Shri Animesh Dey, S/O. Manoranjan Dey, & Ors. Vs The State of Tripura, represented by the Secretary cum Commissioner, Department of Higher Education, & Ors.

Court: TRIPURA HIGH COURT

Date of Decision: Feb. 20, 2017

Acts Referred: Constitution of India, Article 226 - Power of High Courts to Issue certain writs
Code of Civil Procedure, 1908, Section 114, Order 47Rule 1 - Review

Hon'ble Judges: T. Vaiphei, S. C.Das

Bench: Division Bench

Advocate: D. Bhattacharjee, S. Das, A. Das, S.Chakraborty, A.K.Pal, P.Dutta, T.Deb Barma, B.Banerjee

Final Decision: Dismissed

Judgement

1. The 10 review petitions, mentioned above, presented under Article 226 of the Constitution of India, the petitioners sought review/recall of the

common Judgment and order dated 26.02.2016 passed by the Division Bench of this Court in W.P.(C) No.172 of 2015, W.P.(C) No.419 of

2015, W.P.(C) No.420 of 2015, W.P.(C) No.421 of 2015, W.P.(C) No.422 of 2015, W.P.(C) No.424 of 2015.

2. Identical and common question raised in all the review petitions and hence those were taken up together at the motion stage itself and this

common judgment/order is passed which shall govern all the review petitions.

3. We have heard learned counsel, Mr. D. Bhattacharjee for the petitioners and learned counsel, Mr. B. Banerjee and Mr. T. Deb Barma for the

respondents.

4. All these review petitions were filed seeking the following reliefs :

[A] Review/recall the judgment and order dated 26.02.2016 passed in W.P.(C) 172 of 2015, W.P.(C) 419 of 2015, W.P.(C) 420

of 2015, W.P.(C) 422 of 2015, W.P.(C) 424 of 2015;

[B] Issue writ in the nature of certiorari for setting aside/quash the Advertisement Notification No.-F.11(36-29)-Rectt/TPSC/2014

(Vol-II) dated 23.07.2016;

[C] Issue writ of mandamus for directing the Respondents and each of them not to appoint any one pursuant to the Advertisement

Notification No.F.11(36-29)-Rectt/TPSC/2014(Vol-II) dated 23.07.2016.

5. A bare reading of the reliefs sought in the review petitions show that the petitioners prayed for review/recall of the judgment and order dated

26.02.2016 and further prayed for setting aside and/or quashing an advertisement dated 23.07.2016 made by respondent No.3. It is, therefore,

evident that by filing the review petitions the petitioners sought alteration and/or setting aside of judgment and order dated 26.02.2016 and further

sought some new relief in respect of an advertisement dated 23.07.2016, which were issued subsequent to the judgment in the writ petitions.

6. Mr. Bhattacharjee, learned counsel appearing for the petitioners submitted that the observation/direction made by this Court in para 61 and 62

of the judgment dated 26.02.2016 is contrary to the UGC Regulation and, therefore, the ultimate reliefs granted by this Court in para 87 of the

judgment cannot sustain and is liable to be recalled. According to Mr. Bhattacharjee, as per the UGC Regulation API score was not required for

the selection of Assistant professor and so, the direction was contrary to the said Regulation and hence, this Court in exercise of its inherent

jurisdiction under Article 226 of the Constitution shall interfere in the judgment dated 26.02.2016 and recall the judgment as otherwise there will be

miscarriage of justice and the petitioners will suffer irreparable loss. According to Mr. Bhattacharjee, the petitioners of review petition Nos.5 of

2017 and 9 of 2017 were respondent Nos.8 and 6 respectively in W.P.(C) No.421 of 2015, but the other review petitioners were not made

parties in the earlier writ petitions, but they were aggrieved by the judgment since their interest were affected. They were successful in the

interview, which has been quashed by judgment dated 26.02.2016 and so, they can maintain the review petition.

7. Learned counsel, Mr. B. Banerjee, submitted that the petitioners sought review/recall of common judgment dated 26.02.2016, but the

petitioners of those writ petitions, except the petitioner of W.P.(C) No.172 of 2015, have not been made parties in the review petitions and so, the

petitions are not maintainable and liable to be rejected at the threshold.

