
(2011) 03 GAU CK 0117
In the Gauhati High Court
Case No : Reviwe Petition No. 130 of 2010

Smti. Laxmi Devi Prajapat

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

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

Citation : (2011) 03 GAU CK 0117

Hon'ble Judges : A.C. Upadhyay, J

Bench : Single Bench

Advocate : N. Saikia, A. Saikia, P. Mahanta, L. Borgohain and P. Goswami, for the Appellant; K. Agarwal, R. Bora and R. Bora, Asstt. SGI, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Upadhyay, J.—This review application has been filed by the writ Petitioner, seeking grant of appropriate relief by directing the Respondents-school authorities to admit the Petitioner's son in Class-XI in the commerce stream at Delhi Public School, Guwahati.

2. Heard Mrs. N. Saikia, learned Counsel, appearing for the Petitioner, and Mr. K. Agarwal, learned Counsel, representing Respondent Nos. 3 and 4. Heard also Mrs. R. Bora, learned Asstt. SG, representing the Respondent Nos. 1 and 2.

3. Learned Counsel for the Petitioner has submitted that many students from outside the school aforesaid have been given admission in the commerce stream but the son of the Petitioner, who has been studying in the school for last five years, has been denied admission in the commerce stream. It has been further submitted on behalf of the Petitioner that the Petitioner has come to know from different sources that students, who have secured either equal grade or lower grade than the son of the Petitioner, have been given admission in their choice stream by the school authority. It has also been submitted that the Petitioner discovered some new and important facts relating to admission of some students

in the commerce stream, who having secured equal or lower grade than the son of the Petitioner, have been admitted in the school. The Petitioner stated that this fact was not within the knowledge of the Petitioner, even after exercise of due diligence and such facts could not be placed before the Court by the Petitioner, at the time of hearing and passing of the judgment by this Court.

4. It would be pertinent to notice herein the relevant extract of the judgment under review passed by this Court which reads as follows:

25. As already stated, it is neither a case where the Petitioner's son was discriminated and denied admission in Commerce Stream of the Respondent-School, nor students similarly situated with the Petitioner's son had been given admission in "Commerce Stream" of the School. If that would have been the case, there would be no difficulty for granting equitable relief to the Petitioner's son. On the other hand, a specific averment has been made by the Respondent-School that in terms of the decision of the Apex Court in Saurabh Chaudhary (supra) Petitioner's son had been given admission in Arts stream even though he had failed to secure the cut off marks even for admission in Arts Stream. This being the position, Petitioner cannot raise any grievances at all, since he has been given admission in the School. In such a situation, if relief is granted to the Petitioner, it would amount to injustice to other students, who were similarly situated with him and denied admission in the XIth class for similar reasons.

26. In the result, relying on the decision and observation of the Hon'ble Supreme Court in Kendriya Vidyalaya v. Saurabh Chaudhary (supra) as the Petitioner's son has already been given admission in Arts Stream of the Respondent School, which was found to be most suitable for him on the basis of the cut off marks. Thus, the above action of the Respondent-School cannot be faulted. There is no merit in this writ petition and the same is dismissed. Parties are asked to bear their own costs.

5. The new facts discovered by the Petitioner, as stated in the review petition read as follows:

A. For that it has been held in several judgments of the Apex court and including a recent judgment of Division Bench of Madras High Court passed in W.P. No. 12972 of 2007 Dr. S. Anandalakshmi v. Govt. of India CBSE, wherein the Hon'ble Chief Justice presiding the Division Bench has held that

It is made clear that as concluded by the Supreme Court in 1995(5) SCC 572 (cited supra), the students who have studied X Standard in the School are entitled to continue their XI Standard studies without any fresh selection process. The CBSE Board has also made it very clear that the CBSE instructions in the circular issued by it on 30.03.2006 are on the same line. We direct all the CBSE schools in the State of Tamil Nadu to scrupulously follow the circular issued by CBSE from the academic year 2008-2009 onwards in respect of admission of students from X Standard to XI Standard by following the criteria and norms as stated below. (a) Admission of a student on class X to XI within the same school

should not be treated as a fresh admission but only as continuation of the original admission done in that school. So issuing transfer certificate to class X students within the same school and readmitting them to class XI is against the rules. (b) All the students of the same school who have qualified in class X Board examination should be offered admission in class XI as far as possible subject to the availability of seats. Students from other schools may be considered for admission after accommodating the students of their own schools. (c) Every student cannot be given his or her choice of subjects because of the various limitations such as number of seats available, number of sections in class XI etc. However, the choice of students along with their performance in class X Board examination should be considered for allotment of different subjects. (d) No admission test should be conducted by schools for their own students. After admitting their own students if there are still vacancies, they may be filled either on the basis of the class X Board examinations or by conducting an admission test for the students who are from other schools. (e) No school should prescribe any cut off marks for admission to class XI or for allotment of subjects.

