

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO. 104/96 in OA.NO. 1001/95

Friday this the 14th day of February 1997

CORAM : Hon'ble Shri P.P.Srivastava, Member (A)

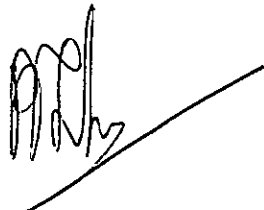
Smt.M.P.Kanal ... Applicant

V/S.

Union of India & Ors. ... Respondents


Tribunal's Order by Circulation

This Review Petition is filed against the judgement of the Tribunal pronounced on 7.10.1996. The applicant has brought out in the review petition that the Tribunal has not considered the fact that the Full Bench judgement in Wazir Chand's case was upheld by the Hon'ble Supreme Court and the appeal was rejected and therefore it is binding judgement under Article 141 of the Constitution of India and this is an error apparent on the face of the record. However, I find that the question concerning Full Bench judgement in Wazir Chand's case has been discussed in Paras 7,8,9,10,11 and 12. Since the Tribunal has followed the Full Bench judgement in Wazir Chand's case in deciding the issue concerning the recovery from DCRG, the question of this judgement being a binding precedent under Article 141 of the Constitution of India did not arise. Since the Full Bench judgement in Wazir Chand's case has been followed by the Tribunal, there is no error on the face of the record as has been pleaded by the petitioner in Para 2 (b). In Para 2 (b) the review petition brings out



that the Tribunal committed a grave error in not referring to the Wazir Chand's case and on the contrary relied ~~upon~~ the Ram Pujan's case and this amounts to ignoring the Hon'ble Supreme Court's judgement concerning binding precedent. The arguments of Learned counsel for the applicant is wholly misconceived. Ram Pujan's case and Wazir Chand's case dealt with two different issues. The Full Bench judgement in Ram Pujan's case has been followed by the Tribunal for deciding if the recovery could be made without following the procedure of P.P.Act, while the Full Bench judgement in Wazir Chand's case has been followed in deciding the issue of recovering the amount from DCRG. Since both the decisions have been followed on the issues which have been decided by these two Full Bench judgement, there is no merit in the argument submitted by the applicant in Para 2 (b) that Ram Pujan's case does not hold good in view of the SLP having been dismissed by the Hon'ble Supreme Court in the case of Wazir Chand's case. Since both the decisions have been followed by the Tribunal and since there is no contradiction between the two decisions and since the two decisions of the Full Bench ^{are} dealing with two different issues, the submissions are wholly misconceived and are untenable.

2. In Para 2 (c) and (d) the applicant has submitted that DCRG is protected under Section 60 (g) of the CPC and this specific and vital statutory protection has been completely lost sight of by the Tribunal while rendering the judgement. The judgement rendered by the Tribunal in this case ~~has~~ followed the Full Bench judgement in Wazir Chand's case as far as reduction in DCRG is concerned.



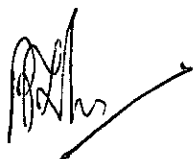
Since Full Bench judgement is binding on Single Bench, no further arguments were considered necessary in deciding this issue as the judgement followed the Full Bench judgement in Wazir Chand's case on this specific issue and it was not necessary to consider other arguments as the judgement on this particular aspect is based on Full Bench judgement in Wazir Chand's case.

3. In Para 2 (e) the applicant has submitted that the P.P. Act, 1971 is a superior and statutory Act passed by the Parliament and as such no orders of the Railway Board can nullify or take precedent over the P.P. Act, 1971 and therefore there cannot be any alternative procedure prescribed as compared to the P.P. Act, 1971. The applicant has further stated that :-

" It is most surprising that this very important legal aspect of the matter has been totally ignored by the Hon'ble Tribunal while delivering the judgement and the Hon'ble Tribunal has not spoken a word on the aforesaid clinching arguments of the Applicant (Review Petitioner herein) and chosen to altogether ignore and has not rendered any findings of the aforesaid aspect."

On this issue, the above averment of the applicant is not factually correct as this aspect has been dealt with in detail by the Tribunal in Paras 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6. After dealing with this issue in all the above paras, the Tribunal has said in Para 5.7 as under :-

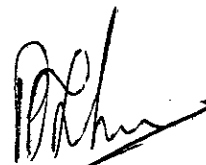
" 5.7 Be it as it may, as far as the present O.A. is concerned, the controversy stands settled by the Full Bench judgement in Ram Pujan's case on this issue which is binding on this Bench as has already been observed."



This issue concerning the finding ~~on~~^{with} this particular aspect, as brought out by the applicant in the review petition, has been specifically ~~dealt~~^{with} in Para 5.6 of the judgement which reads as under :-

" 5.6 With the overruling of the Caterers' case by the Municipal Corporation's case, the position of law on the issue of two procedures has since changed. The amendment to P.P.Act by inserting Section 15 by which the jurisdiction of all other courts are debarred, was as a result of decision in caterers' case. In view of New Bombay Municipal case decision those provisions are required to be interpreted narrowly and only for the purpose for which these were inserted. Therefore, since Section 15 of P.P.Act, debars the jurisdiction of any other court only, it can safely be interpreted that it would not bar the right of the Union Government to frame rules under Art.309 for recovery of rent including damage rent. In this sense also the decision in Ram Pujan's case that provisions under Section 7 of P.P.Act is only an alternate procedure which does not debar recovery according to the Railway circular, can be justified."

4. In view of this, I am of the view that the Review Petition is devoid of any merit. The applicant has not brought out any material which will show that there has been any error apparent on the face of record, or any other important material which was not available at the time of arguments and, therefore, there is no merit in this Review Petition and the same is dismissed in limine.


(P.P. SRIVASTAVA)
MEMBER (A)

mrj.

24.14/2497
order/Judgement despatched
to Applicant/Respondent (s)
on 19/2/97
21/2/97