

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR**

**MISC.CIVIL APPLICATION (REVIEW) NO.72/2023**

**IN**

**WRIT PETITION NO.5194/2009 (D)**

**Shri Ramdeobaba Sarwajanik Samiti, Nagpur and anr**

**..VS..**

**The City of Nagpur Municipal Corporation, having its office at Civil  
Lines, Nagpur and anr**

.....  
Office Notes, Office Memoranda of Coram,  
appearances, Court orders or directions  
and Registrar's orders

Court's or Judge's Order

.....  
Shri M.G.Bhangde, Senior Counsel with Shri S.V.Purohit,  
Counsel for Applicants/Petitioners.  
Shri J.B.Kasat, Counsel for Non-applicant No.1.  
Shri A.A.Madiwale, AGP for Non-applicant No.2.

**CORAM : A.S.CHANDURKAR & URMILA JOSHI-PHALKE, JJ.**  
**CLOSED ON : 07/07/2023**  
**PRONOUNCED ON : 14/07/2023**

1. By this application, the applicants/petitioners seek review of the judgment and order dated 16.12.2022 passed by this court in Writ Petition No.5194/2009 and other connected petitions. By all writ petitions, the petitioners therein including applicants herein had challenged the Nagpur City Corporation Assessment and Collection of Water Rate Bye-laws 2009 (the said bye-laws 2009).

2. Writ Petition No.5194/2009 was preferred by the

applicants/petitioners, who were running an unaided educational institution. The college established by the applicants/petitioners was an unaided engineering college. While amending the said bye-laws 2009, the Nagpur Municipal Corporation (the Corporation) placed the Government Aided Colleges in Tariff Code No.9(c) while unaided colleges were placed in Tariff Code 9(d). The water rates prescribed for consumption above 80 units under Tariff Code 9(c) was Rs.20/- per unit while under Tariff Code 9(d) it was Rs.100/- per unit. It was contentions of the applicants/petitioners in the said petition that the said differentiation had no nexus whatsoever especially in the backdrop of the fact that the colleges, receiving and not receiving aid, were rendering similar services and imparting education. Realizing the said bye-laws 2009, the said bye-laws 2009 were again amended by virtue of the Water Rate (Amendment) Bye-laws 2010. Notification was published by the Urban Development Department on 8.9.2010. The Schools and Colleges irrespective of receiving grant-in-aid were clubbed together and were placed in Tariff Code No.9(c-2). As a result, from 8.9.2010 unaided schools and colleges were also placed in

the similar slab of Rs.20/- per unit. In this backdrop, it was submitted that amendment to the said bye-laws 2009, as made by the bye-laws 2010, ought to be given retrospective effect. It was contended that there was no justification for charging Rs.100/- per unit for the period from 1.4.2009 to 7.9.2010.

3. The said writ petition was dismissed by observing that it was not a case of simple correction of a mistake, however it was a conscious decision taken to club educational institutions together irrespective of the fact whether they were receiving grant-in-aid or not. It is further held that the amendment to the bye-laws carried out in the year 2010 cannot be said to be a result of rectification of an earlier mistake or curative in nature so as to entitle the petitioners to seek a declaration that for the period from 01.04.2009 to 08.09.2010 the water rate at Rs.20/- per unit for an educational institution which was unaided is liable to be paid. The declaration as sought by the petitioners cannot be granted.

4. The present review application is filed on the ground that there is a grave injustice to the applicant No.1

which is a public trust working diligently in the field of education from the year 1984 without any aid from the Government. The ground raised in the review application is that the applicants had argued two aspects; (i) the said bye-laws 2009 (unamended) which provide for different rates for aided and unaided colleges are unconstitutional being violative of Article 14 of the Constitution of India and (ii) the amendment introduced by bye-laws of 2010 was curative and, therefore, the same is retrospective in nature. It is contended that this court has duly recorded both the said submissions in the judgment which is under review. Though the contentions also find place in the brief note of arguments dated 11.9.2022, the same was not considered while passing the judgment and, therefore, the present application is filed as no other alternative efficacious remedy is available to the applicants/petitioners.

5. Heard learned Senior Counsel Shri M.G.Bhangde for the applicants/petitioners, learned counsel Shri J.B.Kasat for non-applicant No.1 – the Corporation, and learned Assistant Government Pleader Shri A.A.Madiwale for non-applicant No.2.

6. Learned Senior Counsel Shri M.G.Bhangde for the applicants/petitioners submitted that though there was a pleading as to validity/constitutionality of the said bye-laws 2009, prayers to that effect to quash and set aside the water rates bye-laws were made. While arguing the matter, this aspect was argued and it was recorded by the court in paragraph No.6 of the judgment. The said submission also finds place in brief notes of argument wherein it is mentioned that prior to the said bye-laws 2009, there was no difference in the matter of water charges leviable for aided and unaided colleges. However, discrimination made in the said bye-laws 2009 is arbitrary and violative of Article 14 of the Constitution of India. It was further argued that aided colleges are included in the category of institution and unaided colleges are included in commercial. There is no nexus in putting the colleges in different categories. While assigning the reasons, this court has not considered the said submissions which had affected the rights of the applicants/petitioners and a grave injustice is caused to the applicants/petitioners. As the submissions are not considered, no relief was granted to the applicants/petitioners. The non-consideration of the material aspect,

which was argued, is an error apparent on the face of record and, therefore, the review application deserves to be allowed.

