

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

RVWO/21/2024
GENERAL MANAGER, EASTERN COALFIELDS LTD.
VERSUS
MANOHAR BAURI AND ORS.

With
CC/62/2024
SRI MANOHAR BAURI AND ORS.
VERSUS
SAMIRAN DUTTA, CHAIRMAN CUM MANAGING DIRECTOR EASTERN
COALFIELDS LTD. AND ORS.

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 20th August, 2024.

Appearance:

*Mr. Bijoy Kumar, Adv.
...for the petitioner*

*Ms. Ajeya Mitra, Adv.
Mr. Kamal Krishna Chakraborty, Adv.
Ms. Srijani Das, Adv.
...for the Respondent.*

The Court: This is a review petition filed by the General Manager, Eastern Coalfields Limited, having its office at Mugma, P. O-Mugma, P.S-Nirsha, district- Dhanbad, Jharkhand. The same is for review of this Court's order dated April 8, 2024, in writ petition No. WPO 463 of 2018.

In the same the following directions were made:-

- (i) The respondent Authorities/respondent no. 1 shall immediately release the balance quantity of 8990 metric tons of Grade "D" steam coal from Mugma Area, in favour of the present writ petitioners.

- (ii) The exercise as above should commence within a period of three weeks from the date of communication of this order to the said respondent Authority.

The review petitioner does not comply with the said order of the Court within the prescribed time limit. Hence, a contempt application has been filed by the writ petitioner there, which is pending before the Court at present. During pendency of the contempt application the review petitioner has filed the instant review petition.

Parties have heard exhaustively on the point of review of the Court's order as above.

Let the principles of law which guide the writ Court to go into the review of its own order be discussed at the outset.

Power of review is a statutory and not an inherent power of the Court. It finds its origin in Section 114 and Order 47 Rule 1 of the CPC. An order can be reviewed by the Court, only on the prescribed grounds as mentioned in Order 47 Rule 1. A Court of review has definite limited jurisdiction within the periphery of the provision enshrined under Order 47 Rule 1 of the CPC. The power of review of a Court cannot be exercised as an inherent or appellate power of the same, to be exercised in the guise of power of review. An order of the Court, even if an erroneous one cannot be a subject matter of review and be set aside in exercise of review jurisdiction. Power of review can be exercised for correction of a mistake but not to substitute a view.

Keeping in mind such settled principles of law, let the grounds taken by the review petitioner here, be considered.

It is worth mentioning that during hearing of the writ petition, the respondents therein including the review petitioner has never appeared to contest the same. Hence, the order of the Court dated April 8, 2024, in writ petition No. WPO 463 of 2018 was delivered in absence of the said respondents.

Be that as it may, the review petitioner is represented by Mr. Bijoy Kumar, learned Advocate. Mr. Kumar has at the outset taken up the point to challenge maintainability of the writ petition in the Ordinary Original Civil Jurisdiction of this Court. He has stated that the office or the place of business of the review petitioner or the cause of action of the writ petitioner in WPO 463 of 2018 has never arisen within jurisdiction of the Ordinary Original Civil Jurisdiction of this Court. Under such circumstances, according to Mr. Kumar, the writ petition could not have been maintained in the original side of the Court. He submits that an order passed without jurisdiction is void *ab initio*. In this connection Mr. Kumar has referred to the two orders of the Hon'ble Co-ordinate Bench, in which the Court has held that no part of cause of action having been arisen within the Original Side of this Court, the writ petition, which was pending before it, would not be maintainable in the original side of this Court. Those are order dated September 7, 2021, passed in writ petitions No. WPO 366 of 2021 (Smt. Dulali Majhian @ Majhan vs. M/s. Eastern Coal Fields Ltd. & Ors.) and WPO 239 of 2021 (Smt. Pushpa Bouri @ Puspa Bauri vs. M/s. Eastern Coal Fields Ltd. & Ors.) respectively and dated February 11, 2021 in WPO 119 of 2020 (Susmita Gayen vs. The State of West Bengal & Ors).

Thereafter, Mr. Kumar has suggested that even with respect of territorial jurisdiction of this Court the writ petitioner could not have maintained his case before this Court, in so far as the entire cause of action of the writ petitioner arose in District Dhanbad of the State Jharkhand. By referring to the relevant portion of the review petition, Mr. Kumar has stated that the relief has been sought for from the office of the review petitioner situated at Mugma, Jharkhand and as such having no cause of action in the said writ application arisen within jurisdiction of this Court, this writ petition would not have been maintainable before this Court.

Lastly, Mr. Kumar has mentioned that the policy for grant of employment to the land losers has been withheld by a subsequent policy decision of the review petitioner, in the year, 1997. It is submitted further that since thereafter no coal has ever been supplied in terms of the scheme prevalent earlier to compensate the land losers. In such position and the writ petitioner having not challenged the decision of the review petitioner to withhold supply of coal to the land losers, the writ petitioner would not otherwise be eligible for a favourable order from the writ Court, on the basis of his prayers made in the writ petition.

