

(1981) 09 GUJ CK 0011
In the Gujarat High Court

Case No : Misc. Civil Application No's. 434, 435, 458 and 459 of 1981 with C.A. No's. 2929, 2930, 2984 and 2985 of 1981

Gujarat University, Ahmedabad and etc.

APPELLANT

Vs

Sonal P. Shah

RESPONDENT

Date of Decision : 16-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1982 Guj 58 : (1982) 1 GLR 171

Hon'ble Judges : V.V. Bedarkar, J;N.H. Bhatt, J;A.M. Ahmadi, J

Bench : Full Bench

Advocate : A.J. Patel, Asstt. Govt. Pleader, S.N. Shelat, K.A. Mehta, P.M. Raval and K.N. Raval, for the Appellant; B.J. Shelat and P.V. Hathi, for the Respondent

Judgement

1. By our order dated 11-9-1981, we had summarily rejected the above four Misc. Civil applications for review of the order passed by the then Chief Justice B. J. Divan and myself as per Our judgment dated 18-8-1981 in the special civil applications Nos. 2530 and 2779 of 1981 : (reported in Sonal V. Shah and Others Vs. Gujarat University and Another, First of those two Petitions was filed by four students, three of whom were regular students of M. A. Part I whereas the fourth student was an external student for the said examination. In the second petition, the petitioners were the external students of the very examination. The subject matter of the challenge in the first of the two Petitions was the decision of the Gujarat University purporting to be dated 19-6-1981, pursuant to which the University had decided to grant mass promotions to its students, who were in the first year and second year of B. A., B. Sc. and B. Com. courses and who were the students of M. A., M. Sc and M. Com. Part I examinations, but in respect of postgraduate students of Part I examination, the benefit was confined only to regular students and not to external students. By the order of the Division Bench of this court, to which I was a party as one of the two Judges, it was held that the decision of the University granting mass promotion was bad at law and it was further directed that the respondent University should hold the examinations for

M. A. part I and all other examinations without mass promotions, which were ordered to be given. . In the second Petition also, a declaration was granted that the respondent-University had no Power or authority to promote any student to any class without holding appropriate examinations.

2. In those two petitions, the Gujarat University was the respondent No. 1 and the State of Gujarat was the respondent No. 2, as it was alleged that the decision of the Gujarat University was the outcome of undue pressure exerted by the State of Gujarat on the University. This allegation against the State was negatived by us as not having been substantiated. Qua the State, the matters since then rested there and in the present proceedings, the State has still been impleaded as a party only by way of abundant caution and the State has rightly sat on the fence declaring that they had nothing to say one way or the other.

3. The Misc. Civil application No. 434/81 is filed by the Gujarat University against the Judgment in the special civil application No. 2530 of 1981 whereas the second Misc. Civil application No. 435/81 is filed by the very University against the judgment in the special civil application No. 2779 of 1981. It is to be noted that both the special civil applications were heard together and disposed of by the common judgment, but the University by way of abundant caution has filed two separate review applications, registered with the office as the Misc. Civil application Nos. 434 and 435 of 1981, impleading the respective petitioners of those two petitions and the State of Gujarat as opponents in these review petitions.

4. The Misc. Civil applications Nos. 458 and 459 of 1981 were filed by six students, studying in the under graduate courses of this university, styling their applications as review applications under Sec. 114 of the CPC read with Art. 226 of the Constitution and inherent powers of the Hon"ble High Court. The said students are required to file two applications because by common judgment, the two special civil applications Nos. 2530 and 2779 of 1981 were disposed of.

5. Initially, the two earlier review applications "had come up before the Hon"ble Chief Justice M. P. Thakkar and myself for admissional hearing and ultimately all these matters have been entrusted to us as the members of the Full Bench. The Hon"ble Chief Justice has assigned these matters to us by virtue of his administrative powers under Rule 2 (6) of Part I of High Court Appellate Side Rules. We heard the matters on 8-9-1981, 9-9-1981 and after some hearing on 11-9-1981, we passed the order, which is reproduced below: -

"For reasons to be recorded hereafter the court summarily rejects the aforesaid four miscellaneous civil applications referred to this Full Bench No orders on Civil applications Nos. 2929, 2930, 2984 and 2985 of 1981 In view, of the above."

6. The Civil applications Nos. 2929 and 2930 of 1981 were filed by one under-graduate student supporting the impugned judgment and seeking to be impleaded as parties in the two review applications filed by Mrs. Mehta's clients, whereas the last of the two civil applications were by Mr. K. N. Raval for the

original petitioners of the special civil application- No. 2530 of 1981 seeking to contend that the constitution of the Full Bench of ours was not legal and Rule 2 (6) of Part I of the Appellate Side Rules under which the Chief Justice constituted the Full Bench was ultra vires.

