
(2018) 08 CAL CK 0016

In the Calcutta High Court

Case No : CAN 5254 of 2018, W.P. 4616(W) of 2018

Director of Madrasah Education

APPELLANT

Vs

Anisur Rahaman & Ors.

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Constitution Of Indian 1950 — Article 226

Citation : (2018) 08 CAL CK 0016

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Joytosh Majumder, T. M. Siddiqui, Suman Sengupta, S. S. Siddiqui, Golam Mustafa, Tarasankar Samanta

Judgement

Leave is granted to the learned advocate of the applicant/ respondent No. 3 in the writ application to correct the cause title here and now by adding

the name and style of the third respondent as an applicant. The judgment dated July 27, 2018 had three parts. The first part recorded my prima facie

satisfaction that the writ petitioners' names were not included in the application for financial assistance or in the District Level Inspection Team

report. This means that contemporaneous records would have shown that they were not present during the time of inspection.

However, the second part recorded the sorry state of affairs for which despite several chances not only was affidavit in opposition not filed by the

respondents within the stipulated time but also no co-operation was extended to the learned senior advocate of the State who is also an additional

Government Pleader by the concerned authorities nor were records sent to him for being produced before this Court. The third part was my decision

was on merits treating the submissions made in the writ petition to have been

admitted. On that basis I passed the order on merits disbelieving the findings recorded in Annexure P/14 to the writ petition.

Unfortunately because of the continued intransigence of the applicant/respondent No. 3 in the writ petition I had passed an order directing the State of West Bengal to take disciplinary steps against the officers of the said Directorate including the respondent No. 3 in the writ petition. At that time there was none to tender apology for the conduct of the third respondent. Today in this application for recalling being CAN 5254 of 2018 taken out by the respondent No. 3/applicant has sought mercy from the Court and also has tendered his apology at paragraph 2 of the said application.

Accordingly, the direction relating to disciplinary proceeding against the third respondent which was more in terrorem than out of any motive of exact vengeance is recalled as prayed for.

So far as the judgment on merits is concerned, unfortunately though the law has been clearly shown inter alia, at Annexure F to the application and though the learned Government Pleader has the records of the case today, I find that there is not even any averment about the respondents have tried diligently to produce those records at the time of hearing. The circumstances in which they were not brought before the Court has not been averred in the application, according to Mr. Majumder, learned Government Pleader, due to the tearing hurry in which the present application was drafted and filed.

On the other hand, Mr. Golam Mostafa appearing for the opposite parties/writ petitioners submits that though he is not equipped with the brief today despite service, his client has been given hearing by the Secretary of the concerned department where he was asked to produce the original records and according to him the next date has been fixed on August 8, 2018. The next date has been fixed in terms of my order. Such order has been sought to be recalled in this application. Naturally compliance with my order in a case where non-compliance would entail the respondents responsible for such non compliance, cannot take away the right of the applicant to seek recalling or review of the order or even prefer an appeal from it since to hold otherwise would be to make the process of the Court an instrument of extortion.

One cannot expect that the order of the Court be complied with in terror of the contempt proceeding and at the same time hold the person concerned

disentitled to seek either review or recall of the order. This however, does not deal with the question how I can exercise my substantive power of

considering an application effective seeking review which contains no averments which can allow review to be made even in exercise of power both

under Article 226 of the Constitution and as a superior Court under the Letters Patent, 1865. Accordingly, the operation of the judgment dated July

17,2018 is stayed on the following conditions:-

a) Within a period of seven days from date, a formal application for review without certified shall be taken out by the applicant/third respondent in the

writ petition duly affirmed by an affidavit averring the reason why the records could not be brought before this Court when the matter was being

heard and also why even the affidavit in opposition was not filed ;

b) The hearing fixed on August 8, 2018 shall be concluded but the order shall not be communicated to the petitioners but shall be kept in a sealed

cover which shall be brought before this Court on the next date along with this application;

c) All observations made against the applicant and the officers concerned shall remain kept in abeyance and shall not be reported in the media. I

sound a word of caution. The jurisdiction of this Court to do mercy has been invoked. Such quality of mercy is not â??strainâ??dâ?. What was true

in Renaissance Venice is true in 21st Century, Calcutta.

The next time the authorities under the State Directorate show such cavalier disregard for the processes of Court or learned senior Government

advocate who is also additional Government Pleader, they shall see the cruel face of an obdurate Court rather than the merciful smile of an indulgent

Judge. Let the matter be posted for further consideration after the review application has been affirmed and filed. Liberty to mention. Let photostat

plain copy of the order duly countersigned by the Assistant Registrar (Court) be given to the learned advocate for the applicant on usual undertaking.