

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

RVW 83 of 2023
With
IA No. CAN 1 of 2023

State of West Bengal
-versus-
Soumen Nandy & Ors.
In
WPA 9979 of 2022
IA No. CAN 1 of 2023
CAN 2 of 2023

Soumen Nandy
-versus-
The State of West Bengal & Ors.

For the State-review applicant
in RVW application and for the

respondents in WPA 9979 of 2022 :- Mr. S. N. Mookherjee, Ld. A.G.
Mr. Anirban Ray, Ld. G.P.
Mr. Sirsanya Bandopadhyay, Adv.
Mr. Arka Kumar Nag

For the respondents in RVW :-
application and for the
petitioners in WPA 9979 of 2022

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.,
Mr. Firdous Samim, Adv.,
Ms. Gopa Biswas, Adv.,
Ms. Payel Shome, Adv.

For E.D.

:- Mr. Dhiraj Trivedi, Ld. DSG,
Mr. Samrat Goswami, Adv.

For CBI

:- Mr. Billwadal Bhattacharyya, Ld. DSGI,
Mr. Arijit Majumdar, Adv.,

For the Respondent No.13

:- Mr. Sandip Kumar De, Adv.,
Mr. Abhijit Sarkar, Adv.

For DPSC, Hooghly

:- Mr. Biswabrata Basu Mallick, Adv.,
Mr. Biman Halder, Adv.

For DPSC, Nadia :- Mr. Arindam Chattopadhyay, Adv.

For WBBPE :- Mr. L.K. Gupta, Sr. Adv.,
Mr. Saikat Banerjee, Adv.,
Mr. Ratul Biswas, Adv.,
Mr. Kaushik Chowdhury, Adv.

Heard on :- 08.05.2023

Judgment on :- 12.05.2023

Amrita Sinha, J.

An application for review has been filed by the State of West Bengal through the Secretary, Department of Urban Development and Municipal Affairs seeking review of the order dated 21st April, 2023 passed by His Lordship the Hon'ble Justice Abhijit Gangopadhyay in CAN 02 of 2023 preferred by the Directorate of Enforcement in WPA No. 9979 of 2022 (Soumen Nandy vs. State of West Bengal & Ors.).

The said review application has been filed pursuant to the leave granted by the Hon'ble Supreme Court on 28th April, 2023 in petition for Special Leave to Appeal (C) No. 8706/2023 filed at the instance of the State of West Bengal challenging the order dated 21st April, 2023 passed in CAN No. 02 of 23 in WPA 9979 of 2022.

The order passed by the Hon'ble Supreme Court records the synopsis of the Special Leave Petition which reads as follows:

- “9. That the impugned order records that none appears for the State despite notice, on contrary it is most respectfully submitted in the said application the applicant has not even arrayed Department of Urban Development and Municipal Affairs as a party, instead the applicant had randomly served Advocates associated with the Ld. Government Pleader's Office, which was informed subsequently, instead of serving the concerned Advocates or the concerned Department for appropriate action. Such mischief by the counsels, ought to

have been frowned upon, instead of being strengthened vide the impugned order herein.”

The Hon’ble Supreme Court observed that the High Court recorded in its order that none appeared on behalf of the State, though served; but a specific averment has been made in the SLP regarding non service upon the department of Urban Development and Municipal Affairs. The Hon’ble Supreme Court opined that in the interest of justice the State of West Bengal be heard afresh by the High Court on the issue whether the investigation should be initiated by the CBI.

The Hon’ble Supreme Court permitted the State to move a petition by way of review before the High Court and the High Court was directed to take a considered view after hearing the parties.

The learned senior counsel representing the petitioner before the Hon’ble Supreme Court submitted before the Court that review petition would be moved within three working days. The Hon’ble Supreme Court requested the High Court to dispose of the review petition within a week from the date of its filing and further directed that the CBI and Enforcement Directorate shall maintain the status quo for a period of a week. The Special Leave Petition stood disposed of.

