IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Review Petition No. 132 of 2019
Ref: WP(C) No.4472 OF 2018

1. The State of Assam represented by the Chief Secretary, Government of Assam, Dispur, Ghy – 6, Kamprup (M), Assam.

2. Commissioner & Secretary to the Government of Assam, Health Department, Government of Assam, Dispur, Ghy – 6.

3. The Director of Medical Education, Assam, Office of the Director of Medical Education, Sixmile, Khanapara, Ghy - 22.

4. The Controller of Examinations, Office of the Director of Medical Education, Sixmile, Khanapara, Ghy-22.

….. Review Applicants.

Vs.

Vicky Kumar Patel,
Son of Sakaldeo Patel,
Resident of Ranipath, Moranhat,
PO & PS: Dibrugarh, District: Dibrugarh, Assam.

.....Respondent.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE MANISH CHOUDHURY

For the Review Petitioners : Mr. D. Saikia, Senior Advocate,
Mr. B. Gogoi, Advocate.

For the Respondent : Mr. M. Sarania, Advocate.

Dates of hearing : 24.11.2020

Date of Judgment & Order : 15.12.2020

JUDGMENT & ORDER

[N. Kotiswar Singh, CJ (Acting)]

Heard Mr. D. Saikia, learned Senior Counsel, assisted by Mr. B. Gogoi, appearing for the Review Petitioners. Also heard Mr. M. Sarania, learned counsel for the Respondent/Writ Petitioner.

2. The present review petition has been filed seeking review of the order dated 16.08.2019 passed in the WP(C) No. 4472 of 2018 primarily on the ground that a very important document, namely, the "Information Bulletin" published by the Central Board of Secondary Education (CBSE) which also provides for eligibility criteria in more detail for the State Quota of medical/dental seats could not be produced at the time of hearing of the writ petition, and hence, was not considered by the Court, which could have made a difference on the ultimate outcome of the decision rendered by this Court.

3. To appreciate the contention of the Review Petitioners, the salient features of the judgement sought to be reviewed, in the backdrop of the facts and the legal submissions considered by the Court, may be highlighted.

4. The aforesaid writ petition was filed by the present respondent challenging Rule 4(2)(c) of the Medical Colleges & Dental Colleges of Assam (Regulation of Admission into 1st Year MBBS Course) Rules, 2017 (for short, "State Rules") as notified on 01.07.2017 by the Health & Family Welfare Department, Government of Assam.

5. Admission to Medical and Dental Colleges is based on a common entrance examination at all India level, known as National Eligibility cum Entrance Test (NEET) conducted of at the relevant time by the CBSE as provided under Section 10D of the Indian Medical Council Act, 1956. Seats available in various Medical and Dental Colleges are categorised under Central Quota and State

Quota and the respective States are empowered to prescribe their own additional eligibility criteria for admission to seats under the State Quota.

6. The State Quota seats is defined in Rule 2(xxvi) of the State Rules, to mean the seats available for admission into 1st year MBBS and BDS Courses in the Medical Colleges and Dental Colleges of Assam as per the Medical Council of India (for short, "MCI") and Dental Council of India (for short, "DCI") norms, excluding seats allotted under 15% All India Quota, Central Pool and NE State Quota.

7. Rule 4 provides for the mode of selection of State Quota candidates. It reads as follows:

> "4. Mode of Selection of State Quota Candidates.-
>
> (1) The candidates who qualify in the NEET as per NEET Rules for admission into 1st year MBBS/BDS Course shall have to apply to the DME in a Declaration Form as per the Educational Notice published by the DME immediately after the declaration of NEET result. The Declaration Form shall be available in the office website (www.dmeassam.gov.in).
>
> (2) Eligibility of the candidates to be called for counselling.-
>
> (a) The candidate must pass the qualifying examination.
>
> (b) The candidate must pass all the four subjects i.e. Physics, Chemistry, Biology/Biotechnology (which shall include practical tests in these subjects) and English of the qualifying examination in the same sitting and without grace marks.
>
> (c) The candidate must obtain a minimum of 60% marks taken together in Physics, Chemistry and Biology/Biotechnology at the qualifying examination in case of candidates belonging to General/Unreserved category. In respect of candidates belonging to SC/ST(P)/ST(H)/OBC/MOBC category the marks obtained in Physics, Chemistry and Biology/Biotechnology taken together in the qualifying examination shall be 50%."

8. *Vis-a-vis* the requirement of aforesaid Rule 4(2)(c), the writ petitioner had passed Class XII examination in Science Stream from the Assam Higher Secondary Education Council securing 55, 62, & 54 marks in Physics, Chemistry and Biology, respectively, in one attempt, securing an average of 57% marks in

those subjects which fell short of the requirement under Rule 4(2)(c), though the petitioner fulfilled the eligibility criteria for appearing in the NEET, of which there is no dispute.

9. The petitioner appeared in the NEET, UG 2018 conducted by the CBSE, securing 421 marks out of 720 marks as a General Category candidate securing NEET All India Ranking 610902. In the list prepared for the State Quota of the State of Assam, he was placed at serial No. 332. His candidature was rejected at the counselling stage on the ground that he was not eligible as per the State Rules as the average marks secured by him in Physics, Chemistry and Biology was less than 60% for unreserved candidates as provided under Rule 4(2)(c) of the aforesaid State Rules.

10. The contention of the writ petitioner was that Section 10D of Indian Medical Council Act, 1956, (for short the MCI Act) inserted by an amendment Act of 2016, mandates holding of a uniform entrance examination for all medical institutions by a designated authority, effect of which could not have been diluted by the States.

Section 10D of the said Act reads as under:-

> "10D. Uniform entrance examination for undergraduate and post-graduate level-
>
> There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner.
>
> Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination."

