THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

Review I.A.Nos.1 and 2 of 2024

in

Writ Petition No.32848 of 2023

COMMON ORDER:

Review I.A.No.2 of 2024 is filed seeking review of the Order dated 26.04.2024 passed by this Court in W.P.No.32848 of 2023; and pending consideration of the review petition, petitioner by Review I.A.No.1 of 2024, seeks suspension of the said Order. As both the interlocutory applications relate to the Order dated 26.04.2024 passed in the writ petition, they are being disposed of by this Common Order.

2. It may be noted that W.P.No.32848 of 2023 was filed aggrieved by the action of respondents 3 and 4 in amending the Rules and Regulations of the 3rd and 4th respondent-Chamber of Commerce in the Executive Committee on 12.10.2023 and approved in the General Body Meeting on 03.11.2023 whereby Clause 5(b) of the Regulations is amendedwhereby a Member of 2nd respondent who is placed, elected, and holding the office of any public representative of any political party was not permitted to contestfor any post of 2nd respondent Executive Body, and that the said amendment has not yet been approved by the State Governmentunder the Telangana State Non-Trading Companies Act, 1962 (Act 2 of 1967), and Election Schedule for respondent-Chamber of Commerce, Warangal Society, for the year 2023-24, 2024-25 was issued, and the nomination of the petitioner was rejected by the 5th respondent on 10.11.2023.

3. This Court, after considering the submissions made by Mr. Chikkudu Prabhakar, learned counsel for the petitioner, and the learned Government Pleader for Industries and Commerce for respondent Nos.3 to 5, and considering the judgments relied on by the petitioner, i.e., **Union of India v. International Trading Co.[1], Vasavi Engineering College Parents Association v. State of Telangana[2], State (NCT of Delhi) v. Sanjeev[3], Rajbala v. State of Haryana[4];** and the judgments relied on by the learned Government Pleader in **Prestige Lights Ltd v. State Bank of India[5], R.L. Shankarappa v. Federation of Karnataka Chambers of Commerce and Industry (FKCCI)[6], The Warangal Chamber of Commerce v. Director of Marketing, Government of Andhra Pradesh[7]**, disposed of the writ petition by Order dated 26.04.2024.

4. Heard Mr. Chikkudu Prabhakar, learned counsel for the petitioner, learned Government Pleader for Industries and Commerce appearing for respondent Nos.1 and 2, Mr. D. Jagadeshwar Rao, learned counsel appearing for respondent Nos.3 and 4.

5. Learned counsel for the petitioner contends that the Order dated 26.04.2024 is a mistake, error apparent on the face of the record; that this Court has not considered the arguments; that the District Court dismissed the S.O.P.No.1 of 2023 on 23.01.2024 by stating that the Civil Court does not have power to entertain the SOP relief for the

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[1] (2003) 5 SCC 437
[2] (2019) 7 SCC 172
[3] (2005) 5 SCC 181
[4] (2016) 2 SCC 445
[5] (2007) 8 SCC 449
[6] (2022) LawSuit (Kar) 2557
[7] 1974 SCC OnLine AP 165

petitioner and there is no maintainability of the SOP on the 2nd respondent; that the fact of dismissal of SOP No.1 of 2023 was not brought to the notice of this Court as this Court reserved the writ petition for judgment, and in the meantime the District Court dismissed the SOP, and subsequently the writ petition was dismissed; that the 2nd respondent-Chamber of Commerce comes under Article 12 of the Constitution of India in view of the judgment of the Constitution Bench in **Ajay Hasia v. Khalid Mujeeb Sehravardhi**[8], that the 2nd respondent-Chamber of Commerce is governed by the State Government under statute and therefore comes under Article 12 of the Constitution of India; that the General Body Resolution of 2nd respondent dated 12.10.2023 should have complied with the mandatory regulations by obtaining approval of State Government prior to issuing Election Notification dated 03.11.2023 and as gross violations took place in the Election Notification, this Court has ample powers to strike down the notification in view of the judgment of Hon'ble Supreme Court in paragraph 18 of **Vasavi Engineering College Parents Association (supra)**; that right to vote and right to contest are statutory rights of the petitioner under the Regulations of 2nd respondent which are monitored by the State Government; that when the rights of a party are affected by the order of this Court, such party even though not made a party in the previous proceedings can be heard in a review petition as per the judgment of Hon'ble Supreme Court in **Shivdev Singh v. State of Punjab**[9]**;**that the passing of Resolution in the General Body barring the petitioner from contesting

