
(2021) 04 J&K CK 0049

In the Jammu And Kashmir High Court

Case No : Review Petition No. 3 Of 2012, 5 Of 2011, 6, 12, 13, 14, 16, 17, 52, 53, 54, 54, 58, 59, 62, 63, 72 Of 2012, CM No. 500, 529, 531, 622, 787, 788, 789, 792, 793, 794, 837, 838, 856, 2343, 2344, 2345, 2346, 2348, 2349, 2354, 2355, 2356, 2407, 2408, 2430, 24

Gagan Gupta And Others

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 06-04-2021

Acts Referred:

Jammu And Kashmir Excise Act, 1958 — Section 62
Jammu And Kashmir High Court Rules, 1999 — Rule 65
Code Of Civil Procedure, 1908 — Order 47 Rule 1, Order 47 Rule 1(1)
Jammu And Kashmir Liquor License And Sale Rules, 1984 — Rule 14, 16, 26, 27
Constitution Of India, 1950 — Article 136, 141, 226

Citation : (2021) 04 J&K CK 0049

Hon'ble Judges : Sanjay Dhar, J;Tashi Rabstan, J

Bench : Division Bench

Advocate : Sunil Sethi, Parimoksh Seth, Navyug Sethi, H.A Siddiqui, Aseem Sawhney, Raman Sharma, Bhanu Jasrotia, R.K. Jain, Mohit Jain, Himani Uppal, U. K. Jalali, Anuj Sawhney, Shivani Jalali, Rahul Pant, Rahil Raja, Rahul Bharti, Satinder Gupta, Zoya Bhardwaj, Alt

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1. By virtue of above titled review petitions and one writ petition, the petitioners are seeking review of judgment dated 28.12.2020 passed by this Court in a bunch of intra court appeals and one writ petition bearing LPAOW Nos. 11/2017, 20/2017, 21/2017, 22/2017, 23/2017, 44/2017 and OWP No. 486/2017. In these Letters Patent Appeals(LPAs), challenge was made to a common judgment of learned Single Judge passed in OWP No. 822/2005, titled, Sandya Devi and others vs. State of J&K and others and several others writ petitions connected therewith.

2. Several writ petitions came to be filed before the learned Single Judge wherein challenge was laid to communication dated 14.12.2005 (Notice for cancellation of temporary licenses) addressed to the writ petitioners by the Excise Commissioner. Certain other writ petitions were filed before the learned Single Judge seeking regularization of temporary licenses issued in their favour by the competent authority by draw of lots. All these writ petitions came to be decided by the learned Single Judge by a common judgment dated 06.02.2017. Paragraphs 34, 35 and 36 of the judgment of the learned Single Judge are relevant to the context and same are reproduced as under:

"34. In the instant petitions, Government Order dated 22.07.2003 is not in challenge. However, herein also there is no dispute that by notice dated 25.06.2006 issued by the Excise Commissioner the licenses were essentially operable only for one year, i.e., for the year 2005-2006 and with respect to 95 locations only identified by the Committee of officers constituted by the respondents in compliance of the directions of the Division Bench. Therefore, I think, it would be inconsequential to delve into the legality or otherwise of the impugned notices issued to the petitioners. Any discussion on the submissions made at the Bar would have only academic value. Furthermore, the temporary licenses in question were issued in favour of the petitioners in terms of the Excise Police promulgated in terms of Government, vide Order No. 99-F of 2003 dated 7.4.2003 read with Order No. 156-F of 2003 dated 22.7.2003. More than thirteen years have passed since then. The said policy recognized the need for restrictive and regulative trade in the liquor till the time it was considered appropriate to bring about a total prohibition. Since the matter has been pending in the Court since then and there had been an interim order operating in the matter, obviously, the Government and the official respondents have not been able to revise the liquor policy during these years. On the other hand, the petitioners, who were granted temporary licenses for four months which could be regularised to be operable, at best, for one year, have been continuing on such licenses for more than eleven years now on Court orders merely because of pendency of these petitions.

