

(2014) 09 MAD CK 0127

In the Madras High Court

Case No : Review Application No. 131 of 2014 in W.A. No. 1066 of 2014

S.R.P. Venkatasubramani

APPELLANT

Vs

The Bharathiyar University

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 MAD CK 0127

Hon'ble Judges : Satish K. Agnihotri, J;M.M. Sundresh, J

Bench : Division Bench

Judgement

1. The review petitioner filed a writ petition in W.P. No. 681 of 2012 challenging the rank list dated April, 2004 for the candidates for whom ranking was held during the said month and consequently, sought for a direction to the first respondent to prepare a fresh ranking list. The said writ petition was dismissed by the learned single Judge by an elaborate order. Challenging the said order passed, the petitioner filed writ appeal in W.A. No. 1066 of 2014. The said writ appeal was dismissed by us by order dated 20.08.2014 in the following manner.

"2. The learned counsel appearing for the appellant submitted that a mere delay cannot disentitle a person from getting the appropriate relief; the second respondent has failed in one paper and as such, is not eligible for the third University rank conferred on her and therefore, the impugned rank list will have to be redrawn.

3. A perusal of the affidavit filed by the appellant in support of the writ petition would show that no proper reasons have been assigned for approaching the Court after more than seven years from the date of the publication of the rank list. It is not as if the appellant was not aware of the rank list. It is no doubt true that the principle governing delay, laches and accusation are not one of law, but of practice and prudence. The learned Single Judge has rightly declined to exercise the extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India.

4. Insofar as the second submission is concerned, there is absolutely no material produced by the appellant, either before the learned Single Judge or before us, in support of his allegation that the second respondent has failed in one subject. The learned counsel for the appellant has submitted that the information sought for under the Right to Information Act has not been published. We are afraid that the said fact alone cannot be a ground to give a positive finding that the second respondent has failed in one subject. Being the aggrieved person, who has moved the Court by way of filing a writ petition, it is for the appellant to substantiate his allegations. The learned Single Judge has found on merits that the second respondent has secured 81.94% as against the appellant, who has secured 80.21%.

5. Considering the above, we do not find any merit in this writ appeal. Hence, the writ appeal is dismissed. No costs."

Now the petitioner has come forward with this review application seeking to review the order passed in the writ appeal.

2. Two submissions have been made by the learned counsel appearing for the petitioner. The first submission is that the reason given by this Court in the writ appeal that the appellant was aware of the rank list, is factually incorrect. The second submission is that it is for the respondents to convince the Court that the second respondent has not failed in one subject in view of the specific assertion made in the affidavit filed by the petitioner.

3. Keeping in mind the scope of the review filed by the petitioner, we do not find any merit in this review application. In the affidavit filed in support of the writ petition, the following averments have been made in so far as the delay is concerned.

"I respectfully state that the petitioner with the intention to do his higher studies in the USA, approached the Universities therein for scholarship during the study, and came to know that the scholarships would be available to University rank Holders. Thereafter, he approached the University for a copy of the rank list prepared by the first respondent through his friend and came to know that he had not been in the University rankings. The petitioner was shocked to hear the same.

4. I respectfully state that as the petitioner and the 2nd respondent were classmates, he knew that the 2nd respondent did not pass all the 8 semester examinations in first attempt and hence, the petitioner expected that he would be given 3rd ranking in the University Rank list. But, the 1st respondent conferred the 3rd rank to 2nd respondent ignoring the petitioner."

4. In the reply affidavit, the petitioner has claimed that there is no delay on his part. Admittedly, the petitioner has sought to challenge the rank list published in the month of April, 2004. Therefore, he should have explained the delay. Admittedly, the rights have accrued to the second respondent. A perusal of the

affidavit filed in support of the writ petition would show that the petitioner has left to United States of America. Even the writ petition has been filed through the power Agent. It is for the petitioner to pursue his remedy within the appropriate time. Considering the same, we do not find any error apparent in the order passed by us in so far as the question of delay is concerned, as the writ petition has been filed merely after a period of four years from the date of the impugned list published by the first respondent.

5. Coming to the second question raised by the learned counsel for the petitioner, we are of the considered view that the said issue has already been considered and orders have been passed on merits. We have clearly stated in the order that it is for the petitioner to substantiate the allegation. Merely making an averment in the affidavit would not suffice, when the same is not supported by relevant documents. Accordingly, we do not find any merit in this review application and the same is dismissed. No costs.