

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7701 OF 2017

M/s. Hotel Moti (Pvt.) Ltd.

Petitioner

Mr. Subham Sharma, Advocate on behalf
of Mr. Baibaswata Panigrahi, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Anindya Mishra, Advocate
(For Opp. Party Nos.2 to 4)
Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opp. Party No.1)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
12.07.2022**

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition have challenged the unilateral decision of the Opposite Parties in raising the energy bills against them under ‘Commercial Category Tarrif’ instead of ‘Industrial Tarrif’, which is contrary to the decision of Chairman-cum-Managing Director, GRIDCO. The Petitioner also claims benefit as a Small Scale Industry under the IPR 1996.
3. At the outset, Mr. Mishra, learned counsel appearing for Opposite Party Nos.2 to 4 submits that the issue raised in this writ petition is no more *res integra* as has been decided in OJC No. 5884 of 2000 and a batch of writ petitions, disposed of on 4th January, 2019. He further submits that this writ petition is not maintainable, as on the self-same cause of action, the Petitioners had earlier moved this Court in OJC No. 5436 of 2000, which was dismissed for non-prosecution vide order dated 15th April, 2015.

Subsequently, the Petitioner filed CMAPL No. 402 of 2015, but the same was dismissed as not pressed on 6th April, 2017. Hence, this writ petition is hit by principles of *res judicata* and is liable to be dismissed.

4. Mr. Sharma, learned counsel for the Petitioner although concedes that the issue involved in this writ petition has already been decided in OJC No. 5884 of 2000 and a batch of writ petitions, disposed of on 4th January, 2019, but submits that CMAPL No. 402 of 2015 was withdrawn under a misconception. It is his submission that since the Petitioner had died during pendency of the writ petition, learned counsel appearing for the Petitioner withdrew the CMPAPL on a confusion to file an application for substitution in the disposed of writ petition. He, therefore, submits that dismissal of the writ petition as well as CMAPL should not stand as a bar for consideration of the case of the Petitioner in the light of the decision in OJC No.5844 of 2000 and a batch of writ petitions, more particularly when the Petitioners in similar writ petitions are extended with the benefit of order passed in OJC No. 5884 of 2000 and a batch of writ petitions.

5. Mr. Mishra, learned counsel for the Opposite Party Nos.2 to 4, however, objects to the said submission.

6. Mr. Mishra, learned Additional Standing Counsel also submits that the issue involved in this writ petition is already decided in OJC No. 5844 of 2000 and a batch of writ petitions.

7. Taking into consideration the rival contentions of learned counsel for the parties and the fact that the CMAPL was withdrawn under a misconception to file an application for

substitution in the disposed of writ petition, this Court is of the considered opinion that the Petitioner should be extended the same relief as granted to the Petitioners in OJC No. 5844 of 2000 along with batch of writ petitions, which were disposed of on 4th August, 2019 on the following observation:

“During course of hearing, learned counsel for the Petitioners seeks liberty to make representation to the competent authority for availing benefit which are extended by GRIDCO as per Clauses-7 and 8 of letter dated 14th May, 1996 of Chairman-cum-Managing Director, GRIDCO, which is quoted below:

“7) The units relating to tourism activities (existing and new hotels) will be entitled to have power at industrial and not at commercial rates of tariff (Cl.16.2)

(Same as IPR-92)

(i) 8) Industrial Units, hotel, Cinema halls etc. covered under earlier Industrial Policy Resolution shall continue to enjoy the incentives admissible under the said Policy except to the extent abridged/modified explained in this Policy (Cl.22.)

Prayer is allowed. Petitioners may make representation before the competent authority, which shall be considered in accordance with law.

However, irrespective of filing of representation, if the petitioner(s) make(s) payment of outstanding amount without prejudice to its claim, within a period of six months from today, we direct the competent authority not to charge the penalty and interest on the outstanding amount.”

8. Accordingly, this writ petition is disposed of with a direction that in the event the Petitioner makes a representation before the competent authority within a period of two weeks hence stating the grounds therein along with certified copy of this order, the same shall be considered in accordance with law.

However, irrespective of filing of the representation, if the Petitioner makes payment of outstanding amount without prejudice to its claim within a period of six months from today, the competent authority shall not impose any penalty and interest on the outstanding amount.

9. It is, however, submitted by Mr. Sharma, learned counsel for the Petitioner that the outstanding amount has already been paid with protest. This Court does not express any opinion on such submission.

10. Connected case record in OJC No. 5436 of 200 shall be returned to the concerned section forthwith.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

