

CASE NO.:
Appeal (civil) 512 of 2008

PETITIONER:
Homfraygunj Martyrs Memorial Committee

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 18/01/2008

BENCH:
TARUN CHATTERJEE & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T

O R D E R

Arising out of S.L.P. (C) 2523 of 2007)

1. Delay of 14 days in filing this Special Leave Petition is condoned.

2. Leave granted.

3. This appeal is directed against the final order dated 20th of July, 2006 passed in Writ Petition No. 93 of 2006 and also the order dated 18th of August, 2006 in Review Petition No. 12 of 2006 passed by the Division Bench of the High Court at Calcutta, Circuit Bench at Port Blair, whereby the High Court had dismissed the Writ Application as well as the Review Petition by the aforesaid two orders.

4. Having heard the learned counsel for the parties and after going through the impugned orders, we are of the view that the order of the High Court, dismissing the Writ Application on the ground of maintainability of the same, cannot be sustained. It appears that an application under Article 32 of the Constitution was filed before this Court, which came to be registered as W.P. (C) 141 of 2006, which was dismissed as withdrawn. The order of this Court runs as under:

\023The learned senior counsel appearing for the petitioner seeks leave of the Court to withdraw this Writ Petition. Permission granted. The Writ Petition is allowed to be withdrawn and is dismissed as such.\024

5. After the Writ Petition under Article 32 of the Constitution was withdrawn, a fresh Writ Application was filed in the High Court, which was dismissed on the ground that since the point taken in the Writ Petition was already urged before this Court and the Writ Application under Article 32 of the Constitution of India was withdrawn, there could not be any question to entertain the Writ Application. A Review Application was filed, which was also dismissed by the High Court and the appellants have filed this appeal against the aforesaid two orders.

6. In our view, the High Court had gone wrong in dismissing the Writ Application on the ground that it was not maintainable after the Writ Petition under Article 32 of the Constitution was withdrawn. It is now well settled that when a Writ Petition filed under Article 32 of the Constitution is dismissed as withdrawn, that would not take away the right of the Writ Petitioner to move a fresh writ application under

Article 226 of the Constitution for the same relief. That being the position, we have no other alternative but to set aside the impugned order, including the order passed in the Review petition and restore the writ application for decision afresh in accordance with law. We request the High Court to decide the writ application after giving hearing to the parties and after passing a reasoned and speaking order within four months from the date of supply of a copy of this order to the High Court.

7. The impugned orders, therefore, are set aside. The appeal is allowed to the extent indicated above. There will be no order as to costs.

8. We, however, make it clear that we have not gone into the merits of the Writ Petition, which shall be decided by the High Court in accordance with law.

JUDIS