11. It was also contended that prescription of eligibility in the Admission Notice of NEET was on the basis of "Regulations on Graduate Medical Education, 1997" (for short, "1997 Regulations"), which was framed by the MCI in exercise of powers conferred under Section 33 of the 1956 Act. It was thus contended that since the MCI had framed the Regulations prescribing 50% marks taken together in the subjects of Physics, Chemistry and Biology/Biotechnology as the eligibility criteria for appearing in the NEET and when the Admission Notice had also indicated as such, prescribing a different eligibility criteria as has been done under Rule 4(2)(c) of the State Rules is ultra-vires as being repugnant to the 1956 Act and the 1997 Regulations. It was contended that when a single common examination in the form of NEET was held and when admissions are to take place on the basis of marks obtained in the NEET, fixation of higher eligibility criteria for admission in the State Rules is wholly arbitrary.

12. It was also submitted by the petitioner that there is always a possibility of many students getting admission to the Medical Colleges of Assam under All India Quota even though they may have obtained less than 60% marks in those subjects in aggregate and, therefore, there is no rational basis in depriving the permanent residents of the State of Assam from securing admission based on the marks obtained in the NEET.

13. On the other hand, relying on the decision of the Hon'ble Supreme Court in ***Dr. Preeti Srivastava & Anr. -Vs- State of M.P. & Ors., (1999) 7 SCC 120*** and of this Court in ***Siddhartha Sarkar & Ors. -Vs- State of Assam & Ors., 2007 (3) GLT 715*****,** it was contended on behalf of the State Government that the State may lay down norms of admission prescribing a standard higher than the one stipulated by MCI in the context of admission to Medical Colleges.

14. This Court, however, noted that the learned Senior Counsel appearing of the State had acknowledged that there is a distinguishing feature in the present case in the sense that when the case of ***Siddhartha Sarkar*** (supra) was decided there was no NEET which is now conducted as a uniform entrance examination to all Medical Institutions at Undergraduate as well as Post-graduate levels.

Nevertheless, it was sought to be distinguished on the ground that the same will not have any bearing in as much as, NEET is held as a uniform entrance examination whereas the issue herein is about prescription of higher qualification for the purpose of admission by the State and there is no conflict with the 1956 Act and 1997 Regulations and as such, the challenge must be negated.

15. As then, now also, Mr. D. Saikia, learned Senior Counsel for the State drew attention of the Court to the Admission Notice of NEET with particular emphasis to the heading "Reservation of Seats and Admission in Medical/Dental Colleges" and the heading "Counselling Details" to contend that the Notice itself recognizes the applicability of the existing Rules framed by the State in the matter of admission to the Medical Colleges under the State Quota.

16. Learned Senior Counsel referring to the Admission Notice issued by the CBSE submits that in the said Admission Notice there is a specific provision relating to "Reservation of Seats and Admission In Medical/Dental Colleges" in which it has been mentioned under Clause 3 thereof that "All other existing eligibility criteria for admission to Medical/Dental Colleges shall be applicable as per Rules and Policies of the State /UT/Institution/University concerned".

17. The said Admission Notice also mentions of an "Information Bulletin" which states detailed information of test, syllabus, eligibility criteria to appear/admission, reservation, exemption fee, cities of exemption, State Code of eligibility, Age etc. is available on website www.cbseneet.nic.in. Candidates were accordingly advised to check all the details in the online information Bulletin before submission of application form.

18. According to the learned Senior Counsel, the Admission Notice makes it abundantly clear that as regards State Quota, as opposed to Central Quota, the respective State can lay down additional eligibility criteria as clearly mentioned in the Admission Notice. It has been submitted that though in the Admission Notice, there is a mention of an "Information Bulletin" to be referred to by the candidates before submission of application forms, unfortunately that Information Bulletin was not readily available with the State Government at a time when this writ

petition was taken up by this Court because of which the State government could not effectively and cogently put their case that the result of NEET (UG) may be utilised by other entities of Central/State Government for admission purpose in accordance with their Rules and during counselling, the eligibility criteria, self-declaration, various documents etc. of the eligible candidates shall be verified as per norms specified by the respective State authorities for admission under the State Quota in the Medical/Dental Colleges.

19. According to Mr. D. Saikia, learned Senior Counsel, the aforesaid Bulletin Information would have clinched the issue in favour of the State Government had the said Information Bulletin been brought to the notice of the Court at the time of final hearing and before the order dated 16.08.2019 in the said writ petition was passed. It has been submitted that the said Information Bulletin was not readily available with the State Government and as soon as the same became available, the present Review Petition has been filed.

20. Before we examine the submission of the learned Senior Counsel for the State, we may briefly revert back to the judgement in issue.

21. This Court considered the provisions of Entry 66 of List I of the VII Schedule of the Constitution of India as well as Entry 25 of List III. The Court also considered the provisions of Section 19A of the 1956 Act which empowers the MCI to prescribe the minimum standards of medical education required for granting undergraduate medical qualification by Universities or Medical Institutions in India. This Court referred to the decision in ***Dr Preeti Srivastava*** (supra) and ***Siddhartha Sarkar*** (supra) and that took the view that the power of the State to prescribe higher qualification than the minimum qualifications laid down by MCI in 1997 Regulations was the legal position before NEET was introduced and proceeded to examine as to whether with the holding of NEET, the State can still continue to prescribe qualifications for admission into Medical Colleges which is higher than the eligibility qualification for appearing in the NEET or whether such a prescription of eligibility criteria will fall foul with the 1956 Act and 1997 Regulations.

