

(2011) 10 BOM CK 0108

In the Bombay High Court

Case No : Civil Review Application No. 23 of 2011 in Writ Petition No. 157 of 2011

Sunrise Electromelt Ltd.

APPELLANT

Vs

State of Goa and The Chief Electrical Engineer, Electricity Department, Government of Goa, Vidyut Bhawan, Panaji, Goa

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Citation : (2011) ELR 1791

Hon'ble Judges : R.P. Sondurbaldota, J;F.M. Reis, J

Bench : Division Bench

Judgement

F.M. Reis, J.—All the above Review Petitions are taken up together as they seek review of the common Judgment passed by this Court on 18.07.2011 on the same grounds.

2. We have heard Shri Nitin Sardesai, learned Counsel appearing for the Applicants and Shri S. S. Kantak, learned Advocate General, appearing for the Respondents.

3. Shri Nitin Sardesai, the learned Counsel appearing for the Applicants, has sought the review of the impugned Judgment dated 08.07.2011 on two counts. It is the contention of the learned Counsel that the rights of the Applicants have crystallized upon making the application for power while a Notification dated 30.09.1991 was in force and hence irrespective of when the power was actually supplied, the Applicants would be entitled to the rebate at the 1988 rates. It is further his contention that in the reply filed by the Respondents in the Writ Petition, it was specifically contended by the Respondents that the rebate was granted to the Applicants not under the Notification dated 30.09.1991 but under the Notification dated 01.08.1996 as per the prevailing rates and that the Notification of the year 1996 has been declared illegal. It is further his contention that this Court had committed a mistake/error apparent on the face of record

which is established on the basis of a new document which is very important and has direct bearing to the matter in controversy. The learned Counsel further submitted that in case the averments in the said letter were considered, this Court would have come to the conclusion that the rights of the Applicants were governed by the Notification of 1991 and not of the Notification of 1996 and, as such, the Applicants were entitled for the rebate as contemplated therein. The learned Counsel further submitted that before filing the Writ Petition, the Applicants had made a thorough search of the documents in their possession but the Applicants had not found the letter in its record despite exercise of diligence. The learned Counsel further submitted that in case the letter dated 09.04.1999 was considered, this Court would have come to the conclusion that the Applicants are entitled for the rebate as claimed by them as per the 1991 Notification. The learned Counsel further pointed out that there is another error in the impugned Judgment to the effect that the reference to the reliance by the learned Counsel in paragraph 63 of the Judgment passed by this Court on 21.01.1999, in Writ Petition No. 262/1998, reported in 1999 (1) G.L.T. 218, in the case of G. R. Ispat Ltd., vs. Chief Electrical Engineer & Ors., is to be read as paragraph 64 of the said Judgment. The learned Counsel, as such submitted, that the impugned Judgment as such deserves to be reviewed.

4. On the other hand, Shri S. S. Kantak, learned Advocate General, appearing for the Respondents has pointed out that there is no error apparent on the face of record which requires any review of the impugned Judgment. The learned Advocate General has pointed out that the letter sought to be relied upon by the Applicants is the understanding of the concerned Department of the Judgment passed by the Apex Court which, in any event, does not survive in view of the Judgment passed by this Court on 08.07.2011. The learned Advocate General further pointed out that the whole exercise on the part of the Applicants is to get a re-hearing of the Petition under the guise of a Review Petition. Learned Advocate General points out that even assuming the application for power was made when the Notification of 1991 was in place, nevertheless, it is not disputed that the power was supplied to the Applicants after the said Notification of 1991 was rescinded and, as such, the question of Applicants seeking any rebate could not arise at all. Learned Advocate General further pointed out that he does not dispute the fact that the reliance by the learned Counsel appearing for the Applicants was on paragraph 64 and not on paragraph 63 of the impugned Judgment.

5. Having heard the learned Counsel as far as the second contention of the learned Counsel for the Applicant as there is no dispute about the typographical mistake, the reference to "paragraph 63" at page 18 in paragraph 15 of the impugned Judgment shall be deleted and "paragraph 64" would be inserted therein.

6. As far as the next contention of the learned Counsel appearing for the Applicants, we find that mere discovery of a new document by itself is no error

apparent on the face of record which would require any review of the impugned Judgment. Apart from that the letter sought to be introduced by the Applicants could not in any way advance the case of the Applicants any further. In paragraph 27 of the impugned Judgment, this Court has held thus :

In Writ Petition No. 159 of 2011, the situation appears to be identical in as much as the power supply was availed/supplied on 28th July 1995. If one carefully peruses the September 1991 notification, it is clear in application, in as much as the rebate is extended and can be claimed from the date on which supply of electricity is made available to such units. If the supply of electricity itself is made available after rescission of this notification, then, there is no question of its applicability to the petitioners.

7. It is not disputed that the Applicants have availed of the supply of electricity and/or was made available to the Applicants after the rescission of the said Notification of 1991. In view of the said findings of this Court in the impugned Judgment, the Applicants, in any event, would not be entitled to avail of any benefits under the 1991 Notification.

8. The learned Counsel for the Applicants was trying to impress upon us by going through the said Judgment of this Court and the Apex Court in the earlier Writ Petition filed by the Applicants and point out that there was an error committed therein to the effect that the Applicants had availed of the rebate under 1996 Notification. This exercise is not permissible in a Review Petition.

9. The Apex Court in the Judgment reported in *S. Bagirathi Ammal Vs. Palani Roman Catholic Mission*, , has held at Para 12, thus :

12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.

10. In another Judgment of the Apex Court reported in *The State of West Bengal and Others Vs. Kamal Sengupta and Another*, , it has been held at Para 21 thus :

21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it

might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

11. Considering the said Judgments of the Apex Court, we find that the said documents sought to be relied upon by the Applicants are not at all relevant nor would in any way help the Applicants to advance their contentions in view of the findings rendered therein.

12. Hence, subject to the correction as mentioned in paragraph 5 herein above, we find no merit in all the above Review Applications, which are accordingly dismissed.