
(1994) 06 GAU CK 0037

In the Gauhati High Court

Case No : Review Application No. 7 of 1994 in Civil Rule No. 1945 of 1993

Mukul Pathak

APPELLANT

Vs

Hemen Das

RESPONDENT

Date of Decision : 29-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 2 GLR 236

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : P.G. Barua, R. Baruah and R. Bharali, for the Appellant; S.N. Medhi, M. Das and A. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This application for review has been filed to review the order dated 16.7.93 passed by a Single judge (Hon'ble Homchoudhuri, J) in Civil Rule No. 1945/93. The order dated 16.7.93 is quoted below:

Heard Mr. S.N. Medhi, learned Counsel for the Petitioner and Mr. G. Sarma, learned Govt. Advocate.

It is not disputed by the learned Govt. Advocate that in respect of the policy decision of the Govt. which was notified by its Memo No. SDB. 160/90/68 dated 4.2.92 (Annexure-1), establishment of a new rice mill would be considered only in places where no rice mill exists within a radius of 3 K. M, and that no licence in violation of the guideline circulated by the aforesaid letter of the Govt. should be issued.

Upon hearing the learned Counsel for the Petitioner and learned Govt. Advocate, I dispose of the petition with a direction to the Respondent Nos. 1 to 4 that no licence for establishing rice mill should be granted to the Respondent No. 5 in violation of the Govt. instruction dated 4.2.92.

As against this order, a writ appeal being the writ Appeal No. (T) 860/93 was filed. The writ appeal was dismissed on the ground of delay, but it was observed that the Appellant may approach the learned single judge for his redressal. Accordingly, this review application has been filed.

2. The admitted position is that the present review Petitioner (Mukul Pathak) was the Respondent No. 5 in the Civil Rule, but without issuing any notice to him, the learned Single Judge allowed the Civil Rule and disposed of the matter on the day of moving the application. So, this order admittedly is in violation of the principle of natural justice.

3. The law on this point is settled by a recent decision of the Supreme Court reported in 1993 (4) SCC 595 S. Nagaraj v. State of Karnataka and Ors. The law laid down in Unit case is as follows:

Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order.

The Supreme Court relying on the Privy Council decision laid as follows:

...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.

4. That the court has the power to review its own order in exercise of power under Article 226 of the Constitution of India is settled as far as back as in 1963. In Shivdeo Singh and Others Vs. State of Punjab and Others, where the Supreme Court pointed out as follows:

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 is inherent in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla J., affected the interests of persons who are not made parties to the proceedings before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the Respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, through their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J.

5. In *A.R. Antulay Vs. R.S. Nayak and Another*, the Supreme Court in paragraph 83 pointed out as follows:

The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiae*, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied.

6. In (1990) GLR (NOC) 19 *Shri Chandreshwer Bhattacharjee v. The Managing Partner of Banamali Tea Estate, Sibsagar*, a Division Bench of this Court pointed out that in case of an order under Article 226 of the Constitution of India, the power of review can be exercised if manifest wrong has been done to do the full and effective justice.

7. This being the position of law, I have no doubt that the order dated 16.7.93 passed by this Court in Civil Rule No. 1945/93 requires to be reviewed. Accordingly, this review application is allowed. Place the Civil Rule No. 1945/93 for further hearing.

8. I have heard Sri. P.G. Baruah, learned Counsel for the review Petitioner and Sri. S.N. Medhi, learned Counsel for the writ Petitioner in Civil Rule No. 1945/93. The Civil Rule No. 1945/93 may be placed for further hearing immediately. I make no order as to costs.