

**(2018) 03 MP CK 0139**

**In the Madhya Pradesh High Court**

**Case No : REVIEW PETITION NO. 1277 OF 2017**

Nagar Palik Nigam

APPELLANT

Vs

Banshi & Others

RESPONDENT

**Date of Decision : 23-03-2018**

**Acts Referred:**

Constitution of India — Article 21, 137, 145(c), 226  
Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 8

**Citation : (2018) 03 MP CK 0139**

**Hon'ble Judges : S.K. GANGELE, J;ANURAG SHRIVASTAVA, J**

**Bench : Division Bench**

**Advocate : Jayant Neekhara, Pradeep Batra, Aditya Jain**

**Final Decision : Allowed**

## **Judgement**

1. Heard on I.A. No.16749/2017, an application for condonation of delay in filing the review petition.

2. The application is allowed and delay in filing the review petition is hereby condoned.

3. This review petition has been filed against the order dated 08.05.2017 passed in Writ Petition No.19671/2016. The petitioner was awarded a

contract for supply of essential commodities to different fair price shops. The Supply Officer and Junior Supply Officer of Food Department

conducted inquiries and noticed that the petitioner did not supply the essential commodities to the fair price shops, although he was awarded a contract

for distribution of essential food items and other articles under Public Distribution System to different fair price shops for a period from 09.10.2015 to

30.06.2015. As per the contract, the petitioner had to supply the essential commodities to different government fair price shops by transport vehicles.

The petitioner in connivance with the fair price owners misappropriated the articles. On the basis of aforesaid report, criminal cases were registered

against the petitioner. Simultaneously, the District Magistrate/Collector, District Jabalpur passed an order of detention dated 11.07.2016 against the

petitioner in exercise of powers under Section 8 of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

4. The petitioner did not surrender before the authority. He filed W.P. No. 19671/2016 challenging the order of detention at pre detention stage on the

basis of the judgment of the Hon'ble Apex Court passed in the case of Additional Secretary to Government of India vs Alka Subhash Gadia reported

in 1992 Supp. (1) SCC 496. The petitioner contended that he was not at all responsible for misappropriation of any essential item. He completed the

contract and supplied the essential items to different fair price shops. Because he had filed a petition before this Court and prayed a relief that inquiry

be conducted against the officers, who had committed irregularities in the matter of supply of essential commodities, hence, in order to teach a lesson

to the petitioner, the order of detention was passed. This Court dismissed the writ petition after observing that prima facie there is a charge that the

petitioner did not supply essential commodities to different fair price shops in accordance with the terms of the contract. He was awarded a contract

of transportation of essential commodities to different fair price shops. Hence, the authority has passed the order of detention.

5. After dismissal of the writ petition, the petitioner submitted an application for re-consideration and cancellation of the order of detention passed by

the District Magistrate/Collector, Jabalpur before the Ministry of Home and Internal Affairs, Bhopal M.P. As per the petitioner, the Ministry of Home

Affairs summoned detailed report from the Collector/District Magistrate, Jabalpur.

The Department of Home also called a report from District Manager, M.P. Civil Supplies Corporation Limited, Jabalpur in regard to the illegalities.

Thereafter, the statements of shop owners of concerned fair price shop were recorded by the authorities. The shop owners verified the facts that food

grains were duly supplied to the different fair price shops.

6. When petitioner received information about the inquiry, he submitted an application seeking copy of inquiry report to the office of M.P. State Civil

Supplies Corporation Limited, District Jabalpur under Right to Information Act.

The documents were supplied to the petitioner and the statements of the concerned shop owners were also supplied to the petitioner which verify the fact that food grains were duly supplied by the petitioner to them. The petitioner has filed the documents alongwith the petition.

7. It is contended by learned counsel for the petitioner that the facts on which the order of detention has been passed against the petitioner have not been found true in the inquiry. The order of detention affects civil rights of a person. It is contrary to Article 21 of the Constitution of India and it could not be passed on extraneous grounds. It is further submitted by the counsel for the petitioner that in view of the facts subsequently discovered by the petitioner, the order passed by this Court be reviewed and the detention order passed by the authority be also recalled.

8. Hon'ble Supreme Court in the case of Additional Secretary to Government of India vs Alka Subhash Gadia reported in 1992 Supp. (1) SCC 496 has laid down following criteria in regard to exercise of powers under Article 226 of the Constitution of India against the order of detention at pre detention stage:

â??That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. If in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law

under which it is made will be frustrated since such orders are in operation only for a limited period. The courts have the necessary power to entertain

grievances against any detention order prior to its execution, and they have used it in proper cases, although such cases have been few and the

grounds on which the courts have interfered with them are necessarily very limited in scope and number, viz., where the courts are prima facie

satisfied (i) that the order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a

wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority

which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention

orders prior to their execution on any other ground does not amount to abandonment of the said power or to their denial to the proposed detenu, but

prevents their abuse and the perversion of the law in question.â??