Pursuant to the order passed by the Hon’ble Supreme Court, the writ petition stood assigned to this Bench by the Hon’ble the Acting Chief Justice of this Court on 1st May, 2023 and the cause papers of the case were forwarded to this Bench on 2nd May 2023. Leave was sought for by the review applicant on 4th May, 2023 to file the Memorandum of Review without a certified copy. Being made aware of the time line mentioned in the order passed by the Hon’ble Supreme Court, this Bench granted leave to file the same and the Memorandum of Review along with the connected application being CAN 1 of 2023 was filed on 4th May, 2023.

One of the grounds for filing the application for review, *inter alia*, is that the order under review was passed without jurisdiction. The Bench dealing with the matter did not have the jurisdiction to pass order on the application filed by the Enforcement Directorate to investigate any matter in connection with recruitment in the municipalities. The Bench in question was assigned the determination to decide matters relating to primary education under Group-II including applications connected thereto. As the Hon'ble Bench did not have any jurisdiction to take up matters relating to municipalities, accordingly, the Court could not have passed any direction to cause investigation in connection with recruitment in the municipalities. The order passed by a Bench lacking jurisdiction is bad in law and liable to be set aside.

In support of the aforesaid submission the learned Advocate General relied upon the decision passed by the Hon'ble Division Bench of this Court in the matter of ***Sohan Lal Baid -vs- State of West Bengal & Ors.*** reported in ***AIR 1990 Cal 168 : 1989 SCC Online Cal 224*** paragraphs 23, 24, 27 and 28. Reliance has also been placed on the judgment passed by the Hon'ble Supreme Court in the matter of ***State of Rajasthan -vs- Prakash Chand & Ors.*** reported in ***(1998) 1 SCC 1*** paragraphs 20, 23 and 27.

The next ground seeking review is that the investigation, if at all, ought to be made by the State agency and not by the CBI. Law and order being a subject matter of the State under List-II, Schedule-VII of the Constitution, the Court ought not to have directed the CBI to investigate the same circumventing the State investigating agency.

The other ground seeking review is that the department of Urban Development and Municipal Affairs was not made a party in the writ proceeding; nor any notice served upon the said department prior to moving the matter. The

order ought not to have been passed without affording the department an opportunity of hearing.

Further ground praying for review is that the application filed by the Enforcement Directorate did not contain any prayer seeking permission to investigate. In the absence of a specific prayer, the Court ought not to have passed direction upon the CBI to proceed with investigation with regard to an alleged scam in recruitment under the municipalities.

Another ground made out in the petition for review is that 21st April, 2023, the day when the order complained of was passed, was declared as a holiday on account of Eid by the State of West Bengal and a resolution was adopted by the Bar Association, High Court, Calcutta forwarded to the Hon'ble the Acting Chief Justice and all other Hon'ble Judges of this Court with request not to pass any order in the absence of either of the parties. The Hon'ble Judge, even though aware of the said resolution of the Bar Association, proceeded to pass order in the absence of any representative of the State.

It has been submitted that there are serious procedural errors in the order complained of and as such the said order dated 21st April, 2023 is liable to be reviewed.

The writ petitioner, Directorate of Enforcement and the Central Bureau of Investigation vehemently opposes the submissions of the applicant.

Learned advocate representing Enforcement Directorate submits that the application for review is not maintainable as the same has been filed out of time. It has been submitted that the learned senior counsel representing the State before the Hon'ble Supreme Court made a categorical submission that the petition for review would be moved within three working days. The State failed to move the Court within the aforesaid time. The Hon'ble Supreme Court, relying upon the

submission made on behalf of the State, permitted the review to be filed within three working days and as such any petition filed beyond the said time period is liable to be dismissed as, not maintainable.

It has been submitted that whether the Hon'ble Judge had the determination to take up matters relating to recruitment in municipalities is irrelevant as the primary investigation is in connection with illegal recruitment in educational institutions and in the process of investigation it came to light that similar irregularity has cropped up in the recruitment process under the municipalities. As the investigation is ongoing, the Enforcement Directorate filed the application to keep on record the brief of the investigation and for passing appropriate orders.

