

(2015) 07 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Misc. Review Petition No. 216/2015, Civil Misc. Stay Appl. No. 7349/2015, Civil Misc. Appl. No. 444/2015 and Civil Misc. Appl. 16960/28.5.15 in Civil Writ Petition No. 5773 of 2014

National Meditek

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 07 RAJ CK 0019

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Sudhanshu Kasliwal, Senior Advocate and Krishna Verma, for the Appellant

Final Decision : Disposed off

Judgement

Mohammad Rafiq, J—Delay in filing the review petition is condoned.

2. The application u/s. 5 of the Limitation Act is disposed of.

3. This petition seeking review of the judgement dated 18.02.2015 has been filed by the writ petitioner on the premise that subsequent to the decision by Single Bench, he has acquired certain documents from the respondents under Right to Information Act showing that in effect the order impugned debars the petitioner from participating in their work for two years and also has the effect of black listing it, which has been done without any notice to the petitioner. Petitioner assailed the judgement passed by the single bench before the division bench. The division bench upheld the judgement in so far as challenge to the order of debarment for two years dated 4.3.2014 was repelled by the Single Bench, but this argument was raised before the division bench that the petitioner stands black listed for two years and that this is evident from the subsequently acquired documents that this was done without opportunity of hearing to him. The division bench while upholding the judgement of Single Bench impugned before it,

dismissed the appeal as withdrawn with liberty to appellant to file appropriate review petition on that limited ground.

4. Shri Sudhanshu Kasliwal, learned senior counsel for the petitioner has argued that the order passed by the respondents was to debar the petitioner from participating in their tenders for two years, whereas the effect of the order is that the petitioner has been taken as black listed by other bodies in different States. In order to bring home his point, learned senior counsel has referred to the order passed by such bodies to show that his empanelment/approval rates has been cancelled by such bodies in other States. Learned senior counsel submits that the show cause notice dated 7.11.2013 was a mere eye wash as it appears from the note sheet, which petitioner has acquired later that decision to forfeit its bids, debarring it from participating in future bids for two years was already taken. Reference is made to note 178, which has been approved by the Chief Executive Officer of the respondents at note 180. Learned senior counsel also referred that the show cause notice that was served on the petitioner on 19.9.2014 was enough to debar the petitioner from participating in the tender proceedings of the respondents for two years and accordingly the petitioner submitted reply to such show cause notice on 30.10.2014 explaining their stand. The show cause notice was never meant to blacklist the petitioner and, therefore, the order of debarment cannot be construed as an order of blacklisting, is the argument of learned senior counsel.

5. Learned senior counsel submitted that if the order of debarment in the tender proceedings of the respondents is confined to debarment in that department, the petitioner would have no grudge, but this order has been misconstrued as an order of blacklisting by various other departments in different States.

6. The order, as it has been passed in the original form, was challenged before this Court in the writ petition. Arguments were also canvassed treating it an order of debarment and it is accordingly that the order was understood by this Court to mean an order of debarment. The argument that show cause notice dated 7.11.2013 was nothing but an eye wash, was specifically taken. It was also argued that the impugned action of the respondents stopping the petitioner from participating in future bids for two years tantamounts to ban on the business activities of the petitioner firm. Even then the argument was rejected by the Court when it was held that "having agreed if the petitioner has backed out from its offer, the respondent Board had every justification in forfeiting its earnest deposit of Rs. 25,000 and debarring it from further participating in tenders for a period of two years".

7. Contention that this decision has been taken even prior to serving show cause notice on the petitioner and, therefore, notice was an eye wash and cannot be accepted, is sought to be supported by the note 180 supra. The note sheet is an internal record of the respondents for processing the matter further and therein it has been proposed to forfeit the bid security of the bidder and debar him from taking part in further bids. The period for which petitioner should be debarred

has not been specified in that note. However, it was at a later stage when the show cause notice indicated that why the petitioner should not be debarred for a period of two years. Petitioner had fully understood the show cause notice and submitted its reply, which was considered by the respondents and, therefore, it cannot be said that the principles of natural justice were not complied with or petitioner was not afforded opportunity to present his case before the respondents. If the order of debarment, as is the submission of learned senior counsel, is misconstrued as an order of black listing by others, that by itself cannot afford ground for review of the judgement and obviously the respondents cannot be held responsible for such interpretation. The documents which petitioner subsequently acquired under Right to Information Act do not in any manner improve the case of the petitioner and review of the judgement on that basis would not be justified.

8. Besides, it is not open to this court in the scope of review to examine the matter afresh on merits on the arguments that have been raised on behalf of review petitioners. The Supreme Court in *Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs.*, (2009) 9 JT 537 : (2009) 14 SCC 663 : (2009) 11 SCR 252 , held that an application of review would lie only when the order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. First thing that would be seen to entertain a review petition is that an order of which review is sought, suffers from an error apparent on the face of record and permitting the order to stand would lead to failure of justice. In the absence of any such order, finality attached to the order cannot be disturbed. The power of review can also be exercised by the court in the event of discovery of new and important matter or evidence which, after the exercise of due diligence was not within knowledge of the party or could not be produced by him at the time when the order was made. Review court does not sit in appeal over its own order. Rehearing of matter in the guise of review is impermissible in law. Exercise of inherent jurisdiction cannot be invoked for reviewing any order. The Supreme Court in the aforesaid judgment in *Inderchand Jain*, relied on its earlier judgments in *Rajender Kumar and Others Vs. Rambhai and Others*, (2002) ACJ 1822 : AIR 2003 SC 2095 : (2002) 1 JT 549 Supp , *Lily Thomas, Vs. Union of India and Others*, AIR 2000 SC 1650 : (2000) CriLJ 2433 : (2000) 2 DMC 1 : (2000) 5 JT 617 : (2000) 4 SCALE 176 : (2000) 6 SCC 224 : (2000) 2 UJ 1113 : (2000) AIRSCW 1760 : (2000) 3 Supreme 601 .

9. In *Parsion Devi and Others Vs. Sumitri Devi and Others*, (1998) 1 CTC 25 : (1997) 8 JT 480 : (1997) 6 SCALE 432 : (1997) 8 SCC 715 : (1997) 4 SCR 470 Supp : (1997) 2 UJ 820 , it was held by the Supreme Court that an error, which is not self-evident and has to be detected by process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review. In exercise of review jurisdiction, it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between the erroneous decision and error apparent on the face of record. While

the first can be corrected by the higher forum, the latter can only be corrected only by exercise of review jurisdiction.

10. I find no merit in this review petition, which is accordingly dismissed. The stay application as well as the misc. application filed along with the review petition also stands disposed of.