



GAHC010255622023

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./125/2023

PIYAR ALI SARKAR
S/O NURUL HAQUE, VILL.- DURGAMARI, P.O.-VIDYAPUR, DIST.-
BONGAIGAON, ASSAM- 783380.

VERSUS

NAUSAD ALI AND 4 ORS.
S/O TAIJUDDIN AHMED, VILL.- DURGAMARI, P.O.-VIDYAPUR, DIST.-
BONGIAGAON, ASSAM- 783380.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GHY- 6.

3:THE DISTRICT DEFENCE OFFICER CUM SUPERINTENDENT OF POLICE
BONGAIGAON
ASSAM.

4:THE CIRCLE ORGANIZATIONER OF VILLAGE DEFENCE ORGANIZATION
BONGAIGAON
ASSAM.

5:THE SUB-DIVISIONAL DEFENCE OFFICER CUM OFFICER IN-CHARGE
BONGAIGAON POLICE STATION
P.O. AND P.S.-BONGAIGAON

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : MR S H MAHMUD



BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri BD Das, Sr. Adv.
Shri J. Lotha, Adv.

Advocate for the respondents : Shri MU Mahmud, R-1
Shri R. Dhar, GA-Assam

Date of hearing : **20.04.2024**
Date of Judgment : **26.04.2024**

JUDGMENT & ORDER

The instant petition has been filed for review of the judgment and order dated 12.10.2023 passed in WP(C)/3053/2022. By the aforesaid judgment, the writ petition was allowed and the impugned communication dated 07.04.2022 relating to the formation of Durgamari VDP with the respondent no. 5 as the Secretary was set aside. It is the said respondent no. 5 who has filed the instant application for review.

2. For better appreciation of the issue involved, a brief narration of the facts would be convenient.

3. The opposite party no. 1 herein (Nausad Ali) had filed the aforesaid writ petition challenging the order dated 07.04.2022 constituting the Durgamari VDP with the respondent no. 5 as the Secretary. It was projected that the opposite party was the Secretary in the earlier tenure of 5 years from 2016 to 2022 and was a contender for the said post along with the present applicant. In the general meeting held on 27.02.2022 , it was resolved that though there were



certain allegations against the writ petitioner, the same were found to be false and the meeting had ultimately left the decision to be taken by the OC and IC of the concerned police station and outpost, who were present in the meeting. The said two officers, after deliberation and considering the credibility of the two candidates had selected the writ petitioner as the Secretary of the said VDP and it was projected that the VDP was accordingly constituted with the petitioner as its Secretary. The grievance of the writ petitioner was however with regard to the communication dated 07.04.2022 issued by the Superintendent of Police, Bongaigaon wherein for the Durgamari VDP, the opposite party herein / respondent no. 5 was shown to be the Secretary.

4. It was contended that the majority of the people in the meeting were in support of the writ petitioner and for some extraneous consideration and political influence, the respondent no. 5 was given the appointment. It was also contended that there was no bar for re-appointment of an incumbent as Secretary after completion of the earlier tenure. It was also submitted that even in terms of qualification, the writ petitioner was better qualified having passed the Higher Secondary Examination whereas the respondent no. 5 does not have any formal education.

5. Though the State respondents had contested the writ petition, the respondent no. 5 did not appear. It was submitted on behalf of the State that the tenure of the earlier Committee in which the writ petitioner had served as a Secretary was already over and therefore a change was made. Further, vide communication dated 30.03.2022 the OC had forwarded the name of the respondent no. 5.

6. This Court, after hearing had come to the conclusion that the order dated 07.04.2022 of appointment of the respondent no. 5 as the Secretary of the VDP



did not contain any reasons and was contrary to the resolutions taken in the General Meeting dated 27.02.2022. The impugned communication dated 07.04.2022 was accordingly set aside and the said VDP was directed to be constituted with the writ petitioner as its Secretary.

7. It is the aforesaid order dated 12.10.2023 of this Court which is the subject matter of the review petition.

8. I have heard Shri BD Das, learned Senior Counsel assisted by Shri J. Lotha, learned counsel for the review applicant. Also heard Shri MU Mahmud, learned counsel for the opposite party / writ petitioner. Shri R. Dhar, learned State Counsel has appeared for the official respondents and has also produced the records in original pursuant to the earlier directions of this Court.