Reasons for the operative order dt.11-9-1981.

Bhatt, J.

7. The first question that was hotly debated before us and which consumed good deal of time of the hearing before us was pertaining to the authority of this High Court to exercise review powers. We, however, find that because of the amendment made in Section 141 of the Civil Procedure Code, in the year 1976. the provisions of Order 47 of the Code relating to review are not applicable to the proceedings before the High Court under Art. 226 of the Constitution of India. We, therefore, hold that powers of this High Court to review its own judgment are the powers which every court of plenary jurisdiction inheres. The earlier view of the Full Bench of the Bombay High Court in the case of *In Re: Prahlad Krishna Kurne*, is no longer good law in view of the Supreme Court's judgment in the case of *Shivdeo Singh v. State of Punjab* AIR 1963 SC 1909. The five Judges of the Supreme Court negated the contention of the appellant, advocate there contending that the High Court had no powers of review under Article 226 of the Constitution as Article 226, unlike Art. 137 relating to Supreme Court's powers of review was silent about those powers. The Supreme Court says "it is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it." So, though the Supreme Court by necessary implication negated the attraction of the Provisions of Order 47 of the CPC to the writ jurisdiction of the High Court, it firmly established the existence of such powers, but they clarified that such inherent Powers could be invoked "to Prevent miscarriage of justice or to correct grave and palpable errors committed by the High Court." In that case, an order was passed affecting some allottees of land and the earlier order of Khosla J. of the Punjab High Court directly affected those persons, who were not made parties. The very Judge of the High Court entertained an independent subsequent petition and allowed the same. It was alleged that this second petition was to all intents and purposes an application for review, which was not permissible, for want of any provision in Art. 226 of the Constitution. This very argument was negated by the Supreme Court, because the Supreme Court felt that the persons directly affected by the earlier order of the Punjab High Court were necessary parties, who were entitled to be heard.

8. This judgment came to be followed by the Bench of two Judges of the Supreme Court in the case of *Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh*, . Which reiterated the existence of inherent powers of the High Court to review its earlier decision in exercise of inherent powers. The Supreme Court in that case, however, clarified the ambit and scope of these review

powers, because in Shivdeo Singh's case WR 1963 SC 1909), (supra) only the existence of the power of review and the purpose of exercising that power alone were referred to. Clarifying the legal position further, the Supreme Court lays down as follows:

(Para 3)

"It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it, but there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence, which after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may be exercised on any analogous ground. But, it "may not be exercised on the ground that the decision was erroneous on merits. That would be the Province of a court of appeal. A Power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate Court."

So I find that the following legal propositions stand firmly established: -

(1) The provisions of the CPC in Order 47 are not applicable to the High Court's power of review in proceedings under Art. 226 of the Constitution:

(2) The said Powers are to be exercised by the High Court only to prevent miscarriage of justice or to correct grave and palpable errors. (The epithet "palpable" means that which can be felt by a simple touch of the order and not which could be dug out after a long drawn out process of argumentation and ratiocination).

(3) The inherent powers, though ex facie Plenary, are not to be treated as unlimited or unabridged, but they are to be invoked on the grounds analogous to the grounds mentioned in Order 47 Rule 1; namely;

(i) discovery of new and important matter or evidence which the party seeking the review could not produce at the time when the earlier order sought to be reviewed was made, despite exercise of due diligence. (ii) existence of some mistake or error apparent on the face of the record, and (iii) existence of any analogous ground. (These are the very three grounds referred to in order 47 Rule I Civil P. C. and by declaration of law at the hands of the Supreme Court in the above case they are the hedges or limitations of the High Court's power.)

9. In the above strain, reference to the judgment of the three judges of the Supreme Court in the case of Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, is also Pertinent. It was no doubt a case under Art. 137 of the Constitution of India, but there is general exposition of law pertaining to review

proceedings. The Supreme Court states "But whatever the nature of the proceedings, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility" ".

Elaborating what an error apparent on the face Of the record is, the Supreme Court has further laid down that, an error apparent on the face of the record exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the court in the original judgment is a possible view having regard to what the record states. It is difficult to hold- that there is an error apparent an the face of the record." Some other judgments are also there including those of the Supreme Court dealing with the scope and ambit of the High Court's powers of review, but it is not necessary to refer to them here though the learned assiduous advocates appearing in these cases had taken pains to cite before us almost exhaustively the exposition of law on this point.

10. It is interesting to note in this connection the case of Shrimati Indira Nehru Gandhi Vs. Shri Raj Narain and Another, , where the judgment of one of the five Judges was sought to be reviewed before perhaps the very five Judges of the Court. Beg J. closely had gone through his judgment again and reiterated his conviction about the correctness of his view. The final order passed by the five Judges of the Supreme Court is interesting-and worthy to be quoted: -

"In view of the fact that one of us (Beg J.) is of the opinion that there is no sufficient ground for reviewing the judgment, this review application is dismissed."

