

**(2006) 04 CAL CK 0023**

**Calcutta High Court**

**Case No:** G.A. No"s. 3547 and 3720 of 2005 and A.P.O.T. No"s. 37 and 658 of 2003

B.G. Sampat

APPELLANT

Vs

Indian Express Newspapers  
(Bombay) Pvt. Ltd.

RESPONDENT

---

**Date of Decision:** April 4, 2006

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, 114
- Industrial Disputes Act, 1947 - Section 15(2)

**Citation:** (2006) 3 CHN 303 : (2006) 111 FLR 738 : (2006) 3 LLJ 1021

**Hon'ble Judges:** V.S. Sirpurkar, C.J; Soumitra Sen, J

**Bench:** Division Bench

**Advocate:** B.G. Sampat, for the Appellant; Sk. Ali Mohammad and Subrata Mukherjee, Soumen Sen, Pooja Das Chowdhury, Vineet Tibrewal and Dilip Kumar Kadel, for the Respondent

**Final Decision:** Dismissed

---

**Judgement**

Soumitra Sen, J.

This is an application for review of a judgment dated 23rd September, 2004 along with an application for condonation of delay.

2. The application for review has been taken out on 22nd November, 2005. Therefore, there is a delay of about one year in preferring the above application.

3. As an explanation for the reasons of delay the petitioner has stated that delay has occurred due to financial constraints and due to ill-health. As the grounds made out in the application for condonation of delay was cryptic and without any material particulars the petitioner was given liberty to file a supplementary affidavit. Pursuant thereto a supplementary affidavit has been filed. Unfortunately, in the said supplementary affidavit also no cogent reasons have been given with regard to the delay. The petitioner has also stated that the lawyers to whom he had gone to take

advice had opined that the petitioner should prefer a special leave petition. Though a review application was another option, but no favourable result would be expected out of it, since the review application will have to be filed before the same Hon'ble Judges of the Division Bench who had passed the initial order. Since the petitioner was under financial constraints no SLP was preferred. But this application for review has been taken up when both the Hon'ble Judges of the Division Bench who had passed the initial order are no longer available in this Court.

4. Though we are of the opinion that the petitioner has not been able to make out any ground whatsoever for condonation of delay, but since the petitioner is appearing in person we also propose to dispose of the review application on merits.

5. The petitioner was an employee of the respondent namely, Indian Express (Bombay) Pvt. Ltd. (hereinafter referred to as "the Indian Express), While he was in Calcutta by an order dated 1st of August, 1998 he was transferred to Bombay office with effect from 5th of August, 1998. The petitioner, however, did not comply with the order of transfer and continued to make representations to the Bombay Office for reconsideration of the order of transfer on, inter alia, the ground of hardship.

6. It is significant to note that the petitioner did not challenge the order of transfer. Subsequent thereto on or about November 1998, the Indian Express came to know that on 4th of August, 1998, the petitioner along with other persons were arrested by the Hare Street Police Station on charge of gambling on the street and a case No. RR/668 of 1998 was registered against the petitioner. The concerned Metropolitan Magistrate on the basis of the case registered found the petitioner and others guilty of the offence accused, namely, gambling in public street.

7. By reason of the conviction of the petitioner in the said case a show-cause notice dated 22nd November, 1998 was served upon him. The petitioner replied to the said show-cause notice, which was found to be unsatisfactory, and, accordingly, a charge sheet was issued on behalf of the Indian Express to the petitioner.

8. This said chargesheet consists of two charges--(1) Failure on the part of the petitioner to comply with the order of transfer; (2) The petitioner's conviction in the criminal case filed against him for gambling in a public street.

9. It is an admitted position that the petitioner did not participate in the departmental proceeding held at Bombay. In spite of knowing the fact that the Indian Express was proposing to hold the enquiry at Bombay, the petitioner insisted that such enquiry should be held at Calcutta. As the petitioner did not participate in the said domestic enquiry the departmental proceeding was concluded in the absence of the petitioner. The Enquiry Officer on the basis of the materials available before him held that the charges against the petitioner were proved.

