

Party Name : JAYANTA KR. ACHARJEE Vs THE STATE OF TRIPURA & ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. A Lodh, learned counsel appearing for the petitioner as well as Mr. B. Dutta, learned counsel appearing for the respondents.

This is a petition for review under Order XLVII, Rule 1 of the CPC against the judgment and order dated 27.03.2014 delivered in W.P.(C) No.395 of 2005.

Before approaching this Court, by means of this petition, the petitioner by filing a writ appeal being W.A. No.48 of 2014 challenged the said judgment and order dated 27.03.2014. It was urged by the petitioner that the main ground of the challenge in the writ petition was to the validity of the memorandum dated 07.12.1992. According to the petitioner, the observation as under, made by this Court was 'erroneous'.

"It is to be noted that the challenge to the Memorandum dated 07.12.1992 has not been pressed by the petitioner."

Now, the petitioner by filing the review petition has asserted that the purpose of filing of the writ petition was to challenge the constitutionality of the memorandum dated 07.12.1992 under No.F.4(62)Fin(PC)/92 issued by the Under Secretary, Government of Tripura, Finance Department.

Mr. A. Lodh, learned counsel for the petitioner has submitted that the cut off date i.e. 31.12.1991 as fixed by the memorandum dated 07.12.1992 is unreasonable as no object has been exposted by the Government for setting up that cut off date.

In response to the queries to the Court, Mr. Lodh, learned counsel could not show averment or any such ground of objection from the entire writ petition. What he could place as regards the challenge to the said memorandum dated 07.12.1992 is available in para 19(a), which is reproduced hereunder:

"19A. That the impugned memorandum dated 7-12-1992 issued by the Under Secretary to Government of Tripura, Finance Department which already annexed by the respondents counter as Annexure R-3 which is illegal, mala fide, arbitrary and in violation of fundamental right of the petitioner as guaranteed under Article 16 of the Constitution. If the said memorandum dated 7-12-1992 is not declared as ultra vires, illegal in that case the petitioner will be seriously prejudiced and will suffer irreparable loss and injury i.e. during his whole life."

Except this, there is no averment or the ground of objection, why the memorandum dated 07.12.1992 is ultra vires, is illegal or it would be perennially prejudicial to the petitioner. Even what Mr. Lodh, learned counsel has urged today before this Court that the cut off date is unreasonable. To that extent there is no pleading. In sum, there is no ground why the said memorandum has been challenged.

This Court clearly recalls, in the course of hearing, when this Court asked where the grounds is in the writ petition, in order to place their reply, the counsel for the petitioner stated that except para-19(A) there was no other pleadings and he had sincerely at that point of time stated that he would not press the objection as to the constitutionality of the Government policy as declared by the memorandum dated 07.12.1992.

It appears to the Court that after obtaining the certificate from Tripura University on 25.04.2014, the petitioner has taken a chance by floating this review petition as it appeared that the date of publication being 31.01.1992 is so close to the cut off date that he might make out ground therefrom, but that was never a ground in the writ petition and there was no pleading as such in this regard.

Mr. Lodh, learned counsel has submitted that despite whatever has surfaced, the Court can appreciate the challenge as projected by the petitioner. This Court is constrained to hold that if this approach is subscribed in a writ proceeding, then the sanctity of the proceeding can hardly be maintained by this Court, because the process is someone must delineate the grounds of objection when the constitutionality of a policy or order or any other law is challenged. The ground must be clearly laid down so that the proper response can be availed from the respondents.

As such, this Court has no option but to discard such plea of Mr. Lodh, learned counsel for the petitioner. That apart, as pointed out by Mr. B. Dutta, learned counsel appearing for the respondents that Supreme Court in Ramrao Vs. All India Backward Class Bank Employees Welfare Association reported in 2004 AIR (SC) 1459 has clearly laid down law that unless it is shown that the classification as made by way of the cut off date that classification is not well-laid by intelligible differentia, than a cut off date cannot be declared as unreasonable. From a keen reading of the ratio as laid down in Ramrao Vs. All India Backward Class Bank Employees Welfare Association, it is clear that in absence of the materials in that respect the challenge against the cut off date cannot be sustained by the Court.

This Court is of the view that the petitioner has miserably failed to make out any ground for invoking the special power under the review jurisdiction. Accordingly, this petition stands dismissed. No costs.