

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MCC No. 673 of 2016

Dr. Kaushik Ghosh S/o. B.N. Ghosh, Aged About 43 Years, having worked as Chief Technologist, Footwear Design & Development Institute, Ministry Of Commerce & Industry, Government Of India, R/o- House No. E- 1, FDDI, Complex, Staff Quarters, Chennai.

---- Applicant

Versus

1. M/s XO Footwear Pvt. Ltd. A Company Incorporated & Registered Under Companies Act, 1956, Through Sachin Kumar, S/o. Shri Ashok Kumar, Age 27 Years, Working As Manager Accounts Having Its Registered Office At A-122, Mangolpuri Industrial Area, Phase-II, Delhi.
2. Chhattisgarh State Minor Forest Produce, (Trading & Development) Cooperative Federation Director, Having Its Office At A-25, VIP Estate, Near VIP Club, Khamordi Shankar Nagar, Raipur, (Chhattisgarh)
3. Charanpaduka Industries (P) Ltd., Plot No. 1462-64 MIE, Part-B, Bahadurgarh, District- Jhajjar (Haryana)
4. M.B. Rubber (P) Ltd. D-13, 14, 15 & A- 48/2, Site IV Industrial Area, Sahibabad, Ghaziabad (Uttar Pradesh)
5. Liberty Shoes Ltd., Libertypuram, 13th Milestone, G.T. Road, Bastara, District- Karnal (Haryana)
6. Ajay Plastics Industries, 95-96, Shahzadabagh, Industrial Area, Old Rohtak Road, New Delhi
7. M/s Footwear Design And Development Institute, Ministry, Government Of India, Head Office: A-10/A, Sector 24, Noida 201 301, Gautam Buddh Nagar, District Uttar Pradesh

---Respondents

For Applicant	:	Mr. K.M. Vijayan, Senior Advocate with Mr. Satish Chandra Verma and Mr. N.V.N. Margandayan, Advocates
For Respondent No.1	:	Mr. D.K. Rustogi and Mr. Ali Asgar, Advocates
For Respondent No.2	:	Mr. A.S. Kachhawaha, Advocate
For Respondent No.7	:	Dr. Saurabh Kumar Pandey, Advocate

Hon'ble the Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C.A.V ORDER
Reserved on 11/12/2017
Pronounced on 14/12/2017

Per P. Sam Koshy, J.

1. The present Review Petition has been filed seeking review of the judgment dated 03.08.2016, passed by this Court in WPC No. 239/2016. The writ petition was filed by the respondent No.1 before this Court challenging the tender proceedings invited for the supply of footwear. The grievance of the petitioner was that his bid was cancelled on the ground that the samples which the petitioner had submitted did not meet the required specifications with regard to the thickness of sole (forepart) and sole abrasion.
2. The writ petition was finally disposed of vide order dated 03.08.2016 holding that the manner in which the FDDI Chennai conducted the test and submitted the report leaves much to be desired and it was held that the test were not conducted properly and finally the report which was submitted by the FDDI Chennai was set-aside and it was directed that the samples of the other successful bidders be sent to some other laboratories for testing and if they meet the standards required, the respondent No.2 in the present review petition was free to place orders on them.
3. The applicant herein has filed the review petition seeking a relief of expunging the remarks made against the applicant in paragraphs No. 15, 16, 17, 19 & 20 of the judgment dated 03.08.2016. According to the applicant, the department of FDDI did not effectively contest the case before the High Court and in the process some observations have been made by the High Court in its judgment and the applicant has been placed under suspension from a service on 23.08.2016.