35. I think It would be just and appropriate to dispose of all these writ petitions with liberty to the State respondents to review its Excise Policy, if they so feel, in view of the decision of the Court in PIL nos. 7/1999, 70/1999 and 136/1999 which was placed on record of LPA No. 145/99, titled 'Residents of Kunjwani v. State of Jammu & Kashmir', and the Government's recognition of the need for restrictive and regulative trade in the liquor till the time it was considered appropriate to bring about a total prohibition. This would take care of the grievances of all the petitioners as well as private respondents. In that case, it would also be open to the respondents to undertake a denovo exercise to identify the locations for continuing or opening of such retail vends in accordance with any such policy as may be adopted.

36. These petitions are, accordingly, disposed of in terms of the above along with

all connected CMPs. The official respondents shall undertake and complete the requisite exercise by the end of the current financial year, i.e., 31.03.2017, and issue fresh licenses to the selectees for the year 2017-2018 operative with effect from 01.04.2017. In case the present vendees have not paid the annual fee and other dues for the current or any other previous year, he shall deposit the same with the Excise Department before closure of the present financial year. If any petitioner has deposited his fee or other dues before the Registry of this Court pursuant to any Court order, the Registry shall release and pay the same along with interest in favour of the Excise Commissioner, J&K Government, Excise and Taxation Complex, Rail Head, Jammu, under proper receipt through the learned Advocate General."

3. The aforesaid judgment of the learned Single Judge came to be challenged by way of a bunch of LPAs before the Division Bench of this Court and another writ petition bearing OWP No. 486/2017 also came to be filed which was taken up for hearing by the Division Bench along with the LPAs. In the said writ petition challenge was made to the Excise Policy for the years 2017-2018 and by way of amendment, the scope of challenge was extended to the Excise Policies for the years 2018-2019 and 2019-2020 as well. All the aforesaid intra court appeals along with aforesaid writ petition came to be decided by the Division Bench vide judgment dated 28.12.2020, which is sought to be reviewed. Vide the said judgment, this Court issued the following directions:

"(i) The show cause notices issued to the appellants for cancellation of their temporary licenses granted on 20.08.2005, which were valid up to 19.12.2005, are upheld.

(ii) Clause 3.2.7 and Clause 11 in the Excise Policy for the year 2017-18, Clause 3.2.4 and Clause 11 in the Excise Policy for the year 2018-19 and Clause 3.2.7 and Clause 10 in the Excise Policy for the year 2019-20, are struck down being contrary to the provisions of Clause 3.2.1 of the Excise Policies for the years 2017-18, 2018-19 and 2019-20, and Rules 26, 27 of the Rules.

(iii) As submitted by the learned counsel for the Government, the official respondents shall be at liberty to frame new Policy for the coming year namely, 2021-22 in accordance with the provisions of the Act and the Rules, and the law laid down by Hon'ble the Supreme Court on the subject.

(iv) The Liquor Vends already operating shall be allowed to continue till 31.03.2021 and thereafter the licenses for liquor vends shall be allotted in terms of the Excise Policy to be notified by the Government for the year 2021-22. The government shall be at liberty to take appropriate steps in view of striking down of the provisions of the Excise Policies, which envisage grant and automatic renewal of licenses for a period of five years.

(v) With reference to the observations made in Para 62 of the Judgment, the matter may be examined by the Chief Secretary of the Government of Jammu and Kashmir, for taking appropriate action.

(vi) Renewal of licenses for trade in liquor is not matter of right, which can be enforced.

(vii) For the purpose of renewal of licenses for trade in liquor, if permissible in law, all the conditions applicable for grant of a new license shall also be applicable.

(viii) The writ petition is allowed in the aforesaid terms. The appeals are dismissed with cost of 10,000/- on each of the appellants. The cost be deposited with the respondent No.2, Excise Commissioner, Department of Excise and Taxation within one month from the receipt of the copy of the judgment."

4. There are three sets of review petitioners before us. The first set of review petitioners are those who were parties to the proceedings before the writ court as well as before the Division Bench. The second set of review petitioners are those who were neither parties to the proceedings before the writ court nor before the Division Bench and they claim to be the parties affected by the judgment sought to be reviewed. One more review petition has been filed by the petitioners who were holding Excise Licenses under Form No. JKEL 3 i.e. retail vends in a Hotel and Form JKEL 4, retail vends in a Bar attached to the restaurant, cinema/theater or dak bungalow. Besides this, one writ petition has been filed by the petitioner who was not a party to the proceedings either before the writ court or before the Division Bench. He has sought an order for recall of the judgment in question.

