

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No. 493 of 2017

In
Civil Writ Jurisdiction Case No.13205 of 2010

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1. The Food Corporation of India, 16-20, Barakhambha Lane, New Delhi, through the Manager.
 2. The General Manager (Bihar), Food Corporation of India, Regional Office, Patna.
 3. The Senior Regional Manager, Food Corporation of India, Arunachal Building, Exhibition Road, Patna-1.
 4. The Area Manager, Food Corporation of India, District Office- Muzaffarpur.

... .. Petitioner/s

Versus

1. M/s Sasa Musa Sugar Works Ltd., At and P.O., Sasa Musa, District Gopalganj through its Factory Manager, Jamaluddin son of late Nehaluddin
2. The Union of India through the Secretary, (Food), Ministry of Consumer Affairs and Public Distribution (Department of Food and Public Distribution), Government of India, Krishi Bhawan, New Delhi-110001.

... .. Opposite Party/s

with
CIVIL REVIEW No. 21 of 2018

In
Civil Writ Jurisdiction Case No.2009 of 2010

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1. The Food Corporation of India, 16-20, Barakhambha Lane, New Delhi, through the Manager.
 2. The General Manager (Bihar), Food Corporation of India, Regional Office, Patna.
 3. The Senior Regional Manager, Food Corporation of India, Arunachal Building, Exhibition Road, Patna-1.
 4. The Area Manager, Food Corporation of India, District Office- Muzaffarpur.

... .. Petitioner/s

Versus

1. M/s Vishnu Sugar Mills Ltd., P.O.-Vishnu sugar Mills, At P.S. Gopalganj, District- Gopalganj through its General Manager P.R.S. Panicker
2. The Union of India through the Secretary, (Food), Ministry of Consumer Affairs and Public Distribution (Department of Food and Public Distribution), Government of India, Krishi Bhawan, New Delhi-110001.

... .. Opposite Party/s

with
CIVIL REVIEW No. 22 of 2018

In
Civil Writ Jurisdiction Case No.4438 of 2009



1. The Food Corporation of India, 16-20, Barakhambha Lane, New Delhi, through the Manager.
2. The General Manager (Bihar), Food Corporation of India, Regional Office, Patna.
3. The Senior Regional Manager, Food Corporation of India, Arunachal Building, Exhibition Road, Patna-1.
4. The Area Manager, Food Corporation of India, District Office- Muzaffarpur.

... .. Petitioner/s

Versus

1. M/s Riga Sugar Company Ltd., at & P.O. Riga, District-Sitamarhi through its President Sri Amar Sharma son of Late Major B.R. Sharma.
2. The Union of India through the Secretary, (Food), Ministry of Consumer Affairs and Public Distribution (Department of Food and Public Distribution), Government of India, Krishi Bhawan, New Delhi-110001.

... .. Opposite Party/s

Appearance :

For the Union of India	:	Mr. S.D. Sanjay, Senior Advocate (Addl.S.G.) Mr. Kumar Priya Ranjan (C.G.C.) Mr. Niraj Kumar, Advocate
For the F.C.I.	:	Mr. P.K. Verma, Senior Advocate
for the Respondent	:	Mr. Y.V. Giri, Senior Advocate Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Mr. Rajat Kr. Tiwary, Advocate

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT

Date : 26-04-2019

The Food Corporation of India, has invoked the power of Review by filing an application under Article 226 of the Constitution of India for reviewing the order dated 27.02.2017 passed in C.W.J.C. No. 4439 of 2009. The aforesaid order was passed relying on the judgement delivered in another case of M/s Hari Nagar Sugar Mills Limited, Mumbai through its Manager S. N. Poddar & Anr. Vs. The Union of India & Ors. (LPA No. 380 of 2002 disposed of on 30th July, 2008) reported in 2008(4) BBCJ 347, whereby the Food Corporation of India



was mandamized to refund the amounts which have been repayable against the excess payment for levy sugar for the years 1975-76, 1976-77 and 1977-78, upon re-fixation by adjusting against the payments which were payable for the years 1995-96 and 1996-97. The aforesaid writ application was disposed of in the following terms:-

“10. The Food Corporation of India, being the nominee of the Central Government, received levy sugar for the sugar years in question from the appellant. It paid the price payable on account of such levy sugar as was fixed by the Notifications issued by the Central Government during the relevant sugar years. No sooner the Central Government published the Notifications dated 22nd February, 1995 pertaining to the relevant sugar years, the Food Corporation of India felt that it has made excess payment to the appellant in relation to supplies effected by it during the relevant sugar years, almost 20 years back. Proceeding on such understanding the Food Corporation of India purported to recover the excess payment alleged to have been made by it from the current bills of the appellant in relation to sale of levy sugar by the appellant to the Food Corporation of India for the sugar year 1995-96. This action on the part of the Food Corporation of India led to presentation of a writ petition by the appellant in this Court, which was registered as CWJC No. 9010/1996. The said writ petition was taken up for hearing on 21st October, 1997 when a learned Single Judge of this Court in His Lordship's order recorded the principal contentions of the appellant, as had been put forward in the said writ



petition, and then recorded the submissions of the learned counsel appearing on behalf of the Union of India. After having had recorded the submission of the learned counsel for the Union of India that the Union of India is coming out with a fresh Notification within a period of two months, the learned Single Judge, while directed the Union of India to issue such a notification, also directed the Food Corporation of India to recalculate the amount of the price within a period of two weeks and thereupon to pay to the appellant, if any amount is found due by the Food Corporation of India to the appellant.”

2. The grounds on which the present application for Review has been preferred are as follows:-

- i. Does the judgment passed by this Court suffer from any error apparent on the face of the record.
- ii. Is the order passed by the Court hit by the principles of res judicata as for the same relief the respondent / petitioner- Sasa Musa Sugar Works had earlier moved the Delhi High Court in which the Food Corporation of India had been given liberty to recover the excess amount paid towards the levy sugar for the years 1975-76, 1976-77 and 1977-78, after re-determination by the Government in view of the Apex Court judgement in M/s Malaprabha's case, from the bills of 1995-96 and 1996-97 and the same having been adjudicated once by another court, could be



entertained before this Court for similar relief and a separate and contradictory order be passed.

- iii. Can the case of Hari Nagar Sugar Mills Limited be equated and treated as an equal case to that of the petitioner, though the present company stands on a completely different footing.
- iv. Is the judgement rendered by this Court in the teeth of the judgement and order passed by the Hon'ble Apex Court in the case of M/s Malaprabha Sugar Cooperative Limited (1) and (2).
- v. Does the judgment directly violates the law with regard to the Essential Commodities (Amendment and Validation) Act, 2009 as in the wake of the new law, the claim for payment in relation to the specified order determining the price of levy sugar and for non-adjustment of excess payment with regard to the years 1975-76, 1976-77 and 1977-78 from the bills of 1995-96 and 1996-97 could not have been maintained, especially, since they did not challenge the re-determination of levy sugar price made by the Government of India vide Notification dated 22.02.1995 or 13.04.1999 in pursuance of the order passed by the Apex Court in the case of M/s Malaprabha



(1) or M/s Malaprabha (2).

- vi. Thus, in view of the aforesaid provision, the claim of the petitioners in the writ petition for payment in relation to the specified order determining the price of Levy Sugar and for non-adjustment of excess payment with respect to the relevant years from the bills of 1995-96 and 1996-97 could not have been maintained by the petitioners.
- vii. Since the writ petitioner sugar mill did not prefer to challenge a question that the re-determination of levy sugar price made by the Government of India vide Notification dated 20.02.1995 or dated 13.04.1999 in pursuance of the directions given by the Apex Court in the case of M/s Malaprabha (1) or M/s Malaprabha (2), they cannot at this stage question the recovery of excess payment received by it with respect to the three sugar years.
- viii. That the review of the order was necessitated because if the same is allowed to continue several other sugar mills would rise and make claims and demand for refund and the amount already recovered and adjusted though from them by Food Corporation of India.
- ix. Moreover, not only has the decision of the Supreme Court



in M/s Malaprabha's case (1) and M/s Malaprabha's case (2) been set at naught but the entire provisions of Section 3 of the Essential Commodities (Amendment and Validation) Act, 2009 has been overlooked by the Court either by the Patna High Court or the Hon'ble Supreme Court while disposing the above said cases.

- x. A run through the provisions of the Validation Act, 2009, would make it amply clear that all actions which have taken prior to 21st of November, 2009 have been statutorily validated and cannot be subject-matter of any discussion before a court of law and was also not taken into account while passing orders in C.W.J.C. No. 4438 of 2009 and its analogous cases being C.W.J.C. No. 4439 of 2009 and C.W.J.C. No. 13205 of 2010 disposed of on 27.02.2017 which is the subject-matter of the present review application.

3. Before proceeding to deal with the intricacies of the grounds which have been urged in the present Review application, I am tempted to quote a decision of the Apex Court cited in **A.I.R. 1963 (SC) 1909 (Shivdeo Singh and others V. State of Punjab and others)** wherein the Court dealing with a Review application under Article 226 of the Constitution of



India stated as hereunder:-

“It is true there is nothing in Article 226 of the Constitution 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.”

4. A plain reading of the aforementioned citation clearly reveals that this Court under Article 226 of the Constitution of India can well review its decision in the circumstances as have been detailed therein subject to the Review petitioners satisfying the same.

5. Before proceeding further it would be also appropriate to take a glance of the provisions of the Review as contained in the ‘Code of Civil Procedure’ to the Section 114



which is as follows:

“114. Review.—Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

6. The Section 114 empowers the High Court to review its own judgment but as is well-known, its jurisdiction is limited. It has to be exercised within the frame work of Section 114 read with Order 47 of the “Code”. Section 114 empowers the Court to review its order in the conditions preceded which have been laid down therein are satisfied substantially and once the conditions preceded are satisfied, the substantive provision of law does not prescribe any limitation on the power of the Court except those which are explicitly provided in Section 114.

7. Expounding the provision of Review as



contained in Order 47 in the Code of Civil Procedure, the law as it is patent from a plain reading of the said order and is reproduced hereunder:

“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 on which he applied 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.] ”

8. Thus, it appears from a plain reading of Order 47 Rule 1 that a Review of a judgment or an order could be maintained in the following circumstance:

- (a) A rule from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant.
- (b) Such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made.
- (c) On the account of some mistake or error apparent on the face of record and
- (d) or any other sufficient reason.

9. Thus, it is evident that a Review would not be maintainable unless there is an error apparent on the face of record and the provisions could not be invoked to set right an erroneous decision.

10. Under such circumstances, the only remedy available to the party would be to file an appeal against the said order. Thus, reopening of a matter can be encouraged only if there is an mistake or an error apparent on the face of record and the said power cannot be exercised as it is not permissible for an



erroneous decision to be reheard and corrected. This aspect of the matter has well been decided in **B. Dhanalaxmi Vs. M. Shahjahan reported in AIR 2004 Mad 512** which decision is based on several earlier pronouncements wherein it has been held that a Review cannot be an Appeal in disguise. The relevant paragraph of the aforementioned judgment is being quoted hereinbelow:-

“8. Insofar as the time taken by the appellants in getting the copy of the order, we have taken the dates furnished by the learned counsel for the appellants during the course of arguments and the judgment was delivered on the basis of the dates of events furnished to this Court after serving a copy of the same to the learned respective counsel for the contesting respondents. We have also delivered the judgment on the basis of the statements furnished to us by the learned Special Government Pleader in regard to the date of grant, filing of the copy application, receipt of the copy of the order etc. None of the respondents have objected to those dates till such time, the orders were pronounced. New pleas are sought to be advanced on the basis of additional materials with reference to dates. For example, Mr. Natesan, learned counsel for the Rev. Appln. No. 43 and 46 would contend that when the copy of application was returned on 16-8-2001, the appellant had taken 20 days time to file writ petition and this date should be excluded. Similar is the contention in some of the writ appeals by the contesting respondents. In order to consider the new pleas on the basis of fresh materials we will have to necessarily



consider the scope of this Court to exercise the power of review. The issue is not res integra as it had come up before the Apex Court for more than one occasion, where the Apex Court has clearly laid down the scope of the power of this Court to review an order.”

11. Learned counsel for the Review petitioner Mr. P.K. Verma, Senior Counsel, appearing on behalf of the Food Corporation of India has submitted that the present application for Review under Article 226 of the Constitution of India can well be entertained in view of the grave and palpable injustice that has been occasioned to the party as the writ petitions were allowed with direction to make payment/refund to the petitioners of the analogous cases which was wholly against the law as had been settled by the Apex Court and also violated the provisions of the notifications issued with regard to levy sugar supplies for the years 1995-96 as the extra amount of payments made for the sugar years 1975-76, 1976-77 and 1977-78 were to be adjusted against bills of the year 1995-96 and 1996-97.

12. Learned counsel for the Review petitioner further contended that when a judgment is passed by any court of law intra party in Letters Patent Appeal, no other writ petition can be maintained by the same party for the same relief/cause of action in some other court nor any order can be passed by that court in contravention of a judgment settled earlier, as has



erroneously occurred in the present case. It was submitted that the order dated 27.02.2017 passed by the Hon'ble Court further suffers error of law as it failed to take into account the statutory provisions as contained under the Essential Commodities (Amendment and Validation) Act, 2009 which categorically barred any suit claim or other proceeding in any Court, Tribunal or Authority for the payment or adjustment of any payment in relation to the determination of price of levy sugar under any specified order before the 21st of October, 2009 in relation to sugar season up to and including October, 2008-09.

13. In order to reinforce the contention made above, learned counsel for the appellant has traversed in detail the events which have culminated in the order which is the subject-matter of the Review petition. They are recapitulated hereunder for necessary reference:

I. “09.11.1975, 09.11.1976, 22.12.1977, 17.12.1979, 20.01.1980

Central Government Notifications fixing price of levy sugar price for sugar season 1975-76, 1976-77 and 1977-78, 1978-79 and 1979-80 were issued respectively.

II. 22.09.1993

The levy sugar price notifications for the period Malprabha-I 1974-75 to 1979-80 was assailed in different High Courts and which were ultimately transferred before the Hon'ble Supreme Court who was pleased to



hold the notifications as not begin in accordance with the statutory provision and the Central Government was directed to publish fresh notification by re-determining levy sugar prices for the sugar years of 1975-76, 1976-77 and 1977-78. The judgement and order passed on 22.09.1993 is known as Sri Malaprabha Cooperative Sugar Factory Limited Vs. Union of India and others is reported in 1994(1) SCC 648 popularly known as Malaprabha-I.

III. 22.02.1995

(Amendment Notification) in the light of the direction given by the Hon'ble Supreme Court in the case of Malaprabha (supra), the Central Government was pleased to issue amended notifications redetermining levy sugar price for the 3 year period 1975-76, 76-77 and 77-78.

IV. 30.09.1996/04.10.96:

(Adjustment) Consequent upon the publication of the amended notification whereby the levy sugar price inter alia for the period in question for the State of Bihar for the year 1975-76, 1976-77 and 1977-78 stood reduced this resulted into excess payment to the Respondent Sugar Company and hence the petitioner/respondent issued direction for adjustment of the excess payment from the dues of Levy Sugar Supplies so outstanding for the year 1995-96 and 96-97 which in case of the present petitioner/respondent was Rs. 30,91,122.70. The remainder balance amount was paid to the Sugar Mill.

V. 28.01.1997

The said Notification of re-fixation issued



by the Central Government on 22.02.1995 was again questioned by M/s Malaprabha Sugar Factory on technical grounds before the Hon'ble Supreme Court and the Hon'ble Court again vide order dated 28.01.1997 remitted back the re-fixation to the Central Government for re-notification in accordance with law. This is popularly known as Malaprabha-2 and is reported in 2002(9) SCC 716.

VI. 29.07.1997

A writ petition bearing **CWP 4253/96 for payment of withheld amount of levy sugar supplies for the year 1995-96** was filed by the respondent M/s Sasa Musa Sugar Works Ltd. along with 3 other Sugar Mills M/s Motilal Padampat Udyog, M/s Riga Sugar Company Ltd. And M/s Vishnu sugar Mills Limited before the Hon'ble Delhi High Court. The Hon'ble Court (Single Bench) disposed the case vide judgment dated **29.07.1997** whereby court was pleased to direct to pay the amount within 2 months as the matter of re-fixation of levy sugar for years 1975-76, 1976-77 and 1977-78 was taking long time.

