GAHC010141392019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet. 96/2019

1:BODOLAND TERRITORIAL COUNCIL AND ANR
KOKRAJHAR, ASSAM, REP. BY ITS PRINCIPAL SECRETARY.

2: THE JOINT SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR

VERSUS

1:SRI PRADIP KUMAR BASUMATARY AND 6 ORS
S/O- LATE RAM KISHORE BASUMATARY, VILL.- GOSSAIGAON, P.O. RANCHAIDHAM, P.S. BASUGAON, DIST.- CHIRANG, PIN- 783372.

2:SRI MWGTANG BORO
S/O- SRI CHANDI CH. BORO
VILL.- GHORAMARA
P.O. RANCHAIDHAM, P.S. BASUGAON
DIST.- CHIRANG, PIN- 783372.

3:SRI RANJIT RAPHAEL KUJUR
S/O- RAJENDRA KUJUR
VILL.- DALOBARI T.E., P.O. AND P.S. KOKRAJHAR
DIST.- KOKRAJHAR, PIN- 783370.

4:DIPAK CHANDRA ROY
S/O- KHITINDRA MOHAN ROY
VILL.- DUMARDAHA PT-1
P.S. GAURIPUR, DIST.- DHUBRI, PIN- 783331.

5:PRASENJIT DEBNATH
S/O- SASADHAR DEBNATH
VILL.- GURUFELA (NO. 1 HATIGARH)
P.O. GURUFELA, P.S. KACHUGAON
DIST.- KOKRAJHAR, PIN- 783360.

6:DURJYADHAN MOCHAHARY
S/O- BAPU RAM MOCHAHARY
VILL NO. 2, JHARGAON
P.S. UDALGURI, DIST.- UDALGURI.

7:PRAVIN KUMAR GUPTA
S/O- DURGA PRASAD GUPTA
VILL.- DHALIGAON, BRPL
P.O. AND P.S. DHALIGAON, DIST.- CHIRANG.

8:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR. A K BHUYAN
Advocate for the Respondent : MR. S BISWAS

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH

ORDER

Date : 12-03-2020

Heard Ms. B. Bhuyan, learned counsel appearing for the review petitioners. Also heard Mr. S. Biswas, learned counsel appearing for the writ petitioner/respondent Nos. 1 to 7 as well as Mr. B. Deuri, learned State counsel, appearing for respondent No. 8.

2. By this Review Petition, the petitioners, i.e., the authorities in the Bodoland Territorial Council (BTC) are seeking review of the order dated 09.11.2018, passed by this Court in WP(C) 1812/2018. The said writ petition was filed by the petitioners therein, who were serving in the ITI, Salakati, in various capacities and were desirous of applying for 28 nos. of posts as and when the said posts are advertised in terms of the Government order dated 20.02.2017 and seeking for a direction to the respondent authorities to implement the order dated 20.02.2017, by which the State of Assam had approved the creation of 28 nos. of posts (Gazzetted and non-Gazzetted category) for the Industrial Training Institute (ITI),

Salakati, as mentioned in the said order, subject to the condition that the BTC authorities shall bear all the recurring expenses, such as, payment of salary and other administrative expenses for running the institute and there shall not be any financial implication on the part of the State Government with regard to creation of posts or maintenance of the institute.

3. The order dated 20.02.2017 was issued pursuant to a tri-partite agreement entered into on 12.07.2011 amongst the Government of Assam, the BTC authorities and the National Thermal Power Corporation (NTPC) as the First Party, Second Party and the Third Party, respectively.

4. While considering the writ petition, this Court noted that in the Memorandum of Understanding (MOU), which was entered into by the aforementioned three parties, it was clearly mentioned that the ITI at Salakati shall be set up by the Third Party, i.e., NTPC at their own cost and shall provide all infrastructural facilities like building including workshop, staff quarter, boundary wall, garden and landscaping etc., hostel, furniture, equipments and machinery as required to start functioning of the ITI and the Second Party, i.e., the BTC authorities shall provide land with physical possession free of cost to the Third Party for setting up of the ITI at Salakati. It is further provided in Clause 4 of the MOU that after construction of the ITI is completed by the Third Party, the same shall be handed over to the Second Party, i.e., BTC and the Second Party shall appoint/engage Instructors and other staff as per norms and shall bear all the recurring expenses such as payment of salary and other administrative expenses for running the institute. It is also specifically mentioned in Clause 4 of the MOU that there is no financial implication on the part of the First Party, i.e., the Government of Assam, in terms of creation of post or maintenance of the institute.

