

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [MCA] No.894 of 2018
in
Writ Petition No.625 of 2013 (D)

Maharashtra S.T. Chalak Vahak Yantriki Sanghatana
vs.

Maharashtra State Road Transport Corporation, through its Chairman & others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri P.N. Verma, Advocate for the Applicant.
Ms. Bhagyasri Reddy, Advocate h/f Shri V.H. Kedar,
Advocate for Non-Applicant Nos.1 to 3.
None for Non-Applicant No.4.

CORAM : SUNIL B. SHUKRE, J.

DATE : 7th MARCH, 2019.

Heard the learned Counsel for the applicant
 and the learned Counsel for non-applicant Nos.1 to 3.

02 Initially, a request for grant of short adjournment was made by the learned Counsel for non-applicant Nos.1 to 3. But, as this Court was not inclined to grant the request, the learned Counsel for the non-applicants also submitted her argument in reply to the arguments canvassed before me.

03] In the order passed in the judgment rendered by this Court on 14/06/2018, it has been found that the view taken by the learned Single Judge has been confirmed by the Division Bench of this Court, when it decided L.P.A. No.143/2007 on 15/12/2015. But, now when my attention has been

invited to this judgment, it is found that the view so expressed is not correct. In the judgment, dated 15/12/2015, the Division Bench has not confirmed the view taken by the Single Bench Judge, rather the Division Bench has kept the issue open to be decided by the Single Judge of this Court though it set aside the order of imposing of costs passed by the learned Single Judge. It appears that, such an error, an error apparent on the face of the record, has been committed by this Court only because the other side i.e. this applicant or original respondent No.1 was absent before this Court. Had the original respondent No.1 been present before this Court, the correct factual scenario could have been brought to the notice of this Court and which would have gone a long way in preventing the appearance of manifest error in the judgment rendered by this Court.

04] Considering the issue of absence of the applicant or the original respondent No.1 at the time when the writ petition was disposed of, I am of the view that it has to be addressed by considering the depth of the justification given by the applicant for its absence before the Court. The applicant or the original respondent No.1 was impleaded in the writ petition in impersonal capacity and it is well known that the original respondent No.1 had not availed of services of any Advocate to present its case before the Court. The original respondent No.1 had chosen to entrust the responsibility to Mr. N.M. Verma, its General Secretary. It is stated by the learned Counsel for the applicant that Shri N.M. Verma was detected to be

afflicted with Parkinson's disease sometime in the year 2018 and thereafter he was continuously under treatment for the disease and that was the reason why he could not remain present before this Court nor could engage anybody on his behalf to inform the fact of his illness to the Court. It is also submitted that Shri N.M. Verma is an aged person and could not find any suitable person to inform the fact of his illness to the Court.

05] The learned Counsel for the applicant invites my attention to the medical papers filed on record by this applicant to support his contention. A perusal of these medical papers, starting from page 11, show that since 16/04/2018 till 21/06/2018, Shri Verma was under the medical treatment for his Parkinson's disease. I have no reason to view these medical papers with any suspicion and if that is so, there is no reason for me also to reject the contention that for the factors not within the control of Shri Verma, that Shri Verma remained absent before this Court on the day of 14/06/2018 and also on the previous date as mentioned in the judgment impugned herein. There is thus a justifiable cause shown by the applicant for absence of Shri Verma.

06] Once, it is seen that due to justifiable reasons, Shri Verma could not remain present before this Court, the case would convert itself into one of denial of an appropriate opportunity of hearing to the applicant-original respondent No.1. Apart from this, I have also found that due to absence of the original

respondent No.1 before this Court on 14/06/2018, the relevant fact could not be brought to the notice of this Court, which has resulted into creeping of a manifest error in the judgment under review. This is a fit case for reviewing the judgment dated 14/06/2018.

07] The application is allowed. The judgment dated 14/06/2018 passed in Writ Petition No.625 of 2013 is hereby recalled. The writ petition be placed before the appropriate bench for being dealt with in accordance with law.

**sandesh*

JUDGE