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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 20th August, 2020*

REVIEW PETITION No.123/2020
in
\+ W.P.(C) 4621/2020

SHAILENDRA KUMAR SINGH ..... Petitioner
Through: Petitioner-in-person

Versus

GOVERNMENT OF NCT OF DELHI
THROUGH ITS CHIEF SECRETARY ..... Respondent
Through: Mr. Sanjoy Ghose, ASC for GNCTD
With Ms.Urvi Mohan, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D.N. PATEL, Chief Justice** (*Oral*)

Proceedings of the matter have been conducted through video conferencing.

CM No.19686/2020 (*exemption*) in RP No.123/2020

Allowed, subject to all just exceptions.

The application stands disposed of.

Review Petition No.123/2020

1. This review petition has been preferred by the original petitioner for

review of our judgment and order dated 28.07.2020 passed in W.P.(C) No.4621/2020.

2. In W.P. (C) No. 4621/2020, filed as a public interest litigation, the petitioner sought to challenge the grant of subsidies (particularly with regard to consumption of power and water) to the public by the respondent Government of NCT of Delhi ("GNCTD"). He also sought a direction upon GNCTD "not to make any such freebie *(sic)* policy".

3. By way of the judgment under review dated 28.07.2020, the writ petition was dismissed, principally on the ground that the petitioner had failed to demonstrate any unconstitutionality, manifest arbitrariness or mala fides on the part of GNCTD, and the policy decisions of the executive were therefore not vulnerable to interference under Article 226 of the Constitution. Relying upon the judgments of the Supreme Court in *Villianur Iyarkkai Padukappu Maiyam v. Union of India* (2009) 7 SCC 561 (paragraph 168-170) and *Dr.Ashwani Kumar vs. Union of India & Anr.* 2019 SCC Online 1144 (paragraph 13, 29), it was held as follows:

> *"6. It is evident from the aforesaid decisions also that a policy decision of the government cannot be interdicted by the writ court in the absence of a finding of unconstitutionality, illegality or mala fides. The petitioner has failed to make out any of these grounds, or to demonstrate any manifest arbitrariness on the part of the executive. We therefore see no reason to entertain this writ petition to alter the policy decision of the respondents. Water and electricity concessions are given by the respondents as per their policy decisions based upon application of facts and situations prevailing in the particular society. The policy decision is always based upon the priorities of the executive, elected by the people. We are not inclined to alter the policy decision of the Government unless any*

illegality or otherwise is pointed out in detail.

7. As stated above, the petitioner is unable to point out any illegality about the electricity and water concessions given by the respondents. The Government cannot run at the desire of a person like this petitioner. Bare assertions have no value in the eyes of law. Assertions are required to be supported by cogent materials and the alleged illegality has to be made out, otherwise, the Courts will be extremely slow in interfering with the policy decision. Hence, also we see no reason to interfere with this petition."

4. In support of this review petition, the petitioner has sought to place on record a number of documents which were not part of the writ petition. He drew our attention to the extracts of the "Economic Survey Report on Water Supply and Sewerage" for 2018-19 to submit that GNCTD itself has admitted large-scale wastage of water and improper use of resources. The petitioner vehemently argued that this demonstrates the unreasonableness of the policy to grant subsidy in water and electricity tariffs to consumers. He urged us to hold that there are other better uses of limited resources, which the GNCTD should use to reduce unemployment, build roads and undertake other measures commensurate with the objectives of a welfare state.

5. Looking to the contentions raised by the petitioner in person, it appears that this review has been preferred as an appeal in disguise which is not permissible in the eye of law.

6. There is no error apparent on the face of the record in the judgment and order dated 28.07.2020 in W.P.(C) No.4621/2020 passed by this Court.

7. It ought to be kept in mind that even if the judgment is erroneous, the review is not tenable at law.

8. In the case of **Parsion Devi & Ors. v. Sumitri Devi & Ors.**, reported

in **(1997) 8 SCC 715**, the Hon'ble Supreme Court in Para – 7 to 9 held as under :

> ***"7.*** *It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. (SCR at p. 186) this Court opined:*
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> *"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for 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."*
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> *(emphasis ours)*
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> ***8.*** *Again, in Meera Bhanja v. Nirmala Kumari Choudhury while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma this Court once again held that 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.*
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> ***9.*** *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 the record. 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 the record justifying the court to exercise its power of review under Order 47 Rule 1*

CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

(Emphasis supplied)

9. In the case of **Haryana State Industrial Development Corpn. Ltd. v. Mawasi & Ors**, reported in **(2012) 7 SCC 200**, the Hon'ble Supreme Court in Para – 26, 27 and 34 held as under :

26. *At this stage it will be apposite to observe that the power of review is a creature of the statute and no court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The rules framed by this Court under that article lay down that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure, 1908 which reads as under:*

Order 47 Rule 1*:*

*"**1.Application for review of judgment**.—(1) Any person considering himself aggrieved—*

(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 of which he applies 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."

27. *The aforesaid provisions have been interpreted in several cases. We shall notice some of them. In S. Nagaraj v. State of Karnataka [1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320 : (1994) 26 ATC 448] , this Court referred to the judgments in Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai [AIR 1941 FC 1] and Rajunder Narain Rae v. Bijai Govind Sing [(1837-41) 2 MIA 181 : (1836) 1 Moo PC 117] and observed: (S. Nagaraj case [1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320 : (1994) 26 ATC 448] , SCC pp. 619-20, para 19)*

"19. <u>Review literally and even judicially means re-examination or reconsideration.</u> Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. <u>In Raja Prithwi Chand Lal</u>

Choudhury v. Sukhraj Rai [AIR 1941 FC 1] the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Sing [(1837-41) 2 MIA 181 : (1836) 1 Moo PC 117] that an order made by the Court was final and could not be altered: (Rajunder Narain Rae case [(1837-41) 2 MIA 181 : (1836) 1 Moo PC 117] , MIA p. 216)

'… nevertheless, if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in. … The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have, however, gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects, in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the

practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order 40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order 40 Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

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***34.** In Haridas Das v. Usha Rani Banik [(2006) 4 SCC 78] , the Court observed: (SCC p. 82, para 13)*

"13. … 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."

(Emphasis supplied)

10. Moreover, the petitioner has not made out any ground under Order

XLVII Rule 1, for us to exercise our power of review.

11. Having heard the review petitioner in person and the learned counsel for the respondent and looking to the facts and circumstances of the case, we are not inclined to review our judgment dated 28.07.2020. The petitioner has been unable to show any error on the face of the judgment under review. Whatever the merits or otherwise of the petitioner's submissions regarding the policies adopted by the GNCTD, it is generally not for the writ court to supplant the priorities of the elected executive with its own understanding. We are not impressed with the petitioner's submission that the impugned policies are unconstitutional, arbitrary or mala fide. Suffice it to say that the scope of review is limited, and the petitioner is not entitled to a re-hearing of the grounds which he raised and urged at the hearing of the writ petition.

12. For the aforesaid facts, reasons and judicial pronouncements, we hold that there is no substance in this review petition since we do not find any error apparent on the face of the judgment under review dated 28.07.2020, passed in W.P.(C) No.4621/2020.

13. Hence, this review petition is hereby dismissed.

CHIEF JUSTICE

PRATEEK JALAN, J

AUGUST 20, 2020
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