THE HIGH COURT OF MEGHALAYA

REVIEW PETN. No.17/2014
ARISING OUT OF WP(C)No.378/2013

The Garo Hills Autonomous District Council
Represented by Secretary to the Executive Committee,
GHADC, Tura. **::::** Review Petitioner

-**Vs-**

Shri. Mody M. Sangma,
S/o Shri. N. Ch. Marak,
R/o Rongchadengre village,
P.O. Grenggondhi,
South West East Garo Hills District,
Meghalaya. **::::** Respondent

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner	:	Mr. GS Massar, Sr. Adv Mr. S Dey, Adv
For the Respondent	:	Mr. S Sen, Adv
Date of hearing	:	***11.11.2014***
Date of Judgment & Order	:	***11.11.2014***

JUDGMENT AND ORDER(ORAL)

Heard Mr. GS Massar, learned senior counsel assisted by Mr. S Dey, learned counsel appearing for the review petitioner i.e. respondent No.1 in WP(C)No.378/2013 and Mr. S Sen, learned counsel for the respondent/writ petitioner.

2. The main thrust for filing the present review petition for review of the judgment and order of this Court dated 30.09.2014 are:-

(i) in the writ petition i.e. WP(C)No.378/2013 only the portion of the Notification i.e. impugned Notification dated 01.10.2012 is impugned in the writ petition and;

(ii) also para 8 (1) of the Sixth Schedule to the Constitution of India had not been considered while passing the judgment and order dated 30.09.2014.

3. On careful perusal of the present review petition as well as hearing of the submission of the learned senior counsel appearing for the review petitioner i.e. respondent No.1 in WP(C)No.378/2013, it is clear that the review petitioner is seeking for rehearing of the writ petition i.e. WP(C)No.378/2013 which had already been heard and finally decided. It is now well settled that the review petition cannot be filed for rehearing of the writ petition which had already been finally decided and also that the writ petition which had already been decided finally cannot be reopened for hearing only on the ground that one important point had not been discussed at the time of final disposing of the writ petition. It is equally well settled that there should be finality of the judgment. It is also equally well settled that the review petition does not lie on the wrong decision. Review petition will lie when there is an error apparent on the face of the judgment and order and no consideration/justification is required to see if there is an error apparent on the face of the judgment and order. Once hearing and discussion is required to see if there is an error apparent on the face of the judgment and order, such type of error is not an error apparent on the face of the judgment and order for which review petition could be filed. For this settled principle of law, no citation of case law is required.

4. It is a settled law that the fact contains in the judgment as to what happened in the Court or as to what are the points argued in the Court are conclusive and cannot ordinarily be allowed to be controverted by an

affidavit or otherwise. Regarding this settled law, it would be sufficed to refer to two cases i.e. **(i)** ***Food Corpn. of India and others v. Bhanu Lodh and others: (2005) 3 SCC 618; and (ii) Bank of Bihar v. Mahabir Lal & Others: AIR 1964 SC 377 (380).***

Para 11 of the *SCC* in ***Food Corpn. of India*** case ***(****Supra****)*** reads as follows:-

> "***11.*** *We may first dispose of the contention raised by Mr. Sanjay Parikh, learned counsel for the petitioner in Special Leave Petition (Civil) No.11475 of 2004. Having perused the judgment of the learned Single Judge in the writ petition, we find that the only question which was argued before the learned Single Judge was the one which we have extracted hereinbefore. No other point seems to have been addressed to the Court. A perusal of the judgment in the writ appeal also supports this view. In the face of this record, it is not possible to accept the contention of the learned counsel for the petitioner that any other arguments were addressed. We must accept as correct the facts as obtaining from the judgment of the High Court, which cannot be controverted by the averments made in the present special leave petition, nor by the statement made across the Bar. We are, therefore, not in a position to accept that any contention other than the contention placed before the High Court was argued before the High Court. (See the observations of this Court in para 4 in the judgment of* ***State of Maharashtra v. Ramdas Shrinivas Nayak: (1982) 2 SCC 463: 1982 SCC (Cri) 478****.) The only contention which appears to have been argued and examined by the High Court pertained to the power of the Central Government to issue direction under sub-section (2) of Section 6 of the Act, which has the effect of putting an embargo on the direct recruitment of employees*."