9. Shri Das, learned Senior Counsel for the review applicant has submitted that the writ petition was filed by gross suppression of material facts. He submits that the entire premises on which this Court had proceeded was on the projection made on behalf of the writ petitioner that appointment in the post of Secretary is made by a resolution of a General Meeting. He submits that the said projection is entirely erroneous and misleading as there is a set of Rules, namely, the Assam Village Defence Organisation Rules, 1986 which were framed in exercise of the power conferred by Section 18(1) of the Assam Village Defence Organisation Act, 1966. Specific reference has been made to Rule 5 read with Rule 2(iv) thereof. As per Rule 5 which deals with constitution of VDP, the Secretary of the Committee is to be nominated by the District Village Defence Officer from amongst the Primary Committee members. The District Village Defence Officer (DVDO) has been defined in Rule 2(iv) to be the Superintendent of Police of the concerned District.

10. The learned Senior Counsel for the applicant submits that unlike the post of President of a VDP, the resolution in the General Meeting would be of no relevance for the post of Secretary which is to be filled up by nomination by the DVDO i.e. the Superintendent of Police. In accordance with the said prescription of the Rules, the review applicant was duly appointed vide the order dated 07.04.2022.

11. The learned Senior Counsel for the applicant accordingly submits that the order of this Court dated 12.10.2023 was passed without being apprised with the law holding the field of such appointment. It is further submitted that the aforesaid judgment has been passed due to misrepresentation / suppression of material facts whereby there has been an error of law apparent on the face of the records leading to miscarriage of justice. It is accordingly submitted that the present is a fit case for exercise of review and consequently, to dismiss the writ petition.

12. *Per contra*, Shri Mahmud, learned counsel for the writ petitioner has strenuously objected to the review petition. He submits that the order dated 12.10.2023 is a reasoned order which was passed after hearing the parties and therefore, the review is not maintainable as the same cannot be an appeal in disguise. It is also submitted that the review applicant chose not to contest the writ petition in spite of receiving notice and therefore, the present application has not been filed with clean hands.

13. Shri Mahmud, the learned counsel further submits that in the General Meeting held on 27.02.2022, after the recommendation of the writ petitioner as Secretary, the concerned Officer in-Charge and the In-Charge had selected him. Therefore, the impugned order could not have been passed by the Superintendent of Police. The learned counsel has also contended that the

review applicant has no educational qualification and therefore, would not be fit to hold the post in question which is a sensitive post wherein proceedings are to be maintained.

14. In support of his objection, Shri Mahmud, the learned counsel for the writ petitioner has placed reliance upon the following case laws-

- i. (1997) 8 SCC 715 [Parsion Devi and Ors. Vs. Sumitri Devi and Ors.]**
- ii. (2004) 13 SCC 377 [Karnataka Power Coprpn. Ltd. Vs. Alagendran Exports Ltd.]**
- iii. (2008) 8 SCC 92 [State Bank of India and Ors. Vs. S.N. Goyal]**
- iv. (2013) 8 SCC 320 [Kamlesh Verma Vs. Mayawati and Ors.]**
- v. Order dated 02.05.2023 of this Court in Review Petition No.80/2022 [Iqbal Hussain @ Ekbal Hussain Vs. the National Insurance Company Limited and Ors.]**

15. The case of **Parsion Devi** (supra) has been relied upon in support of the contention that in review there cannot be examination of the reason. In the case of **Karnataka Power Coprpn** (supra), it has been laid down that only because of another view is possible, review is not permitted. In the case of **State Bank of India** (supra), the Hon'ble Supreme Court was dealing with the aspect of review by quasi judicial bodies. In the case of **Kamlesh Verma** (supra), the principles governing review have been laid down which was also relied upon by this Court in the case of **Iqbal Hussain** (supra).

16. Shri R. Dhar, learned State Counsel has produced the records in original pursuant to the earlier directions of this Court. The same has been carefully

examined.

17. The principles governing review are well settled. In a recent decision dated 18.08.2022 reported in **(2022) SCC OnLine 1034, (S Madhusudhan Reddy Vs. V Narayana Reddy & Ors.)** a three Judges' Bench of the Hon'ble Supreme Court, after discussing the relevant case laws has reiterated the principles laid down in the case of **Kamlesh Verma** (*supra*) which are as follows:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores

Ltd.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been

negative.”

