

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 31 of 2015**

A.P.Nirman Limited Through: Rajesh Kumar Agrawal S/o Late Gopi Ram Agrawal, Aged about 43 years, C 86, V.I.P. Estate, Opposite Ashoka Ratan Shankar Nagar, Raipur (Chhattisgarh), P.S. Shankar Nagar, Tahsil & Distt. Raipur (C.G.)

---- Petitioner**Versus**

1. The State of Chhattisgarh, Through- Secretary, Water Resource Department, Mantralaya, New Raipur, Raipur (Chhattisgarh)
2. The Engineer-in-Chief, Water Resource Department Sihawa Bhawan, Raipur (Chhattisgarh)
3. The Chief Engineer, Water Resource Department, Mahanadi Godawari Basin, Raipur (Chhattisgarh)
4. The Executive Engineer, Water Resource Division Gariaband, Dist. Gariaband (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Siddarth Yadav and Shri Rahul Jha, Advocates.
For Respondents/State	:	Shri B. Gopa Kumar, Deputy Advocate General

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

C A V Order**Per Navin Sinha, Chief Justice****07/07/2015**

1. The present application has been filed to Review order dated 5.3.2015 dismissing the Writ Petition (C) No.2375 of 2014.
2. Learned Counsel for the Petitioner submits that the order, Review of which is sought, does not consider that the Court cannot come to the assistance of a party which circumvents the law. Both the parties had referred the matter to the Chief Engineer who was the designated Arbitrator under the agreement. The Engineer-In-Chief could not have interfered with the award. It was binding on him under Clause 4.47.2. If the finding had been under Clause 4.31 (ii) by the Engineer-In-Chief, he could have had authority in the matter. If it was an

award passed by the Chief Engineer acting as Arbitrator, the Engineer-In-Chief could not have sat as an appellate authority over the same. The Engineer-In-Chief if aggrieved, was required to approach the Arbitration Tribunal. By the impugned order, the Court has virtually re-written the terms of the agreement by a wrong interpretation of Clause 4.47.2 and Clause 4.31 (ii) of the agreement between the parties. It was lastly submitted that the writ had been sought for quashing Annexure P-1 dated 28.7.2014 and Annexure P-2 dated 25.8.2014. The latter has not been considered at all and which constitutes an error apparent on the face of the record.

3. Learned Counsel for the Petitioner next submits that the powers of this Court in Review jurisdiction are not fettered in any manner and if the Court finds that any aspect of the agreement has incorrectly been considered by it, the erroneous interpretation done can be reexamined on merits again so that injustice is not done. Reliance was placed on (2014) 7 SCC 663 (Usha Bharti vs. State of Uttar Pradesh) and (2014) 14 SCC 77 (State of Rajasthan vs. Surendra Mohnot). A last alternative submission made was that if the Court was not satisfied to entertain Review application, liberty may be granted to challenge Annexure P-2, dated 25.8.2014.

4. Learned Counsel for the Respondents opposed the application submitting that the order, Review of which is sought, considers all aspects of the matter sought to be urged in the Review application. If the Petitioner is aggrieved by the same, remedy appropriately lies before the proper forum. The Review application is not maintainable and it may be dismissed.

5. We have considered the submissions on behalf of the parties.

6. In the order dated 5.3.2015 Review of which has been sought, all aspects with regard to the Engineer-In-Chief under Clause 4.31(ii) and Chief Engineer under Clause 4.47.2 including the authority of the Engineer-In-Chief to act in the matter have been considered in detail. The Petitioner virtually asks us to sit in judgment over our own order.

7. The order dated 25.8.2014 at Annexure P-2 was only a sequel and communication pursuant to the order dated 28.7.2014 at Annexure P-1. If the order dated 28.7.2014 was found to be erroneous, all consequential orders automatically collapse without any need for formal pronouncement with regard to the same.

8. Usha Bharti (Supra) on which reliance has been placed on behalf of the Petitioner, in fact lays down the law that it is only patent errors and not latent errors which can be the subject matter of Review jurisdiction. It is only accidental mistakes causing miscarriage of justice for which Review jurisdiction could be invoked. The Court will lean in favour of finality of a decision.

9. In Surendra Mohnot (Supra) the facts were entirely different. It related to a concession made by a Counsel beyond authority. It was further held that a Review application was not an appeal in disguise whereby an erroneous decision is reheard and corrected. Only patent errors could be considered in the Review jurisdiction. The Review jurisdiction could not be equated with the original hearing of the case and finality of the judgment delivered will not be reconsidered except where there was a glaring omission or patent mistake or a grave error by judicial fallibility. If the error has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an error is far from self-evident, it has to be established by lengthy and complicated arguments the Review jurisdiction is not available.

10. The two judgments rather than coming to the aid of the Petitioner hold to the contrary.

11. All aspects sought to be urged in the Review application have been considered in the order dated 5.3.2015. The Review petition is held to be not maintainable and is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE