

AD-09&10
Ct No.09
26.04.2024
TN

CPAN 1476 of 2023

Arabinda Nath Jati
Vs.
Bijin Krishna and others

RVW 136 of 2024

Chief Electrical Inspector
Vs.
Arabinda Nath Jati and others

CAN 1 of 2024
CAN 2 of 2024
In
WPA 4013 of 2023

Mr. Dyutiman Banerjee
.... for the writ petitioner

Mr. Shayak Chakraborty
.... for the review applicant

Mr. Rajendra Banerjee
.... for the respondent no. 7

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder
.... for the alleged contemnor no. 1

Mr. Animesh Paul
.... for the alleged contemnor nos. 3 & 4

In Re: RVW 136 of 2024
CAN 1 of 2024
CAN 2 of 2024

1. Learned counsel for the review applicant contends that the review is confined to the imposition of costs of Rs. 50,000/- on the respondent no. 3 in the writ petition, that is, the Chief Electrical Inspector. Learned counsel for the applicant argues that in terms of Rule 80 of the West Bengal Lift, Escalator and Travelator

Rules, 2022, Home lifts (single phase) have been excluded from the purview of the Rule. It is submitted that although the language of the Rule could have been happier, the definite impression created by such provision is that home lifts are exempted from the purview of the Act. It is pointed out by learned counsel for the review applicant that the relevant section, that is, Section 2 of the West Bengal Lifts, Escalators and Travelators Act, 2019 provides that nothing in the Act shall apply to installation and working of any lift, escalator or travelator as provided therein.

- 2.** In Clause (v) thereof, it is stipulated that nothing in the Act shall apply to any premises or any class or sub-class of elevating device as the State Government may by Notification exempt. It is contended that the said Section, read in conjunction with Rule 80 of the 2022 Rules, clearly shows that home lifts are actually exempted from the purview of the Act and thus, the premise of the order under review was bad.
- 3.** It is further contended that even if there was any scope of interpretation, it was not expected that the Chief Electrical Inspector, not being a person supposed to know the law, could have interpreted it beyond doubt and, as such, the finding “palpable” in the order under review so far as it applies to the Chief Electrical Inspector, could not have been valid.
- 4.** Moreover, the complicity of the Chief Electrical Inspector is not borne out by the materials discussed in the order

under review, to saddle the said official with such huge costs.

5. Learned counsel for the writ petitioner/ respondent in the review application argues that since “Home lift” is not defined in the parent Act at all and as Rule 80 stipulates that home lifts (single phase) are excluded from the provisions of the Rule and not the Act, the interpretation sought to be lent to the said provision by the review applicant is incorrect. That apart, the complicity of the Chief Electrical Inspector, it is argued, is evident from the records annexed to the writ petition itself.
6. The scope of review under the provisions of Order XLVII of the Code of Civil Procedure and the parameters thereof apply to a review in connection with a writ petition as well. The only yardstick in the said provision applicable to the present case could be “error apparent on the face of record”, since there has been no discovery of new matter.
7. There are two factors where the review applicant is justified in his arguments.
8. The first is that the premise of imposition of costs in the order under review was that the attempt of the Chief Electrical Inspector was held to be “palpably illegal”.
9. However, the review applicant is justified in arguing that although the interpretation of Rule 80 accepted by this court was one of the plausible interpretations, even if there is a subtle ambiguity in the provision, it is not to

be expected from the Chief Electrical Inspector to interpret the same in consonance with the judgment of this court. The very ambiguity or scope of interpretation in Rule 80 justifies the stand taken by the Chief Electrical Inspector that he was not certain as to the actual interpretation of the said provision and could have interpreted it in the manner as done by proceeding on the premise that home lifts are exempted from the Act.

- 10.** Thus, the finding of 'palpable illegality' in the order under review, which was one of the premises of imposition of costs, is invalid.
- 11.** The other premise was that the Chief Electrical Inspector intended to aid and perpetuate the illegality perpetrated by the developers-respondents.
- 12.** It has been observed by this court in the order under review that the Chief Electrical Inspector acted in tandem with the perpetrators of the illegality.
- 13.** However, a careful perusal of the order under review does not reflect any substantial premise for such finding of complicity between the Chief Electrical Inspector and perpetrators of illegality. Thus, the second basis of imposition of costs which finds place in the order dated April 17, 2023 in WPA 4013 of 2023 is also perverse.
- 14.** In view of such finding in my order being perverse, the very premise of imposition of costs on the Chief Electrical Inspector, being not borne out by the

preceding reasons in the order under review, is required to be set aside.

- 15.** Accordingly, RVW 136 of 2024 is allowed to the extent that the imposition of costs of Rs. 50,000/- on the Chief Electrical Inspector and the observations to the effect that the Chief Electrical Inspector acted in palpable illegality and intended to aid and perpetuate the illegality perpetrated by the developers-respondents in tandem with them are set aside.
- 16.** The order under review stands modified accordingly.
- 17.** It is, however, made clear that the other portions of the order under review are not interfered with.
- 18.** CAN 1 of 2024 and CAN 2 of 2024 also stand disposed of accordingly.
- 19.** There will be no order as to costs.

In Re: CPAN 1476 of 2023

- 20.** CPAN 1476 of 2023 is now taken up for hearing.
- 21.** In view of the above order passed in the review application, setting aside the cost imposed on the Chief Electrical Inspector/alleged contemnor, the contempt application loses its cause of action.
- 22.** Accordingly, CPAN 1476 of 2023 also stands disposed of in the light of the above observations.

- 23.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)