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W.M.P.Nos.19654 & 21015 of 2021

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in

W.P.No.14639 of 2021

C.V.KARTHIKEYAN, J.

Both the Writ Miscellaneous Petitions have been filed by the 5th respondent and the 4th respondent respectively in W.P.No.14639 of 2021, seeking to re-call the order passed by this Court in the Writ Petition dated 06.08.2021.

2.W.P.No.14639 of 2021 came up for consideration before me on 06.08.2021 and, on hearing the learned counsel for the petitioner, Mr.B.Harikrishnan and on hearing Mr.Yogesh Kannadasan, learned Government Counsel, who appeared for the 1st, 2nd & 3rd respondents, an order had been passed in the Writ Petition, whereby the writ petition was allowed. In Para 17 of the said order, I had recorded as follows:-

“17.It is to be stated that after the order had been dictated in open court, a representation was made on behalf of the fourth respondent that a Senior Counsel has been engaged and he would appear and that the order should be held over till 10.08.2021. Such a request is refused. The order already dictated stands.”



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3.The 4th & 5th respondents in the Writ Petitions have then filed the present petitions.

4.Heard Mr.T.R.Rajagopalan, learned Senior Counsel appearing on behalf of the petitioners in both the Writ Miscellaneous Petitions and Mr.B.Harikrishnan, learned counsel for the writ petitioner, who is shown as the 1st respondent in the two Writ Miscellaneous Petitions and Mr.P.Sanjay Gandhi, learned Government counsel for the 1st, 2nd & 3rd respondents in the Writ Petition / 2nd, 3rd & 4th respondents in the Writ Miscellaneous Petitions.

5.In the affidavit filed in support of the present petitions, it had been stated that the order in the Writ Petition had been passed without giving an opportunity to represent the case by way of filing a counter. It was stated that after receiving the web copy of the order, the petitioners found that the Writ Petition itself has been allowed. It had been stated that there were several material facts to be placed with respect to a Civil Court decree obtained by them and which had been finally decided in the S.A.No.1598 of 1965 by this Court. It had therefore been stated that it



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would only be appropriate that an opportunity is given to them to put forth the facts before this Court and this would necessitate that the order passed on 06.08.2021 be recalled.

6.It is also stated by the learned senior counsel appearing on behalf of the petitioners that a Writ Appeal was actually filed questioning the order in the Writ Petition and in the Writ Appellate Court, it was informed that these petitions to re-call the order had also been filed. The Writ Appellate Court had therefore, stated that the petitions to re-call may be pursued first. Accordingly, the matter had been placed before me to consider the Writ Miscellaneous Petitions to re-call the order dated 06.08.2021 in W.P.No.14639 of 2021.

7.The issue whether under Article 226, the Court can re-call its own order had come up for consideration on earlier occasions and the view taken by the Courts would be quite instructive in determining as to how a Court should proceed when such an application to re-call an order is filed.



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8.In **New India Assurance Co. Ltd., Vs. Krishna Kumar**

Pandey reported in 2019 SCC Online SC 1786, the Hon'ble Supreme Court had held that an application for re-call is maintainable particularly, if an order is passed without jurisdiction. That was a matter, which was on the criminal side relating to offences punishable under Section 498-A IPC and the accused was sentenced to rigorous imprisonment for one year. The appeal filed was dismissed by the Sessions Court. A revision was then filed before the High Court. The revision was partly allowed and the sentence was reduced to the period already had undergone. Thereafter, an application was filed to correct that particular order in the revision petition which was dismissed. The High Court had held that the order cannot be modified. However, the Hon'ble Supreme Court, held that the High Court had acted in excess of its jurisdiction while holding that the conviction should not affect the service career of the accused. It was stated that therefore, the High Court should have recalled that particular portion of the order which, had been passed without or rather exceeding jurisdiction.



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9.Further reference can also be made to the judgement of the

Constitution Bench in **Shivdeo Singh Vs. State of Punjab** reported in **AIR 1963 SC 1909**, wherein the Constitution Bench examined the inherent powers of the High Court to review its own order under Article 226 of the Constitution of India. The Constitution Bench held that nothing in Article 226 of the Constitution of India precludes a High Court from exercising the power of review which inheres in every High Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

10.In a subsequent judgment in **Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma** reported in **(1979) 4 SCC 389**, the Hon'ble Supreme Court speaking through Justice Chinnappa Reddy observed as follows:-

*“3..... It is true as observed by this Court in **Shivdev Singh and Ors. v. State of Punjab and Ors.** 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 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.”

11.It could also be taken that the re-calling of an order can be, to an extent, equated to a review of an order.

12.That aspect came up for consideration before the Hon'ble Supreme Court in **Thungabhadra Industries Ltd., Vs. State of Andhra Pradesh** reported in **AIR 1964 SC 1372**, which reads as follows:

“A review is by no means an appeal in disguise whereby an



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erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

13.Again in **Nothern India Caterers (India) Ltd., Vs. Lt. Governor of Delhi** reported in (1980) 2 SCC 167, the Hon'ble Supreme Court had held as follows:-

“8.....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’.”

14.The learned Senior Counsel appearing on behalf of the petitioner relied on the judgment of the Hon'ble Supreme Court in **Asit Kumar Kar Vs. State of West Bengal and Others** reported in (2009) 2



SCC 703 and made specific reference to Paragraph 4, 5, 6 and 7. In

Paragraph 4, 5, 6 and 7, it had been observed as follows:-

“4.It is a basic principle of justice that no adverse orders should be passed against a party without hearing him. This is the fundamental principle of natural justice and it is a basic canon of jurisprudence. In the Seven Judge Constitution Bench of this Court, [A.R. Antuley v. R.S. Nayak & Anr.](#) 1988 (2) SCC 602] it has been observed in paragraph 55 thereof:

"55.so also the violation of the principles of natural justice renders the act a nullity".