22. This Court after considering the various decisions relied on by the contesting parties referred to Section 10D and Section 33(mb) inserted by the Amendment Act of 2016 to the MCI Act and observed that the uniform entrance examination in the form of NEET is conducted by virtue of Section 10D of the 1956 Act and the 1997 Regulations, which came into force with effect from 24.05.2016. Accordingly, it was observed that 2017 State Rules were framed by the State Government after Section 10D and Section 33(mb) had been enforced. The Court took the view that in the light of Article 254(1) of the Constitution of India which lays down that in the event of a conflict between a Union and the State law in the Concurrent field, the former prevails over the later.

23. This Court then proceeded to examine the procedure for selection and observed that uniform entrance examination in the form of NEET is conducted for the purpose of admission and the State/Union Territory wise Merit List of the eligible candidates is also prepared on the basis of marks obtained in the NEET for the purpose of admission to MBBS course from the said lists. Thus, the uniform entrance examination takes within its fold aspects relating to admission to Medical Institutions by laying down eligibility criteria in respect of merit. Accordingly, this Court held that the impugned Rule 4(2)(c) of the 2007 Rules requiring the candidates to possess minimum marks in the qualifying examination which is more than the minimum marks prescribed by the MCI to appear in NEET can negate the candidature of the candidate, who finds place in the merit list of NEET for admission, and therefore, Rule 4(2)(c) is directly in conflict with Section 10D of the 1956 Act and the 1997 Regulations.

24. This Court then took the view that it is no longer a case of MCI prescribing minimum qualifications in respect of which, without impeaching such minimum qualifications, it is permissible for the State to prescribe additional or further qualifications of eligibility and to that extent, the decisions rendered in the case of ***Dr Preeti Srivastava*** (supra) and ***Siddhartha Sarkar*** (supra) are distinguishable. It was also observed that there was no NEET or for that matter, Section 10D of 1956 Act at the time when the judgements in ***Dr Preeti Srivastava*** (supra) and ***Siddhartha Sarkar*** (supra) were rendered.

25. This Court also held that the submission of the learned Senior Counsel that the expression “all other existing eligibility criteria” appearing at Clause 3 of “Reservation of seats and the Admission in Medical/Dental Colleges” and “subject to the applicable rules” appearing in Clause 2 of the Counselling Details of the Admission Notice, that the same fortify that the Rules framed by the State have to be taken into consideration at the time of admission, has to be understood in the overall context of procedures laid down for the purpose of admission.

26. It was observed that Clause 1 of “Reservation of seats and Admission in Medical/Dental Colleges” lays down that All India Merit List and All India Rank of the qualified candidates shall be prepared on the basis of the marks obtained in NEET and candidates shall be admitted to MBBS/BDS Courses from the said lists by following the existing reservation policies. Clause 2 indicates that all admissions to MBBS/BDS Courses within the respective categories shall be based solely on marks obtained in NEET. Merit is determined by NEET. The word “other” in the expression “all other existing eligibility criteria” excludes any eligibility criteria with regard to merit laid down by any Rules framed by the State. The words “applicable rules” at Clause 2 under the heading “Counselling Details” refer to Rules which are only applicable and not inconsistent with the 1997 Regulations, as amended.

27. The Court accordingly, held that Rule 4(2)(c), which prescribes an eligibility condition for admission, which is above the eligibility criteria fixed for appearing in NEET, is repugnant to Section 10D of the 1956 Act and the 1997 Regulations, as amended, is ultra vires the Act and Regulations and struck down Rule 4(2)(c) of the 2007 Rules.

28. Mr. Saikia, learned Senior Counsel submits that this conclusion of the Court could have been different had the aforesaid “Information Bulletin” which unambiguously clarified the stand of the State Government had been produced and referred to at the time of hearing of the writ petition and accordingly, seeking review of the judgment and order.

29. As we proceed to examine the scope of review in the present case based on the aforesaid document, we may examine the nature of this document which appears to be the fulcrum of this review petition.

30. It is important to note that though the present review petition has been filed on the basis of the aforesaid Information Bulletin, a reference to it was already available in the Admission Notice, which was part of the pleading in the original writ petition and was also referred to by the State respondent/Review Petitioners .

In the lower right column of the Admission Notice, it has been specifically mentioned about the Information Bulletin as follows:

> "**INFORMATION BULLETIN**
>
> The Information Bulletin containing detailed information of test, syllabus, eligibility criteria to appear/admission, reservation, exemption fee, cities of exemption, State Code of eligibility, Age etc. is available on website www.cbseneet.nic.in. Candidates may, therefore, check all the details in the online information Bulletin before submission of application form."

Thus, as far as the existence of the aforesaid Information Bulletin is concerned, it was very much within the knowledge of everybody including the State respondents/Review Petitioners. The only contention of Mr D. Saikia is that though there is reference to Information Bulletin in the Admission Notice, the detail contents of the said Information Bulletin were not available before the State authorities, and these details which could have clinched the matter in favour of the State, but could not brought to the notice of this Court at the time of hearing of the writ petition.

31. In this regard, Mr D. Saikia drew our attention to certain information provided in the said Information Bulletin, which according to him would clarify the matter beyond any doubt about the case of the State.

At serial no. 12 under the heading IMPORTANT NOTES, there is a mention that,

"The result of the NEET (UG) may be utilised by other entities of Central/State Governments for admission purpose in accordance with their rules."

Mr. D. Saikia contends that a reference to "their rules" as mentioned above is related to the rules framed by the State Government, that is, the 2017 State Rules. The aforesaid provision is to be found again under the heading INTRODUCTION of the Information Bulletin. There is also an added provision under INTRODUCTION that during counselling, the eligibility criteria, said declaration, various documents, etc. of the eligible candidates shall be verified as per norms specified by the respective authorities and Medical/Dental Colleges.

