
(2012) 08 GAU CK 0004

In the Gauhati High Court

Case No : Rev. Petition No. 80 of 2010 and 31 of 2011

Purna Chutia and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2013) 3 GLT 21

Hon'ble Judges : Anima Hazarika, J

Bench : Single Bench

Advocate : R. Sarma, Ms. K.D. Sarmah, Ms. B. Devi, Mr. Y.K. Phukan, Ms. D. Borgohain and Ms. J. Chetia, for the Appellant; H.K. Barman, G.A., Mr. Y.K. Phukan, Ms. D. Borgohain and Ms. J. Chetia and Mr. R. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

Anima Hazarika, J.—Review of the order dated 29.4.2010, passed in WP(C) No. 457/2009, has been sought for by both the petitioner and the private respondent No. 4. The review petition filed by the respondent No. 4 is numbered as Review Petition No. 80 of 2010 in WP(C) No. 457/2009 whereas the review petition filed by the writ petitioner in WP(C) No. 45/2009 is numbered as Review Petition No. 31 of 2011. Both the review petitions are taken up together for disposal since review petitions arise out of the same order.

2. Heard Dr. Y.K. Phukan, learned Senior Counsel assisted by Ms. D. Borgohain, learned Counsel appearing for the review petitioner in review petition No. 80 of 2010. Also heard Mr. R Sarmah, learned Counsel appearing for the review petitioner in review petition No. 31 of 2011 and Mr. H. K. Barman, learned State Counsel appearing for the State respondents in both the review petitions.

3. The pleaded facts of review of the judgment and order passed in WP(C) No. 457/2009 by the respondent No. 4 is summarized as follows-

(a) The selection of the writ petitioner to act as Mouzadar should be cancelled as

he is not a resident of Machkhowa Mouza, which is essential for filling up the vacant post of Mouzadar as Employment Notice dated 16.11.2006 indicated and the name of the review petitioner being appeared in the select list at serial No. 2, he should be appointed as Mouzadar, more so, when there was no consensus that the matter be sent back to the Deputy Commissioner, Lakhimpur to issue a fresh advertisement for filling up the post of Mouzadar of Machkhowa Mouza, Lakhimpur as held by this Court by the impugned judgment and order.

(b) That the review petitioner will suffer loss in view of the fact that he will be deprived of the chance of appointment having stood second in the select list and the respondent/petitioner who though being first in the select list being prima facie ineligible for appointment.

c) The writ petition was heard on several dates, but there was no agreement to remit the matter back to the Deputy Commissioner for issuing fresh advertisement as observed by this Court in the impugned judgment, the same is liable to be reviewed to give justice in the interest of all the parties to the writ petition.

4. On the other hand, the review has been sought for by the writ petitioner on the ground which is summarized as follows:

(i) The petitioner prayed for a direction to the Deputy Commissioner, Lakhimpur to appoint him in the post of Mouzadar since his name appeared at Sl. No. 1 in order of merit in the select list in pursuance to the advertisement inviting applications from the eligible candidates for filling up the post of mouzadar and the present petitioner/respondent No. 4 had contended that the selection of the petitioner should be cancelled as he is not a resident of Machkhowa Mauza, as required under the relevant Rules, should have been decided by this Court as there was no agreement between the parties that a direction should be issued to the Deputy Commissioner, Lakhimpur to issue fresh advertisement inviting applications for filling up the post of Mouzadar of Machkhowa Mouza, Lakhimpur as held by this Court and as such the decision of the Court that both the parties were agreeable to a direction to the Deputy Commissioner, Lakhimpur may be reviewed and the points and the issues raised in the writ petition may be decided.

5. From the grounds urged for review of the judgment, it would appear that it is the case of the writ petitioner as well as respondent No. 4 that the learned Counsel appearing for the petitioner and the respondent No. 4 have argued the case on the basis of their pleadings but the case was disposed of on a different footing, which they have not pleaded and argued before the Court, the same thus require review of the order. Learned Counsel in support of their submission has referred the maxim "*Actus Curiae Neminem Gravabit*", meaning thereby that any act of the Court shall prejudice none.

6. The expression "mistake" is sufficient reason and the doctrine of "*Actus Curie Neminem*" would definitely come within the purview of Section 114 read with Order 47 Rule 1 of the CPC ("Code" for short) which necessitates a review.

7. Now the question left before the Court as to whether the order dated 29.4.2010 passed in WP(C) No. 457/2009 requires review of the order. The Court noticed the Employment Notice dated 16.11.2006 issued by the Deputy Commissioner, Lakhimpur which is quoted hereunder for better appreciation in order to answer the question raised in the review petition by the contesting parties.