8. The power of review which is exercised by this Court under Article 226 of the Constitution, flows from Section 114 read with Order 47, Rule 1

of CPC. For ready reference, we may quote here the provisions of Section 114 of CPC as well as Order 47, Rule 1 of CPC which read as

follows:-

114. Review-Subject as aforesaid, any person considering himself aggrieved,--

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the

decree or made the order, and the Court may make such order thereon as it thinks fit.

Order XLVII, Rule-1.Application for review of judgment-(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his

knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake

or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or

order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A Party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an

appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being

respondent, he can present to the Appellate Court the case on which he applies for the review.

9. It is an admitted position that except the petitioners of review petition Nos.5 of 2017 and 9 of 2017 other petitioners were not parties in the writ

cases. It is submitted by Mr. Bhattacharjee, learned counsel, that all the petitioners preferred a Special Leave Petition before the Apex Court since

they found themselves aggrieved by the judgment and order dated 26.02.2016 and that Special Leave Petition was withdrawn and consequently

the present review petitions are filed. A copy of that order dated 05.09.2016 passed by the Apex Court in SLP(CC) No.15782-15783/2016 has

been annexed as Annexure R/7 and the order passed by the Apex Court reads as follows :

O R D E R

If on the issue of natural justice the petitioners feel that the matter decided by the High Court required notice to them, they may

approach the High Court for appropriate relief.

In view of the same, counsel prays to withdraw the petition. Prayer is allowed.

Permission to file SLP as well as special leave petitions are dismissed as withdrawn.

10. As already stated hereinbefore, except the petitioners of review petition Nos.5 of 2017 and 9 of 2017 other petitioners were not parties in the

earlier writ petitions. However, they felt that they were aggrieved by the judgment dated 26.02.2016. They filed the Special Leave Petition but had

withdrawn the same. The reliefs now sought in the present set of review petitions are almost in the form of an appeal to review/recall the earlier

judgment, which is not permissible in law.

11. It is an admitted position that a similar review petition was rejected by this Court in the case of Folguni Laskar & ors. V. State of Tripura &

ors., reported in (2016) 2 TLR 251 and in that judgment this Court in para 6 observed :

....

In our considered opinion the word ""any person"" cannot be read isolatedly. It should be read together with other contents of the

provision contained in Section 114 and Order 47 of C.P.C. which would manifestly reveal that the word ""any person"" occurred

there-under, the provision means, a person who was a party, or one of the parties on either side of the judgment which was sought to

be reviewed and not a third party.

The Gauhati High Court in the case of Lalzakhama Vs. Rotluanga (1996) 1 Civil LJ, 527(Gau): 1995 (III) GLT 105 in Para 3 & 4

observed thus:-

3. I have perused the cases relied on by the counsel for either party but found that none of the cases is an answer to the description

of the case in hand. So, I have searched for appropriate authority and found one in Bharat Singh vs. Sheo Prasad, AIR 1978 Delhi

22, where it was said:

A review application can be filed only by a party to the lis in which the order sought to be reviewed has been passed. It cannot be

preferred by a third party. It could not be contended that the phrase ""any person considering himself aggrieved"" would include any

one who is adversely affected by the impugned order, whether that person is or is not party to the lis in which the impugned order has

been passed. As will be apparent from a reading of the rule any person considering himself aggrieved by a decree or order may apply

for review provided he can establish that he ""from the discovery of new and important matters or evidence which, after the exercise

of due diligence, was not within his knowledge or could not be produced by him at the time when the decision was passed or order

made."" This postulates that the person applying for review has to satisfy two conditions, namely that he is aggrieved by the order and

also that he for the reasons mentioned was not in a position to bring that fact to the notice of the Court earlier which resulted in a

wrong order being passed. If these two conditions are necessary before a review application can be moved, it follows that the review

application has to be made by a person who was a party to the lis decided by the impugned order or decree. This review is based on

the principle that a decree or order adversely affecting a person who is not a party to the lis in which that order or decree is passed is

in law not binding on him. Such a person, therefore, can ignore the order or decree which adversely affects him and so, cannot apply

for a review of that order of decree. He may take such other steps as may be available to him in law to protect his right as and when

the order or decree adversely affecting him is sought to be enforced so as to jeopardize his rights.