5. While considering the writ petition, this Court directed the learned Standing counsel, BTC, to obtain necessary instructions with regard to the creation of the aforementioned posts. However, the learned counsel could not obtain the necessary instructions. The State respondents, however, clarified that since the Government had already sanctioned the creation of the posts in terms of the aforementioned Government order dated 20.02.2017, the Government had nothing more to do with the same and it was the responsibility of the BTC authorities to discharge their obligation under the MOU arrived at by the parties. This Court, accordingly, felt that the BTC authorities were under the obligation to honour the undertaking given in the said MOU on the basis of which the State Government issued the aforesaid order

dated 20.02.2017. Accordingly, this Court disposed of the writ petition by directing the respondent authorities, more particularly, the BTC authorities to implement and execute the said Government order dated 20.02.2017 in terms of the MOU executed on 12.07.2011.

6. Ms. Bhuyan, learned counsel appearing for the review petitioners has submitted that during the pendency of the writ petition or at the time of disposal of the writ petition by this Court with the aforementioned direction, the BTC authorities could not apprise the Court about the fact that Finance is not a subject entrusted to the BTC and it is still a subject in the domain of the State Government and, as such, they are not in a position to create any post which would obviously require payment of salary, etc. and, accordingly, the BTC authorities are not in a position implement the order dated 20.02.2017 to create the aforementioned 28 nos. of posts and to take additional financial burden. It is also submitted by Ms. Bhuyan that Clause 16 of the MOU makes it clear that in case any need arises, the parties to the MOU shall amicably decide either to renew or to enter into a fresh MOU on mutually agreed terms and conditions after five years from the date of execution of the MOU and, in terms of Clause 16 of the MOU the BTC authorities have already written to the WPT & BC Department of the Government of Assam, vide a letter dated 07.12.2013 to move the Finance Department with regard to creation of posts of ITI, Salakati, since finance is not a subject entrusted to the BTC.

7. It is also submitted by her that the BTC authorities have again written to the State Government vide their letter dated 09.03.2016 clarifying the stand of the BTC with regard to the financial implication in respect of the posts in the ITI, Salakati, that since the BTC has not been given power by the State Government to create permanent posts, the BTC had engaged the instructors and other staff in the ITI, Salakati, on fixed pay basis. The aforementioned letters dated 07.12.2013 and 09.03.2016 are annexed as Annexure J and L, respectively, in the writ petition. The BTC authorities had written to the Government of Assam vide their letter dated 28.02.2018 (Annexure-4 of the Review Petition) about the aforesaid financial constraints in creating the posts since Finance is not an entrusted department of BTC and requested the Government of Assam to review the MOU by making necessary correction to Clause 4 of the MOU. Accordingly, it is submitted by Ms. Bhuyan that it is not viable for the BTC authorities to implement the said order dated 20.02.2017, which has been directed to be implemented by this Court by the order under review. Accordingly, the present Review

Petition has been filed seeking review of the order of this Court, she submits.

8. Ms. Bhuyan has further submitted that in terms of paragraph 3B inserted after paragraph 3A in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003, certain additional powers have given to the Bodoland Territorial Council to make laws within its areas with respect to various fields, viz. agriculture, animal husbandry and veterinary, co-operation, cultural affairs, education, fisheries, Food and civil supply, forests, health and family welfare, land and revenue, etc. However, it is clearly evident from the Sixth Schedule to the Constitution (Amendment) Act, 2003 that Finance is not a department entrusted to the BTC and, as such, the BTC cannot be saddled with the financial liabilities that would arise from creation of the aforementioned 28 posts in the ITI, Salakati.

