

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

RVWO/15/2024
With
WPO 37 of 2017
IA NO: GA/1/2024

WEST BENGAL TRANSPORT CORPORATION LIMITED AND ANR
VS.
SUVRA KUMAR DEY AND ORS.

BEFORE:
THE HON'BLE JUSTICE RAI CHATTOPADHYAY
DATE : 1st October, 2024.

Appearance:
Mr. Suvra Kumar Dey (in person)

Mr. Mainak Ganguly, Adv.
Mr. Niladri Bhattacharjee, Adv.
Ms. Deblina Chattaraj, Adv.

.... For Appellant/Contemnor

The Court : The instant is a review application filed by the applicants namely, The West Bengal Transport Corporation Limited and its Managing Director respectively, seeking review of this Court's judgment and order dated January 16, 2024 in Writ Petition No. 37 of 2017 (Suvra Kumar Dey vs. State of West Bengal and Ors.).

The grounds for review has been mentioned, *inter alia*, to be intentional suppression of material facts before the Court by the present opposite party (that is, the writ petitioner), misrepresentation and false submissions of him, manipulative and baseless arguments on the basis of irrelevant documents,

which conjointly have resulted into playing fraud by the said writ petitioner in presenting the case before the Court. It is stated that for the reasons as above the judgment and order of this Court, as mentioned above is to be considered a nullity and requires to be set aside.

The appellants herein are the respondents in the writ petition No. 37 of 2017, whereas the present opposite party is the petitioner over there. Mr. Mainak Ganguly being assisted by Mr. Niladri Bhattacharjee and Ms. Deblina Chattaraj have appeared for the applicant in the review petition. He has elaborated as to how the present opposite party/writ petitioner has exercised fraud upon the Court by misrepresenting and also suppressing the relevant and necessary materials, from the scope of consideration of this Court. He says that a notification dated May 17, 2006, inviting applications from the eligible candidates for promotion was published by the applicant (hereinafter referred to as **No.915**). Mr. Ganguly, would emphasise that the petitioner's contention of having submitted an application in response to the said notification No.915 is only a false statement, manipulative and representing otherwise than the actual facts, in order to misdirect the Court.

He would remind the Court regarding contention of the writ petitioner/opposite party in the said writ petition that in spite of submission of application in response to the notification No.915, he was not allowed to participate in the selection process, for no reasonable cause. It was further submission of him, that the said application of him, submitted pursuant to the

notification No.915 was lost from the custody of the present applicants/respondents. Mr. Ganguly would not fail to indicate that the opposite party/writ petitioner has not been able to show any trace of receipt of copy of the said application of him, in the office of the present applicants.

Mr. Ganguly would submit that the petitioner's claim of having submitted an application pursuant to the notification in order to take part in the process of selection for promotion, is only false in view of his subsequent letter and its contentions. He has mentioned about a letter of the petitioner dated June 8, 2006 which the present opposite party/writ petitioner has said to have written to the present applicant No.2/Managing Director, expressing his grievance for not being considered for promotion. Mr. Ganguly would say that the said letter of the opposite parity/writ petitioner was not expressing any grievance for not being able to take part in the selection process but has been written to challenge the promotional policy *vide* notification No.915. therefore according to the applicants, the person who challenges the policy of the employer could not have taken part in the said policy, by way of submitting an application form, as claimed.

Furthermore, as per the applicants, there is no proof or record produced by the writ petitioner, regarding receipt of that letter of the writ petitioner dated June 8, 2006 in the office of the applicants. It has been mentioned that purportedly the petitioner has suppressed from the very beginning regarding the date of alleged receipt of the said letter of him, in the office of the

applicants on June 9, 2006. That, he has divulged the said fact only at a belated stage on August 12, 2008, while submitting his another application under the Right to Information Act. Thus, according to the applicants, the writ petitioner's assertion regarding submission of any letter dated June 8, 2006, on June 9, 2006, is an afterthought statement, motivated and designed to misrepresent the Court. Thus fraud is said to have been committed upon the Court.