Learned advocate representing the Enforcement Directorate, the applicant of the application on which the order impugned was passed, denies the allegation of the review applicant that no notice was served upon the State prior to moving the said application. It has been submitted that as the matter is of extreme public importance and urgent measures were required to be taken to facilitate the process of investigation, accordingly, leave was sought from the Hon'ble Judge to move the matter on urgent basis. The Hon'ble Judge granted leave to move the matter at 2.30 p.m. on the self same day. Notice of moving the matter was duly served in the office of the learned Government Pleader clearly intimating the date and time of moving the said application. Affidavit of service with proof of service was filed in court.

The urgency, considering which the Hon'ble Judge passed the order, was clearly mentioned in paragraph 4 of the application filed by the Enforcement Directorate. As highly influential persons are supposedly found to be involved in the recruitment scam both in schools and municipalities, immediate order for investigation was required to be obtained from the Hon'ble Court.

According to the provisions of Section 66(2) of the PMLA, the Enforcement Directorate shared the information with the CBI who is investigating the offence of money laundering and as the irregularity in recruitment under municipalities appeared as an offshoot of the primary investigation, accordingly, it cannot be said that the Hon'ble Judge hearing the matter did not have the determination to take note of the subsequent event and pass consequential order thereon.

As there is no error apparent on the face of the record, and the grounds available under Order 47 Rule 1 CPC not being satisfied, the petition for review and the connected application ought not to be entertained by the Court and is liable to be dismissed.

Learned advocate representing the Central Bureau of Investigation (CBI) submits that the application for review is not maintainable as the same is not in conformity with the provisions of Order 47 Rule 1 of the Code of Civil Procedure which is applicable to the writ proceedings. It has been submitted that there is neither any mistake nor any error apparent on the face of the record requiring review of the order. The reasons/grounds set out in the Memorandum of Review cannot be considered as 'sufficient reason' to review the order passed by the Court. There is hardly any scope to re-argue the matter in a proceeding for review.

It has been contended that the order dated 21st April, 2023 has already been acted upon and FIR has already been registered on 22nd April, 2023 on detection of subsequent offence as per the CBI Manual and there is no reason to interfere in the matter at this stage by way of a review.

In this connection the learned advocate relies upon the decision passed by the Hon'ble Supreme Court in the matter of **Ram Kishan Fauji -vs- State of Haryana & Ors.** reported in **(2017) 5 SCC 533** paragraphs 8, 9, 16, 17, 18, 22, 26, 31, 42, 46, 52, 56, 61, 62 and 63. It has been argued that as FIR has already

been registered, the proceeding has to be treated as criminal proceeding and no order ought to be passed on review in connection with a proceeding under Article 226 of the Constitution of India.

Reliance has been placed on the judgment delivered by a coordinate Bench of this Court on 12th March, 2020 in **CRR 910 of 2019** in the matter of **Ramesh Chandra Singh & Anr. -vs- Central Bureau of Investigation** paragraph 36 wherein the Court opined that there is no bar for the High Court under Article 226 of the Constitution of India to order a CBI investigation.

The judgment of Ramesh Chandra Singh (supra) was carried in appeal before the Hon'ble Supreme Court and by order dated 13th September, 2021 passed in petition for **Special Leave to Appeal (Crl) No. 3020/2020 (Ramesh Chandra Singh & Anr. -vs- Central Bureau of Investigation & Anr.)** the Hon'ble Supreme Court, being made aware of the fact that a closure report has been filed, was pleased to close the Special Leave Petition.

Reliance has also been placed on the judgment delivered by another coordinate Bench of this Court on 12th November, 2013 in **CRR 1882 of 2013** in the matter of **Binod Kumar Kabra -vs- State of West Bengal & Ors.** where the Hon'ble Court relying upon the ratio laid down by the Hon'ble Supreme Court in the matter of **State -vs- N. S. Ghaneswaran; 2013 3 SCC 594** held that when a member of CBI registers an FIR in accordance with the provisions of CBI Manual, legality thereof cannot be brought into question on that score.

Reference has been made to the ratio laid down by the Hon'ble Supreme Court in the matter of **Devaraju Pillai -vs- Sellayya Pillai** reported in **(1987) 1 SCC 61** on the issue that the petition for review ought to be heard and decided by the Hon'ble Judge who passed the order and not by any other Judge.