[8] (1981) 1 SCC 722
[9] 1961 SCC OnLine SC 29

in the elections of Management Committee of the 2nd respondent is not valid in the eye of law as the statutory right to vote and to contest are upheld by the Larger Bench judgment of Hon'ble Supreme Court in **PUCL v. Union of India**[10] and reiterated in **Rajbala (supra)**; that the Hon'ble Supreme Court has laid down the ambit and scope of a Review Petition under Order 47 Rule 1 CPC in **Kamlesh Verma v. Mayawati**[11], and the interpretation of the principlei.e., "any other sufficient reason" listed under Paragraph 20(iii) of **Kamlesh Verma (supra)**was given in **Chajju Ram v. Neki**[12]as *"a reason sufficient on grounds at least analogous to those specified in the rule"*, and the said interpretation was approved by the Hon'ble Supreme Court in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius**[13], and the same principle has been reiterated in **Union of India v. Sandur Manganese & Iron Ores Limited**[14] and also in **Madhusudhan Reddy v. Narayan Reddy**[15]by the Larger Bench of the Hon'ble Supreme Court, and the same is applicable to the present case.

6. Learned Government Pleader for Industries and Commerce appearing for respondent Nos.1 and 2, and Mr. D. Jagadeshwar Rao, learned counsel appearing for respondent Nos.3 and 4. Mr. D. Jagadeshwar Rao, learned counsel relies on the judgment of the Hon'ble Supreme Court in **S. Murali Sundaram v. Jothibai Kannan**[16]. Learned Government Pleader submits that this Court appreciated the facts of the case and recorded the fact situation wherein the resolution

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[10] (2003) 4 SCC 393
[11] (2013) 8 SCC 320
[12](1922) 24 BOMLR 1238
[13] AIR 1954 SC 526
[14] (2013) 8 SCC 337
[15] 2022 LiveLaw (SC) 685
[16] (2023) 13 SCC 515

came to be approved by the 2nd respondent, and taking on record that similarly situated members have approached the District Court, left it open to the petitioner to avail alternative remedy and therefore there is no error apparent on the face of the record to review the order in the writ petition. He further submits that this Court has entertained the writ petition, however, considering the alternative remedy with regard to the grievance that the impugned Resolution has not yet been approved by the State Government, relegated the petitioner to avail the alternative remedy and hence the same cannot be said to be an error apparent on the face of record. He further submits that this Court referred to the relevant case-law relied on by the respective counsel at the stage of writ petition, and the case-law now placed before this Court is only additional in nature reflecting on the same point, either with regard to power of this Court under Article 226 or review jurisdiction, and moreover this Court anyhow can neither consider new grounds nor an old fact that could not be brought before this Court by the petitioner, in exercise of review jurisdiction as the ambit and scope of review is limited, predominantly confined to error apparent on the face of record. Learned Government Pleader refers to paragraph 18 of **Murali Sundaram (supra)**, which reads as follows:

> **"18. In Shanti Conductors (P) Ltd. [(2020) 2 SCC 677], it is observed and held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It is further observed that 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 ace of record justifying the court to exercise its power of review under Order 47 Rule 1 CPC."**

7. It may be noted that this Court disposed of the writ petition by observing as follows:

> **"15. Having considered the respective submissions and perusing the material on record, it is pertinent to note that, as per the material papers furnished in the counter affidavit, the impugned Resolution Meeting conducted on 03.11.2023 was attended by the petitioner along with other 472 members. It is not in dispute that the petitioner has not objected to the decisions arrived in the Meeting and it is also not in dispute that the people who are aggrieved by the decisions arrived in the meeting have approached the District Court by way of an Original Petition.**
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> **16. Therefore, in view of the alternative remedy, this writ petition is disposed of with liberty to the petitioner to avail the alternative remedies as available under law by keeping it open to the parties to raise all the contentions sought to be raised in this writ petition. The interim order dated 04.12.2023 stands vacated. No costs."**

8. Learned counsel for the petitioner now in this review petition places before this Court the Order dated 23.01.2024 passed by the District Court in S.O.P.No.1 of 2023. A perusal of the order would show that the petition was dismissed by the District Court on the ground of jurisdiction and the copy of the same was delivered on 09.02.2024, which is a clear two months' time before the disposal of writ petitionby this Court on 26.04.2024. That being so, the reasons now sought to be canvassed by the petitioner that they could not bring to the notice of this Court the result of proceedings before the District Court on account of the writ petition having been reserved for orders, cannot be countenanced as it cannot be said that the petitioner has

done due diligence to bring the facts to the notice of this Court but could not bring the same as he has no knowledge of dismissal of the petition by the District Court.