Mr. Ganguly would further submit that it was never the intention of the writ petitioner to appear and compete in the promotion process pursuant to the notification No.915. He claims that the petitioner has consistently and deliberately avoided the selection process in an attempt to accomplish his objective by taking illegal and circumvention approaches. In this regard he would refer to one letter of the writ petitioner addressed to the applicant no.2 dated October 15, 2008, in which the petitioner would seek for grant of career advancement scheme benefits to him with retrospective effect and promotion in terms of the other notification No.3015F dated March 13, 2001. It is submitted that evidently the petitioner would not be interested to take part in the selection process, which has in turn nullified his claim of having submitted any application in response to the notification No.915, as claimed. It is indicated that admittedly also in his said letter dated October 15, 2008 (in connection with RTI reply given to him by the applicant corporation dated September 23, 2008), the writ petitioner had stated that the promotional process initiated by Memo No. 915 is not in conformity with the Memo No.10620 dated December

19, 2000, which does not provide for any process to be initiated for promotion requiring submission of application etc.

Mr. Ganguly would submit that all these admitted documents would unfailingly suggest to the intention of the petitioner not to take part in the selection process, in terms of notification No.915. that, in actuality, his assertion that he filed an application in accordance with the aforementioned notification No. 915 is merely false and misleading. Therefore, Mr. Ganguly has submitted, that the writ petitioner has committed fraud upon the Court in this manner.

It is also argued that, despite the fact that the petitioner did not take part in the selection process for promotion, he has used this tactic to conceal important material facts from the Court and contest the promotional policy. Therefore, the writ petitioner was before the Court in the said writ petition with unclean hands and could not have thereof claimed any equitable relief. Also, that the prayer of the writ petitioner was vitiable in view of the practice of fraud which is apparent on the face of the record and suppression of material fact by him in the Court.

To buttress his submissions as above, Mr. Ganguly would refer further to the first writ petition filed by the petitioner, being WPO 1788 of 2008, with his prayer for consideration of his promotion in terms of notification No.10620 dated December 19, 2000, in terms of which, according to the petitioner, there would not be any formality or procedure for separately applying for promotion.

Mr. Ganguly insists that the same may be considered as another eventuality to expose petitioner's true intentions not to take part in the promotional process which would automatically negate his claim that at a subsequent stage and as to the notification No. 915, he had ever responded. On the contrary, he should be considered not to have participated in the promotional process, according to his own volition though misrepresented about the same, before the Court.

Mr. Ganguly would submit with regard to the finding of the applicant No.2/the then Managing Director, in its order dated June 22, 2011, to the effect that the application of the petitioner was misplaced from the office record, to be a *bona fide* mistake on the part of the then Managing Director of the applicant No.1. He would stress upon the facts and circumstances as enumerated above which is deducible from the petitioners conduct and contention of his various documents. According to the applicants, the documents by the petitioners from time to time elaborately expressed the intention and conduct of the petitioner. That the same would be sufficient to outweigh a *bona fide* erroneous stray statement made by the Managing Director in the said order dated June 22, 2011, which is virtually based on no evidence. Allegedly, the petitioner with ulterior motive has subjugated the said error apparent on the face of the order dated June 22, 2011 and manipulatively utilised the same to his advantages.

Lastly, Mr. Ganguly would say that the writ petitioner having never occupied the promotional post and having not served therein at any point of time would not be eligible at all for grant of any commensurate benefit.

