HIGH COURT OF GUJARAT

INDIAN OIL CORPORATION LIMITED
Versus
DEEPAK V SHUKLA

Date of Decision: 04 April 1997

Citation: 1997 LawSuit(Guj) 175

Hon'ble Judges: S D Pandit

Eq. Citations: 1998 AIR(Guj) 8, **1997 2 GLH 755**, 1997 4 GCD 461

Case Type: Miscellaneous Petition (Civil)

Case No: 697 of 1997

Subject: Civil, Constitution

Acts Referred:
Constitution Of India Art 226
Code Of Civil Procedure, 1908 Or 47R 1

Final Decision: Application dismissed

Advocates: G N Shah, R C Jani

Cases Cited in (+): **1**

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[1] Rule. I have heard both the sides at the length at this stage of merits and, therefore, with the consent of the parties, I proceed to decide this application finally by this judgment.

[2] This application is filed by the original respondent in SCA No. 3887/96 which has been decided by me on 27-1-1997. In the application it has not been specifically stated as to what is the nature of this application but at the time of hearing learned Advocate for the applicant Shri G.N. Shah submitted that the application is an application to review and recall the order passed by this Court on 27-1-1997 in SCA No. 3887/96. It is also submitted by him that this application is filed in pursuance of the order passed by the Division Bench of this Court in LPA No. 206/97. I have perused the Judgment-order given by the Division Bench. But if the order of the Division Bench in LPA No. 208/97 is read carefully then it would be quite clear that there is no direction of the

Division Bench to file any application. The Division Bench had only granted opportunity to the petitioner as prayed by the petitioner to approach this Court by an appropriate application for appropriate order. The order of the Division Bench is running as under :

> "This appeal is directed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 3887 of 1993 decided on January 27, 1996. Along with the Letters Patent Appeal the appellant has placed on record certain new and additional materials in the form of some policy decision said to have been taken by the authorities. In our opinion, it would be in the fitness of things if this Court in exercise of its jurisdiction under letters patent may not express any opinion. Mr. G.N. Shah learned Counsel for the appellant states that that appellant Corporation may be permitted to move the learned Single Judge by filing an appropriate application before the learned Single Judge who decided the matter. He, however, states that in view of the fact that a direction is issued by the learned Single Judge and since some time was taken by the appellant in getting the certified copy and, therefore, the corporation has approached this Court, some time may be granted against the order passed by the learned Single Judge. In the facts and circumstances' of the case ends of justice would be met if this appeal is disposed of with a liberty to move the learned Single Judge for an appropriate order to be passed. The direction issued by the learned Single Judge is ordered to be kept in abeyance upto March 26, 1997. The learned Counsel for the appellant also states that the judgment is dated 27th January, 1997 and a question of limitation may also arise. He however states that immediately the copy was applied for after some time the certified copy was made available to the appellant. It is open to the learned Counsel for the appellant to invite the attention of the Court to that aspect and the Court will pass an appropriate order. The appeal is accordingly disposed of. No order as to costs."

I proceed to consider this application as an application for review of the original order passed by this Court on 27-1-1997. It must be remembered that where a litigant has obtained a judgment in a Court of justice he is by law entitled not to be deprived of that judgment without solid ground. Where, therefore, a review of a judgment is asked for by a party greatest care ought to be exercised by the Court in granting the review especially where the ground of review is the discovery of fresh evidence. It is settled law that scope of review is limited. The provisions of Code of Civil Procedure do not apply to a proceeding under Art. 226 of the Constitution of India. The proceeding before this Court is a proceeding under Art. 226 of the Constitution of India and in the case of AT Sharma vs. A.P.Sharma, AIR 1979 SC 1047 the Apex Court has considered the question of review powers in a writ petition by laying down the following principles :

"It is true there is nothing in Art. 226 of the Constitution to preclude the 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 the power of review. The power of review may be exercised on the discovery of new and important matter of 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. 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. The above decision of the Apex Court is before the amendments of Sec. 141 CPC and an explanation has been added to Sec. 141 CPC by the amendment Act of 1976 and that Sec. 141 along with the explanation is running as under :

"141. The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction."

