

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.249 of 2015

IN

Civil Writ Jurisdiction Case No. 18407 of 2012

=====

Hindustan Petroleum Corporation Ltd. Through Its Chairman, 17, Jamshedji Tata Road, Mumbai - 400020, represented by Chief Regional Manager & Duly Constituted attorney, Patna Retail Region, Loknayaak Jaiprakash Bhawan, 6th Floor, Dakbunglow Crossing Post Box No. 40, Frazer Road, Patna - 800001

.... Petitioner

Versus

1. Sanjay Kumar Singh Son of Sri Prafulla Kumar Singh, Resident of Village - New Sidhauili, P.S. - Dehri - on - Sone, District - Rohtas at Sasaram.
2. Mukesh Pandey, Son of Sri Jagdeep Pandey, Resident of Village - Barahi, P.O. and P.S. - Akhorigora, District - Rohtas at Sasaram.
3. The General Manager, North Central Zone, Hindustan Petroleum Corporation Limited, 1, Nehru Enclave, Gomti Nagar, Lucknow - 226010 (U.P)
4. The Senior Manager, Network Planning, North Central zone, Hindustan Petroleum Corporation Limited, 1, Nehru Enclave, Gomti Nagar, Lucknow - 226010 (U.P)
5. The Senior Regional Manager, Hindustan Petroleum Corporation Limited, Patna Retail Region, Loknayaak Jaiprakash Bhawan, 6th Floor, Dakbunglow Crossing Post Box No. 40, Frazer Road, Patna - 800001
6. The Presiding Officer, Delear Selection Committee, Hindustan Petroleum Corporation Limited, Patna Retail Region, Loknayaak Jaiprakash Bhawan, Dakbunglow Crossing, Post Box No. 40, Frazer Road, Patna - 800001.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Rajeev Prakash

For the Respondents : Mr. Brisketu Sharan Pandey

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 04-05-2016/DATE OF PRONOUNCEMENT

Heard learned counsel for the petitioner and learned counsel for the respondents.



2. The present application has been filed for review of the judgment and order dated 19.09.2014 passed in CWJC No. 8407 of 2012 whereby, *inter alia*, directions were issued to the review-petitioner-Corporation (Respondent no. 1 in the writ petition) to conduct the re-interview, and to take a final decision within a period of four months from the date of receipt of the order.

3. Learned counsel for the review-petitioner submits that it's order had not been interfered with in the judgment under review. It was, however, made clear that no fresh advertisement would be made and that no fresh candidate would be considered. A fresh interview would be conducted only in respect of candidates who had earlier been screened and interviewed and who alone would be considered by the Corporation, and it was required to take a final decision within a period of four months from the date of receipt of the order.

4. It is now submitted that prior to passing of the judgment under review dated 19.09.2014, new guidelines and a fresh policy decision vide Circular No. R-30024/33/2012-MC dated 23.06.2014 had been brought out by the Ministry of Petroleum and Natural Gas, whereby the oil companies had been directed to cancel all pending cases of retail outlets/LPG distributorship allotments in the cases where interview (including original or rescheduled or arising out of established complaints) were pending. All such cases were required to be taken up afresh under the new system of draw of lots under a fresh

process of selection and accordingly, fresh interviews/re-interviews became prohibited under the new guidelines.

5. The Corporation accordingly approached this Court in LPA No. 162 of 2015, which was however, disposed of by the Division Bench granting liberty to the petitioner to approach this Court with an appropriate application by taking recourse to such provisions of law as may be permissible. The Corporation has then filed the present review petition.

6. It is stated on behalf of the Corporation that owing to sheer inadvertence and unintentional laches on the part of its conducting counsel, the said circular No. R-30024/33/2012-MC dated 23.06.2014 was not brought to the notice of the Court and the new guidelines could not therefore be pointed out at the time when the order directing re-interview was passed by this Court.

7. Learned counsel for the writ petitioner-opposite party no. 1 opposed the review petition, submitting that the Circular No. R-30024/33/2012-MC dated 23.06.2014 was well within the knowledge of the review petitioner and if the same was not brought before this Court at the time of disposal of the writ petition, the same cannot form the basis for review of the judgment of this Court.

8. Having heard the parties and on consideration of the materials on record, this Court finds the review petition to be devoid of merit. It is not in dispute that even though circular No. R-



30024/33/2012-MC dated 23.06.2014 had come into existence during the pendency of the writ petition, the Corporation failed to bring the same before this Court and as such the said circular did not form part of the record of proceedings of the writ petition. In that view of the matter, it cannot be said that the judgment under review suffers from any error apparent on the face of the record.

9. The parameters and restricted scope for interference in review jurisdiction are well known. In *Thungabhadra Industries Ltd. vs The Government of Andhra Pradesh* [AIR 1964 SC 1372] it was held as follows :

"There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

10. In *Aribam Tuleshwar Sharma vs Aribam Pishak Sharma* [(1979) 4 SCC 389] it was held as follows :

"There are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the

Subordinate Court.”

11. In *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*

[(1980) 2 SCC 167], it was explained as follows :

“Whatever be the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.”

12. In *Haridas Das vs Smt. Usha Rani Banik* [(2006) 4 SCC 78]

it was held as follows :-

“The parameters are prescribed in Order XLVII of the CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict.”

13. A cumulative reading of the aforesaid authoritative pronouncements makes it abundantly clear that review jurisdiction is not available to re-hear the matter by taking on record any fresh documents or materials at the stage of review which could have, but were not, produced in the original proceedings. Moreover, the circular dated 23.06.2014 sought to be

relied on by the Corporation is merely in the nature of a guideline and thus non-consideration of the same by reason of the Corporation not having brought it on record, would not constitute an error of law, much less an error apparent on the face of the record.

14. Learned counsel for the petitioner has relied upon the decision in *the High Court of Judicature at Patna vs K.K. Chaubey & Others* reported in *2015 (4) PLJR 328 (FB)*, as also on *Chairman & MD, Central Bank of India & Others vs Central Bank of India SC/ST Employees Welfare Association & Others 2016 (1) PLJR 506*, to submit that review jurisdiction may be exercised in a situation where the Court’s attention was not drawn to a material statutory provision during the original hearing as an act of court shall prejudice none, as well as to prevent miscarriage of justice. It may however be observed that the present case is not one of oversight of any statutory provision rather merely of a guideline and its non-consideration is not such as is likely to result in miscarriage of justice.

15. This Court is therefore, not persuaded to allow the review petition which stands dismissed.

(Vikash Jain, J)

Chandran

AFR/ NAFR	AFR
CAV DATE	
Uploading Date	06.05.2016
Transmission Date	