(B) Grounds urged by the review petitioners/writ petitioners:

5. Although a host of grounds have been urged by the review petitioners/writ petitioners in their respective petitions challenging the legality of the judgment sought to be reviewed yet the main grounds that have prevailed during the course of arguments are summarized as under:

(I) That the review petitioners who were parties to the proceedings before the writ court had challenged the show cause notices issued to them for cancellation of their temporary licenses granted on 20.08.2005, which were valid up to 19.12.2005 on the ground that the same have been issued on the directions of the Government which had already taken a decision to cancel the licenses but the Division Bench even after noticing this contention, without dealing with the same, upheld the validity of these show cause notices. Thus, the Division Bench has committed an error which is apparent on the face of record.

(II) That the directions issued by the Division Bench through the medium of the judgment sought to be reviewed, are beyond the pleadings of the parties inasmuch as no challenge was laid to the Excise Policies for the years 2017-2018, 2018-2019 and 2019-2020.

(III) That the Division Bench, while framing a question with regard to the nature of right to trade in liquor did not answer the said question even after discussing the law on the issue.

(IV) That the findings recorded in the judgment sought to be reviewed to the extent that there is no right to claim renewal of liquor licenses is not in accordance with the provisions of the Jammu and Kashmir Excise Act and the Jammu and Kashmir Liquor License and Sale Rules, 1984.

(V) That the findings recorded in the judgment under review that even for the purpose of renewal of a liquor license, same procedure is to be adopted as in the case of grant of fresh license, is dehors the provisions of the Act and the Rules.

(VI) That the principles of natural justice have been given a complete go by inasmuch as the parties and persons who are directly affected by the judgment under review were neither given any notice nor heard even though their particulars could have been easily ascertained by the Court.

(VII) That the provisions contained in Section 62 of the Jammu and Kashmir Excise Act, which have a vital bearing upon the case at hand, have not been noticed by the Court while passing the judgment under review and this constitutes an error apparent on the face of the record.

(C) Maintainability of the review petitions/writ petition:

6. It has been vehemently contended by the learned counsel appearing for the State that Special Leave Petitions filed by some of the review petitioners against the judgment under review, before the Supreme Court stand dismissed, as such, the review petitions as well as the writ petition which are subject matter of this order, are not maintainable. In this regard, reliance has been placed upon the judgment of the Supreme Court in *Abbai Maligai Partnership Firm and another v K. Santhakumaran and others*, (1998) 7 SCC 386.

7. On the contrary, learned counsel appearing for the review petitioners have while admitting that permission to file Special Leave Petition before the Supreme Court against the judgment under review has been declined by the Supreme Court in the case of certain review petitioners, contended that since the said dismissal order was passed in limine without granting leave to appeal and not on merits, as such, this Court is not precluded from deciding these writ petitions/review petitions on merits.

8. A copy of order dated 26.02.2021 passed by the Supreme Court in Special Leave Petition (Civil) bearing No. 3698/2021, titled, *Manmohan Singh and others v State of Jammu and Kashmir and others* and connected petitions has been placed on record. The said order reads as under:

"Permission to file Special Leave Petition is granted.

Heard learned senior counsel for the petitioners.

We are not inclined to interfere with the impugned orders. The Special Leave Petitions are, accordingly, dismissed.

9. It is not in dispute that Special Leave petitions against the judgment under

review were also filed by those review petitioners who were not parties before the writ court or the appellate court and that the afore quoted order of the Supreme Court governs their Special Leave Petitions as well. The question that falls for determination is whether in the face of fact that the Supreme Court has declined to interfere with the judgment under review, it would be legally permissible for this Court to exercise its jurisdiction of review. A similar issue arose before the Supreme Court in *Kunhayammed and others v State of Kerala and another*, (2000) 6 SCC 359 and while discussing this issue, the Supreme Court clarified the same in the following manner:

"(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does

not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger, the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

10. The aforesaid principles were reiterated and reaffirmed by the Supreme Court in *Khoday Distilleries Limited v Sri Mahadeshwarasahakara Sakkare Karkhane Ltd Kollegal*, (2019) 4 SCC 376.

