

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**MISC. CIVIL APPLICATION (FOR REVIEW) NO. 1 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 9476 of 2016**

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ARVIND KEJRIWAL
Versus
GUJARAT UNIVERSITY

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Appearance:

MR PERCY KAVINA, SENIOR COUNSEL WITH MR. AUM M KOTWAL for
the PETITIONER(s) No. 1

MR TUSHAR MEHTA, SOLICITOR GENERAL WITH MR KANU AGARWAL,
ADVOCATE WITH MR JASH S THAKKAR, ADVOCATE FOR MS
DHARMISHTA RAVAL for the RESPONDENT(s) No. 1

MR DEVANG VYAS, ADDITIONAL SOLICITOR GENERAL WITH MR
KSHITIJ M AMIN for the RESPONDENT(s) No. 2,3

MR SHIVANG M SHAH for the RESPONDENT(s) No. 4

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 09/11/2023

CAV IA ORDER

1. This application is filed by the original respondent no.2 in the captioned Special Civil Application for seeking a review of the CAV Judgement dated 31.3.2023.

2. Gujarat University - Respondent No.1 herein was the original petitioner who had challenged the order passed by the Central Information Commission directing

the disclosure of the educational degree of the Hon'ble Prime Minister. By a detailed CAV Judgement, this Court had allowed the petition on the basis of submissions made therein by both the parties i.e. at the instance of the petitioner and the respondent no.2 thereto - the applicant herein.

3. The respondent no.2 has brought this Review Application praying that the judgement be reviewed as there were errors apparent on the face of the record of the judgement.

4. Mr. Percy Kavina, learned Senior Counsel appearing with Mr. Aum Kotwal, learned advocate had made submissions on behalf of the applicant which are as under:

(a) Reading Paras 10, 28 and 40 of the Judgement, Mr Kavina would submit that the observations of the Court that the degree was displayed on the website

is factually incorrect as, on examination of the website, what is found on the website is that the degree is not available but a document referred to as OR (Office Register). Therefore, the statement made before this Court by the original petitioner that led the Court to observe that the degree is displayed is not correct and therefore there is an error apparent on the face of the record. The observation of the Court that the applicant herein therefore could not have persisted with his request and thus observing that the controversy ought to have been put to rest by the applicant rather than pursue it are observations made in light of the availability of the degree on the website, which infact is not available.

(b) Mr. Kavina would submit that the reproduction of the Letters Patent Appeal memo which was filed on 30.06.2016 made a misstatement of the degree being available on the website and therefore when the petition was dismissed, subsequently when the

applicant visited the website, it was found that this assertion was wrong and the observations that went in, in the judgement are factually incorrect and the judgement deserves to be recalled.

(c) Mr. Kavina would draw the Court's attention to the mark-sheet annexed to the application and submit that what was available on the website was an extract of the Register of the University and the degree was never displayed on the website and the observations in the judgement therefore were beyond the record and the review was necessary.

(d) Mr. Kavina would further submit that though during the hearing of the petition, the uploading of the degree on the website was categorically denied by the applicant and the applicant on search of the Gujarat University website found that mark-sheets and not the degree were uploaded. Even in the reply filed to this Review Application, the applicant

has been able to substantiate that the degree was in fact uploaded and this is more than enough for the Court to review and recall its judgement.

(e) Mr. Kavina would further submit that imposition of costs of Rs.25,000/- is based on wrong factual assertions. The observations of the Court that the applicant “used an appeal against him to kickstart and trigger a controversy not falling within the purview of the RTI Act” and that the applicant had made an “absolutely casual application” are wrong as the applicant was not the initiator of any of the proceedings but was only a respondent. That no application was filed by him for any information. The proceedings were suo motu taken up by the CIC which clearly indicates that the applicant never persisted with the matter. Imposition of costs on this count that there was wrongful insistence or persistence on behalf of the respondent no.2 in the petition is misconceived and misplaced. The costs

imposed are compensatory costs and the same have been awarded without the court's satisfaction that the claim was false or vexatious to the knowledge of the party concerned.

