

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 3208 (M/S) of 2016

Pitambar Singh & others Petitioners
versus
State of Uttarakhand & others Respondents

Mr. B.P. Nautiyal, Sr. Advocate assisted by Mr. Mohd. Matloob, Advocate for the petitioners.

Mr. R.C. Arya, Standing Counsel for the respondent State.

Mr. Paresh Tripathi, Advocate assisted by Ms. Sonia Chawla, Advocate for respondent no. 4.

U.C. Dhyani, J. (Oral)

By means of present writ petition, the petitioners seek to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.11.2016 (Annexure 11 to the petition), passed by respondent no. 2 and closure notice and termination order dated 29.09.2016 (Annexure 3 to the petition), passed by respondent no. 4.

2. Heard learned counsel for parties on amendment application, being CLMA no. 3782 of 2017 and perused the documents brought on record, including the judgment rendered by the Division Bench of this Court, *vide* order dated 14.12.2016, in Special Appeal no. 358 of 2016, M/s Shahnaz Ayurvedic vs Pitambar Singh and others.

3. The petitioners have delineated the sequencing of events, which led the petitioners to file present amendment application. This Court does not think it

necessary to reproduce those incidents / facts, for the sake of brevity, for they are part of the record.

4. It is the submission of learned Senior Counsel for the petitioners that those facts, which have been narrated in the amendment application, have prompted the petitioners to bring present amendment application.

5. Learned counsel for respondent no. 4 submitted that when the maintainability of the writ petition is itself challenged, no amendment can be prayed in order to attempt to cover up the issue. Learned counsel also submitted that proposed amendment is malicious, inasmuch as the petitioners after obtaining the order from this Court, have not informed the concerned officials about the same. It is contended that present petition under Article 227 of Constitution of India itself is not maintainable as the same, at the best, could have been filed under Article 226 (subject to objection of maintainability therein also) and now by the proposed amendment, the said petition is sought to be maintained, by the petitioners under Article 227 of the Constitution of India to cover up the illegality committed by them and to frustrate the order of Division Bench, passed in Special Appeal, which itself establishes that the writ petition is to be treated under Article 226 and not under 227, as no special appeal lies against any order passed in exercise of powers under Article 227 of the Constitution of India.

5. The Court is satisfied with the sufficiency of reasons thus furnished in the affidavit filed in support of

present amendment application, as also the proposed amendments and, therefore, the Court is inclined to allow the amendment application without entering into the merits of the case.

6. If the amendment application is allowed, the same does not mean that Court is agreeing to the contents of such application. The *bona fide* and authenticity of such contents shall be adjudicated by this Court when the writ petition is decided on merits or when stay vacation application is taken up for hearing.

7. Amendment application is allowed. Let amended memo of petition be brought on record within two weeks. Thereafter, reply to the amended memo (of petition) be filed by the respondents within next two weeks.

8. List the writ petition after four weeks.

(U.C. Dhyani, J.)

Dt. July 28, 2017

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