

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMAPL No. 306 of 2021

Nrusingha Charan Mishra

....

Petitioner

Mr. D. Mohapatra, Adv.

-Versus -

State of Odisha and others

....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

14.02.2022

Order No.

01

This matter is taken up through hybrid mode.

2. Heard Mr. Dayananda Mohapatra, learned counsel for the petitioner.

3. The petitioner has filed this CMAPL seeking to recall the order dated 14.07.2021, by which WPC (OAC) No.658 of 2000 was dismissed by this Court with the following orders:-

“This matter is taken up by video conferencing mode.

Mr. D.N. Rath, learned counsel appearing for the petitioner states that the brief has already transferred from his office and, as such, he has no instruction in the matter. Therefore, their names may be deleted from the cause list as well as fist page of the brief.

In view of the above submissions, the name of Mr. J.K. Rath and associates be deleted from the cause list as well as fist page of the brief.

None appears for the petitioner at the time of call.

The writ petition stands dismissed for want of prosecution.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed, vide Court's Notice No.4587 dated 25th

March, 2020, as modified by Court's notice no. 4798 dated 15th April, 2021."

4. On perusal of the aforesaid order, it appears that previously counsel Mr. D.N. Rath, learned counsel was appearing in this case on behalf of the petitioner and, as such, on the said date, i.e., 14.07.2021, he stated that the brief had been transferred and he had no instructions in the matter and, therefore, their names be deleted from the cause list as well as from the first page of the brief. Thereafter, since none had appeared for the petitioner at the time of call, the matter was dismissed for want of prosecution, reason being the matter is of the year 2000 and if the petitioner had taken away the brief from the previous counsel, it is the responsibility of the newly engaged counsel to appear thereafter and, as such, none was present on 14.07.2021 on behalf of the petitioner to indicate that he was engaged in the case by the petitioner. Subsequently, Mr. D. Mohapatra, learned counsel has entered appearance on behalf of the petitioner and filed this CMAPL on 31.10.2021 for recalling of the order dated 14.07.2021. But, on perusal of the said application, it appears that no plausible reasons for non-appearance on 14.07.2021 have been indicated in the application itself. The only reasons, which have been assigned in paragraph-3 of the application, are extracted hereunder:

"3. That it is humbly submitted that the petitioner filed the writ petition through other lawyers but however, the O.A. was continuing with the counsel appearing before the learned tribunal. The same created a confusion for which the counsel pleaded no instruction. The petitioner learnt about the aforesaid fact after receipt of the counter of opposite party no.3 on 13.08.2021 by his counsel appearing in the writ petition with prayer for

transfer of the O.A. and thereafter required to contact his counsel but he could not know about dismissal of the case and filed the rejoinder on 23.09.2021. Thereafter, the petitioner learnt about the dismissal of the writ petition while filing memo on 01.10.2021. The petitioner files the present CMAPL with enclosed Vakalatnama.”

5. In the above view of the matter, this Court is not inclined to recall the order dated 14.07.2021 passed in WPC (OAC) No. 658 of 2000.

6. Accordingly, the CMAPL stands dismissed.

Ashok

(Dr. B.R. Sarangi)
Judge