11. While applying the aforesaid principles to the present case, it is to be noticed that the Supreme Court has dismissed the Special Leave Petitions of some of the review petitioners in limine without granting leave to appeal and without observing anything on the merits of the case. Therefore, the doctrine of merger as enunciated by the Supreme Court in *Kunhayammed's case* (supra) would not come into play in the instant case.

12. The order of the Supreme Court refusing Special Leave Petition is a non speaking order and, as such, it would not stand substituted in place of the order under challenge. Thus, review jurisdiction of this Court is not effected by the dismissal of Special Leave Petitions of some of the review petitioners. The same are, therefore, required to be considered on their own merits. Accordingly, all the applications seeking permission to file review petitions are allowed and the review petitions are held to be maintainable.

(D) Scope of review:

13. Learned counsel for both the parties have cited a host of judgments on the scope of review and in fact most of these judgments have been relied upon by both the parties meaning thereby that there is hardly any dispute between the parties regarding the legal position covering the field of scope of review of this Court in review proceedings. However, we would like to discuss the scope of review jurisdiction in some detail by reference to relevant statutory provisions and the case law.

14. Rule 65 of the Jammu and Kashmir High Court Rules, 1999 deals with power of the High Court with regard to the review of a judgment. It reads as under:

"65. Application for review of judgment- The Court may review its judgment or order but no application for review shall be entertained except on the ground

mentioned in order XLVII Rule 1 of the Code."

15. From a perusal of the aforesaid provision, it is clear that a plea for review of a judgment can be entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure(CPC). Here it would be apt to quote the provisions contained in Order XLVII Rule 1 of the CPC, which reads as under:

"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 an 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, or 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) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

[Explanation:- The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for review of such judgment.] "

16. From a perusal of the aforesaid provision, it is clear that review of a judgment can be made on the following grounds:

(i) if it is shown by the aggrieved person that a new and important matter and evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him, has been discovered.

(ii) if there is some mistake or error apparent on the face of record and (iii)for any other sufficient reason.

17. The expression "for any sufficient reason" has been interpreted by the Courts to mean for a reason analogous to the first two reasons. As already noted, a number of judgements have been cited by the learned counsel for the parties on the scope of review, but we would like to refer to only some of these judgments so as to understand the issue.

18. In *Kamlesh Verma v Mayawati and others*, (2013) 8 SCC 320, the Supreme Court while discussing the scope of review, in paragraphs 20.1 and 20.2 of the said judgment laid down its conclusions as under:

"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....."

"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 mistake 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 negated "

19. The aforesaid principles were reiterated by the Supreme Court in *Yashwant Sinha and others v Central Bureau of Investigation and another*, 2019 SCC online 517 and *Sunil Vasudeva and others v Sundar Gupta and others*, (2019) 17 SCC 385.

20. In *Shiv Dev Singh and others v State of Punjab*, AIR 1963 SC 1909, the Supreme Court went to the extent of holding that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inhere in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

21. The other judgments cited at Bar by the learned counsel for the parties more

or less lay down similar principles with regard to scope of review. Therefore, we would not like to burden this judgment with those citations. However, what can be deduced from all these judgments is that exercise of jurisdiction of review by a Court can be resorted to only in exceptional circumstances when there is a glaring omission or patent mistake or a grave error has crept in an earlier judgment by a judicial fallibility.

(E) Discussion:

22. So far as the first contention of the review petitioners that the main ground of challenge to the show cause notices issued to the writ petitioners has not been dealt with by the Division Bench while passing the judgment under review is concerned, it is to be noted that the Court has found the basis of the impugned show cause notices legally tenable and well founded. On that ground the validity of the show cause notices has been upheld in terms of clause-(i) of the relief. The argument of the writ petitioners in this regard has been clearly noted in the judgment under review whereafter on the reasoning relating to foundation of the show cause notices their validity has been upheld. If at all the review petitioners have any grievance against the manner in which their contentions have been dealt with by the Division Bench, it is open to challenge the reasoning that has formed basis of the finding of the Court, by way of an appeal. The same cannot offer a ground for review of the judgment.

23. The second ground urged by the review petitioners is that directions issued in the judgment under review are beyond the pleadings of the parties. According to the petitioners, there was no challenge laid against the Excise Policies for the years 2017-2018, 2018-2019 and 2019-2020 and, as such, it was not open to the Court to delve upon the validity of certain clauses of these Policies.

24. If we have look at the pleadings of the writ petition bearing OWP No. 486/2017, that has been decided by the common judgment, which is under review, clearly a challenge was laid by the writ petitioners therein to all these Policies. Initially the challenge was laid only to the Excise Policy for the year 2017-2018 and later on was by way of amendment, the challenge was laid to the Excise Policies for the years 2018-2019 and 2019-2020 as well. The challenge to these Policies made by the petitioners may have been laid for a different purpose, but nonetheless, they had sought a writ of certiorari for quashing these Policies. Therefore, the ground urged by the review petitioners is without any substance.

25. It has been contended by the review petitioners that vide judgment under review, law with regard to nature of right of a person who trades in liquor has been discussed by the Court in paragraphs 36 to 39 of the judgment but no finding in this regard has been rendered by the Court and that this constitutes an error apparent on the face of the record.

26. It is correct that vide aforesaid paragraphs of the judgment under review the position of law as laid down by the Supreme Court holding the field regarding the

nature of right to trade in liquor has been discussed but the contention of petitioners that there is no finding in this regard by the Court is against the record. In paragraph 75 of the judgment, it clearly noted by the Court that the Supreme Court has time and again opined that there is no fundamental right to trade in liquor. The Court has further observed that it is a right conferred by the State. Thus, the contention raised by the review petitioners in this regard is without any merit.

27. It has been vehemently contended by the review petitioners that the finding recorded in the judgment under review that there is no right to claim renewal of liquor license is against the provisions of the Jammu and Kashmir Excise Act and the Rules framed thereunder. This contention has been elaborately dealt with in the judgment sought to be reviewed by referring to Rules 14 and 16 of the Jammu and Kashmir Liquor License and Sale Rules, 1984 and the law laid down by the Supreme Court. Paragraphs 75 and 76 of the judgment under review deal with this aspect of the matter and we would not like to elaborate it any further as that would amount to rehearing the matter which is impermissible in review jurisdiction. If the review petitioners feel that the reasoning given in these paragraphs is not in accordance with law, the same can be a subject matter for appeal and not these proceedings.

28. Another ground raised by the writ petitioners/review petitioners is that the finding of the Court vide the judgment under review that similar procedure is required to be adopted for renewal of a liquor license as is being adopted in the case for grant of fresh license is not in accordance with the Act and the Rules and, as such, it constitutes an error apparent on the face of the record. This contention was raised during the course of arguments at the time of hearing of the Letters Patent Appeals and the writ petition. The same has been taken note of in the judgment under review and dealt with in paragraph Nos. 80 to 82 of the judgment. Because rehearing of a case under the garb of review is not permissible under law, therefore, we would desist from making any further elaboration on this issue. The review petitioners in case they feel aggrieved of the views expressed in the aforesaid paragraphs of the judgment under review, are at liberty to approach the higher forum by way of appeal. It is a settled law that a review is not maintainable as the ground that the view expressed in the judgment is erroneous.²⁹ It has been vehemently argued by the review petitioners, particularly those who were not parties to either the writ proceedings or to the LPAs that principle of natural justice have not been followed by the Court while passing directions affecting them vide the judgment under review. It is contended that in terms of the Excise Policies for the years 2017-2018, 2018-2019 and 2019-2020, certain rights and benefits had been conferred upon the review petitioners who were not parties to the proceedings and these rights and benefits are sought to be taken away in terms of directions of the Court vide the judgment under review without even hearing them. Elaborating their arguments further, these petitioners contend that under the aforesaid Excise Policies, their licenses were renewed for five years until March, 2023 whereas in

terms of judgment under review, they are sought to be deprived of their rights under these licenses beyond 31st March, 2021 and that too without hearing them. According to these petitioners, this constitutes a sufficient ground to review the judgment in question.

