

GOVERNMENT OF ODISHA

WORKS DEPARTMENT

No. LEGAL-MISCSB-0001-2021 9479 /W., Dated 5.7.21

From

Dr. Chitrasen Rout, OAS (S),
Joint Secretary to Government.

To

The EIC (Civil), Odisha/
The C.E, NHs, Odisha/
The Chief Architect, Odisha.

Sub: Vacation of stay after six months from the date of such order unless extension is granted for good reason- Instruction regarding.

Sir,

In inviting a reference to the subject cited above, I am directed to enclose herewith a copy of the letter No.16495/Gen, dated 29.06.2021 of G.A & P.G Department, along with the Order No.03 dated 19.03.2021 passed by the Hon'ble High Court of Odisha in the WP(C) No.2863 of 2021 (State of Odisha & others Vrs Shibashis Kar) in the light of the order of Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Private Ltd. and another Vs. Central Bureau of Investigation in Criminal Appeal No.1375-1376/2013 and clarified in MA No.1577/2020 vide order dated 15.10.2020 which speaks for itself. The observations of the Hon'ble Court may please be kept in view while dealing with similar matters to uphold the interest of the state.

Yours faithfully,

4/05/2021
Joint Secretary to Government

Memo No. 9480 /W., Dated 5.7.21

Copy along with enclosures forwarded to all Divisional Heads/all Sections of this Department for information and necessary action.

4/05/2021
Joint Secretary to Government

Memo No. 9481 /W., Dated 5.7.21

Copy along with enclosures forwarded to all C.Es/ S.Es/ S.E (Electrical)/ E.Es for information and necessary action.

4/05/2021
Joint Secretary to Government

Memo No. 9482 /W., Dated 5.7.21

Copy along with enclosures forwarded to the P.S to Commissioner-cum-Secretary to kind information of Commissioner-cum-Secretary.

4/05/2021
Joint Secretary to Government

Memo No. 9483 /W., Dated 5.7.21

Copy along with enclosures forwarded to the Notice Board/ OSWAS Control Room for offline as well as online display in the Departmental Website.

4/05/2021
Joint Secretary to Government

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2.7.21

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SRS
2.7.21

No 16495 / Gen
GAD-SC-CASE1-0032-2021

Government of Odisha
General Administration & Public Grievance Department

Bhubaneswar, Dated 29th June, 2021

To

All Departments of Government,
All Heads of Departments,
All Collectors.

Sub- Vacation of stay after six months from the date of such order unless extension is granted for good reason - Instruction regarding.

In inviting reference to the subject cited above, I am directed to say that matters remain in dead lock for months together due to the stay order passed by the Hon'ble Courts.

The Hon'ble High Court, Orissa, while disposing the W.P. (C) No. 2863 of 2021 (State of Odisha & others Vrs Shibashis Kar) vide Order No. 03 dated 19.03.2021, citing the authority of the Hon'ble Supreme Court have observed that as per decision of the Hon'ble Supreme Court held in case of Asian Resurfacing of Road Agency Private Ltd. and another v. Central Bureau of Investigation in Criminal Appeal No. 1375-1376/2013 and clarified in MA No. 1577/2020 vide order dated 15.10.2020, any stay order passed by any Court cannot remain effective beyond six months unless a specific order has been passed by the Court.

It is, therefore, requested that the above observation of the Hon'ble Supreme Court may be kept in view while dealing with such matters.

The subordinate offices under their control may be intimated accordingly.

6/7/21
29.6.2021

Additional Secretary to Government

17
Memo No. 16496.,

Dated. 29th June, 2021

Copy forwarded to all Sections of G.A. & P.G. Department / Guard file (10 copies)/ G.A. & P.G. Department Library (10 copies) for information and necessary action.

G.A. & P.G. 29.6.21

Additional Secretary to Government

SAS

W.P. (C) No.2863 of 2021

State of Odisha and others Petitioners

-Vrs-

Sri Shibashis Kar Opp. party

03 19.03.2021

This matter is taken up through Hybrid mode.

Heard Mr.L.Samanataray, learned Addl. Government Advocate for the petitioners-State and Mr.B.Mohanty, learned counsel for the opp. party No.1.

In this writ petition, the petitioners have prayed for a direction to the opp. parties to quash or set aside the order dated 29.01.2019 passed in O.A. No.444 of 2019 by the Orissa Administrative Tribunal, Bhubaneswar under Annexure-4. They have also prayed for a direction to transfer the aforesaid case to this Hon'ble Court.

