

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO. 383 OF 2013

IN

WRIT PETITION NO. 4076 OF 2011

(Shri Anand Ramanujam vs. Government of India thr. the Secretary Education (School Education)
Ministry of Human Resource Development & Ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
P.B. VARALE, JJ.
JANUARY 30, 2015.**

This review petition is filed for recalling judgment dated 07.02.2013 in Writ Petition No. 4076 of 2011.

We have heard Mrs. Meenaxi Iyer, learned counsel for the review applicant/ original petitioner, Shri Patil, learned counsel for respondent Nos. 3 & 4 and Shri Kalangiwale, learned counsel for respondent No.2. Nobody has appeared for respondent No. 1.

Shri Patil, learned counsel has submitted that present review petition is nothing but an attempt to have rehearing and fresh consideration of writ petition or then in any case an appeal. It does not contain any ground for review.

In the light of this objection raised in reply, we have heard Mrs. Meenaxi Iyer, at length. Apart from some comments on judgment, she has also read out the

review petition itself. After she completed her arguments, she was asked to point out grounds warranting review. She submitted that her review petition itself contains necessary grounds.

Writ Petition No. 4076 of 2011 was filed by review applicant for reliefs like direction to Respondent No. 1 to take action against corrupt employees of Central Board of Secondary Education (CBSE), to investigate the grievance of the petitioner, to reimburse air travel expenses as hearing at Delhi was not conducted properly, to quash and set aside the order dated 09.11.2010 passed by the Director (EDUSAT), CBSE, to direct the Chairman, CBSE to pass final orders on review petition filed by the petitioner on 23.11.2010 and to direct Respondent No. 2 – CBSE to place on record all replies and written correspondence made by Respondent Nos. 3 & 4 pertaining to representation dated 09.08.2010. There was a prayer to pay compensation of Rs.2,00,000/- and litigation costs with residuary prayer to grant any other relief as may be found proper and just.

This Court has decided said Writ Petition on 07.02.2013 in the background of earlier order of this Court dated 05.07.2010 in Writ Petition No. 3882 of 2009. The judgment dated 07.02.2013 reproduces prayer clauses in Writ Petition No. 4076 of 2011 (except last two prayer clauses) and the order dated 05.07.2010 in Writ Petition No. 3882 of 2009. That order also

mentions prayer clauses in Writ Petition No. 3882 of 2009. Thereafter this Court has mentioned respective arguments and then this Court has recorded its findings.

This Court has found that prayer clauses in Writ Petition No. 4076 of 2011 and Writ Petition No. 3882 of 2009 reveal similarity. The question whether Respondent Nos. 3 & 4 are “*State*” within the meaning of Article 12 of the Constitution of India had attained finality because of order dated 05.07.2010 and the only remedy to seek a direction to Respondent No. 2 to take appropriate action against Respondent Nos. 3 & 4 for violation of CBSE affiliation or bye laws was open to the petitioner. This Court found that earlier order dated 05.07.2010 only kept this remedy open and allowed the petitioner to approach Respondent No. 2 for the said purpose. This Court found that the petitioner was not permitted to raise any other grievance except to demand an action against Respondent Nos. 3 & 4. His representation to Respondent No. 2, therefore, should have been limited only to that extent. The prayers which the petitioner could have made in Writ Petition No. 3882 of 2009 but did not make, could not have been added in Writ Petition No. 4076 of 2011. This Court found that Writ Petition No. 4076 of 2011, therefore, needed to be considered only for the purpose of granting petitioner relief of direction to Respondent Nos. 1 & 2 to proceed against Respondent Nos. 3 & 4.

This Court has then in para 11 of its

judgment dated 07.02.2013 looked into a challenge to hearing as conducted on 01.09.2010 and 17.09.2010 and found that by deciding representation of the petitioner in the mode and manner in which it has been done, i.e. by hearing the petitioner and Respondent Nos. 3 & 4 separately, no case for reimbursement of air fare to the petitioner was made out. This Court also observed that the petitioner did not make any independent or separate prayer for granting him air fare for his visit to Delhi. In para 12 of said judgment, this Court then looked into full and final settlement document signed by the petitioner on 05.04.2008. It observed, whether the document is executed voluntarily or then it was on account of some coercion was definitely a disputed question. It also noted that Respondent No. 2 found it not necessary to take any action in the matter of affiliation of Respondent Nos. 3 & 4 but a warning was issued to them to ensure that in future, they would follow affiliation bye laws in letter and spirit. This Court found that thus authority had not refused to look into the matter and it did not arrive at a finding which was erroneous or perverse. The Administrative Authority had looked into all relevant facets and then exercised jurisdiction available to it. There was no jurisdictional error.

