THE HIGH COURT OF MEGHALAYA

Review Petition No.8/2014

1. Union of India represented by the Secretary,
Govt. of India, Ministry of Home Affairs, New Delhi.

2. The Director General,
Central Reserve Police Force (CRPF),
Block No.-1, CGO Complex, New Delhi.

3. Inspector General of Police,
North Eastern Sector, (NES), CRPF,
Shillong, Meghalaya. **::::** Review Petitioners

-Vs-

Shri. Binay Chetri,
S/o Shri. Ram Chandra Chetri,
R/o Bishop Cotton Road, 4th Furlong,
Shillong, East Khasi Hills District,
Meghalaya. **::::** Respondent/Writ Petitioner

BEFORE
HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH

For the Review Petitioners : Mr. R Deb Nath, CGC

For the Respondent : None appears

Date of hearing : ***11.11.2014***

Date of Judgment & Order : ***02.12.2014***

JUDGMENT AND ORDER

(Justice T. Nandakumar Singh)

Heard Mr. R Deb Nath, learned CGC appearing for the review petitioners/respondents in WP(C)(SH)No.288/2008/appellants in Writ Appeal No.(SH)29/2011.

2. By this review petition, the review petitioners/respondents in WP(C)(SH)No.288/2008/appellants in Writ Appeal No.(SH)29/2011 are

praying for review of the judgment and order of the Division Bench of the erstwhile Gauhati High Court, Shillong Bench dated 29.08.2011 passed in WA No.(SH)29/2011 only on the ground that while examining the records, it was revealed from the records that Shri.K.A. Ningam was promoted from the rank of Assistant Commandant to the rank of Deputy Commandant on 11.12.2003; and subsequently, Shri.K.A. Ningam was promoted from the rank of Deputy Commandant to the rank of Second-in-Command vide Departmental Promotion Committee (for short 'DPC') dated 15.06.2009 and also that Shri.V.K. Rawat was promoted from the rank of Assistant Commandant to Deputy Commandant on the basis of the DPC held on 07.03.2011 and also that the respondent/writ petitioner was, subsequently, promoted to the rank of Deputy Commandant on 18.02.2009. For deciding this ground for review, it would be pertinent to mention the background fact leading to the filing of the writ petition i.e. WP(C)No.(SH)288/2008 and writ appeal i.e. WA No.(SH)29/2011. Accordingly, concise fact, sans detailed, is briefly noted.

3. The respondent/writ petitioner Shri. Binay Chetri was appointed as Assistant Commandant in Central Reserve Police Force (CRPF) in the year 1999 and in the later part of the year 2003, he was ordered to move to Department 53 Tikrikilla and took over the charge of Quarter Master and Motor Transport Officer. The Commandant 53 Bn., CRPF undertook repairing work of some vehicles at the cost of Rs.12,900/- and Rs.8150/- respectively vide sanction order dated 11.10.2003. However, the Deputy Inspector General Police (DIGP) CRPF, having noticed some alleged irregularities in the said repairing work, ordered for holding of a court of enquiry vide office order dated 11.11.2004. One Shri. Ranbir Singh, Additional DIGP/Group Centre CRPF, Guwahati was detailed to preside over the said court of enquiry. The petitioner participated in the said enquiry

proceeding and denied the charges leveled against him and his statement of defence was also recorded on 28.03.2005. The said enquiry officer of the said court of enquiry submitted his report to the DIGP, CRPF, Guwahati with a finding that the court of enquiry did not find any financial irregularity. The DIGP, CRPF, Guwahati did not agree with the finding of the court of enquiry that there was no financial irregularity and without citing any reason of his disagreement with the said finding, he (DIGP, CRPF) forwarded the matter to the IGP, CRPF with the recommendation to initiate regular departmental proceeding against the officers allegedly involved in the repairing work of the vehicles with further order for making recovery. The IGP, N.E. Sector CRPF, Shillong issued a communication/order dated 03.09.2005 to the petitioner and others i.e. the petitioner, Shri.K.A. Ningam, Shri.V.K. Rawat and three others to deposit a sum of Rs.1,069/- each in the Govt. Treasury. For easy reference, the said order dated 03.09.2005 is quoted hereunder:-

