

50 **20.08.**
2024
Ct. No. 04

Ab

RVW 111 of 2023
IA No. CAN 1 of 2023
IA No. CAN 2 of 2023

Paritosh Saha
Vs.
The State of West Bengal and others.

Mr. Surya Prosad Chattopadhyay,
Mr. Arjun Samanta.
... for the applicant.

Mr. Biswabrata Basu Mallick,
Mr. Ratul Biswas.
... for the State.

Ms. Shraboni Sarkar,
Ms. Krishna Yadav,
... for the PSC.

A belligerent litigant has filed the instant application despite having succeeded in the writ petition wherein the challenge was made to the discrepancies in the answer keys given for the Question No. 28, 81 and 88.

Several literatures and the books authored by the Expert in the subject were annexed to the writ petition in order to corroborate the stand that the answer keys given for the aforesaid questions are incorrect.

Believing the petitioner/applicant and taking into account the opinions of various authors, we directed the appointment of an Expert to submit a report whether the contention of the petitioner/applicant is justified or not.

At the time of hearing, it transpires that the answer key for Question No. 28 was wrong as the correct answer would be option (d) instead of option (b). Taking into account the same, since the petitioner/applicant attempted option (c), it was observed that he will not be

awarded any marks for the same. The Court categorically observed that had it been an option (b) or (d), the petitioner/applicant should have been given the marks. So far as the other Question No. 81 and 88 were concerned, the Court accepted that the petitioner/applicant attempted the right option and, therefore, awarding of a negative mark on the basis of the answer key was a fault on the part of the authorities.

The petitioner/applicant took a calculated chance and was under the impression that in the event the negative marks given for Question No. 81 and 88 is reversed, he might come in the zone of consideration for appointment. The misfortune continued when the petitioner/applicant felt short of .5 marks because of the negative mark having awarded for Question No. 28.

The entire argument is hovering around the correctness of the answer to the Question No. 28. It appears that the argument was advanced by another set of Lawyers when the writ petition was finally disposed of. Even the Advocate-on-Record of the writ petition is not the Advocate-on-Record of the review application, which is filed by another set of Lawyers. However, to cover up the situation, the Advocate-on-Record of the writ petition is taken in the team, but the argument is advanced by the new set of Lawyers by reopening the entire issue, which was set at rest in the said judgment.

It remind us the off quoted observations rendered by the Apex Court in case of **Tamil Nadu Electricity Board and another vs. N. Raju Raddiar and another**, reported in **AIR 1997 SC 1005** in the following:

“Once the petition for review is dismissed, no application for clarification should be filed, much less with the change of the Advocate-on-Record.

This practice of changing the advocates and filing repeated petitions should be deprecated with a heavy hand for purity of administration of law and salutary and healthy practice.”

The argument so advanced, in fact, reopens the whole issue, which had been decided by the Court on the basis of a new material or some of the materials are being replicated in the review application to support that the findings in the judgment under review contained a patent error.

The review jurisdiction is not meant for rehearing of the entire matter, but should be exercised within the limited compass. The Court does not hover around the voluminous papers in order to decipher the patent error, but the Court must confine its scrutiny to the apparent error without any roving enquiry to be made into the documents. There is a distinction between an erroneous order and the order containing patent error. In former case, it is open to the aggrieved person to move higher forum as the Court cannot review its order in this regard. It is only in the case the Court finds error apparent on the face of the record, the order can be reviewed. Voluminous documents are disclosed, which are either disclosed in the writ petition or something new in support of the aforesaid contention. The review application appears to have been taken out after realizing that the petitioner/applicant felt short of 5 marks and has not been brought in the zone of consideration.

Such a recalcitrant litigant should not be permitted to abuse the process of Law nor should be permitted to take up a circuitous route in achieving the thing, which is impermissible. The eloquence of the Member of the Bar and the rhetoric, which he possessed, does not invite the Court to take a decision, which had already

been taken on the basis of the materials so disclosed in exercise of jurisdiction for review.

Though we had venture to make certain comments because of the perceived attempt on the part of the Counsel appearing in the review application despite having found that there is a lack of explanation far to constitute a sufficient cause in an application for condonation of delay.

In the writ petition, the excerpts from the various authors, some of whom are common, were annexed and almost the identical papers with some new books are annexed to the review application with an intent to reopen the entire issue, which cannot be permitted in exercise of the review jurisdiction.

We, thus, do not find any sufficient cause for delay nor we find any merit in the review application and, therefore, both the applications are dismissed.

In view of the dismissal of the application for condonation of delay and the review application, another application being CAN 2 of 2023 has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

