IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

RP.NO. 1223 OF 2015 (S) IN WP(C).34649/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 34649/2015
OF HIGH COURT OF KERALA DATED 02-12-2015

REVIEW PETITIONER(S):

FIAT JUSTICIA, REPRESENTED BY
ITS DIRECTOR ADV. M.L.GEORGE,
"AVE MARIA", ACHANVEETTIL ROAD,
PACHALAM P.O., KOCHI - 682 012.

BY ADV. ADV. M.L.GEORGE (PARTY-IN-PERSON)

RESPONDENT(S):
----

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE SECRETARY, DEPARTMENT OF HOME, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

3. THE SECRETARY, DEPARTMENT OF FINANCE, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

4. THE SECRETARY, DEPARTMENT OF LAW, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

5. THE DIRECTOR, VIGILANCE AND ANTI CORRUPTION BUREAU, THIRUVANANTHAPURAM - 695 033.

BY SPECIAL GOVERNMENT PLEADER SMT. R.SUSHEELA BHAT

THIS REVIEW PETITION HAVING BEEN HEARD ON 23-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RP.NO. 1223 OF 2015 (S) IN WP(C).34649/2015

APPENDIX

PETITIONER(S)' EXHIBITS:

ANNEXURE - JUDGMENT DATED 02.12.2015 IN W.P(C) NO.34649 OF 2015

RESPONDENT(S)' EXHIBITS: NIL

ASHOK BHUSHAN, C.J.
and
A.M. SHAFFIQUE, J.

=====================================

R.P. No.1223 of 2015
in
W.P(C) No.34649 of 2015

=====================================

Dated this the 23rd day of December, 2015

O R D E R

Ashok Bhushan, C.J.

Heard the petitioner appearing in person.

2. This Review Petition has been filed seeking review of the judgment dated 02.12.2015 in W.P(C) No.34649 of 2015 by which judgment, the Writ Petition, after hearing the learned Senior Advocate for the petitioner has been dismissed. Petitioner had filed the Writ Petition raising objection regarding the proposed payment of huge amount running to lakhs in seeking legal opinion and engaging Senior Advocates of the Supreme Court without obtaining permission of the Government in the vigilance case. Petitioner's case in the Review Petition is that in spite of obtaining opinion of

the Advocate General of the State, opinion from the Senior Advocates of the Supreme Court has been obtained causing loss to the public exchequer.

3. After hearing learned Senior Advocate for the petitioner, Writ petition was closed making the following observations in paragraph 7:

> "7. Whether fifth respondent could have obtained legal opinion from senior counsel or incurred such expenses are issues which are for the Government to look into and it is not for this Court in this Public Interest Litigation to entertain such issues and examine the contention raised by the petitioner. To obtain legal opinion by department of the Government or the Government itself are the issues in the domain of respective department of the Government as per procedure prescribed. In regard to the payment of lakhs of rupees, these are issues which are to be in the domain of audit authorities to consider and not for this Court to entertain the issues and present any opinion. We are of the view that this case is not a fit case to be entertained as a Public Interest Litigation. "

4. This Review Petition has been filed on the grounds: (A) This Court failed to consider the observations made by the learned Single Judge in O.P (Crl.) No.376 of 2015. (B) Judgment of the learned Single Judge dated 09.11.2015 aforesaid revealed that

the 5th respondent did not attempt to get opinion of the Advocate General which fact is confirmed by the information received by the petitioner under the Right to Information Act, 2005, Ext.P2. (C) Public money has been squandered by the Government Officers flouting the prescribed procedure. (D) The 5th respondent has wilfully tried to mislead the court by filing a self contradictory statement. (E) The vigilance case against the former Minister is that he got illegal gratification from the Bar owners while renewing their Bar licences and hence seeking opinion from Shri L.Nageswara Rao, Senior Advocate who has appeared for the Bar owners' Association in the Supreme Court is against the administration of justice and rule of law. (F) Petitioner approached this Court in public interest as last resort since the petitioner did not get justice from the Government on the letters, Exts.P3 and P4 sent to the Honourable Governor of Kerala and Department of Home.

