

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.140 of 2015

IN

Civil Writ Jurisdiction Case No. 609 of 2007

Union of India through the Secretary (Fertilizers), Ministry of Chemicals and Fertilizers, Department of Fertilizers, Shastri Bhawan, New Delhi

.... Petitioner

Versus

1. Prosanta Kumar Ray, S/o Shri Mohan Lal Ray, Resident of Flat No. 54B, Pocket-B, DDA, SFS Flats, Mayur Vihar, Phase 3, Delhi- 110096
2. The Board of Directors, the Pyrites Phosphates and Chemical Ltd. (A Government of India Undertaking), Corporate Office, 12-A, Sector-24, Noida, U.P.
3. The Pyrites, Phosphates and Chemical Ltd. (A Govt. of India undertaking), Corporate Office, 12-A, Sector-24, Noida, U.P. through its Chairman cum Managing Director
4. The Chairman cum Managing Director, the Pyrites, Phosphates and Chemical Ltd. (A Govt. of India undertaking), Corporate Office, 12-A, Sector-24, Noida, U.P. cum the Director (Fertilizers), Ministry of Chemical and Fertilizers, Department of Fertilizers, Shastri Bhawan, New Delhi
5. The Official Liquidator, High Court Patna, having its office at Ministry of Corporate affairs, 4th Floor, Block-A, Maurya Lok Complex, Dab Bungalow, Patna

.... Opposite parties

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, ASG with
Mr. Kunal Tiwary, Advocate
For writ petitioner : Mr. Ram Pravesh Kumar
For the O.L. : Mr. Gautam Kejariwal
Ms. Aishwarya Riti, Advocates

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 04-03-2016

Heard learned counsel for the petitioner.

The Civil Review application has been filed for reviewing the order dated 24.8.2012 passed in CWJC No. 609/2007 by which the respondent-Union of India, Ministry of Chemicals and

Fertilizer had been directed to examine the claim of respondent no.2- writ petitioner for payment under Voluntary Separation Scheme (VSS) and to ensure payment in terms of the Scheme to the respondent no.2- writ petitioner within a period of four months from receiving the representation.

Aggrieved by the said order the Union of India had filed an appeal before this Court being LPA No. 722 of 2014. By order dated 28.1.2015 this Court, inter alia, disposed of the appeal as withdrawn in the following terms:-

“At the time of admission of this appeal, it has been submitted on behalf of the appellants that no counter affidavit appropriate to the facts in the writ application was filed by the appellant in the writ proceeding and it was in such circumstances that the writ petition has been disposed of.

Considering the matter in its entirety and in the interest of justice, this appeal is disposed of as withdrawn with liberty granted to the appellant to approach the writ Court with appropriate application, in future, if so advised, and also to take recourse to such provisions of law as may be permissible.”

Learned Assistant Solicitor General appearing for the petitioner-Union of India has made submissions on various grounds, none of which are based upon any material on the record. Even the

submission before the Appellate Court that no counter affidavit appropriate to the facts in the writ petition was filed by the appellant in the writ proceedings and it was in such circumstances that the writ petition was disposed of, does not represent the correct picture as transpired during the proceedings in the writ petition.

It is a matter of record and so admitted by learned Assistant Solicitor General also that this Court had granted repeated indulgences and issued directions to the learned Central Government counsel to file the counter affidavit but an adamant stand was taken by learned Central Government Counsel and upon instructions allegedly received by him it was stated that no counter affidavit was required to be filed by the Central Government.

It may be appropriate to notice at this stage that on 7.1.2011 when CWJC No. 609/2011 was taken up this Court observed that from the records it does not appear that copy of the brief had been served upon learned counsel for respondent nos. 1 and 2, Union of India and directed that the same be done within two days. Thereafter, on 10.2.2011 on the prayer of learned Central Government Counsel, the matter was directed to be put up on 24.2.2011 to enable him to file the counter affidavit. On 24.3.2011 this Court noted that no one appeared for the Union of India nor any counter affidavit has been filed, although time was granted for the



same to learned counsel for the Central Government. Again on 31.2.2011 this Court noted that it is unfortunate that upon service of notice the Union of India was represented by its counsel, Mr. H.Rahmani, Central Government Counsel who had appeared and prayed for time for filing the counter affidavit but neither the counter affidavit has been filed nor the said Central Government counsel appeared either on the last occasion on 24.3.2011 or on that day. The matter was directed to be put up on 15th April, 2011 with a further direction that a copy of that order be communicated to learned Assistant Solicitor General.

On 15.4.2011 this Court recorded that learned Central Government counsel submitted that the Central Government was a proforma party whereas learned counsels for the O.L. and for the petitioner, on the other hand, submitted that the Scheme of Voluntary Retirement was floated on the basis of the direction of the Central Government and as of that date since the company had been directed to be wound up by this Court there was neither a Board of Directors nor Chairman-cum-Managing Director of the company to defend the matter and only the Central Government could look into the issues and further that since the decision of closure and Voluntary Separation Scheme was of the Central Government, the liability would also be of the Central Government in case the writ petition

was decided in favour of the petitioner. On the said submissions this Court ordered that in the above circumstances, the Central Government Counsel is directed to comply with the earlier direction of this Court dated 10.2.2011 for filing counter affidavit in the matter.

On 12.5.2011 when the matter was next put up, this Court again ordered that as prayed for by learned Central Government Counsel, as a last indulgence, put up the matter on 30.6.2011 to enable him to file counter affidavit in the matter.