VII. 18.09.1998

Union of India and FCI being aggrieved by the judgment and order dated 29.07.1997 preferred an intra court appeal giving rise to **L.P.A. No. 259 of 1997** which was disposed vide judgment and order dated **18.09.1998** with a direction that the order of payment will not prejudice the right of the appellants to recover the amount from the respondents hereinafter re-fixation of price of levy Sugar in accordance with law.

VIII. 1999

The Union of India and the FCI moved



the Apex Court against the order passed in the LPA vide SLA (Civil) No. 2756/1999. During the pendency of the SLA re-fixation of Levy Sugar price in pursuance to the order of the Apex Court in Malaprabha-2 was issued vide notification dated **13.04.1999** re-fixing the levy sugar price for the Sugar year 1975-76, 1976-77 and 1977-78 without making any change in price earlier notification in 1995.

IX. 24.08.1999

The said SLA No. 2756 of 1999 was heard and permitted to be withdrawn with liberty to the Union of India to move the Hon'ble High Court of Delhi now that the notification of re-fixing the price of levy sugar for the three years 1975-76, 1976-77 and 1977-78 in the light of Malaprabha judgment had been issued.

X. 17.09.1999

The Delhi High Court in LPA No. 266 of 1999 filed by the Union of India and FCI took note of the facts and observed with direction that now that the price of levy sugar for the three years have been fixed the appellants are at liberty to recover the amounts for the years 1975-76, 1976-77 and 1977-78 by adjusting against the payments payable for 1995-96 and 1996-97 and if the sugar mills so chose to challenge the fixation of the price they will be at liberty. In this order LPA No. 259/1997 and SLA 756 of 1999 was taken note of in which M/s Sasa Musa Sugar Works Limited was a party where liberty to recover the amounts from the respondents after re-fixation of price of sugar was permitted.

XI. 30.08.2000

M/s Hari Nagar Sugar Mills filed CWJC No. 8876 of 2000 in the High Court at Patna challenging the recovery and



adjustment of the excess payment from bills of 1995-96 and 1996-97. It was not stated to have moved the Delhi High Court earlier. Writ petition was dismissed by the Single Judge vide order dated 13.12.2001.

XII. 2002

Against single Judge order LPA No. 380 of 2002 was filed by M/s Hari Nagar Sugar Mills which was disposed of vide order dated 30.07.2008 allowing refund with 10% interest.

XIII. 2008

Against above order SLP No. 29170 of 2008 was filed by FCI before Apex Court which was dismissed on 13.01.2016. A Review application and lastly a Curative petition was also filed which were dismissed in limine.

XIV 11.06.2010

The respondent M/s Sasa Musa Sugar Works filed a representation before the FCI for refund of the recovered/adjusted amount in light of the Patna High Court order passed in case of M/s Hari Nagar Sugar Mills Limited.

XV. 26.06.2010

Area Manager FCI Muzaffarpur informed that SLP has been filed against the judgment passed in the case of M/s Hari Nagar Sugar Mills Limited.

XVI. 27.02.2017

A writ petition bearing CWJC No. 13205/2010 was filed by Respondent M/s Sasa Musa Sugar Works before Patna High Court in 2010 which was disposed of vide order dated 27.02.2017 now presently under Review. Apparently this order was passed on the presumption that the petitioner's case is similar as that of M/s Hari Nagar Sugar Mills and therefore the reliefs as given at para 25 of that



judgment was applied in case of this petitioner. The fact that the petitioner had already moved the Hon'ble Delhi High Court for the same relief and hence the present writ was not maintainable being hit by the principles of *res judicata* could not be looked into. The court also failed to look into the fact that the **Division Bench of the Delhi High Court in the LPA had clearly observed that in terms of re-fixation of levy sugar price for the alleged years, recovery can be made by adjusting against payables for the year 1995-96, 1996-97.** Thus the Court failed to see that issues decided in an inter party case are binding on the parties and cannot be altered by taking shelter of some 3rd party judgments. The court also failed to cite the statutory provision under the **Essential Commodities (Amendment and Validation) Act, 2009 which clearly barred any suit, claim or proceeding in any court for payment or adjustment of any amount in relation to determination of price of levy sugar under any specified order issued before 21.10.2009 in relation to sugar produced upto sugar season 2008-2009.**

14. Learned Senior Counsel, Mr. P.K. Verma, appearing on behalf of the Review petitioner, submitted that in the backdrop of the facts which has been intricately recapitulated by him, the Petition filed under Article 226 of the Constitution does not preclude a High Court from exercising the power of Review, which as per settled law, inheres 'in every court of plenary jurisdiction, to prevent miscarriage of justice



and to correct grave and palpable errors committed by it' (AIR 1963 SC 1909(Shivdeo Singh and Another v State of Punjab and Ors.). It was further contended that the present case fits into the category as described above, and a grave and palpable error such as has been committed in the passing of the order under Review, would lead to gross miscarriage of justice, and render substantial loss to the Corporation. It was thus urged that once the claim of the Writ Petitioner would be allowed, there would be a floodgate of such claims and would necessarily entail the payment of huge amounts of refund of levy price which has been adjusted or was sought to be adjusted from the 1995 Sugar year. Thus, the petitioners prayed that the matter requires reconsideration, and that the order passed by this Court should be reviewed to prevent gross miscarriage of justice.

15. Referring to the decision of this Court in the case of Harinagar Sugar Mills Ltd. Vs. The Union of India and Others, passed in LPA No. 380 of 2002, vide judgement dated 30.07.2008, reported in 2008 (4) PLJR 583, it was submitted that the Petitioner cannot avail the benefit of the said judgement as it was hit not only by the principle of constructive *res judicata*, but also for the reason that the case of the Petitioner was at variance from the case of Harinagar Sugar Mills Ltd



(supra). It was contended by the Review Petitioner, that the petitioner had earlier moved the Delhi High Court for a similar relief and had also failed to obtain relief in the Intra Court Appeal.

16. It was submitted by the Petitioners that whereas Harinagar Sugar Mills came to this Court directly, the Petitioner had approached the Delhi High Court for a similar relief and by its order dated 17.09.1999, the Court had given the liberty to the Review petitioners to deduct the amount but they chose to not challenge the said order, and nor did they take any steps thereafter. It is only after the decision in the Hari Nagar Sugar Mills was rendered, that the Petitioners approached this Court seeking deductions made in the year 1995, and claiming their cases to being similar to that of the case of Hari Nagar Sugar Mills. It was submitted that the rights of the parties stood culminated after the decision of the Delhi High Court having attained finality and thus the writ petitioners were precluded/estopped from raising any further plea for refund. As such, this Court has seriously erred on facts, and the order rendered becomes erroneous and is fit to be reviewed so as to occasion justice to the parties.

17. Learned counsel appearing on behalf of the



Review petitioner has drawn the attention of this Court to a decision of the Apex Court reported in **A.I.R. 2005 SC 592 (Board of Control for Cricket in India v. Netaji Cricket Club)** wherein paragraph Nos. 88, 89, 90, 92 and 93:

“88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a Court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in S. 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in O. 47, R. 1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus



curiae neminem gravabit."

92. *Yet again in Lily Thomas (supra), this Court has laid down the law in the following terms :*

"**52.** The dictionary meaning of the word "review" is "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 Arjunsinghji, 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....."

(Emphasis supplied)

93. *It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the*



learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake.”

