

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

RVW 84 of 2024

With

CAN 1 of 2024

In

WPA 9428 of 2021

Indian Oil Corporation Ltd. & Anr..

-Vs-

Sarvesh Kumar & Ors.

For the Petitioners:

Mr. S.N. Mukherjee, Sr. Adv.,
Mr. Soumya Majumder, Adv.,
Mrs. Sharmistha Ghosh, Adv.,
Mr. Victor Chatterjee, Adv.,
Mr. Ranit Ray, Adv.

For the respondent:

Mr. Sukumar Bhattacharya, Adv.,
Ms. Anamika Pandey, Adv.

For respondent nos. 1 to 39:

Mr. Samim Ahammed, Adv.

Hearing concluded on:

20.03.2024.

Judgment on:

27.03.2024.

PARTHA SARATHI SEN, J. : –

1. This review petition arises out of the judgment dated 12.02.2024 as passed in WPA 9428 of 2021 at the instance of respondent Nos. 2, 4 and 6 of the said writ petition that is Indian Oil Corporation Limited(herein after referred to as ‘ Oil Company’ in short) and its officials.

2. Before dealing with the facts and circumstances as involved in the instant review petition, a brief look to the decision taken by this Court while disposing WPA 9428 of 2021 is necessary.

3. While allowing the said writ petition this Court noticed the followings :-

i. The writ petitioners and the other workmen being Junior Engineering Assistants-IV (production) whose basic pay have been fixed to the tune of Rs. 29.000/- have been recruited under the same recruitment process and in the same post.

ii. Admittedly a settlement was arrived at by and between the oil company and its Workmen Union and the clause 2.3 of the said settlement reads as under :-

“ Workmen who joined the service of the Corporation in regular scale of pay on or after 01.01.2017 shall also be covered by the provisions of this Settlement. However, the Fitment benefits shall not be admissible to them.”

iii. The writ petitioners and the other workmen being Junior Engineering Assistants-IV (production) joined after 01.01.2017.

iv. In the settlement this Court finds no cut-off date i.e. 03.10.2017 which according to the oil company is the penultimate date for getting benefit under the terms of settlement.

v. In the guideline as issued by the oil company, however the cut-off date has been mentioned as 03.10.2017.

vi. The said guideline has been issued by the oil company unilaterally and the same does not form part of the settlement.

vii. Fixation of pay of the writ petitioners at Rs. 25,000/-and of the other workmen being Junior Engineering Assistants-IV (production) at Rs. 29,000/-is violative of Article-14 of the Constitution of India since both the categories of the workmen are discharging same nature of job.

viii. The action of the oil company tantamounts to class legislation.

4. In the backdrop of the above judgement the Oil Company has come forward with the instant Review Application on the grounds as mentioned in the Memorandum of Review.

5. In course of his submission Mr. Mukherjee, learned Sr. Counsel appearing for the review petitioner/Oil Company draws attention of this Court to the grounds taken by the Oil Company in the Review Petition vis-à-vis page 30, page 35 and page 61 being Annexure 'A', Annexure 'C' and Annexure 'D' respectively of the CAN 1 of 2024. It is contended by Mr. Mukherjee, learned Sr. Counsel that though in the affidavit-in-opposition as filed by the Oil Company in WPA 9428 of 2021 it has been categorically mentioned that the guideline as issued by the Oil Company has been issued pursuant to the settlement arrived at by and between the Oil Company and its Workmen Union but due to inadvertence and on account of unintentional mistake by the then conducting advocate for the Oil Company, some relevant papers namely; the representation dated

02.10.2019 (a copy of which is annexed with mark 'A' to CAN 1 of 2024), the Memorandum of Settlement (a copy of which is annexed with mark 'C' to CAN 1 of 2024) and record of note of discussion on 03.10.2019 (a copy of which is marked as annexure 'D' to CAN 1 of 2024) could not be annexed with the said affidavit-in-opposition for which a confusion arose in the mind of the court that the guideline as issued by the Oil Company is not the outcome of the Memorandum of Settlement but it has been issued by the Oil Company unilaterally.

