

Review Application No.241 of 2019 (O&M) in
Civil Writ Petition No.13565 of 2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 24, 2019

1. RA No.241 of 2019 (O&M) in CWP No.13565 of 2015

M/s Selvel Media Services Pvt. Limited

...Petitioner

Versus

The Municipal Corporation & others

...Respondents

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CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mrs. Munisha Gandhi, Senior Advocate with
Mr.Aditya Grover, Advocate,
for the applicant in both the applications.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Review Applications
bearing No.241 and 242 of 2019.

This Court, before the learned Senior Counsel submit her
arguments, raised the objection with regard to the locus-standi of filing the
LPA and as well as the application for review being not a party in the writ
petition and its effect. The answer was that during the pendency of the writ
petition, an application under Order 1 Rule 10 CPC was filed and earlier
writ petition No.20125 of 2014 titled as “M/s Taksh Media Pvt. Ltd.

Panchkula Versus U.T.Chandigarh & others”, vide order dated 02.12.2014, was disposed of as infructuous with a direction to the Municipal Corporation to carry out the notices charging the advertisement and other fees to its logical conclusion by keeping the question of locus-standi open.

Ms. Munisha Gandhi, learned Senior Counsel assisted by Mr.Aditya Grover, Advocate, representing the applicant-review petitioner in both the applications raised the following submissions:-

- 1) The LPA Bench has given liberty to file the review applications;
- 2) There is an apparent collusion between the petitioner and the Municipal Corporation and in this regard, FIR No. RCCHG2014A0021 dated 09.12.2014 against the officials of the Municipal Corporation and non-applicant, i.e., writ petitioner has already been registered, but vide order dated 06.12.2016 passed in CRM-M No.40489 of 2016 and CRM-M No.43149 of 2016, framing of the charges, has been, stayed;
- 3) The petitioners had been adopting pick and choose policy and in order to demonstrate the same, drew the attention of this Court to Page 295 of the review application, whereby the aforementioned charges in respect of the different contracts are up to date;
- 4) The order under challenge suffers from error apparent on record owing to the apparent collusion reflected above as the Arbitrator would not have any jurisdiction to adjudicate the controversy with regard to the levy of the advertisement, which is statutorily required to be paid by any of the parties governed by the agreement/contract. In this regard, the provisions of the Chandigarh Advertisement Control Order, 1954 were referred to, having been framed in pursuance to the power derived under Section 12 of the Capital of Punjab (Development and Regulation) Act, 1952.

At this stage, this Court raised a further query with regard to

the applicability of the order, Mr. Aditya Grover referred to the provisions of Section 122 of the Punjab Municipal Corporation Act, 1972, adopted by the Chandigarh Administration, i.e., Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 including the insertion of Section 126A, which requires prior approval of the Chandigarh Administration notwithstanding the conditions as contained in Sections 122 to 125 empowering the Chief Administrator to enforce such condition from time to time. Instead of adhering to the statutory requirement, the writ petitioner chose to file two writ petitions, which have been disposed of. Even Section 39 of 1954 Order, envisages alternative remedy of an appeal. In order to lend support, reference has been made to the judgment rendered by Hon'ble the Supreme Court in **M/s. Titagarh Paper Mills Ltd. Versus Orissa State Electricity Board and another**, (1975) 2 SCC 436 (Para 7) and, thus, urged this Court for recall of the order.

I have heard the learned counsel for the applicant-review petitioner, appraised the paper book and of the view that the review applications are required to be dismissed with exemplary costs and the reason is not one but many:-

- 1) If at all the petitioner has a grievance alleging and branding to be a whistle blower, the remedy lies elsewhere;
- 2) The order of the LPA Bench did not indicate any direction to this Court. It would be in the fitness of things to refer to the operative part of the order, which is extracted herein below:-

“After hearing the arguments of both the parties, learned senior counsel for the appellants has prayed for withdrawal of

the appeals in order to file the review application at the first instance as according to her, the advertisement fee/tax is statutorily leviable and for that purpose the Arbitrator cannot be appointed. Although, Mr. Chetan Mittal, Senior Advocate appearing on behalf of the writ petitioner/respondent No. 5 has submitted that this issue in law has been settled and the Arbitrator can be appointed but the learned counsel for the appellant has submitted that these precedents in his favour also.

Be that as it may, in view of the request made by learned counsel for the appellants, the present appeals are hereby disposed of having been withdrawn with liberty to the appellants to file an appropriate application for seeking review of the impugned order dated 18.5.2017.

In case any such application is filed within 15 days for seeking review of the order along with the application for condonation of delay filed under Section 5 of the Limitation Act, 1963, then the said application may be considered sympathetically.”

On plain and simple reading of the aforementioned observations, it is only on the request of the appellant, who was not a party in writ petition, the appeals were disposed of as having withdrawn with the aforementioned permission. This Court is not only flabbergasted, but bewildered to notice such a vengeance and rancour against the writ petitioner in assailing the order of this Court vide Intra Court Appeal and as well as the review application. This Court has not been informed about the availment of any separate remedy.

3. There is no dispute to the ratio decidendi culled out in the judgment referred to above, but it was in terms of the

provisions of the contract. No provisions of the contract and the agreement have been referred during the course of the argument denuding the power of the arbitrator to determine the controversy. The agreement between the parties contained a resolution of dispute. All these factors, if read cumulatively, lead to an irresistible conclusion that the review applications are nothing but apparently an act of animosity;

4. The delay of 700 days in filing the review applications has also not been explained, though an attempt has been made to bring the case within the explanation reasonable cause of approaching the LPA Bench. It would be understandable that there was some flaw in the judgment, but under the garb of alleged liberty that too at wish and desire of the applicant, this permission has been given, therefore, cannot be permitted to seek condonation of delay at the drop of the hat.

Finding no error apparent on record, the review applications and the applications seeking condonation of delay are dismissed with costs of ₹ 2,00,000/-each to be deposited in the Welfare Fund Account of the Bar Association of this Court.

In case the costs is not paid, Registry is directed to list the matter for compliance.

May 24, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No