7. In support of his contentions, learned Senior Counsel Shri M.G.Bhangde for the applicants/petitioners, placed reliance on the decision of this court in the case of **Morarjee Gokuldas Spinning and Weaving Company Ltd., Mumbai and anr vs. State of Maharashtra and anr**, reported in (2010)4 Mh.L.J. 69 wherein it is held that merely because an industry is located in a conforming zone and another industry in a non-conforming area would be irrelevant as the consumption of water and the purpose for which it was consumed would be the same namely industrial use. All industries whether in conforming zone or non-conforming zone use water as an input for production. In the reasons given being not reasonable the classification must be held to be not reasonable.

Learned Senior Counsel further placed reliance on the decision of this court in the case of **Dhunjibhoy Ice Factory Pvt.Ltd., Mumbai and anr vs. Municipal Corporation of Gr.Mumbai**, reported in 2011(6) Mh.L.J. 708 wherein

also it is held that distinction sought to be made on the basis of whether the industry was in the conforming zone and or non conforming zone would be irrelevant as the consumption of water, and the purpose for which it was consumed would be the same namely industrial use.

Learned Senior Counsel further placed reliance on the decision of the Honourable Apex Court in the case of **Calcutta Municipal Corporation and ors vs. Shrey Mercantile (P) Ltd. and ors**, reported in (2005)4 SCC 245 wherein question of challenge was to the levy as arbitrary and discriminatory and violative of Article 14 of the Constitution of India. The Honourable Apex Court held that functions of the corporation with regard to mutation remains the same, whether the applicant is a transferee under a conveyance or a lessee or a beneficiary under a will or an heir in the case of intestate succession. Once an application for mutation is made, the same is examined by the department and after hearing the objections, if any, the record is ordered to be changed. Ultimately, the exercise is for fiscal purpose. Similarly, the property valuation may be below Rs.50,000/- or above Rs.2.00 lacs, the function of the corporation in

making the mutation entry remains the same. Similarly, whatever may be the cause of mutation, whether it is case of transfer or devolution, the activity of mutation remains constant in all the cases. The expenses incurred in all the cases also cannot vary, whatever be the value of the property or the cause of mutation. In the circumstances, there is no reason given for charging different rates depending on the value of the property and the cause of transfer. By doing so, the incidence of the levy falls differently on persons similarly situated resulting in violation of Article 14 of the Constitution.

On the point of power of review, learned Senior Counsel placed reliance on the decision of the Honourable Apex Court in the case of **Indian Charge Chrome Ltd. and anr vs. Union of India and ors**, reported in (2005)4 SCC 67 wherein it is held that errors apparent on the record were non consideration of the contention regarding illegality of the communication dated 30.6.2001 and absence of opportunity to explain the order dated 14.1.1999. The Honourable Apex Court held that these are manifest errors which have crept up in the judgment under the review

resulting into grave miscarriage of justice.

8. *Per contra*, learned counsel Shri J.B.Kasat for the non-applicant No.1 – the Corporation, has strongly opposed the review application on the ground that the review application is not maintainable as the applicants/petitioners failed to plead and demonstrate any mistake or error on the face of record and, therefore, the review application deserves to be rejected. It is further contended that the applicants/petitioners have prayed for substituting a view taken by this court which is not permissible under the review and prayed for rejection of the review application. He submitted that the law is settled as to the powers of review. It is settled principle of law that rehearing of the matter is impermissible. The applicants/petitioners failed to plead and demonstrate any mistake or errors on the face of record and, therefore, to consider the grounds pleaded by the applicants/petitioners, in view of Order XLVII Rule 1 of the Code of Civil Procedure “reheard and corrected” is not permissible and, therefore, the review application deserves to be rejected.

9. In support of his contentions, learned counsel

Shri J.B.Kasat for non-applicant No.1 – the Corporation placed reliance on the decision of the Honourable Apex Court in the case of **Arun Dev Upadhyaya vs. Integrated Sales Service Ltd. and anr.,** in R.P.© Nos.1273-1274/2021 decided on 5.7.2023 wherein the scope of review is considered and held that the plain reading of the provision under Order XLVII of the Code states that the power to review can be exercised only upon existence of any of three conditions expressed therein. A mistake or an error apparent on the face of record is one of conditions.

He further placed reliance on the decision of the Honourable Apex Court in the case of **Perry Kansagra vs. Smriti Madan Kansagra,** reported in (2019)20 SCC 753 wherein also the exercise of powers under Order XLVII Rule 1 and Section 114 of the Code are summarized. He submitted that in view of the above said principles, the application for review deserves to be rejected.

