

# THE HIGH COURT OF MEGHALAYA

## WA No. 61/2014

Shri Shah Jamal Sheikh,  
S/o Shri (L) Hajim Uddin Sheikh,  
R/o Shidakandi P.O. New Bhaitbari,  
West Garo Hills District, Meghalaya

:::: Appellant

-Vs-

1. State of Meghalaya represented by the Secretary to the Govt. of Meghalaya, Education Department, Meghalaya.
2. Director of School Education and Literacy, Meghalaya, Shillong.
3. Additional Director of School Education and Literacy (EW & S) Garo Hills, Tura, Meghalaya.
4. District School Education Officer, West Garo Hills, Tura.
5. The Principal, Bhaitbari Higher Secondary School, West Garo Hills.
6. Managing Committee, Bhaitbari Higher Secondary School represented by the Secretary of the Managing Committee, Shri. Borhan Uddin Akond.
7. Shri Borhan Uddin Akond, S/o Jamshed Ali Akond, R/o New Bhaitbari, P.S. Phulbari, West Garo Hills, Meghalaya.

:::: Respondents.

**BEFORE**

**THE HON'BLE MR JUSTICE UMA NATH SINGH  
CHIEF JUSTICE (ACTING)  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

For the Appellant : Mr A.Khan, Adv  
Mr. SA Sheikh, Adv

For the Respondents : Mr. ND Chullai, Sr. GA  
Mr. R. Gurung, GA

Date of hearing : 29.09.2014

Date of Judgment & Order : 29.09.2014

**JUDGMENT AND ORDER (ORAL)**

**Hon'ble Justice Uma Nath Singh, CJ (Acting)**

1. We have heard learned counsel for the parties and perused the documents on record.
2. This writ appeal has been filed being aggrieved by the judgment and order dated 3-7-2014 passed in Review Petition No. 14/2013 filed against the order passed in WP(C) No. 167/2013 by learned Single Judge. By the impugned judgment and order dated 27-8-2013 learned Single Judge has recalled the order dated 27-8-2013 passed in the aforesaid writ petition and has imposed the costs of Rs. 50,000/- (Rupees fifty thousand) for suppression of material facts. The costs have been made payable to Registrar General of this Court within a period of 2(two) months from the date of impugned order. There is a use of improper words for learned Single Judge in the drafting of grounds of this writ

appeal which require a serious notice of this Court. The grounds so pleaded are reproduced hereinbelow:

“ .....

- i. For the impugned judgment and order dated 03-07-2014 passed by the learned Single Judge in review Petition No. 14/2013 arising out of Writ Petition No. 167/2013 is bad in law and fact and has been passed without proper application of judicious mind.
- ii. For the impugned judgment and order dated 03-07-2014 passed by the Learned Single Bench in Review Petition No. 14/2013 suffers from the vice of application of judicious mind.
- iii. For the impugned judgment and order dated 03-07-2014 has been passed by the Learned Single Bench in review Petition No. 14/2013 overlooking the materials placed on record as such it is bad in law and fact.
- iv. For that the impugned judgment and order dated 03-07-2014 has been passed by the learned Single Judge in violation of principles of natural justice as the appellant was never given an opportunity to file an affidavit, on contrary, the learned Single Bench vide order dated 03-06-2014 was pleased to direct the appellant to file an affidavit on specific issue, depriving the appellant to respond to the averment made in review petition No 14/2013.
- v. For the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in review Petition No. 14/2013 failed to appreciate that the respondent No.7 did not have locus standi to file the review petition inasmuch as the respondent No. 7 was neither a party nor aggrieved by the order dated 27/8/2013 passed in WP(C) 167/2013, as such, the review petition No. 14/2013 was liable to be dismissed on this ground alone.

- vi. For the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in Review Petition No. 14/2013 failed to appreciate that the review petitioner (respondent No.7 herein) had invoked the review jurisdiction questioning the order dated 27-08-2013 passed in WP(C) No.167/2013 and the same person in disguise as a Secretary has preferred the writ petition being WP(C) No. 57/2014 impugning the order dated 29-08-2013 approving the Managing Committee of the respondent No. 6, as such, the review petitioner (respondent No. 7) is guilty of abusing the process of court and this fact was overlooked by the Learned Single Bench.
- vii. For the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in review Petition No. 14/2013 failed to appreciate the settled proposition of law that once a petition is not maintainable or the petitioner does not have locus standi, no relief can be granted.
- Viii. For the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in review Petition No. 14/2013 failed to appreciate that in WP(C) No. 167/2013 filed by the appellant the order dated 20-05-2013 dissolving the Managing Committee of the appellant was challenged on the ground that the sitting MLA cannot usurp the power of statutory authority and dissolve the statutory body. Further the Learned Single Bench failed to appreciate that it was nobody's case that appellant was deprived of his right to participate in the meeting.
- ix. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in review Petition No. 14/2013 failed to appreciate that the order dated 27-08-2013 disposing WP(C) 167/2013 was passed with mutual consent of the parties and