Mr. Kavina would submit that in such circumstances the principles for exercising the review jurisdiction were available and the Court should review the judgement.

5. Mr. Tushar Mehta, learned Solicitor General Of India appeared and argued on behalf of the Gujarat University. He would make the following submissions:

(I) Mr. Mehta would read the relevant paras of the judgement which the applicant has sought review of and submit that it was the specific case of the petitioner - Gujarat University that no application was made by the applicant - original respondent no.2 herein but on the basis of a letter addressed to the CIC, he triggered the mechanism under the RTI

Act.

(II) Reading the provisions of Section 8(1)(j) of the Right To Information Act, Mr. Mehta would submit that the CIC had not even recorded the reasons to suggest as to what was the overwhelming public interest which required sharing the personal information of the degree of the Hon'ble Prime Minister when such information was expressly exempted in light of the provisions of Section 8 of the Act.

(III) That the review applicant had not even mentioned the public interest in the letter/application, a question of law was posed by the University in the petition to submit whether the CIC had acted within the framework of law.

(IV) Mr.Mehta would then invite the Court's attention to Page 86 of the Paper Book and submit

that the Court had specifically recorded how the applicant herein had made an indiscriminate misuse of the provisions and how the highest officer i.e. the CIC had decided to pass order completely ignoring the provisions of the RTI Act.

(V) Mr. Mehta, learned Solicitor General of India would submit that as far back as in the year 2016, it was made clear in the memo of appeal that the degree was uploaded and therefore it was reasonable to presume that the applicant - original respondent must have checked up the website of the University.

(VI) Mr. Mehta would further submit that the grounds raised in the review application are clearly for extraneous reasons which would not justify exercising of review jurisdiction.

(VII) Mr. Mehta, learned Solicitor General would rely

on the extracts of the affidavit-in-reply to contend that the behaviour of the applicant is deplorable inasmuch as he has even after the judgement made utterances which were immature and irresponsible; made with a view to keep the pot boiling when his legal remedy was rejected by this court. He would submit that once the court had recorded a finding about the existence of the degree in the proceedings, it was immature on the part of the applicant to portray contrary to the judgement of the court. The applicant has not only tweeted contrary to the findings but has continued to malign the individuals including the University.

6. At the outset, it would be pertinent to set out the parameters wherein this Court can step in and exercise the powers of review of a decision rendered by this Court. A power of review can be exercised on a discovery of a new and important matter or evidence which, after the exercise of due diligence was not within the knowledge or

could not be produced at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or correction of an erroneous view. Any other attempt would tantamount to abuse of the powers of review. Powers of review cannot be confused with powers of the Appellate Court and under the powers of review the Court cannot be asked to sit in Appeal over the Judgement.

7. Having considered the submissions made by the respective counsels, it is borne out that the review application is essentially filed on the ground that the University had merely placed the register showing the conferment of the degree i.e. the Office Register and not the degree itself. The pleadings to the application indicate that the Office Register annexed to the application reflects the degree of the Hon'ble the Prime Minister. The register is a document which is a

contemporaneous record which reflects the conferment of the degree in question.

8. The applicant in the review application seeks to suggest that there is an error apparent on the face of record inasmuch as though as per the memo of appeal of the year 2016, it was categorically mentioned that the degree was uploaded, the submission of the University is falsified. According to the applicant, the consequential observations made in paragraphs no. 10, 28 and 40 of the judgement are errors and mistakes apparent on the face of the record.

8.1 It needs to be mentioned here that the pleadings of the Letters Patent Appeal were made as far back as in the year 2016. The applicant had appeared before the Division Bench and the appeal was disposed of recording the very similar contentions of the Gujarat University. In absence of controverting of such pleadings by the applicant as far back as in the year 2016, it was

reasonable to presume that the applicant - original respondent no. 2 had verified and checked the website of the University. It is not open for the applicant to seek review on the pretext of the factual assertion which he now disputes seven years after the disposal of the appeal, when it is not even the case of the applicant that this was a case of discovery of new material or a fact not within the knowledge or not discoverable or could not be produced when the judgment was delivered.