9. Be that as it may, the District Court observed that the 2nd respondent being an entity under the Companies Act, the Civil Court has no jurisdiction to entertain any Suit or Proceedings in support of any matter, and the Company Law Board is the principal authority having jurisdiction. It may be noted that the Company Law Board was dissolved under Section 466(1) of the Companies Act, upon the constitution of National Company Law Tribunal (NCLT) w.e.f. 1st June,2016, and NCLT has been given exclusive jurisdiction to adjudicate claims of oppression and mismanagement under the Companies Act, 2013. At this juncture, it is to be noted that any grievance with regard to the matters of elections of 2nd respondent would fall within the ambit of affairs of the 2nd respondent as held by the High Court of Andhra Pradesh in **C. Vasudeva Rao v. State of A.P.[17].** It is held in **C. Vasudeva Rao (supra)** as follows:

> **"The expression "any dispute" is wide enough to cover even the disputes relating to election of the members of the committee. So, any dispute arising among the committee, albeit, it be a dispute pertaining to the election of office bearers of the Executive Committee, squarely falls within the expression "any matter relating to the affairs of the society" as has been used in Section 23 of the 2001 Act. The expressions "any dispute" and "any matter relating to the affairs of the society" are too wide enough even to cover the election dispute relating to the election of the office bearers of the Executive Committee or any matter relating to the**

[17] Writ Petition No.8696 of 2022 (High Court of A.P.)

affairs of the society. Even an election of office bearers of the Executive Committee relates to the affairs of the Society.”

10. The Hon’ble Division Bench of this Court has upheld the same in **Mrs. Nirmala Kale v. The Society of Trustees of Indigenous Churches**[18], and relegated the petitioner therein to avail remedies available in law as the writ petition was not maintainable on the ground of the Society therein being not an entity under Article 12 of the Constitution and not performing public duty.

11. It is relevant to note that in**The Warangal Chamber of Commerce (7 supra)**this Court adjudicated the aspect as to whether the petitioner i.e., Warangal Chamber of Commerce, being a corporate body, can maintain a writ petition under Article 226 of the Constitution of India. The Division Bench of this Court, while adjudicating the matter, has referred to various case-law, namely **State of Orissa v. RajasahebChandranmullIndrakumar (P) Ltd.**[19], **The State of Orissa v. Madan Gopal Rungta**[20] etc., held in paragraph 19 that Lord Denning in **Attorney General v. Independent Broadcasting Authority**[21] dealt with the *locus standi* of a private individual to maintain a writ petition against the public authority. This Court in **Warangal Chamber of Commerce (7 supra)** held that the petitioner is a Corporate Body, and the Commission Agents are its members and refusal to increase the commission affects the real interest of the petitioner and therefore the petitioner has real and

[18] Writ Appeal No.1551 of 2013 (Telangana High Court)
[19] (1973) 3 SCC 739
[20] AIR 1952 SC 12
[21] (1973) 1 All ER 689

sufficient interest in the matter. This Court further ruled that the same does not conclude the matter in favour of the petitioner therein (i.e., Warangal Chamber of Commerce) and that the Government had a right to put an end to the Resolution passed by the Market Committee and approved by Director of Marketing. In that view of the matter, the rationale in considering the nature of controversy thrown by the fact situation therein at the relevant point of time vis-à-vis the maintainability of a writ petitionby the State or its instrumentality as a matter of course, stand on different footing. Merely a writ petition was entertained does not automatically make the party an instrumentality of the State under Article 12 as, in certain circumstances, a writ may be issued to even private bodies or persons directing them to comply with statutory requirements, as held by the Hon'ble Supreme Court in **Federal Bank Ltd. v. Sagar Thomas**[22].

12. It is relevant to refer to the judgment of the Hon'ble Supreme Court in **Sagar Thomas (supra)**, wherein it was held as follows:

> **"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.**
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> **xxxxxxxxxxxxxxx**

[22](2003) 10 SCC 733

26. A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally. It is a private affair of the company though the case of nationalized banks stands on a different footing. There may well be companies, in which majority of the share capital may be contributed out of the State funds and in that view of the matter there may be more participation or dominant participation of the State in managing the affairs of the company. But in the present case we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. It has its own Board of Directors elected by its shareholders. It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking business with a capital of five lakhs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. The banking companies have not been set up for the purposes of building the economy of the State; on the other hand such private companies have been voluntarily established for their own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all freedom that it has, has to act in a manner that it may not be in

conflict with or against the fiscal policies of the State and for such purposes, guidelines are provided by Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measures to keep a check and provide guidelines and not a participatory dominance or control over the affairs of the company. For other companies in general carrying on other business activities, maybe manufacturing, other industries or any business, such checks are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardized for that reason. Besides taking care of such interest as indicated above, there is no other interest of the State, to control the affairs and management of the private companies. Care is taken in regard to the industries covered under the Industries (Development and Regulation) Act, 1951 that their production, which is important for the economy, may not go down, yet the business activity 12 is carried on by such companies or corporations which only remains a private activity of the entrepreneurs/companies.

