

**WPA 5733 of 2020
With
CAN 2 of 2024**

**Soma Bakhandi
Vs.
The State of West Bengal & Ors.**

Mr. Rahul Karmakar,
Mr. Sounak Mukherjee.

... for the Applicant/Respondent No. 2

Ms. Urmila Chakraborty,
Mr. Dipendra Nath Chunder.

... for the Writ Petitioner.

Mr. Raj Mohan Chatteraj,
Mr. Sourav Mondal.

... for the Respondent No. 3 & 6

1. This matter has been listed and heard at the instance of the applicant/respondent Nos.3 and 4 in the writ petition, on an application filed by it, being CAN No.2 of 2024, seeking vacating and/or recalling of the order of this Court dated January 31, 2024, passed in WPA No. 5733(w) of 2020.
2. Mr. Karmakar, Ld. Advocate for the applicant has moved the same to argue firstly that the order dated January 31, 2024, as above has been passed without hearing the present applicants and in their absence. The applicants would specifically argue on the ground that the writ petition would not have been maintainable at all, since the respondent school, against which the petitioner has sought for relief, is a non-sponsored, unaided private institution, against

which no writ would lie. He would elaborate the law that against some Authority, which is not the public Authority, the writ jurisdiction of this Court could not have been espoused. It is submitted further that the law is well settled with regard to the non-maintainability of the writ petition against a private institution, excepting relating to its statutory functions. In this regard he has relied on a judgment reported in **(1976) 4 SCC 486 [Commissioner, Lucknow Division and Others vs Kumari Prem Lata Misra]**.

3. Ms. Chakraborty, Ld. Advocate for the writ petitioner opposes such prayer for vacating and/or recalling of the order of this Court dated January 31, 2024, passed in WPA No. 5733(w) of 2020. She would submit that in spite of being granted sufficient opportunities, the applicants preferred not to appear before the Court, on the date of hearing. In this regard she has referred to the previous orders passed in the said writ petition. Accordingly she opposes the contention of the applicants, that order as above has been passed, without hearing the said applicants. She would say that, instead, the applicants have chosen not to represent themselves, in the said writ petition . That, now the applicants cannot come up with the prayer of recalling of that order, which would amount to rehearing of the case. It has been stated further that the applicants have not been able to make out a case justifying recalling of the Court's order passed

earlier. She seeks that the present application be rejected.

4. Needless is to say that after delivery of the order dated January 31, 2024, by dint of which the said writ petition has been disposed of, the Court has become “Functus Officio”. Still the Court can go into its own order, when a manifest error would occur on the face of the order. The Supreme Court, in the case ***Sri Ram Sahu (dead) through Legal Representatives and Others vs Vinod Kumar Rawat and Others [reported in (2021) 13 SCC 1]*** has been pleased to hold that an error which is not self evident and which can be discovered only by a long process of reasoning, cannot be treated as an error apparent on the face of record. The Court says that in that event, it would not be proper to go into its own order/decision for correcting the same.
5. Reopening of adjudication of the case would not be the purpose of the Court as that would violate the rule against perpetuity. The Supreme Court, in the case of ***State of Telengana and Others vs Md. Abdul Qasim (died) Per LRs. [reported in 2024 SCCOnLine SC 548]*** has held that a decision of the Court, however erroneous, can never be a factor for revisiting the same, but only be corrected in an appeal.
6. Assessment of correctness of the judgment and correction of an error apparent on the face of it, are two different aspects, to be understood by application of different facets of the law established. The

applicants seek that for the reasons as stated by it, the order of this Court, as mentioned above, may be revisited. However, the grounds pleaded regarding non-maintainability of the writ petition as stated above, is subject to a process of reasoning. Hence, the same can hardly be understood to be an error apparent on the face of the record, legible to be gone into at a subsequent stage.

7. On the other hand, the applicants are found to have remained unavailable when the matter was heard, even after due service of the notice. Therefore, even for the said reason, the applicants shall not be entitled to any further opportunity, as prayed for in this application.
8. For the reasons as above, the present application, being CAN 2 of 2024,(in connection with WPA 5733(W) of 2020), appears not to be maintainable.
9. Hence the same is dismissed.
10. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)