IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET No. 210 of 2023,
RVWPET No. 215 of 2023,
RVWPET No. 171 of 2023,
RVWPET No. 176 of 2023,
RVWPET No. 181 of 2023,
RVWPET No. 182 of 2023,
RVWPET No. 184 of 2023 &
RVWPET No. 216 of 2023

[Applications under Section 114 of Code of Civil Procedure, 1908]

AFR

RVWPET No. 210 of 2023

Pradeep Kumar Dhal ...... Petitioner

-Versus-

Governing Body of Christ College and others .... Opp.Parties

RVWPET No. 215 of 2023

Pradeep Kumar Dhal ...... Petitioner

-Versus-

State of Odisha and others .... Opp.Parties

RVWPET No. 171 of 2023

Dr. Smita Nayak ...... Petitioner

-Versus-

State of Odisha and others .... Opp.Parties

RVWPET No. 176 of 2023

Rabindranath Lenka ...... Petitioner

-Versus-

Christ College, Cuttack and others .... Opp.Parties

RVWPET No. 181 of 2023

Rabindranath Lenka ...... Petitioner-

-Versus-

State of Odisha and others .... Opp.Parties

RVWPET No. 182 of 2023

Itishree Swain ...... Petitioner

-Versus-

State of Odisha and others .... Opp.Parties

RVWPET No. 184 of 2023

Itishree Swain ...... Petitioner

-Versus-

State of Odisha and others .... Opp.Parties

RVWPET No. 216 of 2023

Prangya Paramita Jethy ...... Petitioner

-Versus-

State of Odisha and others .... Opp.Parties

Advocate(s) appeared in these cases:-

For Petitioner(s): M/s. Bimbisar Dash & A. Nayak, Advocates
[In **RVWPET No. 210 of 2023**]

M/s. B.S. Tripathy, A. Tripathy & A. Sahoo, Advocates
[In **RVWPET No. 215 of 2023]**

M/s. Sameer Kumar Das, P.K. Behera & N. Jena, Advocates
[**In RVWPET Nos. 171 of 2023, 176 of 2023, 181 of 2023, 182 of 2023 & 184 of 2023**]

HIGH COURT ORISSA सत्यमेव जयते

M/s. K.P. Mishra, L.P. Dwibedi,
S. Rath, A. Mishra & K. Hussain,
Advocates,
[In **RVWPET No. 216 of 2023**]

For Opp. Parties: Mr. S.N. Das,
Addl. Standing Counsel

M/s. Susanta Kumar Dash, S. Das,
P. Das & P. Haricchandan, Advocates
[For **O.Ps.- Governing Body and Principal of Christ College, Cuttack]**

Ms. Pami Rath, Sr. Advocate with
M/s. S. Gumansingh & P. Mohanty, S. Mohanty, & J. Mohanty Advocates
[**O.P. No.4 in RVWPET No. 182 of 2023 & RVWPET No.184 of 2023**]

CORAM:
JUSTICE SASHIKANTA MISHRA

JUDGMENT
14th December, 2023

SASHIKANTA MISHRA, J. The petitioners in these applications seek review of the judgment passed by this Court on 26.04.2023 in a batch of writ applications being W.P.(C) No. 21522 of 2019, W.P.(C) No.3150 of 2020, W.P.(C) No. 12970 of 2018, W.P.(C) No. 4075 of 2014, W.P.(C) No.22665 of 2015, W.P.(C) No. 10414 of 2021, W.P.(C) No. 6557 of 2021, W.P.(C) No. 3150 of 2020 and W.P.(C) No. 6969 of 2021. As per the said judgment, this Court held

that Christ College, Cuttack is a minority institution within the meaning of Section 2 of the Odisha Education Act, 1969 and further, the prayer made by the review petitioners in their respective writ applications are relatable to contract of personal service and no public law element is involved for being adjudicated upon by this Court exercising writ jurisdiction under Article 226 and 227 of the Constitution of India.

2. The review applications have been filed raising two grounds- firstly, the finding of the Court regarding the status of Christ College as a minority institution being based on the Division Bench decision of this Court in ***Dr. Shyamal Ku. Saha and others vs. State of Orissa and others*** [W.P.(C) No. 2207/2012, 29737/2011, 7579/2008 and 9406/2008 disposed of on 26th June, 2012] is erroneous on the face of record and secondly, whether the grievances of the petitioners are amenable to be adjudicated by this Court exercising writ jurisdiction or not have not been deliberated.

