

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12382 of 2006

Satyanarayan Panda & Anr.

....

Petitioner(s)

Mr. D. Mohapatra,
Advocate

-versus-

***The Director Consolidation, Odisha
& Ors.***

....

Opposite Party(s)

Ms. S. Ghose,
AGA for O.P.1
Mr. S.K. Mishra,
Advocate for O.P.2

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
20.10.2022**

Order No.

11. 1. Background of in this case is that in the second initiation of a proceeding U/s.37(2) of the O.C.H. & P.F.L Act, the proceeding was registered as R.P. Case No.1275 of 2013 and the same came to be disposed of on 2nd September, 2003 vide Annexure-4 at page 21. It is on the premises that the above proceeding was disposed of in absence of the Opposite Parties therein i.e. the present Petitioners herein, the present Petitioners came to file a petition to recall the order dated 2.09.2003 and requesting therein to dispose the R.P. Case No.1275 of 2013 afresh, but with the involvement of the parties to contest.
2. Taking this Court to the contents in the application vide Annexure-5 and the background of the case, Sri Mohapatra, learned counsel for the Petitioners submitted that there is already disposal of the original proceeding U/s.9(3) of the Act which again appears to have

been opened on the disposal direction of the competent authority in exercise of power U/s.37(2) of the Act. This application was taken up on 4.02.2006 and disposed of on technical ground. Learned counsel for the Petitioner submitted that the authority lacks jurisdiction to recall his own order. It is, in the circumstance and for there is already adjudication of the issue in exercise of power U/s.9(3) of the Act, Sri Mohapatra, learned counsel for the Petitioners contended that there is unnecessary re-initiation of a Section 9(b) proceeding and there is unnecessary forcing a party to again face a further round of litigation and if the proceeding is reopened, it may ultimately see several round of litigations through several forums.

3. Learned State Counsel, however, taking this Court to the reasons assigned in the impugned order at Annexures-4 & 6 claims that the Director is justified in rejecting the application and therefore there is no requirement of interfering in the impugned order.

4. Considering the rival contentions of the parties, this Court finds, undisputedly there was earlier initiation of a proceeding U/s.37(2) of the Act resulting initiation of Objection Case No.1/96, which came to be disposed of on 17.10.1997 vide Annexure-3. Such order has never been challenged. It is at this stage of the matter looking to the grounds taken for recalling of the order dated 2.09.2003, this Court finds, the Petitioners apart from the above grounds have also given the reason of non-attendance. For the matter being decided on a date not fixed for hearing and keeping in view the grounds in the application at Annexure-5 and as there is obstruction to the Petitioners in agitating their grounds in disposal of the 37 (2) proceeding, this Court finds, there was no lawful obstruction to the competent authority in considering such aspect and deciding such matter afresh by recalling the order dated 2.09.2003. In the circumstance, this Court in disposal

of the Writ Petition, interfering in the order at Annexure-6, sets aside the same. In the circumstance, the order at Annexure-4 must go. In the process this Court setting aside both the orders at Annexures-4 & 6, remits the matter to the Director, Consolidation, Odisha, Cuttack for fresh disposal of the 37(2) proceeding, but however, involving the parties likely to be affected.

5. Since the matter is decided in presence of both the parties, this Court directs both the parties to appear before the competent authority along with a copy of this order on 10th November, 2022. This Court further directs the competent authority to involve the private Opposite Parties therein by issuing notice to them.

6. The Writ Petition stands disposed of.

(Biswanath Rath)
Judge