Further, under the heading GENERAL INFORMATION, under Para 1(b) it has been clearly mentioned that,

"Mere appearing and qualifying in NEET (UG) does not confer any rights to the candidate for admission in MBBS/BDS Courses. The selection and admission to MBBS/BDS in any Medical Institution recognised for offering MBBS/BDS Courses are subject to fulfilling the admission criteria, eligibility, rank in merit list, medical fitness and such other criteria as may be prescribed by the Government of India, respective States, Universities and Medical Dental Colleges."

It has been further provided under Para 1(h) that the,

"Candidate's eligibility for NEET (UG) is purely provisional and is subject to fulfilment of eligibility criteria as prescribed by the MOH & FW/MCI/DCI/CBSE/MCC."

It has been also provided under Para 2(d) that

"Candidates qualifying NEET would be eligible for All India Quota and other quarters under the State Government/Institutes, irrespective of the medium in which the examination is taken by a candidate, subject to other eligibility criteria. (As per a letter no. V.11025/35/2012-MEP(Pt.) dated 08.12.2016 received from MoH & FW.)"

32. Mr D. Saikia further submits that under the heading ELIGIBILITY AND QUALIFICATIONS, in Para 2 thereof, under the heading, ELIGIBILITY FOR SEATS UNDER THE CONTROL OF STATE/DEEMED UNIVERSITY/ CENTRAL UNIVERSITIES/SEATS of ESIC and the AFMC INCLUDING BHU &

AMU/CENTRAL POOL QUOTA, it has been mentioned under sub paras (a) and (b) that,

> "(a) Indian Nationals, Non Resident Indians (NRIs), Overseas Citizen of India (OCIs), Persons with Indian Origin (PIOs) & Foreign Nationals are eligible for admission in Medical/Dental Colleges subject to rules and regulations framed by the respective State Governments, Institution and the Government of India. (b) Foreign nationals may confirm the eligibility from the concerned Medical/Dentals College/State."

Further, under Para 4 of the aforesaid Chapter, it has been provided under the heading ADMISSION AND RESERVATION that,

> "An India Merit List of the qualified candidates shall be prepared on the basis of the marks obtained in the NATIONAL ELIGIBILITY CUM ENTRANCE TEST (UG) an candidates shall be admitted to MBBS/BDS courses from the said list only by following the already existing reservation policy. CBSE will provide All India Rank, Admitting Authorities will invite applications for counselling and merit list shall be drawn based on All India Rank by the Admitting Authorities. Admission to MBBS/BDS Courses within the respective categories shall be based solely on marks obtained in the National Eligibility Cum Entrance Test. The admitting/counselling authorities will throw merit list of the candidates in the respective categories declared by the candidates at the time of applying for admission/counselling".

It has been further provided under sub-para (b)(i) under the heading, ADMISSION IN STATE MEDICAL COLLEGES/ UNIVERSITIES/ INSTITUTION/ PRIVATE MEDICAL COLLEGES FOR SEATS OTHER THAN 15% ALL INDIA QUOTA, that,

> "(b)(i) Admission under State Quota Seats shall be subject to reservation policy and eligibility criteria prevailing in the state union territory as notified by the respective State/Union Territory from time to time."

33. Under Chapter 6 under the heading MERIT LIST AND QUALIFYING CRITERIA it has been provided under Para 4 (b) and (c) under the caption MERIT LIST FOR SEATS OTHER THAN 15% ALL INDIA QUOTA, as follows:

> "(b) Admitting Authorities will invite applications for Counselling and merit list shall be drawn based on All India Rank by the Admitting Authorities subject to the applicable rules.

(c) The admitting/counselling authorities will draw merit list of the candidates in the respective categories declared by the candidates at the time of applying for the admission/counselling based on State rules."

34. Under Chapter 8 under INSTRUCTIONS FOR COUSELLING in Para 2 thereof, it has been mentioned under the caption, COUNSELLING AND ADMISSION OTHER THAN 15% ALL INDIA SEATS that,

"Candidates wishing to apply for admission in State Medical Colleges/Universities Institutions using merit list of NEET (UG) – 2018 shall follow the instructions of the State Government and/or authorities of the Medical/Dental colleges/Institution University concerned for counselling. Counselling for Private Medical Colleges (except Deemed) will be with the respective State Governments……."

35. According to Mr D. Saikia, the aforesaid provisions in the "Information Bulletin" make it crystal clear that at the time of appearing in the NEET the candidates were informed in unambiguous terms that for admission to seats under the State Quota, it will be governed by the rules and regulations framed by the respective State Government and mere qualification in the NEET does not guarantee admission under the State Quota. The candidates seeking under State Quota have to fulfil the eligibility criteria laid down by the State Government. According to Mr. Saikia, however, unfortunately, as mentioned above, the aforesaid very relevant document namely, "Information Bulletin", could not be produced before the Court as the same was not readily available with the State Government, which could have convinced the Court not to interfere with Rule 4(2)(c) of the 2017 State Rules.

36. We will now examine whether the plea taken by Mr D. Saikia aforesaid would be a good ground for review of the order passed by this Court on 16.08.2019.

37. The principles which guide an application for review as outlined under Order 47 Rule 1 CPC, which are also applicable in writ proceedings are that, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, which was not within the knowledge of the applicant or could not be produced by him at a time when the order was passed or on account

of some mistake or error apparent on the face of the record, or for any sufficient reason, one may apply for review of an order.

A review, however, cannot be filed by way of appeal for substitution of a view and a mere possibility of two views on the subject is not a ground for review, but a review would lie to correct any mistake or error apparent on the face of the record, which if not corrected can lead to miscarriage of justice.

38. These principles were revisited and reiterated in ***Kamlesh Verma v. Mayawati*, (2013) 8 SCC 320** in the following words.

