

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 952 of 2019**

- U.K. Shrivastava, S/o Late J.K. Shrivastava, aged about 78 years, R/o Anand Nagar, Near Old Labour Court, Raipur, District Raipur (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through The Secretary to the Govt. of Chhattisgarh, Department of Higher Education DKS, Mantralaya Bhawan, Raipur (C.G.)
(Now Mahanadi Bhawan, Atal Nagar, New Raipur, Chhattisgarh)
2. Durga Education Society (A Society Registered Under The C.G. Societies Registration Act 1973) Regid No. 1950-51 Ka 55, Through Its President, Durga Mahavidyalaya Campus, Raipur (C.G.)
3. President Durga Education Society Durga Mahavidyalay Campus, Raipur (C.G.)
4. Principal Durga Mahavidyalay Campus, Raipur (C.G.)
5. Commissioner Department of Higher Education Non-Government Collegiate Wingh DKS, Mantralaya Bhawan, Raipur (C.G.)

(Now Indravati Bhawan, Atal Nagar, New Raipur, Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Sunil Kumar Soni, Advocate.
For Respondent/State	:	Shri Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Order on Board****Per P. R. Ramachandra Menon, Chief Justice****23.10.2019**

1. This is a petition for recalling the order dated 22.08.2019 passed by this Court in MCC No. 699 of 2019, whereby the Writ Appeal No. 252 of 2019 filed by the

rival contestant, which was dismissed for non-compliance of the peremptory order dated 02.05.2019 was restored to file; subject to payment of cost of Rs. 2,000/- by the Petitioner therein to the Chhattisgarh State Legal Services Authority.

2. The present Petitioner was the 1st Respondent in the said MCC. The grievance of the Petitioner, as put forth by the learned counsel, is that the said MCC was not listed before the very same 'coram' who had dismissed the writ appeal on 02.05.2019. By virtue of mandate of Rule 40 of the High Court of Chhattisgarh Rules, 2007 (for short, 'Rules of 2007') it is stated that, the MCC had to be listed before the very same learned Judges who passed the order on 02.05.2019. The learned counsel seeks to place reliance on the verdict dated 20.09.2019 passed by this Court in M.Cr.C.(A) No. 1078 of 2019 as to the course of action to be pursued under such circumstances; with specific reference to the mandate of Rule 40 of the Rules of 2007 (in connection with the placement of 'subsequent bail applications' and such other instances).
3. The first and foremost aspect to be noted is that the MCC No. 699 of 2019 filed by the aggrieved party seeking for restoration of the appeal (which was dismissed for non-compliance of peremptory order dated 02.05.2019) was passed by a Bench consisting of the then Acting Chief Justice, sitting with one of us. The subject matter was coming within the jurisdiction of the Chief Justice's Court as per the roster. In the said circumstances, when the MCC was filed, it was caused to be listed before this Court, the seat of the Chief Justice having been taken over by the Chief Justice w.e.f. 06.05.2019 and the Acting Chief Justice was no more there.
4. It is also relevant to note that the order passed by the Bench on 22.08.2019, allowing the MCC granting restoration of the appeal on cost, was passed after hearing the learned counsel for both the sides *i.e.* including the learned counsel

who was appearing for the 1st Respondent therein, who himself has filed the present MCC. Admittedly, no objection was raised at that point of time with regard to the finalization of the matter by the Bench. The learned counsel submits that he was not aware of the legal position at that point of time. We do not intend to make any comment with regard to the said submission, as it is for the learned counsel to make a self-introspection as to its worth. The fact remains that the matter was finalized after hearing both the sides and there is no error apparent on the face of record, to press for a review. That apart, absolutely no instance of any 'prejudice', if any, caused to the Petitioner is brought to the notice of this Court.

5. Coming to the rule position, Rule of the Rules of 2007 reads as follows:

“40. An application for modification, clarification, restoration or review of an order, or a subsequent bail application under Section 438/439 of the Code of Criminal Procedure, shall be listed before the same Coram:

Provided that if the same Coram is not available on account of retirement or for any other reason for a period of three months, and

(1) if the matter relates to a Larger Bench then the same shall be listed before an equivalent Larger Bench of which one of the members was a member of the earlier Bench;

(2) if none of the members of the earlier Bench is available then the application shall be listed before an equivalent regular Bench;

(3) [in case of a Single Bench, the matter shall be listed before regular Bench;]

(4) in case of a Single Bench where the matter relates to a subsequent bail application under Section 438/439 of the Code of Criminal Procedure, the same shall be listed before the regular Single Bench.”

Even a plain reading of the above Rule shows that, normally, a matter which was decided by the Bench, if sought to be modified, clarified or reviewed has to be placed before the very same 'coram'. However, the 'proviso' reads further,

that if the same 'coram' is not available on account of retirement or for any other reason for a period of three months and if the matter relates to a Larger Bench, then the same shall be listed before an equally Larger Bench, of which one of the members was a member of the earlier Bench.

6. Coming to the factual position, it is to be noted that the Bench which passed the order on 02.05.2019, was not available from 06.05.2019. The matter was listed and finalized by the present Bench only after three months i.e. on 22.08.2019. This being the position, it is well within the scope of Rule 40 proviso (1) of the Rules of 2007 as mentioned above, which unfortunately has not been read or properly understood by the Petitioner while filing the present proceedings seeking to recall the order dated 22.08.2019, wrongly pointing out that it is defective. On going through the facts and figures and also after hearing the learned counsel, we are of the firm view that only a cursory and casual exercise has been pursued by the Petitioner in moving this Court by way of the present proceedings and that too, without a case that any 'prejudice' has been caused to him.
7. In above circumstances, we hold that the petition is devoid of any merit and it is nothing but an abuse of the process of the Court; which is liable to attract heavy cost. However, taking a lenient view, it stands dismissed with a nominal cost of Rs.5,000/- (five thousand only), to be paid to the High Court Legal Aid Committee within a period of one month. If the amount is not satisfied as above, the Registrar General is directed to issue necessary certificate in favour of the beneficiary for recovery in terms of the relevant provision of law. A copy of this order be forwarded to the beneficiary as well, for information.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge