

AD-22 & 23
05.07.2024
TN

CPAN 453 of 2024
RVW 287 of 2023
In
WPA 1055 of 2022

Sri Suvendu Chakraborty and others
Vs.
Sri Deepak Nigam, Divisional Railway Manager
and another

Mr. Gopal Ch. Ghosh,
Mr. Rajkrishna Mondal

.... for the petitioners

Mr. Indrajeet Dasgupta,
Ms. Puspita Bhowmik

....for the alleged contemnors

In Re: RVW 287 of 2023

1. The present review application has been preferred by the alleged contemnors in respect of an order dated August 24, 2023 passed in WPA 1055 of 2022.
2. Learned counsel appearing for the review applicants submits that the review applicants, who were the respondents in the writ petition, were not present at the time when the order was passed and, as such, a proper picture of the matter could not be presented before the court.
3. Learned counsel hands over a colour photograph indicating that the cradle guard which has been installed in respect of the disputed high-tension electric wire running over the writ petitioners' house was intended to protect the house of the writ petitioners. However, it is submitted that as per the guidelines and

governing specifications, a minimum distance has to be kept between high-tension cable and the cradle guard. As such, only adhering to such specifications, the cradle guard has been fixed as it is, as also depicted in the picture.

4. While passing the order dated August 24, 2023, it is submitted, the court was misled by the writ petitioners in passing a direction on the alleged contemnors/railway authorities to remove the cradle guard and re-position it sufficiently above the top of the roof of the petitioners' property in terms of a sketch map which was annexed to the writ petition.
5. It is argued that the sketch map was a mere representative depiction of the location and could not be conclusive for the purpose of installation of a cradle guard. It is submitted that since the cradle guard has been installed already keeping the minimum distance with the high-tension line, the direction of this court ought to be reviewed and recalled, since lifting the cradle guard further would violate the said specification regarding the minimum distance between the high-tension wire and the same.
6. Learned counsel appearing for the writ petitioners/respondents in the review application points out that the premise of the order of this court dated August 24, 2023 was a judgment by a Division Bench dated November 09, 2006 passed in MAT 1793 of 2023. It is further submitted that before the Division Bench,

the railway authorities had given an impression that the cradle guard would be installed. In fact, the sketch map was also a part of the records before the Division Bench. In the light of the same, the Division Bench had directed the placement of a cradle guard and also fixation of a 25 KV danger board on the fencing of the building of the writ petitioners (appellants therein) as suggested in the sketch map and also in the written instruction of the Eastern Railway dated November 08, 2006 which were filed before the said court.

- 7.** Learned counsel for the respondents in the review application/writ petitioners also takes this court through the said sketch map and the written instruction of the railway authorities which had assured that the railway authorities will put in a guard with net and provide cradle wire under the overhead line of 25KV.
- 8.** As such, it is evident that the order under review was passed only upon taking into consideration and in compliance of the previous order of the Division Bench. Before the Division Bench, it was the railway authorities which had filed the sketch map and the supporting instructions. From the said sketch map, it is amply clear that sufficient space has to be left between the building of the writ petitioners and the high-tension transmission line.
- 9.** Thus, the present endeavour of the review applicants is to reopen the entire issue by relying on photographs

and certain specifications (which specifications are not produced in court, though), which would entail a complete re-appreciation of new evidence which was available to the respondent authorities at the relevant juncture and a reopening of the writ petition on merits. It is well-settled that such reopening of the issues on merits is strictly impermissible in a review application, the limited scope of which is merely error apparent on the face of the records or discovery of new materials and/or grounds akin to the two.

10. Such tests having not been met herein, I do not find any scope of entertaining the review application.
11. Accordingly, RVW 287 of 2023 is dismissed on contest without any order as to costs.

In Re: CPAN 453 of 2024

12. Since the review application was pending so long, no order was being passed in connection with the contempt application. However, in view of the dismissal of the review application, the alleged contemnors become duty-bound to comply with the specific direction of this court.
13. Accordingly, on the prayer of the alleged contemnors, the alleged contemnors are directed to file affidavit(s)-in-opposition within three weeks from date to the contempt application. Reply/replies, if any, shall be filed within a week thereafter.

14. The matter shall be listed on August 16, 2024 for hearing.

(Sabyasachi Bhattacharyya, J.)