9. By relying on paragraph 69 of the judgement of the Hon'ble Supreme Court in the case of *Yashwant Sinha vs. CBI,* reported in *(2020) 2 SCC 338,* learned counsel for the review petitioners has submitted that the review petition deserves to be allowed on the ground that the order sought to be reviewed was passed by the Court because at the time of consideration of the writ petition the BTC authorities failed apprise the Court about the fact that finance is not a subject entrusted to the BTC. It has been submitted that had this fact been brought to the notice of the Court, perhaps, the direction of the Court would have been different. The relevant portion of the aforesaid judgement of the Hon'ble Supreme Court, as relied on by the learned counsel for the review petitioners reads as follows:

> "*69. In Kamlesh Verma (supra), this Court in paragraph 20, laid down its conclusions, which reads as follows:*
>
> '*Summary of the principles*
>
> *20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*
>
> *20.1. When the review will be maintainable:*
>
> *(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
>
> *(ii) Mistake or error apparent on the face of the record;*

(iii) Any other sufficient reason."

10. This Court is obviously not sitting in appeal but is exercising the jurisdiction of review. The scope of review is limited and the grounds on which a review petition can be made are clearly prescribed by the statute. Though no specific provisions have been provided under Article 226 of the Constitution of India with regard to the grounds of review, it is now well settled that the principles laid down under Order 47 Rule 1 of the Code of Civil Procedure, 1901, are to be generally followed while entertaining an application for review of a judgement rendered under Article 226 of the Constitution. As laid down in Order 47 Rule 1 of the CPC, review will lie under the following circumstances:

> "Upon discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason."

11. The scope of the grounds for review has already been discussed in numerous decisions of this Court. A review petition has to be confined to the scope and ambit of Order 47 Rule 1 of the CPC. The issue to be decided in this Review Petition is whether the financial constraints expressed by the BTC authorities because of non-entrustment of the subject of Finance can be a ground for reviewing the order sought to be reviewed. As regards the ground of financial constraints faced by the BTC, which is sought to be justified as the reason for not implementing the order of the Government, this Court is of the view that financial constraints faced by the BTC may not be a ground for reviewing the order of this Court for the reason that in Clause 4 of the MOU it has been mentioned in clear terms that there will be no financial implication on the part of the State Government in terms of creation of post or maintenance of the institute. True, Finance may not be a subject entrusted to the BTC, but this Court fails to understand that, if that be so, how did the BTC authorities enter into the aforesaid tri-partite MOU executed on 12.07.2011 by which the BTC authorities had agreed to the conditions insisted by the State Government that the State Government will not have any liability towards creation of posts. This Court is of the opinion that the BTC authorities having agreed to the terms and conditions incorporated in the MOU, the ground taken by the BTC authorities that Finance is not a subject entrusted to the BTC cannot be considered to be a

ground for review in the light of the decision of the Hon'ble Supreme Court relied on by the learned counsel for the review petitioners.

12. Mr. B. Deuri, learned State counsel has submitted that, in fact, there are discussions going on between the State Government and the BTC authorities with regard to financial implication in respect of creation of posts in question.

13. With regard to the submission of Mr. Deuri, this Court is of the view that until and unless any clarification is issued by the State Government owning financial liability in respect of creation of posts in ITI, Salakati, under the MOU, the ongoing discussions stated to be taking place between the State Government and the BTC cannot be considered to be a ground for review of this Court's order. It is only when the State Government assures the BTC authorities that it would take the financial liability in respect of creation of the aforementioned 28 posts, or necessary changes are made in Clause 4 of the MOU in terms of Clause 16, it cannot be construed that the BTC authorities are not liable for the financial implication in respect of creation of the aforementioned posts.

14. Accordingly, for the reasons discussed above, this Review Petition is closed with liberty granted to the review petitioners to approach this Court again, if necessary, in the event of renewal of the MOU, or entering into a fresh MOU as per Clause 16 of the MOU resulting into change of position with regard to financial liability in respect of creation of aforementioned 28 nos. of post.

JUDGE

Comparing Assistant