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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on : 13th April, 2018*
Judgment pronounced on : 24th May, 2018

+ LPA 773/2015

ISHAN EDUCATION RESEARCH SOCIETYAppellant

versus

NATIONAL COMMISSION FOR MINORITY EDUCATION
INSTITUTIONS & ORS.Respondents

+ LPA 774/2015

ISHAN EDUCATIONAL RESEARCH SOCIETY (REGD) & ANR.
.....Appellants

versus

NATIONAL COMMISSION FOR MINORITY EDUCATION
INSTITUTIONS THR ITS REGISTRAR & ANR.Respondents

+ LPA 776/2015

ISHAN EDUCATION RESEARCH SOCIETYAppellant

versus

NATIONAL COMMISSION FOR MINORITY EDUCATION
INSTITUTIONS & ANR.Respondents

Appearance : Ms.Jyoti Singh, Senior Advocate with Mr.Ajay Saroya and
Mr.Priyabrat Rai, Advocates.
Mr.Syed Abdul Haseeb, Advocate for respondent no.1.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

Review Petition No.171/2017 in LPA No.774/2015

Review Petition No.172/2017 in LPA No.773/2015

Review Petition No.173/2017 in LPA No.776/2015

1. The present review petitions have been filed under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (in short 'CPC') against a common judgment dated 16.03.2017, passed in LPA Nos.773/2015, 774/2015 and 776/2015 on the following grounds:

- (i) That applications bearing C.M. No.25395/2015 in LPA No.773/2015, C.M. No.25399/2015 in LPA No.774/2015 and C.M. No. 25409/2015 in LPA No.776/2015 filed for placing additional facts and documents on record and for urging additional grounds, had missed the attention of the Court;
- (ii) That under para-14 of the judgment dated 16.03.2017, this Court has observed that as per the law, the actual test of a Minority Educational Institution is that the "institution" must be "established and administered" by a minority. However in para 15, under a mistake, establishment of the society has been connected with the establishment and administration of the institution. Under the National Commission for Minority Educational Institutions Act, (2 of 2005) 2004 (the Act) it is the establishment of the institution which is relevant;
- (iii) That the appellant/petitioner had sought leave to amend its Memorandum and Rules and prayed for remanding the matter to the NCMEI, as there is sufficient ground to review the judgment;

- (iv) That the additional documents which the appellant wished to file on record, were not produced before the NCMEI at the appropriate time and were sought to be produced only after the orders of the NCMEI and since the documents are relevant for the decision of the matter, remand of the same is called for;
- (v) That the appellant has been discriminated by the NCMEI as it has given a finding of valid conversion on the basis of affidavits to other societies and denied the same benefit to the appellant on similar affidavits.

2. Mr. Syed Abdul Haseeb, Advocate for the Respondent No.1 opposes the review petitions and submits that the order dated 16.03.2017 has been challenged on merits and the grounds raised in the review petitions are beyond the ambit of review.

3. After hearing arguments on the review petitions, it was indicated to Ms. Jyoti Singh, Senior Advocate appearing for the appellant that there does not appear any merit in the said petitions. We had however, offered to clarify that the observations made in the impugned order dated 16.03.2017 shall not come in the way of the appellant society whenever they apply for grant of minority status in the future. The matter was passed over to enable learned counsel to obtain instructions.

4. On passover, learned Senior Advocate submits that the review petitions may be decided on merits.

5. Arguments on behalf of counsel for both the parties have been heard.
6. It is first considered necessary to refer to the relevant paragraphs of the judgment dated 16.03.2017. In paragraphs 17 to 20 the following observations were made:-

“17. It has been held by the Supreme Court in the case of Dayanand Anglo Vedic (DAV) College Trust & Management Society vs. State of Maharashtra reported as (2013) 4 SCC 14, that for being a minority institution, it would have to be more than mere pretence and to qualify as a Minority Educational Institution, the institution should be of and for the minorities in truth and reality and not merely on paper. It is imperative that there exists some real positive nexus to enable the institution to be identified as an institution of and for the Minorities. Mere insertion of words in the bye-laws or memorandum of the society that describe the society as a minority society would not be sufficient to satisfy the requirement of granting minority status to an educational institution. It is the prerogative of the Courts to ascertain and satisfy itself whether an educational institution is of and for the minorities in its true letter and spirit or merely a cover to claim the benefits and privileges granted to a Minority Educational Institution under the said Act.

18. There is no iota of evidence on record to show that the members of the appellant society adopted Buddhist religion in its true letter and spirit by renouncing the Hindu religion. Nor there is anything to support the fact

that the appellant society was promoting or promulgating the principles of the Buddhism in order to create more awareness of the minority religion. Further, we do not find anything in the bye-laws or the memorandum of the appellant society that incorporates that the educational institutions set up by the appellant society would be beneficial to the members of the minority religion.

19. We also notice that the NCMEI granted minority status to one of the institutes established and run by the appellant society namely, Ishan Institute of Management and Technology vide Certificate dated 04.06.2012, which was later revoked and cancelled by the NCMEI. We find no infirmity with the revocation or cancellation of the grant of minority status to the said institution as section 12C of the Act gives complete power to NCMEI to cancel the minority status granted to a Minority Educational Institution.

20. In light of the above observations, we find no reason to interfere with the view taken by the learned Single Judge in the judgment under appeal."

7. We may note at the outset that the scope of a review petition is very limited. A review application cannot be treated as '*an appeal in disguise*'. In the case of "*Thungabhadra Industries Ltd. vs. Govt. of A.P.*" reported as **AIR 1964 SC 1372**, the scope of a review petition was delineated by the Supreme Court in the following words:-

"11. What, however, we are now concerned with is whether the statement in the order of September 1959

that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for 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 characterised 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." (Emphasis added)

8. In the case of "*Parsion Devi vs. Sumitri Devi*" reported as **(1997) 8 SCC 715**, on a conspectus of the law laid down in "*Thungabhadra Industries (supra)*", "*Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma*" reported as **(1979) 4 SCC 389** and "*Meera Bhanja vs. Nirmala Kumari Choudhury*" reported as **(1995) 1 SCC 170**, the Supreme Court had held as follows:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court

to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise.”

9. In a recent decision dated 03.03.2017, in the case of “*Sasi (D) Through LRs vs. Aravindakshan Nair and Others*”, reported as **2017 (3) SCALE 383** after taking note of the aforesaid authorities that have laid down the nature, scope and ambit of review jurisdiction, the Supreme Court has reiterated that “*the error has to be self-evident and is not to be found out by a process of reason.*”

10. Co-relating the grounds mentioned in the aforesaid paras with the well settled principles of law on the scope of review jurisdiction, it is found that the minority status certificate was granted to the Appellant/Society by the NCMEI on 04.06.2012; that the Appellant/Society had applied for minority status of three more institutes but the NCMEI withdrew the minority status certificate granted on 04.06.2012, on account of suppression of facts; that the Appellant/Society made no effort to amend its Memorandum and Rules of the Society even though its members had purportedly converted to Buddhist religion in the year 2003; that the Appellant/Society amended the Memorandum and Rules of the Society only after the promulgation of the NCMEI Act; that the NCMEI has passed a speaking order on the basis of documents produced before and all the above aspects were duly examined in the judgment dated 16.03.2017. The plea of the Appellant/Society for permission at this belated stage, to place more documents on record before the NCMEI, is without any force, therefore, the question of remand does not arise.

11. In view of the above, we do not find any merit in the present review petitions. Accordingly, the same are dismissed.

SANGITA DHINGRA SEHGAL, J

HIMA KOHLI, J

MAY 24th, 2018
ssc/afa