5.One of the counsel relied upon another Five Judge Constitution Bench decision in [Rupa Ashok Hurra v. Ashok Hurra](#) [2002 (4) SCC 388]. It is true that in paragraph 9 of the said judgment it has been observed that this Court under [Article 32](#) of the Constitution cannot hold as invalid a judgment of this Court by treating it as a nullity. However, the aforesaid judgment does not say that we cannot pass a recall order when that order has been passed without hearing a party.

6.There is a distinction between a petition under [Article 32](#), a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the



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merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.

7.We are treating this petition under [Article 32](#) as a recall petition because the order passed in the decision in [All Bengal Licensees Association v. Raghabendra Singh & Ors.](#) [2007 (11) SCC 374] cancelling certain licences was passed without giving opportunity of hearing to the persons who had been granted licences. In these circumstances, we recall the directions in paragraph 40 of the aforesaid judgment. However, if anybody has a grievance against the grant of licences or in the policy of the State Government, he will be at liberty to challenge it in appropriate proceedings before the appropriate Court. The writ petitions are disposed of with these directions.”

15.The collation of the principles as laid down in the aforesaid judgments are that, the Court should accept, if a mistake had crept in an order, that a mistake had actually crept in and seek to re-call that particular order to restore status-quo ante and permit the parties to re-argue the case.

16.It had been urged by Mr.B.Harikrishnan, learned counsel for



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the Writ Petitioner that the parameters applicable to review a judgment or order would not be applicable to a petition filed to review an order. But, it must be kept in mind that the grievance of the petitioner herein is that they have facts to place which should be considered. It is not a case where they had placed on records facts, and seek recall on the ground that there is necessity to place further or additional facts for consideration.

17.In the instant case, it is stated that the order in the writ petition had been passed, without hearing the counsels for the 4th and 5th respondents therein. As extracted even in the order itself, after the order had been dictated in the open Court, a representation was made on behalf of the 4th and 5th respondents, since the order had already been dictated in the open Court. This Court had opined that the order should stand as dictated. Thereafter, these applications have been filed which, in my opinion is a proper approach, since on an oral representation, an order passed cannot be wiped out or re-called. It is to be appreciated that formal applications have been filed to re-call the order.



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18.Both the learned counsel for the writ petitioner,

Mr.B.Harikrishnan and the learned Senior Counsel appearing on behalf of the 4th and 5th respondents in the Writ Petition, Mr.T.R.Rajagopalan, learned Senior Counsel sought to place further facts with respect to the averments made in the Writ Petition to urge that the order is justifiable on the one hand and that the order requires reconsideration on the other hand.

19.If a case is drawn into a discussion on the correctness of its own earlier order then, it is only appropriate that the Court errs on the side of caution and takes a prudent step not to sit in appeal over the order but rather permit the order to be re-called and permit the litigants to have opportunity to advance all facts in a proper form. The proper form would be to consider the averments filed in the affidavit filed in support of the Writ Petition and also the averments in the counter affidavit, if filed on behalf of the respondents.

20.I would like to place a caveat that while passing the order now sought to be recalled, the Government counsel was present but no indication



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was made that the course of the order which was dictated in the open Court would require, a further reconsideration by this Court. It would however, not be appropriate on my part to enter into a further discussion on the merits of the contentions raised either on the side of the writ petitioner or on behalf of the 4th and 5th respondents but, **test** with providing them with a platform to raise those contentions. Such a platform can be provided only if the order is re-called.

21.Mr.B.Harikrishnan, learned counsel for the writ petitioner stated that a far judicious approach would have been to file an appeal against the order complained, but Mr.T.R.Rajagopalan, learned Senior Counsel as stated earlier, affirmed that a Writ Appeal was actually filed while, probably simultaneously these petitions have also been filed.

22.Since it is urged that there are reasonable grounds, which require to be heard at length and to be examined and which, if considered might change the course of the order already passed, and since those materials had not been considered earlier, even though the respondents were



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shown as respondents in the Writ Petition, it is only appropriate, in view of the broad guideline also laid down by the Supreme Court in the aforementioned judgments, I hold that the order passed on 06.08.2021 is re-called.

23. Therefore, more particularly to provide an opportunity to both the writ petitioner and to all the respondents in the Writ Petition to put forth their respective cases in proper perspective, and to the satisfaction of the respective litigants, I would willingly re-call the order dated 06.08.2021 passed in W.P.No.14639 of 2021. The said order is re-called.

24. The Registry may note in the Writ Register, that the order dated 06.08.2021 allowing the Writ Petition had been re-called by this Court and also note that therefore, the Writ Petition has to be re-heard. If an entry had been made in the records of the Court, closing the Writ Petition noting that it had been allowed, such entry will now have to be reversed not only in the Registers of the Court but also in the Case Status, which is uploaded in the



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Court website, that the order dated 06.08.2021 in W.P.No.14639 of 2021 has been withdrawn by this order dated 25.03.2022 in the present Writ Miscellaneous Petitions.

C.V.KARTHIKEYAN, J.

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25.The Writ Petition thus stands revived and the parties will have to advance arguments in the main Writ Petition. Registry may place the Writ Petition before my Lord the Hon'ble Chief Justice to be listed before the appropriate Bench.

25.03.2022

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