10. The disciplinary authority concurred with the findings of the Enquiry Officer and in accordance with the standing order proposed termination of the service of the

petitioner. The petitioner thereafter was asked to show-cause as to why the proposed punishment would not be imposed upon him. The petitioner replied to the said show-cause notice, but, however, the disciplinary authority found his reply to be unsatisfactory and terminated the service of the petitioner by an order dated 9th November, 1990.

11. The petitioner thereafter, upon receipt of the order of termination, sought to raise an industrial dispute. The conciliation proceeding initiated on the basis of the dispute raised by the petitioner failed and ultimately a reference was made by the Labour Court, Government of West Bengal, by its order dated 30th January, 1992 for adjudication of two issues namely, (1) Whether the dismissal of the petitioner was justified, (2) To what relief, if any.

12. During the pendency of the industrial dispute the petitioner also filed an application for interim relief u/s 15(2)(b) of the Industrial Disputes Act, 1947.

13. The said application for interim relief was contested by the Indian Express by filing an objection. The learned Tribunal by an order dated 13th of August, 1995 rejected the said application and also held that it prima facie appeared that the State of West Bengal was not the appropriate Government to make the reference.

14. The said decision of the learned Tribunal was challenged by the petitioner by filing a writ application being W.P. No. 116 of 1998 wherein it was, inter alia, contended that in deciding the application for interim relief u/s 15(2)(b) of the said Act the learned Tribunal does not have any discretion in not granting the interim relief and that the learned Tribunal had exceeded his authority by deciding the question of territorial jurisdiction in the application filed for interim relief.

15. The said writ application was disposed of by a learned Single Judge of this Court by the judgment and order dated 18th of December, 1998, whereby and where under the finding of the learned Tribunal was set aside. It was further held in the said judgment of the learned Single Judge that the Government of West Bengal was the appropriate Government for the purpose of making a reference. The question with regard to this scope and ambit of the provision of Section 15(2)(b) of the said Act. was, however, referred to a Larger Bench in view of conflicting decisions on the said issue.

16. Against the said judgment of the learned Single Judge the Indian Express preferred an appeal. The petitioner herein also filed a cross-objection. Both the appeals of the cross-objection were taken up for disposal.

17. A Division Bench by an order dated 15th of September, 2000 was pleased to observe that since the scope and ambit of Section 15(2)(b) of the said Act has already been conclusively decided by a Full Bench decision in a judgment reported in 2000 (1) CHN 1, the issue with regard to the jurisdiction of the State Government to make a reference is required to be considered first as a preliminary issue and in the event,

such issue is decided in favour of the petitioner, then the question with regard to the grant of interim relief in favour of the petitioner u/s 15(2)(b) should be decided afresh in the light of the Full Bench decision as mentioned above.

18. On the basis of the direction given by the Division Bench, the learned Tribunal took up the question of the jurisdiction of the State Government to make a reference as a preliminary issue. By an order dated 17th of November, 2000 the learned Tribunal reversed its earlier finding that the State Government was not the appropriate authority to make a reference, inter alia, on the ground that situs of employment is one of the factors to determine jurisdiction but not the only factor. The Tribunal also went on to hold that the place where the order of termination of discharge as a penal measure is served is a factor to be considered for determining as to whether the State of West Bengal would be the appropriate authority to make an order of reference. It was held by the Tribunal that since the order of dismissal was served upon the petitioner at Calcutta, the State of West Bengal would, indeed, have jurisdiction and would be considered the appropriate authority for the purpose of passing an order of reference.

19. The Indian Express challenged the decision of the Tribunal by filing a writ application being W.P. No. 222 (W) of 2001. The said writ application was dismissed by a learned Single Judge observing that the question of jurisdiction has already duly considered on an earlier occasion by a learned Single Judge in the judgment dated 18th of December, 1998, which was the subject-matter of challenge before the Division Bench as mentioned hereinabove and followed the same analogy. The learned Single Judge was pleased to observe that since one of the charges against the petitioner is with regard to his failure to join the transfer post pursuant to the order of transfer which order was served" upon the petitioner in Calcutta, the State of West Bengal had the jurisdiction to make an order of reference. The writ application filed by the Indian Express was, accordingly, dismissed.