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision

> **a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to."**

13. It is to be noted thatthe prerogative remedy under extraordinary jurisdiction of this Court under Article 226 is quite extensive and is not limited by any other provision of the Constitution, however, merely a party approaching the Court in a writ petition under Article 226 does not entitle it to be entertained, much less granting a relief, more so, when there is an efficacious and a primary statutory remedy provided under the relevant Act which has not been availed. The petitioner, in the first place, has to show that he has done his due diligence in availing the primary statutory remedybefore invoking the extraordinary jurisdiction of this Court.

14. At this juncture, it is also relevant to refer to the judgment of Hon'ble Supreme Court in **Radha Krishan Industries v. State of H.P.**[23], wherein the Supreme Court had the occasion to deal with the circumstances under which the remedy under Article 226 can be exercised by the High Court.

> **"25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In**

[23](2021) 6 SCC 771

Whirlpool Corpn. v. Registrar of Trade Marks[24], a two-Judge Bench of this Court, after reviewing the case law on this point, noted: (SCC pp. 9-10, paras 14-15).

> **"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".**
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> **15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field". (emphasis supplied)**

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

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[24](1998) 8 SCC 1

> **27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.**
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> **27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”**

15. In the instant case, this Court during the course of considering the submissions made at the hearing of the writ petition, perused the impugned Executive Committee Meeting Notice of 2nd respondent dated 12.10.2023 and the subsequent General Body Meeting dated 03.11.2023, and further this Court made a specific recording that the petitioner, admittedly, is the attendee, along with 472 other attendees, to the General Body Meeting on 03.11.2023 which approved the Unanimous decision taken on Paragraph 5(b) of the Executive Committee Meeting dated 12.10.2023.It cannot be said that principles of natural justice have been given a go-by in the light of attendance of the petitioner in the meetings of 2nd respondent and unanimity of the decision under Paragraph 5(b), nor the fundamental rights of the petitioner have been violated as right to vote in 2nd respondent election is conferred on its Members and thus it is a statutory right and not a fundamental rights under the Constitution, and further neither the vires of Companies Act nor the vires of Telangana State Non-Trading Companies Act, 1962 (Act 2 of 1967) were challenged.

However, considering the submission that the impugned Resolution, though unanimous, requires approval of State Government, this Court granted liberty to the petitioner to avail the alternative remedy, in view of the statutory remedy available under law, by raising all the pleas sought to be raised in the writ petition.

16. At this juncture, it is also relevant to refer to the judgment of Hon'ble Supreme Court in **Kamlesh Verma (12 supra)** wherein the principles for entertaining a review were summarized, and the same read as follows:

> **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.**
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> **SUMMARY OF THE PRINCIPLES**
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> **20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:**
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> **20.1 When the review will be maintainable:**
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> **(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 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius to mean "a reason sufficient on grounds at lease analogous to those**

specified in the rule" The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

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.

17. Having considered the respective submissions, and perusing the record, it may be noted that the 2nd respondent being established and governed under the Companies Act, 1956 (now Companies Act, 2013), the petitioner has a statutory remedy provided under the Act with regard to grievance in the conducting of affairs of the 2nd respondent.

Further, the District Court has dismissed the petitioner on the specific ground that it has no jurisdiction as the 2nd respondent is an entity under Companies Act. The dismissal of the petition by the District Court does not automatically entitle the petitioner to a remedy under Article 226, bypassing the statutory remedy under the Companies Act, 1956 (now Companies Act, 2013). Furthermore, as held in **Kamlesh Verma (supra)**, a different view could be possible cannot be a ground to entertain a review petition.In that view of the matter, this Court does not find any error apparent on the face of record to review the Order dated 26.04.2024 passed in W.P.No.32848 of 2023.

18. Accordingly, both the applications i.e., Review I.A.Nos.1 and 2 of 2024, are dismissed. No costs. It is left open to the petitioner to avail the remedies available under law. Miscellaneous petitions pending, if any, shall stand closed.

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JUSTICE NAGESH BHEEMAPAKA

04th March, 2025
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THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

Review I.A.Nos.1 and 2 of 2024

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