

GAHC010262882022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./71/2023

PADDA SARKAR @ PADDA RANI SARKAR
D/O. HEM CHANDRA DAS @ HEM CHANDRA MANDAL, W/O. KARTIK
SARKAR, VILL. PUBPAR JYOTIA BHANGRA, MAUZA- PATI DARRANG, P.S.
BAIHATA CHARIALI, DIST. KAMRUP, ASSAM, PIN- 781381.

VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-110001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
POLITICAL AND HOME DEPTT.
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER

KAMRUP (R)
AMINGAON
GUWAHATI
PIN- 781031.

4:THE SUPERINTENDENT OF POLICE (B)
AMINGAON
DIST. KAMRUP (R)
ASSAM
PIN- 781031.

5:THE OFFICER-IN-CHARGE

BAIHATA CHARIALI P.S.
P.O. BAIHATA CHARIALI
DIST. KAMRUP
ASSAM
PIN- 781381

Advocate for the Petitioner : MS. S B CHOUDHURY, MR. S K DAS

Advocate for the Respondent : DY.S.G.I., SC, NRC,SC, F.T,GA, ASSAM

– B E F O R E –

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 20.03.2024.

Date of Judgment : **20.08.2024.**

JUDGMENT & ORDER (CAV)

(NELSON SAILO, J)

Heard Ms. SB Choudhury, learned counsel for the review petitioner/writ petitioner, Mr. J Payeng, learned Standing Counsel, Home Department for respondent Nos. 2, 4 & 5 and Mr. H K Hazarika, learned Government Advocate, Assam for the respondent No. 3.

[2.] The instant review petition has been filed by the review petitioner (petitioner) seeking review/modification/alteration of the Order dated 04.06.2018 passed by this Court in WP(C) No. 7201/2016.

[3.] Aggrieved with the Order dated 11.08.2016 passed by the Foreigners Tribunal No. 5., Kamrup at Rangia in R.F.T. Case No. 56/2015 (*State Vs. Padda Sarkar @ Padda Rani*

Sarkar) declaring the petitioner to be a foreigner, who had illegally entered India (Assam) from Bangladesh after 25.03.1971, the petitioner filed WP(C) No. 7201/2016 before this Court. This Court, upon hearing the parties and upon perusal of the records of the case, dismissed the writ petition vide Order dated 04.06.2018.

[4.] According to the petitioner upon filing the writ petition through her engaged counsel, notice was issued and an interim order was passed in her favour on 01.12.2016. After that she was not in touch with her counsel for a long time and then upon being misguided by some persons, she took back her brief from her engaged counsel. Subsequently, on 05.12.2022, she handed over the brief to her newly engaged counsel who found out that the case had already been dismissed on 04.06.2018. Although the Court had appointed an Amicus Curie, as she was not heard, she has filed the review petition after some delay.

[5.] It may be noted that the instant review petition was filed on 08.06.2023, after about five (5) years from the date of dismissal of the writ petition.

[6.] Ms. S B Choudhury, learned counsel for the petitioner submits that review of the Order dated 04.06.2018 is being sought by the petitioner because of the fact that there are errors apparent on the face of the record. She refers to the grounds taken in the review petition which are abstracted below for perusal: -

“I. For that, the Review Petitioner seeks indulgence of this Hon’ble Court to allow her to place her case through her engaged Counsel whom she had explained the actual facts and circumstances regarding her citizenship and who can place her case in its proper perspective.

II. For that, the Government Gaon Burha’s Certificate reflects the linkage of the

Review Petitioner with her father, Late Hem Chandra Mandal @ Hem Chandra Das and also references with the Migration Certificate. But the Gaon Burha's Certificate was not considered by this Hon'ble Court while passing the final order dated 04/06/2018.

III. For that, in any view of the matter, the final order dated 04/06/2018 passed in W.P.(C) No. 7201/2016 by this Hon'ble Court on the ground given above to secure the ends of justice."

[7.] Mr. J Payeng, learned counsel for the Home Department, on the other hand, submits that a review petition has to be filed within a period of 30 days from the date of the order sought to be reviewed but in the instant case, it has taken the petitioner about five (5) years to file the instant review petition. He submits that even if one is to understand but without admitting that there was some communication gap between the petitioner and her earlier engaged counsel, even then the petitioner is required to explain why she could not file the review petition soon after engaging a new counsel on 05.12.2022 who no sooner came to learn that the writ petition had been dismissed on 04.06.2018 and the petitioner did not explain the reasons for the delay in the present case. The learned counsel submits that despite the inordinate delay in filing the instant review petition, the petitioner has not even filed a separate application seeking condonation of delay and that she has only made some statements in the review petition which cannot by any means be construed as sufficient cause. He therefore, submits that the review petition should be dismissed on grounds of inordinate delay and laches.