9. The Hon'ble Apex Court further in the case of Vikram Singh Alias Vicky Walia and another vs State of Punjab and another reported in (2017) 8

SCC 518Â has held as under in regard to exercise of power of review by the Court:

15. Again a two-Judge Bench in Lily Thomas and others vs. Union of India and others, 12 (2000) 6 SCC 224, had the occasion to consider the scope

of review jurisdiction of this Court. In paragraph 52 following was laid down:

52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute.

This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844, held that the power of review is not an inherent power. It

must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is

a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has

to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have

been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude

the Court from rectifying the error. This Court in S. Nagaraj v. State of 13 Karnataka, 1993 Supp (4) SCC 595, held: (SCC pp. 619-20, para 19)

Â "19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of

human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made.

Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no

statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out

such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai, AIR 1941 FC 1, the Court

observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow

ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain*

*Rae v. Bijai Govind Singh*, (1836) 1 Moore 117, that an order made by the Court was final and could not be altered:

‘... nevertheless, if by misprision in embodying the judgments, 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.’

Basis for exercise of the power was stated in the same decision as under:

‘...It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable

injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been

inadvertently made as if the party had been heard.’

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing

finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by

Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred

the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame

rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering

this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, ‘for any other

sufficient reason’ in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of

circumstances has been held to be sufficient ground to exercise the power. Apart

from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

20. What is "an error apparent on the face of the record" has also been a subject matter of consideration by this Court in a large number of cases.

What are the grounds on which this Court shall exercise its jurisdiction and what is the error apparent on the face of the record came to be considered

by this Court in Kamlesh 20 Verma vs. Mayawati and others, (2013) 8 SCC 320 (in which case one of us Dipak Misra, J. was also a party). This

Court held that an error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record.

In paragraphs 15 and 16 following was laid down:

15. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the

record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard

and corrected, but lies only for patent error. This Court in Parsion Devi v. Sumitri Devi, 1997 (8) SCC 715, held as under: (SCC pp. 718-19, paras 7-9)

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries

Ltd. v. Govt. of A.P., AIR 1964 SC 1372, this Court opined: (AIR p. 1377, para 11) 21

'11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial

question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an identical state of facts that a

substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was

wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always

be capable of exposition, between a mere erroneous decision and a decision

which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.'

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury*, 1995 (1) SCC 170, while quoting with approval a passage from *Aribam Tuleshwar Sharma*

*v. Aribam Pishak Sharma*, 1979 (4) SCC 389, this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An

error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record

justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not

permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

(emphasis in original)

16. Error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and

searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The

mere possibility of two views on the subject is not a ground for review.

22. Summarising the principles when review will be maintainable and review will not be 26 maintainable following was held in paragraphs 20.1 and

20.2:

22.1. 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.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram v. Neki*, AIR 1922 PC 112, and approved by this Court in *Moran Mar*

Basselios Catholicos v. Most Rev. Mar Poulse Athanasius, AIR 1954 SC 526, to mean "a reason sufficient on grounds at least analogous to those

specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.(2013)8 SCC 337.

22.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.

10. Law of review is this when the error is apparent on the face of the record, the power of review can be exercised for correction and in the certain

circumstances, review is maintainable when discovery of new and important matter or evidence which, after the exercise of due diligence, was

not within the knowledge of the petitioner or could not be produced by him.

11. The Hon'ble Apex Court in the aforesaid judgment has specifically held that the review is maintainable on discovery of new and important

matter or evidence which, after the exercise of due diligence was not within the knowledge of the petitioner or could not be produced by him. In the

present case, the petitioner has brought important facts that the petitioner had supplied essential items to different fair price shops in accordance with

the terms of the contract. The statements of fair price shop owners were recorded and on the basis of aforesaid statements, this fact has come to the knowledge that the petitioner had supplied the essential commodities to different fair price shops in accordance with the contract awarded to him. The verification of facts, in our opinion, is necessary because the detention order is an extreme recourse and it has to be taken under specific circumstances because it is antithesis to due procedure of law. Hence, in view of these facts, which could not be brought by the petitioner at the time of filing of the petition, the review petition is allowed and order passed by this Court dated 08.05.2017 in W.P. No. 19671/2016 is hereby recalled.

12. In accordance with the judgment of the Hon'ble Apex Court passed in the case of Additional Secretary (supra) quoted above in this order that if order is passed on extraneous and irrelevant grounds, then it can be interfered by the Court in exercise of powers under Article 226 of the Constitution of India. In the present case, as per the documents submitted by the petitioner and on perusal of the statements of different fair price shop owners it is clear that the essential items have been supplied by the petitioner in accordance with the contract. Hence, in our opinion, it is necessary for the detaining authority to verify the aforesaid facts before passing the order of detention. Hence, the order of detention dated 11.07.2016 passed by the District Magistrate/Collector, Jabalpur is hereby quashed. It is further observed that the authority is at liberty to pass appropriate order after verification of facts in the light of the material and the evidence came subsequently in accordance with law.

13. No order as to costs.