Certain judgment has been relied on by Mr. Ganguly during his arguments to rely on the respective propositions therein, as mentioned herein below:-

i) (2010) 8 SCC 383: *Meghmal & Ors. vs. G. Narasimha Reddy & Ors.*

On the proposition that fraud unravels everything, fraud and deception are synonymous.

ii) 2004 AIHC 534 (Kar): *Bangalore Development Authority, by its commissioner, Bangalore & Ors. vs. P. Anjanappa & Ors.*

For the proposition that the Court has inherent power to recall an order obtained by fraud; that, an 'error apparent' on the fact of the record comes within the ambit of 'other sufficient cause' as contemplated in Order 47 Rule 1 of the Civil Procedure Code, to set aside an order obtained by fraud.

iii) 2009 (2) CHN 860: *Satyanarayan Pandey Vs. State of West Bengal & Ors.*

For the proposition that power of High Court to review its own order is not derived from Order 47 Rule 1 of the Civil Procedure Code; that the High Court is not bound by the parameters laid down in the said Code but exercises its own inherent power with an object is to prevent miscarriage of justice.

iv) (2000) 1 SCC 666: *M.M Thomas vs. State of Kerala &Ors.*

For the proposition that the High Court, as a Court of records, as envisaged in Article 215 of the Constitution of India, has inherent power to correct its records; that it is duty bound to keep all its records correctly and in accordance with law; that if any error apparent is noticed by the High Court in respect of any order passed by it, the High Court has not only the power, but a duty to correct it; that the High Court's power in that regard is plenary.

v) (2007) 11 SCC 488: *Union Territory, Chandigarh Vs. Brijmohan Kaur.*

Here the Court has propounded that the general principle is when an incumbent does not discharge any duty in the promotional post, he will not be entitled to claim the pay corresponding to the promotional post and/or arrears thereof.

vi) (1988) 4 SCC 534: *Bharat Singh &Ors. vs. State of Haryana &Ors.*

For the proposition that the party raising a point in a writ petition must specifically plead such facts and annex corroborative documents in support thereof. Difference between a plaint and a writ petition in this regard is laid down by the Court, in this case.

The opposite party/writ petitioner has appeared personally as before and contested the review petition filed by the corporation. As against the contentions of the applicant regarding commission of fraud by the writ petitioner on every stage, as stated above, there has been a vehement objection

by the writ petitioner to the same. The writ petitioner has strongly relied on the order of the Management Director dated June 22, 2011, wherein the Managing Director has recorded about the writ petitioner having submitted an application pursuant to the promotion notification No.915 and the department having lost the same, resulting into non-consideration of the petitioner's candidature for promotion. That the same has been *bona fide* erroneous recoding of fact – as stated by the applicants, is strongly denied by the writ petitioner. Per contra he has submitted that the finding in the said order dated June 22, 2011 speaks enough as regards the actual state of affairs, which the applicants now have tried to distort by filing the instant review petition. That is only for the purpose to victimise the writ petitioner, he has stated.

The writ petitioner has further submitted that the subject matter in his earlier Writ Petition No.1788 of 2008 has no relevance or bearing as to the present writ petition No. WPO 37 of 2017. He says that in the writ petition of 2008 he agitated non-consideration by the authorities regarding his promotion, in terms of Memo No.10620 dated December 19, 2000. He admitted that in the same, he sought for promotion in terms of said Memo dated December 19, 2000. He would say that his prayer in the same was a distinct and separate one, than his grievance as expressed in the present case, regarding inaction of the applicant to grant him actual cash benefits for the period for which he has been granted notional promotional benefit, vide this Court's earlier order.

The writ petitioner would say that the statement made by him in different letters as relied on by the applicant herein has been written contextually from time to time in connection with seeking information from the corporation or expressing his grievance etc. that, the same cannot be considered as suppression of any material fact by him or manipulation or fabrication with respect to the factual aspect of the matter.

He would say further that the present review petition is an appeal in disguise, to re-agitate the issues in dispute, which have already been decided by the Court after hearing exhaustively the parties before it. The unchallenged decision of the Court as above, has actually terminated possibility of any challenge what so ever, not only with regard to the order of grant of cash benefit to the petitioner but also regarding grant of notional benefit of promotion to the petitioner. He would say that the orders of the Court passed earlier to that effect having already been final, cannot be altered or even varied or modified in the guise of a review petition.