4. In my opinion this is the correct position of law. So, the word ""any person"" in Order 41 Rule 1 CPC means a person who was a

party, or one of the party on either side to the judgment which is sought to be reviewed; and not third party like the present

applicants.

12. In the review petition of Folguni Laskar(supra) almost similar and identical questions were raised that the judgment passed by this Court was

contrary to UGC Regulation and that the particular UGC Regulation was not referred to the Court. The point that API score was not meant for

appointment of Assistant professor was also raised in that earlier review petition and that point had been clearly answered by this Court in para 12

of the judgment with following observation:

12. Mr. Biswas, learned counsel for the petitioners tried to justify the review application referring to the UGC regulation which is

annexed as Annexure-2 to the review application. This Court while disposing the writ petitions by judgment dated 26.02.2016 has

taken into consideration all the relevant records and also taken into consideration the relevant judgments passed by the Apex Court

on the issues involved and after detailed discussions the directions were issued in Para 87 of the judgment. The directions contained in

sub-Para (vi), (vii) and (viii) flows from the discussions made in the judgment and not isolated one.

13. The Court sitting in review jurisdiction does not have the competence to hear a matter de novo since that would amount to committing a

jurisdictional error. A review of an order is permissible upon discovery of a new and important matter of evidence which after the exercise of due

diligent was not in the knowledge of the applicant or could not be produced by him at the time when the order was passed or on account of some

mistake or error apparent on the face of the record, or for any other sufficient reason.

The fact that a provision of law was not brought to the notice of the Court is no ground for review. The decision taken by the Court was erroneous

on merit is also not a ground for review. In a review petition the petitioners have no right to seek the relief of setting aside and/or quashing of a

subsequent advertisement made by the respondents dated 23.07.2016.

14. No doubt a writ Court has plenary jurisdiction to prevent miscarriage of justice and to correct grave and culpable errors, but there are limits on

the exercise of such power of review. While exercising the power of review the writ Court is also to be guided by the principles laid down in the

provisions of Section 114 and Order XVII of CPC. Sitting in review this Court has no plenary jurisdiction to re-write the judgment and/or alter the

original judgment.

15. A review petition cannot be entertained in disguise of an appeal, whereby a judgment is re-heard and corrected. The scope of review is very

restricted. A judgment can be reviewed only if the applicant can establish that (i) discovery of the new and important evidence which could not be

produced at the time of hearing, (ii) error apparent on the face of the record, (iii) for any other sufficient reason.

The Supreme Court in the case of Meera Bhanja Vs. Nirmala Kumari Choudhury, reported in (1995) 1 SCC 170 has observed that the review

proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule-1 CPC. The review petition

has to be entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent on the face of the

record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on

points where there may conceivably be two options. The limitation of powers of Court under Order 47, Rule-1 of CPC is similar to the jurisdiction

available to the High Court while seeking review of the orders under Article 226 of the Constitution.

16. In the case of Haridas Das Vs. Usha Rani Banik, reported in (2006) 4 SCC 78, the Supreme Court in Para 13 of the judgment observed

thus:-

13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the

ambit of interference expected of the Court since it merely states that it ""may make such order thereon as it thinks fit."" The parameters

are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing ""on account of some

mistake or error apparent on the face of the records or for any other sufficient reason"". The former part of the rule deals with a

situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not

possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could

perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict.

This is amply evident from the explanation to Rule 1 of the Order 47 which states that the fact that the decision on a question of law

on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any

other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has

adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. This

Court in M/s. Thungabhadra Industries Ltd. v. Govt. of A.P.[AIR 1964 1372] held as follows:

[T]here is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a

decision which could be characterized as vitiated by ""error apparent"". A review is by no means an appeal in disguise whereby an

erroneous decision is reheard and corrected, but lies only for patent error. ...where without any elaborate argument one could point

to the error and say here is a substantial point of law which stare one in the face, and there could reasonably be no two opinions

entertained about it, a clear case of error apparent on the face of the record would be made out.