18. In the instant case, the order dated 12.10.2023 passed by this Court was without even being apprised of the statute holding the field and as per the said statute, the post of Secretary of the VDP is to be filled up by nomination by the DVDO i.e. Superintendent of Police of the district. For ready reference, the relevant portion of the Rules of 1986 is extracted hereinbelow. It may be mentioned that the aforesaid Rules were formulated in exercise of the power conferred by Section 18(1) of the Assam Village Defence Organisation Act, 1966

“2. iv. *“District Village Defence Officer” means the Superintendent of Police of the District concerned.*

5. *Formation of Village Defence Primary Committee :-*

*a. The V. D. Primary Committee shall be formed by the District Village Defence Officer on the recommendation of the thana and Sub – Divisional V. D. Officers with one adult member from each family of the Village or a group of Village. The minimum number of family of a village or a group of villages to constitute a Primary Committee shall be 100 (one hundred) and jurisdiction of such Primary Committee will be coterminous with the conventional boundary of the Village or group of villages , as the case may be. The member of the Primary Committee shall select the President by majority opinion **and the Secretary of the Committee will be nominated by the District Village Defence Officer from amongst the Primary Committee members.** The Thana Officer or his representative shall be the Convenor / Organiser of the*



Committee who shall not be less than Sub- Inspector in rank.”

19. This Court is of the considered view that in the adjudication process of the writ petition, the relevant statute was not even placed for consideration and therefore, the judgment dated 12.10.2023 has been passed by overlooking the said statute. In this regard, Shri Mahmud, learned counsel for the writ petitioner has submitted that during the pendency of the writ petition, the aforesaid aspect of the Rules of 1986 was indeed raised. This Court is however of the view that though the said submission may be correct, reference to the Rules was not made at all at the time of final adjudication of the writ petition on 12.10.2023. This Court has also noted that there was nothing in that regard in the pleadings before the Court. Be that as it may, it is an admitted fact that the judgment and order dated 12.10.2023 was passed without taking into consideration the Rules of 1986 holding the field.

20. The decision of this Court in interfering with the appointment / nomination of the review applicant as Secretary of the Durgamari VDP was on the projection made on behalf of the writ petitioner that it was his name which was recommended by the General Meeting. However, as discussed above, the appointment of Secretary is only through a nomination to be made by the DVDO i.e. the Superintendent of Police of the district. The findings of the Court appearing in the judgment dated 12.10.2023 is, on the face of it erroneous and *dehors* the Rules.

21. There is absolutely no dispute with the proposition of law laid down in the cases referred to by Shri Mahmud, the learned counsel for the writ petitioner. However, the principles have to be applied on the facts and circumstances of the case. In the instant case, there is a clear error apparent on the face of it and the decision of this Court is contrary to the Rules of 1986. It is also not a case



where there is a mere disagreement with the earlier view and neither an attempt has been made to examine the reasons. The reliance upon the case of **SBI** (supra) is misconceived as the consideration was exercise of powers of review by quasi judicial bodies without such powers being conferred by law. In the instant case, there is no dispute regarding the conferment of powers of review by this Court *qua* a decision rendered under Article 226 of the Constitution of India.

22. In the interest of justice, this Court has also considered the objection that the review applicant has no educational qualification and therefore, would not be fit to hold the post in question. This Court has however noticed that there is no such statement / pleading. Though the pleadings in paragraph 5 of the writ petition were sought to be relied upon, the same only states that the writ petitioner was more experienced.

23. This Court has also examined the records in original produced by Shri R. Dhar, learned State Counsel. The same clearly reveals that the Superintendent of Police, Bongaigaon who is the District Village Defence Officer had considered the matter in details whereby the names of the review applicant and the writ petitioner were forwarded. After deliberation vide note dated 02.04.2022, it was the name of the review applicant which was nominated by the S.P. who is the competent authority being the DVDO as per Rules of 2(iv) of the Rules of 1986.

24. As regards the objection that the review applicant had chosen not to contest the writ petition in spite of receipt of notice, the said objection has been refuted on behalf of the review applicant by submitting that there was no conclusive evidence of receipt of such notice. Be that as it may, even if it is assumed that the review applicant had chosen not to contest the writ petition that would not preclude this Court in considering the present application, more



so, when a ground has been taken regarding non-consideration of the statute holding the field which goes into the root of the matter.

25. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the applicant has made out a case for review. The judgment and order in question dated 12.10.2023 passed in the connected WP(C)/3053/2022 is apparently *dehors* the Rules of 1986 which was not brought to the notice and accordingly the same stands reviewed. This Court holds that the appointment of the review applicant as Secretary of the Durgamari VDP in the district of Bongaigaon does not suffer from any legal infirmity. Consequently, the writ petition WP(C)/3053/2022 is dismissed.

26. The records in original be returned back to the learned State Counsel.

JUDGE

Comparing Assistant