"*OFFICE OF THE INSPECTOR GENERAL OF POLICE,*
NE SECTOR CRPF SHILLONG 793001

No. I-X-53/2005-NES-Estt-3 Dated, the Sept' 2005

OFFICE ORDER

Commandant 53 Bn, CRPF approved to undertake repair work of vehicle Regn No. Regn No. DL-IG-B-2464(26) TATA Truck and DEP-3394(28) TATA Bus of a cost of Rs. 12,900/- and 8,150/- respectively vide sanction order No. L.VIII-3/2003-04-MT-53 dated 11/10/2003. But required repairs of these vehicles were not carried out and irregularities were observed Bills for such irregular repair were preferred to PAO, CRPF, New Delhi for payment to the firm.

2. A Court of Inquiry on the above was therefore conducted to find out the circumstances under which irregular repair of vehicle occurred and to fix the responsibility vide DIGP, CRPF, Guwahati office order No. C-IV-1/2004-PA dated 11/11/2004 Shri Ranbir Singh, Addl. DIGP, GC, CRPF, Guwahati was detailed to preside over the Court. The Court has submitted its report to DIGP, CRPF, Guwahati with the findings that though repair of vehicles were carried out in a irregular manner, there was no loss to the exchequer as the job work carried out at later stage and the Court could not establish any financial irregularity. The DIGP, CRPF, Guwahati did not agree with the

findings of the court and further …. with the preliminary enquiry report and … trial the repair of vehicle carried out by 53 Bn on vehicle Regn No. DL-IG-B-2462(26) TATA Truck was irregular and fake one, resulting which the loss of Rs. 8,550/- occurred to the Govt.

3. Having gone through the facts as brought out and as per comments/recommendation of the DIGP, CRPF, Guwahati the IGP has agreed with the comments/recommendations of the DIGP, CRPF, Guwahati. I am therefore desired to convey the following orders:-

(a) The DIGP, CRPF Guwahati to initiate disciplinary action against the following personnel for their lapses and negligence in discharging their duties.

(i) SI/MM (Now HC/Ptr) P.C.Mulla (Now in 6 Bn)
(ii) SI/GD Shyamanandan (Now in 164 Bn)

(b) Following officers may be issued with warning letter by my office for their failure to verify the repair work before signing the LCR on 11/11/2003 and 03/12/2003 in their capacity as Member of Line Committee.

(i) Shri S.Bhowmik, Asstt Comdt (Now in 50 Bn)
(ii) Shri V.K. Rawat, Asstt Comdt (Now in 50 Bn)

(c) Rs 6,412/- @ Rs 1,069/- each from the following personnel may be recovered and deposited into the Govt. Treasury.

(i) Shri K.A. Ningam, Dy Comdt, (IRLA-4494) 53 Bn (Now in 31 Bn)

(ii) Shri Binoy Chetry, Asstt Comdt (IRLA-4971) 53 Bn (Now in GC KKT)(writ petitioner)*

(iii) Shri S. Bhowmik, Asstt Comdt (IRLA No. 6026) 50 Bn

(iv) Shri V.K. Rawat, Asstt Comdt (IRLA No. 6028) 50 Bn

(v) SI/MM (Now HC/Ptr) P.C. Mulla (Now in 6 Bn)

(vi) SI/GD Shyamanandan (Now in 164 Bn)

(d) Recovery of Rs 2,138/- from the following personnel who have proceeded on retirement may be waived.

(i) SI/GD N.S. Rana, 53 Bn
(ii) SI/MT S.N. Rai, 53 Bn

No. G.II-1/2005-EC-8 *Dated, the 3rd Sept 2005*

Copy to

Shri Binoy Chettry, A/C, Insp (M) Cash for information and needful action.

