

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

RVW 148 of 2025

With

IA No. : CAN 1 of 2025

With

IA No. : CAN 2 of 2025

Kausik Majumdar

Vs.

State of West Bengal & Ors.

In

MAT 490 of 2024

IA No. : CAN 1 of 2024

Kausik Majumdar

Vs.

State of West Bengal & Ors.

For the Writ Petitioner/ : Mr. Abhratosh Majumdar, Ld. Sr. Adv.

Appellant/Applicant Mr. Samim Ahammed, Adv.

Mr. Arka Maiti, Adv.

Ms. Ambiya Khatun, Adv.

For the State : Mr. Biswabrata Basu Mallick, Ld. AGP

Mr. K.M.Hossain, Adv.

For the Respondent Nos. : Mr. Suddhasatwa Banerjee, Adv.

2 to 4 Mr. Ujjal Ray, Adv.

Mr. Atreya Chakraborty, Adv.

Mr. A. Chakraborty, Adv.

Hearing Concluded on : November 7, 2025

Judgement on : November 13, 2025

DEBANGSU BASAK, J.:-

1. Appellant has applied for review of the judgement and order dated December 23, 2024 passed by the Coordinate Bench in MAT 490 of 2024 with CAN 1 of 2024.
2. Review proceedings have been specially assigned to this Bench in view of the fact that, one of the Hon'ble Judges of the Coordinate Bench is no longer available in this Court.
3. Learned senior advocate appearing for the review applicant has submitted that, a writ petition challenging the dismissal of the appellant was filed before this Hon'ble Court. In such writ petition, the learned single judge has held the writ petition to be not maintainable, by the judgement and order dated February 23, 2024, since, the educational institution did not fall within the expansive definition of State within the meaning of Article 12 of the Constitution of India. By the judgement and order under review, the Coordinate Bench has upheld such decision of the learned single judge.
4. Learned senior advocate appearing for the review applicant has contended that, the educational institution in

question, is governed by the Board of Regulations for Anglo-Indian and other Listed Schools, 1993. He has pointed out that, the educational institution concerned is included in the list of the Regulations of 1993.

5. Learned senior advocate appearing for the review applicant has contended that, by reason of the service conditions of the review applicant as a teacher of the educational institution concerned, being governed by the Regulations of 1993, and by virtue of the ratio laid down in ***2023 Volume 4 Supreme Court Cases 498 (St Mary's Education Society and Another Versus Rajendra Prasad Bhargava and others)***, the writ petition is maintainable. He has contended that, the service conditions of the review applicant are governed by the Regulations of 1993 which partakes the flavour of a statute.

6. Learned senior advocate appearing for the review applicant has submitted that, two writ petitions as against the same educational institution, were held to be maintainable by this Hon'ble Court. He has referred to the orders passed by the learned single judge in such writ petitions. He has submitted that, in respect of one of the writ petitions,

although an appeal was preferred, the same was withdrawn by the educational institution concerned.

7. Learned senior advocate appearing for the review applicant has contended relying upon **2020 Volume 2 Supreme Court Cases 33 (Yashwant Sinha and Others Vs. Central Bureau of Investigation)** that the review is maintainable. He has also referred to the order dated April 20, 2025 passed in the Special Leave Petition directed against the judgement and order under review. He has contended that, the Special Leave Petition of the appellant was allowed to be withdrawn with the liberty as prayed for. The review applicant had sought liberty from the Hon'ble Supreme Court to seek review of the judgement and order under review, which was granted.

8. Learned advocate appearing for the respondent has questioned the maintainability of the review proceedings. In support of his contention that, the review is not maintainable, he has drawn the attention of the Court to the contents of the judgement and order under review. He has contended that, the ratio of **St Mary's Education Society and Another (supra)** was discussed and the Coordinate Bench did not find

favour with the contentions raised by the review applicant. He has contended that, under the guise of review, the court cannot treat the review as an appeal. A wrong view taken by the Coordinate Bench should not be interfered with by way of a review.