The writ petitioner would contend further that the applicants throughout the course of several litigations between the parties have never come up with the allegations of any fraudulent discourse having been undertaken by the writ petitioner. Therefore, that he has not been allowed the opportunity to contest such frivolous ground of the applicants, at any point of time earlier. The allegation of fraud having been committed by the writ petitioner, being taken the first time before this Court in the review jurisdiction would be barred by

constructive *res judicata* for the reasons as stated above, the writ petitioner has said.

On the contrary the writ petitioner would make allegations of fraud being committed by the corporation in so far as, in spite of the previous finding of the Managing Director regarding acceptance of application of the writ petition in office the corporation/applicants, the corporation has subsequently come up with the different case of the petitioner not at all having submitted any such application. Therefore, according to the writ petitioner, there has been suppression of office record and the actual facts by the applicants before the Court.

He would further say that the order of the Court and subsequent order of the concerned department granting him notional promotion has become final, without being challenged any further. The same cannot be reopened as if in an appeal, in the guise of this review application filed by the applicants, the writ petitioner has strongly contended. The petitioner as stated further that in the writ petition (at page 129 thereof) the applicants have admitted on oath, regarding submission of application by the writ petitioner to take part in the selection process for promotion, which, subsequently, in this review petition, they have denied. Thus, by shifting stands allegedly the applicants have conducted themselves fraudulently.

He would further say that the Court in its judgment dated January 16, 2024, has considered and accepted petitioners plea that he has, during the

relevant period of time, worked in the posts which may be considered as posts belonging to the promotional cadre. According to the petitioner there is no new and cogent material have been produced by the applicant to deny that fact. Also, that there would not be any scope for the applicants in the review petition to challenge findings of the Court in its judgement dated October 9, 2013 and January 16, 2024. Therefore, by no means of interpretation petitioner's actual cash benefit for the disputed period may be turned down.

The writ petitioner would submit that the present review petition no. RVWO 15 of 2024 is not maintainable and would seek dismissal of the same.

The applicant/review petitioner is principally challenging the veracity, credibility and legality of the proceedings brought in by the writ petitioner before this Court. It claims that the writ petitioner's action is infused with the injurious, pernicious and destructive element of fraud, which has the potential and force to invalidate and vitiate the entire proceedings, in terms of the law of the land. In support, the applicant has relied on the judgment of the Supreme Court, reported in **(2010) 8 SCC 383 (Meghmala & Ors. vs. G. Narasimha Reddy & ors.)**, in which the Court has held that the settled proposition of law is that where an applicant gets an order by making misrepresentation or playing fraud, such order is unsustainable in the eye of law. The Court quotes from a decision of the Queen's Bench reported in **(1956) 1 QB 702 [Lazarus Estates Limited vs. Beasley]**, that *"No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud*

unravels everything". The Court has also held there that "*Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of the courts of justice*".

The applicants would further argue that a Court of Equity, would not always be bound by the parameters laid down in the Civil Procedure Code, in case it has to travel against the time and re-enter and review its own order, delivered earlier. By referring to the decision of this Court, reported in **2009 (2) CHN 860 (Satyanarayan Pandey vs. State of West Bengal & Ors.)**, it has been stated that the power of the High Court to review its own order is not derived from Order 47 Rule 1 of the Civil Procedure Code and not bound by the parameters laid down in the Code. But the High Court exercises its own inherent power, with an object to prevent miscarriage of justice. More so, an order obtained by exercise of fraud is an 'error apparent' on the face of the record and also comes within the ambit of 'other sufficient cause', as contemplated in Order 47 Rule 1 of the Civil Procedure Code.

To elaborate this point, Mr. Ganguly for the applicant, has further referred to Article 215 of the Constitution of India and the judgment of the Supreme Court reported in **(2000) 1 SCC 666 (M. M. Thomas vs. State of Kerala & Anr.)**, to say that the High Court as the Court of Records has the duty and power to correct the records and keep and maintain the records correctly and in accordance with law. Hence, the High Court has plenary power to rectify and make corrected any error apparent on the face of the record.