5. It is also settled position in law that principle of finality of the judgment of superior court should be maintained inasmuch as review petitions are not to be taken as a routine course. It is also equally well settled that as early as 1941, the Federal Court had discussed the principles governing the power of review in ***Raja Prithi Chand v. Sukhrai: AIR 1941 FC 1*** and held that the Federal Court will not sit as a Court of Appeal from its

own decisions nor will it entertain review applications for rehearing and also that an order once made is final.

6. The Apex Court in ***Col. Avtar Singh Seklhon v. Union of India & Ors: AIR 1980 SC 2041*** held that review is not a routine procedure and review does not lie even on a wrong decision. The Apex Court in ***Lily Thomas & Ors v. Union of India & Ors: (2000) 6 SCC 224*** held that review is not an appeal in disguise. The power to review cannot be exercised merely to substitute the point of law. Relevant portion of the judgment of the Apex Court in ***Lily Thomas & Ors v. Union of India & Ors*** *(Supra)* is quoted hereunder:-

> "*The power of review is not an inherent power. It must be conferred by law. A review petition 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 perpetuation shall result in a miscarriage of justice nothing would preclude the court from rectifying the error.*
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> *The power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches coordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its power under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statue, can take a different view notwithstanding the earlier judgment.*"

7. The Apex Court in ***Sow, Chandra Kanta & Anr v. Sheikh Habib: AIR 1975 SC 1500*** held that once an order passed by the superior court i.e. the Supreme Court or the High Court is final and cannot be interfered with lightly. An application for review of the earlier judgment of superior court cannot be entertained for the purpose of rehearing through different counsel and once an order had been passed by the court, a review thereof must be subject to the Rules of the game and cannot be lightly interfered with and review of the 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, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient for reviewing the earlier final judgment and order. The same principle is again reiterated by the Apex Court in ***Col. Avtar Singh Sekhon v. Union of India & Ors*** *(Supra)*.

8. The Apex Court in ***Union of India v. Paul Manickam & Anr: (2003) 8 SCC 342*** held that a review application for bringing a new case which could have been mentioned earlier is not maintainable. Relevant portion at para 19 of the SCC in ***Union of India v. Paul Manickam & Anr*** ***(Supra)*** is quoted hereunder:-

> *"As noted supra, for the first time in the review application it was disclosed that the representation was made to the President of India and no representation was made to the State of Tamil Nadu or the Union of India who were arrayed in the writ petition as parties. This appears to be a deliberate attempt to create confusion and reap an undeserved benefit by adopting such dubious device. The High Court also transgressed its jurisdiction in entertaining the review petition with an entirely new substratum of issues. Considering the limited scope for review, the High Court ought not to have taken*

into account factual aspects which were not disclosed or were concealed in the writ petition."

9. The Apex Court in ***Aribam Tuleshwar Sharma v. Aribam Pishak Sharma & Ors: (1979) 4 SCC 389*** held that the final judgment and order cannot be reviewed on the ground that certain documents forming part of the record were not considered at the time of passing the judgment and order. Paras 3 & 4 of the SCC in ***Aribam Tuleshwar Sharma's*** Case **(***Supra***)** read as follows:-

"3. *The Judicial Commissioner gave two reasons for reviewing his predecessors order. The first was that his predecessor had overlooked two important documents exhibits A/1 and A/3 which showed that the respondents were in possession of the sites even in the year 1948, 49 and that the grants must have been made even by them. The second was that there was a patent illegality in permitting the appellant to question, in a single Writ Petition settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court* ***in Shivdev Singh and Ors. v. State of Punjab and Ors. AIR 1963 SC 1909*** *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. But, there are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or 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 also be exercised on any analogous ground. <u>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</u>.*

