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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Review Petition 125/2018 in W.P.(C) 5830/2004

STG. CONFERENCE OF PUBLIC ENTERPRISE..... Petitioner

Through: Ms. Meenakshi Arora, Sr.
Advocate with Mr. Inder Jit Singh,
Advocate

versus

GOVT. OF N.C.T. OF DELHI & ORS Respondents

Through: Mr. Salman Khurshid, Sr. Adv.
with Mr. Rajesh Kumar, Ms. Azra
Rehman and Mr. Sanjay Kumar,
Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% **29.01.2020**

1. This order disposes of Review Petition No. 125/2018.
2. Given the limited issue involved, a brief reference to facts would suffice.
3. The Standing Conference of Public Enterprises (SCOPE – the review applicant, as well as the petitioner in the present proceedings) addressed a communication, on 22nd February, 1989, to the Directorate General Resettlement (DGR), Ministry of Defence, stating that it had constructed a multi-storeyed office complex at Lodhi Road, for

accommodating 28 leading public sector undertakings, and was required to provide security services for the said premises. The DGR was, therefore, requested to recommend agencies for the purpose. In response thereto, the DGR, *vide* a communication dated 10th August, 1989, nominated two agencies, from whom the petitioner invited quotations on 28th September, 1989. The quotations were evaluated by a Committee which, *vide* its minutes dated 25th October, 1989, approved the offer of M/s Delhi Guard and Security Services (DGSS). As such, the contract for providing security services at the SCOPE Building was awarded, by the petitioner, to DGSS.

4. In course of time, five writ petitions, one by the New Delhi General Mazdoor Union, and the remaining four by the Delhi Officers and Establishment Employees Union, were filed, before this Court, against the petitioner. In the said writ petitions, the Unions contended that, as the present petitioner, i.e. SCOPE, was not registered under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970, and the contractors (including DGSS), were not licensed, under Section 12 of the said Act, the workmen were entitled to be treated as direct employees of SCOPE. While rejecting the said submission, this Court, *vide* judgment dated 30th April, 1991¹, clarified that it was not examining the issue of whether the workmen were entitled to be treated as employees of SCOPE under any other Act, including the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”). The said judgment was carried, in appeal, by the Unions, to the Supreme Court.

¹ New Delhi General Mazdoor Union v. Standing Conference of Public Enterprises, ILR (1992) I Del 358

The appeals, of which Civil Appeal 5497/1995² was treated as the lead case, were disposed of, by the Supreme Court, *vide* a detailed judgment dated 9th May, 1995. In the said judgment, the Supreme Court held that, when an industrial dispute was raised, the industrial adjudicator had to decide whether the contract, with the contractor, was sham or genuine. Jurisdiction, to adjudicate the dispute, it was clarified, would vest, in the industrial adjudicator, only consequent upon a finding that the contract was a sham. In case the contract was found to be genuine, the industrial adjudicator would have to refer the workmen to the appropriate Government for abolition of contract labour under Section 10 of the ID Act and to keep the dispute pending. In view of this enunciation of the law, the Supreme Court held, on facts, that the decision, of this Court, that the workmen did not become direct employees of the respondent enterprises (including SCOPE) merely because there were no registration certificates and licenses with SCOPE, had to be upheld. Thereafter, in para 73 of the report, the Supreme Court observed thus :

“73. The remedy of the workmen is to raise a proper industrial dispute as indicated earlier for appropriate reliefs. If and when such dispute is raised, the Government should make the reference within two months of the receipt of the dispute and the industrial adjudicator should dispose of the same as far as possible within six months thereafter.”

5. The respondent-workmen, accordingly, raised an industrial dispute which was referred, *vide* order dated 20th July, 1995 of the GNCTD to the learned Industrial Tribunal for adjudication. The term of reference read thus :

² Gujarat Electricity Board, Thermal Power Station, Ukai v. Hind Mazdoor Sabha, (1995) 5 SCC 27

"Whether the workmen mentioned in Annexure-A are entitled to absorption / regularisation by the management of S.C.O.P.E and if so, what directions are necessary in this respect?"