9. Learned advocate appearing for the respondent has relied upon **2025 SCC Online SC 1927 (Malleeswari Vs. K. Suguna and Another)** and **1997 Volume 8 Supreme Court Cases 715 (Parsion Devi and Others Vs. Sumitri Devi and Others)** in support of his contention that, the review is not maintainable in the facts and circumstances of the present case.

10. Since the respondent has raised the issue of maintainability of the review proceeding, the same is taken up for consideration first.

11. The review applicant as a writ petitioner had filed a writ petition being WPA 16573 of 2019 challenging the order of dismissal from service dated October 29, 2018. The respondent had dismissed the review applicant from service on finding substance with the allegation that the review applicant was guilty of committing sexual harassment.

12. The respondent had raised the issue of maintainability of the writ petition against it, in the writ petition filed by the review applicant. The learned single judge, after considering various authorities cited before it, including ***St Mary's Education Society (supra)*** had held that, the respondent cannot be regarded as an authority or State within the meaning of Article 12 of the Constitution of India and dismissed the writ petition.

13. The review applicant had preferred an appeal being MAT 490 of 2024 against the judgement and order dated February 23, 2024 dismissing his writ petition. The Coordinate Bench had dismissed such appeal by the judgement and order under review dated December 23, 2024.

14. The issue of maintainability of the writ petition had been decided both by the learned Single Judge as also by the Coordinate Bench by the judgement and order under review. The issue as to whether or not, the educational institution concerned was an authority within the meaning of Article 12 of the Constitution of India had been deliberated upon and decided against the review applicant both by the learned

single judge as also by the Coordinate Bench in the judgement and order under review.

15. In the judgement and order under review, the Coordinate Bench has taken into consideration, provisions of the West Bengal Administrative (Adjudication of School Disputes) Commission Act, 2008 and various authorities on the subject as to whether, a writ petition as against an unaided private school is maintainable or not. ***St Mary's Education Society (supra)*** has been discussed at length by the Coordinate Bench in the judgement and order under review. After considering the provisions of the Act of 2008 as also the ratio laid down in *St Mary's Education Society (supra)* the Coordinate Bench has held that, the writ petition was not maintainable.

16. After noticing the various authorities on the issue of review, ***Malleeswari (supra)*** has held as follows: –

“15. It is axiomatic that the right of appeal cannot be assumed unless expressly conferred by the statute or the rules having the force of a statute. The review jurisdiction cannot be assumed unless it is conferred by law on the authority or the Court. Section 114 and Order 47, Rule 1 of CPC deal with the power of review of the courts. The power of review is different

from appellate power and is subject to the following limitations to maintain the finality of judicial decisions:

15.1 The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC.

15.2 Review is not to be confused with appellate powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court.

15.3 In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise.

15.4 The power of review can be exercised for the correction of a mistake, but not to substitute a view. Such powers can be exercised within the limits specified in the statute governing the exercise of power.

15.5 The review court does not sit in appeal over its own order. A rehearing of the matter is impermissible. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. Hence, it is invoked only to prevent a miscarriage of justice or to correct grave and palpable errors.⁷

16. To wit, through a review application, an apparent error of fact or law is intimated to the court, but no extra reasoning is undertaken to explain the said error. The intimation of error at the first blush enables the court to correct apparent errors instead of the higher court correcting such errors. At both the above stages, detailed reasoning is not warranted.

17. Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record. Such an error is a patent error and not a mere wrong decision. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

17.3 Lastly, the phrase ‘for any other sufficient reason’ means a reason that is sufficient on grounds at least analogous to those specified in the other two categories.”

17. Parsion Devi and others (supra) has held that, mistake or error apparent on the face of the record is one which is self-evident and does not require a process of reasoning. It has pointed out that, there is a distinction between “mistake or error apparent on the face of the record” and an “erroneous” decision. It has also laid down that, rehearing the matter for detecting an error in the earlier

decision and then correcting the same does not fall within the ambit of review jurisdiction. Review jurisdiction cannot be used as appellate jurisdiction.