The decision delivered by the Hon'ble Supreme Court in the matter of ***Parsion Devi & Ors. -vs- Sumitri Devi & Ors.*** reported in ***(1997) 8 SCC 715*** paragraphs 9 and 10 has been relied on the issue that under Order 47 Rule 1 CPC a judgment may be open to review, *inter alia*, if there is a mistake or an error apparent on the face of record. It is not permissible for an erroneous decision to be re-heard and corrected. A review is for a limited purpose and cannot be allowed to be an appeal in disguise.

Reliance has been placed on the judgment delivered by the Hon'ble Madhya Pradesh High Court in ***Union of India & Ors. -vs- Gokulchand & Sons & Anr.*** reported in ***2005 SCC Online MP 289: AIR 2005 MP 201*** on the same principle as laid down in Parsion Devi (supra).

It has been argued that the application was moved on service upon the respondents and as notice was duly served in the office of the learned Government Pleader, the same amounts to good service. The State respondents, for reasons best known, did not attend the Court at the time of consideration of the application. The application had to be moved on urgent basis in view of the extraordinary circumstances under which the investigation is proceeding. There is every probability of tampering evidence, terrorising/influencing the witnesses resulting in interference with the process of investigation.

No prejudice has been caused to the State by directing the CBI and ED to investigate the matter as the aforesaid investigating authorities are already investigating the scam relating to recruitment in educational institutions and the investigation has proceeded to a considerable extent. There ought not to be separate investigating authorities for investigating the connected offence which has come to light in course of the investigation.

Service upon the learned Government Pleader has been made in accordance with the rules of this court and the learned Government Pleader represents the State including all its departments. As the matter relates to a public scam where more than one department is involved and as all departments fall within the meaning of 'State' under Article 12 of the Constitution of India, accordingly, service upon the learned Government Pleader ought to be taken as good service.

As several persons involved in the recruitment scam relating to schools are also involved in the recruitment scam in connection with municipalities and the proceeds of crime are intermingling with each other, there is no scope to segregate the investigation and the investigation is liable to be proceeded by the agency/agencies investigating the same.

Prayer has been made for dismissal of the petition for review and any application connected thereto.

Learned senior counsel representing the writ petitioner relies upon the various provisions of the Prevention of Money-Laundering Act, 2002 ('PMLA' for short) especially Sections 2(na), 2(p), 2(u), 3, 2(y) and the Schedule thereto.

It has been submitted that according to the PMLA, the Enforcement Directorate is the appropriate authority to investigate the issue. The application in question was moved upon notice to the parties. The Hon'ble Judge being satisfied with the service of the application, heard the learned advocates who appeared on the said date and passed necessary order. No ground has been made out for reviewing the same. Moreover, the review petition has not been filed within the time granted by the Hon'ble Supreme Court, hence the same ought not to be entertained.

The investigation process is continuing and the said ongoing investigation ought not to be either stalled or interfered with by this Court. It has been submitted that the review application is not maintainable as the grounds mentioned in the Memorandum of Review are not in accordance with the Civil Procedure Code which is very much applicable to the writ proceeding and not good enough for reviewing the order.

The writ petitioner relies upon the judgment dated 18th April, 2023 passed by a coordinate Bench of this Court in **WPA 7666 of 2023 (Usuf Ali Seikh -vs- State of West Bengal & Ors.)** wherein the Court was of the opinion that an agency already investigating the same or similar set of facts and/or crime may be better suited, equipped and experienced to investigate the subject.

Reliance has also been placed on the judgment delivered by an Hon'ble Division Bench of this Court on 22nd September, 2022 in **RVW 159 of 2022 in WPST 102 of 2020 with CAN 1 of 2022** in the matter of **The State of West Bengal & Ors. -vs- Confederation of State Government Employees, West Bengal & Ors.** wherein the Court held that although the High Court enjoys a plenary power of correcting its mistakes or errors in writ jurisdiction, yet by virtue of the provisions in Order 47 Rule 1 of CPC the same is required to be exercised bearing the mind the condition enshrined therein.