4. The counsel for the petitioner also expressed their apprehension of an adverse affect on his service career by virtue of the observations made by this Court in its judgment, so far as the applicant is concerned. It was also submitted by the learned Senior counsel appearing for the applicant that pending the review petition before this Court, the services of the petitioner has also being subsequently terminated and the basis for the termination has been the observations by this Court in its order and thus prayed for the expunging of those remarks. The counsel for the applicant stressed hard to convince this Court that there has been no lapse whatsoever on the part of the applicant while submitting the report in respect of the test of the samples belonging to the petitioner in the writ petition. The learned counsel tried to provide emphasis on the fact that all due care was taken while the test were being conducted both in respect of time required for testing and the chemical test which were conducted and tried to canvas the fact that the observations were not proper and justified and the same have been made only on account of no proper assistance being provided by the FDDI, the contesting party before the writ Court.
5. It was further contended that the applicant also did not get an opportunity to speak for himself as regards the alleged lapse on his part and for this reason also the observations made in the judgment pertaining to the applicant may be expunged.
6. The perusal of the record would show that the applicant herein had filed an Special Leave to Appeal before the Hon'ble Supreme Court, which was registered as 19324/2016, which came up for hearing before the Supreme Court on 21.10.2016, where after hearing, the

counsel for the petitioner (the applicant herein) withdrew the petition before the Supreme Court with liberty to file a review petition before the High Court.

7. Further, from the records it does not appear that any of the respondents before the writ Court including the FDDI or the Chhattisgarh State Minor Forest Produce Cooperative Federation Limited, which had floated the tender, have gone to the Hon'ble Supreme Court assailing the order. Thus, the judgment as such has attained its finality.
8. A plain perusal of the observations made by this Court while disposing of the writ petition would clearly reflect that this Court had only scrutinized the report submitted by the FDDI Chennai which was signed by the present applicant. Further, in the course of the scrutiny being made, this Court found certain discrepancies in the procedure adopted for the test, which were conducted on the samples, supplied that of the petitioners before the writ Court. The discrepancies were pertaining to the date on which the present applicant had signed the report and also the duration and the technique used while testing the samples. It was also detected in the course of the scrutiny that the certain tests were not conducted at FDDI Chennai, but were outsourced and the details of which were not reflected in the report. Hence, the observations were made raising serious doubts on the report of FDDI Chennai and the reply which the FDDI had filed in the High Court and the affidavit of which was also signed by the present applicant.
9. It was also pertinent to mention that the counter affidavit on behalf of the FDDI was also sworn by the applicant herein and it was the

contents of the counter affidavit of the FDDI and its report which was minutely scrutinized by this Court in the course of disposing of the writ petition. This Court while disposing of the writ Court had never made any adverse remark so far as the present applicant is concerned and that this Court never intended the present applicant to be subjected to a disciplinary action nor has the High Court called upon the FDDI to take any action against the present applicant. This Court had only considered the contents of the materials placed before the writ Court for its consideration and on perusal of record this Court did not find the contents of counter affidavit filed before the Writ Court and the report filed by the FDDI, Chennai worth accepting on account of large scale discrepancy and the Writ Petition was disposed off accordingly.

10. However, in case if the FDDI has initiated a disciplinary action against the applicant herein i.e. an entirely different cause of action to be agitated before the appropriate authority/forum independently without getting it connected with the Writ Petition which has been disposed off by this Court on 03/08/2016 vide WPC No.239/2016.
11. If the respondent No.7 have taken any disciplinary action against the applicant herein, the same has to be looked into independently and separately without being influenced or guided by any of the observations made by this Court in WPC No.239/2016 decided on 03/08/2016.
12. It is made clear that, the respondent No.7 cannot and will not be permitted to take shelter of the observation made in the order by this Court in WPC No.239/2016 to be the sole basis for taking action against the applicant herein.

13. What is all the more relevant at this juncture to be mentioned is that, the grounds put forth by the learned senior counsel on behalf of the applicant are all those grounds which are beyond the purview of review jurisdiction, as those are the grounds which were never considered or looked into by this Court in the Writ Petition.
14. So far as the review is concerned, it is settled position of law that Review is entertainable only in case if there is an error apparent on the face of record and which is glaringly visible. Revision petition cannot be converted into a proceeding whereby the whole writ petition is to be heard on merits again. Neither can the review petition be treated as an appeal reconsidering the order on its merit.
15. For all the aforesaid reasons reserving the right of the applicant to assail the subsequent developments separately, this Court does not find any force in the present MCC seeking for review of the order dated 03/08/2016 in WPC No.239/2016.
16. The MCC thus being devoid of merits deserves to be and is accordingly rejected.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge