
(2013) 02 CAL CK 0064
In the Calcutta High Court
Case No : W.P.C.R.C. 117 (W) of 2012

Sudip Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Constitution of India, 1950 — Article 32
Penal Code, 1860 (IPC) — Section 463, 464, 465

Citation : (2013) LabIC 1354

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Asok Kumar Janah and Ms. Pampa Dey Dhabal, for the Appellant;
Kamalesh Bhattacharyya, Rijaul Hossain and Bidhan Biswas, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—This is an application for recalling an order dated 19.4.2011 passed in the above writ petition on the ground that certain fraudulent acts of the petitioner could not be brought before the Court. The aforesaid application is taken out by the Director of the School Education who was not represented when the aforesaid order was passed.

2. The writ petitioner was admitted in the Primary Teachers" Training Course conducted by an institute recognized by the West Bengal Board of Secondary Education. After successful completion of the said training course, the writ petitioner was granted a certificate and on the basis, thereof, his name was registered in the concerned Employment Exchange under the trained category.

3. On notification of the vacancy by the Medinipore District Primary School Council the Employment Exchange sponsored the name of the writ petitioner under the trained category. The petitioner was found eligible to sit in the written test on the basis of the bio-data and/or testimonial submitted to the said Council. The marks awarded by the selection committee made the petitioner eligible for being appointed to the post of a primary teacher. The panel containing the name

of the writ petitioner was forwarded to the Director of the School Education by the said council, but approval could not be given for such appointment. On inquiry, it was informed to the petitioner that a doubt has been raised by the Director as to the genuinity of the mark-sheet issued by the West Bengal Board of Secondary Education, which was submitted by the writ petitioner before a Primary Teachers' Training Institute at the time of getting admission.

4. The petitioner, thereafter, moved before this Court by filing a writ petition being W.P. No. 18597(W) of 2007. The said writ petition was taken up on 19.4.2011 in presence of the petitioner and the Medinipore District Primary School Council and the same was disposed of by directing the Director of the School Education, West Bengal to grant approval to appointment of the writ petitioner within 2 weeks from the date of the receipt of the recommendation from the concerned District Primary School Council or in the event, the recommendation has already been submitted then from the date of the communication of the said order. It is specifically observed in the said order that no document, in support of the alleged contentions that the petitioner submitted a forged mark-sheet to the institution, was produced either before the Court or annexed to the writ petition. However, a memo dated 25th June, 2004 was annexed to the writ petition, containing the name of 12 trained candidates whose mark-sheets were found to be forged by the Director of the School Education, wherein the name of the writ petitioner does not find place.

5. In the recalling application, it is stated by the respondent No. 3/applicant herein that the Assistant Director of School Education vide letter dated 18.2.2004 duly informed the Paschim Medinipore District Primary School Council relating to the forgery committed by the petitioner at the time of taking admission to the Primary Teachers' Training Institution. It is further stated that the said document ought to have been produced by the Council at the time of disposal of the writ petition which has not been done.

6. By order dated 22.6.2012, Mr. Kamalesh Bhattacharyya, the learned Advocate appearing for the respondent No. 3/applicant was directed to produce the mark-sheet submitted to his client by the lecturer-in-charge of the Primary Teachers' Training Institute. The matter was again fixed on July 5, 2012, but the so-called forged mark-sheet alleged to have been submitted by the petitioner was not produced before the Court. However, the matter was heard and was reserved for judgment.

7. The entire gamut of an application is not founded on the assertion that the respondent No. 3/applicant could not appear on the said date but is based on the allegation that the writ petitioner having submitted a forged mark-sheet before the Primary Teachers' Training Institute, the order, directing the said respondent to grant approval, should be recalled.

8. Mr. Kamalesh Bhattacharyya, the learned Advocate appearing for the respondent No. 3/applicant submits that once a forgery and fraud is proved then

the Court should upset all the orders being an outcome of such forgery or fraud. He further submits that the appointment made on the basis of a fraudulent document is liable to be terminated as a person committing fraud cannot reap the benefit therefrom and placed reliance upon a judgment of the Apex Court delivered in case of District Primary School Council, WB Vs. Mritunjoy Das and Others,

9. Mr. Asok Kumar Janah, the learned Advocate appearing for the writ petitioner. however, opposes the said application on the ground that the order passed after contested hearing having reached finality could not be recalled by means of an interlocutory application. In support of the aforesaid contention. he placed reliance upon a judgment of the Supreme Court in case of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, 3. He further submits that there is a distinction between an application for review and recall petition and placed reliance upon a judgment of the Supreme Court in case of Asit Kumar Kar Vs. State of West Bengal and Others,

10. Having considered the respective submissions, the application for recall, as indicated above, does not rest upon the non-representation of the respondent No. 3/applicant, but based upon the non-production of the document by the Medinipore District Primary School Council at the time of final disposal of the writ petition. It is no doubt true that a fraud and justice never dwells together. Fraud unravels everything. The party to the fraud cannot be allowed to reap the benefit of the order on the ground that the lis has reached finality. The Court always possess inherent power to recall its judgment or order if it is obtained by fraud. The power to recall not only springs from the legislature but from the very nature and the constitution of the Courts to enable them to maintain their dignity, secure obedience to its process and rules, protects from wrong and to punish unseemingly behaviour. It also amounts to abuse of the process for invocation of the inherent power to recall an order obtained by fraud. So far as, forgery is concerned, it originated from a French word "Forger" signify "...to frame or fashion a thing as the smith doth his work upon the anvil" And it is used in our law for the fraudulent making and publishing of false writings to the prejudice of another man's right (Termes De La Ley). (Stroud's Judicious Dictionary, 5th Edition, Vol. 2) The Webster's Comprehensive Dictionary, International Edition, defines "forgery" as "The act of falsely making or materially altering, with intent to defraud; any writing which, if genuine, might be of legal efficacy or the foundation of a legal liability." Therefore, the fraud is an essential ingredient of forgery and the forgery is an offence as defined in Sections 463, 464 and 465 of the Indian Penal Code. The fraud and forgery may yield a punitive action against its commission by a person and therefore, must be proved without any reasonable doubt. Therefore, even a lis has terminated by an order being an outcome of the fraud and forgery can be recalled by the Court as it cannot be said to have reached finality in the sense as tried to be contended by Mr. Asok Kumar Janah. In case of Shri Brahm Datt Sharma (supra), the writ proceeding which was finally disposed of was sought to be revived on the basis of a

subsequent event after 2 years and in such perspective, it was held that the proceeding cannot be revived and/or reopened on the basis of an interlocutory application.

11. In case of Asit Kumar Kar (AIR 2009 SC (Supp) 282) (supra), the order was sought to be recalled by filing an application under Article 32 of the Constitution and it is held that there is a distinction between a petition under Article 32, a review petition and a recall petition as in case of review, the Court must consider whether there is an error apparent on the face of the record but in case of recall petition, the Court does not go into the merits of the original proceeding but recall the order on the ground that it was passed without affording an opportunity of hearing.

12. The aforesaid decisions has no manner of application in the present context, in as much as, the recall petition is not made on the ground that the order disposing the writ petition was passed without giving an opportunity of hearing to the respondent No. 3/applicant. The petition rest upon an assertion of fraud and forgery, which in my opinion if proved beyond reasonable doubt empowers the Court to recall its order in exercise of its inherent power. Mere assertion of a fraud and forgery does not invalidate the orders passed on merit unless some cogent evidence/document is produced before the Court. In the instant case, neither the forged mark-sheet was produced (in spite of the direction so passed) nor there was any attempt to produce the documents by the respondent No. 3/applicant. In affidavit-in-opposition, the writ petitioner specifically denied to have submitted a forged mark-sheet to the Primary Teachers' Training Institute and firmly stood to his stand that the mark-sheet which he produced before the District Primary School Council, was produced by him before the institute at the time of taking admission. I cannot disbelieve the statement of the writ petitioner.

13. The application being CAN No. 3235 of 2012 is, therefore, dismissed.

14. However, there shall be no order as to costs. Since the hearing of the contempt application was postponed because of the recall application. Let the contempt application be posted for hearing after 4 weeks.