

IN THE HIGH COURT OF ORISSA AT CUTTACK
O.J.C. No.2230 OF 1993

Chakrapani Naik Behera and others *Petitioner(s)*
M/s.C.A.Rao,
Senior Advocate

-versus-

State of Orissa and others *Opposite Party(s)*
Mr.S.Ghose,AGA
Mr.U.C.Panda,Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER
23.09.2022

Order No.

17. 1. Heard learned counsel for the Parties.
2. The Writ Petition involves orders at Annexures-2 & 5 passed by the competent authorities under the provision of Regulation 2 of 1956. Moot question in challenge to these two orders appears to be Petitioner not only through the written statement advanced the question of applicability under the provision of Regulation 2 of 1956 to the case at hand but such a point even taken note by the original authority in disposal of the impugned order at Annexure-2, there has been no answer to such aspect.
3. Taking this Court to the impugned order by the Appellate Authority in Annexure-5 of the Writ Petition on reiteration of the same plea, Mr.Rao, learned Senior Counsel urged that stage of contingency has been completely neglected by the Appellate Authority. It is therefore prayed that both the orders at Annexures-2 & 5 should be interfered and liable to be quashed. Mr. Panda, learned counsel for private Opposite Parties, while seriously objecting to the contention raised by Mr.Rao, learned Senior Counsel taking this Court to both the

impugned orders submitted the orders are outcome after providing opportunity of argument and participation of the Petitioner and once the Court has taken note on the points raised even though there has been no discussion on such point, it should be presumed that the competent authority passed the order keeping the submissions raised therein in mind.

4. Mr.Ghose, learned Additional Government Advocate supports the stand of Mr.Panda, learned counsel for private Opposite parties and opposing the entertainment of the Writ application.

5. Keeping in view the short question involved as to the effect of the question of law has been raised thereby challenging the applicability of Regulation 2 of 1956 to the case at hand, if the courts below have taken such exercise? This Court looking to the written note of submission at page-17 finds Petitioner has the specific submission even by written note of submission and on perusal of the impugned order at Annexure-2 finds in first paragraph at page-11 of the brief, it appears the competent authority in original side has taken down the submission of learned counsel on the non-applicability of Regulation 2 of 1956 on record.

Entire reading of the order at Annexure-2, this Court nowhere finds there is any decision on the applicability of the Regulation 2 of 1956 to the case at hand. This Court on perusal of Annexure-4 by way of memorandum Appeal finds the Petitioner raised above ground for consideration of the Appellate Authority in paragraph-6 as well as paragraphs-11,13.

6. Now coming to impugned order at Annexure-5, this Court observes even though such a serious question has been raised by the Petitioner in Appeal and the Appellate Court discussed such aspect in

the last paragraph-4 running page-25 of the brief but has not given any answer on the applicability of the statute.

7. In the circumstance and for ignoring very vital point touching to the core of the proceeding not being taken care by both the forums, this Court finds order at Annexure-2 as well as Annexure-5 not sustainable. In the process, this Court sets aside both the orders at Annexures-2 and 5 however since there is requirement of re-adjudication from the original stage, this Court remands the matter to the S.D.O., Gunupur for fresh hearing of the O.S.A.T.I.P Case No.40 of 1985 by way of fresh adjudication also involving a question indicated hereinabove and also involving the Petitioner as well as private Opposite Parties. For the remand of the matter, both Parties are directed to appear before the S.D.O., Gunupur on 11th October, 2022 along with copy of the order.

8. The Writ Petition succeeds to the above extent.

(Biswanath Rath)
Judge

Swarna