

24.01.2025
Court No.13
Item No.4 to 6, 13
pk

**WPCRC 19 of 2025
In
WPA 24875 of 2022**

**Manoj Sarkar & Ors.
Vs.
Sri Arup Sengupta, The Commissioner of School
Education, Govt. of W.B.**

**With
WPCRC 20 of 2025
In
WPA 20966 of 2022**

**Kakali Mondal
Vs.
Sri Arup Sengupta, The Commissioner of School
Education, Govt. of W.B.**

**With
WPCRC 22 of 2025
In
WPA 8094 of 2022**

**Joyanti Saren
Vs.
Sri Debabrata Sarkar, Chairman, DPSC, North 24 Pgs.**

**With
RVW 9 of 2025

State of West Bengal
Vs.
Kakali Mondal & Ors.**

Mr. Ratul Biswas,
Mr. S. Ghosh,
Mr. Sourojit Mukherjee
... for the petitioner in WPCRC 19 of 2025
Mr. T.M. Siddiqui,
Mr. N. Chatterjee,
Mr. T. Chakraborty,
Ms. Kalpita Paul
... for the alleged contemnors in WPCRC 19 of 2025

Mr. Rabi Lal Maitra, ld. Sr. Adv.

Mr. Amlan Kr. Mukherjee,
 Mr. Rajit Lal Maitra
 ... for the petitioner in WPCRC 20 of 2025

Mr. T.M. Siddiqui,
 Mr. Sirsanya Bandopadhyaya,
 Mr. Tanoy Chakraborty,
 Mr. S. Siddiqui,
 Ms. Kalpita Paul
 ... for the alleged contemnors in WPCRC 20 of 2025

Mr. T.M. Siddiqui,
 Mr. Sirsanya Bandopadhyaya,
 Mr. S. Siddiqui,
 Ms. Tapati Samanta
for the petitioner in WPCRC 20 of 2025 and RVW 9 of 2025

Mr. Amitava Chaudhuri,
 Mr. N. Roy
for the DPSC, North 24-Parganas in WPCRC 20 of 2025 and RVW 9 of 2025

Mr. Sandip Kumar De,
 Mr. Abhijit Sarkar
 ...for the petitioner in WPCRC 22 of 2025

Mr. T.M. Siddiqui,
 Mr. T. Chakraborty,
 Mr. A. Prasad,
 Ms. Kalpita Paul
 ...for the alleged contemnor in WPCRC 22 of 2025

Mr. Bhaskar Prasad Vaisya,
 Mr. Pinaki Bhattacharjee
 Ms. Kalpita Paul
 ...for the DPSC, North 24 Parganas in WPCRC 22 of 2025

1. In terms of the order dated 06.01.2025 passed by a Division Bench of this Court in MAT 1443 of 2024, the Commissioner of School Education (CSE) has filed an application seeking review of the Court's order dated 25.04.2024 as corrected on 30.04.2024.

2. The principal ground on which review is sought is that the Commissioner of School Education has not given consent to the petitioners' prayer as recorded in the Court's order dated 25.04.2024 and 30.04.2024.
3. Mr. T.M. Siddiqui, learned senior advocate appearing for the CSE submits that the opposition to the prayers in the writ petitions is recorded in the report filed before this Court to the writ petitions. He further submits that the CSE, who personally present in Court, had neither given oral or written instructions consenting to any order prayed for by the writ petitioners.
4. Mr. Siddiqui submits that this Court should notice the fact that several meritorious candidates who ranked well above the petitioners would be prejudiced if the petitioners are recruited by reason of the said orders dated 25.04.2024 and 30.04.2024. Mr. Siddiqui relies upon a decision of the Supreme Court in the case of ***State of Maharashtra Vs. Ramdas Shrinivas Nayak and another*** reported in **(1982) 2 SCC 463**, particularly paragraph 4 thereof.
5. This Court notes that in the said paragraph the Hon'ble Supreme Court had observed that the factum of having given consent can never be resiled from, by a party. The party could however come and say that the concession was made under a mistaken impression of law.
6. The so called meritorious candidates have not approached this Court and hence the same cannot be a ground to

deprive the writ petitioners. Admittedly there were large scale irregularities in the recruitment process of the year 2009 which have been admitted by some DPSCs in the State.

7. Mr. Siddiqui and Mr. Maitra, learned senior counsel appearing for the CSE and the writ petitioners respectively have placed before this Court a decision of the Supreme Court in Civil Appeal No. 853 of 2025 (Rimpa Saha & Ors. Vs. District Primary School Council, Malda & Ors.) arising out of SLP (Civil) No. 27722 of 2024. The said SLP was filed by the candidates who appeared in the same selection process from the Malda District.
8. In the said case, initially orders similar to the order dated 25.04.2024 and 30.04.2024 were passed by consent, on 26.04.2024 in the said batch of writ petitions, first being WP 11633 of 2024.
9. Consent of the DPSC, Malda and State was duly recorded in the said orders. About 5 months later and after the parliamentary elections were over, an application for review was filed by the DPSC, Malda where it was stated in writing that no consent was in fact given by the CSE and the DPSC as recorded.
10. Confronted with such statement on affidavit, this Court by order dated 25th September, 2024 recalled the said order dated 26.04.2024 where directions for issuing appointment letters to several candidates under the Malda DPSC were

passed. Against the order the writ petitioners therein approached the Hon'ble Supreme Court as stated above and by the said order dated 20.01.2025, the Supreme Court was pleased to observe as follows:-

“4. We have perused the review petition. The only ground on which the review petitions have been allowed is incorporated in paragraph 6 of the impugned order which reads thus:

“6. Be that as it may, since the orders have been passed on consent and such consent has never been given in writing or given and withdrawn, this Court is inclined to recall the order dated 26th April, 2024.”

5. We must record here what is recorded in the order dated 26th April, 2024 is the oral consent of the learned counsel appearing for the respondents herein. All the Constitutional Courts in our country accept the oral statements made on behalf the parties by their respective learned counsels. The order impugned proceeds on a footing that there is no consent given in writing. As the oral consent of the learned counsel appearing for the respondents has been expressly recorded, the order dated 26th April, 2024 could not have been reviewed on the ground that there was no written consent.

6. Therefore, the impugned order is hereby set aside and the order dated 26th April, 2024 is hereby restored. We make it clear that the parties aggrieved by the said order can always challenge the said order in accordance with law.”

11. The candidates, who filed the writ petitions that were allowed by order dated 26.04.2024 (Which stood revived) from the District of Malda, therefore, are now entitled to letters of appointment.
12. As already recorded in the Court's last order, the consent given by the State in respect of the District of Howrah has never been challenged, withdrawn or stated to have not been given. A question that baffles this Court is as to how the State can give consent for recruiting the writ petitioners who are candidates in the recruitment process of the year 2009

for the District of Howrah and resile from such consent insofar as two other districts namely Malda and North 24 Parganas are concerned.

13. Apart from above, approbation and reprobation by the State, this Court must deal the submission of Mr. Maitra by reference to a supplementary affidavit dated 14.01.2025 filed in Court today.
14. It appears that in furtherance of the consent orders dated 25.04.2024 and 30.04.2024 passed in these writ petitions, the DPSC, North 24-Parganas has prepared panel of all the writ petitioners for the purpose of appointment. Mr. Maitra has also placed letter no. CO/961/Admn. dated 29.04.2021 signed by the Chairman and the Secretary (DI of Schools), DPSC, North 24-Parganas, recording that the process of compliance of this Court's order dated 25.04.2024 as corrected on 30.04.2024 has begun and communication was sent to the Commissioner of School Education. The CSE has not responded to the same. The review application is also silent on this.
15. It further appears that the said letter was followed up by another letter being Memo No. CO/997/Admn. dated 20th June, 2024 directly addressed to the CSE by the Chairman, DPSC, North 24-Parganas confirming verification of the credentials of all the writ petitioners. The CSE has not responded to the same. The review application is once again silent on the reply of the CSE against this communication.

16. It is, therefore, abundantly clear before this Court that consent was lawfully and correctly given by the learned counsel, appearing for the CSE and the DPSC on 25.04.2024 and 30.04.2024. Such consent and order passed based thereon, were acted upon and were on the verge of being given effect to and letters of appointment must have been ready for being issued. The CSE has deliberately and willfully suppressed facts in filing the review application. The silence of the CSE against the aforementioned two letters of the DPSC clearly indicates his consent as communicated by their counsel on 26th and 30th April, 2024.
17. Although not a party to the contempt application, the learned counsel for the DPSC, North 24 Parganas has placed reliance on a decision of the Supreme Court in the case of ***Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*** reported in ***(1991) 4 SCC 195***, particularly paragraph 19 thereof. It is stated that a concession given by the Government Pleader in trial Court cannot bind the Government notice in writing. The said case can be distinguished from the facts of the instant case given the subsequent silence of the CSE despite receiving two communications from the DI of Schools, North 24-Parganas and the Chairman, DPSC thereof. Apart from boldly citing the aforesaid decision, the DPSC, North 24-Parganas has not been able to explain the circumstances under which

they acted in furtherance of the said Orders dated 25th and 30th April, 2024 and had addressed two letters hereinabove to the CSE. The conduct of the DPSC, North 24-Parganas to say the least is deplorable and unbecoming of a State authority. The DPSC appears to be changing colours like a chameleon.