GOVERNMENT OF ASSAM OFFICE OF THE DEPUTY COMMISSIONER, LAKHIMPUR,
NORTH LAKHIMPUR

No. LRC-1/72/2002-2003/27

Dated. 16.11.06

EMPLOYMENT NOTICE

This is to inform that the interested persons that a vacancy has arisen in the post of Mouzadar, Machkhowa Mouza, sub-division, Dhakuakhana, District Lakhimpur. For filling up the above vacant post of Mouzadar applications are invited from suitable persons. Interested candidates may submit applications in the office of the undersigned within 27.11.06. No application will be accepted after the above date. Alongwith the applications certificate of Education, age, character, financial status. Revenue payment receipt must be enclosed.

Sd/- Shri Monish Thakur, IAS Deputy Commissioner, Lakhimpur, North Lakhimpur Dated 16.11.06

8. The Court upon going through the records "produced by the learned State Counsel, found that a decision was taken for fresh selection, which, however, did not take place due to the pendency of the Writ Petition No. 457 of 2009, since the appointment of the writ petitioner was objected to in view of the fact that he is not a permanent resident of the Machkhowa Mouza for which applications were invited referring Executive Instructions as contained in instruction 116 and 117 under Chapter VIII of the Assam Land Revenue Manual and as per the above instruction, the eligibility criteria for appointment to the post of Mouzadar was lacking as per the Employment Notice dated 16.11.2006. Therefore, the Court deemed it fit and proper to direct the authority to issue fresh advertisement inviting applications for filling up the post of Mouzadar indicating the eligibility criteria as contained under Chapter VIII of the Assam Land Revenue Manual.

9. The Employment Notice dated 26.11.2006 lacks the essential criteria required to be appointed as Mouzadar which should be inserted properly as contained under Chapter VIII of the Assam Land Revenue Manual in order to select the best person of the Mouza to be a Mouzadar, the Court passed the order dated 29.4.2010 which is now sought to be reviewed. This had also come up during the course of hearing.

10. The Court considering the public importance involved in the appointment of Mouzadar of a Mouza who is capable of doing all such acts as enshrined in

Chapter VIII of the Assam Land Revenue Manual, while disposing the writ petition directed the authority to issue fresh advertisement as indicated in the judgment and order dated 29.4.2010 passed in WP(C) No. 457 of 2009. The Court is equally conscious of the words "mistake", "sufficient cause" and the legal maxim "Actus Curie Neminem Gravabit". But by the judgment rendered by this Court, the Court has not committed any "mistake" nor there is "sufficient cause" "prejudice to any person" so as to invoke the aforesaid legal maxim "Actus Curie Neminem Gravabit".

11. So far the merit of the review petition is concerned, it is well settled that the review petition can be filed only for consideration of the important matters or evidence which, by mistake or error on the face of the record, could not be considered when the order was passed. The review petition cannot be filed for re-hearing of any matter.

12. Hon"ble Apex Court in the case of Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, has observed as under:

It is well settled that a party is not entitled to seek: a review of a judgment delivered by this Court merely for the purpose of re-hearing and a fresh decision of the Court. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: Sajjan Singh Vs. State of Rajasthan, . For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will revise its judgment: Girdhari Lal Gupta and Another Vs. D.N. Mehta, Assistant Collector of Customs and Another, . The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: O.N. Mohindroo Vs. The District Judge, Delhi and Another, In a civil proceeding, an application for review is entertained only on a ground mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record.... But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original, hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility Sow Chandra Kante and Another Vs. Sheikh Habib, .

13. In the case of Parsion Devi and Others Vs. Sumitri Devi and Others, , Hon"ble Apex Court held that while exercising power under Order 47 Rule 1 of the Code, it is not permissible for an erroneous decision to be "reheard and corrected" and the power of review cannot be exercised to be "an appeal in disguise". The Court has observed "It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 of the IPC.

14. In the case of Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, , the Court held as thus: A review is by no means an appeal in disguise

whereby an erroneous decision is reheard and corrected, but lies only for patent error.

For the reasons and discussions made hereinabove, this Court is not inclined to review the order dated 29.4.10 passed in WP(C) No. 457/2009 and accordingly, the review petitions being Review Petition Nos. 80 of 2010 and 31 of 2011 in WP(C) No. 457 of 2009 filed by the respondent No. 4 and the writ petitioner respectively stand dismissed. However, on the facts and circumstances of the case, there shall be no order as to costs.