

(2005) 08 DEL CK 0100

In the Delhi High Court

Case No : RP355 of 2004 in WP (C) 4415 of 2001

Hamdard Employees and General Workers Union (Regd.)	APPELLANT
Vs	
National Capital Territory of Delhi and Others	RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Citation : (2005) 84 DRJ 69

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : A.M. Singhvi, Sr, S.N. Bhandari, Amit Seth, Simran Mehta and M.A. Niyazi, for the Appellant; A.M. Singhvi, Sr Advocate, S.N. Bhandari, Amit Seth and Simran Mehta for Respondents 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—By way of this review petition, the respondents 4 & 5 in the writ petition being CW4415/2001 (hereinafter referred to as the "said writ petition"), inter alia, pray that the judgment and/or order dated 29.07.2003 (hereinafter referred to as the "said order") passed by this court be recalled, reviewed and/or modified and the said writ petition be dismissed.

2. Prior to the filing of this review petition, the respondents 4 and 5 (applicants herein) had filed a Letters Patent Appeal being LPA No. 740/2004 in this High Court. When the said appeal came up for preliminary hearing, the appellants (Respondents 4 & 5 in the said writ petition) sought leave to withdraw the appeal with liberty to seek review of the said order. By an order dated 06.08.2004, a Division Bench of this Court dismissed the appeal as withdrawn with the aforesaid liberty. Thereafter, the review petition was filed. Subsequently, an amendment of the review petition was sought which was allowed on 21.04.2005 and ultimately the review petition, as amended, was heard on 12.08.2005.

3. Before I mention the grounds for seeking review, it would be pertinent to point out that by the said order dated 29.07.2003, this Court had disposed of the said

writ petition with the direction that all those employees of the erstwhile Hamdard Factory at Lal Kuan, Delhi, who had been relocated to Ghaziabad and who were willing to change their residences to locations near the factory at Ghaziabad, would be entitled to "shifting bonus" as indicated by the Supreme Court in the case of M.C. Mehta Vs. Union of India and Others, . These directions were given in the backdrop that the factory belonging to Hamdard Dawakhana (Wakf) Laboratories, represented by the respondents 4 & 5, was situated at Lal Kuan, Delhi and had to be shut down in view of the said decision of the Supreme Court "being an industry falling in the "H" category". In the said order, it is recorded that the entire issue in the said writ petition was with regard to the entitlement for "shifting bonus" insofar as the workmen who agreed to shift with the industry were concerned. It was noted in the said order that the Supreme Court had specifically directed, in the case of workmen employed in 168 industries mentioned in M.C. Mehta (supra) that they would be entitled to the "shifting bonus" to help them settle in the new location. In the said order, it is recorded that:-

"Although the factory in which the petitioners were employed was not listed in the 168 industries which were before the Supreme Court in the aforesaid decision, by parity of reasoning inasmuch as the relocation was due to the directions and orders passed by the Supreme Court in the aforesaid judgment, the same conditions would apply to the workmen shifted on account of such relocation. There is no dispute with regard to this."

It was also recorded in the said order that:-

"The only submission that has been made by the learned counsel appearing for the respondent no. 4 & 5 is that only those workmen, who in fact, have shifted or are willing to shift their residence pursuant to the relocation would be entitled to the "shifting bonus". Those workmen who do not shift their residence would not be entitled to any such bonus referred to in the said decision of the Supreme Court. This submission of the learned counsel for the respondents is not objected to by the learned counsel for the petitioner..."

It is in this context that the directions indicated were given while disposing of the writ petition.

4. It is now being alleged that the said order "appears to be based on an erroneous concession of law by the counsel appearing for the applicants in the said writ petition". It is further submitted that the "parity of reasoning" would not be applicable inasmuch as Hamdard (Wakf) Laboratories is not a category "H" industry but a category "E" industry and the said decision of the Supreme Court, which was confined to category "H" industries, would not be applicable.

5. Dr Singhvi, who appeared for the applicants, submitted that it has been erroneously recorded in the said order that the factory at Lal Kuan, Delhi was an industry falling in the "H" category. He submitted that the applicants' factory was one falling under category "E" and, Therefore, the reasoning of the Supreme

Court decision would not apply to its workmen. To this extent, he submitted that there was an error which was apparent and which requires to be corrected. In this regard, the non-applicant (petitioner in the said writ petition) submitted that the "parity of reasoning" that was applied was not just because the factory at Lal Kuan was stated to be a category "H" industry but that the relocation was "due to the directions and orders passed by the Supreme Court in the aforesaid judgment". He submitted that this Court had correctly recorded, as indicated above, that "there is no dispute with regard to this". This is so because in the counter-affidavit filed on behalf of the respondents 4 and 5 itself, it is stated in para II as under:-

"On 21.12.2000, the answering respondents put up a notice in its factory premises in Delhi informing the employees about the directives of the Supreme Court and the order of the Lt. Governor regarding the need to close the factory premises."

In para III of the same counter-affidavit (in reply to para 4 of the writ petition), it is stated that:-

"...the closure of the factory following Supreme Court directives or the orders passed by the Lt. Governor did not ipso facto entail compliance with the directions contained in M.C. Mehta's case."