18. The Review applicants have also referred to another judgment being **(Full Bench) 2015 (4) PLJR 328 [High Court of Judicature at Patna vs. K.K. Chaubey]** wherein the bench has considered the provisions of law in its entirety at para 12 to 20 which is being quoted hereunder:

“12. Before we enter into the question as to whether the judgment and order, under review, call for review, apposite it is, in our considered view, to bear in mind, that the scope of review, which has undergone, as the days have rolled by, some significant changes inasmuch as there was a time, when it was considered impermissible to review a judgment and order unless a statute provides therefor; but, the Courts, with the passage of time, have concluded that justice is, after all, a virtue, which must prevail over all barriers and that the rules, procedures or technicalities of law must, if necessary, bend before justice and that such a situation may arise, when a court finds that it has rendered a decision, which it would not have rendered, but for an assumption of fact, which, in fact, did not exist and its adherence to such a faulty decision would result in miscarriage of justice. In such cases, nothing can prevent a court from rectifying its own error, because the doctrine of "actus curiae neminem gravabit", (i.e., an act of court shall prejudice none), can be invoked, in such a case, for correcting the error



committed by the court.

13. Similarly, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed grounds, namely, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed, (ii) mistake or error apparent on the face of the record or (iii) any such sufficient ground, which is analogous to the two grounds aforementioned. However, it has, now, surfaced in the light of the judicial pronouncements, that the expression, "any sufficient ground", must be analogous to the two grounds aforementioned, is no longer a rule of universal application.

14. A review of a judgment and order is permissible, where a glaring omission or patent mistake or grave error has crept in, because of judicial fallibility.

*15. This Court must remain mindful of the basic principle of review that a review is not a rehearing of a matter on merits and cannot be lightly entertained by the Court. Observed the Supreme Court, in **Sow Chandra Kanta v. Sk. Habib**, reported in (1975) 1 SCC 674, "A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate, which should be a routine affair or a habitual step."*

16. Yet another principle of review is that the power of review has to be exercised to prevent miscarriage



*of justice or correct grave and palpable error. Laid down the Supreme Court, in **Aribam Tuleshwar Sharma v. Aibam Pishak Sharma**, reported in (1979) 4 SCC 389, following its earlier decision in the case of **Shivdeo Singh v. State of Punjab** (AIR 1963 SC 1009) as follows:*

"There is nothing in Article 226 of the Constitution to preclude a 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 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 powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(Emphasis is supplied)

*17. From the underlined portion, it becomes transparent that while an appellate Court is empowered to correct all matters of error committed by the subordinate court, review can be allowed on limited grounds and that the review cannot be sought for, much less allowed, on the ground that the decision was erroneous on merits inasmuch as such an aspect would be exclusively within the province of appellate court. Dealing with this aspect of review jurisdiction, the Supreme Court, in **Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi** (AIR 1980 SC 674), observed, thus:*

"Whatever be the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier



by judicial fallibility."

(Emphasis is added)

18. It must be, however, kept in mind that the above observations were made by the Supreme Court, while considering the scope of Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order XL Rule 1 of the Supreme Court Rules, and held, in Northern India Caterers (India) Ltd.(supra), as follows:

"It is well settled that a party is not entitled to seek a review of a judgment merely for the purpose of a rehearing and a fresh decision of the case. The general principle is that a judgment pronounced by a court is final and departure from this principle is justified only when circumstances of a substantial and compelling character make it necessary to do so".

*19. For instance, if the attention of the Court was not drawn to a material statutory provision during the original hearing, the Court will review its judgement. (See, **Girdhari Lal Gupta v. D. H. Mehta and Another** (AIR 1971 SC 2162). The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. (See, **O.N. Mohindroo v. The District Judge, Delhi and Another** (AIR 1971 SC 107) and **Northern India Caterers (India) Ltd.** (supra).*

20. It follows, therefore, that the power of review can be exercised for correction of a mistake, but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. A review cannot be treated as 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 for review can be entertained.

19. Further at para 23, the Court was pleased to observe :

23. Lest the subtle but real distinction existing between the power of review, on the one hand, and



the power of an appellate court, on the other, disappears completely, Order 47, Rule 1 circumscribes a court's power of review by specifying the three grounds on which review is possible, the specific grounds being, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed, (ii) mistake or error apparent on the face of the record, and (iii) for "any other sufficient reason".

20. Relying on the ratio of the judgement the Bench deciding the issue has referred to various decisions at para 29 to 32 which is extracted hereunder:

29. *In fact, there is plethora of judicial pronouncements of the Supreme Court, which shows that there can be exceptional cases, where a deviation from the grounds of review, as propounded in **Moran Mar Basselios Cathlicos** (supra), is possible and one of such cases is the case of **Lily Thomas vs. Union of India**, reported in (2000) 6 SCC 224 : 2000 Cri.L.J. 2433, wherein, having taken into account the facts that (a) the power of review is a creation of statute and not an inherent power; that (b) no power of review can be exercised if not given to a court or Tribunal either specifically or by necessary implication; and that (c) under the guise of review jurisdiction, merit of a decision cannot really be examined, the Supreme Court has, in unequivocal terms, pointed out that justice is, after all, a virtue, which must prevail over all barriers and that the rules, procedures or technicalities of law must, if necessary, bend before justice and that such a situation may arise, when a court finds that it has rendered a decision, which it*



would not have rendered, but for an assumption of fact, which, in fact, did not exist and its adherence to such a faulty decision would result in miscarriage of justice. In such cases, rules **Lily Thomas** (supra), nothing can prevent a court from rectifying its own error, because the doctrine of "actus curiae neminem gravabit", (i.e., an act of court shall prejudice none), can be invoked, in such a case, for correcting the error committed by the court.

30. The real theme of the Supreme Court's decision, in *Lily Thomas* (supra), is that though the power of review cannot be exercised by a court unless the statute confers such a power and that a statutory power of review can be exercised subject to such limitations as the statute may impose, yet a court is not powerless, in an appropriate and exceptional case, to rectify its error, because "an act of court shall prejudice none" and, hence, in exceptional cases, a court can invoke the doctrine of "actus curiae neminem gravabit" for correcting an error committed by it.

31. In fact, from the decision in *Municipal Board, Pratabgarh v. Mahendra Singh Chawla*, reported in (1982) 3 SCC 331: AIR 1982 SC 1493, what clearly emerges is that when a High Court acknowledges its error and rectifies its error, which has crept in, what the High Court really does is restore the rule of law and not defeat it. Points out the Supreme Court, in *Municipal Board, Pratabgarh* (supra), that laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Further observed the Supreme Court, in *Municipal Board, Pratabgarh* (supra), on this aspect of law, thus, "... Undoubtedly, rule of law must prevail but as is often said, 'rule of law must run akin to rule of life. And life of law is not logic but experience'. By pointing out the error, which according to us crept into the High Court's judgment, the legal position is restored and the rule of law has



been ensured its pristine glory...".

(Emphasis is added) Patna High Court C. REV. No.153 of 2015 dt.30-09-2015 20

32. The law, on the subject of review, may, in the light of the discussions held, as a whole, be summarized thus:

(i) Ordinarily, a court or a tribunal cannot review its order or decision if the statute does not confer on the court or the tribunal, as the case may be, the power to review its own order. This apart, whatever limitations are imposed by a statute, while conferring the power of review on a court or a tribunal, the court or the tribunal, as the case may be, must adhere to the limitations, which the relevant statute may impose on the exercise of such power. Section 114 CPC, which embodies the substantive power of review of a civil court, does not impose any limitations on the court's power to review its order or decision; yet the power of review even by a civil court cannot be unguided and uncanalised, for, Order 47, Rule 1 circumscribes the court's power of review.

(ii) Though, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed grounds, namely, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed and (ii) mistake or error apparent on the face of the record or (iii) any such sufficient ground, which is analogous to the two grounds Patna High Court C. REV. No.153 of 2015 dt.30-09-2015 21 aforementioned, the subsequent development of law, on the subject of review, has shown that the grounds referred to, namely, that any sufficient ground must be analogous to the two sufficient grounds aforementioned is no longer a rule of universal application.

(iii) One of the cases, which has helped in the expansion of the court's power to review its order is



the case of Lily Thomas (supra) inasmuch as Lily Thomas (supra) ruled that ordinarily, the power of review, being a creature of statute, cannot be exercised as an inherent power; yet such technicalities of law may have to be bent, in an appropriate cases, for the purpose of correcting an order committed by the court if such an error arises out of a presumption of fact, which was nonexistent, and when the court finds that its refusal to review its own error would cause, or has caused, grave miscarriage of justice.