> **12.** This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient. This Court in *Sow Chandra Kante* v. *Sk. Habib* [(1975) 1 SCC 674 : 1975 SCC (Cri) 305 : 1975 SCC (L&S) 184 : 1975 SCC (Tax) 200] held as under: (SCC p. 675, para 1)
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> > "*1.* Mr Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a rehearing. May be, we were not right in refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. 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 not be a routine affair or a habitual step. It is neither fairness to the court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon

of repeat performance with the review label as passport. Nothing which we did not hear *then* has been heard *now*, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

(emphasis in original)

14. Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. This Court in *Col. Avtar Singh Sekhon* v. *Union of India* [1980 Supp SCC 562 : 1981 SCC (L&S) 381] held as under: (SCC p. 566, para 12)

> "*12.* A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra Kante* v. *Sk. Habib* [(1975) 1 SCC 674 : 1975 SCC (Cri) 305 : 1975 SCC (L&S) 184 : 1975 SCC (Tax) 200] this Court observed: (SCC p. 675, para 1)
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> > '*1.* … 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. … The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.'"

15. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. This Court in *Parsion Devi* v. *Sumitri Devi* [(1997) 8 SCC 715] held as under: (SCC pp. 718-19, paras 7-9)

> "*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.* [AIR 1964 SC 1372] this Court opined: (AIR p. 1377, para 11)
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> > '*11.* 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*.'

8. Again, in *Meera Bhanja* v. *Nirmala Kumari Choudhury* [(1995) 1 SCC 170] while quoting with approval a passage from *Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma* [(1979) 4 SCC 389] this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

(emphasis in original)

16. Error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. This Court, in *Lily Thomas* v. *Union of India* [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] held as under: (SCC pp. 250-53, paras 54, 56 & 58)

"*54.* Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

……
……

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order 40 Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

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56. 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. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

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58. Otherwise also no ground as envisaged under Order 40 of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in *Sarla Mudgal case* [*Sarla Mudgal* v. *Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569]. It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in *Sarla Mudgal case* [*Sarla Mudgal* v. *Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is

apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words 'any other sufficient reason appearing in Order 47 Rule 1 CPC' must mean 'a reason sufficient on grounds at least analogous to those specified in the rule' as was held in *Chhajju Ram* v. *Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] . Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T.C. Basappa* v. *T. Nagappa* [AIR 1954 SC 440] , this Court held that such error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath* v. *Ahmad Ishaque* [AIR 1955 SC 233] , it was held: (AIR p. 244, para 23)

> '*23.* … [I]t is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? The learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in—*Batuk K. Vyas* v. *Surat Borough Municipality* [ILR 1953 Bom 191 : AIR 1953 Bom 133] , that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of

indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.'

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order 40 of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in *Sarla Mudgal case* [*Sarla Mudgal* v. *Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . The petition is misconceived and bereft of any substance."

17. In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court in *Kerala SEB* v. *Hitech Electrothermics & Hydropower Ltd.* [(2005) 6 SCC 651] held as under: (SCC p. 656, para 10)

> "*10.* … In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. The learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the Review Petitioners to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in *Jain Studios Ltd.* v. *Shin Satellite Public Co. Ltd.* [(2006) 5 SCC 501] , held as under: (SCC pp. 504-505, paras 11-12)

> "*11.* So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition

would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

39. The Supreme Court in the said case, ***Kamlesh Verma*** (supra) summarised principles as follows:

" 20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram* v. *Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India* v. *Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

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

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

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

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

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

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

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

40. When queried from Mr. D. Saikia, whether it could be said that the said document namely, "Information Bulletin" was discovered after exercise of due diligence and that it was not within the knowledge of the State authorities, thus, could not be produced at the time of hearing, it was fairly admitted by Mr D. Saikia that there could have been some laxity on the part of the officials in not able to procure the said document in time when the writ petition was heard, as it was uploaded in the website of the CBSE and was not readily available with the State Government. He submits that, nevertheless, the High Court being a Constitutional Court and a Court of Record has inherent jurisdiction to exercise the power of review under Article 215 of the Constitution to correct any grave and palpable error committed by it and to prevent miscarriage of justice, even if, the case does not come strictly within the purview of the principles contained in Order 49 Rule 1 CPC.

41. In support of his contention, Mr D Saikia has relied on the decisions of the Hon'ble Supreme Court in ***M. M. Thomas vs. State of Kerala and Anr., (2000) 1 SCC 666***, ***Municipal Corporation of Greater Mumbai and Anr. Vs. Pratibha Industries Ltd and Ors., (2019) 3 SCC 203***, ***State of Rajasthan and Anr. Vs.***

***Surendra Mohnot and Ors., (2014) 14 SCC 77*, *State of Jammu and Kashmir vs. R.K. Zalpuri and Ors., (2015) 15 SCC 602*, *Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and ors., (2005) 13 SCC 289* and *Board of Control for Cricket in India and Anr. Vs. Netaji Cricket Club and Others, (2005) 4 SCC 741*.**

(i) In ***M. M. Thomas* (supra),** it was held that,

> **"14.** The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In *Naresh Shridhar Mirajkar* v. *State of Maharashtra* [AIR 1967 SC 1 : (1966) 3 SCR 744] a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record.
>
> **15.** .....
>
> **16.** Referring to the said passage and relying on the decision of this Court in *Naresh Shridhar Mirajkar* [AIR 1967 SC 1 : (1966) 3 SCR 744] a two-Judge Bench of this Court in *M.V. Elisabeth* v. *Harwan Investment & Trading (P) Ltd.* [1993 Supp (2) SCC 433 : AIR 1993 SC 1014] has observed thus: (AIR Headnote)
>
> > "The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction...."
>
> **17.** If such power of correcting its own record is denied to the High Court, when it notices the apparent errors its consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court

would include the power of review relating to errors apparent on the face of the record."

