

06.09.2022
Court No.32
rpan/01

RVW 35 of 2018
+
IA No.: CAN 1 of 2018 (Old No.: CAN 5163 of 2018)
+
IA No.: CAN 2 of 2018 (Old No.: CAN 5164 of 2018)
Union of India & Others
- Versus -
Newajul Alam & Others

Mr. Smarajit Roy Chowdhury,
Mr. Anirban Mitra
... for the Petitioners/Applicants.
Mr. Sadananda Ganguli,
Mr. Shahan Shah,
Md. Shamim Halder
... for the Respondent No.1.

Aggrieved by the judgment dated 5th September, 2017 passed in WPCT 232 of 2015, the Union of India and its functionaries have preferred the present review application, being RVW 35 of 2018.

As we have invited Mr. Roy Chowdhury, learned advocate appearing for petitioners/applicants to advance his argument on merits, we condone the delay of 126 days in preferring the review petition. The application for condonation of delay, being IA No.: CAN 1 of 2018 (Old No.: CAN 5163 of 2018) is, accordingly, disposed of.

Mr. Roy Chowdhury primarily argues that the impugned judgment has been delivered being oblivious of the fact that the Board of Secondary Education, Madhya Bharat, Gwalior is totally different from the Board of Secondary Education, Madhya Bharat, Gwalior (M.P.). Both the Boards have different logo, different official address and different official *website*. The

Board of Secondary Education, Madhya Bharat, Gwalior (M.P.) from which the writ petitioner/respondent no.1 obtained the High School (Class – X) Examination Year, 2011 certificate, is not a recognized Board.

He contends that though the Gwalior Board was impleaded as party respondent to the writ petition, no affidavit was called for from the said Board and as such, there is an error apparent on the face of the record.

He argues that the writ petition was disposed of placing reliance only upon an order passed in the case of *Santosh Kumar Vs. State of U. P. & Others* [WRIT – A No. – 73146 of 2011]. The Board of Secondary Education, Madhya Bharat, Gwalior (M.P.) was never a recognised Board, not even prior to the decision dated 29th September, 2011 of the Secondary Education Board, as referred to in the order passed in *Santosh Kumar* (supra). The impugned judgment was delivered even without considering the judgments delivered by the Hon'ble Allahabad High Court in Special Appeal no. 630 of 2016 (*District Basic Education Officer, Kannauj Vs. Smt. Sadhna Katiyar and 6 Others*) and Special Appeal no.453 of 2016 (*Board of Secondary Education Madhya Bharat Vs. Sanjay Kumar and 6 Others*).

According to Mr. Roy Chowdhury, the Hon'ble Court while delivering the impugned judgment also did not take into consideration a memo dated 6th March, 2013, the list of recognised institutions, issued by the Ministry of Human Resources, memo dated 21st June, 2013, issued by the Board of Secondary Education, Odisha, Cuttack and a memo dated 4th November, 2013 issued by the Railway Board. From the said documents, it would be explicit that the Board of Secondary

Education, Madhya Bharat, Gwalior (M.P.) is not a recognised Board.

He further argues that from the order passed in the case of *Sweeti Bhati Vs. State of U.P. & Anr.* [Writ – A No. – 22723 of 2013] decided on 30th April, 2013, it would be explicit that the Board of Secondary Education, Madhya Bharat, Gwalior (M.P.) has not been established by law so as to be competent to hold any public examination. Reliance has also been placed upon the judgment delivered by the Hon'ble Punjab and Haryana High Court in the case of *Subash Chander Vs. State of Haryana and Others* [C.W.P. No.15019 of 2015] and in the case of *Raffik Mohmad Vs. State of Haryana & Others* [C.W.P. No.17499 of 2015]. The said judgments, according to Mr. Roy Chowdhury, were suppressed by the respondent no.1 at the time of final hearing of the tribunal application.

Mr. Ganguli, learned advocate appearing for the respondent no.1 submits that it is not a case that even after exercise of due diligence, the orders passed in the Special Appeal No. 630 of 2016, Special Appeal No.453 of 2016 and the order passed in *Sweeti Bhati* (supra) could not be brought to the notice of the Court by the applicants at the time of hearing of the writ petition. All the decisions, as referred to, were disposed of prior to the judgment impugned in the review application. Though the said orders were within the knowledge of the applicants, they did not place reliance upon the same when the writ petition was finally heard.

He argues that there is no patent error on the face of the record and that the parameters prescribed for review do not postulate rehearing because a party has not highlighted all the

aspects of the case or could not perhaps argue them more forcefully and/or citing binding precedent to the Court. In support of such contention, reliance has been placed upon a judgment delivered by the Hon'ble Supreme Court in the case of *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, reported in AIR 1995 SC 455.

Heard the learned advocates appearing for the respective parties.

All the documents and judgments, as referred to in the review application pertain to a period prior to disposal of the writ petition. Matters which ought to have urged in course of appeal have been sought to be agitated afresh.

The law on the subject – exercise of power of review, as propounded by the Hon'ble Apex Court and various other High Courts may be summarised as follows:

- i) review proceedings are not by way of appeal;
- ii) power of review may be exercised when some mistake or error apparent on the face of record is founded. But, error on the face of record must be such an error which must strike on mere looking at the record and would not require any long drawn process of reasoning on the point where there may be conceivable two opinions;
- iii) power of review may not be exercised on the ground that the decision was erroneous on merits;
- iv) power of review can also be exercised for any sufficient reason which is wide enough to include the misconception of fact or law by the court or even the advocate;

The arguments advanced by Mr. Roy Chowdhury and the grounds taken in the review application do not in any manner

establish any error whatsoever on the face of the record nor the application for review had been preferred upon discovery of any new and important piece of evidence.

For the reasons discussed above, no interference is called for and the review application being RVW No.35 of 2018 and the application of stay, being IA No.: CAN 2 of 2018 (Old No.: CAN 5164 of 2018) are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)