

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

RVW 253 of 2022
in
W.P.A 24254 of 2022
With
CAN 1 of 2023

Hindustan Petroleum Corporation Limited & Ors.

vs.

Ghosh Oil Movers & Anr.

For the review applicants : Mr. Biswanath Chatterjee, Adv.
Mr. Sobham Kr. Pathak, Adv.

For the private respondents : Mr. Debabrata Saha Ray, Adv.
Mr. Pingal Bhattacharyya, Adv.
Mr. Subhankar Das, Adv.
Mr. Neil Basu, Adv.
Mr. Shankha Biswas, Adv.

Last Heard on : 31.07.2023.

Delivered on : 02.08.2023.

Moushumi Bhattacharya, J.

1. The application of Review arises out of an order passed by this Court on 23rd November, 2022 in WPA 24254 of 2022 which sought for quashing of the respondents' decision to reject the petitioners' bid. By the order under review, the Court directed quashing of the rejection of the petitioners' bid as communicated to the petitioners on 15th November, 2022 and the writ petition was disposed of on that basis.

2. The review applicant seeks review of the order primarily on the ground of a subsequent judgment and order passed by this Court on 2nd March, 2023 in WPA 24259/ 2022 (M/s. Moumita Logistics & Anr. Vs. Hindustan Petroleum Corporation Ltd. Ors.) and a related writ petition being WPA 24265 of 2022 (Ajit Kumar Murmu Vs. Hindustan Petroleum Corporation Ltd. Ors.). By the judgment and order dated 2nd March, 2023, both the writ petitions were dismissed on the facts of the case and particularly on Clause 3 of the Tender Notice dated 13th January, 2022.

3. The brief facts which are relevant for the decision on the present application are that the respondents (writ petitioners) participated in a tender floated by the review applicants HPCL (respondents in the writ petition) for transportation of bulk products for Mughalsarai in January, 2022. The petitioner also participated in a subsequent

tender floated by the respondents for Haldia in April, 2022. Clause 3 of the tender document contains a restriction on the tenderer to offer the same Tank Trucks for each location in the event there being more than one tenders. The Clause required that a tenderer should offer separate sets of Tank Trucks for each location and further that violation of this Clause would result in the contract being terminated for all the locations. The petitioners came to the Court against the rejection of the petitioners' bid for the Mughalsarai Tender and the Court by the judgment and order under review dated 23rd November, 2022 quashed the rejection of the petitioners' bid.

4. Learned counsel appearing for the review applicants submits that the order dated 23rd November, 2022 should be reviewed in light of the subsequent judgment and order passed by this Court on 2nd March, 2023 in Moumita Logistics. Counsel submits that this is a new and important fact which has come to light only subsequently and further that the Court has ample powers in the writ jurisdiction to review its own orders.

5. Learned counsel appearing for the respondents (writ petitioners) submits that the review does not fulfil the conditions under Order XLVII Rule 1 of The Code of Civil Procedure, 1908. Order XLVII Rule 1 of the CPC requires the presence of three conditions for a review to be maintainable. These include discovery of new and important matter or evidence which was not within the knowledge of the party applying for the review at the time of passing of the decree or order despite exercise

of due diligence. The second condition is of an error apparent on the face of the record while the third is for any other sufficient reasons.

6. The Supreme Court has also held in several decisions from 1963 onwards that a Constitutional Court exercising power under Article 226 can review its own order as an inherent power of a Court of plenary jurisdiction in order to prevent miscarriage of justice or correcting grave and palpable error committed by it : Ref. AIR 1963 SC 1909.

7. The aforesaid view was carried to latter decisions of 2014 and 2015; State of Rajasthan & Anr. Vs. Surendra Mohnot & Ors., (2014) 14 SCC 77 and State of Jammu and Kashmir Vs. R.K. Zalpuri & Ors., (2015) 15 SCC 602.

8. The decisions shown on behalf of the respondents/writ petitioners refers to the power of a Tribunal to review its order/decision under Section 22(3)(f) of The Administrative Tribunals Act, 1985 and primarily relies on Order XLVII Rule 1 of the CPC.

9. Although the settled position is that there is nothing in Article 226 of the Constitution which would preclude a writ Court from reviewing its own order for preventing miscarriage of justice, the principles of Order XLVII Rule 1 of the CPC would equally apply to this case. The new and important matter would be the subsequent judgment delivered by the Court in Moumita Logistics which contains

a specific finding that the parties were bound by Clause 3 of the tender document which constituted a bar on a tenderer from offering the same Tank Trucks for different locations.

10. Relying on recent decisions of the Supreme Court Moumita Logistics held that the writ Court should not interpret terms of a tender as the author of the tender document is the best person to understand the specific requirements. Paragraph 11 of the Judgment contains a specific reference to the order under review and the fact that the order was passed on a prima facie view of the matter and before affidavits. The judgment in Moumita Logistics was delivered in 2nd March, 2023 whereas the order under review is of 23rd November, 2022. The judgment in Moumita Logistics would hence constitute new and important matter which could not have been available to the review applicant at the time of passing the order dated 23rd November, 2022.

11. Even otherwise, the document which now forms part of the review petition, being a consolidated table incorporating both the Mughalsarai as well as Haldia tenders, clearly shows that the petitioners had offered the same Tank Truck bearing the same registration numbers for both the tenders but under different names. The juristic identity of the owners of the Tank Trucks however remains the same.

12. Therefore, even factually, the order dated 23rd November, 2022 is required to be reviewed. Incidentally, this consolidated table was not available to the Court at the time of passing the order under review.

13. The above discussion persuades this Court to hold in favour of the review applicants. Apart from plenary jurisdiction of the Court to review to its own order, there are enough facts and circumstances even under Order XLVII Rule 1 of the CPC to allow the present application.

14. CAN 1 of 2023 is accordingly disposed of by granting stay of the operation of the order dated 23rd November, 2022 passed in WPA 24254 of 2022 in terms of the prayers made in the application.

15. The review application is disposed of in terms of the above.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)

(Suvendu)