6. It is further argued by Mr. Mukherjee that had those three documents been annexed with the affidavit-in-opposition as filed by the Oil Company in WPA 9428 of 2021 this Court would have passed a different judgment. It is further argued by Mr. Mukherjee, learned Sr. Counsel that the aforementioned three documents are material and vital documents for arriving at a just decision of the Court for which the power of review may be exercised as otherwise the writ petitioners of the aforementioned writ petition would be favoured with unjust enrichment which is impermissible in the eye of law. It is further argued on behalf of the Oil Company / Review Petitioner that concept of Review of Judgement as passed in a writ petition is not at all foreign and thus the principles of Order 47 of the Code of Civil Procedure can very well be applied while entertaining a review petition arising out of a judgement passed in a writ petition.

7. In course of his argument Mr. Mukherjee, learned Sr. Counsel for the Oil Company places his reliance upon the following reported decision namely:-

“i. Board of Control for Cricket in India and Anr. vs. Netaji Cricket Club and Ors reported in (2005) 4 SCC 741; and

ii. Yashwant Sinha and Ors. vs. Central Bureau of Investigation reported in (2020) 2 SCC 338.”

8. It is thus argued on behalf of the review applicant/ Oil Company that the instant Review Petition may be allowed and the judgement dated 12.02.2024 as passed in WPA 9428 of 2021 be modified.

9. Per contra, Mr. Samim Ahmed, learned advocate for the writ petitioners/respondent nos. 1 to 39 submits before this Court that the grounds of review as mentioned in the Memorandum of Review are baseless and thus the instant Review Petition is liable to be dismissed *in limine*.

10. Drawing attention to the affidavit-in-opposition as filed by the Oil Company in the aforementioned writ petition it is argued on behalf of the writ petitioners/respondents that the review petitioners/ Oil Company has failed to establish that the documents which they intend to rely upon in the instant Review Petition are new and important which even after exercise of due diligence could not be placed at the time of hearing of the said writ petition. It is further argued that the alleged mistake on the part of the conducting advocate on behalf of the Oil Company has been

pleaded only with a motive to create a flimsy ground for filing the instant Review Application. It is further argued that while passing the judgement dated 12.02.2021 in WPA 9428 of 2021 this Court has gone into the merit of the said writ petition vis-à-vis the consequences and effect of signing of a Memorandum of Settlement and unilateral guideline and thus there is no scope to revisit the judgment in the garb of review since while hearing the Review Petition a Court is not excepted to act as a Court of Appeal of its own judgement.

11. Drawing attention to the Annexure 'A' of CAN1 of 2024 it is argued by Mr. Smim Ahmed, learned counsel for the respondent nos. 1 to 39/ writ petitioners that the said documents has got no bearing with the instant lis since the same is a mere representation which lost its force after execution of the Memorandum of Settlement which has been annexed with the writ petition being Annexure P10. It is further argued that the Annexure 'C' to the aforesaid CAN being the copy of the alleged Memorandum of Settlement is also of no use since the same is not according to Rule 58 of the Industrial Disputes (Central Rules), 1957. In course of his argument Mr. Samim Ahmed has strongly criticized the Annexure 'D' to the said CAN since the same has not been signed by all the representatives of the Union of the Workmen and the same cannot be treated as part of the Memorandum of Settlement being Annexure P10 of the writ petition.

12. In course of his argument Mr. Ahmed places his reliance upon a reported decision of a Co-ordinate Bench of this Court namely; State of

West Bengal vs. Sudipto Ghosh reported in **(2023) SCC Online Cal 3329**.