(iv) It is essentially the principle behind the doctrine of "actus curiae neminem gravabit", which has made the court hold, in Municipal Board, Pratabgarh (supra), that when a court corrects and rectifies an error, it restores the rule of law and not defeat it. Even Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarni, reported in (2003) 7 SCC 219, recognises that in an exceptional case, a court may have to review its order by invoking the doctrine of "actus curiae neminem gravabit".

21. Supporting the arguments advanced by Shri Verma, learned Additional Solicitor General for the Union of India has fully endorse the arguments advanced and has further tried to carve out a distinction between the case of Hari Nagar Sugar Mills and the case of opposite parties/writ petitioners. It has been submitted that while the writ petitioners had approached the Delhi High Court, the Hari Nagar Sugar Mills had not done so and the order passed by the Delhi High Court is binding on both the petitioner as well as the respondent. It was submitted that the petitioner having preferred a writ petition



along with other Sugar Mills filed for a similar cause before the Delhi High Court is estopped inter parties from raising a plea before this Court and cannot avail the benefits which are available to Hari Nagar Sugar Mills. Learned Additional Solicitor General further contended that in the instant case, the law as laid down by this Court enumerating the grounds for Review while encompassing the facts of the present case can be applied for reviewing the order sought by the Review petitioner. In this context, he has taken the Court through the decision cited in **2006(3) B.B.C.J. 459 (Sri Rajesh Kumar Vs. Smt. Pushpa Rani)** at paragraph Nos. 15, 22 and 36 which read as follows:

“15. Before we enter into the question as to whether the judgement and order, under review, call for review, appoiste it is, in our considered view, to bear in mind, that the scope of review, which has undergone, as the days have rolled by some significant changes inasmuch as there was a time when it was considered impermissible to review a judgement and order unless a statute provides therefore; but, the Courts, with the passage of time, have concluded that justice is, after all, a virtue, which must prevail over all barriers and that the rules, procedures or technicalities of law must, if necessary, bend before justice and that such a situation may arise, when a court finds that it has rendered a decision, which it would not have rendered, but for an assumption of fact, which, in fact,



did not exist and its adherence to such a faulty decision would result in miscarriage of justice. In such cases, nothing can prevent a court from rectifying its own error, because the doctrine of "actus curiae neminem gravabit", (i.e., an act of court shall prejudice none), can be invoked, in such a case, for correcting the error committed by the court.

22. *For instance, if the attention of the Court was not drawn to a material statutory provision during the original hearing, the Court will review its judgment. [See, **Girdhari Lal Gupta vs. D.H. Mehta and Another** (AIR 1971 SC 2162)]. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. [See, **O.N. Mohindroo vs. The District Judge, Delhi and Another** (AIR 1971 SC 107) and **Northern India Caterers (India) Ltd.** (supra)].*

36. *The law, on the subject of Review, may, in the light of the discussions held, as a whole, be summarized thus:-*

(i) Ordinarily, a court or a Tribunal cannot review its order or decision if the statute does not confer on the court or the tribunal, as the case may be, the power to review its own order. This apart, whatever limitations are imposed by a statute, while conferring the power of review on a court or a tribunal, the court or the tribunal, as the case may be, must adhere to the limitations, which the relevant statute may impose on the exercise of such power. Section 114 of CPC, which embodies the substantive power of review of a civil court, does not impose any limitations on the court's power to review its order or decisions; yet the power of review even by a civil court cannot be unguided and uncanalised, for, Order



47, Rule 1 circumscribes the court's power of review.

(ii) Though, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed grounds, namely, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed and (ii) mistake or error apparent on the face of the record or (iii) any such sufficient ground, which is analogous to the two grounds aforementioned, the subsequent development of law, on the subject of review, has shown that the grounds referred to, namely, that any sufficient ground must be analogous to the two sufficient grounds aforementioned is no longer a rule of universal application.

(iii) One of the cases, which has helped in the expansion of the court's power to review its order is the case of Lily Thomas (supra) inasmuch as Lily Thomas (supra) ruled that ordinarily, the power of review, being a creature of statute, cannot be exercised as an inherent power, yet such technicalities of law may have to be bent, in an appropriate cases, for the purpose of correcting an order committed by the court if such an error arises out of a presumption of fact, which was nonexistent, and when the court finds that its refusal to review its own error would cause, or has caused, grave miscarriage of justice.

(iv) It is essentially the principle behind the doctrine of "actus curiae neminem gravabit", which has made the court hold, in Municipal Board, Pratabgarh (supra), that when a court corrects and rectifies an error, it restores the rule of law and not defeat it. Even Rajesh D. Darbar Vs. Narasingrao



Krishnaji Kulkarni, reported in (2003) 7 SCC 219, recognises that in an exceptional case, a court may have to review its order by invoking the doctrine of “actus curiae neminem gravabit”.

22. Shri S.D. Sanjay, learned Senior Counsel has further referred to an earlier decision of the Apex Court in A.I.R. 1971 SC 2162, wherein it was held that under Article 137, wherein the attention of the Court was not drawn to the particular provision of the statute, it can review its decision.

“16. The learned counsel for the respondent State urges that this is not a case fit for review because it is only a case of mistaken judgement. But we are unable to agree with this submission because at the time of the arguments our attention was not drawn specifically to sub-section 23C(2) and the light it throws on the interpretation of sub-section (1).”

23. By referring to the aforementioned judgement, learned counsel for the Union of India contended that where the proposition of law is not cited and on account of the same a judgement is rendered, the same can well be reviewed and in this very case since the law was not brought to the notice of the High Court appropriately and, therefore, the finding regarding deduction made by the F.C.I. 1995-96 could not be given. It was submitted by learned Senior Counsel that the order dated 27.02.2017 passed in writ petition is fit to be reviewed in view of the Essential Commodities (Amendment and Validation) Act, 2009, wherein it has been clearly laid down in sub-section (3)(1)



(b) of the said Act that no suit, claim or other proceedings shall be instituted maintained or continued in any Court, Tribunal or other authority for the payment to adjustment of any payment in relation to the determination of price of levy sugar under any specified order. Further Clause 3(1)(c) of this Act has specifically laid down that no Court shall impose any decree or order directing any payment in relation to the determination of price levy sugar under any specified order. Learned Counsel thus submits that in the presence of such litigation, the petitioner could not have passed such an order but for the mistake occurred by the same could not be brought to the notice of the Court. Further since Act has been implemented in retrospective effect to validate the determination of price of levy sugar from time to time pursuant to the provisions of Essential Commodities Act and as per the sub-section(2)(a) of this Act. The explanation inserted with effect from 1st October, 1974 itself. Thus, in the face of parliamentary legislation, the order dated 27.02.2017 is fit to be reviewed. In this context, learned A.S.G. for the Union of India has referred to **A.I.R. 1979 SC 1047** wherein at paragraph No. 3, it has been held as follows:-

"3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important



documents Exhibits A/1 and A/3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single Writ Petition, 'settlement' made in favour of the different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909) there is nothing in Article 226 of the Constitution to preclude a 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 Sub-ordinate Court.”

24. Per contra, the writ petitioners (Sugar Mills) have resisted the Review application stating that the order under



reference does not call for any Review. It was submitted by learned Senior Counsel Shri Y.V. Giri that both the grounds which have been raised for Review of the said judgement are not tenable on either facts or law as neither the F.C.I. nor the Union of India have been able to make out a case that the writ application filed by the Sugar Mills was barred by the principles of *res judicata* and *estoppel*. Furthermore, the second ground being that the Validating Act, namely, the Essential Commodities (Amendment and Validation) Act, 2009 () which had been enacted on 22.12.2009 having come into force with effect from 21.10.2009, the writ petitioner/respondents herein, were precluded from claiming relief in similar terms as was granted in the case of Hari Nagar Sugar Mills. In this context, learned Senior Counsel has cited the decision of **Mukesh Prasad vs. The State of Bihar** reported in (2015 SCC OnLine Pat 8492). In the said case this Court has clearly defined the scope of Review jurisdiction and has culled out the principles the regarding the power of Review which has been spelt out in which it has been held at paragraph No. 17,19,20,21 and 22 as as follows:-

“17. The petitioners have filed the present review petition under Article 226 of the Constitution of India. It is true that there is nothing in Article 226 of the Constitution to preclude the High Court from



exercising the power of review, which inheres in every Court to plenary jurisdiction to prevent miscarriage of justice or correct grave errors or palpable errors committed by it, but the exercise of power of review is restricted. The power of review may be exercised for correction of a mistake or error apparent on the face of the record, but cannot be exercised where different views, on the same subject, are possible. The limitations on the power of the Court under Order XLVII Rule 1 of the Code of Civil Procedure are similar in application to the jurisdiction available to the High Court under Article 226 of the Constitution of India. The power of review cannot be treated as an appeal in disguise and can be exercised only for correction of a patent error law, which is apparent on the face of the record and not an error which has to be traced after elaborate argument being noted for establishing it. A review of a judgement is not permissible if the only ground for review is that the point is not dealt in correct perspective.