18. Mr. Ratul Biswas, learned counsel for one of the writ petitioners has placed reliance upon two decisions of the Supreme Court, namely, ***Om Prakash Vs. Suresh Kumar*** reported in ***(2020) 13 SCC 188*** and in the case of ***Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another*** reported in ***(1997) 9 SCC 736***. He has argued by reference of the aforesaid judgments that the conduct of a party and more so a State authority in making different and contradictory submissions by changing counsel is a deplorable practice and should not be encouraged by Court. Admittedly, in the instant case, the set of counsels who gave and communicated consent on behalf of the CSE have not been engaged either by the DPSC or CSE in the review application or before a Division Bench in MAT 1443 of 2024. At Para 1 & 2 of the **Reddiar decision (supra)** the Supreme Court held as follows:

“1. It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on 24-4-1996. Yet another advocate, Mr S.U.K. Sagar, has now been engaged to

file the present application styled as “application for clarification”, on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No. 2670 of 1996 in CA No. 1867 of 1992, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, had held as under:

“The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to permit such practice. That apart, he has not obtained ‘No Objection Certificate’ from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the ‘No Objection Certificate’ would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the ‘No Objection Certificate’ from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits.

On these grounds, we dismiss the review petition.”

2. Once the petition for review is dismissed, no application for clarification should be filed, much less with the change of the Advocate-on-Record. This practice of changing the advocates and filing repeated petitions should be deprecated with a heavy hand for purity of administration of law and salutary and healthy practice.”

19. The said decision was cited with approval in the **Om**

Prakash Case (supra) at Para 15:-

“15. As aforesaid, in the present case, the counsel who was engaged by the appellant and had appeared for him before the High Court did not, *stricto sensu*, transgress the authority conferred on him by the appellant. Notably, the appellant filed review petition before the High Court by engaging another advocate for reasons best known to him. This Court has deprecated the conduct of such petitioners and has opined that such review petitions should not be encouraged and need to be dismissed, as expounded in *T.N. Electricity Board v. N. Raju Reddiar* [*T.N. Electricity Board v. N. Raju Reddiar*, (1997) 9 SCC 736]. Not only that, even before this Court, the appellant, advisedly, showed willingness to explore possibility of settlement as is evident from different orders recorded above. It is obvious that the delivery of possession of the suit premises, then in possession of the respondent, was expedited and made over to the appellant only after intervention of this Court, which indulgence was shown because the appellant had expressed inclination to spare portion of premises for the respondent. Only after this Court intervened, the appellant could take the construction of the proposed building forward and completed it on 19-6-2018. In terms of the order dated 14-11-2017 [*Om Prakash v. Suresh Kumar*, 2017 SCC OnLine SC 1957] of this Court, it was made absolutely clear that the appellant will not put the newly constructed premises to use without seeking prior permission of this Court. That permission is yet to be given to the appellant.”

20. The present counsel appearing for the CSE in support of the review application cannot possibly know on what basis consent was given by their predecessor counsel who are not available before this Court. Mr. Biswas indicates that not only was consent given by the learned counsel on behalf of the CSE on 25.04.2024 and 30.04.2024 but the said counsel for the CSE excused himself from the Court room to talk to the CSE over the phone and came back into the Court room after such communication confirming consent on behalf of the CSE.
21. Even assuming for the sake of argument that a consent wrongly given can be withdrawn, the same must be done

within reasonable time. In the Malda case the Review Application, resiling from the consent was filed after 5 months.

22. In the instant case consent is sought to be resiled from after 8 months. The CSE has not come within reasonable time to resile from his consent. On the contrary the CSE has given tacit approval to the consent and the DPSC has acted upon the same.
23. This Court has enquired of the CSE who personally present in Court as to what steps have taken by him against the set of learned counsel who had communicated consent on his behalf on 25.04.2024 and 30.04.2024. No answer has come forward from either the CSE himself or the learned senior counsel appearing on his behalf.
24. In the facts and circumstances above, and particularly in view of the observations of the Hon'ble Supreme Court in the Rimpia Saha & Ors. Order (supra), this Court is of the view that the application seeking review of this Court's order dated 25.04.2024 and 30.04.2024 to the extent that it states that no consent was given on behalf of the CSE, shall stand dismissed.
25. Let a rule be issued on the alleged contemnors. Since the alleged contemnors are present in Court, formal drawing up and service of rule is dispensed with. The alleged contemnors shall answer the rule as to why they should not be committed to prison or otherwise suitably dealt with for

wilful and deliberate violation of this Court's order dated 25.04.2024 and 30.04.2024 on the adjourned date.

26. List the contempt applications on 14.02.2025.

(Rajasekhar Mantha, J.)