

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

REVIEW APPLICATION (CIVIL) NO. 66 OF 2016
IN
WP/11921/2014
WITH
CIVIL APPLICATION NO.8616 OF 2016
IN
WP/11921/2014

SHREE SANT DNYANESHWAR SHIKSHAN MANDAL, BHUSAWAL AND
ANOTHER
VERSUS
PRASHANT NAGO BADGUJAR AND OTHERS

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Advocate for Review Petitioners/ Applicants : Ms.Surekha Mahajan h/f
Shri Bhokarikar Madhav M.

Advocate for Non Applicant/ Respondent 1 : Shri V.PPatil.

AGP for Non Applicants/ Respondents 2 and 3 : Shri P.N.Kutti.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 26th August, 2016

Per Court:

1 Heard the learned Advocates for the litigating sides at length.

When the Writ Petition Nos.11921/2014 and 701/2015 were heard on
29.02.2016, the record and proceedings were called for and the impugned
order was stayed by granting ad-interim protection on the condition of
reinstatement of the Respondent/ Employee. The said order dated
29.02.2016 reads as under:-

“1. *Heard the learned Advocates. The petitioner shall
reinstate the employee pending a hearing of this
petition within 2 (two) weeks from today, in the
light of the directions set out in the impugned order.*

2. *Call for record and proceedings from the Additional Commissioner, Adivasi Vikas, Nashik Division, Nashik, pertaining to Appeal No.2/2013 which has been decided by the impugned order dated 28.02.2014.*
3. *Stand over to 28.03.2016. On the condition of reinstatement in service within 2 (two) weeks as directed above, the impugned order shall stand stayed.*
4. *Needless to state, if the direction as above is not complied with, the interim protection granted today shall stand vacated without reference to the Court and the employee will then be at liberty to seek the execution of the impugned order.*
5. *At this juncture, the petitioner prays for staying this order for 4 (four) weeks.*
6. *Learned Advocate for the employee opposes the request on the ground that he has not been reinstated for the past about 18 months despite this Court having not granted any interim relief to the Establishment.*
7. *Considering this aspect and in view of the fact that the employee is kept out of employment without salary for almost 18 months, this request made by Mr.Bhokarikar is rejected.”*

2 Thereafter, the Petitioner/ Management has filed this Review
Petition and an order was passed on 06.04.2016 which reads as under:-

- “1. *When this matter was called out on 28.3.2016 Shri Bhokarikar learned Advocate had made a statement that a learned Sr. Advocate is being engaged in this matter. When the Court was about to dictate the order, he clarified that the Sr. Advocate was appearing in the Writ Petition and not in the Review Petition. At the request of Shri Bhokarikar, this statement was not recorded, though he stated that he cannot state the name of the Sr. Advocate, whom he was to engage.*
2. *Today, when the matter is called out, Shri Bhokarikar again submits that Sr. Advocate is appearing in the*

- Review Petition. He has stated the name of Shri Sunil Dighe, Advocate, who would conduct this matter.*
3. *At this juncture, when the order was being dictated in open Court, Shri Bhokarikar submits that he is seeking time in this Review Petition for his own reason and not for engaging a Sr. Advocate in the Review Petition.*
 4. *Shri Patil, learned Advocate for the non-applicant submits that the interim order of this Court dated 29.2.2016 has not been complied with and on the pretext of filing a Review Petition, the Review Petitioner continues to flout the order of this Court.*
 5. *At this juncture, Shri Bhokarikar, learned Advocate submits that this Review Petition be heard after summer vacation. This request is seriously opposed by Shri Patil.*
 6. *Considering the above and the reluctance of Shri Bhokarikar, Review Application No. 66 of 2016 is posted for hearing on 16.6.2016, purely on the request of Shri Bhokarikar.*
 7. *It is clarified that no orders have been passed on the Review Petition and the order passed in the Writ Petition dated 29.2.2016 has neither been stayed nor been kept in abeyance.”*

3 The learned Advocate for the Review Petitioner/ Management has canvassed an argument that the judgment impugned in the Writ Petition is without jurisdiction on the ground that the employees, who were working in the Primary Ashram Schools as well as the employees of the Secondary Ashram Schools, have a remedy of approaching the School Tribunal under the MEPS Act, 1977.

4 It is submitted on instructions that the Review Petitioner/

Management cannot reinstate the Respondent/ Employee in service, on which condition the impugned judgment was stayed. The only contention put forth is that because the impugned judgment is without jurisdiction, the Petitioner/ Management cannot reinstate the Respondent/ Employee during the pendency of this petition, which is yet to be admitted.

5 Shri Patil, learned Advocate submits that, during the pendency of the Writ Petition and after filing of the Review Petition on 11.03.2016, the Review Petitioner filed Writ Petition No.4836/2016 for the same cause of action before the learned Division Bench of this Court. By order dated 06.05.2016, the learned Division Bench has dismissed Writ Petition No.4836/2016 as withdrawn after recording that the Petitioner desired to withdraw the said Writ Petition unconditionally.

6 In my view, the Review Petition can be entertained only if there is an error apparent on the face of the order. In the instant case, the Petitioner/ Management has attempted to argue out the entire Writ Petition as if the Writ Petition is being heard finally. As noted above, the Petitioner/ Management has enjoyed the interim relief and has not complied with the condition on which it was granted on the plea that the Review Petitioner/ Management cannot reinstate the Respondent/ Employee.

7 I do not find that this Review Petition can be entertained when an ad-interim order has been passed granting ad-interim relief to the Petitioner/ Management which is conditional. The contentions raised by the Review Petitioner are pertaining to the Writ Petition which is still pending. In fact, the Writ Petition which was filed on 08.05.2014 was circulated for the first time on 09.12.2015 after about 19 months from its filing. Yet, this Court granted ad-interim protection to the Petitioner / Management, which relief has been enjoyed by the Petitioner while not complying with the condition on which it was granted.

8 The Honourable Supreme Court, in the matter of *Lily Thomas vs. Union of India*, **AIR 2000 SC 1650**, has held in paragraphs 52 and 55 as under:-

“52. *The dictionary meaning of the word “review” the “the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunshinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been*

passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S. Nagaraj V. State of Karnataka, 1993 Supp(4) SCC 595 held :

“Review literally and even judicially means re-examination or re-consideration. 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. In Prithwi Chand Lal Choudhary v. Sukhraj Rai, AIR 1941 FC 1 that 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 Singh (1836) 1 Moo PC 117 that an order made by the Court has final and could not be altered.

“.....nevertheless, if by misprision in embodying the judgments, by 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 or 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 Art. 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 Art. 137 of the Constitution. And Cl. (c) or Art. 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 in 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."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength."

- "55. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review

can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of co-ordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its powers under Art. 136 or Art. 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”

9 In the light of the above, this Review Petition deserves to be dismissed with heavy costs.

10 Ms.Mahajan, learned Advocate, prays that the costs may not be imposed.

11 As such, this Review Petition is dismissed. Needless to state, since the ad-interim protection granted was conditional, the said protection stands vacated.

12 No costs.

13 The pending Civil Application does not survive and the same is disposed of.