3. Heard Mr. Sameer Kumar Das, learned counsel for the petitioners in RVWPET Nos. 171, 176, 181, 182 &

184 of 2023; Mr. Bimbisar Dash, learned counsel for the petitioner in RVWPET No.210 of 2023; Mr. B.S. Tripathy, learned counsel for the petitioner in RVWPET No. 215 of 2023; Mr. Susanta Kumar Dash, learned counsel appearing for the Christ College; Ms. Pami Rath, learned Senior Counsel appearing along with Mr. P. Mohanty, learned counsel for the private opposite party in RVWPET Nos. 182 & 184 of 2023; and Mr. S.N. Das, learned Addl. Standing Counsel appearing for the State.

4. Before adverting to the specific contentions raised before this Court by the parties, it would be proper to keep in perspective the principles relating to review of a judgment. Order-47, Rule 1 of CPC relates to remedy of review by a person dissatisfied with a judgment. It reads as under;

> *"**1. Application for review of judgment.—**(1) Any person considering himself aggrieved—*
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> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
>
> *(b) by a decree or order from which no appeal is allowed, or*
>
> *(c) by a decision on a reference from a Court of Small Causes,*
>
> *and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at*

the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

5. It is evident that the power of review can be exercised only under the circumstances indicated in the provision and not otherwise. No doubt, provisions of CPC cannot regulate the proceeding under Article 226 of the Constitution but it is well settled that same principles apply to review arising out of Article 226 proceedings. Principles with regard to exercise of review jurisdiction have been laid down by the Supreme Court in several decisions, all of which need not be referred to save and except certain oft- quoted and relevant ones. In the case of

Thungabhadra Industries Ltd. v. Govt. of A.P., reported in **(1964) 5 SCR 174 : AIR 1964 SC 1372**, the Supreme Court held as follows;

> *"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out."*

6. In the case of ***Meera Bhanja vs. Nirmala Kumari Choudhury,*** reported in (1995) 1 SCC 170, the Supreme Court held as follows:

> *"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)*
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> > *"It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] , 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 the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or 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 merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

7. In a recent judgment rendered in the case of **Sanjay Agarwal vs. State Tax Officer,** reported in (2023) SCC Online SC 1406, the Supreme Court noted several earlier judgments and culled out the principles decided and summarized the same in the following words:

*"**16.** The gist of the afore-stated decisions is that:—*
(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.
(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.
(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."
(v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."
(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.
(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.
(viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review."

8. In view of the contentions raised before this Court during hearing of these applications, which would be referred to a little later, this Court feels it apposite to also refer to the judgment of the Supreme Court in the case of ***Haridas Das vs. Usha Rani Banik***, reported in (2006) 4 SCC 78, wherein it was held as under;

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not

possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in Thungabhadra Industries Ltd. v. Govt. of A.P. [(1964) 5 SCR 174 : AIR 1964 SC 1372] held as follows : (SCR p. 186)

> *"There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. … where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."*

9. Keeping the above principles in background, the contentions of the parties shall now be dealt with.

Mr. Sameer Kumar Das, learned counsel has argued that the finding in **Dr. Shyamal Ku. Saha** was misinterpreted by this Court to hold that the same was also

relatable to Christ College, Cuttack. Mr. Das has referred in particular to that part of the judgment passed by the Division Bench where it was held that the earlier judgment rendered by the Single Judge in ***Governing Body of Stewart Science College, Cuttack v. State of Orissa and Governing Body of Christ College, Cuttack vs. State of Orissa,*** reported in 2008 SCC OnLine Ori 2 :: AIR 2008 Ori 143 cannot be held to have finally determined the status of Stewart Science College as a minority educational institution and that instead of entertaining the writ applications, learned Single Judge ought to have directed to get the dispute adjudicated by the competent fact finding authority.

Mr. Bimbisar Dash has also made similar argument as has Mr. B.S. Tripathy. According to learned counsel, the finding of this Court that no specific finding was rendered as regards the status of Christ College is erroneous on the face of it and therefore, should be revisited.

Mr. Susanta Kumar Dash as well as learned State counsel have both argued that firstly, the contention

raised on behalf of the petitioners is factually incorrect and in any case the same cannot be ever a ground for review. Even if two views are theoretically possible to be taken on a particular issue, same cannot be a subject of review.

