
(1996) 03 CAL CK 0050

In the Calcutta High Court

Case No : Rev. T. No. 588 of 1995 in F.M.A. No. 586 of 1996

Steel Authority of India Ltd.

APPELLANT

Vs

Santosh Kumar Joardar and Others

RESPONDENT

Date of Decision : 29-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 151

Citation : (1996) 2 CALLT 392

Hon'ble Judges : Arun Dutta, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Sumit Panja and Kanchan Roy, for the Appellant;Milan Bhattacharya and K.G. Roy for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—This application has been filed for review of the judgment and order dated 10th February, 1995 delivered by my learned brother on behalf of the Appeal Bench in F.M.A.T. No. 196 of 1993, dismissing the appeal and confirming the judgment and order of the learned Single Judge passed in Civil Order No. 1472(W) of 1991 on 21st December, 1992, directing the authorities concerned to treat 29th November, 1937, as the writ petitioner's date of birth and to correct the relevant entries in his service book accordingly. The authorities were also directed to calculate the writ petitioner's date of superannuation on that basis and to forthwith re-instate him in service and treat the interim period till such reinstatement as period of continuous service and allow the petitioner all service benefits including emoluments for such period.

2. Appearing on behalf of the applicant, Steel Authority of India Ltd., the appellant in the above mentioned appeal, Mr. Sumit Panja, learned advocate, urged that this review application was filed on the discovery of new and important evidence having a direct bearing on the facts at issue in the writ petition, which evidence was existing on the date of delivery of the judgment and order, but after exercise of due diligence was not within the knowledge of the

applicant and could not, therefore, be produced at the time when the Judgment and order was delivered.

3. Mr. Panja submitted that after the Judgment had been delivered In the appeal on 10th February, 1995, an employee of the applicant working with old files In the security department (Central Industrial Security Force) of the Durgapur Steel plant, found the writ petitioner's attestation Form wherein his date of birth was shown as 29th November, 1934, and not 29th November, 1937, as claimed by him.

4. According to Mr. Panja, on discovery of the Attestation Form, the applicant decided to check the writ petitioner's age with the records of the school where he had studied. The vigilance Department took up the matter with the Headmaster of Krishnnagar A.V.H. School, who by his letter dated 1st March, 1995, confirmed that according to the school Admission Register, the writ petitioner's age on the date of admission, that is, 8th February, 1951 was 16 years two months and nine days, which fixes the petitioner's date of birth as 29th November, 1934, and not 29 the November, 1937, as claimed by him. Mr. Panja pointed out that pursuant to our directions, the Admission Register was produced by the Headmaster of the School, and the entries therein corroborates the contents of the letter written by the Headmaster on 1st March, 1995, being Annexure "X2" collectively to the writ petition.

5. Mr. Panja urged that since even after exercise of due diligence, the aforesaid evidence was not available to the applicant and could not, therefore, be produced at the time when the Judgment under review was delivered, having regard to the nature of the said evidence, there was sufficient ground for review of the said judgment.

6. In support of his contentions, Mr. Panja firstly relied on the decision of the Supreme Court in the case of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, , wherein the observations made in the case of Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, to the effect that the power of review may be exercised on the discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, was reiterated with approval.

7. Mr. Panja also referred to a Single Bench decision of this Court in the case of Smt. Debola Mukherjee and Anr. v. Sujit Singh, reported in 1977(2) CLJ 35, where the aforesaid principle embodied in order 47 Rule 1 of the CPC was explained.

8. Mr. Panja urged that having regard to the above, the judgment and order passed by the appeal Court on 10th February, 1995, dismissing the appeal, was liable to be recalled and the appeal was liable to be allowed on the basis of the new evidence before the Court.

9. Opposing the review application, Mr. Milan Bhattacharya, learned advocate, submitted that the review application was misconceived and did not satisfy the conditions of Order 47 Rule 1 of the Code of Civil Procedure.

10. Mr. Bhattacharya urged that the principal requirement of Order 47 Rule 1 of the aforesaid Code is that after the exercise of due diligence the new matter or evidence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the decree was proved or order made. Mr. Bhattacharya urged that while the Attestation Form was in the custody of the applicant and the information relating to the school where the writ petitioner studied, was available with the applicant, no steps were taken during the pendency of the writ petition and the appeal to check the writ petitioner's age with the school authorities,

11. Mr. Bhattacharya urged that such in action showed complete lack of diligence on the part of the applicant, which In itself was sufficient for dismissal of the review petition. ,

12. Mr. Bhattacharya also disputed the authenticity of the Admission Register of the school in question on the ground that the same had not been duly proved.

13. Mr. Bhattacharya lastly contended that the instant review application is really in the nature of an appeal where an attempt Is being made by the applicant to re-open and re-appraise the evidence, which is not permissible under Order 47 Rule 1 of the Code of Civil Procedure.

14. In this regard, Mr, Bhattacharya also relied on the decision of the Hon''ble Supreme Court in Smt. Meera Bhanja''sCase (supra) wherein it was observed that it is well settled that review proceedings are not by way of appeal, and a power of review is not to be confused with the power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

15. Mr. Bhattacharya also relied on a Single Bench decision of the Delhi High Court in Hori Lal Vs. Sharwan Kumar, , where it was held that discovery of new evidence on questions of fact was no ground for review of the decree of the second appellate Court since the finding of fact of the lower courts became final and binding on the second appellate Court.

16. Mr. Bhattacharya urged that the review petition was liable to be dismissed on such ground as well.

17. Having considered the submissions of the respective parties, we are inclined to hold that the review application is liable to be dismissed. We cannot but accept Mr. Bhattacharya's submissions that the applicant has not been able to show that even after exercise of due diligence, the evidence now being sought to be tendered, was not within the knowledge of the applicant when the appeal court delivered its judgment. As will appear from the review petition itself, the waking up process began after the said Judgment had been delivered.

18. The decisions cited by Mr. Panja only reiterates the provisions of order 47 Rule 1 of the Code of Civil Procedure, and explains the grounds on which a review petition may be entertained. One of grounds being the discovery of new and important evidence after a decree or order is made, which, after exercise of due diligence was not within the knowledge of the power seeking a review of such decree or order.

19. In the instant case, as pointed out by Mr. Bhattacharya, the Attestation Form came from the custody of the applicant, and the enquiry involving the writ petitioner's school could have been conducted when the writ petition was filed.

20. In the said circumstances, we cannot but hold that there was complete lack of diligence on the applicant's part in procuring the documents on the basis of which the review petition has been made. If such evidence is to be accepted at this stage, there would be not finality of Judgments, as submitted by Mr. Bhattacharya.

21. Having regard to the view taken by us, there is no need for us to go into the authenticity of the Admission Register produced by the Headmaster of the Krishnanagar A.V.H. School and the entries made therein, as far as the writ petitioner is concerned.

22. The review application accordingly falls and is dismissed with costs assessed at 200 gold mohurs.

A.K. Dutta, J.

23. I agree.