
(2004) 02 CAL CK 0025
In the Calcutta High Court

Case No : RVW No. 003 of 2004 in W.P.C.T. No. 214 of 2003

Rajinder Singh

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 CHN 446

Hon'ble Judges : P.K. Biswas, J;N.A. Chowdhury, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; H.R. Bahadur, for the Respondent

Judgement

P.K. Biswas, J.—The present hearing arises out of an application for review and/or for recalling of the order dated 22.12.2003 passed by Justice D.K. Seth and Justice Subhro Kamal Mukherjee, High Court, Calcutta, Circuit Bench at Port Blair, in connection with W.P.C.T. No. 214 of 2003 (Lt. Governor and Ors. v. Rajinder Singh), whereby and whereunder it was held by the aforesaid Division Bench that "we are of the view that the respondent is not entitled to any relief as revealed from the facts disclosed. In the result, the writ petition succeeds and is hereby allowed. The impugned order dated 3rd September, 2003 passed in O.A. No. 90/A & N/2002 by the learned Central Administrative Tribunal, Calcutta Bench, Circuit at Port Blair, is hereby set aside." It was further directed by the aforesaid Division Bench that the petition before the learned Tribunal stands dismissed.

2. Being aggrieved by and dissatisfied with the aforesaid order of the Division Bench, the respondent/petitioner has come up with an application for review and/or praying for recalling the order dated 22.12.2003 alleging mainly that certain documents i.e. the minutes of the Screening Committee held on 26.3.1989 and 4.3.1992 could not be placed before the aforesaid Division Bench despite due diligence by the present petitioner and the aforesaid Division Bench also failed to consider the administration's letter dated 10th January, 1995, wherein, other

lecturers" services were regularized from the initial date of their ad hoc appointment after clearance from the UPSC on the directions of the learned Tribunal and awarded them seniority with all other consequential benefits.

3. It has also been alleged by the petitioner that the aforesaid Division Bench failed to consider the real issue involved in the matter itself and as such the Division Bench fell in error by not considering the facts that the services of the petitioner were regularized in consultation with the UPSC in accordance with the Recruitment Rules w.e.f. 23.9.76 on its merits and as such the aforesaid Division Bench has also committed an error of fact by overlooking the documents relied on by the petitioner, particularly, the documents showing bias on the part of the respondents/members of the Screening Committee and it has also been alleged by the petitioner that the false submissions made by the respondents in their affidavits which has a direct bearing in the case of the petitioner has laid to a finding in which error apparent on the face of the record is visible. It has also been alleged that the aforesaid Division Bench also overlooked numerous documents which have been mentioned in para XII of the aforesaid application.

4. That being the position, the present petitioner has come up with the prayer as aforesaid, praying for review and recalling of the judgment dated 22.12.2003 and in consequence with further prayer to uphold the judgment of the learned Tribunal passed on 3.9.2003 in O.A. No. 90/A&N/2002 and to dismiss the aforesaid WPCT.

5. This prayer has been seriously opposed by the learned advocate appearing for the respondents, alleging that review can only be made under specified circumstances, wherein, an error apparent on the face of the record is visible; but, here the allegations, as has been levelled by the petitioner in his application for review, do not come under the purview and scope of the review either under Order 47 of C.P. Code or even within the scope and ambit under Article 226 of the Constitution of India.

6. It has also been contended on behalf of the respondents that assuming for the sake of argument without admitting the same that certain documents were overlooked, yet, that will not be available in an application under review unless it could be shown by the petitioner that those were not available to him despite due diligence at the time when hearing in connection with the matter in WPCT was taken up and may be the contentions, as put forth in the application, were good enough to take into consideration by the appellate forum but in an application for review or recalling the order, such matters could not at all be entertained by the Court and accordingly, it has been submitted on their behalf that the review, as made by the petitioner has no merit at all and as such it should be rejected.

7. We have heard the submissions of the petitioner who has appeared in person as also the submissions made by the learned Counsel appearing for the respondents and given our anxious consideration with regard to such

submissions.

8. It is needless to say that the scope of an application for review is much more restricted than that of an appeal. The Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 47, Rule 1 of C.P. Code.

9. It is now a settled position of law that the power of review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it and it therefore clearly indicates that the Court's power of review while exercising jurisdiction under Article 226 of the Constitution extends to correct all errors to prevent miscarriage of justice. It has also been the settled position of law that the Court while exercising its power of review under Article 226 of the Constitution may, therefore, review its earlier order not only when there exists an error on the face of the record but also when the interest of justice so demands.

10. But here looking into the claim as has been made by the petitioner relating to non-consideration of the documents, we may at once say that those documents were very much available to the petitioner when the matter was taken up for consideration by the Division Bench and the petitioner has not also been able to satisfy the Court and also failed miserably to establish the situation which prevented him from not producing those documents before the aforesaid Division Bench of this Court and in such view of the fact it cannot be said that there has been discovery of new and important matter which, despite exercise of due diligence on the part of the petitioner, was not within the knowledge and possession of the petitioner and as such could not be produced by him at the time when the impugned order was made.

11. Another argument has also been advanced on behalf of the petitioner that there has been misrepresentation on behalf of the respondents in their affidavits before the Division Bench but that sort of thing was neither advanced nor argued before the Division Bench by the petitioner and there is also no reflection of the same in the order impugned. So, no importance could be attached to that sort of submissions,

12. It has also been contended on behalf of the petitioner that there were certain mistakes or errors apparent on the face of the record. But the petitioner has not been able to persuade this Court that there were such errors which are apparent on the face of the record. In such a situation we are rather prompted to hold that an error apparent on the face of the record must be such a patent error which in one glance can be detected without advancing long drawn arguments on either side.

13. But, here in this particular case, looking into the materials available and hearing the arguments advanced on behalf of the parties, we are not at all persuaded to hold that in the judgment under review there was an error

apparent on the face of the record and as such we are clearly of the view that since the petitioner has not been able to establish that there was error apparent on the face of the record, no review is permissible.

14. We are, however, not unmindful about the situation that in appropriate case in exercising power of review under Article 226 of the Constitution Court may review its earlier order not only when there exists an error on the face of the record but also when the interest of justice so demands. But here in this particular case, the petitioner has not been successful enough to bring out such situation which really necessitates interference by this Court by way of review of its earlier order to subserve the interest of justice.

15. Furthermore, it is also equally settled position of law that even when the Court is exercising its power of review under Article 226 of the Constitution to meet the demand of interest of justice in such case also, in any event, it cannot usurp the jurisdiction of appellate forum since scope of an application for review is much more restricted than that of appeal.

16. To conclude, upon consideration of the settled position of law in this regard and having considered the submissions made by the respective parties and in view of our observations in the preceding paragraphs, we are of the clear opinion that in the instant case, no review, as prayed for, is permissible and in consequence thereof, the prayer for review, as has been made by the petitioner, stands rejected.

17. The matter is, thus, disposed of, accordingly.

N.A. Chowdhury, J.

18. I agree.