I refer to this opinion of five judges only for the purpose of highlighting that when a Judge whose judgment is sought to be reviewed thought that there was no case for review, the other Judge forthwith would or should agree. This judgment is cited by me here only for the Purpose of showing that statutorily undefined powers of review are in practice to be exercised in a very narrow compass.

11. The first ground for invoking our jurisdiction is that the, court had granted the consequential relief of mandamus beyond the one sought for. It is no doubt true that the petitioners of the special civil application No. 2530 of 1961 had sought a relief "further directing the respondents to hold the examinations for M. A. Part I course forthwith," but they had also prayed for such other, and further reliefs as may be deemed just and proper in, the facts and circumstances of the case. At the time of the arguments before the Division Bench, to which I was a party, a prayer was sought that the necessary corollary of the declaration made by us should be carried to its logical culmination. The tenor of both the petitions also clearly showed that there was a challenge to a "decision to give mass Promotion to all the students" because success at an examination gave an added

credence to the academic performance of the students and that automatic mass promotion adversely affected the credibility Of the University's degrees and diplomas, etc. It is, therefore too late in the day for the review Petitioners to urge that the petitions were confined to a declaration for mass promotion as illegal only qua M. A. Part I students. In a way it was a public interest litigation which was brought to the legal forum, not by busybodies, but by persons who were themselves substantially affected by that decision as claimed by them. It is truism to state that in order to make its declaratory orders fully effective and not impotent, either wholly or partially, the High Court exercising its writ jurisdiction in its capacity as the sentinel of the rule of law under Article 226 of the Constitution of India is clothed with the Power to grant any consequential or ancillary relief. If any authority in support of that statement of law is needed, I would fruitfully advert to one of the judgments of the Supreme Court. It is the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, where in paragraph 45 it has been stated that "Article 32 gives the courts very wide discretion in the matter of framing their writs to suit the exigencies of particular cases and an application cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for." The Division Bench of this court in a recent judgment, to which I was a party, in the case of Consumer Education and Research Centre and Others Vs. State of Gujarat and Others, also said that the High Court's writ or declaration was not to be rendered otiose and an ornamental scrap of paper on the technical ground that a relief or declaration was not followed by a prayer for a consequential relief. What is good of a civil court's decree is not to be invoked when the High Court's prerogative writ jurisdiction is being exercised. Section 34 of the Specific Relief Act, 1963 will not be attracted to such proceedings under Art. 226 of the Constitution of India. To me it surprises that though there was overall discussion about all the courses and the University's Power to dispense with any examination at any stage and even though in the body of the judgment impugned in these review petitions, there is a reference to all examinations including examinations of the first year and the second Year courses, the University as if out of assumed ignorance, was emboldened to declare before us at the time of hearing that all throughout the hearing of the Division Bench, they understood the petition as confined to a declaration for cancellation of M. A. Part I examinations or that the rule of mandamus was sought only qua them and not generally. What I have observed above while speaking of the minutes for the Division Bench about this is a clinching answer to this belated Plea Unfortunately put forward on behalf of the University.

12. It was then alleged as a second ground that the students likely to be adversely affected were not issued any notice. That is a general notice under O. 1, R. 8 of the Civil Procedure Code. As far as the two review applications filed by the University are concerned, it is to be noted that this question was not specifically raised by way of defence and in the course of the hearing before the then Division Bench, a question had cropped, but was not pursued by the

Advocate General, who as per his statement on 29-8-81 at the earlier stages of the University's review petitions before the Hon"ble Chief Justice M. P. Thakkar and myself had conceded that this point was not raised by the University "because there are conflicting decisions whether they are necessary or proper parties." This particular statement made by the Advocate General on 29-8-1981 is recorded by me in the minute book of that day and this statement was specifically brought to the notice of Mr. S. N. Shelat, who subsequently took over "the charge, of these matters, and he" stated that as was noted by me, this was not disputed by the University speaking "through him.

