

IN THE HIGH COURT OF ORISSA AT CUTTACK

I.A. No.16541 of 2022

[Arising out of WP(C) No.32412 of 2021]

M/s. Paradeep Phosphates Ltd.

Petitioner

-versus-

***Presiding Officer, Labour Court,
Bhubaneswar and another***

Opposite Parties

Advocates appeared in this case :

For Petitioner :

Mr. Narendra Kishore Mishra, Sr. Advocate
Mr. N. K. Mishra, Advocate
Mr. A. K. Roy, Advocate
Mr. A. Mishra, Advocate

For Opposite Parties : Mr. Shankar Das (O.P. no.2 in person)

CORAM:

JUSTICE ARINDAM SINHA

JUSTICE SANJAY KUMAR MISHRA

JUDGMENT

15.12.2022

ARINDAM SINHA, J.

1. Mr. Mishra, learned senior advocate appears on behalf of applicant-management, who was writ petitioner. He submits, the writ

petition was disposed of by judgment dated 17th November, 2022. The application carries prayer for recalling the judgment and for the matter to be heard afresh by another Division Bench, where one of us (Mr. S. K. Mishra, J.), is not a party.

2. He draws attention to disclosure in the application, being an affidavit. He points out, the deponent is none other than opposite party no.2 in the writ petition. The deponent was identified in the affidavit by Mishra, J. In the circumstances, the prayer.

3. The workman appears in person. We have not required him to answer.

4. It has been said in the application, inter alia, Mishra, J. while at the Bar had conducted I.D. Case no.16 of 2003 on behalf of Paradeep Phosphates Employees' Union and had identified said opposite party as workman witness no.3 (WW3), deponent of the affidavit. It has also been said that at the hearing of the writ petition, particularly on 17th November, 2022, the workman appeared in person. When the matter was taken up for the first time by this Bench, Mishra, J. should have recused himself from hearing the writ petition being otherwise concerned with opposite party no.2, appearing in

person. However, the Bench not only heard the case as the only matter on that day but also perhaps inadvertently, passed judgment.

5. Perused the affidavit in context of aforesaid. It appears, Mishra, J., while at the Bar was representing Paradeep Phosphates Employees' Union. The evidence on affidavit says that the deponent was working as Junior Accountant in the Finance and Accounts Department of the company. There is no mention that he was an office bearer of the Union. It also appears from the affidavit, identification made of the deponent was on 23rd October, 2009. Applicant has brought this to our notice after we heard and dealt with the writ petition on 17th November, 2022.

6. We have looked at the order-sheet in the writ petition and find, this Bench heard it on two days. First was on 27th October, 2022. We reproduce text of our order made that day.

"1. Mr. Mishra, learned senior advocate appears on behalf of petitioner and submits, the writ petition be listed on 15th November, 2022. Opposite party no.2 appears in person and submits, several adjournments were obtained earlier. On query from Court he submits, the matter be taken up on any date fixed.

2. List on 15th November, 2022, marked at 10.30 A.M.

3. Interim order to continue till next date.”

Though there was direction for listing on 15th November, 2022, marked at 10:30 A.M. but the writ petition could only be taken up on 17th November, 2022. It is obvious that applicant did not think fit to make inquiry, in that period, regarding whether one of us was acquainted with opposite party no.2.

7. We are sure in our minds that there was no recollection of this obscure act of one of us, while carrying on the profession and in the usual course of things, more than thirteen years ago, in having identified said opposite party as a witness of the Union, when we heard and disposed of the writ petition. Priority was given because a litigant was appearing in person and had submitted on 27th October, 2022 that several adjournments had been obtained earlier.

8. Notwithstanding above, we looked for and found guidance regarding recusal from judgment of the Supreme Court in **Supreme Court Advocates-on-record Assn. v. Union of India (Recusal Matter)**, reported in **(2016) 5 SCC 808**. One of the learned Judge's view was unanimous, the other learned Judges in the Bench having

agreed therewith. We extract and reproduce paragraph 25 from the view.

“25. From the above decisions, in our opinion, the following principles emerge:

25.1. If a Judge has a financial interest in the outcome of a case, he is automatically disqualified from hearing the case.

25.2. In cases where the interest of the Judge in the case is other than financial, then the disqualification is not automatic but an enquiry is required whether the existence of such an interest disqualifies the Judge tested in the light of either on the principle of “real danger” or “reasonable apprehension” of bias.

25.3. The Pinochet case added a new category i.e. that the Judge is automatically disqualified from hearing a case where the Judge is interested in a cause which is being promoted by one of the parties to the case.”

No question has been raised or arises of Mishra, J. having financial interest in the outcome of the case, for his automatic disqualification. We have scrupulously enquired, pursuant to the application having been moved, on whether applicant has made out a case on principles of “real danger” or “reasonable apprehension” of bias. There could not be real danger of bias in perception of applicant simply because

had it been so, same would have kept applicant alert and upon noticing constitution of the Bench, caused immediate awareness to orally mention for release. The application is dated 1st December, 2022 seeking recall, on the ground urged, of judgment dated 17th November, 2022. Reasonable apprehension cannot also be said to have been there since, apprehension cannot be an afterthought.. Lastly, it cannot be said, opposite party, in contesting the writ petition, was promoting a cause, in which Mishra, J. was or is interested. In the circumstances, the application having been made to the Court and to be dealt with by the Bench, we find the contention for recusal, without merit.

9. Review is possible in law on discovery of new and important matter or evidence, which after exercise of due diligence, was not within knowledge of applicant or could not be produced by him, at the time when the order was made. It is also possible on account of some mistake or error apparent on face of the record or for any other sufficient reason. Here, the affidavit dated 23rd October, 2009 has been produced, as discovered to be new and important matter or evidence, obviously in context of hearing and adjudication of the writ

petition. As aforesaid, deponent of the affidavit was not an office bearer of the Union, the latter who was client of one of us when at the Bar. Contents of the affidavit are in no way related to or connected with the writ petition of applicant. Mistake or error on face of the record has not been urged and in view of preceding paragraphs 5 to 8, we do not find sufficient reason to review our judgment dated 17th November, 2022.

10. There is no link for us to take cognizance of contention in the application and feel that we ought not to have heard or decided challenge in the writ petition.

11. The application is dismissed.

(*Arindam Sinha*)
Judge

(*S. K. Mishra*)
Judge

P.K. Sahoo