Sd/-
For Addl DIGP, GC, CRPF, KKT"

4. The Additional DIGP (Pers.I) CRPF issued a memorandum being No.D.IX-20/2005-CRC dated 16.06.2006 for conducting the departmental enquiry for the said alleged financial irregularity of a very small amount in repairing the vehicles enclosing the statement of imputation of misconduct/misbehavior on which action was proposed to be taken against the petitioner. After holding the departmental enquiry in clear violation of the principles of natural justice, the Additional DIGP (Pers.I) issued an order dated 07.05.2008 for imposing penalty of "censure" to the respondent/writ petitioner Shri. Binay Chetri. Appeal filed against the said order dated 07.05.2008 was also not fruitful. It is the fact that the duly constituted DPC had recommended the respondent/writ petitioner for promotion to the rank of Deputy Commandant vide signal dated 07.07.2006; in that signal/promotion order, the name of the petitioner appeared at Srl.No.1 under the North Eastern Sector where there were 7(seven) vacancies and also that before issuing of the charge sheet dated 16.06.2006, the DPC already considered and recommended the case of the petitioner for promotion to the rank of Deputy Commandant. Because of the said order dated 07.05.2008 imposing penalty of "censure", promotion of the petitioner in WP(C)No.(SH)288/2008/respondent in WA No.(SH)29/2011, to the rank of Deputy Commandant had not been given effect to. Being aggrieved, the respondent/writ petitioner filed the writ petition i.e. WP(C)No.(SH)288/2008.

5. The review petitioners-respondents in writ petition/appellants in writ appeal had filed affidavit-in-opposition. The respondent/writ petitioner also filed rejoinder affidavit/affidavit-in-reply. The respondent/writ petitioner stated in the rejoinder affidavit that "*it is also pertinent to state that Shri.K.A. Ningam, Deputy Commandant and Shri.V.K. Rawat, Assistant Commandant were awarded penalty of "censure" in the same case, but were timely promoted without any effect in the seniority and hence, serious discrimination had also been caused to the petitioner*." In the rejoinder affidavit/affidavit-in-reply, the petitioner did not mention the dates of promotion of Shri.K.A. Ningam and Shri.V.K. Rawat to the higher rank. But the petitioner only stated that they also awarded penalty of "censure" for the same case and they had been promoted to the higher rank without affecting the seniority. The learned Single Judge vide judgment and order dated 14.03.2011 passed in WP(C)No.(SH)288/2008 had allowed the writ petition by setting aside the impugned order dated 03.09.2005 and also the impugned order dated 07.05.2008 imposing penalty of "censure". In the said judgment and order dated 14.03.2011, the learned Single Judge simply mentioned that the said two officers namely Shri.K.A. Ningam, Deputy Commandant and Shri.V.K. Rawat, Assistant Commandant, who were also made liable for purported irregularity in the said repairing job and thereafter, imposed with penalty of recovery and also imposed with penalty of "censure" like that of the petitioner had been promoted.

6. Review petitioners being aggrieved by the said judgment and order dated 14.03.2011 filed Writ Appeal No.(SH)29/2011. In the Memo of writ appeal, the review petitioners/appellants stated that Shri.K.A. Ningam was promoted from the rank of Assistant Commandant to the rank of Deputy Commandant on 11.12.2003 and subsequently, from the rank of Deputy Commandant to the rank of Second-in-Command vide DPC dated

15.06.2009 and also Shri.V.K. Rawat from the rank of Assistant Commandant to the rank of Deputy Commandant on the basis of the DPC held on 07.03.2011. It is also stated in the memo of writ appeal that the respondent/writ petitioner was promoted to the rank of Deputy Commandant on 18.02.2009. From the memorandum of writ appeal, it is clear that the review petitioners are not denying that the said Shri.K.A. Ningam and Shri.V.K. Rawat, were further promoted to the higher rank at the time of passing the said judgment and order of the learned Single Judge dated 14.03.2011. As stated above, neither in the rejoinder affidavit/affidavit-in-reply filed by the respondent/writ petitioner nor in the judgment and order of the learned Single Judge dated 14.03.2011 mentioned the respective dates of promotions of the said two officers namely, Shri.K.A. Ningam and Shri.V.K. Rawat to the higher rank. The Division Bench of the erstwhile Gauhati High Court, Shillong Bench dismissed the Writ Appeal No.(SH)29/2011 vide judgment and order dated 29.08.2011 upholding the said judgment and order of the learned Single Judge dated 14.03.2011 by reiterating the observations of the learned Single Judge in the judgment and order dated 14.03.2011 passed in WP(C)No.(SH)288/2008 that "*the learned Single Judge also further held that the two officers namely, Shri.K.A. Ningam and Shri.V.K. Rawat, who faced the same court of enquiry and against whom similar penalty had been imposed, had been considered for promotion to the higher post. It is the further case of the respondent/writ petitioner that the petitioner's case was considered for promotion to the next higher post by the DPC and position of the petitioner is at Srl.No.1 in the minutes of selection, but his case for promotion was left out only on the ground that penalty had been imposed to the petitioner. In such situation, the learned Single Judge made clear finding that the petitioner should be treated similarly with the said two officers namely, Shri.K.A. Ningam and Shri.V.K. Rawat, who faced the same court of inquiry along with the petitioner.*" It is clear fact that the said