5. Petitioner appearing in person has submitted

that the present was a fit case to be entertained in public interest since it gave sufficient material to indicate that public fund is being squandered by the 5th respondent and he was obliged to obtain opinion from the Advocate General and the reasons given in the reply dated 27.07.2014, Ext.P2 is untenable. It is submitted that this Court also committed mistake in noticing the fact that opinion from the legal experts was decided to be obtained since the Advocate General and the Director General of Prosecution of the State did not respond to the letters of the Director of Vigilance, Anti Corruption Bureau whereas different reasons have been given for not obtaining opinion from the Advocate General and Director General of Prosecution. Petitioner submitted that observations made by the learned Single Judge in O.P(Crl.) No.376 of 2015 were sufficient enough to direct for a probe in the matter and staying payment of exorbitant fees to the Advocates of the Supreme Court.

6. We have heard the petitioner appearing in

person and perused the Review Petition and the grounds taken therein.

7. Before we embark upon considering the various grounds raised in the Review Petition, it is relevant and necessary to refer to the grounds on which a judgment of this Court in exercise of Article 226 of the Constitution of India can be reviewed.

8. The Apex Court in **Meera Bhanja v. Nirmala Kumari Choudhury** ([1995] 1 SCC 170) had occasion to consider the grounds on which the High Court can review its judgment. In paragraphs 8 and 9 of the judgment, the following was held:

> 8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, R.1, CPC In connection with the limitation of the powers of the Court under Order 47, R.1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Art.226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047, speaking through Chinnappa Reddy, J., has made the following pertinent observations (para 3) :
>
> "It is true there is nothing in Art.226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of Plenary jurisdiction to prevent miscarriage

of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court,"

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably the two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137, wherein, K. C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record :

"An error which 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 alleged error is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior

Court to issue such a writ."

In a subsequent judgment, **Kamalesh Verma v. Mayawati** ([2013] 8 SCC 320), the Apex Court again examined the ground on which review can be allowed. The Apex Court in paragraph 20 elaborately considered the grounds which can be a ground for review and which cannot be a ground for review. It is useful to extract paragraph 20 of the judgment which is to the following effect:

> "20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
>
> 20.1 When the review will be maintainable:-
>
> (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
>
> (ii) Mistake or error apparent on the face of the record;
>
> (iii) Any other sufficient reason.
>
> The words "any other sufficient reason" has been interpreted in Chhajju Ram v. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius and Others, 1955 (1) SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. and Others, JT 2013 (8) SC 275.
>
> 20.2. When the review will not be maintainable:-
>
> (i) A repetition of old and overruled argument is not enough

to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived. "

9. From the submissions which have been pressed by the petitioner, it is clear that the petitioner in essence is asking this Court to rehear the Writ Petition and entertain the Writ Petition. This Court has in the judgment dated 02.12.2015 noted the submissions made by the learned Senior Advocate for the

petitioner in the Writ Petition and observed in paragraph 7 that whether the 5th respondent could have obtained legal opinion from Senior Advocates or incurred such expenses are matters which are for the Government to look into and it is not for this Court to look into the same in a public interest litigation. It is also observed that to obtain legal opinion is in the domain of respective Department of the Government or the Government as per procedure prescribed. In regard to the payment of lakhs of rupees, it was observed that these are issues which are to be in the domain of Audit Authorities to consider and not for this Court to entertain the issues and express any opinion. The observations clearly mean that Government can always entertain such issues and take appropriate measures including the Audit wing of the Government. Submissions which are sought to be pressed in the hearing of the Review petition are the same which were raised by the learned Senior Advocate for the petitioner at the time of hearing the Writ Petition. It has been held by the Apex Court, as noted above, that Review Petition is not by way of appeal against the judgment and has to be strictly confined to the scope and ambit of review. Grounds on which review is sought are the same which were raised at the time of hearing the Writ Petition and which were considered, we are of the view that the said grounds does not furnish sufficient grounds for review. We, however, proceed to look into the specific grounds which have been raised in the Review Petition.

