

(1976) 01 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Review Applicatio No's. 3, 4 and 5 of 1975

Sat Pal Sabharwal

APPELLANT

Vs

The H.P. Financial Corporation, etc.

RESPONDENT

Date of Decision : 16-01-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1976) 5 ILR HP 34

Hon'ble Judges : R.S. Pathak, C.J.;C.R. Thakur, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Yogeshwar Prasad, Kailash Chand and D.P. Sud, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—These three review applications have been made by the Petitioner in three connected writ petitions disposed of by a common order.

2. The Himachal Pradesh Financial Corporation was constituted under the State Financial Corporation Act, 1951. The Petitioner, who was employed as an Assistant in the Punjab Financial Corporation, also constituted under the aforesaid Act, was allotted to the Union territory of Himachal Pradesh. He was permitted to join the Himachal Pradesh Financial Corporation in June, 1968. Some time later disciplinary proceedings were taken against the Petitioner, and he was removed from service by an order passed by Shri Govind Sahai, Managing Director of the Corporation. It appears that thereafter some promotions were made to the posts of Assistant Accountant, Accountant and Senior Accountant in the Corporation.

3. The Petitioner filed three writ petitions in this Court. In Civil Writ Petition No. 87 of 1969, he challenged the order of Shri Govind Sahai removing him from service and the order of the Board dismissing his appeal. He attacked the constitution of the Board of Directors and the initial appointment of Shri Govind

Sahai as Managing Director of the Corporation. There were other reliefs also, which we need not detail here. Civil Writ Petition No. 98 of 1970 was directed, inter alia, against the appointment of Shri R.C. Sood as Senior Accountant. Civil Writ Petition No. 75 of 1971 challenged the subsequent appointment of Shri Govind Sahai as Managing Director.

4. The writ petitions were dismissed by our order dated December 23, 1974. We delivered separate judgments but concurred in the order of dismissal. My learned brother held that the Petitioner could not invoke Article 226 of the Constitution because the (Staff) Regulations, on which the Petitioner relied, did not have the force of law, and the Petitioner did not hold a statutory office and therefore the proper remedy for the Petitioner was by way of a suit for damages. My learned brother also entered into the merits of the case and found against the Petitioner. In my judgment I expressed the view that although the Himachal Pradesh Financial Corporation was constituted by statute, it was an organisation essentially of a commercial nature, that the functions discharged by its officers and authorities were not Governmental functions, that the (Staff) Regulations, Which provided for the appointment and termination of service of the employees, did not have statutory force but were concerned merely with the internal management of the Corporation's affairs and that the officers, advisers and employees of the Corporation did not enjoy statutory status. Upon those considerations I came to the view that the appointments and orders impugned in the writ petitions could not be challenged under Article 226 of the Constitution. As the writ petitions were liable to dismissal as not maintainable, I did not enter into the merits of the controversy.

5. The Petitioner has now filed these review applications contending, inter alia, that there are errors apparent on the face of the record which justify a review of our judgments. Of all the grounds taken by the Petitioner, who appears in person, it seems to me that one ground by itself will suffice to dispose of these applications. The ground is that the view taken by us on the nature of the Himachal Pradesh Financial Corporation and of the (Staff) Regulations, and the status of the officers and employees of the Corporation, appear to be directly in conflict with the view expressed by the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation,

6. Before proceeding further, two features of the Supreme Court case are immediately apparent. One is that the decision was rendered in relation to the Industrial Finance Corporation Act. The other is that the decision was rendered some time after our order dismissing the writ petitions.

7. In regard to the first, strictly speaking a decision by the Supreme Court in relation to one statute cannot be regarded as the law laid down in regard to another statute, howsoever analogous it may be. But it is not disputed that there is a very close similarity between the provisions of the Industrial Finance

Corporation Act and the State Financial Corporation Act, and the position obtaining in respect of the Industrial Finance Corporation and its authorities and officers does not differ materially from that of the Himachal Pradesh Financial Corporation, its authorities and officers. Indeed, the submissions before us on these review applications have proceeded on the assumption that there is no material difference, and considerations pertinent to the Industrial Finance Corporation Act and the Corporation constituted under it are equally relevant to the State Financial Corporation Act and the State Corporation with which we are concerned.

8. In regard to the second feature, the question which arises is whether our judgments can be thrown open to review because of a different view taken by the Supreme Court in a case subsequently decided. There is a catena of cases laying down that no review is admissible merely because a subsequent event comes into being which, had it existed on the date of the judgment, could conceivably have led to a different decision. This was held in *Kotaghiri Venkata Subhama Rao v. Vellanki Venkatarama Rao* ILR (1901) Mad. 1 P.C. and *Chhajju Ram v. Neki* AIR 1922 P.C. 112 and several cases following thereafter. There is another class of cases where the law has been altered subsequently by legislation, and it has been held that if the legislation operates prospectively it cannot be made the basis of reviewing a judgment already delivered. Such a case was *Gyanji Pomaji Marwadi Vs. Ningappa Marbasappa Arleshwar*, But where the legislation operates retrospectively, so as to alter rights and obligations which were specifically under the consideration of the court at the time of disposing of the case, the courts have taken the view that full effect must be given to the legal fiction and it must be assumed that at the time when the case was heard and decided the law always was as the subsequent statute expressed it, and therefore the judgment suffers from an error apparent on the face of the record. An instance of such a case is *Mohammad Azamat Azim Khan Vs. Raja Shatranji and Others*, Then there is still another class of cases. They are cases where the counsel or court overlooked decisions of binding authority. There is a cleavage of opinion among the courts in India whether a case such as that justifies review. In my opinion, if a decision of the Supreme Court directly bearing on the point has not been cited by counsel or has been overlooked by the court, the court can review the judgment delivered by it. As long ago as *Mt. Jamna Kuer v. Lal Bahadur* AIR (37) 1950 F.C. 131, the Federal Court laid down that where an error creeps into the judgment of a court through the oversight of the court or the mistake of counsel, and it is apparent on the face of the record, it should be corrected without driving a party to appeal. If the court has omitted to consider a case of binding authority clearly concluding the point before it, and therefore has committed a grave and palpable error, the court should find its way to correcting its error. The cases favouring review or opposed to it are legion, and in every case the point falls to be decided on the particular facts.