19. The scope of Order XLVII Rule 1 CPC, dealing with review of a judgement, has been succinctly stated by the Supreme Court in Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715], in paragraph 7, in the following words:-

“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. (1964) 5 SCR 174 (SCR at p. 186) this Court opined:

“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."

20. The error, which has to be detected by a process of reasoning, can hardly be said to be an error apparent on the fact of the record.

21. In the case of Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [AIR 1960 SC 137], the Supreme Court, in paragraph 17, made following observations in connection with an error apparent on the fact of the record:-

"17... 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. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior



court to issue such a writ... ”

22. In Lily Thomas v. Union of India, [(2000) 6 SCC 224], the principle was reiterated by the Supreme Court with a caution that in exercise of power of review, the Court may correct the mistake but not to substitute the view. The mere possibility of two views on the same subject is not a ground for review.”

25. Furthermore, the Apex Court in a catena of decision being **B.H. Prabhakar & Ors. vs. M.D. Karnataka State Co- operative Apex Bank Ltd. Reported in (2000) 9 SCC 482** as well as in the case of **Union of India & Ors. vs. Mohd. Nayyar Khalil & Ors. reported in (2000) 9 SCC 252**, has held that change of law in new contention cannot be raised at the stage of Review. The said principle squarely covers the facts and circumstances of the present case. So far as the decision of the Delhi High Court is concerned, the answering respondents contended that the said decision was brought on record by them in the writ proceedings but such a ground as is being sought in the present writ application with regard to the application of the principles of *res judicata* was never contested by them and hence non consideration thereof cannot be treated as an error apparent on the face of the record. So far as the Validating Act of 2009 is concerned, learned Senior Counsel contended that the same had already come into force prior to the impugned order under Review and it was well within the



knowledge of the authorities and hence, having not placed in the writ petition, cannot be made subject matter of the Review petition. In fact by the present review, the petitioners are trying to do something indirectly which they are otherwise prohibited to do directly.

26. Learned Counsel for the respondents submitted that the present Review application was in fact an oblique device to render ineffective the decision of the Hon'ble Apex Court as the aforementioned Validating Act was never used by the Review petitioners at the time when a challenge was placed to the order dated 30.07.2018 of Hari Nagar Sugar Mills before the Apex Court. SLP (C) No. 29170 of 2008 with SLP (C) No. 1793 of 2009 were both dismissed by the Apex Court 13.1.2016. Again, in the Review of the order passed in the SLP which was also dismissed there was no such reference of the Validating Act. Thus, it was contended that now after having lost before all Courts it is not open for them to raise this particular issue at the stage before this Court as any order in the Review petition would amount to overruling the decision of the Hon'ble Apex Court. The issue regarding Validating Act, having not been canvassed in the case of Hari Nagar Sugar Mills which was upheld by the Apex Court. It was submitted that from the



decision of the Hari Nagar Sugar Mills, it is apparent that the court was deciding the issue in relation to policy matter of price fixation vide notification of 1995 and 1999 which was a similar common notification fixing price of levy sugar for the sale of Bihar. Thus, the decision of the Court holding that the said notification will have prospective effect and not retrospective effect means that the decision is a judgement in rem and not a judgment in persona and hence effecting the entire sugar mills of the State of Bihar. This interpretation stands supported by the judgement rendered by the Apex Court in the case of **State of Uttar Pradesh and Ors. vs. Arbind Kumar Srivastava and Ors. reported in 2015 (1) SCC page 347**, wherein relying on the decisions and the ratio in **Jaswant Singh's case [2006] 11 SCC 464 (U.P. Jal Nigam Vs. Jaswant Singh)**, the Court held at para 22 and 23 as follows:

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution



of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. *However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.*

22.3. *However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such*



a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

23. *Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated 22-6-1987. The respondents before us did not challenge these cancellation orders till the year 1996 i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only was there unexplained delay and laches in filing the claim petition after a period of 9 years, it would be totally unjust to direct*



the appellants to give them appointment as of today i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.”

27. Learned Senior Counsel Shri Giri further submitted that the Review petition was also against the National Litigation Policy framed by the Government of India on 23.06.2010 wherein a responsibility has been cast on the Government to ensure that the litigants do not resort to filing frivolous cases for the sake of litigation. Following the said principle, the Apex Court in the case of **Union of India & Ors. Prithvi Singh and ors.** wherein it has been held that frivolous litigation has been filed which was not called for in the background. It may be noted here that though the same situation arises in the present case and the issues have been settled by the Apex Court yet the writ petitioners are being subjected to this frivolous litigation which is wholly uncalled for and fit to be deprecated as it is in stark apposition to the State Litigation Policy. It is relevant to mention here that during the course of the writ proceedings, the respondents sought several adjournments stating that the S.L.P. against the order of the Hari Nagar Sugar Mills was pending and his case would be considered in the light of the decision rendered in the same.



Furthermore, the Review petitioner had also filed a modification application being MJC No. 219/2017 and other analogous cases seeking extension of time for execution of the order dated 27.02.2017 passed by this Court, but after the disposal of the writ petition, they have come up with this Review application, which is but an oblique device to evade the implementation of the order passed by this Court.

28. Learned Senior Counsel further submitted that so far as the Validating Act is concerned, it does not alter the decision requiring Review thereof as till date the authorities/Review petitioners never relied upon the said Validating Act, at any point of time, either during the course of this litigation or in the case of Hari Nagar Sugar Mills. It was thus submitted that such a plea is not available to the Review petitioners. Even on merits of the Gazette Notification, learned Counsel submitted that so far as it relates to Section 3(1)(a) read with Sub-section (2), the said Notification has validated and saved all the specified orders fixing the levy sugar price and, therefore, even the levy sugar price notification for the year 1974-75 up to 1979-80 has also been saved. Further, the said Validating Act does not make the 1995 and 1999 notification retrospective so far as applicable for the sugar year in question



nor does it effect repeal the notification fixing the price for the year 1974-75 up to 1979-80. It was thus submitted that in the above mentioned background and in the light of the decision in Hari Nagar's case, it is apparent that none of the notification was set aside but all of them were made effective prospectively.

29. Learned Senior Counsel further averred that so far as the explanation substituted for Sub-section (3)(c) of the said Validating Act, a perusal of Section 2(b) indicates that the same was effective only from the first day of October, 2009 and it does not therefore affect the price fixation made prior to the same, which in the present case relates to the year 1974-75 up to 1979-80. Thus, in the light of the aforementioned provisions, the Validating Act does not alter the position warranting a Review of the order passed by this Court.

30. So far as Section 3(1)(c) of the Validating Act is concerned, it was submitted that the word "no court" therein will not include the High Court exercising power under Article 226 of the Constitution of India, as it would amount to amending the basic structure of the Constitution and stifling the independence of judiciary, thus rendering the Validating Act itself *ultra vires* and unconstitutional.

31. It is further submitted that the issue in relation



to the judgement of the Delhi High Court is concerned, it was submitted that the arguments advanced by the Review Petitioners is wholly misplaced as in the said case the court had not decided the validity and effect of the 1995 and 1999 notifications but had merely passed an order with liberty to challenge the fixation to price. Thus, the said notification having been placed under challenge in Hari Nagar Sugar Mills and the decision of the same being judgement in rem and consequently had to be applied to all the Sugar Mills in Bihar, irrespective of the same having been challenged specifically or not.