10. Grounds A and B are the grounds on which review sought is on the basis of the observations made by the learned Single Judge in the judgment dated 09.11.2015 in O.P(Crl.) No.376 of 2015. The observations of the learned Single Judge as quoted in paragraph 3 of the Review Petition is to the following effect:

> **"The opinion of the Advocate General of the State or any Law Officer under him was not attempted since the accused is also the Law Minister of the State and the Director made an honest attempt to get the best opinion from the experts on the issue."**

The fact remains that opinion was obtained from two Senior Advocates of the Supreme Court and the issue raised was regarding objection to the proposed payment of huge amount running to lakhs of rupees for seeking legal opinion. Whether payment of the expenses incurred for obtaining legal opinion from the two Senior Advocates was justified or not was not the issue before the learned Single Judge in O.P(Crl.) No.376 of 2015. Thus the observations as made above does not furnish any ground for review of the judgment where this Court has observed that it is for the Government to look into the matter as to whether the 5th respondent could have obtained opinion from the Senior Advocates or incurred such expenses or not.

11. It is true that in Ext.P2, which is a reply obtained by the petitioner under the RTI Act, it was stated that it was decided not to seek opinion from the Advocate General and Director General of Prosecution as the same would have lacked credibility on the ground that the above officers were working under the State

Government and any opinion furnished by them would have been brushed aside as opinion brought by the investigating agency. Whether the reasons given in the reply under the RTI Act were correct or not, are the issues which need be gone into in this Review Petition. While deciding the Writ Petition it was observed that the Advocate General and the Director General of Prosecution did not respond to the letters of the Director of Vigilance and Anti Corruption Bureau. In Ext.P2 the fact mentioned was that as the Attorney General of India and Solicitor General of India did not respond to the letters sent by the Director of Vigilance, Anti Corruption Bureau, opinions were obtained from Shri Mohan Parasaran (Former Solicitor General of India) and Shri L.Nageswara Rao (Former Additional Solicitor General of India). Thus the reason sought to be given for obtaining legal opinion from two Senior Advocates and it was not the Advocate General and the Director General of Prosecution did not respond to the letters but it was the Attorney

General of India and the Solicitor General of India who did not respond to the letters. The noticing of the fact that letters were not responded to by the Advocate General/Director General of Prosecution in paragraph 3 of the judgment are inconsequential since opinion was actually obtained from the two Senior Advocates for the reasons as mentioned in the statement filed in the Writ Petition as well as the reasons given in Ext.P2. The above grounds does not also furnish any sufficient ground for review of the judgment.

12. Coming to ground No.C, it is relevant to note that allegation of squandering of public money by Government Officers was the submission which was already pressed and considered while deciding the judgment. This Court has already made appropriate observations in paragraph 7 of the judgment as extracted above and it is always open for the Government and Audit Officers to take appropriate measures as required. In ground D it is stated that the 5th respondent has made self contradictory statement which exposes his doubtful

integrity and involvement. Reasons given in the reply statement or reasons given in Ext.P2 reply under the RTI Act, both indicates that it was decided to obtain opinion from the two Senior Advocates. Whether incurring of expenses on obtaining opinion was justified or not, as observed above, has already been taken care of by making observations in paragraph 7.

13. With regard to ground E that opinion ought not have been obtained from the Senior Advocate who was appearing for the Bar Owners' Association in the case in the Supreme Court is not a ground on which the High Court may review its judgment since the fact was noticed that opinion has been obtained from the Senior Advocate. In ground F it is mentioned that the petitioner approached the State Government by Exts.P3 and P4 and since he did not get justice he filed the Public Interest Litigation. The above ground also does not furnish any ground to review the judgment.

14. We thus conclude that none of the submissions raised by the petitioner hearing in person furnishes

any ground to review the judgment dated 02.12.2015. The present case does not come within the grounds as has been laid down by the Apex Court in the two judgments noted above for reviewing the judgment of this Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

With the above observations, this Review Petition is closed.

ASHOK BHUSHAN,
CHIEF JUSTICE.

A.M. SHAFFIQUE,
JUDGE.

vsv