13. Though the maintainability of the instant Review Petition has not been agitated before this Court yet this Court feels it obligatory to mention that under Article 215 of the Constitution of India every High Court is a Court of Record and therefore the High Court enjoys the Power of Review of its own judgement. It is not in dispute that the principles of Order 47 of the Code of Civil Procedure applies as well in case of a Review Petition pending before the High Court. In view of such this Court proposes to have a glance to the provisions of Order 47 Rule 1 of the Code of Civil Procedure and the same is reproduced hereunder in verbatim:-

“1.Application for review of judgment

(1)Any person considering himself aggrieved-

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

(b) by a decree or Order from which no appeal is allowed, or

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

and who, from the discovery of new and important matter or

evidence which, after the exercise of due diligence was not

within his knowledge or could not be produced by him at the

time when the decree was passed or Order made, or on

account of some mistake or error apparent on the face of the

record of for any other sufficient reason, desires to obtain a

review of the decree passed or Order made against him, may

apply for a review of judgment to the Court which passed the

decree or made the Order.

(2).....

Explanation.-.....”

14. On a cursory reading of the aforesaid legislative provision it thus appears that a review of judgment can be sought for on the following grounds:-

a. *The discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the review petitioner or could not be produced by him at the time when the order was passed; or*

b. *On account of some mistake or error apparent on the face of the record; or*

c. *For any other sufficient reason.*

15. Admittedly the facts and circumstances as involved in the Review does not attract Clause (a) or Clause (b) as discussed (supra). However, the ground of review as taken in the Memorandum of Review i.e. the inadvertence of the conducting advocate or mistake by the conducting advocate of the Oil Company in filing the aforementioned three documents namely Annexure 'A', Annexure 'C' and Annexure 'D' to the CAN 1 of 2024 when the writ petition was heard, tantamounts to sufficient cause or not.

16. At this juncture this Court proposes to look to the reported decision of ***Board of Control for Cricket in India and Anr (supra)*** wherein the Hon'ble Apex Court while examining the scope and purpose of review expressed the following view:-

“89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the

face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. 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*".

It is true that in Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulose Athanasius and Others [(1955) 1 SCR 520], this Court made observations as regard limitations in the application of review of its order stating :

"Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47, Rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within

the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule.", but the said rule is not universal."

17. In the reported decision of **Yashwant Sinha and Ors. (supra)** the Supreme Court had occasion to revisit the scope of review by a court exercising its writ jurisdiction and the relevant part of the judgement is as under:-

"67. The foundations, which underlie the review jurisdiction, have been examined by this Court at some lengths in S. Nagraj vs. State of Karnataka 1993 Supp (4) SCC 595 :

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of

mistake and scope of rectification ,depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the court. In Administrative Law the scope is still wider. Technicalities apart if the court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai,J) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue."

18. In the perspective of the Principles of Law as discussed in the aforesaid two reported decisions this Court has got no hesitation to hold that it is nobody's case that a mistake occurred on the part of the Court while passing the judgement in WPA 9428 of 2021 on account of non-consideration of some vital materials and on the contrary it is the case of the review petitioners/Oil Company that on account of mistake on the part of their erstwhile conducting lawyer in the aforesaid writ petition some vital documents could not be produced and had the same be produced at the time of hearing of the said writ petition, the judgement would have been otherwise.

19. As held by the Supreme Court that the entire concept of writ jurisdiction is based on equity and fairness and thus the writ court must

ensure that in exercise of its plenary power no miscarriage of justice is caused to any litigant and in the event it has been detected that a mistake occurred either on the part of the court or on account of the mistake of the parties to the litigation which casus serious miscarriage of justice, scope of rectification of the same by way of review is not unwarranted and in doing so hyper-technicalities should be avoided.

20. Coming to the factual aspects as involved in the instant Review Petition it appears from Annexure 'A' to the aforesaid CAN that prior to signing of the Memorandum of Settlement, a representation was submitted with the Negotiation Team of the respondent/authorities on 02.10.2019 for execution of the long term settlement agreement with a further request to provide some additional benefit to a large number of workmen who have joined on or after 01.01.2017.

