

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.26798 OF 2022

Nirakar Jena

....

Petitioner(s)

Mr.L.N.Rayatsingh,Adv.

-versus-

State of Odisha and others

....

Opposite Party(s)

Mr.S.P.Panda,AGA

CORAM:

JUSTICE BISWANATH RATH

ORDER

10.11.2022

Order No.

01.

1. Heard learned counsel for the Parties.
2. Learned counsel for the Petitioner filed a certified copy of Annexure-1 in Court today be kept on record.
3. The Writ Petition involves a challenge to the impugned order at Annexure-1 passed by the Appellate Authority on the sole ground that on the date of posting of Appeal for hearing under the provision of O.C.H. & P.F.L Act for finding inconvenience the Advocate for the Petitioner filed an application seeking at least fifteen days' time on the ground of non-availability of the appellant therein who was busy in his daughters marriage. It is alleged in rejection of such application on the same date, the matter was heard and decided.
4. Learned State Counsel in his opposition submits for the reason therein party if at all aggrieved has a revision remedy and the point urged here can very well be agitated in the revision proceeding. In the circumstance learned State Counsel submits objection to the entertainability of the Writ Petition at this stage.

5. Considering the rival contentions of the Parties keeping in view the objection of the entertainability of the Writ Petition, this Court entering into the grounds in the first para itself finds there has been filing of application by the Advocate for the Appellant therein seeking fifteen days' time on the grounds mentioned therein and further proceeding clearly discloses the proceeding on the date fixed was undertaken on rejection of such application and certainly without involvement of the Appellant.

6. Considering a genuine ground available there and the illegal rejection of application rendering continuance of the hearing proceeding without proper assistance of the Appellant involved therein. For the finding herein, it becomes unnecessary if the Petitioner herein is asked to prefer revision at this stage of the matter.

7. In the circumstance this Court while rejecting the claim of the State Counsel entering into the reason of rejection of the time petition by the Appellate Authority found to be in non-application of mind and rendering illegal rejection of such application. Since this Court finds appeal remedy to a party is a valuable remedy nothing prevented the Appellate Authority in granting at least some days adjournments and taking up the matter in the involvement of the Appellant particularly keeping in view the matter involves a revenue matter and there is definite assistance of the person concerned in the course of hearing of the matter even.

8. In the circumstance this Court finds, the Appeal order at Annexure-1 is not sustainable in the eye of law. This Court sets aside the order dated 07.07.2022 in R.A. Case No.24 of 2014 but however since the Appeal is required hearing and fresh disposal of the matter, the R.A. Case No.24 of 2014 is remitted to the appellate authority involved herein for fresh hearing. In the fresh disposal the

observations, if any, in the impugned order shall have nothing to do. Petitioner undertakes to serve copy of the order of this Court herein on the Appellate Authority at least within a period of one week. On submission of copy of order, the Appellate Authority shall intimate the Petitioner the date of hearing and Petitioner undertakes that he shall not enter into the adjournment tactics any further.

9. Free copy of this order be handed over to learned State Counsel.

(Biswanath Rath)
Judge

Swarna