It may be mentioned here that the CBSE instruction in the circular issued from time to time has not changed its stands, which are still valid and are in force.

B. For that the guidelines for admission of the Respondent authority in the stream of commerce and humanities the criteria laid down in the guideline is same. That C.B.S.E. and other Boards without entrance test minimum B1 grade or 70% in all subjects has been fixed. That for C.B.S.E. and other Boards with entrance test the minimum grade of B2 or 60% in all subjects has been prescribed both commerce and humanities. That from the above it is clearly evident that the qualification for humanities and for commerce stream is same, whereas only in science the grade prescribed is higher.

C. For that science stream grade A1 and A2 i.e. 95% or 9.5 CGPA in all subjects have been fixed by the Respondent as minimum by the admission guidelines in class xi in 2010-2011. But that Sri Avijoy Das having average grade having B2 in Science and C2 in Social Science and CGPA of only 7.2 was admitted in class xi of the school.

D. For that humanities and commerce has the same minimum grade as per the admission guideline of class XI issued by the Respondent authority. That Sri Sourav Roy having CGPA of 7.2 having grade B2 in Mathematics and Science has been admitted in the commerce stream. That Sri Avrodeep Das having CGPA of 7.2 grade C1 in Social Science and Hindi has been admitted in the commerce stream. That Sri Punya Jyoti Borah having CGPA of 6 and D grade in Mathematics and D grade in Science has been admitted in humanities.

6. In reply to the contentions made on behalf of the review Petitioner, the Respondent Nos. 3 and 4 submitted that it is absolutely incorrect to say that the students, who have secured either equal grade or below grade, have been given admission in the school of their choice stream by the school authority. It has

been denied by Respondent Nos. 3 and 4 that the Petitioner has discovered new facts, after exercise of due diligence, which was not within her knowledge and could not be produced before passing of the judgment and order by this Court. The Respondent Nos. 3 and 4 stated that admission of Avijoy Das, Sourav Roy, Avrodeep Das and Punya Jyoti Borah are vague and wild allegations, which were not replied in the affidavit-in-opposition filed by the Respondent Nos. 3 and 4. Therefore, the review of the aforesaid grounds is neither maintainable nor it can be entertained.

7. Learned Counsel for the Respondent School submitted that the provisions of Order XLVII Rule 1 of CPC provides for review of judgment. As per the aforesaid provisions of law, the review can be made under the following grounds-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the persons seeking review or could not be produced by him at the time when the judgment and Order was delivered; or

(ii) On account of some mistake or error apparent on the face of the record;

(iii) For any other sufficient reasons.

8. Learned Counsel pointed out that in the instant case, the review has been sought on the ground of discovery of new and vital facts and also because of glaring omissions and error apparent on face of the record, however, a bare reading of the grounds taken and submissions made clearly shows that under the guise of review, the Petitioner is seeking a fresh decision on merit, which is not permissible under the law. According to the learned Counsel for the Respondent the Review Petitioner has failed to show any justifiable ground to review the decision within the parameters of Order XLVII Rule 1 Code of Civil Procedure. In view of above, the Review Petition is neither maintainable nor entertain able.

9. Refuting the submissions made by the Petitioner learned Counsel for the Respondent pointed out that the decision of the Apex Court reported in *The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others*,

The Principal, Cambridge School and Anr. v. Ms. Payal Gupta and Ors. and decision rendered by the Madras High Court in W.P. No. 12972 of 2007 *Dr. S. Anandalakshmi v. Government of India CBSE* and submitted that the CBSE Circular referred therein is still valid and in force and as such the Petitioner's son is entitled to continue his study in the same school after passing Class X and there cannot be admission test by the school for their own students. In this regard, this Court in its judgment and Order dated 01.10.2010 passed in W.P.(C) No. 4015/2010, took into consideration the decision rendered by the Apex Court in *Payal Gupta's case supra* and the decision rendered by the Apex Court in *Principal, Kendriya Vidyalaya and Others Vs. Saurabh Chaudhary and Others*, while deciding the Writ Petition. However, the decision rendered by the Madras High Court was not placed as such, it was not considered.

10. Learned Counsel for the Respondent pointed out that even assuming that the decision rendered by the Madras High Court was placed and considered by this Court, while deciding the Writ Petition, the decision would not have changed in any manner, in as much as, paragraph 3 of the aforesaid decision which has been mentioned in sum and substance in ground No. A clearly shows as follows-

(b) All the students of the same school who have qualified in Class X Board examination should be offered admission in class XI as far as possible subject to the availability of seats. Students from other schools may be considered for admission after accommodating the students of their own school.

(c) Every student cannot be given his or her choice of subjects because of the various limitations such as number of seats available, number of sections in class XI etc. However, the choice of students along with their performance in class X Board examination should be considered for allotment of different subjects.

11. The averments and submissions made in ground B, save and except the averments borne on record, are not true and correct. A bare perusal of the Guidelines annexed as Annexure-3 clearly shows that the criteria for admission in the Commerce Stream and Humanities Stream, are not same as contended.