the state respondent had chosen not to file affidavit and conceded to the order dated 27-08-2013, however, respondent had circumvented the order dated 27-08-2013 passed by the Learned Single Bench and constituted the Managing Committee of the respondent No.7 which was approved on 29-08-2013 rendering the order dated 27-08-2013 passed in WP(C) No 167/2013 infructuous.

- x. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in review Petition No. 14/2013 failed to appreciate that the respondent No.7 and state respondent had constituted and approved a Managing Committee circumventing the order dated 27-08-2013 and the respondent no.6 had approached the Hon'ble Court by filing writ petition being WP(C) No. 57/2014 for extending the term of the illegally constituted committee.
- xi. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 passed in review Petition No. 14/2013 failed to appreciate that the appellant had approached the Learned Single Bench by way of writ petition (C) No. 167/2013 being aggrieved with the dissolution of the Managing Committee. However, the matter was disposed of on the concession made by the state respondent vide order dated 27-08-2013, before the order dated 27-08-2013 could be acted upon. The Managing Committee of Bhaitbari Higher Secondary School was reconstituted and approved vide order dated 29-08-2013. The appellant being left with no other alternative, on a separate cause of action, once again preferred a writ petition being WP(C) No. 277/2013 impugning the order dated 29-08-2013 approving the Managing Committee of Bhaitbari Higher Secondary School and the said writ petition is pending for disposal. However during the pendency of the matter the respondent No. 7 preferred

Review Petition No. 14/2014 alleging suppression of facts and inter alia praying for review of order dated 27-08-2013 solely on the ground of suppression of facts. The order dated 27-08-2013 passed in WP(C) No 167/2013 was innocuous order and there was no suppression of facts. In fact the order was passed on the concession made by the state respondent. The Learned Single Bench had allowed the review petition overlooking the facts narrated above.

- xii. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in review Petition No. 14/2013 failed to appreciate that the respondent has filed writ petition being WP(C) No. 57/2014 inspite of the Managing Committee of Bhaitbari Higher Secondary School being approved, and challenged the approval order which is in his favour, praying for extension of tenure of the Managing Committee which itself speaks volume about the intention and conduct of the respondent.
- xiii. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in review Petition No. 14/2013 failed to appreciate that the cause of action of WP(C) No. 167/2013 was dissolution of the appellant's Managing Committee and the said writ petition was disposed of by an innocuous order dated 27-08-2013, before the order dated 27-08-2013 could be acted upon. A fresh cause of action arose whereby the Managing Committee of Bhaitbari Higher Secondary School was approved vide order dated 29-08-2013. The appellant being aggrieved by the approval of the Managing Committee of Bhaitbari Higher Secondary School preferred WP(C) No. 277/2013 which is subjudice before the learned Single Judge and the respondent No. 7 suppressed this fact solely with an intention to frustrate the WP(C) No. 277/2013.

- xiv. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in Review Petition No. 14/2013 failed to appreciate that based on the concession made by the state respondent the order dated 27-08-2013 disposing the writ petition No. 167/2013 was passed and the state respondent who was arrayed as respondent in Review Petition No. 14/2013 has taken an adversial stand which is highly unwarranted and speaks volume about the conduct of state respondent.
- xv. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in Review Petition No. 14/2013 failed to appreciate that assuming that the appellant had participated in the meeting there was no bar in challenging the dissolution of the Committee which was the subject matter of WP(C) No. 167/2013, more importantly the said writ petition was never disposed of on merit as such there is no occasion of suppression of facts.
- xvi. For the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in Review Petition No. 14/2013 had erroneously held that the appellant had suppressed the material fact while disposing the WP(C) No. 167/2013 overlooking the material fact available in the record and has passed the impugned judgment and order dated 03-07-2014.
- xvii. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in Review Petition No. 14/2013 has arbitrarily imposed a heavy costs of Rs 50,000/- (Rupees Fifty Thousand) without any lawful justification and overlooking the fact that the appellant being a poor person, is not having the means to pay the costs.