So far as the applicant's stand that fraud unravels everything, is concerned, the same is a proposition classically established and can never be disputed. The law of the land as well as the Courts thereof have time and again propounded, relied on and acclaimed the said principle, to weed out iniquitous seizing of Court's remedy by an unscrupulous petitioner, to collar him to take shelter under the veil of an order of the Court.

However, the flip side of the coin is the other principle similarly well established, that fraud is to be pleaded and proved. To prove fraud, it must be pleaded that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such cases is extremely high. An ambiguous statement cannot per se make the representator guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation. The dictum of the Supreme Court in ***V.S. Vishwavidyalay vs. Dr. Raj Kishore Tripathi [AIR 1977 SC 615]***, is that "fraud to be specifically pleaded" – it is not sufficient to plead about commission of fraud in general terms, without giving particulars.

Therefore, the particulars of the fraud must be pleaded and without pleading as such, the question of fraud will not arise at all. To understand as to how the law stands, we may also refer to the words of *Lord Atkin* in ***A.L.N. Narayanan Chettyar vs. Official Assignee [High Court at***

Rangoon [AIR 1941 PC 93], that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt; however suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. There is no gainsaying that the charge of fraud is a serious one which requires elaborated pleadings and evidence.

No doubt that the ground of fraud can be taken at any stage. However, a case of fraud has to be pleaded with sufficient details and particulars of fraud must be pleaded as is prescribed by Order VI Rule 4 of the Code of Civil Procedure, the principle whereof applies to writ proceedings also. Unless pleaded specifically, commission of fraud cannot be assumed or speculated. The Court to rove over the pleadings to forage an element of fraud is not what the law speaks about, as has been propounded by *Lord Macdermott* in the case of **Bank of India and Others vs. Jamsethji A.H. Chinoy & M/s Chinoy & Company [AIR 1950 PC 90]**.

Some other verdicts of the Supreme Court may also be referred to, for the benefit of discussion. In **Raganayakamma vs. K.S.Prakash [(2008) 15 SCC 673]**, the Court has held a plea of fraud, general and vague in nature, without any particulars thereof, would not call for Court's attention, to take that into consideration. In **Placido Francisco Pinto (D) by L.R.s vs. Jose Fransisco Pinto [2021 SCC Online SC 842]**, the Court has held that pleading not indicative of any instance of fraud or misrepresentation would be

inconsistent vis-à-vis the provisions under Order VI Rule 4 of the Civil Procedure Code for which reason in such kind of a case the plea of fraud would not be sustained. In ***C.S. Ramaswamy vs. V.K. Senthil [2022 SCC Online SC 1330]***, the Court has held that mere statement alleging commission of fraud or using the word 'fraud' without elaborating that with sufficient precision and specification as to how the fraud has been committed, may render the plaintiff achieve which otherwise he may not be entitled to under the law, like in a case of a suit barred by limitation. Therefore, the Court has emphasised firstly, that commission of fraud has to be pleaded and secondly, that has to be pleaded with sufficiently accurate and specific materials as to how the fraud has been committed or played.

This is how fraud can vitiate a proceeding. It has been held time and again by the Courts of law as to when a fraud can be considered to have been established upon specific pleadings and sufficient proof thereof. Now, coming back to the facts of the present case, the writ petition connected with the present review petition is the 3rd round of litigation between the parties. Earlier, on two occasions the writ petitioner had moved this Court by filing WP No. 1788 of 2008 and WP No. 866 of 2011. Those two matters and the present writ petition has been decided on contest upon filing affidavits by the respective parties. Curiously, this court has gone into the respective affidavits filed by the parties in the said writ petitions. The plea of any fraud having been played by the writ petitioner, is evidently unavailable and in absentia, so far as pleadings of the review petitioner/respondent, in the said writ petitions, are concerned. It

