

D/L. 33.
February 9, 2024.
MNS.

RVW 280 of 2023
+
CAN 1 of 2023

Bhagirath Ghosh
Vs.
M/s Neogi Constrution and Company
and others

Mr. Arka Maiti,
Ms. Saloni Bhattacharjee,
Ms. Gulsanwara Pervin

... for the applicant.

Mr. Srijib Chakraborty,
Mr. Sobhan Majumder,
Mr. Atulya Sinha,
Ms. Rupsa Sreemani

...for the writ petitioner/opposite
party nos. 1 and 2.

Ms. Sucharita Roy,
Mr. Subhendu Sengupta

...for the respondent nos. 1 to 5.

1. The review application has been filed by the private respondent in the writ petition in which the order under review was passed.
2. Learned counsel for the review applicant submits that in Clause 3.1 under Section B of the tender document, one of the eligibility conditions was that the bidder must be a recognized security agency with experience in providing security services in a Government Hospital or corporate hospital/Medical College and Hospital/any other institutions.

3. It is contended that this Court proceeded on the premise that the writ petitioners had a valid trade licence at least since the year 2011. On such basis, the writ petition was decided, overlooking the fact that among the credentials submitted by the writ petitioners, only two past work experiences, relating to the years 2007 and 2008, pertained to hospitals.
4. Hence, it is argued that since admittedly the trade licence was issued in the name of the petitioners only in the year 2011 and all the work experiences shown by the writ petitioners after 2011 pertained to some other institutions than hospitals and medical institutions, the writ petitioner should automatically have been held to be ineligible. Thus, it is argued that on the basis of such error apparent on the face of the record, the order under review ought to be set aside.
5. Learned counsel appearing for the State takes a rather neutral view and submits that the order of this Court has been complied with.
6. Learned counsel appearing for the writ petitioners, in reply, argues that none of the grounds taken in the review application fall within the domain of Order 47 of the Code of

Civil Procedure, inasmuch as no error apparent on the face of the records have been argued.

7. Learned counsel for the writ petitioners (one of the respondents in the review application) cites a judgment in *Arun Dev Upadhyaya vs. Integrated Sales Service Limited and Another*, reported at (2023) 8 SCC 11 where the Supreme Court observed *inter alia* that 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. A long-drawn process of arguments to canvass a point attacking the order in a review jurisdiction cannot be said to be an error apparent on the face of record.
8. It was further held that under Order 47 Rule 1 of the Code of Civil Procedure, a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error, which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review. It was also observed that a review petition cannot be allowed to be treated as an appeal

in disguise. A series of decisions were referred to where it has been held that the power to review may not be exercised on the ground that a decision was erroneous on merits as the same would be the domain of the court of appeal.

9. To decide whether the present issue falls within the domain of an error apparent on the face of the record, the order under review is required to be looked into first.
10. While perusing the arguments made by the private respondent before the writ Court, it transpires that paragraph nos. 6 to 12 of the said judgment record, in a nutshell, the crux of the arguments made by the private respondent. The said paragraphs indicate that learned counsel for the private respondent had argued elaborately, by placing reliance on the provisions of the tender document of 2018, that in the general conditions of contract, which comprised of a part of the 2018 tender document, Clause 3.1 stipulates that the bidder must be a recognized security agency with experience in providing security services in a Government Hospital, etc., as already quoted above.
11. In such context, it was submitted that the writ petitioners had participated in two tenders

floated respectively in the years 2003 and 2007, during both of which, the writ petitioners did not have the requisite credentials. It was also submitted that even the trade licence was obtained by the petitioners only in the year 2011, that is, after participating in the said two tenders for the years 2003 and 2007. That apart, it was argued that the petitioners did not have requisite security licence, which was a basic necessity keeping in view that the petitioner no. 1 was required to be a recognized security agency and provide security personnel.

12. It was also argued by the private respondent that due to the previous “work experiences” of the petitioners being vitiated by “such” illegality/irregularity, the said work experiences cannot be counted for the purpose of the petitioners being eligible for the 2018 tender.

13. Thus, the entire premise of the attack in the said writ petition on behalf of the private respondent was focused on the ineligibility of the petitioners vis-à-vis the credentials produced by the petitioners for the years 2003 and 2007, which were prior to obtaining the trade licence.

14. While dealing with the said documents, it was held by this Court *inter alia* that the writ petitioners had successfully participated in the tenders floated in the years 2003 and 2007 and the private respondent raised no objection whatsoever at any point of time. The said point, thus, ordinarily ought not to be reopened.

15. It was further observed that the private respondent had sought to make a valid point to the effect that previous lack of credentials might render the petitioners ineligible inasmuch as the necessary requisite work experience is concerned for the year 2018 and in that regard the petitioners were held to be justified in submitting that the previous work experience required under the 2018 tender was confined to the past three years, relating back to the year 2015, which did not cover the 2003 and 2007 tenders.

16. The court observed further that there was nothing on record to indicate that the 2003 and 2007 tenders had a necessary precondition of production of valid security licenses. Since admittedly the petitioners had a trade licence at least since the year 2011, that is, much before 2018 and even before 2015, it cannot be said that the petitioners

were otherwise ineligible to participate in the 2018 tender.

17. Thus, a thorough perusal of the said order shows that the point now sought to be canvassed by the private respondent was not argued at the relevant juncture.

18. To be clear to ourselves, the point now contended by learned counsel for the private respondent in the writ petition, who is also the review applicant, is on the premise of Clause 3.1 not being satisfied by the other documents relating to past experience produced by the writ petitioners apart from those pertaining to the years 2007 and 2008.

19. The review applicant seeks to lend an interpretation to Clause 3.1 so as to exclude the past experience pertaining to institutions other than Government Hospitals/corporate hospitals/ Medical College and Hospitals, etc.

20. Learned counsel for the review applicant has argued the expression “any other institutions” in the said Clause has to be read in the context of the previous words pertaining to hospitals and medical institutions used in Clause 3.1. Thus, the matter requires an argument on the legal interpretation on Clause 3.1 as to whether the expression

“other institution” necessarily comes within the category of hospitals or not.

21. That apart, the current argument is that the other documents apart from the years 2007 and 2008 produced by the petitioners do not satisfy the eligibility criteria. However, the said argument is made for the first time in the review application and does not find reflection in any manner in the order passed in connection with the writ petition.
22. In any event, the point raised by the review applicant is a new point, although available to the private respondent/review applicant at the relevant point of time when the writ petition was heard, and if the said issue is to be decided, the same will be a re-adjudication of the writ petition on merits, on the basis of long-drawn arguments and a detailed consideration regarding the legal interpretation of Clause 3.1 vis-à-vis a scrutiny of the entire documents of eligibility submitted by the writ petitioner at the relevant juncture.
23. Going by the ratio as laid down in *Arun Dev Upadhyaya (supra)*, which is quite well-settled, a review application cannot be converted to an appeal, giving rise to long drawn arguments to arrive at the finding as to

whether an error was committed in the said judgment or not, either on law or fact.

24. Hence, I do not find that there is any error palpably apparent on the face of the record to justify this Court allowing or entertaining the review application.

25. In such view of the matter, RVW 280 of 2023, along with CAN 1 of 2023 filed in connection with the review petition, are dismissed on contest.

26. Since no affidavits have been directed to be filed, it is deemed that none of the allegations made in the writ petition and the connected application are admitted by any of the respondents.

27. There will be no order as to costs.

28. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)