32. It is also submitted that any denial of the benefit of the judgement to the answering respondent would be discriminatory and violative of Article 14 of the Constitution of India and thus the issue of *res judicata* and estoppel were not attracted at all. Another reason for non-applicability of the said doctrine is that the decision of the Delhi High Court does not decide any issue as has been decided in the Hari Nagar's case and both were in relation to a different cause of action and not the same. The doctrine or *res judicata* is attracted only in cases where the issue has been decided and not otherwise. The Hon'ble Apex Court in the case of **Erach Boman Khavar vs. Tukaram Shridhar Bhat**, reported in (2013) 15 SCC 655 has



clearly held that to attract the doctrine of *res judicata* it must be manifest that there has been a conscious adjudication of issue. A plea of *res judicata* cannot be taken aid of unless there is an expression of an opinion on the merits. The relevant paragraphs of the aforesaid judgement is being quoted hereinbelow:

“39. From the aforesaid authorities it is clear as crystal that to attract the doctrine of res judicata it must be manifest that there has been conscious adjudication of an issue. A plea of res judicata cannot be taken aid of unless there is an expression of an opinion on the merits. It is well settled in law that principle of res judicata is applicable between the two stages of the same litigation but the question or issue involved must have been decided at earlier stage of the same litigation.

50. The principles stated in Arjun Singh (supra), Satyadhyan Ghosal (supra) and the other authorities clearly spell out that principle of res judicata operates at the successive stages in the same litigation but, the basic foundation of res judicata rests on delineation of merits and it has at least an expression of an opinion for rejection of an application. As is evident, there has been no advertence on merits and further the learned Company Judge has guardedly stated two facets, namely, “not necessary to grant present Judge’s Summons” and “liberty to applicant to apply, if necessary”. On a seemly reading of the order we have no shadow of doubt that the same could not have been treated to have operated as res judicata as has been held by the Division Bench. Therefore, the irresistible conclusion is that the Division Bench has fallen into serious error in dislodging the order granting leave



by the learned Company Judge to file a fresh suit.”

33. Learned Senior Counsel submits that to attract the doctrine of estoppel, there has to be a conscious relinquishment of right by a party. In the present case, the answering respondents have never relinquished their right consciously, but in fact, the issue is relating to fundamental right under Article 14 of the Constitution of India. The Hon’ble Apex Court in the case of **Olga Tellis vs. Bombay Municipal Corporation**, reported in (1985) 3 SCC 545, has held that there cannot be any estoppel against the Constitution, it has no application in relation to enforcement of fundamental right. It was also held that there can be no waiver of fundamental right founded on Article 14 of the Constitution of India. Paragraph Nos. 27, 28, 29 and 30 of the judgement is quoted hereinafter:

“27. We will first deal with the preliminary objection raised by Mr. K.K.Singhvi, who appears on behalf of the Bombay Municipal Corporation, that the petitioners are estopped from contending that their huts cannot be demolished by reason of the fundamental rights claimed by them. It appears that a writ petition, No. 986 of 1981, was filed on the Original Side of the Bombay High Court by and on behalf of the pavement dwellers claiming reliefs similar to those claimed in the instant batch of writ



petitions. A learned Single Judge granted an ad-interim injunction restraining the respondents from demolishing the huts and from evicting the pavement dwellers. When the petition came up for hearing on July 27, 1981, counsel for the petitioners made a statement in answer to a query from the court, that no fundamental right could be claimed to put up dwellings on foot-paths or public roads. Upon this statement, respondents agreed not to demolish until October 15, 1981, huts which were constructed on the pavements or public roads prior to July 23, 1981. On August 4, 1981, a written undertaking was given by the petitioners agreeing, inter alia, to vacate the huts on or before October 15, 1981 and not to obstruct the public authorities from demolishing them. Counsel appearing for the State of Maharashtra responded to the petitioners' undertaking by giving an undertaking on behalf of the State Government that, until October 15, 1981, no pavement dweller will be removed out of the city against his wish. On the basis of these undertakings, the learned Judge disposed of the writ petition without passing any further orders. The contention of the Bombay Municipal Corporation is that since the pavement dwellers had conceded in the High Court that they did not claim any fundamental right to put up huts on pavements or public roads and



since they had given an undertaking to the High Court that they will not obstruct the demolition of the huts after October 15, 1981 they are estopped from contending in this Court that the huts constructed by them on the pavements cannot be demolished because of their right to livelihood, which is comprehended within the fundamental right to life guaranteed by Article 21 of the Constitution.

28. *It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and substance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. For example, the concession made by a person that he does not possess and would not exercise his right to free speech and expression or the right to move freely throughout the territory of India cannot deprive him of those constitutional rights, any more than a concession that a person has no right of personal liberty can justify his detention contrary to the terms of Article 22 of the Constitution. Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and enforced by them, if those rights are violated. But, the high purpose which the Constitution seeks to achieve by conferment*



of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. The Preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the promise of the Preamble that fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Articles 15,16,19,21 and 29, and some on citizens and non- citizens alike, like those guaranteed by Articles 14,21,22 and 25 of the Constitution. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful state could easily tempt an individual to forego his precious personal freedoms on promise of transitory, immediate benefits. Therefore, notwithstanding the fact that the petitioners had conceded in the Bombay High Court that they have no fundamental right to construct hutments on pavements and that they will not object to their demolition after October 15, 1981, they are entitled to assert that any such action on the part of public authorities will be in violation of their fundamental rights. How far the argument regarding the existence and scope of the right claimed by the petitioners is well- founded is another matter. But, the argument has to be examined despite the concession.

29. *The plea of estoppel is closely connected with the plea of waiver, the object of both being to ensure bona fides in day-to-day transactions. In Basheshar Nath v. The Commissioner of Income Tax Delhi, [1959] Supp. 1 S.C.R. 528 a Constitution Bench of this Court considered the question whether the fundamental rights conferred by the Constitution can be waived. Two members of the Bench (Das C.J. and Kapoor J.) held that there can be no waiver of the fundamental right founded on Article 14 of the Constitution. Two others (N.H.Bhagwati and Subba Rao,JJ.) held that not only could there be no waiver of the right*



conferred by Article 14, but there could be no waiver of any other fundamental right guaranteed by Part III of the Constitution. The Constitution makes no distinction, according to the learned Judges, between fundamental rights enacted for the benefit of an individual and those enacted in public interest or on grounds of public policy.

30. We must, therefore, reject the preliminary objection and proceed to consider the validity of the petitioners' contentions on merits."

34. Learned Senior counsel next submits that in the background, it is evident that the present Review application is misconceived and fit to be dismissed.

35. I have heard learned counsel for the Review petitioners and also the contesting writ petitioners in the present set of Review petitions. The material facts and the law encompassing the issue of Review has been elaborately explained by the parties in the light of the facts and circumstances of the case and this Court has been called upon to answer as to whether in the given circumstances, the order passed by this Court is legally open to further orders under the Review jurisdiction.

36. At the very outset, before proceeding to answer the issues which have been raised, the very reason why this Court embarked on a patient hearing of the contentions raised by the review petitioners, was that there may not be miscarriage of justice. At the same time, this Court was wholly conscious of



the fact that such Review should not transform into an appeal in disguise so as to re-open the issues which had already been settled in the writ application. It is a well-settled principle that "*actus curiae neminem gravabit*", (i.e., an act of court shall prejudice none) i.e., it can be well said that the power of Review can be invoked in such cases in correcting the error which may have been occasioned by the Court. However, the principles of "*actus curiae* ", would be available to an injured party only if it was without redress.

36. I am informed that against the aforementioned order no appeal has been preferred by the respondents in the writ application, but instead of having taken recourse to the provision of Appeal, the F.C.I./Review petitioners have come before this Court to seek a Review order dated 27.02.2017. Since the Review-petitioners are trying to make out a case where miscarriage of justice is likely to be occasioned by the implementation of the order, the appropriate recourse available to them, in the opinion of this Court, was to approach the appellate Court in an Intra Court Appeal as even if "injury" had been made out, they were not without redress.