10. Having heard both the sides, insofar as legal position as to entertaining the review application is concerned, it is true that the review petition should not be lightly entertained. There is no dispute that after perusal of

Order XLVII Rule 1 of the Code, review of a judgment or an order could be sought:

(a) 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; and

(c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

11. Thus, the powers 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 knowledge of person seeking review or could not be produced by him at the time when the order was made. It may not be exercised on the ground that the decision was erroneous on merits as that would be the province of a

court of appeal. Thus, an application for review would lie *inter alia* when the orders suffer from an error apparent on the face of record and permitting the same to continue would lead to failure of justice.

12. In the present application, the applicants/petitioners have come with a case that in paragraph No.6 of the judgment, though the submission is recorded, while assigning the reasons, it was not considered which caused grave injustice to the applicants/petitioners, which is a public trust. Admittedly, in Writ Petition No.5194/2009, the pleadings of the applicants/petitioners were that the applicants/petitioners were running an unaided educational institution. Through the said institution, the applicants/petitioners were running an unaided engineering college. While amending the said bye-laws 2009, the Government aided colleges were placed in Tariff Code No.9(c). Whereas, unaided colleges were placed in Tariff Code No.9(d). The water rate prescribed for consumption above 18 units under Tariff Code No.9(c) was Rs.20/- per unit. While, under Tariff Code No.9(d) the water rate was Rs.100/- per unit. There was no

explanation to the said differentiation when both aided and unaided institutions were rendering similar services and imparting education. There was justification for charging Rs.100/- per unit for the period from 1.4.2009 to 7.9.2010 for the unaided colleges. The said rates for two types of institutions are unconstitutional and being violative of Article 14 of the Constitution of India. The amendment introduced by bye-laws of 2010 was curative and, therefore, retrospective in nature.

13. Admittedly, the applicants/petitioners have pleaded the said contention in the writ petition also. It is specifically pleaded that such discrimination is clearly arbitrary and violative of the petitioners' rights guaranteed to it under Article 14 of the Constitution of India. It was further pleaded that the amendment of 2010 is curative in nature. The applicants/petitioners have made prayer to that effect for quashing and setting aside the said bye-laws 2009 and to declare it as *ultra vires*. Accordingly, the submission was made by learned Senior Counsel Shri M.G.Bhangde for the applicants/petitioners before this Court. The said submission was recorded in paragraph

No.6 of the judgment. Thus, it is orally submitted by learned Senior Counsel that this differentiation has no nexus whatsoever especially in the backdrop of the fact that colleges receiving and non-receiving aid were rendering similar services and imparting the education. This submission also finds place in the written submissions under the head points to be argued. Admittedly, while assigning the reasons, while disposing of the writ petition along with the connected writ petitions, this submission was not considered.

14. Regarding the differentiation, this court in the case of **Morarjee Gokuldas Spinning and Weaving Company Ltd., Mumbai and anr vs. State of Maharashtra and anr** cited *supra* already held that the power to classify must be capable of being reasonably explained. In other words difference in treatment must be capable of being reasonably explained in the light of the object for which the particular legislation is undertaken. This must be based on some reasonable distinction between the cases differentially treated. When differential treatment is not reasonably explained and justified the treatment is discriminatory. To

be able to succeed on the charge of discrimination, a person must establish conclusively that persons equally circumstanced have been treated unequally and vice versa. The Honourable Apex Court also considered the said issue in the case of **Calcutta Municipal Corporation and ors vs. Shrey Mercantile (P) Ltd. and ors** cited *supra* and held that the incidence of the levy falls differently on persons similarly situated resulting in violation of Article 14 of the Constitution.

15. There is no dispute as far as the contention of learned counsel Shri J.B.Kasat for non-applicant No.1 – the Corporation is concerned, that review should not be lightly entertained and mere fact that there were two views in terms of majority and dissenting, we are conscious about the legal settled principles as far as maintainability of the review applications are concerned. However, considering the grounds raised, it is apparent that the submissions made by learned Senior Counsel that the different rates, in view of the said bye-laws 2009, are unconstitutional and violative of Article 14 of the Constitution of India, need to be addressed by giving reasons. The issue, whether the

amendment introduced by bye-laws of 2010, was curative or not and whether it is retrospective in nature, is also required to be addressed. Thus, it is apparent from record that the non-consideration of the submissions has resulted in grave miscarriage of justice and, therefore, it is necessary to rehear the matter.

16. In this view of the matter, we allow the application for review and recall the judgment and order dated 16.12.2022 passed by this court in Writ Petition No.5194/2009 insofar as the observations, regarding Writ Petition No.5194/2009, are concerned. We direct that the Writ Petition No.5194/2009 be listed for hearing. We make it clear that the judgment and order, in respect of other writ petitions are concerned, is maintained.

The Misc.Civil Application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

!! BrWankhede !!