

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.11027 of 2019
(Through hybrid mode)**

SDM, NIC Ltd. DO-II

....

Petitioner

Mr. P. K. Mahali, Advocate

-versus-

***Commissioner for Employee's
Compensation com Deputy Labour
Commissioner and others***

....

Opposite Parties

Mr. T. Pattanayak, ASC

Mr. D. K. Mohapatra, Advocate
for O.P.3

CORAM: JUSTICE ARINDAM SINHA

ORDER

29.08.2022

Order No.

- 03.** 1. Petitioner is the insurance company. Mr. Mahali, learned advocate, appears on its behalf and submits, his client has impugned order dated 30th August, 2016 passed by Workmen's Compensation-cum-Deputy Labour Commissioner, Cuttack. By impugned order the Commissioner recalled earlier order dated 22nd November, 2010. He submits, his client had earlier filed W. P.(C) no.4303 of 2015, which was disposed of on order dated 26th March, 2015, made by coordinate Bench. A paragraph from said order is extracted and reproduced below.

"Be that as it may, since the matter involved in the W.C. Case Nos.1189-D, 1191-D, 1192-D/1999 was already closed by the order dtd. 22.11.2010, there was no occasion

for the Workmen's Compensation Commissioner to sit over the matter again and pass further order thereon. It may be that conclusion has been arisen due to not bringing the order dtd. 22.11.2010 to the notice of the Workmen's Compensation Commissioner, when the proceeding was taken up on 7.02.2015. Considering this to be a mistake on record I feel it appropriate to direct the Workmen's Compensation Commissioner to revisit the issue."

2. Mr. Pattanayak, learned advocate, Additional Government Advocate appears on behalf of State and Mr. Mohapatra, learned advocate for opposite party no.3 (beneficiary).

3. Principal amount to have been paid was Rs.3,18,352/- in respect of four beneficiaries, out of whom opposite party no.3 herein was paid his share. By order dated 4th November, 2010, the Commissioner recorded that the principal amount was paid on delay and disbursed. However, there was the interest component yet to be paid amounting to Rs.3,63,300/-. Direction was for payment thereof, failing which appropriate order to be made. The insurance company on 22nd November, 2010 moved the Commissioner to say that the delay caused was due to the file having been seized by vigilance department. The Commissioner was moved and recalled said order dated 4th November, 2010. By impugned order the Commissioner has in effect restored order dated 4th November, 2010. Petitioner does not want to pay Rs.3,63,300/-, being interest on delayed payment.

4. By impugned order the Commissioner found that of Rs.6,81,652/-,

petitioner had deposited leaving balance of Rs.3,63,300/-. Petitioner, as aforesaid, had filed for review before the Commissioner and by order dated 22nd November, 2010 got recalled attachment order dated 4th November, 2010. Mr. Mahali submits, long time thereafter, opposite party no.3 again moved the Commissioner and thereupon impugned order was passed.

5. The Commissioner, it appears, gave reasons in impugned order for making the same. Three questions were framed and answered. Relevant text from impugned order is extracted and reproduced below.

“On the other hand the claimants had challenged all the grounds taken by the opp. Party no.2 in their review application. Now the crucial question lying for determination by this court are as such;

- (1) Whether the orders dated 22.11.2010 passed by this court in consider earlier order dated 10.06.2010 and 25.06.2010 within the knowledge of the claimants/parties?*
- (2) Whether this court had jurisdiction for recalling attachment order dtd. 22.11.2010 by dint of exercise power under section 31 of the W.C. Act, 1923?*
- (3) Whether the review petition filed by the opp. party no.2 are tenable in law?*

In reply question no.1, it is perused from case record that in fact the copy of the petition filed by the opp. party no.2 for recalling attachment order dtd.04.11.2010 had not been served to the claimants/applicant. The order dated-18.06.2010, 25.06.2010 and 22.11.2010 passed by this court without the knowledge of the claimants. The question no.2 and 3 are based on law. The law is very clear after pronouncement of judgment, this court had become a

functus officio and the language enshrine in section 6 of W.C. Act 1923 and Rule 32 of 1924 are totally contrary to the grounds and prayer made by M/s. National Insurance Co. Ltd. in their review petition. Again our Hon'ble High Court too in the case of B.M., NIA Co. Ltd. Vrs. Laxman Muduli and others held "A person cannot approbate by accepting the benefit and at the same time reprobate by denying of it other direction (2016) (I) TAC 760(O). On considering the factual aspects and legal backdrops of case, I opined the review application filed by the opp. party no.2 carries no merit to stand. Hence. Rejected. "

6. Ground for earlier recalling the attachment order, accepted by the Commissioner, was that file of the insurance company had been seized by the Vigilance. This seizure became reason for it to not pay the interest component. Furthermore, it appears from impugned order that the recall order dated 22nd November, 2010 was noticed by the Commissioner in revisiting the matter and making impugned order. Hence, direction made in petitioner's earlier writ petition was complied with. The Commissioner said, law is very clear, in referring to section 6 of Workmen's Compensation Act, 1923 and rule 32 of the 1924 rules, after pronouncement of judgment the office had become functus officio. Nothing has been demonstrated otherwise. There is no reason to interfere and no order can be made.

7. The writ petition is disposed of.

(Arindam Sinha)
Judge