37. Before proceeding to analyse the submissions advanced by the respective parties, this Court reiterates that the



power of Review should not ordinarily be exercised unless and until there is a “glaring omission” or a “patent mistake” or a “grave error” has crept in because of judicial fallibility. [2015 (4) P.L.J.R. 328 (Full Bench)]. In the aforementioned case while considering the issue, this Court has held at paragraph No. 13 as follows:-

“13. Similarly, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed grounds, namely, (i) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time, when the decree or order was passed, (ii) mistake or error apparent on the face of the record or (iii) any such sufficient ground, which is analogous to the two grounds aforementioned. However, it has, now, surfaced in the light of the judicial pronouncements, that the expression, “any sufficient ground”, must be analogous to the two grounds aforementioned, is no longer a rule of universal application.”

38. In view of the aforementioned judgement referring to the law laid down by the Supreme Court in the case of Aribam Tuleshwar Sharma vs. Aibam Pishak Sharma, reported in (1979) 4 SCC 398, which is based on the earlier decision in the case of Shivdeo Singh vs. State of Punjab (AIR 1963 SC 1909) wherein it was held as follows:-



“There is nothing in Article 226 of the Constitution preclude a 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 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.” (Emphasis is supplied).

39. Thus, the Apex Court has clearly laid down the law inasmuch as it has clarified that the Courts may exercise its power of Review on the discovery of new and important matters or evidence which after exercise of due diligence was not within the knowledge of the person seeking the Review or could not produce before him at the time when the order was made. So far as the issue regarding discovery of new and important matter or evidence is concerned, this Court finds that amendment in the E.C. Act which is sought to be used as the judicial trump card



by the Review petitioners was not something which they had discovered as the same was part of their own legislation and very much available with them all through the course of the litigation. It cannot be said that the authorities had practised “due diligence” with regard to the amendment which was well within their knowledge. Thus, such an argument does not find favour with this Court so as to necessitate exercise of power under Review jurisdiction and the argument advanced by the F.C.I. as well as the Union of India, for the aforementioned reasons stands rejected.

40. So far as the issue regarding the judgement of the Hon’ble Delhi High Court is concerned, learned counsel for the respondents Shri Giri has categorically stated that the same was very much on record in the writ application and it was well within the knowledge of the Food Corporation of India, but since the decision of the Hari Nagar Sugar Mills was a judgement in rem, the authorities did not resort to apply the same so as to defeat the cause of the writ petitioner. Moreover, the plea was perhaps not taken as the Hon’ble Delhi High Court had also granted leave to the sugar factories that if they choose they could challenge the fixation of price of levy sugar for the year 1975-76, 1976-77 and 1977-78. Since the price of levy



sugar had already been challenged, after the judgement aforesaid in the case of Hari Nagar Sugar Mills' case reported in 2008(4) B.B.C.J. 5351, which is a judgement in rem and available to all sugar mills within the State of Bihar, the Review petitioners did not agitate the case on the said premise. The plea so raised by the Review petitioners, in the opinion of this Court is untenable as the judgement aforementioned has been affirmed by the Hon'ble Supreme Court by the dismissal of the S.L.P. and also the Curative petition which came to be filed thereafter and which met with the same fate. Thus, in the considered opinion of this Court, any interference and Review of the judgement of this Court would amount to interference in the judgement rendered in the co-ordinate matter which has its approval by the Hon'ble Apex Court.

41. Learned counsel for the Review applicants have not been able to make out any further case of error apparent on the face of record and the contention by the F.C.I., that the error of law having been occasioned due to non-application of the amendment dated 22.12.2009 which came about and had far reaching ramifications, cannot be accepted by this Court for the reason that the amendment of 2009 was never brought before this Court and a presumption can be drawn that the Union of



India was very aware of the law. The said notification was not placed before this Court in any counter affidavit filed earlier either in this Court or in the Apex Court in the matter relating to Hari Nagar Sugar Mills. The changed law also would not effect the decision rendered by this Court in the case of Hari Nagar Sugar Mills as the notification validified 1995 notification and the Act of 1976-78 in this matter.

42. I also find myself in agreement with the submission advanced by learned counsel for the respondents that since the notification saved the Act 1976-78 validified the 1995 notification, the same cannot be said to have been given retrospective effect. As such, having saved all earlier notifications, the amendment in 2009 was to apply prospectively. It is also evident from the submission of the Review petitioners that all these grounds which are being canvassed before this Court in Review jurisdiction cannot be termed “Errors apparent on the face of record” in view of the settled law as held in the case of **B.H. Prabhakar v. Managing Director, Karnataka State Co-operative Apex Bank Ltd. [(2000) 9 SCC 482]**, which is being quoted hereunder:-

“We have carefully gone through the common judgement sought to be reviewed in these petitions. In our view, no error, much less any patent error, of law could be demonstrated by the review petitioners for



supporting these petitions. The resolution of 7-8-1985 was held not to be operative on the facts of the case. In the review petitions an attempt is made to show that resolution of 7-8-1985 was the basis of the appointment of the petitioners. That has not been accepted by the Court. An attempt to reargue this aspect does not fall within the scope of the review proceedings. So far as the affidavit of the Manager, Legal Cell dated 10-8-1996 is concerned it was never pressed in service before the Court when the impugned judgement was rendered. Hence, the non-consideration thereof cannot be treated to be an error apparent on the record as tried to be suggested. The policy adopted by the respondent Bank alleged to be anti-labour for which reliance is placed on the decision of this Court in the case of Dharwad Distt. P.W.D. Literate Daily Wage Employees Assn. v. State of Karnataka also cannot be made the subject-matter of review proceedings as no such contention was canvassed before the Court when the impugned decision was rendered. On the other hand the petitioners were absorbed as Clerks by the respondent Bank after their temporary tenure ended on completion of an earlier project. That may be the reason why no allegation was made about anti-labour policy of the respondent Bank when the appeals were argued before the Court. For all these reasons, the review petitions are dismissed on merits.”

43. Having given a deep consideration to the contentions raised by the Review-petitioners which have been opposed by Respondent/writ petitioners in the light of the law relating to review it is wholly clear to me that the Review-



petitioners having not been able to demonstrate clearly before this Court as to wherein lies the error apparent on the case of record, the entire Review application is wholly based on new premises and pleas which if considered in its entirety would necessitate re-consideration on merits and would tantamount to an appeal in disguise which is impermissible in law. The pleas canvassed were not such which were new discoveries to the Review petitioners that had been dormant on account of certain reasons. Moreover, what prevented the Review-petitioners in the exercise of due diligence is also not patent from any of their arguments advanced before this Court.

44. I would thus, conclude that this aspect of the matter has well been dealt with in the case of **Union of India & Ors. vs. Mohd. Nayyar Khalil & Ors.** (supra) wherein the Court held that an attempt to re-argue the case does not fall within the scope of the Review jurisdiction, the text of which is extracted hereunder:-

“1. 690 days’ delay is not satisfactorily explained. Hence, the review petitioner is liable to be dismissed on the ground of limitation itself. However, we have also considered the merits of the review petition. The impugned order has followed a three-Judge Bench judgement of this Court in the case of Union of India v. M. Bhaskar. Even if the question regarding the legality of the said three-Judge Bench



decision is pending scrutiny before the Constitution Bench the same is not relevant for deciding the review petition for two obvious reasons- firstly, this was not pointed out to the Bench which decided the civil appeal; and secondly, by the time the impuned order was passed the three-Judge Bench judgment had not been upset and even in future if the Constitution Bench takes a contrary view it would be a subsequent event which cannot be a ground for review as is clear from the explanation to Order 47 rule 1(2) of the Code of Civil Procedure which reads as under:

“Explanation.-The fact that the decision on a question of law on which the judgement 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 judgement.

2. Consequently, even on merits the review petition is liable to fail. The review petition is, therefore, dismissed on the ground of not satisfactorily explained delay as well as on merits.”

45. For the foregoing reasons and in the light of the judicial pronouncements as have been dealt with earlier, I am fully convinced that the order under review which has been sought to be altered by the review-petitioners does not warrant interference by this Court.

46. The same is accordingly dismissed.

(Anjana Mishra, J.)

Saif/-

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