
(2018) 10 CAL CK 0028
In the Calcutta High Court

Case No : Rvw 228 Of 2017, Can No. 10169, 9486 Of 2017, Mat 1995 Of 2016
Executive Director, F.C.I. & Others @APPELLANT@Hash Subhas Pramanik & Others

Date of Decision : 04-10-2018

Acts Referred:

Citation : (2018) 10 CAL CK 0028

Hon'ble Judges : Tapabrata Chakraborty, J;Shivakant Prasad, J

Bench : Division Bench

Advocate : Sagar Bandopadhyay, Subhamoy Dewanji

Final Decision : Disposed Off

Judgement

Tapabrata Chakraborty J.

1. Aggrieved by the judgment dated 27th July, 2017 passed in MAT 1995 of 2016, the Food Corporation of India (in short, FCI) and its functionaries

have preferred the present review application being RVW 228 of 2017.

2. As we have invited Mr. Basu, learned senior counsel appearing for the appellants/applicants to advance his arguments on merits of the review

application, we condone the delay in preferring the review application.

3. Mr. Basu primarily argues that the Honâ??ble Supreme Court while disposing of a writ petition being W.P.(Civil) No.422 of 2000 filed by the FCI

Workers Union seeking to enforce the claim of its members under the Direct Payment System for payment of wages at par with departmental

workmen of FCI, the Honâ??ble Court only granted liberty to the union to move before the appropriate forum for relief. Pursuant to such liberty

granted by the Honâ??ble Supreme Court, a reference has been made to the National Industrial Tribunal, Bombay regarding the working conditions

of Direct Payment System, no work no pay system workers being Reference NTB

No.1 of 2003, which is still pending for adjudication before the National Industrial Tribunal, Bombay. The said fact was suppressed by the writ petitioners in the writ petition being W.P. No. 22855 (W) of 2014. The applicants herein could not deal with the said relevant point at the hearing of the writ petition as no affidavit-in-opposition was filed in the above writ petition.

4. Mr. Bandopadhyay, learned advocate appearing for the writ petitioners/respondents submits that it is not a case that even after exercise of due diligence, the order passed by the Honâ??ble Supreme Court in the W.P.(Civil) No.422 of 2000 could not be brought to the notice of the Appeal Court by the applicants at the time of hearing. The order passed in W.P.(Civil) No.422 of 2000 was delivered way back in the year 2002 and though the said order was within the knowledge of the applicants they did not place reliance upon the same when the appeal was heard.

5. He further argues that there is no patent error apparent on the face of the records and the parameters prescribed for review do not postulate a rehearing of the dispute because a party has not highlighted all the aspects of the case or could perhaps argued them more forcefully and/or cited binding precedents to the Court. In support of such contention reliance has been placed upon the judgment delivered in the case of Haridas Das â??vs- Smt. Usha Rani Banik and Ors., reported in AIR 2006 SC 1634.

6. In the order passed in W.P.(Civil) No.422 of 2000 it has been observed that â?? it would not be appropriate for this Court to record its conclusions on meritsâ?? since the FCI workers union itself had raised an industrial dispute. Thus in the said order there were no findings on merit.

7. Neither in the memorandum of appeal nor in course of hearing of the appeal the order passed in W.P.(Civil) No.422 of 2000 was referred to by the applicants. Matters which ought to have been urged in course of appeal have been sought to be agitated afresh and as such the argument of Mr. Basu that the appeal needs to be reheard upon review is not acceptable to this Court.

8. The law on the subject - exercise of power of review, as propounded by the Honâ??ble Apex court and various other High Courts may be summarized as hereunder:

i) review proceedings are not by way of appeal;

ii) power of review may be exercised when some mistake or error apparent on the face of record is founded. But, error on the face of record must be

such an error which must strike on mere looking at the record and would not require any long drawn process of reasoning on the point where there

may be conceivable two opinions;

iii) power of review may not be exercised on the ground that the decision was erroneous on merits;

iv) power of review can also be exercised for any sufficient reason which is wide enough to include the misconception of fact or law by the court or

even the advocate;

v) the application for review may be necessitated by way of invoking the doctrine of *actus curiae neminem gravabit*.

9. The arguments advanced by Mr. Basu and the grounds taken in the review application do not in any manner establish any error whatsoever on the

face of the record nor the application for review had been preferred upon discovery of a new and important piece of evidence.

10. For the reasons stated above, no interference is called for and the review application and the application for stay being CAN No.9486 of 2017 are,

accordingly, dismissed.

11. During pendency of the review application, the contempt application filed by the writ petitioners came up for hearing and it was submitted on

behalf of the applicants that the contempt would lie before the Division Bench and as such by an order dated 15th September, 2017 the contempt

application was adjourned to enable the writ petitioners to take appropriate steps and accordingly the writ petitioners have preferred the application

being C.A.N. No. 10169 of 2017 seeking necessary directions. By the order passed in appeal the order of the learned Single Judge was neither

replaced nor interfered with.

In view thereof, the said application is disposed of requesting the learned Single Judge to proceed with the contempt application. There shall, however,

be not order as to costs. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon

compliance with the necessary formalities in this regard.