17. In the case of Parison Devi & Ors. Vs. Sumitri Devi & Ors., reported in (1997) 8 SCC 715, the Supreme Court in Paragraphs 9 and 10

observed thus:-

9. Under Order 47 Rule 1 CPC 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 review under Order 47 Rule 1 CPC. In exercise of the

jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be ""reheard and corrected"". A review

petition, it must be remembered has a limited purpose and cannot be allowed to be ""an appeal in disguise.

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the Court

under Order 47 Rule 1 CPC. The observation of Sharma, J. that ""accordingly"", the order in question is reviewed and it is held that

the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and

prohibitory injunctions were provided"" and as such the case was covered by Article 182 and not Article 181 cannot be said to fall

within the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the

face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review

jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous

decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was

a mistake or an error apparent on the face of the record which not of such a nature, ""Which had to be detected by a long drawn

process of reasons"" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases

cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts

and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through

appropriate proceedings to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a ""review"" of the

order of Gupta, J. on the grounds detailed in the review petition. In this view of the matter, we are of the opinion that the impugned

order of Sharma, J. cannot be sustained and we accordingly accept this appeal and set aside the impugned order dated 6.3.1997.

18. In the case of State of West Bengal & Ors. Vs. Kamal Sengupta & Anr., reported in (2008) 8 SCC 612, the Supreme Court referring to its

several earlier decisions has culled out the crux of entertaining a review petition in Para 35 of the judgment which reads as follows:-

35.The principles which can be culled out from the above noted judgments are :

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil

Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression ""any other sufficient reason"" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified

grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error

apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or

larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was

available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring

the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to

show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be

produced before the Court/Tribunal earlier.

19. We may also gainfully refer here Para 10 & 11 of the judgment of the Apex Court in the case of Kamalesh Verma Vs. Mayawati & Ors.,

reported 2013 AIR SCW 4944 which reads thus:-

10. Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order,

undermines its soundness or results in miscarriage of justice. This Court, in Col. Avtar Singh Sekhon v. Union of India & Ors.

1980(Supp) SCC 562: (AIR 1980 SC 2041) held as under:

12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been

hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order,

undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sheikh Habib (AIR 1975 SC 1500) this

Court observed:

A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like

grave error has crept in earlier by judicial fallibility... The present state is not a virgin ground but review of an earlier order which has

the normal feature of finality.

11. 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. A review is by no means an appeal in disguise whereby an

erroneous decision is re-heard and corrected, but lies only for patent error. This Court, in Parison Devi & Ors. v. Sumitri Devi &

Ors.(1997) 8 SCC 715, held as under:

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1, CPC. In the

Thungabhadra Industries Ltd. v. Govt. of A.P. (AIR 1964 SC 1372) this Court opined:

What, however, we are now concerned with is whether the statement in the order of September, 1959 that the case did not involve

any substantial question of law is an ''error apparent on the face of the record''. The fact that on the earlier occasion the Court held on

an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be

erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ''error apparent on the face of the record'',

for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a

decision which could be"" characterized as vitiated by ''error apparent''. A review is by no means an appeal in disguise whereby an

erroneous decision is reheard and corrected, but lies only for patent error''.

(emphasis ours).

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury (AIR 1995 SC 455) while quoting with approval a passage from Aribam

Tuleshwar Sharma v. Aribam Pishak Sharma (AIR 1979 SC 1047) this Court once again held that review proceedings are not by

way of an appeal and have to be strictly confined to the scope and ambit of order 47, Rule 1, CPC.

9. Under Order 47, Rule 1, CPC 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 under Order 47, Rule 1, CPC. In exercise of

the jurisdiction under Order 47, Rule 1, CPC it is not permissible for an erroneous decision to be ""reheard and corrected"". A review

petition, it must be remembered has a limited purpose and cannot be allowed to be ""an appeal in disguise"".

20. In view of the settled position of law, we are not at all inclined to even issue notice to the respondents arrayed in the review petitions and the

review petitions are accordingly dismissed at the threshold. No costs.