

(2012) 09 AHC CK 0249

In the Allahabad High Court

Case No : Civil Miscellaneous Review Application No. 80076 of 2012 in Civil
Miscellaneous Writ Petition No. 37510 of 2011

M/s. Chauhan Road Lines and another APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 9 ADJ 346 : (2013) 3 AWC 2648

Hon'ble Judges : Amitava Lala, Acting C.J.; P.K.S. Baghel, J

Bench : Division Bench

Advocate : R.N. Singh and G.K. Malviya, for the Appellant; Prakash Padia, for the Respondent

Judgement

Hon"ble Amitava Lala, A.C.J.

1. This review application has been made by the applicants, the petitioners in the writ petition, seeking review of the judgment and order dated 31st January, 2012, basically for two reasons: firstly, admittedly no notice or opportunity of hearing was given to the petitioners in respect of the enquiry by the enquiry committee, which fact has escaped from the notice of the Court in coming to conclusion and the Court has held that opportunity was given to the petitioners to associate with the enquiry; and secondly, there was no statement on the part of the petitioners that the period of contract has been extended for one year more after the expiry of the period of contract but is extendable for one year, however, due to order of blacklisting the period of contract was not extended by the respondents. Before entering into the grounds of review, we want to make it clear that there should be a discipline in drafting of review application/s because it is normally placed before the Court which has passed the original order but not before any appellate Court. Therefore, the review application is to be made with descent and guarded words like "escaped from the notice" etc. and not with harsh words like "erred in holding" or "manifestly erred in holding" or "failed to

appreciate" etc., which are normally used in the case of appeal from one Court to its superior Court. Necessity of making the review application is not to embarrass a Judge in person forgetting his rigour and magnanimity but to address the chair, which has passed the original order, to re-appraise the fact and law. Therefore, an application for review can be pursued by eloquence and not by the words of war. Hence, instead of putting any cost for such type of drafting, we warn the petitioners to be careful in future.

2. Let a copy of the aforesaid observations be also circulated by the Registrar General of this Court amongst the Bar to be careful in making review applications in each and every Court of justice for all time to come.

3. So far as merit is concerned, the Court in the judgment dated 31st January, 2012 has held as follows:

The Committee has given opportunity to the transporter to associate with the enquiry.

4. However, the petitioners-applicants submitted that no notice or opportunity of hearing was given to the petitioners in the enquiry and this averment has not been denied by the respondents. In this regard, the respondents themselves have stated in paragraph-56 of the counter-affidavit as under:

56.....There was no requirement for the Corporation to associate the petitioner with the said enquiry. Moreover, nothing has been stated that what prejudice has been caused to the petitioner even if the petitioner was not permitted to associate with the enquiry.....

5. Therefore, the applicants are correct in saying that this part of the fact has escaped from the notice of the Court which is a good ground of review.

6. So far as second ground is concerned, we can distinctly remember that Mr. R.N. Singh, learned Senior Counsel appearing for the petitioners, had placed the matter at the time of admission of the writ petition by saying that the period of contract has been extended by the respondents for one year more on one hand and, on the other hand, petitioners' entire fleet has been blacklisted. The Court had accepted such verbal submission of the learned Senior Counsel even when no objection was raised by the learned Counsel for the respondents-Indian Oil Corporation. Thereafter, when the Court was about to pronounce the judgment only on such submission, Mr. Prakash Padia, learned Counsel appearing for the respondents-Indian Oil Corporation, categorically stated that the period of contract was not extended after the period of two years, therefore, the contract is over by March/April, 2011. Hence, the writ petition is infructuous. Thus, no relief could be granted to the petitioners by the Court and accordingly under the judgment and order dated 31st January, 2012 no relief had been granted. Therefore, now the explanation of Mr. R.N. Singh that the period is extendable, cannot be a logical ground for the purpose of review. It would have been a logical ground had the authority, in one hand, extended the period of contract

and, on the other hand, imposed the black-listing, which is definitely total non-application of mind and arbitrary action and cannot stand at all. But the case of the petitioners is not so. Hence, the second ground of Mr. Singh cannot be accepted.

7. So far as additional issue as to what is the date of completion of two years of black-listing, particularly when from the order impugned it appears to be two years from the date of order dated 24th June, 2011, is concerned, Mr. R.N. Singh has contended that two years" period will be completed by 14th September, 2012 from the date of blacklisting i.e. 14th September, 2010 but by virtue of this order dated 24th June, 2011 it appears to be extended by 24th June, 2013. However, Mr. Padia has clarified the position in paragraph-7 of the supplementary counter-affidavit by saying that two years" period, which started from 17th September, 2010, will come to an end on 16th September, 2012. Therefore, by no means it can be construed that the period is going to expire by 24th June, 2013.

8. In view of the aforesaid discussions, we are of the view that the equitable principles can be applied in this situation in favour of the petitioners particularly when the matter is under Article 226 of the Constitution of India and also on the basis of the following observations made in the order dated 31st January, 2012:

According to us, it is a matter of black-listing, that too not with regard to one or two vehicles of a transporter but in respect of the entire fleet, which were not involved in the alleged malpractice. When such type of decisions are to be taken by any authority, it has to be very much cautious about passing of such drastic order of black-listing the entire fleet. When the respondents themselves are adjudicators, they should be sincere in coming to appropriate conclusion so that the order of blacklisting may not seem to be disproportionate.

9. Thus, in totality, we find that the petitioners succeed in first issue and also in the additional issue but do not succeed in the second issue. Therefore, our overall view is that the writ petition should not be treated as dismissed but as disposed of. Opportunity of hearing will be given to the petitioners by the enquiry committee. Since admittedly the period of black-listing for two years has already ended by 16th September, 2012, the entire fleet of the petitioners are free to render their business. However, the involved vehicle, being TT No. UP 80 BJ 9458, and the vehicle apprehended to be involved, being TT No. UP 78 AN 2061, can be called upon in case of enquiry by giving opportunity of hearing to the petitioners and that too within a limited period, which by no means will go beyond one month from the date of communication of this order.

10. Accordingly, the review application is disposed of, however, without any order as to costs. However, passing of this order will in no way affect the petitioners" right, if any, to proceed before the appropriate Court/forum/authority independently in accordance with law, if any further development has taken place between the period from reserving the judgment and its pronouncement.

Hon"ble P.K.S. Baghel, J.

I agree.