
(2000) 02 GAU CK 0018

Gauhati High Court

Case No: Review App. No. 60 of 1998 in Civil Rule No. 1707 of 1996

State of Assam

APPELLANT

Vs

Chandan Konwar and Others

RESPONDENT

Date of Decision: Feb. 3, 2000

Citation: (2000) 2 GLT 415

Hon'ble Judges: J.N. Sharma, J

Bench: Single Bench

Advocate: C. Choudhury, G.A, for the Appellant; A.K. Bhattacharyya, K. Agarwal, N.N. Tamuli, E. Kataki, A. Kalita, A. Bhattacharyya, M. Singh and G. Singh, for the Respondent

Final Decision: Allowed

Judgement

J.N. Sarma, J.

This application has been filed to review the earlier judgment and order dated 3.4.96 passed by this Court in Civil Rule No. 1707/1996. The prayer for review is made on the ground that this order was obtained from this Court by playing fraud and misrepresenting the facts before this Court. The Petitioners claimed that they were the selected candidates. But it is pointed out by the Senior Govt. Advocate appearing for the State of Assam that this statement is absolutely incorrect and a regular enquiry was made and on enquiry it was found that photocopy of the Select List which was produced along with this case, the names were subsequently entered by manipulation. Mr. C. Choudhury, Senior Govt. Advocate submitted that he has not received the copy of original select list in the office at the time of filing the application. Now he has obtained a copy of the select list only from the other Civil Rule which was filed on the basis of the same Select List. He produces before me a photocopy of the Select List in the other Civil Rule wherein the names of the three Petitioners are not available.

2. The law on this point is clear as decided by the Apex Court in [S.P. Chengalvaraya Naidu \(dead\) by L.Rs. Vs. Jagannath \(dead\) by L.Rs. and others](#), where the Apex Court pointed out that judgment and decree obtained by fraud is to be treated as nullity

and can be questioned even in collateral proceedings. The Apex Court further pointed out that the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. A person, whose case is based on falsehood, has no right to approach the Court. A judgment or decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law. Such a judgment and decree by the first Court or by the highest Court has to be treated as a nullity by every Court whether superior or inferior, (ii) [The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others](#), where the Supreme Court pointed out that in case of malpractice the question of adhering to the principle of natural justice does not arise. The authority can take action on the basis of summary enquiry if there are sufficient materials to come to the finding that malpractice was resorted by the person. (iii) [Union Territory of Chandigarh Vs. Dilbagh Singh and others](#), That was a case where appointment was obtained on the basis of select list which was prepared in unfair and unjudicious manner. That Select List was cancelled by the authority. The question which arose before the Apex Court was that whether the selected persons are entitled to an opportunity of hearing before cancellation as even though they have a legitimate expectation. But the Supreme Court pointed out that such a selected person does not have an indefeasible right to be appointed in absence of any rule to that effect. The Supreme Court pointed out that cancellation in such situation must be non-arbitrary and bonafide. Once the administration comes to a finding that the Select List is a dubious, the authority can always cancel it. (iv) [Pramod Lahudas Meshram Vs. State of Maharashtra and Others](#), In this case, a person was appointed as Probationer, but later on it was found that the recommendation which was made for the appointment of the person was not a proper one and the service of the person was terminated without affording opportunity to the person. In this case the Supreme Court pointed out that in such a situation, the termination is not illegal. (v) [Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh](#), That is with regard to the power of review. The Supreme Court pointed out that an order under Article 226 can be reviewed by the Court.

3. In this case I find that the earlier order dated 3.4.96 was obtained from this Court by playing fraud and misrepresenting the facts. Accordingly, this Review application is allowed and the earlier order dated 3.4.96 passed in Civil Rule No. 1707/96 shall stand set aside and quashed. The Petitioners in C.R. No. 1707/96 earlier appointed on the basis of the order dated 3.4.96 passed by this Court shall be thrown out from service. It is submitted that these persons have already been terminated from service by the authority. The authority may also take appropriate action as against these persons if so advised. In the facts of this case I am inclined to initiate action against these Petitioners, but I have refrained from doing so. Heard Mr. A.K. Bhattacharyya, learned Sr. Advocate for the Respondents, Mr. M. Singh, Advocate

for the Respondents and Mr. C. Choudhury, learned Sr. Govt. Advocate for the Review Petitioner.