is not that in the present review application the applicant has relied on any further new material to bring on record its new knowledge, as to commission of any fraud by the writ petitioner, which might not have been dealt with by the Court in any of the earlier occasions. As discussed earlier, the review petitioner has relied on the prayer of the writ petitioner in the earlier case, his representations et cetera, which have already been made part of the record, in the writ petitions including the one, in connection with which the present review petition arises. Therefore, the Court finds that nothing on earth could have prevented the review petitioner before to urge the point of fraud having been played against it, by the said petitioner. However, any such pleading of fraud was never brought on record, hence not pleaded at all, far less than any fraud committed by the writ petitioner having been established through pleadings and specific materials. All the materials, the review applicant now relies on to plead fraud, were available to it at all the material point of time. Therefore, the review applicant not having raised the point of fraud playing by the writ petitioner at the very first instance, through pleadings supported by specific materials, would not now be able to espouse the same, in accordance with law.

Furthermore, in writ petition No. WP 866 of 2011, the Court directed the review applicant to consider the question of grant of full cash benefit of the petitioner independently. The same order having not been challenged at any subsequent period of time should be deemed to have been accepted by the review petitioner. Thereby the review petitioner reopening the

question of the petitioner having exercised fraud from the inception should not be allowed at this stage of proceeding. Similarly, the Court's order allowing the writ petitioner, the notional benefit of promotion for the specified period, has also not been challenged, but given effect to. It is surprising that the applicants have even questioned the same in this review petition, alleging the same to be an outcome of fraudulent misrepresentation by the writ petitioner, before the Court. The Court questions itself if the scope of review of its own order may be stretched to that extent but only to get the obvious negative answer.

As discussed earlier the pleadings of the review applicants in its respective affidavits-in-opposition are bereft of any mention about any fraud being committed. At the stage of review of the order of this Court in the latest writ petition, the review applicant has made an endeavor to frisk out such elements of fraud from the comparative study of the documents relied on by the parties in the case, that is, of course being not supported with any pleadings as to the allegations of fraud. In view of the settled position of law as discussed earlier, the Court is of the firm opinion that such endeavor of the review applicants, is nothing but to reopen the entire issue which has already been decided by the Court. The contention of the review applicants shall have nothing to do with the error or omission on the face of the judgment and order in question, which the Court might have effortlessly gone into, to make necessary corrections thereof. Here the Court is invited to reassess the merits of the case on a fresh ground of the fraud having been committed by the writ petitioner by misrepresentation and suppression of material facts. The law as

settled and mentioned above would not permit the Court to travel back in the timeline to the extent of reassessing. The applicants would seek exercise of inherent power of this Court, to redress its grievance. As a Court of record, such power of the High Court is endowed and protected under Article 215 of the Constitution, for the purpose of ensuring justice. The test would be in case the Court does not entertain the review application and alter/modify the order under review, whether the same would result into any injustice or not. The grounds pleaded by the review applicants, if not maintainable in the eye of law, as it is in the present case, the applicants cannot be considered to have been successful in clearing the threshold test and entering into the arena of review. That is particularly in this case, when neither the review applicant has ever pleaded the fraud nor could have established the same. Rather the present review application is a willful choice of the review applicants which, if entertained, may have the effect of frustrating this Court's previous order dated January 16, 2024. The principles of law, as have been envisaged in the judgments relied on by the review applicants, are sacrosanct. However, application thereof, as to the factual background of this case, as elaborately discussed above is unwarranted.

On the considerations as above this Court finds no merit in this review petition and finds the same liable to be dismissed.

On the premises as above the review petition no. RVWO 15 of 2024 is dismissed.

Let the contempt petition being CC 22 of 2024 be listed for further consideration after ensuing puja vacation.

(RAI CHATTOPADHYAY, J.)

Tudu/p.a