18. *Yashwant Sinha and others (supra)* has held that, rectification of an order stems from the fundamental principle that justice is above all. It has held that, review jurisdiction can be exercised to remove the error and not for disturbing the finality. It has also explained that, the expression “for any other sufficient reason” in Order 47 Rule 1 of the Code of Civil Procedure, 1908 has been given an expanded meaning and the decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise power of review.

19. As has been noted above, being aggrieved by the judgement and order under review, the review applicant preferred a Special Leave Petition before the Supreme Court. In such Special Leave Petition, the review applicant had sought permission to withdraw the same reserving liberty to seek review of the judgement and order under review more so, on the ground of parity in relation to two other employees of the very same school. Hon’ble Supreme Court by the order

dated April 28, 2025 had granted permission and dismissed the Special Leave Petition as withdrawn with the liberty as prayed for.

20. Grant of liberty to apply for review, should not be equated with a final decision as to whether or not, the review is maintainable. In our view, the order dated April 28, 2025 of the Hon'ble Supreme Court passed in the Special Leave Petition did not decide the issue of maintainability of the review petition. It had noted the submission made on behalf of the review applicant that it sought to apply for review primarily on the ground that, two other writ petitions were held to be maintainable against the same educational institution.

21. The review applicant was aware of the Regulations of 1993 as also the fate of the two writ petitions as will appear from the materials placed on record. The review applicant did not press the applicability of the Regulations of 1993 as also the decision in the two writ petitions, as has been sought to be urged before us in this review, before the Coordinate Bench resulting in the judgement and order under review. However the review applicant had canvassed the applicability of

another statute being the Act of 2008 in relation to the disciplinary proceedings before the co-ordinate Bench.

22. The review proceedings, to be fair to the review applicant, has not been based upon discovery of new and material facts governing the issues. The Regulations of 1993 as well as the fate of the two writ petitions were before both the learned single judge as also the Coordinate Bench.

23. Essentially, the review applicant has sought to invite us to sit in appeal over the judgement and order under review and pronounce that, the Coordinate Bench erred in holding that the writ petition was not maintainable. The judgement and order under review may or may not be erroneous. However, it is not within our jurisdiction under review to enter into an elaborate rehearing of the matter for detecting an error in the judgement and order under review and then correcting the same. After elaborate rehearing of the review we may arrive at a different conclusion than the co-ordinate Bench. However, in the understanding, review jurisdiction cannot be exercised to take a different view from the one obtained in the judgment and order under review, after an elaborate rehearing, largely acting as a Court of Appeal.

24. The earlier two decisions rendered by the writ court with regard to the maintainability of a writ petition against the educational institution concerned, were rendered by the single judges. Although, one appeal was preferred against one of the orders of the learned single judge, the issue of maintainability was not decided finally by the Division Bench in such appeal, as such appeal was withdrawn. Therefore, the issue of maintainability of a writ petition against the educational institution concerned, was open so far as the Division Bench stage is concerned. The Coordinate Bench, has, on appeal held that, the writ petition against the educational institution concerned is not maintainable.

25. The claim of parity made by the review applicant on the strength of orders passed by the learned Single Judge in two earlier writ petitions is not sufficient for the purpose of succeeding on review. We have to rehear the entire appeal, re-appreciate every fact and circumstances of the case, in order to arrive at a finding that, the judgement and order under review contains errors. Such an exercise although available on appeal, is not available to a Court exercising a review jurisdiction.

26. In view of the discussions above, the issue of maintainability of the review is answered in the negative, against the review applicant and in favour of the respondent.

27. RVW 148 of 2025 along with all connected applications are dismissed without any orders to costs.

[DEBANGSU BASAK, J.]

28. I agree.

[PRASENJIT BISWAS, J.]