13. As far as the Petitioners represented by Mrs. Mehta are concerned, on the analogy of the Supreme Court's judgment in Shivdeo Singh's case (AIR 1963 SC 1909) (supra). She urged that non-pleading of the parties directly affected was a good ground for exercise of the review powers of the High Court under the obvious plea that miscarriage of justice should be prevented and a palpable error on the face of the record should be corrected. The question that was debated before us, however, was whether these review petitioners who had availed themselves of the benefit of an unlawful order can be said to be persons, who are entitled to be heard because of their interest likely to be adversely affected. Before us were cited on behalf of the Original petitioners of the two special civil 4Pplications, the judgment of the Supreme Court in the case of The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, and other rulings like The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, and, on behalf of Mrs. Mehta's clients, certain other judgments like Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, were cited. Controversy being what it is and without in any way being required to observe in this judgment decisively One way or the other, I would like to say that the view that such persons cannot be said to be adversely affected and, therefore, (not?) entitled to be heard, when a general policy decision or a legislative Piece is challenged, is a question on which there can at any rate exist two possible strong views countering each other. When such is the situation the exercise of review powers would not be attracted. The authorities on this point are already referred to by me.

14. The last ground urged before us was regarding the numerous difficulties to be experienced by the students and the University, if they were required to implement the direction issued by this court. As -far as the University is concerned, it is not even pleaded much less proved, that these hardships were not known to them when the original writ petitions were being heard by this court. When a particular policy decision of a public statutory body is declared as non est, the ensuing consequence even if entailing some hardship, would not be a ground to dilute the rigorous enforcement of the rule of law, which is the life-blood of a society like ours governed, not by arbitrariness, but by the rule of law. It is, therefore, not necessary for us to deal with these questions any more.

15. Viewed from any angle, it is not possible for us to entertain these review applications and we, therefore had decided to summarily reject them.

16. Though Mrs. Mehta's applications were specifically designated as the Misc. Civil Applications as the review application u/s 114 of the CPC read with Article 226 of the Constitution of India. Not only the label, but contents and prayers of the applications and also the order of reference to the Full Bench made by the Hon"ble Chief Justice, make it amply clear that they were and are treated by all concerned as the review applications. At any rate when what has been assigned to this Full Bench stating that the applications of Mrs. Mehta were review applications, it would not be possible for us to treat them as substantive petitions under Article 226 of the Constitution of India.

17. This brings me to the reasons, which promoted us to summarily reject the Civil applications. The Civil applications nos. 2929 and 2930 of 1981 are summarily rejected by us because by these two applications, an undergraduate student, who was granted mass promotion but did not want to avail of it, it being an ill-gotten one, sought to be impleaded as a party to the University's review applications and to Mrs. Mehta's review applications. When the main petitions themselves stand rejected, they automatically fall through. The last two civil applications filed by Mr. Raval for permitting the original petitioners of the writ petitions to challenge the constitution of the Full Bench are also not required to be dealt with by us because Mr. K. n. Raval himself had declared before us that if we were not inclined to entertain these review petitions, those contentions were not required to be pursued. For this reason, we had decided to reject all these four civil applications.

A.M. Ahmadi, J.

18. I have had the benefit of reading the reasons assigned by my learned brother Bhatt. J., in support of our order of 11th Sept, 1981. While I agree with his conclusion, I would like to express myself on some aspects of the case.

19. By a Circular letter No. 25 of 19th June 1981, the Vice-Chancellor of the Gujarat University decided that all students of First Year and Second Year B. A., B.Sc. and B. Com., class and all students, of M. A. Part I M.Sc., Part I and M. Com., Part I Class who had filled their forms for the University examinations and were otherwise eligible to appear at such examinations should be given promotions and masse to the next higher class with an option to appear at the examination to be held sometime in October 1981. This decision of the Vice-Chancellor was endorsed by the Executive Council of the University. Three regular students and one external student of M.A. Part I challenged the aforesaid decision of the Gujarat University granting mass promotion by a Writ petition, special civil Application No. 2530 of 1981, brought under Article 226 of the constitution and prayed for a mandamus to direct examination forthwith. By another petition, Special civil Application No. 2779 of 1981, four external students of M. A. Part I challenged the University decision on the ground of

discrimination, in as much as, the regular students were granted mass promotion while they were required to appear at the examination to be held in due course and prayed for their mass promotion without being required to appear at the ensuing examination. In the alternative, like the petitioners of the former petition they challenged the decision of the University to grant mass promotion on the ground that Section 11(4) of the Gujarat University Act did not confer any such power and if it did, it was ultra vires Act 14 of the Constitution. As is clear from the judgment of the Division Bench rendered in the aforesaid two petitions on 18th August 1981, at the hearing of the aforesaid two Writ Petitions counsel for the petitioners in the subsequent petition abandoned the main relief and argued in support of the alternative contention in other words, he supported the plea raised by the Petitioners in the former petition. Both the petitions were allowed by the Division Bench of this Court and reliefs as set out in the two Review Petitions of the Gujarat University were granted. (The word "all", between the words and "and" and "other examinations" was added on speaking to minutes).

20. The Gujarat University has moved the present two Review Applications Nos. 434 and 435 of 1981 on the ground that the Division Bench had committed an error apparent on the face of the record in overlooking the fact that both the petitions were not representative Petitions under order 1, Rule 8 of the CPC and the relief granted in the former Petition was in terms wider than that sought by the petitioners. According to the University in the first petition the relief sought was to quash the circular letter No. 25 of 19th June 1981 and for a consequential direction "to hold the examinations for M. A. Part I course forthwith, while in the second petition the relief granted could never have been granted as the University had not granted mass promotion to M. A. Part I external students. It is next pointed out that the decision of the Court is likely to cause not only inconvenience to the, University in organizing examinations but also serious hardships as enumerated in paragraphs 6 and 7 of the Review Applications to about 62,788 under-graduate students who will be required to be examined pursuant to the Court's order. The other two Review Petitions have been moved by some of the "affected" under-graduate students, inter alia on the ground that Court could not have invalidated the decision granting mass promotion and in any case could not have directed the holding of all other examinations without issuing a rule nisi to the under-graduate students who were likely to be directly hit by the said decision and hence the relief ought to have been confined to students of M. A. part I stream only. The difficulties which the students are likely to encounter, as catalogued in the Review Petitions, are : (i) the students have disposed of the old books and purchased the books for the higher classes; (ii) they have paid the fees for the new term which commenced from 15th June 1981; (iii) some of the promoted students have changed their colleges or migrated to other Universities, (iv) the results of students who have appeared for the degree course with A. T. K. T. will have to be withheld till December 1981; (v) students will have to be given sufficient time to Prepare for the examinations. Which will conflict with their studies so far as the present academic term is

concerned and (vi) lastly, the decision to hold examinations may lead to unrest. These are in brief the reasons put forth in the Review Petitions for remoulding the relief granted by the Division Bench on 8th August 1981.

21. All these four Review Applications have been referred to this Full Bench by My Lord the Chief Justice by his order dated 1st September 1981 made in exercise of power conferred on him by Rule 2 (6) of Part I of the High Court Appellate Side Rules.

22. At the hearing of the Review Applications the constitution of this Bench was challenged by the respondents (except the State of Gujarat) on two grounds, viz., (1) under Order 47, Rule 5, code of Civil Procedure. if any of the two Judges constituting the Division Bench whose order is sought to be reviewed retires or is for any other" reason not available, the remaining one Judge alone (Bhatt, J.4 is competent to decide the Review Application or applications and the other two Judges comprising the Full Bench are not competent to hear the matter, and (ii) the learned Chief Justice was not legally entitled to exercise power under Rule 2 (6) of Part I of High Court Appellate Side Rules and in any event the said sub-rule is violative of Article 14 of the Constitution as it does not lay down any guidelines for the exercise of that power In support of the first contention it was also sad that there being no Provision similar to Article 137 of the Constitution empowering High Courts to review their own decisions, the power to review can only be derived from Order 47 of the CPC and hence these applications must necessarily be governed by Rule 5 of that Order.

23. After the decision of the Supreme. Court in Shivdeo Singh v. State Of Punjab AIR 1963 SC 1909 , the preliminary contention hardly deserves mention. In that case the Supreme Court stated in unmistakable terms that there is nothing in Article 226 of the Constitution to Preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice-or to correct grave and palpable errors constituted by it. In State of Gujarat Vs. Sardarabegum and Others, the Supreme Court observed that the High Court had committed a patent error in granting relief under Article 226 of the Constitution, which it ought to have corrected suo motu in exercise of its inherent power. In that case the High Court had granted relief in excess of what the Writ Applicant had asked for. Again in Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, , the Supreme Court reiterated that there is nothing in Article 226 of the Constitution to Preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors constituted by it. Of course, as laid down therein, there are definitive limits to the exercise of power of review by the High Court. These decisions conclude the Point that notwithstanding the absence of a Provision similar to Article 137 of the Constitution.

24. The next question is whether in the exercise of this inherent power of review under Article 226 of the Constitution the High Court must follow the Procedure

laid down in Order 47, Code of Civil Procedure. Before the decision of the Supreme Court in Shivdeo Singh's case (AIR 1963 SC 1909)(supra) there was a judicial controversy on the question whether an application under Article 226 of the Constitution was a proceeding in a Court of civil jurisdiction. To put an end to this judicial controversy, an Explanation came to be added to Section 141, Code of Civil Procedure, by Amendment Act. 1976, whereby proceedings under Article 226 of the Constitution are taken out from the Purview of the Code of Civil Procedure. It. therefore, becomes obvious that the Provisions of Order 47 do not *stricto sensu* apply to proceedings under Article 226 of the Constitution and hence reliance on Rule 5 of that Order by counsel for the contesting respondents is wholly misconceived.

25. So far as the question regarding the legality of the reference to the Full Bench by my Lord the Chief Justice is concerned, it must be stated at the outset that even though the said contention was raised by the contesting respondents in the present applications, they chose to a substantive Writ Petition to challenge the constitution of this Full Bench on identical grounds, That Writ Petition, was also referred to another Full Bench comprising P. D. Desai, S. B. Majmudar and D. H. Shukla, JJ., by my Lord the Chief Justice in exercise of the very same powers. By that Writ Petition the proceedings before this Full Bench were sought to be stayed. We were, however, told that the Full Bench dismissed that Sonal V. Shah Vs. M.P. Thakkar and Others, on the ground that the very same question could be urged before this Full Bench. The effort to truncate the hearing before this Bench can only be described as distasteful. In fairness to the learned counsel for the University as well as the six undergraduate students it must be stated that they did not challenge the legality of the order passed by the learned Chief Justice constituting this Full Bench. It did not seem necessary to hear the learned counsel for the contesting respondents on this Point in the view that we decided to take.

26. Before I proceed to consider the question whether it is necessary in the circumstances of the case to review the order passed by the Division Bench in the aforementioned two Writ Petitions it must be made clear that neither the learned counsel for the University nor the learned counsel for the six undergraduate students challenged the decision of the Division Bench quashing the decision of the University to grant mass promotion as per the circular of the Vice Chancellor dated 19th June 1981. What they contended before us was that the relief granted by the Division Bench travelled beyond the relief actually claimed in the two Writ Petitions and it was therefore necessary to soften the blow by remoulding the relief in other words, the review Petitioners desire that the requirement to hold examinations for under-graduates should be done away with having regard to the difficulties which the students are likely to encounter if they are required at this late stage to clear the examinations. It is indeed true that in the first Writ Petition the reliefs claimed are: M to quash and set aside the decision at Annexure "B", i. e., the circular granting mass Promotions and (ii) to direct the respondents to hold examinations for M. A. part I course forthwith.

There was of course the omnibus prayer to grant such other or further reliefs as may be deemed just and proper in the facts and circumstances of the case. in the second petition the alternative reliefs which were pressed at the hearing, were : (i) to declare that the University had no power or authority to promote any student to any class without the holding of appropriate examinations. ; and (ii) to pass any other and further order as may be deemed fit and proper . It also transpires from the observation in the judgment-

"At the time of hearing, however, the petitioners of this petition joined in chorus with the petitioners of the first petition and highlighted their contention that mass promotion as a matter of fact was against the texture of this University.

that the writ petitioners challenged the decision of the University to grant mass promotion in its entirety. This was sought to be reinforced by inviting our attention to the observation-

"Could they not know that if they could hold examinations for all professional courses, If they could hold examinations for the degree examinations there was nothing to prevent them from holding the similar examination for the First Year and Second Year students Of Arts, Science and Commerce and for M. A., M.Com and M.Sc. Part I examinations which does indicate that the question Of holding examinations for all classes was discussed in the course of the hearing To buttress the argument that even the difficulties or hardships pointed out now were projected before the Division Bench at the time of the hearing of the two writ petitions, our attention was drawn to the following Passage:-

"As the new term has already commenced. It is open to the University to make a provision that the students Who are allowed to keep terms in this higher class would be liable to clear the earlier examinations before the results for higher examinations are declared to their advantage."

But quite apart from the inference that can be drawn from the aforesaid observations found in the judgment of the Division Bench what is of utmost importance is the impression of my learned brother, Bhatt J., in this behalf. After referring to his minutes, he has in paragraphs 11 and 12 of his order indicated in clear terms what was argued before the Division Bench. I hold my learned brother, Bhatt J., in high esteem. It is to this impression of the that I attach great weight. If Bhatt J., says that these questions were debated at the hearing of the writ petitions that is the end of the controversy and no further discussion is permissible. That is the judicial discipline which the Supreme Court followed in the case of Shrimati Indira Nehru Gandhi Vs. Shri Raj Narain and Another, In that case also the Court rejected the review application on the recollection of Beg J., set out in paragraph 3 of the judgment. It is on the basis of this judicial discipline that I concur with Bhatt J., that review must be refused. Such a course becomes necessary in the peculiar facts of such cases and need not be understood as laying down any general rule that if one of the Judge on the bench is disinclined to review the earlier decision, the review petition must necessarily fail. In the

present case if the relief was moulded after taking into account the hardships likely to be occasioned to the students, there can be no scope for review and the matter must lie in the domain of the appellate court.

27. It was however, said that on a plain reading of the relief clause it is obvious that the relief granted by the Division Bench is in terms wider than the relief sought. According to the review petitioners the Division Bench could not have granted a relief which was not sought it is true that the relief claimed in the first petition was for holding X A. Part I examinations but the same cannot be said about the relief claimed in the second petition which in terms, refers to the University power to promote "any student to any class% If by inadvertence the Court grants a relief which is wider than the one sought it would be an error on the face of the record and would squarely fall within the ratio of the Supreme Court decision in Sardarbegum's case (AIR 1197 6 SC 1695) (supra). Such is not the case before us. Here the question regarding the moulding of the relief was debated before the Division Bench before the decision was pronounced. It is also important to bear in mind that by now it is well settled that in exercise of Powers conferred by Article 226 of the Constitution It is always open to the High Court to mould its relief to suit the exigencies of the case and notwithstanding the fact that such a specific relief is not prayed. We have fortunately not permitted the power of the High Court under Article 226 of the Constitution to be bogged down by the high degree of formalisation which guide the English Courts in the matter Of issue of prerogative writs. See Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, , Director of inspection, The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another, and Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, . Therefore, if the Division Bench was alive to the difficulties likely to be caused to the University as well as the students before it moulded the relief as it presently stands, the matter is no more in the realm Of review but must be agitated before the appellate Court, more so when leave to appeal has been granted under Article 133(1) of the Constitution.

28. It was next argued that the Court has wide powers to mould its relief in the circumstances of each case and it is not imperative that all the consequential reliefs flowing from the main relief must be granted. In Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and Others, the petitioner challenged the admission of a number of candidates to the M. B. B. S. course in the Government Medical College, Srinagar, inter alia on the ground that the allocation to the viva voce test of 30 Per cent of the total marks was patently arbitrary. The Supreme, Court relying on the decision in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, concluded that allocation of more than 15 per cent of the total marks to the viva voce examination would, result in constitutional invalidity but refused to interfere with the admissions granted under the impugned decision. Nearer home, in the case of Smita Johnbai Master v. State of Gujarat, S. L. P. (Civil) No. 4198 of 1981 decided on " 8th May 1981 (Reported in Smita Johnbai Master and Others Vs. State of Gujarat and Others, the Supreme Court

with a view to mitigating the harshness of law by the fairness of equity directed that students who had secured admission under the impugned order should be treated as admitted if they had completed the first year course and had appeared at the examination held at the end of the first academic year. The aforesaid two decisions clearly show that wide powers are conferred on Courts under Article 226 of the Constitution in the matter of grant of relief. In the instant case it is true that the decision of the University to grant mass promotion at the behest of a tiny but vocal minority has brought about the present situation. It must be remembered that in 1974 because of the closure of colleges on account of the Navnirman movement, mass promotion was granted. The authorities may have thought that because a similar decision taken in 1974 had gone unchallenged, they had the power to grant mass promotion. But merely because a decision is not challenged it cannot mean that the University has power to grant mass promotion. Whether the law grants that power or not is a matter which the appellate Court will have to determine if an appeal is filed. I am, however, conscious that some of the hardships pointed out in the course of hearing, particularly, (i) the students having disposed of their notebooks and textbooks; (ii) some of them having left their colleges and having migrated to other Universities (iii) science students having not completed their practicals, etc. may be genuine, but for reasons stated earlier, the matter now lies within the domain of the appellate Court.

29. Mrs. Mehta, drawing inspiration from the decision of the Supreme Court in Shivdeo Singh's case (AIR 1963 SC 1909) (supra) force fully argued that the Division Bench in, directing the University to hold "all other examinations" without issuing a rule nisi to the under graduate students violated the fundamental principle of audi alteram partem. That was a case in which the High Court cancelled the order passed by the Director of Rehabilitation in favour of 13 though he was not a party to the writ petition. In Board of High School and Intermediate Education, U. P., Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , it was held that where the Examination Committee is required under the Regulations to deal with the examinees using unfair means in examination halls, it is acting quasi-judicially and is bound to observe the principles of natural justice. That was a case in which the Committee cancelled the results and debarred the examinees from appearing at the next examination without giving the examinees an opportunity of being heard. In those circumstances it was held that the decision was vitiated as violative of the rule of natural justice. Strong reliance was, however, placed by Mrs. Mehta, on the decision in Padam Singh Jhina v. Union of India (1974) 1 SLR 594 (SC) . In that case the petitioner's contention was that he had been mala fide reduced in the seniority list from the fifth to the seventh place in contravention of the Rules. It is important to note that the validity or the vires of the Rules was not challenged. All the persons whose placement in the seniority list was affected were not impleaded and had no opportunity of answering the case set up by the petitioner and hence it was held that in the absence of

persons directly affected, it was not possible for the Court to adjudicate the matter. The ratio of *Jhina's case* (supra) was held not applicable in *The General Manager, The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, . The broad principle on the question of necessary and proper parties was stated by the Supreme Court in the following terms (Para 20): -