21. On comparative study of Annexure 'C' to CAN 1 of 2024 and Annexure P10 of the writ petition it appears that both the documents are absolutely identical except to the extent that Annexure P10 has been scribed in Form H of the relevant rules and Annexure 'C' has been scribed in plain papers though it bears the signatures of the Employers Representative as well as Workmen's Representative. It further reveals that Annexure P10 has been executed in Kolkata on 21.11.2019 before the Regional Labour Commissioner where as the Annexure 'C' to the Review Petition was signed on 03.10.2019 at Surajkund, Faridabad. On close scrutiny of the Annexure 'D' to the CAN 1 of 2024 it appears that at the time of execution of the long term settlement and /or the

Memorandum of Settlement as executed on 03.10.2019, note of discussion was recorded in which the representatives of the Oil Company and the representatives of the workmen had signed and the relevant part of the note of discussion is as under:-

“ The Basic Pay of the workmen who have joined the Corporation on or after 01.01.2017 and are on the rolls of the Corporation as on date of signing of the settlement will be fixed as under:-

Grade	Pay scale to be placed in	Initial Basic Pay to be fixed at
I	Rs.23,000-78,000	Rs.25,600/-
IV	Rs.25,000- 1,05,000	Rs.29,000/-

”

22. Considering the sequence of events as available from Annexure ‘A’ to CAN 1 of 2024, Annexure P10 to the writ petition, Annexure ‘C’ and Annexure ‘D’ to the aforesaid CAN it thus appears that the Oil Company has accepted the demand of the workmen to give beneficial effect of the said long term settlement to those workmen who have joined on or after 01.01.2017 till date of signing of settlement at Surajkund, Faridabad, i.e. October 03, 2019. It further appears that the aforementioned three documents which have been annexed to the aforementioned CAN are not at all new one since it is the consistent stand of the Oil Company that cut off date for grant of such additional benefit is 03.10.2019 which is explicit from paragraph 10 of their affidavit-in-opposition as filed in the aforementioned writ petition.

23. In view of the discussion (supra) this Court thus holds that in the event the aforesaid three documents being Annexure ‘A’, Annexure ‘C’ and

Annexure 'D' to CAN 1 of 2024 were produced at the time of hearing of the writ petition no occasion arose on the part of this Court to hold that the guideline as issued by the Oil Company is unilateral since it does not bear the signatures of the representatives of the workmen.

24. In considered view of this Court the review petitioners/Oil Company is successful in establishing a sufficient cause for non-production of the aforesaid three documents and thus this Court further holds that in the event the said three documents being Annexure 'A', Annexure 'C' and Annexure 'D' to CAN 1 of 2024 are not considered that would cause serious miscarriage of justice resulting to unjust enrichment of the workmen of the Oil Company who joined after the said cut off date i.e. 03.10.2019.

25. As a result the instant Review Petition succeeds.

26. As a result the judgement dated 12.02.2024 as passed in WPA 9428 of 2021 stands hereby recalled in respect of those writ petitioners who have joined in the office of the Oil Company/ Review Petitioner after 03.10.2019. All interim applications are also disposed.

27. Since precious judicial hours have been lost on account of mistake of the review petitioner/Oil Company, this Court imposes a cost of Rs.2 lacs upon the review petitioner i.e. Indian Oil Corporation Ltd and such cost is to be deposited with the office of the State Legal Service Authority, West Bengal, 2 and 3, Kiran Shankar Road, First Floor, Kolkata 700001 within a month from the date of passing of this order failing which it will

be presumed that this Court has not passed any favourable order in favour of Indian Oil Corporation Ltd.

28. In the event such cost is deposited by the Indian Oil Corporation Ltd, Member Secretary, SLSA is directed to expend the same for giving compensation to the victims under the Victim Compensation Scheme.

29. Parties as well as Member Secretary, SLSA West Bengal are directed to act on the server copy of this judgement.

30. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)