
(2022) 09 KL CK 0014

In the High Court Of Kerala

Case No : Review Petition No. 935 Of 2021 In Writ Petition (C) No.21298 Of 2021

Dalit Samudhaya Munnani

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 02-09-2022

Acts Referred:

Constitution of India, 1950 — Article 15(6), 16(6), 139A

Citation : (2022) 09 KL CK 0014

Hon'ble Judges : S. Manikumar, CJ;Shaji P. Chaly, J

Bench : Division Bench

Advocate : Ravivarma Kumar, T.R.Rajesh, Gopalan Mohan Gopal

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.

1. This Review Petition is filed by the petitioners in W.P.(C) No. 21298 of 2021 seeking to review the order passed by this Court on 02.11.2021 in W.P.(C) No. 21298 of 2021, whereby in the light of the writ petitions pending before the Apex Court with regard to the constitutional validity of the 103rd constitutional amendment Act, providing 10% reservation to the economically weaker sections; and taking note of the stay granted by the Apex Court in a Transfer Petition against the proceedings in the writ petition filed by one Nujaim P.K. before this court, the writ petition in question was directed to be deferred until further orders awaiting the judgment of the Apex Court.

2. In fact, this Court has found that the challenge made to the 103rd constitutional amendment has a direct bearing with the validity of the orders passed by the State Government, challenged in the writ petition, and also taking note of the order issued by the Apex Court directing its registry to request the respective High Courts to transfer those cases in order to avoid conflicting findings by different High Courts, the hearing of writ petition was deferred by this court .

3. We have also noted that in the writ petition filed by Nujaim P.K., two of the Government Orders challenged in this writ petition namely Exts.P7 and P8 corresponding to Exts.P4 and P5 therein, are challenged .

4. Therefore it can be seen that we have passed the questioned order taking note of the preliminary objections raised by the State and its officials, and other facts and circumstances. So also, in the light of the order dated 05.08.2020 in Union of India v. Nujaim P.K (W.P. (C) No.55 of 2019 and connected matters and Transfer Petition © No. 1123 of 2021) we thought it fit to arrive at the conclusions made in the order, especially in view of the stay granted by the Apex Court in the Transfer Petition filed before the Apex Court to transfer the writ petition filed by Nujaim P.K.

5. The Review Petition is filed by the petitioners basically contending that this Court has not explained the nature of impact on the orders passed by the State Government vis-a-vis the 103rd Amendment Act. In our view, it is clearly specified in the order that there is a close connection to the challenge made to the 103rd amendment, vis a vis the relief sought for in the writ petition, since the State Government has passed impugned orders on the basis of the amendment made. However, many of the contentions raised in the Review Petition is based on the presumption that, the order erroneously treats the 103rd amendment Act and Articles 15(6) and 16(6) as doubtful of the validity until it is confirmed by the Hon'ble Supreme Court; and that, cases arising from the 103rd Amendment Act should not be admitted or adjudicated.

6. We have heard Dr. Gopalan Mohan Gopal for the Review Petitioners and the learned Senior Government Pleader Sri. V. Manu, and perused the pleadings and material on record.

7. In fact, we have never entered into the merits of the matter while passing the order under review. It is also relevant to note that we have passed the order on the basis of the pending writ petitions before the Apex Court and the order passed by the Apex Court in the Transfer Petition in Nujaim P.K's case; and also taking into account the direction issued by the Apex Court to its registry to request to the High Courts to transfer similar cases to the Apex Court.

8. When there is such a direction issued by the Apex Court, this Court was dutiful to identify as to whether the instant writ petition would come under the realm of the issues pending before the Apex Court as to the 103rd Amendment Act.

9. It was taking into account the said aspects, we have arrived at the conclusions in the impugned order passed by us, for keeping the writ proceedings in abeyance. It may be true, under normal and ordinary circumstances, mere pendency of a writ petition before the Apex Court, even under similar circumstances, would not detain the High Court to consider the subject issue on its merit. However, this is a case where there are circumstances denoted in the order of the Apex Court to identify the cases, which are similar in nature and make a request to the High Courts to transfer those cases to the Apex Court, in

order to avoid conflicting findings with respect to the one and the same aspects pending before the Apex Court and various High Courts.

10. Considering the above said aspects, we are of the definite and clear opinion that the petitioners have not made out any case for the review of the order passed by us, since there is no error apparent on the face of the record or any other legal infirmities justifying this Court to review the order passed. Moreover, it is clearly discernible from the nature of contentions put forth in the Review Petition and the grounds raised that the petitioners have made in-depth efforts to make an attempt to bring the order under the realm of a review petition. It is well settled in law that the error apparent on the face of the record should be identifiable easily and without entering deeply into the merits of the matter .

11. If the decision is erroneous on its merit or if there is any illegality in the findings rendered by this Court, the remedy of the Review Petitioners was to file an appeal against the order. It is also equally important to note that when the orders are passed by the Apex Court in a Transfer Petition filed for transfer of a writ petition filed before this Court, wherein similar contentions are raised and two Government Orders under challenge in this writ petition are correspondingly challenged in the writ petition, this Court was expected to take into consideration the real intent and purport of the order passed by the Apex Court.

12. That said, Article 139A of the Constitution of India dealing with the transfer of cases would be relevant and clause (1) thereto clearly specifies that where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the cases pending before the High Court or the High Courts and dispose of all the cases by itself.

13. On an appreciation of the entire facts and circumstances, we are of the view that we were persuaded to pass an order deferring the hearing of the writ petition, since the materials available on record justified such a course of action. Further, we have taken into account each and every factual and legal circumstances in order to understand the real spirit of the order passed by the Apex Court. Above all, the legality of the orders passed by the Government under challenge in the writ petition in question would depend upon the decision taken by the Apex Court as regards the constitutional validity of the 103rd

14. Even though various judgments are referred to by the learned Senior Government Pleader, with regard to the extent of interference that can be made in a Review Petition, we are of the definite opinion that since the legal position is so well settled, unless and until an error apparent on the face of the record or such other legal infirmities, is discernible in a cursory glance, the Review Petition cannot be entertained. As we have pointed out above, much effort is made by

the Review Petitioners to raise various grounds so as to persuade this Court to detect an error.

15. However, we are of the considered opinion that it was assigning clear reasons that the order was passed by this Court and therefore, in our view, there is no error apparent on the face of the record or other legal infirmities justifying us to allow the Review Petition.

Upshot of the above discussion is that the petitioners have not made out any case for review of the order in question. Needless to say, Review Petition fails and accordingly, it is dismissed.