The first prayer has become infructuous in view of the latest judgment of the Hon'ble Supreme Court that any stay order passed by any Court cannot remain effect beyond six months unless a specific order has been passed by the Tribunal or Court. So, in this case the parties shall follow the direction given by the Hon'ble Supreme Court in the case of ***Asian Resurfacing of Road Agency Private Ltd. and another v. Central Bureau of Investigation*** reported in ***AIR 2018 SC 2039, 2018 (16) SCC 299 and clarification reported in 2020 SCC Online SC 1046***. The alternative prayer is to transfer the O.A. No.444 of 2019 passed by the Orissa Administrative Tribunal, Bhubaneswar to this Hon'ble Court.

Bichi

Since the Orissa Administrative Tribunal is not

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functioning, it shall be appropriate in the interest of justice that the matter shall be taken up by the Hon'ble High Court.

Hence, the writ petition is allowed and the O.A. No.444 of 2019 passed by the Orissa Administrative Tribunal, Bhubaneswar is hereby transferred from the Orissa Administrative Tribunal, Bhubaneswar to this Court henceforth and the matter shall be re-numbered as per the Orissa High Court Rules and the same shall be listed before the appropriate assigned Bench.

The writ petition is accordingly disposed of.

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

.....
S.K.Mishra, J.

.....
Savitri Ratho, J.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO. 1577 OF 2020

IN

CRIMINAL APPEAL NOS. 1375-1376 OF 2013

ASIAN RESURFACING OF ROAD AGENCY PVT. LTD. & ANR. Appellant(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

Respondent(s)

O R D E R

Having heard Mr. Dilip Annasaheb Taur, learned counsel for the applicant and Mr. S.V. Raju, learned ASG for the respondent, we are constrained to point out that in our directions contained in the judgment delivered in Criminal Appeal Nos. 1375-1376 of 2013 [*Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. vs. Central Bureau of Investigation*] and, in particular, para 35, it is stated thus:

"35. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced."

Learned Additional Chief Judicial Magistrate, Pune, by his order dated 04.12.2019, has instead of following our judgment in letter as well as spirit, stated that the Complainant should move

Signature Not Verified
Digitally signed by R
Natarajan
Date: 2020.10.16
16:16:31 IST
Reason:

an application before the High Court to resume the trial. The Magistrate goes on to say: "The lower Court cannot pass any order which has been stayed by the Hon'ble High Court, Bombay with due

respect of ratio of the judgment in *Asian Resurfacing of Road Agency Pvt. Ltd. & Anr.* (supra)." We must remind the Magistrates all over the country that in our pyramidal structure under the Constitution of India, the Supreme Court is at the Apex, and the High Courts, though not subordinate administratively, are certainly subordinate judicially. This kind of orders fly in the face of para 35 of our judgment. We expect that the Magistrates all over the country will follow our order in letter and spirit. ~~Whatever~~ stay has been granted by any court including the High Court automatically expires within a period of six months, and unless extension is granted for good reason, as per our judgment, within the next six months, the trial Court is, on the expiry of the first period of six months, to set a date for the trial and go ahead with the same.

With this observation, the order dated 04.12.2019 is set aside with a direction to the learned Additional Chief Judicial Magistrate, Pune to set down the case for hearing immediately.

Miscellaneous Application is disposed of accordingly.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(NAVIN SINHA)

..... J.
(K.M. JOSEPH)

New Delhi;
October 15, 2020.

ITEM NO.27

Court 3 (Video Conferencing)

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No. 1577/2020 in CrI. Appeal No(s).
1375-1376/2013

(Arising out of impugned final judgment and order dated 25-04-2018
in CrI.A. No. No. 1375/2013 passed by the Supreme Court Of India)

ASIAN RESURFACING OF ROAD AGENCY P. LTD. & ANR. Appellant(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

Respondent(s)

(FOR ADMISSION and IA No.15196/2020-EXEMPTION FROM FILING O.T. and
IA No.15193/2020-INTERVENTION/IMPLEADMENT and IA No.15201/2020-
CLARIFICATION/DIRECTION and IA No.15190/2020-APPLICATION FOR
PERMISSION)

Date : 15-10-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Dilip Annasaheb Taur, AOR

For Respondent(s) Mr. S.V. Raju, ASG
Ms. Binu Tamta, Adv.
Ms. Rukhmini Bobde, Adv.
Mr. V.V.V. Pattabhiram, Adv.
Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Application for impleadment is allowed.

Miscellaneous Application is disposed of in terms of the
signed order.

Pending applications also stand disposed of.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
BRANCH OFFICER

(Signed order is placed on the file)

original record is required by holding that photocopy will not serve the purpose, the appellate/revisional court may call for the record only for perusal and the same be returned while keeping a photocopy/scanned copy of the same.

6. A copy of this order be sent to all the High Courts.

The appeals are disposed of.

.....J.
[Adarsh Kumar Goel]

New Delhi,
April 25, 2018.

.....J.
[Rohinton Fali Nariman]