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C.A.No. 3988-3989 OF 2001

ITEM No.5

Court No. 3

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

IA Nos. 7-8 In Civil Appeal No.3988-3989/2001

COMMON CAUSE

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

(For clarification and modification of Court's order dated 08/10/2003 and office report)

Date : 27/01/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s)Ms. Kamini Jaiswal, Adv.

For Respondent (s)Mr. Anip Sachthey, Adv.
Mr. Shrinivas R. Khalap,. Adv.
Mr. E. Venu Kumar, Adv.

Mr. P.P. Malhotra, Sr. Adv.
Mr. Hemant Sharma, Adv.
Mr. D.S. Mahra, Adv.

For Applicant/RespondentMr. S. Balakrishnan, Sr. Adv.
Mr. K.L. Rathee, Adv.
Mr. Ram Lal Roy, Adv.
Mr. R.N. Keshwani, Adv.

Mr. Subramonium Prasad, Adv.

UPON hearing counsel the Court made the following

O R D E R

The applications are dismissed in terms of the signed order.

KALYANI

(RADHA R. BHATIA)

COURT MASTER

(SIGNED ORDER IS PLACED ON THE FILE.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

IA Nos. 7-8 in CIVIL APPEAL NOS. 3988-3989 OF 2001

COMMON CAUSE

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APPELLANT (S)

VERSUS

UNION OF INDIA & ORS.

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RESPONDENT (S)

O R D E R

This is an application styled as one seeking "clarifications, reconsiderations and modifications" in the judgment dated 8th October, 2003 delivered by this Court.

We have heard the learned counsel for the applicant. We are satisfied that the application does not seek any clarifications. It is an application seeking in substance a review of the judgment. By disguising the application as one for 'clarification', the attempt is to seek a hearing in the open court avoiding the procedure governing the review petitions which, as per the Rules of this Court, are to be dealt with in Chambers. Such an attempt on the part of the applicant has to be deprecated.

Learned counsel for the petitioner has invited our attention to the following observation contained in the opinion of Third Judge in the High court:

"Before parting, I would like to mention something which has troubled me a bit. Section 1(3) of the Act is not in force. On what authority can the Central Government issue notification under Section 1(3) of the Act."

We do not think that the above-said is a finding recorded by the learned Judge. Be that as it may, this was not a point argued before the Court when the Civil Appeal was taken up for hearing. A point not argued will be deemed to have been given up and cannot be permitted to be raised now by filing of such a petition.

Another submission made by the learned counsel for the applicant is that this Court can issue a writ of mandamus directing the Union of India to issue notification for enforcement of an enactment already passed by Parliament. For this purpose, reliance is placed on the dissenting opinion contained in paragraphs 111 and 112 of a Constitution Bench decision of this Court in A.K. Roy Vs. U.O.I. & Ors. (1992) 1 SCC 271. The view taken by the minority cannot be cited as the law laid down by the Constitution Bench nor can it be followed in face of the opinion of majority to the contrary.

Reliance is also placed on the observations contained in paragraph 5 of Supreme Court Legal Aid Committee Vs. U.O.I. & Ors. (1998) 5 SCC 762. Such observations, or simply what was done in a given case, without laying down the law cannot be read as a ratio of the judgment and certainly not as a precedent. Whether a writ of mandamus of the nature which was prayed for before the Court can be issued or not - was not a point argued and decided by the Court.

The applications are wholly devoid of any merit and are therefore dismissed.

.....J
(R.C. LAHOTI)

.....J
(B.N. AGRAWAL)

NEW DELHI;
JANUARY 27, 2004.