

RVWO/2/2023
APO/19/2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

DR. BAISHAKI PYNE ROY
VERSUS
UNION OF INDIA AND ORS.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 3RD FEBRUARY, 2023

APPEARANCE:

Mr. Saurabh Guha Thakurata, Advocate
Mr. Bikash Kumar Roy, Advocate
Mr. Nilanjana Sarkar, Advocate
Ms. Prabhleen Bharara, Advocate
....for the review applicant
Mr. Indranil Roy, Advocate
Mr. Sunit Kumar Roy, Advocate
....for the National Medical Commission
Mr. Saibalendu Bhowmick, Advocate
Mr. Biplab Guha, Advocate
Mr. Rajsekhar Basu, Advocate
....for the WBMC/respondent no.6

The Court:- This review petition has been filed by the appellant in APO/19/2022 seeking review of the order dated 23rd December, 2022. This Court by order dated 23rd December, 2022 had dismissed APO/19/2022 and had affirmed the judgment of the learned single Judge dated 22nd December, 2021 passed in WPO/1144/2021 dismissing the said WPO.

Submission of learned counsel for the review petitioner is that on account of some misconception of law the counsel for the petitioner could not advance argument based upon Section 14 of the Indian Medical Council Act, 1956 under which the review petitioner had a right of recognition of the Post Graduate medical decree and the said right is continued under Section 60 of the National Medical Commission Act, 1990. He further submits that in the similar circumstances, the degree of one of the candidates namely, Dr. Biswajit Bhaduri was recognized, therefore, the petitioner is also entitled for the same relief. In support of his submission, he has placed reliance upon a judgment of the Hon'ble Supreme Court in the matter of *Board of Control for*

Cricket in India & Another vs. Netaji Cricket Club & Others, reported in (2005) 4 SCC 741 and in the matter of *Medical Council of India vs. J. Saai Prasanna & Others*, reported in (2011) 11 SCC 748. He has submitted that if there is misconception of law on the part of the counsel that also is a ground of review.

Learned counsel for the respondents has opposed the petition by submitting that none of the grounds available in the Order 47 of the CPC are existing in this case and that there is no error apparent on the face of the order and that no argument based upon Section 14 of the Act of 1956 was raised at the time of hearing of the appeal and on the contrary, the allegations made in grounds IV and V of the review petition have been leveled. He further submits that Section 60 of the Act of 1990 has been brought in force on 25.09.2020 and also almost a year thereafter the first application was filed for recognition of that decree on 10th August, 2021 which is not permissible. He has also submitted that no right was created in favour of the review petitioner under Section 14 of the Act of 1956.

We have heard learned counsel for the parties and perused the records. The scope of review petition is very limited and in the guise of review, the entire matter cannot be permitted to be reopened by allowing the counsel to advance altogether new argument which is outside the purview of Order 47 of the CPC. Supreme Court in the matter of *S. Madhusudhan Reddy vs. V. Narayana Reddy* reported in 2022 SCC Online SC 1034 in this regard has held as under:-

“24. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be

produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” has been interpreted in Chajju Ram v. Neki¹⁷, and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:—

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

In the present case, it is not in dispute that no argument based upon Section 14 of the Act of 1956 was advanced when the appeal was heard. In fact, the appeal was confined to the arguments and records of the learned Single Judge. Learned Single Judge had already considered and dismissed the writ petition. Whatever arguments were advanced by the appellant at the time of hearing that had been duly considered. Therefore, we find that there is no error apparent on the face of record. So far as the arguments advanced by the learned counsel for the review petitioner based upon Section 14 of the 1956 Act is concerned. Nothing has been pointed out to show from the language of the said Section that any right in fact had incurred, accrued or was acquired by the review petitioner under Section 14 of the 1956 Act so as to attract the provisions of Section 60(2)(b) of the National Medical Commission Act, 1990.

An argument has also been advanced that in another case of Dr. Biswajit Bhaduri, on the direction of the Court the representation has been considered and recognition has been granted. It is not in dispute that in that matter the institution was recognized but the course was not recognized whereas in the present case, the institution itself is not recognized. Though an argument has been advanced that there was misconception of law on the part of the counsel for the review petitioner but we find that the arguments were advanced on the basis of the records of the case, therefore, such a ground at this stage cannot be accepted. Reliance in the case of Medical Council of India (Supra) by counsel for the petitioner is misplaced because that was a case where the issue was about the recognition of primary medical qualification for the purpose of sitting in the screening test that too in different factual scenario. Similarly, there is no dispute to the proposition of law which has been settled by the Hon'ble Supreme Court in the matter of Board of Control for Cricket in India (Supra) but the case of the review petitioner does not fall in one of those conditions which have been mentioned in that judgment.

In these facts and circumstances of the case, we find that no ground of review is made out. The review petition is, accordingly, dismissed.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)