two officers namely, Shri.K.A. Ningam and Shri.V.K. Rawat, who faced the same court of enquiry along with the petitioner, had been promoted to the higher rank. But the review petitioners are asking for review of only the order of the Division Bench dated 29.08.2011 passed in WA No.(SH)29/2011, which upheld the judgment and order of the learned Single Judge dated 14.03.2011 passed in WP(C)No.(SH)288/2008 for simply mentioning the dates of promotion of the said two officers namely, Shri.K.A. Ningam and Shri.V.K. Rawat, which are not mentioned either in the judgment and order of the learned Single Judge dated 14.03.2011 passed in WP(C)No.(SH)288/2008 and judgment and order of the Division Bench dated 29.08.2011 passed in WA No.(SH)29/2011.

7. The learned Division Bench passed the oral judgment and order dated 29.08.2011 in WA No.(SH)29/2011 in presence of Mr. R Deb Nath, learned CGC appearing for the review petitioners/appellants in the writ appeal. Mr. R Deb Nath, learned CGC appearing for the review petitioners/appellants in the writ appeal did not even argue before the Court that recording of the dates of promotion of the said two officers namely, Shri.K.A. Ningam and Shri.V.K. Rawat to the next higher rank are required to be mentioned in the judgment and order and also that the dates of promotion of the said two officers namely, Shri.K.A. Ningam and Shri.V.K. Rawat play an important part in deciding the appeal. As stated above, the respective dates of promotions of the said two officers namely, Shri.K.A. Ningam and Shri.V.K. Rawat are neither mentioned in the judgment and order of the learned Single Judge dated 14.03.2011 nor in the judgment and order of the Division Bench dated 29.08.2011. But it is the fact that the said two officers namely, Shri.K.A. Ningam and Shri.V.K. Rawat, who faced the same court of enquiry along with the petitioner for the same charge had been promoted to the higher rank without affecting the seniority. 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*."

8. 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.

9. 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.*
>
> *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."

10. 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)*.

11. 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."

12. 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,</u>

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. 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.

13. 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***)".

14. 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."

15. The Apex Court while dismissing the Special Leave to Appeal (Civil) No.22897/2012 filed by the review petitioners against the judgment and order of the Division Bench dated 29.08.2011 passed in WA

No.(SH)29/2011 by passing the order dated 11.01.2013 with the observations that "special leave petition is dismissed as withdrawn with liberty to file a review petition before the High Court" did not grant the liberty to the review petitioners to file a fresh SLP against the judgment and order of the Division Bench dated 29.08.2011 passed in WA No.(SH)29/2011. In such circumstances, in the case of rejection of the present review petition, review petitioners cannot file fresh SLP challenging the judgment and order of the Division Bench dated 29.08.2011 passed in WA No.(SH)29/2011. Regarding this point, it would be sufficed to refer to the decision of the Apex Court in ***Vinod Kapoor v. State of Goa & Ors: (2012) 12 SCC 378***. Paras 9, 10 & 11 of the *SCC* in ***Vinod Kapoor's*** case *(**Supra**)* read as follows:-