8.2 This court, without getting into the intentions of the applicant in filing the review application would tend to agree with the submission of Mr. Mehta, learned Solicitor General of India that though there is a contemporaneous record in the form of the Office Register undisputably showing the qualification of the Prime Minister, the review applicant having lost in his legal remedy as the petition was allowed, continues to harp upon his pursuit in following a cause by proceeding in this review application in a manner which does not reflect good taste

in public life. This would justify the submission of learned Solicitor General of India which is apparent from the affidavit-in-reply filed on behalf of the University and which has gone undisputed. The particular excerpt reads as under:

“Even after disposal of the writ petition by this Hon’ble Court vide judgement and order dated 31.03.2023 (after hearing extensive arguments on behalf of the review - applicant) the review applicant and contemptuously and irresponsibly continued his false narration doubting the degree validly conferred by the answering respondent. Apart from the utterances being immature and does not reflect good taste in public life which talking about the highest functionary in the executive wing under the Constitution, the review applicant has not even bothered to inform anyone (while making such irresponsible utterances) that his legal remedy in which the very degree was the subject matter is rejected against him by the highest constitutional court of India.”

9. It is well settled by several decisions of the Hon’ble Apex Court that there is limited scope in which a review can be entertained under the guise of professing ‘an error

apparent on the face of the record' and only disputing the uploading of the degree on the website of the University being the only ground for review. This court is of the opinion that once a finding is recorded by the competent court after hearing a particular litigant, the litigant can only take his legal remedy and recourse to law as may be available in law. The court is conscious that seeking a review is and could be a remedy available in law but looking to the grounds and the arguments raised before this court in the review application, it cannot be said that the applicant has sought to invoke this remedy purely with a view to seeking legal recourse.

10. As far as the contention regarding unjustified imposition of costs, during the course of submissions, it was the case of the University that the mechanism of the Right To Information Act was used as a tool to solicit information which otherwise was exempted in law. Being a respondent in the proceeding before the CIC, the language of the letter addressed by the applicant herein

and which is reproduced indicates the systematic design to divert and misdirect the proceedings at the hands of one Shri Neeraj Sharma where information was asked concerning the applicant. The applicant tried to deflect the entire proceedings to politicise the issue as is evident from the letter. This clearly was an abuse of the process of the RTI machinery. Costs, therefore, are justified.

11. Considering the CAV judgement in extenso, this court upon interpretation of legal principles as enumerated under exemption clause contained in Section 8(1)(e) and (j) of the Right to Information Act, 2005 which are interpreted by the Hon'ble Supreme Court of India speaking through the Constitution Bench of 5-Judges, as well as other benches in the cases of **Supreme Court of India vs. Subash Chandra Agrawal reported in (2020) 5 SCC 481; K.S. Putuswamy vs. Union of India reported in (2017) 10 SCC 1; Kerala Public Service Commission vs. State Information Commission reported in (2016) 3 SCC 417; Central**

Board of Secondary Education vs. Aditya Bandhopadhyaya reported in (2011) 8 SCC 497 and ICAI Vs. Shaunak H. Satya reported in (2011) 8 SCC 781, this application cannot be said to be seeking review of the said legal findings.

12. This court is conscious of the law cited before this Court in ***Kamlesh Verma vs Mayawati*** reported in **(2013) 8 SCC 320**, wherein, the Hon'ble Supreme Court after referring to all the previous pronouncement [para 9-19], summarised the principles on which a review petition would be maintainable as under:-

“Summary of the principles

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 [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] 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. [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

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 negated."*

13. In view of the above, this application is rejected.
Rule is discharged. No costs.

DIVYA

(BIREN VAISHNAV, J)