The writ petitioner prays for dismissal of the petition for review and the application filed thereto.

In reply to the submissions made by the respondents the learned Government Pleader submits that as the Hon'ble Supreme Court has opined that the matter be heard afresh by the Hon'ble Court, as such, in the interest of justice, the petition for review ought to be allowed by setting aside the order dated 21st

April, 2023 and the State agency be permitted to investigate any offence, newly detected by the existing investigating authorities.

I have heard and considered the rival submissions made on behalf of both the parties.

The proceeding in question is a petition for review of the order passed by a coordinate Bench of this Court on an application filed by the Enforcement Directorate by directing the CBI to file a report as to what steps have been taken by them after detection of the scam relating to the recruitment in the municipalities.

The State, through the department of Urban Development and Municipal Affairs, has filed the petition for review seeking leave to investigate the matter by the State agency, and not by the CBI, as directed. The State intends to keep the investigation within their control on the ground that enforcement of law and order being a State subject ought to be in the hands of the State agencies.

The Court is unable to accept such contention of the applicant.

The circumstances under which the Hon'ble Judge passed the order is very evident from the order itself. The status report on the investigation conducted by the Enforcement Directorate in connection with the primary teachers' recruitment scam is quoted in the order sought to be reviewed. The report records that several crore of rupees, documents/electronic evidences were seized from several high ranking officials of the government including the Minister-in-Charge of Education, Member of the Legislative Assembly and ex-President of the West Bengal Board of Primary Education, several persons in the Bengali film industry and other highly influential politicians and individuals.

In the course of investigation, the investigating agency got the lead that several persons involved in the scam relating to recruitment in schools, are also

involved in the scam relating to recruitment in the municipalities. The proceeds of crime in the two set of offences, one in the schools and the other in the municipalities, are intermingled with each other.

The figures mentioned in the status report are mind boggling. Several high ranking officials of the State Government involved in the scam are behind the bars at present and the investigating agencies are proceeding to identify the others involved in the crime. The investigation has proceeded to a fair extent and at this stage it will be highly improper to allow some other investigating agency to conclude the investigation. The connecting crime that has been unearthed recently appears to be a part of the entire big scam relating to job in-lieu-of cash either in the schools or in the municipalities.

It may happen that while proceeding with the investigation, the investigating agencies may come across similar crime in connection with recruitment in other departments of the State. It is not only desirable, but at the same time convenient, if one crime can be investigated upon by only one agency and not by several investigating agencies otherwise, there may always be a chance of having conflicting views/opinion and the investigation may be delayed unnecessarily and may not reach its logical conclusion.

The Court ought to ensure that the investigation is conducted diligently, with utmost importance and in a time bound manner. Handing over or permitting a separate agency to investigate subsequent offences detected in the course of investigation will inevitably result in delay of the process and in turn will aid the persons involved in the crime to remove/ destroy/ tamper evidences, influence/ terrorise witnesses and so on and so forth.

It is absolutely logical and proper to permit the investigation to be concluded by the agency/agencies who is/are in the know of the information and

inputs in connection with the crime. For all practical purposes, the existing investigating authority ought to be permitted to conclude the process of investigation.

The same principle has been followed by this Court in the matter of Ramesh Chandra Singh (*supra*).

It has been argued that the day on which the Hon'ble Judge decided the case, the said Hon'ble Judge did not have any determination to pass order in connection with any matter relating to municipalities. The Hon'ble Judge was vested with the determination to only decide matters relating to primary education in schools. Sohanlal Baid (*supra*) has been relied upon to convince the Court that once the Chief Justice has allocated judicial business of the Court, the power and jurisdiction to take cognizance and hear any matter is derived therefrom. Any matter not specifically allocated by the Chief Justice cannot be entertained, dealt or decided by the Hon'ble Judge.

The same principle has been relied in Prakash Chand (*supra*) wherein it has been laid down that no Judge can assume jurisdiction in a case pending in a High Court, unless the case is allotted to him by the Chief Justice. Strict adherence to this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from the same can be permitted.