The matter continued to be adjourned on several dates thereafter but no counter affidavit was forthcoming on behalf of the Central Government. Thereafter the matter was heard on several dates and on 28.6.2012 learned counsel for the petitioner filed a supplementary affidavit bringing on record the annual reports for the years 2003-04 and 2007-08 of the Ministry of Chemicals & Fertilizers, Government of India to show that the payment under the VSS Scheme had been made from the funds provided by the Central Government. This Court further recorded that Mr. S.M.Eqbal Hasan Rahmani, learned Central Government Counsel sought adjournment to seek instructions and, if so advised, file counter affidavit which he had not yet filed despite the grant of several adjournments. The matter was again directed to be put up on 12th July, 2012.



On 13.7.2012 this Court noted the absence of learned Central Government Counsel as also non-filing of the counter affidavit and as a last indulgence the matter was directed to be put up on 27th July, 2012. Thereafter learned counsels for the Central Government and for the petitioner were heard on subsequent dates and ultimately on 24.8.2012 on the basis of the materials on the record the final order was passed in CWJC No. 609/2007.

In view of the above history as recorded from the order-sheet of the case, it is evident that there was no occasion for learned Central Government counsel to submit before the LPA Bench that no counter affidavit appropriate to the facts of the writ petition had been filed by the appellant in the writ petition and thus to seek permission to withdraw the appeal for filing necessary application seeking review of the order under appeal. If he has chosen to withdraw the appeal it was at his own risk. Not a single ground germane to civil review has been argued before this Court by learned Assistant Solicitor General except to reiterate that whatever the Central Government had given in VSS Scheme was a loan to the company and thus liability was wholly of the company. No such material exists on the record, although repeated indulgences and directions had also been given to learned Central Government Counsel to file the counter affidavit in the matter no counter affidavit

had been filed due to the instructions received by learned counsel. It is a well established proposition that a review can be directed on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge or could not be produced by the review petitioner at the time when the order was made.

Learned Assistant Solicitor General is unable to point out to this Court any error apparent on the face of the record or pleadings of the parties.

He is also unable to show before this Court as to what new and important matter or evidence have come to the knowledge of the petitioner which was not within its knowledge nor could be produced by it after the exercise of due diligence at the time when the order was passed. The fact is quite contrary and what is now sought to be done is to have the matter re-heard after filing of a counter affidavit filed by the said respondent which is not permissible especially in the light of the history of the case as narrated above.

In support of his stand learned counsel seeks to rely upon a decision of the Supreme Court in the case of State of Rajasthan & Anr. Vs. Surendra Mohnot & Ors. : (2014) 14 Supreme Court Cases 77 relying upon paragraphs 28,29 and 30 of the said decision which are quoted below:-



“28. We have already stated the legal position with regard to legal impact as regards the concession pertaining to the position in Law. That apart, we think that an act of the Court should not prejudice anyone and the maxim *actus curiae neminem gravabit* gets squarely applicable. It is the duty of the court to see that the process of the court is not abused and if the court’s process has been abused by making a statement and the same court is made aware of it , especially the Writ Court, it can always recall its own order , for the concession which forms the base is erroneous.

29. Similarly, the Division Bench in the intra-court appeal instead of advertng to the concept of consent decree as stipulated under Section 96(3) of the Code of Civil Procedure ,should have been guided by the established principles to test whether the concession in law was correct or not. In this context, it is useful to refer to a passage from *City and Industrial Development Corpn. V Dosu Aardeshir Bhiwandiwalla* wherein this court, while delineating on the power of jurisdiction under Article 226, has expressed thus; (SCC pp. 175-76,para 30)

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

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- (b) the petition reveals all material facts;
 - (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
 - (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
 - (e) ex facie barred by any laws of limitation;
 - (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”

The abovequoted passage speaks eloquently and we respectfully reiterate. And we add, non-acceptance of a mistake is not a heroic deed. On the contrary, it reflects flawed devotion to obstinacy. The “pink of perfection” really blossoms in acceptance.



30. Our preceding analysis would clearly show that the dictum in Jagdish Narain Chaturvedi: (2009) 12 SCC 49: (2010) 1 SCC (L&S)105 covers the controversy. The respondents prior to regularization were not members of service or a part of the cadre and hence, the benefit of the circular pertaining to selection grade was not applicable to them. Therefore, the irresistible conclusion is that they are only entitled to the benefit of selection grade from the date of regularization. The period of nine years, eighteen years and twenty-seven years has to be computed from that date. True it is, they may have been given the first benefit on an erroneous understanding of the circular and also prior to the decision in Jagdish Narain Chaturvedi case. But that would not entitle them to assert their claim on that basis, for that would be contrary to the law of the land as stated in Jagdish Narain Chaturvedi case. Be it noted, the State, as the latter circular would indicate, has decided not to take any steps for recovery of the benefit. Therefore, we conclude and hold that the writ petition preferred by the respondents before the High Court deserves dismissal and, accordingly, the order passed by the Writ Court and the decision in the intra-court appeal are set aside and the writ petition stands dismissed.”

I do not find anything in the aforesaid paragraphs of the decision which can have any bearing in the present matter. The

decision in the writ petition was not rendered on any concession of law contrary to the actual legal position as was in the case of Surendra Mohnot (supra) sought to be relied upon by learned Assistant Solicitor General. What is being sought in the present matter is a re-hearing after accepting fresh facts to be placed by learned Central Government counsel which was not brought on the record despite repeated directions of this Court at the stage of writ petition. Such a course of action is not permissible under the review jurisdiction and would work to the grave injustice to the petitioner who has been moving in the matter for the last 13 years.

I, thus see no merit in the review application. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

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