> "*9. The question that we have to decide is whether the appeal will lie against the order dated 29-1-2000* ***[(Vinod Kapoor v. State of Goa, WP(C)No.253 of 1999, order dated 29-1-2000 (Bom)]*** *of the High Court dismissing Writ Petition No. 253 of 1999 when an earlier special leave petition against the said order dated 29-1-2000* ***[(Vinod Kapoor v. State of Goa, WP(C)No.253 of 1999, order dated 29-1-2000 (Bom)]*** *of the High Court was filed by the appellant but was withdrawn with the permission of this Court to pursue his remedy by way of review against the said order dated 29-1-2000* ***[(Vinod Kapoor v. State of Goa, WP(C)No.253 of 1999, order dated 29-1-2000 (Bom)]*** *of the High Court. As the appellant has withdrawn the special leave to appeal against the order dated 29-1-2000* ***[(Vinod Kapoor v. State of Goa, WP(C)No.253 of 1999, order dated 29-1-2000 (Bom)]*** *of the High Court with permission to pursue his remedy by way of review instead and had not taken the liberty from this Court to challenge the order dated 29-1-2000* ***[(Vinod Kapoor v. State of Goa, WP(C)No.253 of 1999, order dated 29-1-2000 (Bom)]*** *afresh by way of special leave in case he did not get relief in the review application, he is precluded from challenging the order dated 29-1-2000* ***[(Vinod Kapoor v. State of Goa, WP(C)No.253 of 1999, order dated 29-1-2000 (Bom)]*** *of the High Court by way of special leave to appeal under Article 136 of the Constitution.*
>
> *10. In* ***Abhishek Malviya v. Welfare Commr.: (2008) 3 SCC 108*** *cited by the counsel for Respondent 8, the order dated 13-3-1997 of the Madhya Pradesh High Court sustaining the order of compensation passed by the Additional Welfare Commissioner was challenged before this Court in a special leave petition and by order dated 4-5-1999 this Court dismissed the special leave petition as withdrawn and when the fresh appeal by way of special leave under Article 136 of the*

Constitution was filed, this Court held that the fresh appeal is liable to be dismissed as not maintainable. Para 8 of this Court's order in the aforesaid case of ***Abhishek Malviya v. Welfare Commr.: (2008) 3 SCC 108*** *is quoted herein below: (SCC p. 110, para 8)*

> *"8. We find no merit in the appellant's contention. The order dated 4-5-1999 of this Court specifically refers to the error in the order describing the appellant as 'deceased' and dismissed the SLP as withdrawn with the following observation: 'He wants to apply to the Additional Welfare Commissioner for correction. We express no opinion in that behalf.' No liberty was reserved to file a fresh appeal or seek review of the order dated 13-3-1997 on merits. The order dated 13-3-1997 having attained finality, his efforts to reagitate the issue again and again is an exercise in futility. We are, therefore, of the view that the appeal is liable to be dismissed."*

11. *Moreover, on the High Court rejecting the application for review of the appellant, the order rejecting the application for review is not applicable by virtue of the principle in Order 47 Rule 7 CPC. In* ***Shanker Motiram Nale v. Shiolalsing Gannusing Rajput: (1994) 2 SCC 753****;* ***Suseel Finance & Leasing Co. v. M. Lata: (2004) 13 SCC 675*** *and;* ***M.N. Haider v. Kendriya Vidyalaya Sangathan: (2004) 13 SCC 677*** *cited by the learned counsel for Respondent 8, this Court has consistently held that an appeal by way of special leave petition under Article 136 of the Constitution is not maintainable against the order rejecting an application for review in view of the provisions of Order 47 Rule 7 CPC.*

16. For the foregoing reasons, this Court is of the considered view that the present review petition, which is in disguise of an appeal against the judgment and order of the learned Single Judge dated 14.03.2011 passed in WP(C)No.(SH)288/2008, for rehearing of the Writ Appeal No.(SH)29/2011 by reviewing the final judgment and order of the Division Bench dated 29.08.2011 passed in WA No.(SH)29/2011 is devoid of merit and also that there is no error apparent on the face of the judgment and order dated 29.08.2011 passed in WA No.(SH)29/2011. Accordingly, the present review petition is dismissed and a cost of Rs.2000/- only is imposed to the review petitioners for abusing the process of law. The said cost of Rs.2000/- only should be deposited in the Registry of this Court within a period of two weeks

and the Registry shall deposit the said amount in the fund of the Shillong Bar Association for using the same in extending legal aid to the economically disabled persons of the State of Meghalaya.

JUDGE **CHIEF JUSTICE (ACTING)**

Lam