

(2005) 01 OHC CK 0057
In the Orissa High Court
Case No : Civil Review No. 63 of 2002

State of Orissa and Others		APPELLANT
	Vs	
Suresh Ch. Nayak and Others		RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226, 4

Citation : (2005) 99 CLT 333 : (2005) 1 OLR 292

Hon'ble Judges : M.M. Das, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Sarangi, for the Appellant; Dibyasingh Misra, R.K. Mohanty, P.K. Mohapatra, S. Nath, S. Gartia and D. Ray, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The State of Orissa through the Secretary, School and Mass Education Department along with other Officers are the petitioners in this application for review. The petitioners have prayed for setting aside the Order dated 20.2.2001 passed in O.J.C. No. 11541 of 2000, Order dated 24.7.2001 passed in Misc. Case No. 9264 of 2001 and the Order dated 24.9.2001 passed in Misc. Case No. 11162 of 2001, arising out of the said Writ Application.

2. Mr. Sarangi, Learned Senior Standing Counsel on behalf of the petitioners, submitted that O.J.C. No. 11541 of 2000 was filed by the present opp. parties as the petitioners with a prayer to issue a direction to the Opp. Parties who are the petitioners in this review application, to conduct a fresh viva voce test and allow the writ petitioners to participate in the said test with police protection. He submitted that no notice of the said Writ Application was sent to the opp. parties therein i.e., the review-petitioners, but by Order dated 20.2.2001 when the matter was listed for admission, this Court passed the order to the following effect:

"20.2.2001: Without going into the controversies raised by the parties, and in

view of the undertaking given by the Learned Addl. Government Advocate that the petitioners will be given a chance of appearing at interview within three months from this date, the Writ Petition is disposed of."

Consequent to the above order, the writ-petitioners were permitted to appear at the interview for the post of Primary School Teachers. Misc. Case No. 9264 of 2001 was filed by the writ-petitioners making their grievance that even though they have been allowed to appear in the interview, their results have not been declared. Even though no notice of the said Misc. Case was sent to the review-petitioners, who were the opp. parties therein, by order dated 24.7.2001 this Court directed that if the interview is already over, the concerned authority shall publish the result within four weeks from that date and disposed of the Misc. Case. Similarly, in another Misc. Case bearing No. 11162 of 2001 filed by the writ-petitioners, this Court by Order dated 24.9.2001 directed that appointments be made from the merit list of candidates within a period of eight weeks from that date. Mr. Sarangi submitted that all the aforesaid three orders are necessary to be reviewed in view of the fact that order dated 20.2.2001 was passed by this Court basing on the undertaking given by the Learned Addl. Government Advocate that the petitioners will be given a chance to appear at the interview within three months from that date. He submitted that as a matter of fact, the then Addl. Government Advocate without obtaining any instruction from the review-petitioners gave the undertaking to the above effect which he was not competent to do. He further submitted that at no point of time before passing the above order, the review-petitioners were noticed regarding filing of the said Writ Application and the subsequent misc. cases and had the review-petitioners been given an opportunity of hearing in the Writ Application, they could have filed a proper return to the Writ Petition showing that the writ petitioners were not entitled to the reliefs claimed by them. He further submitted that as per the decision of the State Cabinet, vacancies in the post of Primary School Teachers occurring after 30.6.1996 were not filled up due to grim financial condition of the State and accordingly, a Scheme was formulated by the Cabinet in its meeting held on 29.11.1999 to appoint para-teachers as Swechhasevi Sikhya Sahayak in place of regular Primary School Teachers. Subsequently, as per the decision of the Finance Department, filling up posts of regular Primary School Teacher has been frozen with effect from 1.7.1996. In view of such submission, Mr. Sarangi contended that the writ-petitioners are not entitled to any of the directions issued by this Court in O.J.C. No. 11541 of 2000.

3. Mr. Misra, Learned Counsel for the opp. parties who was appearing for the writ-petitioners, on the contrary, submitted that no ground whatsoever has been made out by the review-petitioners for reviewing the aforesaid orders passed in the Writ Application and the subsequent Misc. Cases. He further submitted that the final order passed in the Writ Application cannot be recalled or completely modified/changed while reviewing the same and that unless there is any clerical or arithmetical error in the said orders or the said orders are on the face of it erroneous, the same cannot be reviewed.

4. On considering the rival submissions made by the parties, we find that the prayer made by the review-petitioners is to recall the said orders on the ground that the review-petitioners who were opp. parties in the Writ Application were not noticed nor copy of the Writ Petition was served on them and the Learned Addl. Government Advocate had no instruction from the review-petitioners nor was authorised to give the undertaking, which has formed the basis of the Order dated 20.2.2001 passed in the Writ Application.

5. Law is well settled that the High Court in exercise of its plenary power under Article 226 of the Constitution can review its decision and although the provisions of the Civil Procedure Code, 1908 (for short "CPC") do not strictly apply to Writ Petitions, the scope of the power of review of a decision under Article 226 of the Constitution will be governed by the principles laid down in Order 47, Rule 1, CPC. The ground on which a decision can be reviewed under Order 47, Rule 1, CPC are if after the decision was rendered, a new and important matter or evidence has come to the knowledge of the applicant which, after exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision was rendered, or there is some mistake or error apparent on the face of the record, or for any other sufficient reason. "Any other sufficient reason" would include a case where a decision is rendered ex-parte and without notice to the opposite parties.

6. Finding sufficient merit in the contentions raised by the Learned Senior Standing Counsel appearing on behalf of the review-petitioners that the orders passed on 20.2.2001 in OJC No. 11541 of 2000, Order dated 24.7.2001 passed in Misc. Case No. 9264 of 2001 and Order dated 29.4.2001 passed in Misc. Case No. 11162 of 2001 were without due notice to the Opp. Parties in the Writ Petition, we are inclined to allow this application. Accordingly, the review application is allowed, Order dated 20.2.2001 passed in OJC No. 11541 of 2000, Order dated 24.7.2001 passed in Misc. Case No. 9264 of 2001 and Order dated 24.9.2001 passed in Misc. Case No. 11162 of 2001 are recalled and OJC No. 11541 of 2000 is restored to the position as it was on 20.2.2001 and will be listed before the appropriate Bench by the Registry.

A.K. Patnaik, J.

7. I agree.