4. In the present case both the grounds on which the review was allowed were hardly grounds for review. <u>That the two documents which were part of the record were not considered by the Court at the time of issue of a Writ under Article 226, cannot be a ground for review especially when the two documents were not even relied upon by the parties in the affidavits filed before the Court in the proceeding under Article 226</u>. Again that several instead of one Writ Petition should have

been filed is a mere question of procedure which certainly would not justify a review. We are, therefore, of the view that the Judicial Commissioner acted without jurisdiction in the allowing the review. The order of the Judicial Commissioner dated December 7, 1967 is accordingly set aside and the order dated May 25, 1965, is restored. The appeal is allowed but without costs.

10. The Apex Court in ***Dr. Subramanian Swamy v. State of Tamil Nadu & Ors: (2014) 5 SCC 75*** held that:

"*52. The issue can be examined from another angel. The explanation to Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. (Vide* ***Rajinder Kumar v. Rambhai: (2007) 15 SCC 513: (2010) 3 SCC (Cri) 584: AIR 2003 SC 2095***)".

11. The Apex Court in ***Usha Bharti v. State of Uttar Pradesh & Ors: (2014) 7 SCC 663*** had considered scope and limitation of review court and held that:

"*68. We have no hesitation in accepting the submission of Mr. Bhushan that the High Court or this Court, in exercise of its powers of review can reopen the case and rehear the entire matter. But we must hasten to add that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 CPC as well as the rules framed by the High Courts and this Court. The limits within which the courts can exercise the powers of review have been well settled in a catena of judgments. All the judgments have in fact been considered by the High Court in pp. 16 to 23. The High Court has also considered the judgment in S.* ***Nagraj v. State of Karnataka: 1993 Supp (4) SCC 595: 1994 SCC (L&S) 320: (1994) 26 ATC 448****, which reiterates the principle that: (SCC p. 619, para 19)*

> *"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."

69. These principles are far too well entrenched in the Indian jurisprudence, to warrant reiteration. However, for the sake of completion, we may notice that Mr. Bhushan had relied upon ***Board of Control for Cricket in India v. Netaji Cirkcet Club: (2005) 4 SCC 741*** *and* ***Green View Tea & Industries: Green View Tea & Industries v. Collector, (2004) 4 SCC 122****. It would be useful to reiterate the following excerpts:*

69.1 In ***Board of Control for Cricket in India: (2005) 4 SCC 741****, it was observed that: (SCC p. 765, para 90)*

"90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit'.

69.2 This Court in ***Green View Tea & Industries: Green View Tea & Industries v. Collector, (2004) 4 SCC 122*** *reiterated the view adopted by it in* ***S. Nagaraj: S.Nagaraj v. State of Karnataka, 1993 Supp (4) SCC 595: 1994 SCC (L&S) 320: (1994) 26 ATC 448.*** *Therefore, the ratio of Green view Tea is not applicable in this case.*

70. In view of the observations made in the aforesaid judgments, this Court would not be justified in holding that the High Court has erred in law in not reviewing its earlier judgment."

12. This Court, keeping in view of the limited jurisdiction of review, had carefully given anxious consideration to the judgment and order dated 30.09.2014 passed in WP(C)No.378/2013 to see as to whether there is an error apparent on the face of the judgment and order. After such consideration, this Court is of the considered view that there is no error

apparent on the face of the judgment and order dated 30.09.2014. This Court for the sake of reiteration stated that this Court already held in the judgment and order dated 30.09.2014 that the GHADC, Tura is not the competent authority to issue the impugned Notification dated 01.10.2012. In such circumstances, no review petition can be filed only on the ground that in the writ petition i.e. WP(C)No.378/2013 only part of the impugned Notification dated 01.10.2012 had been challenged.

13. Review petition is devoid of merit and accordingly dismissed.

JUDGE

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