[8.] Mr. J Payeng, learned counsel further submits that even on merit, the petitioner has to show that there is an error apparent on the face of the record or the petitioner despite due care and diligence could not bring certain relevant materials to the notice of the Court at the

relevant time or the petitioner has to show that there are other sufficient reasons for reviewing of the Order dated 04.06.2018, which has close nexus with the first two principles governing review. The learned counsel submits that from a perusal of the review petition, the petitioner has failed to show that any of the three grounds exists for reviewing the Order dated 04.06.2018. The learned counsel submits that it is a settled position in law that the grounds of review are very limited and that the review petition cannot be filed in the guise of an appeal. He submits that all the points raised by the petitioner in his review petition has already been argued before this Court by the petitioner through his counsel at the relevant time and therefore, the review petition should be rejected and dismissed. In support of his submission Mr. J Payeng, relies upon under the following authorities: -

(1) Vedanta Limited Vs. Goa Foundation &Ors., (2021) 7 SCC 206.

(2) Kamlesh Verma Vs. Mayawati &Ors., (2013) 8 SCC 320.

(3) Central Council for Research in Ayurvedic Sciences&Anr. Vs. Bikartan Das &Ors., (2023) SCC Online SC 996.

(4) S Madhusudan Reddy Vs. V Narayana Reddy &Ors., (2022) SCCOnline 1034.

[9.] Mr. H K Hazarika, learned counsel for respondent No. 3 adopts the argument of Mr. J Payeng, learned counsel for the Home Department and submits that the review petition is hit by delay and laches and is also without any merit and the same should be dismissed.

[10.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record. The writ petition was disposed of vide Order dated 04.06.2018 and thereafter, the petitioner filed the instant review petition only on 08.06.2023, after about five (5) years. Considering the delay, the explanation given by the petitioner is rather very casual, cryptic and inadequate. After filing her writ petition and

getting an interim order on 01.12.2016, the petitioner in her own words, was not in touch with her engaged counsel for quite some time. She then got in touch with her appointed counsel only to withdraw the brief of the case from her said counsel. Thereafter she contacted her newly engaged counsel on 05.12.2022 and handed him over the brief of the case. The newly engaged counsel no sooner came to learn that the case had already been dismissed on 04.06.2018 but even then, the petitioner did not take immediate steps to file the review petition. The review petition came to be filed only on 08.06.2023. Therefore, the projection made in our considered view cannot be accepted as sufficient cause to persuade us to condone the delay. However, notwithstanding our view about the inordinate delay, we feel it would be proper to examine the review petition on merit.

[11.] The review petitioner has made three (3) grounds for seeking review of the Order dated 04.06.2018 as abstracted in preceding paragraph No. 6. Ground No. 1 can only be understood as an assumption of the petitioner that the actual facts and circumstances can best be explained or presented by her engaged counsel. It may be noticed that according to the petitioner herself, after getting an interim order in her favour on 01.12.2016, she withdrew the brief from her engaged counsel in the month of June 2017. She then handed over the brief to a newly engaged counsel on 05.12.2022 who no sooner came to learn that the writ petition had already been dismissed on 04.06.2018. Despite that, review petition was filed only on 08.06.2023. Therefore, the ground taken is found to be not tenable. A review petition cannot be entertained, much less, to find out who can best argue the case. In this case, Court had appointed an Amicus Curiae due to the absence of the petitioner or her counsel to assist the Court.

[12.] In ground No. 2, the petitioner contents that the Government Gaon Burha's

Certificate only reflected the linkage of the petitioner with her father Late Hem Chandra Mandal @ Hem Chandra Das and also the Migration Certificate but the same were not considered by this Court. It may be seen that the migration certificate marked as Ext.A was indeed considered despite the same not being proved in accordance with law as can be seen from paragraph Nos. 9, 12, 17 and 18 the order shot to be reviewed. As per Ext.A Kartik Chandra Das, Gyananda Sundari Das and Hem Chandra Das were allowed to enter India through the check-post of Gede in the district of Nadia in West Bengal. According to the petitioner, both in her written statement as well as her evidence, her grandfather and father had settled down at village Sambaria under Lanka Police Station in the district of Nagaon. Therefore, it is evident that the names figuring in Ext.A are not related to the petitioner. Moreover, as per the exhibit Hem Chandra Das was 20 years of age in 1964 and therefore, in ordinary course, his name would have figured in the voter list in India subject to registration as a citizen under Section 5(1)(a) of the Citizenship Act, 1955 after residing for 7 years. He would have been eligible to be a citizen in India in 1971 and his name ought to have been figured in at least 1 or 2 voters lists but there is no such document. Considering the burden cast upon the proceedee/ petitioner under Section 9 of the Foreigners Act, 1946, the petitioner was found to have failed to prove that she is not a foreigner but a citizen of India. As for the Gaon Burha's certificate relied upon by the petitioner, the same cannot by itself be considered to be evidence for establishing petitioner's citizenship particularly when the same has not been proved in accordance with law.

[13.] In view of what has been stated in the preceding paragraphs, ground No. 3 is found to be devoid of any merit.