6. It was in these circumstances that the Award, dated 2nd December, 2003, came to be passed by the learned Industrial Tribunal. The learned Industrial Tribunal found the contract, with DGSS, to be a sham and, on that basis, held the workmen to be direct employees of SCOPE. Consequent thereupon, the learned Tribunal also went on to direct SCOPE to regularise the services of the said workmen. Aggrieved thereby, SCOPE approached this Court by way of WP(C) 5830/2004, in which the judgment under review has been passed, by me, on 1st February, 2018.

7. SCOPE was represented, during the proceedings, by Mr. Vinay Bhasin, learned Senior Counsel, instructed by Mr. Inder Jit Singh, learned counsel. Mr. Bhasin expressly limited his submissions to the issue of validity of the reference, dated 20th July, 1995, whereupon the learned Industrial Tribunal had assumed jurisdiction over the matter. Mr. Bhasin sought to contend that the State Government, which had made the said reference, was incompetent to do so, and that the reference ought, rather, to have been made by the Central Government. It was repeatedly put, by me, to the Senior Counsel, as to whether he desired to urge any other issue and, on his responding in the negative, under instructions from Mr. Inder Jit Singh, who was briefing him in the matter, the following order was recorded on 27th October, 2017 :

“W.P.(C) 5830/2004

STG. CONFERENCE OF PUBLIC ENTERPRISE

..... Petitioner

Through: Mr.Vinay Bhasin, Sr.
Advocate with Mr. Inder Jit Singh,
Advocate

versus

GOVT. OF N.C.T. OF DELHI & ORS Respondents

Through: Mr.Salman Khurshid, Sr.
Adv. with Mr. Rajesh Kumar, Ms.Azra
Rehman and Mr.Nikhil Kumar, Adv.

ORDER
27.10.2017

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Arguments have been advanced on behalf of the petitioner and respondent by Mr.Vinay Bhasin and Mr.Salman Khurshid, learned senior counsel, respectively.

Mr.Vinay Bhasin, Sr. Adv. for the petitioner limited his submission to the argument the reference made under Section 10 of Industrial Disputes Act in the present case was incompetent, as the appropriate Government to make the said reference was not the State Government but the Central Government. Mr.Salman Khurshid, Sr. Adv. has advanced his arguments by way of rebuttal.

Arguments have been concluded and judgment is reserved.

After conclusion of arguments, both counsel submit, at the Bar, that there may be a possibility of settlement.

Renotify on 10th November, 2017 for the parties to report whether the dispute has been settled out of the Court or not. In case settlement does not take place, judgment would be pronounced, thereafter, on the basis of the arguments advanced today, in the light of the record available before the Court.”

8. In view of the submission, by Mr. Bhasin, that he was limiting his arguments to the issue of competence of the order of reference, whereupon the learned Industrial Tribunal had assumed jurisdiction, the

submissions of Mr. Salman Khurshid, learned Senior Counsel appearing for the respondent workmen were also limited to the said issue. No arguments were advanced, therefore, on merits.

9. *Vide* my judgment under review dated 1st February, 2018, I have rejected the submission, of Mr. Bhasin, that the reference, dated 20th July, 1995 was incompetent, and have upheld the authority of the Central Government to make the said reference. Consequently, the writ petition was dismissed.

10. The present review petition seeks review of the said decision.

11. The averments contained in paras 1 to 5 of the Review Petition are so startling, that they deserve to be reproduced, in *extenso*, thus :

“1. The instant review petition is being preferred by the humble Petitioner to reconsider and review the order/judgement dated 1.2.2018 passed by this Hon'ble Court dismissing the above writ petition of the Petitioner. A true copy of the said judgment is placed below for ready reference and marked as Annexure P-1

2. That it is submitted that Mr. Vinay Bhasin, Ld. Senior Counsel appearing for the petitioner confined his submissions only on the issue of validity of the reference dated 20.7.1995 made by the Govt. of NCT of Delhi. It is humbly submitted that *it was not the instruction of the petitioner, nor of the briefing advocate Mr. Inderjit Singh to confine arguments only on the aspect of appropriate government. Rather the Petitioner as well as the briefing advocate wanted arguments on all aspects.* It is matter of record that the briefing counsel had even filed written arguments on all aspects on 24.3.2017. These were filed after having been approved and vetted by the Senior Counsel, Mr. Vinay Bhasin. In fact, the Petitioner has been all throughout since 1995 contesting the present litigation on several aspects, i.e. on merits.