(ii) In ***Municipal Corporation of Greater Mumbai*** (supra), it was held that,

> **12.** To similar effect is our judgment in *Shivdev Singh* v. *State of Punjab* [*Shivdev Singh* v. *State of Punjab*, AIR 1963 SC 1909] , wherein this Court has stated as under: (AIR p. 1911, para 8)
>
> > "*8*. … It is sufficient to say that 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."

(iii) In ***Surendra Mohnot*** (supra) it was held that,

> **"21.** While dealing with the inherent powers of the High Court to review its order under Article 226 of the Constitution in *Shivdeo Singh* v. *State of Punjab* [AIR 1963 SC 1909] the Constitution Bench observed (AIR p. 1911, para 8) that nothing in Article 226 of the Constitution precludes 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.
>
> **22.** In *Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma* [(1979) 4 SCC 389] , the two-Judge Bench speaking through Chinnappa Reddy, J. observed thus: (SCC p. 390, para 3)
>
> > "*3*. … 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 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(iv) In ***R.K. Zalpuri*** (supra) and ***Rajender Singh*** (supra) the Hon'ble Supreme Court held to the same effect.

However, it can be noted that while deciding the case in ***Rajender Singh*** (supra), the Hon'ble Supreme Court also noted that the High Court ignored many materials on record and thus opined that it was a clear case of error apparent on the face of the record as can be seen from Para 15 of the decision, as reproduced hereinbelow.

> **" 15.** ..... A careful perusal of the impugned judgment does not deal with and decide many important issues as could be seen from the grounds of review and as raised in the grounds of special leave petition/appeal. The High Court, in our opinion, is not justified in ignoring the materials on record which on proper consideration may justify the claim of the appellant. Learned counsel for the appellant has also explained to this Court as to why the appellant could not place before the Division Bench some of these documents which were not in possession of the appellant at the time of hearing of the case. The High Court, in our opinion, is not correct in overlooking the documents relied on by the appellant and the respondents. In our opinion, review jurisdiction is available in the present case since the impugned judgment is a clear case of an error apparent on the face of the record and non-consideration of relevant documents. The appellant, in our opinion, has got a strong case in his favour and if the claim of the appellant in this appeal is not countenanced, the appellant will suffer immeasurable loss and injury. Law is well settled that the power of judicial review of its own order by the High Court inheres in every court of plenary jurisdiction to prevent miscarriage of justice."

(v) In ***Board of Control for Cricket in India and Anr. Vs. Netaji Cricket Club*** (supra), the Supreme Court observed that a mistake on the part of a court can call for review so as misconception of law or fact and also can take into consideration a subsequent event, in the following words,

> **" 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 Order 47 Rule 1 of the Code are 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*"."
>
> ……. ……..
>
> …….
>
> **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 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake."

42. In view of the above decisions, there can be no second opinion about the inherent power of the High Court as a Court of Records in reviewing its own order, without referring to the provisions of Order 47 Rule 1 CPC. Yet, there can be also no doubt that such inherent power of the High Court has to be exercised only to prevent miscarriage of justice or to rectify any palpable error on law or fact on record and it cannot be done so by totally ignoring these principles governing review. The words, "sufficient reason" has been explained to include misconception of fact or law by the court. But, certainly, this inherent power to review cannot be used in the guise of exercising the appellate jurisdiction or rehearing the matter on merit which had been already argued and decided or something which is clearly not permissible under the aforesaid legal principles.

It may be apposite to recollect what was observed in ***Shanti Conductors (P) Ltd. v. Assam SEB, (2020) 2 SCC 677*** (supra) as follows:

> **" 25.** .....The scope of review is limited and under the guise of review, the petitioner cannot be permitted to reagitate

and reargue the questions, which have already been addressed and decided. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer to the judgment of this Court in *Parsion Devi* v. *Sumitri Devi* [*Parsion Devi* v. *Sumitri Devi*, (1997) 8 SCC 715] , wherein in para 9 the following has been laid down: (SCC p. 719)

> "*9*. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"."

43. Thus, the case laws cited by Mr. D.Saikia do not introduce any new legal principle to the well settled legal parameters governing review. The only highlight of these decisions cited by Mr. D.Saikia is that the High Court, being a Court of Record has got *inherent power* to review its decisions, independent of the provisions of Order 47 Rule 1 CPC. Yet, the legal parameters remain the same even if the source of power of the High Court to review its own order is different in the sense that it inheres in it. The High Court in exercise of the inherent power of review can do so for correcting any error apparent on the face of the record to prevent grave miscarriage of justice or for any other sufficient reason, which also includes misconception of fact of law. But the High Court cannot assume the role of an appellate court to re-examine the issues already considered and to arrive at a different finding as held in ***Shivdeo Singh* v. *State of Punjab*** (supra).

44. The entire case of the Review Petitioners hinges, as contended by Mr. D. Saikia, on the crucial document namely, "Information Bulletin" referred to in the "Admission Notice" issued by the CBSE, which bulletin was stated to be not readily available with the State Respondents when the writ petition challenging the virus of Rule 4(2)(c) of the State Rules of 2017 was being considered by this Court.

45. As we examine the plea of Mr. D. Saikia, certain aspects need to be considered.

It is to be seen as to whether the said document was something which could be said to have been discovered after the exercise of due diligence which was not within the knowledge of the State Government.

Further, what is the error apparent on the face of record, which is required to be rectified and/or what is the grave miscarriage of justice which is sought to be prevented, which Mr. D. Saikia claims.

46. As regards the first issue, we are not convinced that the said document was not within the knowledge of the State authorities. In fact, Mr. D. Saikia was candid enough to acknowledge that there could have been some laxity on the part of the State officials in locating/procuring a copy of the same in time.