"In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the Present case, the relief is claimed only against the Railway which has been impleaded through its representatives. No list or order fixing seniority of the petitioners vis-a-vis Particular individuals, pursuant to the impugned decisions. Is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioners seniority in accordance with the principles laid down in the Board's decision of October 16, 1952, were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

The facts of that case reveal that the Policy decision contained in the Board's - order of October 16, 1952 was modified and clarified by the subsequent Board decisions of November 2, 1957 and January 13, 1961. The subsequent two decisions -were challenged by A. V. R. Siddhanti and others. The Supreme Court held that such policy decisions Could be challenged without impleading those who were likely to be affected as a result of the re-adjustment of the petitioner's seniority an the Board a decisions of November 2, 1957 and January 13, 1961 being struck down. The Full Bench of the Kerala High Court in *State of Kerala and Another etc. Vs. Miss Rafia Rahim etc.*, referred to this decision of the Supreme Court and coined that it was not applicable. Besides the view taken in *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, is in line with the earlier view of the Supreme Court in *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, . In that case the School Board cancelled the examination of one Centre as it was found that a vast majority of the examinees of that Particular centre had adopted unfair means. The decision of the Board was challenged an the ground that the examinees were not given an opportunity to represent their cases. The Supreme Court held that it was not necessary to hear every examinee as the policy decision did not stigmatise any particular examinee, In view of the above, I agree with Bhatt J., that without decisively adjudicating upon the controversy since two strong possible views countering each other exist, it would not be proper to exercise review powers to resolve the controversy, more so in view of what to pointed out in paragraph 12 of his order.

30. As regards the request of Mrs. Mehta to treat her applications as Substantive under Art. 226 of the Constitution. I agree with what Bhatt J., has stated in paragraph 16 of his order having regard to the fact that the reference to the Full Bench was to decide the review applications filed by Mrs. Mehta's clients. We

have, therefore, not entertained her request to treat her Applications as substantive petitions under Article 226 of the Constitution.

31. These are my reasons in support of the order passed by the Full Bench on 11th Sept. 1981.

V.V. Bedarkar, J.

32. I have had the good fortune of going through the judgments of both my learned brothers N. H. Bhatt and A. M. Ahmadi, JJ. assigning reasons for the order dated 11-0-1981 and I am in respectful agreement with them.

33. The review applications are quite incompetent as what is sought by them is to Practically set aside the order of the Division Bench and remodulate the reliefs so as to meet the alleged exigencies Of the situation. as according to the review petitioners the decision has an engulfing effect -on the careers and aspirations of the students who are already promoted of course without examination. This is nothing but an attempt to circumvent the Path of approaching the Supreme Court by Way of an appeal for which leave is already granted. Though the plenary jurisdiction of this Court in review is not very much circumscribed there are definitive limits as held in Shivdeo Singh's case (AIR 1963 SC 1909). Of course this judgment was prior to the amendment of CPC by which u/s 141, the provisions of CPC are not made applicable to the proceedings under Article 226 of the Constitution of India, The restrictions under order 47 of the CPC am not directly applicable, and this Court can exercise the Powers on a wider canvass on any analogous ground; still the scope for review has its own restrictions and may not be exercised in the manner in which the Powers can be exercised in an appeal.

34. At review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different counsel of old and overruled arguments cannot create a ground for review, (vide Sow Chandra Kante and Another Vs. Sheikh Habib, , Sow. Chandra Kanta v. Sheik Habib). Hence, these review applications have no scope.

35. As Brother Bhatt, J., who had heard the original writ Petitions has specifically observed, "much of the new fanged arguments here were also advanced before the Division Bench, and the University was not unmindful of the impact and difficulties to be experienced if writ Petitions were allowed. We have to-respect that view and accept it as a fact keeping no scope for reconsidering that Position by repeating those arguments to advance a case for a review."

36. The grounds for review that the relief granted in the original writ petitions was wider in terms and that the large number of students likely to be affected by the order were not made parties and not heard, are, properly dealt with in the judgments of both my learned brothers making any more repetition needless.

37. The challenge to the authority of My Lord the Chief Justice to constitute this

Full Bench is very effectively dealt with by Brother Ahmed, J. in Para 8 (see Para 25) of his judgment with which I fully concur, but in view of the summary rejection of the review application, that challenge also does not survive. So, no order on Civil Applications Nos. 2984 and 2985 of 1981.

38. On these reasons, the order of the Full Bench dated 11-9-1981 summarily rejecting the miscellaneous application is supported. For the reasons given in the judgment of N. H. Bhatt, J. no orders are passed on. Civil Applications No s. 2929 and 2930 of 1981.

39. Order accordingly.