- xviii. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in Review Petition No. 14/2013 had arbitrarily imposed a heavy costs of Rs 50,000/- (Rupees Fifty Thousand) without any lawful justification or assigning any reasons which has caused prejudice or malign the judiciary if the impugned order is allowed to stand and the appellant shall be put to extreme hardship as the same does not have the means to pay the costs.
- xix. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in Review Petition No. 14/2013 had overlooked the status, background and the capacity of the appellant to pay the costs and in the most casual manner imposed the costs of Rs 50,000/- (Rupees Fifty Thousand) unless not interfered it would cause serious miscarriage of justice.
- xx. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in Review Petition No. 14/2013 has failed to appreciate that the facts and circumstances of the case and the material placed before the court did not constitute any suppression of facts which lead to the passing of the order dated 27-08-2013 in WP(C) No. 167/2013.
- xxi. For that the Learned Single Bench while passing the impugned judgment and order dated 03-07-2014 in Review Petition No. 14/2013 failed to appreciate that the review petitioner (respondent No.7) had preferred a review petition in disguise of an appeal which is not permissible in law.
- xxii. That the appellant craves the leave of this Hon'ble Court to take some additional grounds at the time of hearing of the instant appeal.



- xxii. That the instant appeal has been preferred within the prescribed period of limitations and there is no statutory bar in preferring the instant appeal.”
3. Learned counsel for the appellant submitted that the appellant is a man of modest financial means, and he is surviving somehow from his earning as Secretary of the School which is an elected post. Learned counsel submits that the costs amount is excessive and if the same is not interfered, it would be almost impossible for the petitioner to deposit the same. In support of his contention, learned counsel, inter alia, relied on the judgment of Hon’ble the Apex Court in ***Shivdeo Singh and Ors- vs- State of Punjab and Ors (AIR (1963) SC 1908 in particular para 8)***, to argue that the High Court can review its order under Article 226 of the Constitution of India by invoking its such powers.
4. He also referred to a latest judgment reported in ***Sahara India Real Estate Corporation Limited and Ors –vs- Securities and Exchange Board of India and Anr, ((2013) 2 SCC 730)*** to contend that the persons who were not parties to a petition at the time of rendering of judgment and order have no locus standi to file review petition.
5. Learned counsel also placed reliance on the judgment of Hon’ble the Apex Court in ***Rejendra Kumar and Ors -vs- Rambhai and Ors. (AIR (2003) SC 2095)*** to argue that the first and foremost requirement for entertaining a review petition is that there should be error apparent on the face of the judgment/order and allowing the judgment/order to stand will lead to failure of justice.

6. A further judgment to which the reference is made in ***Lily Thomas, etc. etc- vs- Union of India and Ors (AIR (2000) SC 1650 (paras 52 and 53)*** to argue that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power and the review cannot be treated as an appeal in disguise.
7. Learned counsel also cited the judgment reported in ***Union of India and Ors –vs- B. Valluvan & Ors (AIR (2007) SC 210)***, in support of the contention that the Court's jurisdiction to review its own judgment is limited. The review must be exercised under the provisions of Section 114 read with order 47 Rule 1 of the Code of Civil Procedure.
8. According to learned counsel, in the matter of ***V.M. Salgaocar & Bros. –vs- Board of Trustees of Port of Mormugao and Anr (AIR (2005) SC 4138)***, it is observed that the Court should dismiss a suit instituted after the prescribed period of limitation irrespective of the fact that the limitation has been set up as a defence.
9. It is also the submission of learned counsel that expression and suppression of facts would mean deliberate or conscious omission to state a fact with the intention of deriving wrongful gain as propounded in the judgment reported in ***Collector of Customs, Calcutta –vs- Tin Plate Co. of India Ltd. ((1997) 10 SCC 538 para 5)***.
10. Learned counsel while taking the plea that suppression of material facts could affect the final disposal of the case on merit referred, in this regard, to the judgment in the case of ***M/s S.J.S. Business***