At first blush the submission of the applicant may appear to be of some substance but a slight lift in the veil will give a clear picture as to why the matter was entertained by the Hon'ble Judge. It is true that the Hon'ble Judge dealing with the matter did not have the determination to take up matters relating to municipalities on the said date. But at the same time, it is also true, that the origin of the matter was within the determination of education matters which the Hon'ble Judge was dealing.

The genesis of the scam was revealed while dealing with education matters relating to primary schools. In the course of investigation of the scam in connection with schools, the scam relating to recruitment in municipalities was unearthed. To conclude the investigation of the original scam, the scam relating to municipalities is also required to be taken note of and investigated accordingly.

The scam in the municipalities is not an independent offence but is a part of the larger offence involving more or less the same persons, similar nature of crime, similar proceeds of crime, similar victims that is the common people who are the unemployed youth of the society. It is a branch of the main tree of crime-recruitment scam. The two offences may have occurred in two different sets of institutions but the other factors of the offence remain the same. There may be several similar such branches and all are required to be investigated to get a complete picture of the crime that has been committed.

The crime at two separate institutions has been found to be interconnected and segregating the two is practically not possible. The initial investigation will remain inconclusive if the subsequent events are not brought under the purview of the continuing investigation process. Moreover, according to the PMLA, there is a presumption in interconnected transactions. Law permits such presumption and it is perfectly justified that investigation be conducted by the existing agency and not by any separate agency.

In such a situation the Hon'ble Judge thought it apt to pass necessary order on the application filed by the Enforcement Directorate bringing on record the subsequent events discovered in the process of investigation.

Learned Advocate General has argued that passing any order in relating to municipality matter by a judge dealing with education matters was a procedural error.

Assuming, but not admitting, that there was any procedural error in passing any order relating to municipalities, the same may be taken care of by this Bench, as this Bench has been allocated the determination to entertain, hear and decide matters relating to municipalities. In view of the assignment of the review petition by the Hon'ble the Chief Justice, this Bench is presently seized with the jurisdiction to entertain the issue of the writ petition as well as any matter relating to municipalities. By this way, the procedural error, if any, stands cured.

The next issue raised by the learned Advocate General is that the application of ED was moved without serving any notice upon the department of Urban Development and Municipal Affairs. The said department was also not impleaded as party in the proceeding. In fact, the order of the Hon'ble Supreme Court granting liberty to the applicant to file petition for review took note of the fact that the applicant (Enforcement Directorate) randomly served advocates associated with the learned Government Pleader's office instead of serving the concerned advocate or the concerned department.

The Hon'ble Judge, in the order sought to be reviewed, specifically recorded that the application was filed after obtaining leave from the Court to move the same on urgent basis on the same day (21.04.2023). Considering the urgency, the Hon'ble Judge granted leave to move the matter at 2.30 p.m. upon notice to the respondents. The original notice showing service in the office of the learned Government Pleader was produced before the Hon'ble Judge. The said notice was returned to the learned advocate for the applicant (ED) for affirming the affidavit of service.

I have perused the said affidavit of service and the notice attached thereto. It was clearly mentioned in the notice that the application was filed after obtaining leave from the Hon'ble Court and would be moved at 2.30 p.m. on the self same date. According to Rule 26 of the Rules of the High Court at Calcutta relating to

applications under Article 226 of the Constitution of India where the State Government is a party, service upon the Government Pleader is sufficient.

It was the obligation of the learned Government Pleader or the officials attached to the office of the learned Government Pleader accepting notice to ensure that the State is represented when the matter is taken up for consideration by the Hon'ble Court. At the time of service of any notice/petition/application the office of the Government Pleader verifies the same as to whether 48 hours' time has been given prior to moving the matter before the Hon'ble Court. As the matter was sought to be moved on urgent basis, accordingly, urgent measures ought to have been taken to represent the State before the Hon'ble Court.

As the Government Pleader is authorised to represent all the departments of the State, accordingly, submission on behalf of the review applicant that the State or a particular department of the State was not served, cannot be accepted by the Court.