We have already noted that the reference to the said document is to be found in the Admission Notice, which was readily available in the official website of the CBSE, and thus, not a document, availability of which can be of much difficulty. Though, it may be stated as claimed by Mr. D. Saikia that the said Admission Notice was issued by the CBSE and not the State Government, the State Government was fully aware that the CBSE was the agency to conduct the NEET at the relevant time and it would have been expected that the State Government would remain in touch with the CBSE in all the related matters pertaining to holding of the NEET.

Even if the claim by the State Government that it was not readily available at the time of hearing of the petition, is accepted, are the contents of the document of such nature that it would amount to discovery of new and important matter or evidence?

Perusal of the document, contents of which have been exhaustively reproduced above, does not show that the contents of the documents shed any new light to the already known facts and pleas taken by the State Government.

As is evident the contents of the "Information Bulletin" merely reiterates, albeit, more elaborately what had been already stated in the Admission Notice, which Notice was duly considered by the Court while passing the order.

As mentioned above, the Admission Notice states that "All other existing eligibility criteria for admission to Medical/Dental Colleges, shall be applicable as per Rules and Policies of the State/UT/Institution/University concerned." This aspect was duly considered by the Court as seen in Para no. 34 of the judgment and order.

The Admission Notice also clearly mentions of the "Information Bulletin" stating that "The Information Bulletin containing detailed information of test, syllabus, eligibility criteria to appear/admission, reservation, exemption fee, cities of exemption, State Code of eligibility, Age etc. is available on website www.cbseneet.nic.in. Candidates may, therefore, check all the details in the online information Bulletin before submission of application form."

47. In our view, the contents of the aforesaid "Information Bulletin" do not introduce any new fact, other than which were already available publicly. Further, the contents of the Information Bulletin could not have added anything new to the Rules framed by the State Government. The contents of the "Information Bulletin" was prepared by the CBSE and not the State government. It merely provided the information in more detail of what had been already mentioned in the Admission Notice that all other existing eligibility criteria for admission to Medical/Dental Colleges, shall be applicable as per Rules and Policies of the State/UT/Institution/University concerned and that concerned admitting authorities will invite applications for counselling and merit list shall be drawn based on All India Rank by the admitting authorities subject to theor applicable rules.

48. These facts had been already noted by the Court in Para 28 and 29 of the judgment, which read as follows:

> "**28.** In the Admission Notice, under "Reservation of Seats & Admission in Medical/Dental Colleges", it is stipulated as follows:-

"1. An All India merit list and All India Rank of the qualified candidates shall be prepared on the basis of the marks obtained in the National Eligibility-cum-Entrance Test and candidates shall be admitted to MBBS/BDS courses from the said list only by following the Existing Reservation Policies.

2. All admission to MBBS/BDS courses within the respective categories shall be based solely on marks obtained in the National Eligibility-cum-Entrance Test.

3. All other existing eligibility criteria for admission to Medical/Dental Colleges shall be applicable as per Rules and Policies of the State/UT/Institution/University concerned."

29. In the Admission Notice, under the heading "Counselling Details", it is stated as follows:-

"1. CBSE will provide All India Rank. Result will be given to DGHS, Ministry of Health and Family Welfare, Govt. of India to provide the same to admitting authorities.

2. Concerned admitting authorities will invite applications for counselling and merit list shall be drawn based on All India Rank by the admitting authorities subject to their applicable rules."

49. The issue relating to "all other existing eligibility criteria" stipulated by the State Government was duly considered by the Court and held that these criteria excludes any eligibility criteria with regard to merit laid down by the rules framed by the States and the words, "applicable rules" at Clause 2 under the heading "Counselling Details" refer to Rules which are only applicable and not inconsistent with the 1997 Regulations, as amended as can be seen from Para 34 of the judgment, which is reproduced herein below:

"34. The submission advanced by Mr. Saikia on the basis of the expression "all other existing eligibility criteria" appearing at Clause 3 of "Reservation of seats and Admission in Medical/Dental Colleges" and "subject to their applicable rules" appearing at Clause 2 of the Counselling Details of the Admission Notice, that the same fortify that the Rules framed by the State have to be taken into consideration at the time of admission, has to be understood in the overall context of the procedures laid down for the purpose of admission. Clause 1 of "Reservation of seats and Admission in Medical/Dental Colleges" lays down that All India Merit List and All India Rank of the qualified candidates shall be prepared on the basis of the marks obtained in NEET and candidates shall be admitted to MBBS/BDS Courses from the said lists by following the existing

reservation policies. Clause 2 indicates that all admissions to MBBS/BDS Courses within the respective categories shall be based solely on marks obtained in NEET. Merit is determined by NEET. The word "other" in the expression "all other existing eligibility criteria" excludes any eligibility criteria with regard to merit laid down by any Rules framed by the State. The words "applicable rules" at Clause 2 under the heading "Counselling Details" refer to Rules which are only applicable and not inconsistent with the 1997 Regulations, as amended."

50. The stand of the State Government had been already succinctly put forth by the State Government at the hearing of the writ petition that the State has the power to prescribe higher qualification than the minimum qualification laid down by MCI in the 1997 Regulations by referring to the Rules framed under the 2017 State Rules which was duly considered by the Court as can be seen from Para 19 of the judgment sought to be reviewed.

"**19**. Question that arises is as to whether with the holding of NEET, the State can still continue to prescribe qualifications for admission into Medical Colleges which is higher than the eligibility qualification for appearing in the NEET or whether such a prescription of eligibility criteria will fall foul with the 1956 Act and 1997 Regulations."

51. Thus, the fact and submission that all other existing eligibility criteria for admission to Medical/Dental Colleges shall be applicable as per Rules and Policies of the State/UT/Institution/University had been already put forth before the Court at the time of hearing and duly considered by the Court.

