Himalaya College of Education Vs National Council for Teacher Education and Others

Court: Delhi High Court

Date of Decision: Aug. 7, 2009

Acts Referred: Constitution of India, 1950 â€" Article 226
General Clauses Act, 1897 â€" Section 27

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Sanjay Sharawat, for the Appellant; V.K. Rao, for the Respondent

Judgement

Anil Kumar, J.
This is a petition by the petitioner seeking review of order dated 30th July, 2009 dismissing the writ petition of the

petitioner against the order dated 27th July, 2009 of National Council for Teacher Education whereby the matter was remanded back to the

Northern Regional Committee for issue of revised order stipulating withdrawal of conditional recognition effective from academic session 2009-

2010.

2. The petitioner has sought review on the ground that the order does not deal with all the contentions raised on behalf of the petitioner; a copy of

affidavit dated 23rd June, 2008 was produced by the respondents No. 1 and 2 which is alleged to be neither attested by an Oath Commissioner

or by a Notary, however, the petitioner has been able to trace another copy of the same on 5th August, 2009 from its record and the said affidavit

is in the prescribed formant and is duly notarized. It is contended that the copy of the said affidavit was not within the knowledge of the petitioner

despite due diligence on its part. The review is also sought on the ground that the presumption u/s 27 of the General Clauses Act, 1897 is not

applicable in case of NCTE Act. The petitioner/applicant has also sought review of order dated 30th July, 2009 on the ground that under

Regulations 7, 11 and 12 of the NCTE Regulation, 2005, the petitioner was required to appoint qualified faculty and formally inform the Northern

Regional Committee in this regard and those regulations do not require furnishing of any affidavit as alleged by the respondents. It is also alleged

that after obtaining conditional recognition as per the norms of the University/NCTE, the petitioner was within its right to admit students and start

the course. The alternative plea of the petitioner is the even if petitioner was not entitled to admit students; even then the respondents were

debarred from taking this objection at this stage in view of the doctrine of legitimate expectation and the doctrine of estoppels. The petitioner has

also sought an ex parte order of stay of operation of order dated 27th July, 2009 passed by respondent No. 1 and order dated 9th June, 2009

passed by respondent No. 2 during the pendency of the review petition. I have heard the learned Counsel in detail. It is no more res integra that

the discovery of new evidence or material by itself is not sufficient to entitle a party for review of a judgment. A review is permissible in certain

circumstances, if it is established that the applicant had acted with due diligence and that the existence of the evidence which has been discovered

later on was not within the knowledge of the party which seeks review of the order. If it is found that the petitioner has not acted with due diligence

then it is not open to the court to admit evidence on the ground of sufficient cause. The party seeking review should prove strictly the diligence he

claims to have exercised.

3. A copy of the affidavit dated 23rd June, 2008 received by the counsel for the respondent was produced during the hearing. This is not an

affidavit of the respondents but an affidavit of the petitioner. If the plea of the petitioner is that the compliance affidavit was sent then, the petitioner

should have located the same and produced the same. The plea that the copy of the affidavit was found on 5th August, 2009 and could not be

obtained prior to 5th August, 2009 despite due diligence is a bald allegation and cannot be accepted in the present facts and circumstances. The

petitioner is agitating his case about the alleged compliance of the conditions imposed while granting conditional recognition before the Northern

Regional Committee and the Appellate Authority and contending that the affidavits were filed. Rather copies of two more affidavits have been

produced which have been found neither notarized nor attested by the Oath Commissioner. If that be so, the petitioner should have made effort to

locate the said alleged affidavit which is alleged to have been found on 5th August, 2009 and on the basis of which the review is sought.

Apparently, it cannot be held that the said document could not be located despite due diligence on part of the petitioner. The copy of the said

affidavit was not produced before the appellate authority whose order was impugned before this Court and had not been produced even along

with the writ petition. In any case, withdrawing conditional recognition is not based solely on account of non filing of the affidavit in compliance but

is also based on other factors including admitting the students despite unconditional recognition not granted to the petitioner. In the circumstances,

the order passed by this Court would not be materially different even if the said document is considered. Consequently, on the basis of the copy of

alleged affidavit which is alleged to have been traced by the petitioner on 5th August, 2009, the order dated 30th July, 2009 is not liable to be

reviewed.

4. The petitioner has also sought review of the order on the ground that some of the grounds/points raised in the petition have not been dealt with.

The learned Counsel appearing on behalf of the petitioner had raised certain grounds and pleas during the arguments which had been considered.

The grounds which were not raised and argued were not to dealt with specifically. The petitioner now cannot contend that the other grounds were

raised and argued by the counsel for the petitioner. The power of review can be exercised on account of some mistake or error apparent on the

face of the record or for any other sufficient reason. A review cannot be sought merely for fresh hearing or arguments or correction of an

erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face

without any elaborate argument being needed for establishing it. The Supreme Court in Babboo alias Kalyandas and Others Vs. State of Madhya

Pradesh, had held as under:

It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every

Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits

to be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which,

after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time

when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised

on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit.

5. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order XLVII Rule 1 of Code of Civil Procedure.

An error which is not evident and has to be detected by a process of reasoning can hardly be stated to be an error apparent on the face of the

record justifying the court to exercise its power of review. In exercised of review jurisdiction, it is not permissible for erroneous decision to be re-

heard and correct. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise. Attempt of the petitioner in filing the

present application is only to re-agitate the issues raised in the petition. There is no error much less an error apparent on the face of the record has

been pointed out. The Supreme Court in case of Lily Thomas, Vs. Union of India and Others, had cautioned that in exercise of power of review

the court is not to substitute its view. A review cannot be sought for fresh hearing or arguments for correction of an erroneous view taken earlier.

6. In the circumstances, there are no grounds for review of order dated 30th July, 2009. The application is mis-conceived. Therefore, it is

dismissed. The application for stay of orders dated 27th July, 2009 passed by respondent No. 1 and the order dated 9th June, 2009 passed by

respondent No. 2 during the pendency of the review petition are therefore, also dismissed.