[14.] In the case of *Vedanta Limited* (supra) the Apex Court observed that an application

for review of a judgment has to be filed within 30 days from the date of judgement or order, i.e., sought to be reviewed in accordance with Rule 2 of Order 47 of the Supreme Court Rules, 2013. In the given facts of that case, no cogent grounds was furnished for the delay between 20 and 26 months by the two parties in filling their applications for review. One of the Judge who had passed the order which was sought to be reviewed had already retired when the first 4 review petitions were filed by one of the party and later, the other Judge had also retired from second batch of review petitions were filed by the other party. The Supreme Court observe that such practice must be firmly disapproved to preserve the institutional sanctity of the decision-making of the Court. The review petitions were dismissed both on limitation as well as merit. In the present case, we have also noticed that there is a delay of about 1228 days in filling the instant review petition and the petitioner has not given any explanation with sufficient cause or even any acceptable explanation for the delay. Although we have found the case to be fit to be dismissed on the ground of limitation but as may be noticed, we have examined the same on merit as well, as set out in preceding paragraph.

[15.] In the case of *Kamlesh Verma vs. Mayawati & Ors.* (supra) the Apex Court in deciding the said case held that the review will not be maintainable on a repetition of old and overruled argument and review proceedings cannot be equated with original hearing of the case amongst others. Paragraph Nos. 20, 20.1 and 20.2 may be abstracted here under: -

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. *When the review will be maintainable:*

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*

- (ii) *Mistake or error apparent on the face of the record;*
- (iii) *Any other sufficient reason.*

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Baselios Catholicos v. Most Rev. Mar Poulouse Athanasius AIR 1954 SC 526 to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. *When the review will not be maintainable:*

- (i) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) *Minor mistakes of inconsequential import.*
- (iii) *Review proceedings cannot be equated with the original hearing of the case.*
- (iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- (vi) *The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."*

[16.] From the above abstract, it may be seen that unless any of the three conditions as set out in Order 47 Rule 1 of the Code of Civil Procedure are met, review will not be maintainable. Moreover, sufficient reason would mean a reason sufficient on grounds at least analogous or akin to those specified India rule. The petitioner in the present case has failed

to fulfil any of the conditions in order to persuade us to review the Order dated 04.06.2018.

[17.] In the case of *Central Council for Research in Ayurvedic Sciences & Anr.* (supra) although the case was as to whether the respondents therein were entitled to enhancement of their retirement age from 60 to 65 years as applicable to the AYUSH doctors working under the ministry of AYUSH, the Apex Court formulated laid down two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of Writ of Certiorari. Paragraph Nos. 51 & 52, which are relevant to the subject may be gainfully abstracted here under.

“51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under [Article 226](#) of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under [Article 226](#) of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. [Article 226](#) of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation

demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

[18.] From the above abstract, it may be seen that the Apex Court has held that a Writ of Certiorari being a high prerogative writ should not be issued on mere asking. The High Court when it comes to issuance of Writ of Certiorari does not exercise the powers of appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to be based. Only when the order is passed without jurisdiction or is culpably erroneous the High Court can exercise its powers but does not substitute its own views with those of the Tribunal.

[19.] Coming to the present case, it may be seen that this Court in examining the information rendered by the inferior Tribunal had only observed the principles of law laid down by the Apex Court as abstracted above. In other words, this Court did not find any error committed by the Tribunal in rendering its opinion dated 11.08.2016 in RFT Case No. 56/2015.

[20.] A Full Bench of this Court in *Moslem Mondal & Ors.* (Supra) by referring to a number of Apex Court's decisions observed amongst others that a review bench while hearing the review petition cannot re-appreciate the evidence and reject the findings of the earlier bench, which otherwise is within the domain of the appellate court. In other words, a review petition cannot be allowed to be an appeal in disguise.

[21.] In the case of *S Madhusudhan Reddy* (supra), the Apex Court by referring to various

decisions of the same Court on the subject reiterated the principles governing or the grounds available for filing a review application as set out in Order 47 of the CPC. The Apex Court observed that it was a settled law that in the exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in the matter. Further, under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. The principle laid down by the Apex Court squarely applies to the present case. The petitioner in the present review petition has failed to show any error that is apparent on the face of the record or that some new documents or important matter or evidence which after exercise of due diligence was not within her knowledge could not be produced by her at the time when the order sought to be reviewed was passed. There is also no sufficient reason or reasons shown to compel this Court to review the Order dated 04.06.2018.

[22.] Thus, upon due consideration of the review petition in its entirety, we find that the grounds for review raised by the petitioner has already been duly considered and answered by this Court while passing the Order dated 04.06.2018 and therefore, under the given facts and circumstances, we find no reason to allow the review petition.

[23.] This review petition is accordingly dismissed on limitation as well as on merit.

[24.] The records of R.F.T. Case No. 56/2015(*State Vs. Mrs. Padda Sarkar*) be returned to the Foreigners Tribunal No.5, Kamrup, Rangia forthwith along with a copy of this order.

[25.] Copy of this order also be forwarded to the Superintendent of Police (Border),
Kamrup, Amingaon for its necessary information.

JUDGE

JUDGE

Comparing Assistant