

16.08.2024
Item No.40
Ct. No.36
PG/KS

R.V.W. 191 OF 2024
With
I.A. No. CAN 1 OF 2024
In
W.P.A. 12163 of 2024
The State of West Bengal
Versus
Syed Sajjad Hossain & Ors.

Mr. Sirsanya Bandyopadhyay, Ld. Jr. Standing Counsel
Ms. Tapati Samanta

.....For the Applicant/State

Mr. Arunava Ghosh

.....For the Respondents

1. The present review application has been filed by the State on the ground of suppression of material facts by the respondent herein, who was the writ petitioner in the order under review.
2. Learned counsel for the review applicant submits that vide order dated May 3, 2024, the respondent no.3 i.e. the Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal was directed to consider a representation of the petitioner and to decide on the same within the timeline fixed therein. The scope of the representation was whether relief could be granted to the petitioner by granting relaxation of age till 68 years to the petitioner for the purpose of

appointment as a Muslim Marriage Registrar. It is submitted that the petitioner was acting as a temporary Muslim Marriage Registrar. However, the issue directed to be decided by way of the representation had already been conclusively decided in an appeal preferred by the petitioner himself in a prior challenge from a different order.

3. Learned counsel places reliance on the order of the Division Bench dated February 1, 2023, where the challenge of the petitioner on the self-same ground as that in the representation, although in connection with a writ petition filed by a different person, was turned down by holding that a temporary appointment is by a different process, which cannot be equated with the permanent appointment process and hence, the prayer of appointee therein (of the present respondent/writ petitioner) to continue till the completion of 68 years could not be granted. Even thereafter, the petitioner gave the representation on April 9, 2024, despite being fully aware of the dismissal of his same prayer on the self-same ground by the Division Bench.
4. On the allegation of non-consideration of the same, the writ petition was filed and decided by the order under

review on May 3, 2024. Thus, it is argued that the petitioner was guilty of suppression of material facts. Since the carriage of the writ petition lay with the petitioner, who was the *dominus litis*, the prerogative was on the writ petitioner to disclose before the Court the earlier dismissal of the self-same challenge before a Division Bench.

5. In support of such contention, learned counsel places reliance on a judgment of learned Single Judge of the Madras High Court in the matter of *P. Venkata Rao Vs. Mr. Venkatesan, I.A.S., the Secretary to Government Revenue* reported at 2016 SCC Online Mad 2 as well as Supreme Court judgment in the matter of *Cine Exhibition Private Limited Vs. Collector, District Gwalior & Ors.* reported at (2013) 2 SCC 698.
6. That apart, it is pointed out that, by an order dated April 29, 2024, the representation of the petitioner which was directed to be decided by the order under review had already been considered and disposed of. Thus, there was no occasion for the writ petitioner to seek a fresh disposal of the self-same representation.
7. Learned counsel for the respondent herein (writ petitioner) contends that the writ petition was filed on

the premise of the relief of relaxation of age up to 68 years having been given to a third party to the writ petition, much after the order of the Division Bench. Challenging the refusal of the petitioner's plea on similar ground, since similar benefit was extended to a different person standing on the self-same footing, on the ground of contravention of Article 14 of the Constitution, the petitioner had made the fresh representation which was thus required to be decided afresh by the authorities. Since the writ petition was on such premise, it is argued that it cannot be said that the Division Bench judgment would itself act as a fetter.

8. Insofar as the disposal of the petitioner's representation on April 29, 2024 is concerned, it is contended that the same was never communicated to the writ petitioner/present respondent and as such, there was no occasion to disclose the same before the writ court.
9. With regard to the first contention of the present applicant, this Court is of the opinion that an order can be reviewed by the Court on the ground of suppression only if the same is gross and borders on fraud being practiced on the Court.

10. The Division Bench judgment deciding the issue in question in the representation of the petitioner, which was the subject-matter of the writ petition in question, could have been fatal due to suppression if the present review applicant was not represented through counsel at the relevant point of time when the order under review was passed.
11. The State was fully represented on the date when the order under review was passed and had ample opportunity to point out the judgment of the Division Bench where the State was equally a party as the writ petitioner. Having not done so, it does not lie in the mouth of the review applicant to turn back now and file a review application on the ground of suppression.
12. Thus, although otherwise the issue of suppression could have been germane, the same cannot be permitted to be raised by the review applicant, which was represented at the relevant point of time and could have disclosed the existence of the Division Bench order.
13. That apart, the suppression by itself cannot be called an error apparent on the face record, in view of the plinth of the petitioner's writ petition having been alleged unequal treatment being given to a third person

standing on co-equal footing as the petitioner. The point of the petitioner is that the Division Bench judgment, which binds the petitioner, was on the principle that a temporary Mohammedan Marriage Registrar could not be granted the benefit of relaxation of age up to 68 years. However, the self-same relief was granted to a third party, who was also a temporary Marriage Registrar, even after the Division Bench order in the teeth of the said order, thereby violating such principle. Such new issue raised by the petitioner required adjudication by the respondent authorities and, as such, might come as an alleviating factor for the petitioner in the writ petition. Thus, since such issue has a semblance of arguability on merits on reappreciation of facts, it cannot be said that the error was apparent on the face of record or that the suppression in question was so germane has to be alleviated to the plane of fraud.

14. In such view of the matter, the review application cannot be allowed on the first ground taken by the petitioner.

15. However, the second ground taken in the review application is relevant, it being that the representation of

the petitioner, which was directed to be disposed of by the order dated May 3, 2024, already stood disposed of by a previous order dated April 29, 2024. Although the State should have disclosed such fact at the relevant point of time, apparently there was a communication gap between the learned advocates for the State and their client, which prevented the same from being disclosed to the Court.

16. In view of such prior disposal dated April 29, 2024, no useful purpose would be served by a fresh decision by the authorities on the self-same representation, which had already been decided finally. Thus, the petitioner is entitled to a review on the second ground raised in the present application.

17. Accordingly, RVW 191 of 2024 is allowed on contest. The order dated May 3, 2024 passed in W.P.A. 12163 of 2024 is reviewed and recalled on the ground that the representation of the writ petitioner which was directed to be decided by the said order had already been decided by the order dated April 29, 2024.

18. No order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SABYASACHI BHATTACHARYYA, J.)