The contents of the "Information Bulletin" which the Review Petitioners seek to highlight are merely the repetition of the information already given in the Admission Notice. The information given in the Information Bulletin do not convey anything new or additional to the already given in the Admission Notice. There is no change in the nature, character or implication of the information already given in the Admission Notice. Nothing of substantial nature has been added in the Information Bulletin, expect making it more explicit of what had been already given in the Admission Notice.

In the light of the above discussion, we are of the considered opinion that the information contained in the "Information Bulletin" does not provide any new

and important matter or evidence fact which was not within the knowledge of the State Government, even if assuming that the said document could not be produced at the time of hearing of the writ petition after exercising due diligence.

52. Mr. D. Saikia, however, has strenuously argued that if the decision of this Court rendered on 16.08.2019 is not reviewed on the basis of this "Information Bulletin", there will be grave miscarriage of justice, in as much as the State Government would be debarred from prescribing any higher qualification contrary to the law laid down in ***Dr Preeti Srivastava*** (supra) and ***Siddhartha Sarkar*** (supra). This judgment unless reviewed would be plainly contrary to the law laid down in the aforesaid decisions.

He insists that law has been laid down that in the above referred cases that the State can prescribe higher qualifications for admission in the Medical Colleges, which has been clearly mentioned in the "Information Bulletin". Thus, the view taken in the judgment amounts to apparent error of law on the face of the record which needs to be rectified as other wise it will lead to gross miscarriage of justice.

We are afraid, we cannot entertain such a plea, as this argument that the State has power to prescribe higher eligibility criteria had been already advanced before the Court and was duly considered by the Court and was not accepted at the time of passing the order on 16.08.2019.

The Court held that the aforesaid decisions were rendered before inserting Section 10D of the 1956 Act and hence, distinguishable as held in Para 33 of the Judgment.

Para 33 of the Judgment reads as follows:

> "**33**. Uniform entrance examination in the form of NEET is conducted for the purpose of admission. States/Union Territory-wise Merit List of the eligible candidates is also prepared on the basis of marks obtained in NEET for the purpose of admission to MBBS Course from the said lists. Thus, the uniform entrance examination takes within its fold aspects relating to admission to Medical Institutions by laying down eligibility criteria in respect of merit. In that view of the matter, impugned Rule 4(2)(c) of the

> 2007 Rules requiring the candidates to obtain minimum marks in the qualifying examination which is more than the minimum marks required as eligibility prescription to appear in NEET, can negate the candidature of a candidate, who finds place in the merit list of NEET for admission, and, therefore, the Rule 4(2)(c) is directly in conflict with Section 10D of the 1956 Act and the 1997 Regulations. It is no longer a case of MCI prescribing minimum qualifications in respect of which, without impeaching such minimum qualifications, it is permissible for the State to prescribe additional or further qualifications of eligibility and to that extent, we are of the opinion that the decisions rendered in the case of Dr. Preeti Srivastava (supra) and Siddhartha Sarkar (supra) are distinguishable. There was no NEET or for that matter, Section 10D of the 1956 Act at the time when judgements in Dr. Preeti Srivastava (supra) and Siddhartha Sarkar (supra) were rendered."

53. As held above, the aforesaid Information Bulletin does not contain any new and important matter or evidence and as such non consideration of the same cannot be said to be any error apparent on the face of the record and thus it cannot be said to have caused any grave miscarriage of justice.

The Review Petitioners contend that the Judgment by setting aside Rule 4(2)(c) of the State Rules in spite of categorical mentioning in the Information Bulletin and in the light of the decisions in ***Dr Preeti Srivastava*** (supra) and ***Siddhartha Sarkar*** (supra), has caused miscarriage of justice.

Relying on the decision in ***Board of Control for Cricket in India*** (supra), Mr. D. Saikia submits that setting aside of the aforesaid Rule 4(2)(c) in the teeth of the law laid down in ***Dr Preeti Srivastava*** (supra) amounts to misconception of law which can be rectified by reviewing this judgment by taking into consideration the "Information Bulletin" which came in possession of the State Government and which can be considered to be a subsequent development.

We cannot accept such a plea for the reason that it would amount to reopening an argument which had been considered and rejected by the Court. The Court had held in Para 33 of the Judgment that uniform entrance examination in the form of NEET is conducted for the purpose of admission and uniform entrance examination takes within its fold aspects relating to admission to medical institutions by laying down eligibility criteria in respect of merit and Rule

4(2)(c) can have the effect of the negating the candidature who finds place in the merit list of NEET. The Review Petitioners are thus, seeking the same relief which had been sought at the time of arguing the main matter which had been rejected, thus amounting to rehearing of the matter which is within the purview of the superior court hearing an appeal. We do not subscribe to the view that such a considered finding can be said to be misconception of law in the present as to warrant review of the judgment. In the aforesaid case of in ***Board of Control for Cricket in India*** (supra), the mistake of fact referred to was the alleged erroneous submission made that the new Board had taken over at the relevant time, though in fact the old Board had been functioning and the new Board had not taken over. In the present case, there is no such issue of any wrong presentation of fact or law.

Thus, by urging so, the Review Petitioners seek this Court to substitute the earlier view, which is not permissible.

If the Review Petitioners consider that the view taken by the Court that as these decisions were distinguishable as these were rendered before insertion of Section 10D of the 1965 Act, is erroneous, this is another view, which can be taken by the superior court exercising appellate jurisdiction and cannot be rectified as sought by the Review Petitioners by way of review. Such a considered view taken by the Court cannot be contemplated to be misconception of law.

54. For the reasons discussed above, we are not inclined to entertain this review petition and accordingly, the same stands dismissed. No cost.

Sd/- *Manish Choudhury* **Sd/-** *N. Kotiswar Singh*

JUDGE **CHIEF JUSTICE (ACTING)**

Comparing Assistant