

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2009
(Arising out of SLP (C) No. 596 of 2009)

State of Orissa and Ors.

..Appellants

Versus

Balram Sahu

..Respondent

With Civil Appeal No. _____ /2009 @ SLP (C) No. 597/2009

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted in both the Special Leave Petitions.
2. The controversy in the two appeals lies within a very narrow compass.

Writ Petition No.3445 of 2004 was filed by the respondent before the Orissa High Court, inter-alia, with a prayer that his license as a Super Class Contractor should not be cancelled by the respondent No.2 i.e. Chairman of

the Committee of Chief Engineers and Engineers in Chief, Orissa. The Writ Petition was filed under the apprehension that his license was likely to be cancelled. The High Court disposed of the Writ Petition by order dated 13.5.2004 after hearing learned counsel for the writ petitioner and learned Government Advocate with a direction that without issuing show cause notice to the writ petitioner and without giving him a fair opportunity of hearing, his license as Super Class Contractor shall not be cancelled and his security deposit shall not be forfeited.

3. Several miscellaneous cases were thereafter filed by the respondents. By order dated 7.10.2005 the Chairman of the aforesaid Committee directed cancellation of respondent's license under Rule 11(a) of P.W.D. Contractors Registration Rules, 1967 (in short the 'Rules'). This was questioned by the respondent by filing a writ petition taking the stand that the order was passed by the Chief Engineer, but no notice was issued prior to passing of the order. The High Court by order dated 9.2.2007 allowed the Writ Petition, quashing several orders passed on the ground that before the cancellation was done, no notice was given. Reference was made by the present appellants to notice purportedly issued on 21.2.2004. It was stated that before the order was passed by the High Court in Writ Petition No.3445/2004, a show cause notice had already been issued. The

respondent filed a rejoinder affidavit taking the stand that after the order was passed on 13.5.2004 in the earlier writ petition, no notice was issued. The High Court noticed that before cancellation of the license no notice had been issued and the previous writ petition was disposed of with a specific direction that without notice and grant of fair opportunity of hearing license shall not be cancelled and the security shall not be forfeited. Undisputedly, after the date of the High Court's order, no notice was issued. Thereafter, several miscellaneous cases were filed for extension of time. An application was also filed for modification of order passed on 9.2.2007 by the High Court. But the High Court by order dated 25.6.2008 rejected the same and further directed the present appellants to implement the order dated 9.2.2007.

4. Learned counsel for the appellant-state and its functionaries submitted the earlier writ petition was disposed of without issuance of notice and the High Court should have taken note of the fact that prior to the date of order, notice had been issued.

5. Learned counsel for the respondent, on the other hand, submitted that the High Court specifically directed that before cancellation and forfeiture notice has to be given. Even though notice was not formerly issued in the

earlier petition, learned Government Advocate appeared for the State and its functionaries. He did not bring to the notice of the High Court that any show cause notice was issued on 21.2.2004. The matter was disposed of on 13.5.2004 i.e. after about three months. It was pointed out that the cancellation order was passed on 7.10.2005. Before that also there was no prayer made to modify the earlier order. It was never the stand of the State and its functionaries about the issuance of notice on 21.2.2004. We find that the stand taken by the respondent is factually correct. The order dated 13.5.2004 was very specific to the effect that before cancellation and forfeiture of security deposit, notice has to be given. That admittedly has not been done. In the circumstances we dispose of both the appeals with a direction that the impugned order of the High Court shall remain operative. It is open to the appellant-State and its functionaries to issue notice in terms of the order passed by the High Court in Writ Petition No.3445/2004 and after grant of opportunity, decide the matter in accordance with law. The appeals are accordingly disposed of.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
January 27, 2009