10. After hearing counsel for the parties at length on the first point this Court is of the view that while adjudicating the writ applications, particularly the question of status of the institution, reference was made by it to the Single Bench judgment in ***Governing Body of Stewart Science College, Cuttack*** (supra) and Division Bench of this Court in **Dr. Shyamal Ku. Saha** (supra). After analyzing the said judgments, this Court rendered a specific finding as delineated under paragraph-10 of the judgment. According to the petitioners, the interpretation of the earlier judgments by this Court is erroneous, which is apparent on the face of it. In view of the discussion made by this Court in paragraph-10 of the judgment, this Court is not inclined to accept that interpretation of the earlier judgments is erroneous constituting an error on the face of the record. Even otherwise, as held in **Sanjay Agarwal** (supra) "*an error on the face of record must be such an error*

which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the point where there may conceivably be two opinions".

For the above reasons, therefore, the first ground urged by the review petitioners is not tenable.

11. As regards the second ground it has been argued at length by the learned counsel for the Review Petitioners that the finding of this Court that the grievance of the petitioners in the writ applications relates to contract of personal service and therefore, not amenable to the writ jurisdiction was never deliberated as the petitioners were not given opportunity to argue on this point. Particular reference has been made to order dated 22.03.2023, wherein the matter was heard again on the point of status of the institution but not on maintainability of the writ application. In this regard, it has been argued by Ms. Pami Rath, learned Senior Counsel that after closure of hearing of the writ applications when the matters were kept reserved for judgment, on mention being made by her they were listed again as she had not participated in the hearing due to non-mentioning of her name in the cause-list at the

relevant time. Therefore, the matters were listed again and she was heard at length. In course of hearing on the said day she cited the judgment of the Supreme Court in the case of ***St. Mary's Education Society and Another vs. Rajendra Prasad Bharagava and others,*** reported in 2022 SCC OnLine SC 1091, which, inter alia, deals with the point of maintainability of a writ application involving service dispute in the private realm against a private education institution. According to Ms. Rath, it is therefore, not factually correct to contend that there was no hearing on that point.

12. A reference to the judgment under review would reveal that the following was mentioned in paragraph-22 and 23.

> *"22. This takes the Court to the next question - whether the writ applications would be maintainable despite the aforementioned finding.*
>
> *23. It has been argued on behalf of the petitioners that even if it is held that the Christ College is a minority educational institution, it is still amenable to the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution since by providing education it is performing a public duty. On the other hand, it has been argued on behalf of the Christ College that even if it is held that the institution is performing a public duty, the lis before this Court involves individual and private grievances of the petitioners against the*

> *Management, which cannot be gone into in the writ applications."*

13. In view of such categorical observation of this Court and reliance placed on the case of **St. Mary's** (supra) relied upon by Ms. Rath, it is factually incorrect to contend that there was no hearing on the point of maintainability of the writ application. It is significant to note that even during hearing of these review applications on 07.11.2023 and 08.11.2023, learned counsel for the petitioners made attempts to convince the Court that the finding of the Court that the grievances of the petitioners in the writ application related to contract of personal service and no public law element is involved, is erroneous on the face of it. Surprisingly however, on the next date i.e. on 09.11.2023 three memorandums were filed by the learned counsel for the petitioners reserving their rights to argue their cases on merits only if the review applications were allowed. In view of the abrupt stoppage of arguments on merits by the petitioners, this Court closed the arguments and the matters were kept reserved for judgment. From what was argued on behalf of the

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petitioners it is evident that they essentially contend that they should have been heard further on the point and the cases should not have been decided referring only to the relief claimed in the writ applications. In the judgment passed by this Court, after referring to the settled position of law as laid down in **St. Mary's** (supra) this Court referred to the individual prayers made in the writ applications in paragraphs-25 to 31 of the judgment and held that such grievances are relatable to contract of personal service and no public law element is involved.

14. While not conceding to the arguments that the petitioners were not heard on the point, this Court finds that even otherwise it is the settled law that a review of a judgment would not be justified merely because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. The above was held in **Haridas Das** (supra). Thus, the second ground raised for review of the judgment is also found to be untenable.

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15. Having regard to the foregoing discussion therefore, this Court is unable to persuade itself to review the judgment in question.

16. Resultantly, the review applications being devoid of merit, are dismissed.

....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 14th December, 2023/ A.K. Rana, P.A.