In para 13, this Court also looked into argument that hearing was extended by the Director (EDUSAT). It also noted that the petitioner/ review

applicant could not point out any provision which enable either Chairman or said Director to reconsider the matter after it was decided because of direction of this Court. It is in this background that Writ Petition was disposed of. The liberty given to the petitioner vide earlier order dated 05.07.2010 in Writ Petition No. 3882 of 2009 was maintained and kept open.

To avoid prolixity, we find it convenient to treat the judgment dated 07.02.2013 in Writ Petition No. 4076 of 2011 as also memo of review petition MCA No. 383 of 2013, as part and parcel of this order.

In review petition, in para 3, it has been pointed out that this Court has reproduced only six prayers (i) to (vi) in Writ Petition No. 4076 of 2011. There were two more prayers thereafter and same have not been referred to. It is fairly accepted that those prayer clauses were wrongly numbered in memo of writ petition as (v) and (vi) again. The prayer clause (v) not reproduced in the judgment dated 07.02.2013 is about directions to Respondent Nos. 3 & 4 to pay jointly compensation of Rs. Two lakh and costs of litigation along with settlement of all claims made by the petitioner. Prayer clause (vi) is residuary prayer. It has not been pointed out how non mentioning of these prayers in the judgment sought to be reviewed has affected the application of mind therein.

In para 4 of review petition, it is mentioned that as the learned ASGI Shri Mishra was not present for

Respondent No. 1 – Union of India and did not contest the writ petition, his appearance as reflected in the judgment is incorrect.

In para 5, it is pointed out that cheque No.799938 dated 13.11.2006 was for disbursement of Gratuity amount of two employees. The sum of Rs.1,01,390/- for which it was drawn did not belong exclusively to review applicant. The review applicant has been later on paid the sum of Rs.73,279/- vide cheque No.178524 dated 05.04.2008 after obtaining his signature on forged letter. It is further submitted in para 8 that para 11 of the judgment is full of ambiguity and also against the provision of Enquiry Manual. The effort in said para is to show that separate hearing extended to the petitioner and Respondent Nos. 3 & 4 by the Director of CBSE is unsustainable.

This Court has in its judgment already found the said exercise of hearing legal and valid. The material in writ petition and review does not blame Director for issuing short notice and compelling petitioner to travel by air. The parties were aware of their grievance against each other or then defence of other side. How the impugned consideration by the Director is adversely affected, was not demonstrated when writ petition was decided. No prejudice is urged even in these proceedings. The finding of this Court in its judgment dated 07.02.2013 cannot be assailed as if review petition is an appeal.

The contention that the Chairman, CBSE ought to have exercised reviewing power, is sought to be made a bone of contention in para 16 in review petition. In para 18 certain mistakes or omissions while mentioning date or alleged inconsistent observations in the judgment are attempted to be brought to the notice of this Court. The review petitioner has also attempted to point out that there was a prayer for granting him air fare in the petition. It is further pointed out that reference to Central Vigilance Cell in para 13 of the judgment is erroneous and it should have been to Central Board of Secondary Education, New Delhi.

The perusal of entire review petition does not reveal any ground which can be legally invoked in review jurisdiction having substance and warranting recall or modification of judgment dated 07.02.2013. The liberty given by this Court on 05.07.2010 in Writ Petition No. 3882 of 2009 to present petitioner was exhausted by the petitioner. The petitioner could not point out that he could have approached that authority again seeking review of the orders passed by the Director, CBSE on 09.11.2010. The grounds raised in MCA/ Review do not in any way affect final adjudication by this Court on 07.02.2013.

Though the learned counsel for respondent Nos. 3 & 4 pointed out that the material to be looked into by this Court in review jurisdiction was absent in the matter and review applicant was not making out any

case, the review applicant failed to point out impact of various grounds in MCA on said final adjudication.

We, therefore, find that the effort of the review applicant is only to have fresh consideration of his writ petition. The material findings of this Court i.e. limited scope available to the petitioner after final adjudication of Writ Petition No. 3882 of 2009 on 05.07.2010 has not been commented upon at all. We, therefore, find Review Application misconceived. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

JUDGE

JUDGE

**G.S.*