30. It is correct that some of the review petitioners were not parties to the proceedings either before the writ court or before the LPA Bench. It is also a fact that vide Excise Policy for the years, 2018-2019 and 2019-2020, provision for automatic renewal of licenses for five years, subject to fulfillment of certain conditions, has been made, which has been struck down by virtue of the judgment under review. The question arises whether in these circumstances the aforesaid review petitioners, who were not parties before the writ court or LPA Bench, were required to be heard.

31. If we have a look at the impugned Excise Policies for the years 2017-2018, 2018-2019 and 2019-2020, under which these petitioners claim certain rights, it is clear that these Policies make reference to Court proceedings in case, titled, Sandya Devi vs State of Jammu and Kashmir and others. In fact in Excise Policy for the year 2019-2020, it is clearly stated that the licenses for operating liquor vends shall inter alia be subject to outcome of various court proceedings pending in this regard. Not only this, all these three Policies are subject to revision and revisiting by the Government. The review petitioners claim rights and benefits under these very Policies which were subject to the outcome of the court cases pending on the subject. Therefore, they cannot, on the one hand take benefits under these Policies and on the other, avoid the conditions attached to these Policies.

32. Learned Senior Additional Advocate General, Mr. H. A. Siddiqui, appearing for the State, is right in his submission that the review petitioners, who were not parties to the proceedings, were fence-sitters who watched the proceedings from a distance as it was well within their knowledge that the Policies under which they were operating their liquor vends were subject matter of litigation before the Court as was clearly laid down in these Policies and still then they did not choose to watch their interests, if any, by approaching the Court at the right time.

33. Even otherwise this Court while passing the judgment under review, has made a provision for addressing the concerns of these licensees by directing the Government to take appropriate steps in view of striking down of the provisions of the Excise Policies which envisage grant and automatic renewal of licenses for a period of five years. This has been made clear in the direction contained in clause (iv) of the relief. Thus, the aforesaid review petitioners are at liberty to approach the concerned authorities and the Government has to take appropriate steps in accordance with the law as per the directions contained in the aforesaid relief clause.

34. In the face of foregoing discussion, we do not find that principles of natural justice have been violated while passing the directions under review and, as

such, no ground is made out to review the judgment on this basis.

35. It has been vehemently argued by the learned counsel appearing for the review petitioners that this Court while passing the judgment under review, did not consider the effect of section 62 of the Jammu and Kashmir Excise Act and that the same has not even been noticed by the Court in its judgment. It is contended that non consideration of a provision of law constitutes an error apparent on the face of record and, as such, the judgment deserves to be reviewed.

36. Before dealing with this argument, we would like to notice the provision contained in section 62 of the Jammu and Kashmir Excise Act which reads as under:

"Publication of rules and notifications- all rules made and notifications issued under this Act, shall be published in the Jammu and Kashmir Government Gazette and shall thereupon have the force of law and be read as part of this Act and may, in like manner, be varied, suspended or annulled."

37. On the basis of the aforesaid provision, it has been contended by the learned counsel for the review petitioners that all rules and notifications issued under the Act have force of law and therefore, the Excise Policies for the years 2017-2018, 2018-2019 and 2019-2020 which have been issued by the Government in exercise of its power under section 20 of the Act have force of law and have to be read as part of the Act. On this ground, it is urged that the finding of the Court that clauses of these Policies which provide for renewal of liquor licenses for five years are contrary to the Rules, is not in accordance with law inasmuch as the Rules and the Policies both stand on the same footing and have force of law. Taking their arguments further, learned counsel have contended that though the Rules provide for grant of license for only one year yet the aforesaid Policies provide for grant and renewal of licenses for five years and since the Policies are later in point of time, as such, covenants of these Policies are deemed to have superseded the Rules of 1984 to the extent they are contrary to these covenants.

38. So far as the argument of the learned counsel for the review petitioners that the Court while passing the judgment under review has not taken note of the contention of the petitioners that impugned Excise Policies were statutory in nature issued by the Government in exercise of its powers under the Excise Act is concerned, the same is against the record. In para 17 of the judgment, it has clearly been noted that the Policies being in the form of statutory rules and orders have been framed in exercise of powers derived under the Act and the Rules.