The petitioner duly took all contentions in pleadings, evidences, arguments, before the Industrial tribunal as well as in the present writ petition. It seems there was some confusion or communication gap or some incorrect understanding due to which *the Senior Counsel on his own basis* made statement for confining the matter to the issue of appropriate government only. That this has been seriously prejudicial for the petitioner/management. The petitioner as a result has been seriously prejudiced, burdened with huge financial liability, leading to grave injustice. The petitioner has a very strong case on merits.

3. That it is submitted that in this connection it is well settled by a catena of judgments that a party should not suffer *on account fault of a counsel*. It is also well settled that if a statement or a concession is prejudicial, the same can be allowed to be resiled from. It has also been held that such errors must be brought on record of the court as soon as possible since the matter is fresh in the mind of the Court.

4. It is submitted that it was duly contested by the petitioner at all the stages since inception of the present case that reference for absorption/regularization could not have been validly made in respect of terminated contract workmen. That the contract with the contractor, M/s. Delhi Guards and Security Services was terminated by the petitioner on 11.5.1991, who in turn terminated the respondents. Thus on the date of reference, i.e, 20.7.1995, none of the workers were on duty. It is well settled that without looking into the termination, regularization/absorption cannot be directed. In this regard, reference be kindly made to Himachal Pradesh Housing Board V/s. Om Pal (1997-III-LLJ-668)(Supreme Court), Kustita Nayak V/s State of Orissa (2004(3)LLJ-130- Orissa High Court, etc. It is respectfully submitted that all these aspects need consideration. It was always the submission of the petitioner that the direction for regularization/absorption of contract labour since 1.1.1991 by the Industrial Tribunal was perverse. It is submitted that these points involve purely legal issues, going to the root of whole issue and *ought to have argued by the Senior Counsel*.

5. This it is a matter of record that the workers have received huge amounts. This aspect too needs consideration. A statement

showing the amounts already received by the respondents since 1991 is once again annexed hereto as ANNEXURE P-2 for the kind perusal of this Hon'ble Court. It is humble submission of the petitioner that since huge funds are involved, therefore also the matter requires re-consideration.”

12. This Court expresses, with no equivocation whatsoever, its displeasure at the averments contained in the afore extracted paragraphs of the Review Petition. In the opinion of this court, these averments border on impropriety, and amount to taking the Court for granted. They question not only the merit, but also the legitimacy of the arguments advanced by the Senior Counsel, whom the petitioner had engaged. On the face of it, these averments are untrue and do not merit even the slightest consideration, *inter alia* for the reason that the instructing counsel Mr. Inder Jit Singh was present in Court, and was instructing the learned Senior Counsel on 27th October, 2017, when the matter was heard. In the circumstances, it is in extremely poor taste for the petitioner, especially as it purports to be an organisation of public sector undertakings, to aver, in the Review Petition, that “it was not the intention of the petitioner, or of the briefing Advocate Mr. Inder Jit Singh to confine arguments”, “the petitioner as well as the briefing Advocate wanted arguments on all aspects”, the statement regarding confining of arguments to the issue of the appropriate Government was made by the “Senior Counsel on his own basis”, and that all points “ought to have been argued by the Senior Counsel”. The Review Petition goes to the extent of attributing “fault” to the learned Senior Counsel who argued the matter.

13. I had pointedly queried, of Mr. Inder Jit Singh, as to how, having been present and instructing learned Senior Counsel during the course of the proceedings on 27th October, 2017, he could possibly be a signatory to an application averring that the learned Senior Counsel, instructed by him, had not argued all points that he desired should be argued. Mr. Inder Jit Singh's response was that the briefing counsel is hardly in a position to prompt the Senior Counsel, who argues as he deems appropriate. The submission, I merely observe, is astonishing and unsettling in equal measure.

14. I may also add, in passing, that Mr. Bhasin is a respected Senior Counsel held in high esteem by this Court, and that, therefore, even ex facie, the plainly irresponsible averment, in the Review Petition, that the Senior Counsel was advancing arguments "on his own", unmindful of instructions, cannot pass muster.