***Enterprise (P) Ltd. -vs- State of Bihar and Ors reported in (AIR ((2004) SC 2421).***

11. Lastly, according to learned counsel, the amount of costs should have been determined in line with the judgment in ***Ashok Kumar Mittal -vs- Ram Kumar Gupta and Anr. reported in ((2009) 2 SCC 656)***. Awarding of costs is discretionary but it is also subject to the conditions and limitations as contained in Sections 35 and 35-A of CPC.
12. Learned Sr. counsel appearing for the State, on the other hand, supported the impugned judgment. He also referred to the judgment in ***Sanjeev Kumar Jain –vs- Raghubir Saran Charitable Trust and Ors.(2012)1 SCC 455)*** to argue that the amount of costs which, according to this judgment, has to be determined in the absence of specific rules framed by the High Court, as per the provisions of Sections 35, 35-A and 35-B of the CPC.
13. On due consideration of rival submission, we do not find any ground to interfere with the judgment. There is no gainsaying of the propositions of law as propounded in the judgments under reference hereinabove but the question is whether the ratios thereof would apply in the facts and circumstances of this case.
14. If the High Court in exercise of extraordinary jurisdiction under Article 226 decides a matter, it can also review the same on finding that there is an error apparent on the face of records or on account of mis-statement leading to passing a judgment, there is a miscarriage of justice and the ends of justice require that the same should be set right. The review petitioner, he was though not made a party can still have locus standi to file a review in case his interest has been affected. The review petitioner appeared to be aggrieved by the judgment dated 27-8-2013 passed in

WP(C) No. 167/ 2013 and thus, he was well within his right to file a review. As there was a mis-statement of facts which led to passing of an erroneous order in writ petition and that was recalled later by the impugned judgment and order dated 3-7-2014, passed in review is itself a ground to say that there was an error on the face of record. The power of review, undoubtedly, can be exercised in the way and on the grounds as provided under Section 114 read with Order 47 Rule 1 CPC and in the light of various pronouncements on that subject governing the exercise of such power, but that could still not create a bar for the Court to correct the error leading to miscarriage of justice as pointed out in the impugned judgment. Even in the case of delay in approaching the Court if the explanation offered therefor, appears to be plausible, the Court upon being satisfied that a miscarriage of justice has occasioned, can condone the delay and exercise the power of review. The appellant participated in the meeting as respondent No.6 and signed the minutes of the meeting, but he did not disclose this fact to the Writ Court. That goes to suggest that he had suppressed that fact deliberately and consciously in order to mislead the Court in passing a wrong judgment in the writ petition, regardless of the fact as argued on behalf of the appellant that neither of the parties has got any benefit out of the judgment. If the Court was misled to pass a wrong judgment, that would also amount to abusing the process of Court and, in that case, deriving of benefit or no benefit may not make any difference or make out a ground to say that the Writ Court of learned Single Judge could not have exercised the power of review. No doubt, in the judgments of Hon'ble the Apex Court in ***Ashok Kumar Mittal vs Ram Kumar Gupta and Anr (2009) SCC 656***, and ***Sanjeev Kumar Jain –vs- Raghubir Saran Charitable Trust and Ors.(2012)1 SCC 455*** there are detailed discussions about the provisions of Sections 35-A and 35-B CPC, but the same are to be referred to and can be relied upon for guidance at the time of imposition of costs by the High

Court in the absence of specific rules of the High Court dealing with that issue. But that nevertheless, both the judgments have been passed in the cases of civil suits whereas in the instant case, the Court of learned Single Judge has exercised the power of extraordinary jurisdiction under Article 226 of the Constitution of India. That apart, the tenor of averments made in the grounds of this writ appeal also needs to be noticed seriously. On the one hand, the appellant claims to be a poor person with modest means, while on the other, he has not cared to show proper respect to the Court of learned Single Judge. Also, it is not expected of an elected Secretary of the Managing Committee of a Higher Secondary School to mislead the Court and abuse the process of Court. Though, the State of Meghalaya constituting a tribal area comes under the Sixth Schedule to the Constitution of India, but unlike other such areas, looking into the standard of education and that of living of people, it can be said to possess all the attributes of an educationally, financially and culturally advanced society. English is the recognized State language and even a resident with minimum education can interact fluently in English. Thus, the appellant cannot be said to be ignorant about the outcome of his conduct in suppressing a material fact and making a wrong statement which led to the miscarriage of justice in the opinion of learned Single Judge. However, taking into consideration that this is a new High Court with a growing Bar, we reduce the costs imposed by learned Single Judge from Rs. 50,000/- to Rs. 20,000/-, with a note of caution for future to the appellant. With the aforesaid modification in the amount of costs, the writ appeal, being devoid of merits, is hereby dismissed.

(Hon'ble Mr Justice T.N.K.SINGH)  
JUDGE

(Hon'ble Mr. Justice U.N.Singh)  
CHIEF JUSTICE (ACTING)

S.Rynjah