39. However, the Court while dealing with the Clause 3.2.7 and Clause 11 of the Excise Policy for the year 2017-2018, Clause 3.2.4 and Clause 11 of the Excise Policy for the year 2018-2019 and Clause 3.2.7 and Clause 10 of the Excise Policy for the year 2019-2020 has after discussing the provisions of the Jammu and Kashmir Excise Act and the relevant Rules, particularly Rules 14, 15, 26 and

27 of the Jammu and Kashmir Liquor License and Sale Rules, 1984, come to the conclusion that the renewal of a license can be maximum for a period of one year and that any covenant in the Excise Policy which provides for renewal beyond the period of one year is contrary to Rules 26 and 27 of the Rules and, as such, liable to be struck down. While drawing this conclusion, the Court has noted that in all the impugned Excise Policies, it was provided that grant of license for operating liquor vents shall be strictly in accordance with the provisions of Excise Act and the Jammu and Kashmir Liquor License and Sale Rules, 1984. Once it was laid down in the impugned Excise Policies that the Policies will be in accordance with the provisions of the Excise Act and the Jammu and Kashmir Liquor License and Sale Rules, 1984, Rules 26 and 27 of the said Rules which provide for validity of license for not more than one year, stand violated by those covenants contained in the impugned Excise Policies which provide for grant and renewal of licenses for a period of five years. The interpretation given to the covenants of the impugned Excise Policies by reading them in conjunction with the provisions of Jammu and Kashmir Liquor License and Sale Rules, 1984 and holding that those covenants of the policies, which are in conflict with the Rules, are liable to be struck down, is a possible view founded on reason and logic.

40. The interpretation sought to be given by the review petitioners by contending that there is implied supersession of certain provisions of Jammu and Kashmir Liquor License and Sale Rules, 1984 including Rules 26 and 27 by the covenants of the impugned Excise Policies that have been struck down vide judgment under review, is another possible interpretation. But then it is a settled law that when two views are possible on an issue and the Court takes one of the two views, it does not offer a ground of review that the Court did not take the other view. As already noted, in Kamlesh Verma's case (supra), it has been clearly laid down that the mere possibility of two views on the subject cannot be a ground for a review. Thus, in exercise of review jurisdiction, it is not open to us to alter our earlier view simply because another view as projected by the review petitioners is also possible.

41. There view petitioner in RP No. 12/2021 has contended that he has been granted license on compassionate grounds on account of death of his father in terrorist activities, as such, his case stands on a different footing. It is urged that if the ratio laid down in the judgment under review is applied to his case, it would work harshly against him inasmuch as the benefit granted to him on compassionate grounds would be taken away.

42. We have perused the relevant record produced by the learned AAG. From a perusal thereof, we could not find anything in the order of grant of license in favour of the aforesaid petitioner that would suggest that the same has been granted to him in perpetuity. The terms and conditions of the said license are similar to those of other licenses which are renewable on year-to-year basis. Thus, no case for taking a different view in the matter of aforesaid review petitioner is made out.

43. What we have found from the contentions raised by the review petitioners as noted hereinbefore, is that in the guise of review petitions, they have tried to persuade this Court to rehear the issues that have already been decided. Certain other contentions have been raised to canvass the point that the judgment under review is erroneous in law and that the Court has proceeded on an incorrect premise of law.

44. We are of the firm view that even if it is assumed that the view taken by us on any point may not be right but it is not a ground for review that a judgment proceeds on an incorrect exposition of law. Simply because a judge has gone wrong in law that is no ground for a review, though it may be a ground for appeal. Similarly an erroneous view of law is no ground of review though it may be a good ground of appeal. A Court cannot rehear and correct erroneous judgment by way of a review. A mere repetition of old and over ruled arguments are insufficient for exercising jurisdiction of review. Thus we do not find any merit in these review petitions/writ petition.

45. For the forgoing reasons we are not inclined to exercise our jurisdiction to interfere with the judgment under review. Accordingly all the afore titled review petitions including the writ petition bearing WP(C) No. 538/2021 are dismissed.