6. The learned counsel for the petitioner submitted that this clearly demonstrated that it was the respondents' case itself that the shifting / relocation of the factory from Lal Kuan, New Delhi to Ghaziabad was due to the directions and orders passed by the Supreme Court. This being an admitted position, this Court had rightly recorded that "there is no dispute with regard to this". Furthermore, he submitted that nowhere in the counter-affidavit has it been stated by the respondents 4 and 5 that the factory at Lal Kuan, Delhi was one which fell under category "E" and that the case which is now being sought to be set up is entirely different to the one that was before the court when the said order dated 29.07.2003 was passed. He further submitted that it is wrong on the part of the applicants to suggest that an erroneous concession of law had been made by the counsel appearing for the applicants. He pointed to para 3 of the counter-affidavit of the respondents 4 and 5 wherein it was stated that:-

"It may thus be seen that only in those cases which necessitate the shifting of the employees from their existing locations to the new location, and thus to facilitate their shifting and settling at the new location, one year wages as shifting bonus has been conceived. Where such shifting does not take place, or where the employees have not volunteered to settle at the new location, as no hardship is suffered by them owing to the shifting of the industry, it would be wholly inappropriate to ask of the employer to pay shifting bonus".

7. In the light of this categorical statement in the counter-affidavit, the submission of the counsel recorded in the said order cannot be regarded as merely an "erroneous concession" made by the counsel. On the contrary, it

would substantiate the view that no concession was made by the counsel inasmuch as the submissions of the counsel were founded upon the statements contained in the affidavit. The submission recorded in the said order, as already indicated above, was as follows:-

"The only submission that has been made by learned counsel appearing for the respondent no. 4 & 5 is that only those workmen, who in fact, have shifted or are willing to shift their residence pursuant to the relocation would be entitled to the "shifting bonus". Those workmen who do not shift their residence would not be entitled to any such bonus referred to in the said decision of the Supreme Court."

It is obvious that no erroneous concession of law was made by the counsel appearing for the applicants.

8. It is pertinent to note that ground No. IV of the present review petition suggests that, the industry was not shifted pursuant to the Supreme Court judgment in M.C. Mehta's case but in compliance with an order dated 11.12.2000 issued by the Lt. Governor of Delhi, as the said industry was located in a non-conforming (residential) area. This is contrary to what has been stated in the counter-affidavit as indicated above. In para II as well as para III of the said counter-affidavit, it has been stated that the shifting was on account of the directives of the Supreme Court as well as an order of the Lt. Governor. The applicants cannot now be permitted to change their stance and say that the shifting was occasioned not by the directives of the Supreme Court but only by orders passed by the Lt. Governor.

9. Considering the arguments of the learned counsel for the parties, it is apparent that the applicants had not set up any case that the industry fell under category "E" and not category "H". There is no mention in the counter-affidavit of this alleged fact. Accordingly, they cannot now, at the stage of review, take up this point which would require a detailed examination.

10. As regards the submission that the "parity of reasoning" could not be applied, it is apparent from a reading of the order dated 29.07.2003 that the parity of reasoning was based upon the fact that the relocation was due to the directions and orders passed by the Supreme Court. That the relocation was due to the orders passed by the Supreme Court was not disputed in the counter-affidavit and it is so recorded in the said order dated 29.07.2003. Therefore, one cannot say that any palpable error evident on the face of the order has been committed by employing the parity of reasoning. This argument is, Therefore, not available in review proceedings.

11. As regards the contention of the applicants that there was an erroneous concession of law made by the counsel appearing for them, I am in agreement with the submissions made by the counsel for the non-applicants (petitioners) that no such concession, what to speak of an erroneous concession was made by the counsel appearing for the applicants. Whatever the learned counsel had submitted was founded upon statements contained in the counter-affidavit. As

such, this avenue of seeking recall / review of the said order is also not available to the applicants.

12. It must be remembered that while the power of review inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it¹, its exercise is circumscribed and limited. In *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others*, the Supreme Court clarified that [at page 390]:-

"But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

The warning that a review ought not to be an "appeal in disguise" has been repeatedly sounded by the Supreme Court. In *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, , it held:-

"....for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

This has been reiterated in *Aribam Tuleshwar Sharma (supra)*, and *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, and *Parsion Devi and Others Vs. Sumitri Devi and Others*, , where the Supreme Court observed as under [at page 719]:-

"A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"

"There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction."

As regards what constitutes an "error apparent on the face of the record", the Supreme Court, in the case of *Meera Bhanja (supra)*, had this to say:- [at page 172]

"So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on

mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale*² wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

"An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

Summing up the scope of a review petition, the Supreme Court in *Lily Thomas, Vs. Union of India and Others*, , held that :-

"56. It follows, Therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power³. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained..."

Coming to the facts of the present case, there is no discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicants or could not be produced by them at the time when the order was made. And, as indicated above, nor is there any mistake or error apparent on the face of the record. A review cannot be claimed or asked for merely for a fresh hearing or arguments for assailing a view taken earlier. By submitting that the principle of parity of reasoning would not apply, the applicants are, in effect, seeking an appeal disguised as a review. Such a course of action is impermissible in law.

13. In view of the foregoing discussion, I find that the application for review has no merit and is dismissed. There shall be no order as to costs.