9. The case before us falls in a different category. Here, the High Court took a certain view of the law, and on that view dismissed the writ petitions.

Subsequently, the Supreme Court in another case expressed a view apparently opposed to the view taken by the High Court. Does the High Court judgment become amenable to review?

10. At the outset, it must be noted that the Supreme Court only declares the law and does not enact it. The Supreme Court declares the true interpretation of the statute. It does not alter it. It adheres to the judicial function of explaining it. It was observed by the Supreme Court in *Rajeswar Prasad Misra v. The State of West Bengal* AIR 1965 S.C. 1887 that the tendency to read the observations of the court as statutory enactments should be avoided. Viewed in that light, an interpretation rendered by the Supreme Court subsequent in a case stands apart from a subsequent physical fact or event or prospective legislation.

11. The writ petitions were decided by us on our understanding of the statutory position embodied in the State Financial Corporation Act and the (Staff) Regulations. While the State Financial Corporation Act and the (Staff) Regulations remain the same, we now find that the acceptable view is that laid down by the Supreme Court in *Sukhdev Singh* (supra). In essence, the Supreme Court declaration of the law indicates that the true interpretation of the statute is contrary to what has been set down in the High Court judgment. Where on a reading of the Supreme Court decision the error in the High Court judgment is immediately apparent, it must be held that there is an error apparent on the face of the record. The error was always there in the High Court judgment, it has been made apparent by the declaration rendered by the Supreme Court, a declaration of binding authority. In taking this view I am fortified by what has been said in *Thadikulangara Pylee's son Pathrose Vs. Ayyazhiveetil Lakshmi Amma's son Kuttan and Others*, That case was considered by the Punjab and Haryana High Court in *Jaswant Singh v. Balbir Singh* AIR 1975 R L R 504, but the learned single Judge who decided that case felt himself bound by an earlier Division Bench of the same Court.

12. In my opinion, the grounds on which we have held that the (Staff) Regulations do not have the force of law and that the authorities and officers of the Himachal Pradesh Financial Corporation did not enjoy the status of public authorities and public officers appear to be inconsistent with what has been laid down by the Supreme Court in *Sukhdev Singh* (supra).

13. An attempt was made by learned Counsel for the Respondents to show that the law laid down in *Sukhdev Singh* (supra) does not represent the settled law, and some uncertainty prevails in the matter. I am not satisfied that we can enter into that question. It is not open to the High Courts to question a declaration of law by the Supreme Court; the High Courts are bound, even as the other courts and tribunals in the land, to follow it.

14. Learned Counsel for the Respondents then points out that the writ petitions were dismissed on the merits also, and therefore no review should be allowed. As to that, my brother Thakur alone considered the writ petitions on their merits.

My judgment proceeded entirely on the basis that Article 226 of the Constitution could not be invoked at all. Each judgment constitutes the basis of the order dismissing the writ petitions. If one of the judgments is vitiated, the order of dismissal must be considered invalid.

15. The last objection to the review applications is that the High Court has no power to review its decision disposing of a writ petition. It seems to me that the Supreme Court has unequivocally expressed itself on the point in *Shivdeo Singh and Others Vs. State of Punjab and Others*, . Although the facts were some what exceptional, the statement of the law is of the widest amplitude and its signification admits of no doubt. The Supreme Court observed:

It is sufficient to say 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 committed by it.

The Madhya Pradesh High Court in *Manoharlal Verma Vs. State of Madhya Pradesh and Others*, observed that in view of this declaration of the law the proposition that an order under Article 226 of the Constitution can be reviewed is no longer open to debate.

16. It has been said that if we accept the ground on which these review applications are founded there will be no finality to judicial proceedings in this Court, and a veritable flood of review applications will overwhelm the Court. I do not think we should be overly alarmed by the picture so projected. There is no doubt that every case must be concluded finally. *Interest reipublicae ut sit finis litium* is a maxim of sound public policy. At the same time, if their jurisdiction and powers permit, the courts should never be reluctant to correct errors committed by them, no matter how insignificant the case or how small the stake. We are courts of justice and not merely of law, and every impulse in the cause of justice requires us to ensure that so far as lies within our powers no party should be permitted to suffer by an error of the Court. The finality of judicial proceedings is ensured by two controlling considerations. One is the statutory period of limitation provided for invoking the power of review, and where a court acts in equity and no statutory period is prescribed the doctrine of laches comes into play. The second controlling consideration is provided by the limited categories of cases in which review is admissible. In a case where review is permitted because of an error apparent on the face of the record, the error must be a grave and palpable error one that is readily apparent on the face of the record and does not admit of two opinions on the point decided by the court. They are considerations to which every court must pay careful heed when its power of review is invoked.

17. I allow the review applications in this and the connected writ petitions, recall the judgments and order dismissing the writ petitions, direct the writ petitions to be restored to their original number and order them to be listed for re-hearing.

C.R. Thakur, J:

18. I agree.