

(2011) 09 CAL CK 0029

In the Calcutta High Court

Case No : CPAN 1478 of 2010 in Writ Petition 4996 (W) of 2006 CAN 7259 of 2011

Arun Kr. Dey

APPELLANT

Vs

Prof. Saroj Kr. Sanyal and Anr

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 2 CALLT 24

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Prasenjit De and Mr. Kamalesh Bhattacharya and Mr. Dipanjan Sinha Roy, for the Appellant; A.B. Chatterjee, Anjan Datta and Ms. Tapasi Sinha for the Contemnor/Respondent Nos. 1 and 2 and Mr. Kamalesh Bhattacharya . A.G.P. and Mr. Dipanjan Sinha Roy for the Respondent No. 3, for the Respondent

Judgement

Biswanath Somadder, J.—The instant application has been taken out by the State of West Bengal, through the Joint Secretary Department of Agriculture, (Education Branch), Government of West Bengal, seeking recall of the order dated 7th April, 2010, passed in W.P. 4996(W) of 2006. By the said order, this Court disposed of that writ petition with certain directions upon the respondent Nos. 1 and 2, being Vice-Chancellor and the Registrar of Bidhan Chandra Krishi Viswavidyalaya, respectively. Later on, the writ petitioner filed a contempt petition, being CPAN 1478 of 2010, on 18th November, 2010, which is still pending. In the said contempt proceeding, on behalf of the Vice-Chancellor and the Registrar of the Bidhan Chandra Krishi Viswavidyalaya, being the alleged contemnor/respondent Nos. 1 and 2, it was contended that while the University authorities had taken all steps in the matter pursuant to the order dated 7th April, 2010, the Joint Secretary, Department of Agriculture, (Education Branch), Government of West Bengal, was standing in the way to ensure effective compliance of the said order passed by this Court.

2. In such circumstances, by an order dated 7th January, 2011, this Court

directed the writ petitioner to add the Joint Secretary Department of Agriculture, (Education Branch), Government of West Bengal, as party to the contempt proceeding.

3. The contempt petition was thereafter heard from time to time. In the meanwhile, the applicant herein, who was not a party in the writ proceeding, filed the instant application on 28th July, 2011.

4. Citing the decision of the Supreme Court rendered in *Shivdeo Singh and Others Vs. State of Punjab and Others*, , the learned Additional Government Pleader submits that this Court has inherent power under Article 226 to review its own order at the instance of the applicant who was not a party to the original writ proceeding.

5. The judgment of the Supreme Court was rendered in a case where on A's writ petition an order was passed affecting the rights of B, although B was not a party in A's writ petition. Subsequently, B filed a writ petition for impleading him as a party to A's writ petition and for re-hearing of the entire matter. The High Court allowed B's writ petition. In such a fact situation the Supreme Court held, *inter alia*, that the second writ petition by B was maintainable and the High Court had not acted without jurisdiction in reviewing its previous order at the instant of B who was not a party to the previous writ proceedings.

6. The facts of the instant case are clearly distinguishable. The applicant herein has not filed any fresh writ petition nor is seeking any review of the order dated 7th April 2010, passed in W.P. 4996(W) of 2006, which has already been disposed of. The applicant was not a party to the writ proceeding but was subsequently added as party in the contempt proceeding at the behest of the alleged contemners. The judgment of the Supreme Court is not an authority for the proposition that in such a fact situation a recalling application can be maintained by someone who was not a party to the writ proceeding which has already been disposed of. Although it is obvious that the applicant is aggrieved by the order dated 7th April 2010, passed by this Court in W.P. 4996(W) of 2006, clearly his remedy lies elsewhere. In such circumstances, in the interest of justice, let the contempt application, being CPAN 1478 of 2010, stand adjourned *sine die*, with liberty to the parties to mention. The instant application stands disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties. Application disposed of