20. The said decision of the learned Single Judge was under challenge before the Division Bench. The Division Bench by its judgment and order dated 23rd of September, 2004, which is sought to be reviewed before us have examined the matter in details both in law and in fact and have come to a categorical finding that the State of Maharashtra is the appropriate Government and not the State of West Bengal. The appeal filed by the Indian Express was allowed and the award of the learned Tribunal and the judgment and order of the learned Single Judge under appeal was also set aside. Consequently, the writ application filed by the Indian Express was also allowed.

21. We have carefully considered-the said judgment, which is sought to be reviewed. From the said judgment, it appears that the Division Bench has considered the matter from all possible angles and thereafter has come to the conclusive finding as above. Not only in law but, in fact, the Division Bench has come to the finding that not only with regard to control but also with regard to situs of employment as far as

the petitioner's service is concerned, the Government of Maharashtra would be the appropriate authority to make an order of reference.

22. It has been held in the decision reported in A.I.R 2000 SC 1650 Lily Thomas v. Union of India that the power of review is not inherent in Court, it is by reason of the powers conferred under the statute. Section 114 read with Order 47 Rule 1 lays down the provision with regard to the powers of the Court to review an order. For the sake of convenience Section 114 and Order 47 Rule 1 are set out as under:

Section 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.

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 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,

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.

23. From the aforesaid, it is, therefore, clear that a person considering himself aggrieved may apply for review to the Court which passed the decree or order when he discovers new and important matter of evidence which in spite of exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the said decree or order was passed or by reason of some mistake or error apparent on the face of the record or for any other sufficient reason.

24. In the instant case, the petitioner has not been able to show as to which evidence came to light after the judgment was passed. It does not appear that there is any error apparent on the face of the record. The expression "for any other

sufficient reason" has been duly explained in the judgment reported in AIR 1922 Privy Council 112 AIR 1934 213 (Privy Council) Bisheshwar Pratap Sahi and Anr. v. Parath Nath and Anr.

25. In the aforesaid decisions it has been held that the proper construction of the words "any other sufficient reason" would mean a reason sufficient on grounds at least analogous to those specified immediately previously. It is now well-settled that a Court deciding an application for review does not reappraise evidence and finding of fact and decision on law unless the parameters of Section 114 read with Order 47 Rule 1 are satisfied. An application for review is not an appeal in disguise.

26. Furthermore, in the decision of Lily Thomas (supra) the Supreme Court has held that the rule of law following the practice of the binding nature of the Larger Benches and not taking different views by Larger Benches of co-ordinate jurisdiction of equal strength has to be followed and practised.

27. From the grounds as made out in the application for review, we do not find that any fact or law had not been brought before the Division Bench which had passed the order which could have had any material difference in the decision making process of the Division Bench. There is no error apparent on the face of the record, which warrants an interference of the judgment, which is sought to be reviewed.

28. On behalf of the petitioner it was submitted that without granting any interim relief in the application for interim relief filed u/s 15(2)(b), a great injustice has been caused to him. But, we are of the opinion that since the preliminary issue with regard to the jurisdiction of the State of West Bengal to make an order of reference has been decided against the petitioner the question of passing any interim order in the application for interim relief in favour of the petitioner cannot and does not arise.

29. The earlier order of the Division Bench as referred to hereinbefore had clearly stated that consideration with regard to grant of interim relief in favour of the petitioner can only arise, in the event, the preliminary issue with regard to the jurisdiction is decided in favour of the petitioner being the workman. Therefore, in our opinion, the Division Bench having decided the question of jurisdiction against the petitioner could not have passed an order for interim relief.

30. For the reasons as aforesaid, we are of the opinion that this application for review is without any merit and the same is, accordingly, dismissed. There will be, however, no order as to costs.

V.S. Sirpurkar, C.J.

I agree.