Thus, Mr. Kumar has insisted that the order passed by this Court on April 8, 2024 in WPO 463 of 2018 be recalled/modified, on review thereof.

Ms. Ajeya Mitra has represented the opposite party/writ petitioner in this review petition. She has raised vehement objection to such review petition, as filed. Her first contentions is with regard to non-maintainability of this review writ petition in view of the law settled regarding as to when a

review petition can be entertained/allowed by the Court. To elaborate this point Ms. Mitra has relied on the following judgment:

- (i) ***Lily Thomas, etc. vs. Union of India & Ors.*** reported in ***AIR 2000 SC 1650***;
- (ii) ***Shri Ram Sahu (dead) through Legal representatives & Ors. vs. Vinod Kumar Rawat & Ors.*** reported in ***(2021) 13 SCC 1***;
- (iii) ***State of Telangana & Ors. vs. Mohd. Abdul Qasim (Died) Per Lrs.*** reported in ***2024 SCC OnLine SC 548***.

Thereafter Ms. Mitra has submitted that the review petitioner has never been a party in the writ petition. Also that he has never appeared before the writ Court to represent his grounds or objection. Hence, at this belated stage the review petitioner may not be allowed to interfere with due compliance with the Court's order as above.

Ms. Mitra has also submitted that the present review petition is an appeal in disguise when the review petitioner has taken up as many as 34 grounds, touching the merits of the case. It has been submitted that in review this Court may not go into the merits of the case again, there being no scope for the same. It is submitted that the scope of review by the Court of its own order is very limited, as envisaged in the judicial pronouncements by the constitutional Courts including the Apex Court. That, excepting for certain limited grounds like manifest error on the face of order, the Court can review its own order and not otherwise. It is submitted that the review petitioner would not have any scope to reopen the adjudication of the writ petition under the guise of seeking review of the order of the Court. It is submitted that the review petitioner has made an endeavour in this Court to

exactly do the same. Hence, according to Ms. Mitra the review petition is liable to be dismissed.

The scope of a writ Court to go into review of its own order is therefore, very limited. There is no denial in this case that in spite of due service of notices the respondent/s chose not to appear in Court during the time of hearing of the writ petition. It is noted that the review petitioner has relied on as many as 34 grounds to seek this review which principally are with regard to the merits of the writ petition. So far as error apparent on the face of the record are concerned, the review petitioner has made insufficient or no ground at all.

The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

The law has envisaged a review of an order to be applicable only in case the error in the same is apparent on the face of the record. In the case

of **Sri Ram Sahu (dead) & Others (supra)**, the Supreme Court has stated that an error which is not self evident and which can be discovered only by a long process of reasoning, cannot be treated as an error apparent on the face of record, justifying exercise of review power, that an order/decision cannot be corrected in the guise of exercise of review power.

The review petitioner has put forth about the jurisdictional error, in the said order. However, following the ratio decided in the judgment of Supreme Court, as above, the same cannot be considered as an error on the face of the order. The error as pointed out by the review petitioner has to be established by way of the process of reasoning. That would not, justify exercise of review power by this court.

Similar proposition has been upheld by the said Court, in the case of **Md. Abdul Quasim (died) (supra)** that is, decision, however erroneous, can never be a factor for review, but can only be corrected in appeal.

The grounds on which the review application is filed are considered and dealt with by the Court while deciding the writ petition. Therefore there is no error apparent on the face of the record which could have been corrected in exercise of review jurisdiction. As discussed earlier, the Courts have held that scope of review jurisdiction would be within the limits as provided under the statute. The review petitioner has contended about not any error apparent on the face of record but that has to be considered by application of reasons. The Court's order dated April 8, 2024, has been passed after considering all points on merit. There is no scope for this Court to revisit those regarding which the Court has already decided. On the contrary, there would not be any error in case the Court finds that, at that

point of time, the review petitioner was not vigilant and sincere enough as regards the case against it, in so far as it has not appeared before the writ Court, in spite of due service of notice. At this stage therefore, the review petitioner may not be eligible to raise its grievance, if any, before this Court, when exercising review jurisdiction.

Therefore in consideration of the settled legal principles as mentioned above and the facts and circumstances of the case this Court finds no tangible reason to exercise the power of review with respect to its order dated April 8, 2024, in writ petition No. WPO 463 of 2018.

On the premises as above the review petition no. RVW 21 of 2024 is dismissed.

A contempt application filed by the writ petitioner is now pending. Let the same be listed in the monthly list of September.

(RAI CHATTOPADHYAY, J.)