12. Specific reply made in this context by the Respondent School authority, can be reproduced herein for the sake of convenience, which reads as follows:

III. As regards the grounds taken in ground Nos. C and D, I say that Vikash Prajapat, Avijoy Das, Sourav Roy, Avrodeep Das and Punya Jyoti Borah are students of DPS, Guwahati who appeared in Class X Board Examination and admitted in Class XI in the DPS, Guwahati. It may be relevant to mention herein that except Punya Jyoti Borah, all four of them secured CGPA 7.2 i.e. 68.4% and Punya Jyoti Borah secured CGPA 6 i.e. 57%. However, their Grade in each of the subjects are different. The records maintained in the school reveals that Avijoy Das applied for admission in science stream. As he was not entitled to direct admission in science stream as well as to sit in the Entrance Test for science stream, he was allowed to sit in the Entrance Test for science stream being the student of DPS, Guwahati. The school authority having considered his marks obtained in Class X Examination and Entrance Test found him suitable to admit in the science stream. It may be relevant to mention herein that he secured A2 Grade in Mathematics in Class X Examination. Sri Sourav Roy and Sri Avrodeep Das applied for admission in commerce stream. As Sourav Roy and Avrodeep Das did not secure B1 Grade in all the subjects they were not entitled to get direct admission in commerce stream. Sri Sourav Roy was entitled to appear in the Entrance test as per the Guidelines. Though Avrodeep Das was not entitled to sit in the Entrance Test for commerce stream, he was not allowed to sit in the Entrance Test being the student of DPS, Guwahati. Sri Sourav Roy was admitted in commerce stream without mathematics as he got B2 Grade in Mathematics in Class X Examination. Sri Avrodeep Das was admitted in commerce stream with maths being the 6th subject as he could secure B1 Grade in Mathematics and A2

Grade in English in Class x Examination. Sri Punya Joyti Borah applied for admission in Humanities in Class XI. Sri Punya Jyoti Borah though as per DPS admission norms was not entitled for admission Humanities. However, his admission was considered, in accordance with the CBSE Guidelines, in Humanities, being the student of DPS, Guwahati with the combinations of subjects, namely, English, Political Science, Economics, Geography and Physical Education. In view of above, the admission to the aforesaid students has been given in accordance with the CBSE Guidelines and the decisions rendered by the Apex court as well as the Madras High Court.

13. The prayer for review has been made on discovery of new facts and a new decision of Madras High Court in W.P. No. 12972 of 2007 Dr. S. Anandalakshmi v. Government of India CBSE, which were not within the knowledge of the Petitioner, after due exercise of diligence.

14. Hon''ble Supreme Court in S.N.S. (Minerals) Ltd. v. Union of India (2007) 12 SCC discussing the decision rendered by the Court in (2006) 4 SCC 64 Haridas Das v. Usha Rani Banik observed that neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. The relevant extract reads as follows:

8. The scope for review has been considered by this Court in several cases. In a recent case in Haridas Das v. Usha Rani Banik (2006) 4 SCC 64 held as follows: (SCC p.82, para 13)

13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the Defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the Applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed

or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, held as follows: (AIR p. 1377, para 11)

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. ... where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

15. The reply submitted by the Respondent Nos. 3 and 4 clarified that Sourav Roy and Avrodeep Das, admitted in the commerce stream of the Respondent school were students of the same school, who had secured CGPA of 7.2 i.e. 68.4% marks similar to that of the son of the writ Petitioner. However, their grade in each subjects are different. The school also conducted a test to select its own students among many applicant students, who desired to take a particular subject of study. The selection was made by the Respondent School authority, based on overall assessment of the student by evaluating and assessing his past and present performance, in order to shape up and improve his prospect in future. Such action of Respondent School authority to offer a subject suitable for the student in the school, basing on the overall objective assessment of the student, very closely for a number of years, can not be said to be vindictive and spiteful towards the student. Apparently, the action taken by the DPS, Guwahati, in admitting the son of the Petitioner in Arts Stream is in consonance with the instructions and guidelines issued by the CBSE as well as the decisions rendered by the Apex Court in *Payal Gupta's (supra)*, *Principal, Kendriya Vidyalaya and Ors. in and the Madras High Court decision in Dr. S. Anandalakshmi v. Government of India CBSE (supra)*.

16. The selection made by the Respondent school, as reflected in the affidavit of the Respondents reveal that the son of the writ Petitioner was given admission in Arts stream after considering and evaluating his capability to carry on with the course of study, comfortably, and such assessment made by the school authority is apparently in due compliance of the existing Rules, for admission of the school. A review is by no means an appeal in disguise, whereby a decision given earlier is reheard and corrected. The theme, under which the Petitioner seeks to review the order, would require rehearing on merit, which is prohibited under review jurisdiction.

Consequently, the review petition is dismissed.