15. The circumstances in which a judgment can be reviewed, as set out in Order XLVII, read with Section 114 of the Code of Civil Procedure, 1908 are equally applicable to petitions seeking review of judgments passed under Article 226 of the Constitution of India.³ These are (i) mistake or error apparent on the face of the record, (ii) discovery of new and important matter or evidence, which, after the exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at any time when the decree was passed or order made, or (iii) any other sufficient reason. It is also trite that the expression "any other sufficient reasons", as employed in Order XLVII

³ Meera Bhanja v. Niramala Kumari Choudhury, (1995) 1 SCC 170; Haridas Das v. Usha Rani Banik (smt) and Ors. (2006) 4 SCC 78

Rule 1 has to be interpreted ejusdem generis to the expressions that precede it.⁴

16. The grounds on which review of my judgment dated 1st February, 2018 is being sought do not conform to any of these criteria.

17. Any order, by me, condescending to allow the present Review Petition, and , consequently to rehear the writ petition, on the grounds urged in the Review Petition, is bound to become a harbinger for a new, and adventurous, practice, of limiting arguments on selected issues and, on the judgment turning out to be adverse, re-approaching the Court to argue the remaining issues. To say the least, such a practice is intolerable in law.

18. I am of the view, therefore, that no justification is made out, for seeking review of my judgment dated 1st February, 2018.

19. I may note, before concluding this order, that, apart from the issue of maintainability, submissions, on the points which, according to the Review Petition, ought to have been argued by learned Senior Counsel but were not argued, were also advanced by both parties. Both learned Senior Counsel were agreeable to a rehearing of the Writ Petition on merits. Arguments, on merits, were also advanced by both parties. Consideration of the said submissions would, however, require me, in the first instance, to allow the prayer for review, and in the second, to recall my judgement dated 1st February, 2018. This is not permissible, save and

⁴ *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Anthanasius*, (1955) 1 SCR 520 ; *Lily Thomas v. U.O.I.* (2000) 6 SCC 224; *Ajit Kumar v. State of Orissa* (1999) 9 SCC 596;

except on the grounds specified in Order XLVII Rule 1 of the Code of Civil Procedure, 1908. The petitioner does not seek to contend that, on the points argued, and pressed, by learned Senior Counsel on 27th October, 2017, my judgment suffers from any error apparent on the face of record. The prayer for review is premised, instead, on grounds which the petitioner chose not to press during arguments on 27th October, 2017. The law does not permit this. Consent of counsel cannot, empower a court to act in derogation of the law. The right to review is not absolute or inherent, and has to be conferred by statute. Where it is so conferred, it has to be exercised within the prescribed statutory circumspection. Certainty and finality are precious attributes of the judicial process, and may not be lightly sacrificed. I do not deem, therefore, it either necessary, or even appropriate, to advert to the arguments, on merits, advanced by the learned Senior Counsel.

20. I regret, therefore, that I am unable to convince myself to allow the Writ Petition to be reconsidered – which would necessarily require me to recall the judgment under review, with no legitimate ground, therefor, having been made out – on points which were given up learned Senior Counsel on 27th October, 2017 consciously, and in the presence of Mr. Inderjit Singh who was instructing him in the matter, preferred not to urge.

21. A supplementary submission, as advanced in the Review Petition, does, however, deserve consideration. The Review Petition also contends, in para 5, that some of the respondents have already received certain amounts, against the amounts to which they would be entitled as per the

Award dated 2nd December, 2003 of the learned Industrial Tribunal. Needless to say, no workmen may, on the basis of the said Award, be entitled to payment twice over. As such, it is clarified that the petitioner would be at liberty to set off the amounts already paid to the respondent-workmen, out of the amounts payable to them as per the Award dated 2nd December, 2003 while complying therewith. Needless to say, should any of the workmen have a grievance on this account, he would be entitled to ventilate such grievance in accordance with law.

22. Subject to the above clarification, the Review Petition is dismissed, with costs, computed at ₹ 25,000/-, to be deposited with the Registrar General of this Court, to be defrayed for the cause of juvenile justice.

23. Costs be deposited within a period of four weeks from the date of receipt, by the Petitioner, of a certified copy of this judgment.

C. HARI SHANKAR, J.

JANUARY 29, 2020/kr