Further ground for review is that, the day the order was passed by the Hon'ble Judge was a holiday declared by the State of West Bengal and resolution was adopted by the Bar Association of this Court requesting the Hon'ble Judges not to take up any matter ex parte. Despite being aware of the said resolution, the Hon'ble Judge took up the matter and decided the same in the absence of the learned advocate representing the State.

Be it recorded that 21st April, 2023 was a full working day of the High Court and there was no formal direction or request by the Hon'ble the Acting Chief Justice not to entertain/hear or decide matters ex parte. The Court, in its usual course of business, after being convinced with the urgency of the matter, took up the same and passed order upon hearing the learned advocates who were present at the time of hearing.

The review applicant ought to have appreciated the reason as to why the Court granted leave to the applicant (ED) to move the matter on urgent basis on the same date. The Court was concerned with the nature of allegation made in the application filed by the Enforcement Directorate. An investigation is under process involving highly influential individuals, politicians, ministers of the ruling party, popular film stars etc. and the amount of cash, documents/electronic evidences recovered at the time of investigation clearly implies that there are every chances of destroying/removing/tampering the evidences, threatening/terrorising the witnesses which may interfere with the process of investigation. Each and every step in the investigation process is extremely vital and any delay in taking action in proper time may result in a faulty investigation which may later turn out to be fatal. In such a situation, not passing any order on the application on emergency basis, would have led to severe miscarriage of justice. The same would have adverse effect on the investigation itself.

Further submission of the learned Advocate General that there was no prayer by the Enforcement Directorate for causing investigation, and accordingly, it was not proper for the Court to pass order for investigation by the CBI and ED. It has been submitted that the same calls for review of the said order.

The aforesaid submission of the learned Advocate General appears to be fallacious. On a perusal of the order under review it appears that the Court merely directed the CBI to file a report with regard to the steps taken by them and the Director General of Police and Chief Secretary of the State was directed to instruct all the departments under them to help and assist the investigating agencies while investigating this scam.

It does not appear that the Court passed any fresh order of investigation, as possibly, there was no requirement of passing a fresh order of investigation. The process of investigation was already on and in the course of investigation certain

evidences were found relating to similar scam in recruitment under the municipalities. No order for fresh investigation was passed by the Hon'ble Judge. To conclude the continuing investigation, the fresh evidences that were revealed were liable to be taken note of.

The answering respondents in the review petition i.e. the writ petitioner, the CBI and the ED unanimously contend that the application for review ought to be dismissed as being not maintainable as the same is not in consonance with the provision of Order 47 Rule 1 CPC.

Devaraju Pillai (supra), Parision Devi (supra) and Confederation of State Government Employees (supra) have been relied upon in support of the submission that the review petition has a limited purpose and cannot be allowed to be an appeal in disguise. The review applicant has practically made detailed submissions on points of law as well as facts to impress the Court that the order under review ought not to have been passed. The elaborate discussion made hereinabove clearly indicates that the grounds for review as available under Order 47 Rule 1 CPC are not satisfied in the instant petition.

As regards filing the petition for review one day after the time limit sought for by the learned senior counsel, I am of the view that as the Hon'ble Supreme Court directed the High Court to hear the State, accordingly, for ends of justice, the petition for review is being entertained by the court.

It does not appear that the department of Urban Development and Municipal Affairs has suffered or may suffer any prejudice by the order sought to be reviewed. On the contrary, the Court is of the opinion that, the State including its departments, ought to cooperate with the investigating agencies and ensure that the investigation that is continuing reaches a logical conclusion at the earliest, so that the offenders can be booked and appropriately dealt with in

accordance with law. The same will in return enure to the advantage of the State authorities in identifying the persons involved in the racket of job in-lieu-of cash and the administration of the State may continue smoothly. The State authorities ought to actively assist the investigating authorities currently handling the matter, so as to free the State from the illegalities in the process of recruitment in various departments of the State.

The Court is convinced that in the facts and circumstances of the instant case, the petition for review must fail and is, accordingly, dismissed.

On account of dismissal of the review petition the connecting application also stands dismissed.

There shall however be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.

(Amrita Sinha, J.)