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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

R.V.W. 224 of 2022
in
W.P.A. No. 1963 of 2022

Kanishk Sinha
Vs.
The Union of India & Ors.

Mr. Kanishk Sinha
...petitioner in person

Mr. Sukumar Bhattacharyya,
Mr. Avinash Kankani
...for the Union of India

The limited scope of the present review application is whether the petitioner argued the question of constitutional validity of Section 53 of the Patents Act, 1970 when the main writ petition was moved and the parent order was passed by this Court.

It transpires from the order under review that no argument as regards validity or constitutionality of Section 53 of the Patents Act was advanced by the petitioner at the time of hearing of the writ petition. However, it is evident that although not a single ground was taken challenging the constitutionality of the said section in the grounds of the writ petition, in prayers (c) and (d) of the writ petition, the petitioner had thrown a substantial challenge to Section 53 of the Patents Act. The reliefs (c) and (d) of the writ petition read as follows:

“c) a writ in the nature of mandamus directing the respondents to rescind/cancel/withdraw the impugned section 53 of the Patents Act, 1970;

d) a writ in the nature of certiorari directing the respondents to produce the entire records of Act 39 of 1970 namely The Patents Act, 1970 and on being so certified quash the impugned section 53 of the Patents Act, 1970 as ultra vires to the Constitution of India;”

Upon perusal of the order of the Division Bench, which gave liberty to the petitioner to prefer the instant review application, it is seen from internal page 3 thereof that the Division Bench observed that so far as the issue of constitutional validity is concerned, from the order of the learned Single Judge, the Division Bench did not find that any argument was advanced by the appellant questioning the validity of Section 53 of the Act nor in the memo of appeal it had been pleaded that the issue of constitutional validity was argued and not considered by the learned Single Judge. It was further recorded by the Division Bench that learned counsel for the respondent had also submitted that no such issue was argued.

It was observed by the Division Bench that hence, in the circumstances of the case, the Division Bench did not find any reason to interfere with the order of the learned Single Judge.

In such context, the Division Bench observed that the Bench kept it open for the appellant to approach the learned Single Judge with an application for review

if he feels that the issue of constitutional validity was argued and not considered.

Although the petitioner, who is appearing in person, argues that in the very second page of the Division Bench order it was recorded that learned counsel for the respondents had submitted that for challenging the *vires* of a Central Act the appellant was required to give a notice to the Attorney General, the recording of such fact does not *ipso facto* confer any right of review on the petitioner.

Learned counsel for the respondents rightly took the objection that the constitutional validity of such section was never argued nor was any ground made out in the writ petition itself against the validity of Section 53 of the Act.

Moreover, from the observations of the Division Bench itself it is amply clear that the Division Bench refused to interfere with the order of this Court *inter alia* on the ground that the question of validity of Section 53 of the Patents Act was never argued. The leave granted to the petitioner was restricted to keep it open to approach this Court with an application for review if the petitioner feels that the issue of constitutional validity was argued and not considered by the Single Judge. However, the observations *per se* cannot confer any right on the petitioner to have a favourable order passed in review jurisdiction.

It is seen from the materials on record as well as the order under review that nowhere in the said order is it reflected that any argument regarding the validity or *vires* of Section 53 of the Patents Act, 1970 was at all advance before this Bench. In such view of the matter, the review application cannot be entertained and, accordingly, RVW 224 of 2022 is hereby dismissed on contest.

However, it is made clear that nothing in this order shall preclude the petitioner to independently challenge the *vires* of Section 53 of the Patents Act, 1970 before the appropriate Bench having determination to hear such matters.

If such writ petition is filed, the same shall be decided on its own merits without being influenced in any manner by any of the observations made herein. It is further clarified that the merits of challenge sought to be thrown against the *vires* of Section 53 of the Patents Act, 1970 have not been gone into by this Court at all.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)