Explanation : In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceedings under Art. 226 of the Constitution."

[3] The Full Bench of this Court in the case of Gujarat University vs. Sonal P. Shah, AIR 1982 (Gujarat) 58 has considered the provisions of Sec. 141 of Code of Civil Procedure and the decisions of the Apex Court and has laid down the following principles as regards the exercising of review powers :

"As regards Court's power of review in proceeding under Art. 226 of Constitution the following principles can be laid down :

(1) The provisions of the Civil Procedure Code in Order 47 are not applicable to the High Court's power of review in proceedings under Art. 226 of the Constitution;

(2) The powers are to be exercised by the High Court only to prevent miscarriage of justice or to corrective and palpable errors (the epithet "palpable" means that which can be felt by a simple touch of the order ahd not which could be dug out after a long drawn out process of argumentation and ratiocination);

(3) The inherent powers, though ex facie plenary, are not to be treated as unlimited or unabridged, but they are to be, invoked on the grounds analogous to the grounds mentioned in Order 47 Rule 1; namely, (1) discovery of new and important matter or evidence which the party seeking the review could not produce at the time when the earlier order sought to be reviewed was made, despite exercise of due diligence, existence of some mistake or error apparent on the face of the record; and (iii) existence of any analogous ground. These are the very three grounds referred to in Order 47 Rule 1 Civil P.C. and they are the hedges or limitations of the High Court's power."

[4] Therefore, bearing in mind the aforesaid principles, I proceed to consider this application before me. The applicant has produced three documents which are at Annexure C (collectively) and they are at pages 26, 28 and 30. The applicant original petitioner wants me to consider them and to review my earlier order. Said three documents are the letters sent to the Chairman of the applicant and Chairmen of other petroleum companies respectively on 2-11-92,12-9-96 and 19-11-96. The applicant wants to rely upon these three documents which were not produced by the applicant at the time of hearing of original SCA. Therefore, it was incumbent on the applicant to make out a case for the production of these documents and for the consideration of the same by this Court. If the application of the applicants read carefully then it would be quite clear that no case to that effect is pleaded by the applicant in his application. It is nowhere claimed by the applicant in the application that these documents are new and important pieces of evidence which the applicant could not produce at the time when the earlier order was passed despite the exercise of due diligence. When the applicant is not pleading that the applicant could not produce said documents as they were not either in his custody or the applicant could not produce the same though he had taken due diligence to search and produce said documents, then the production of the said documents could not be allowed. Therefore, in the circumstances, the applicant has not only not pleaded a case for consideration of these documents in his application but he has also not proved any case for consideration of these documents, then the production and consideration of them could not be allowed. Therefore, in the circumstances, it is not open for this Court to consider those documents and on the strength of the same to review the order passed by this Court.

[5] Now apart from the above aspect, I proceed to consider the said documents with a view to avoid of remand of the matter, in case, if the Appellate Court happens to disagree with me on the point of not taking into consideration said documents on account of applicant's failure to make out a case for allowing production of these documents. The document at page 26 is a letter dated 2-11-92 issued by the Under Secretary to Government of India, Ministry of Petroleum and Natural Gas. Said letter

lays down the procedure and guidelines for sanction of the consumer pumps. In the instant case, the respondent-original petitioner had applied in the year 1994 for sanction of consumer petrol pump and admittedly by letter dated 20-1-95 the applicant had sanctioned consumer petrol pump in favour of the respondent-original petitioner. Original respondent and applicant before me was in possession of this letter and guidelines for sanction of the petrol pump and therefore, it will have to be presumed that the original respondent- applicant sanctioned the consumer pump to the original petitioner by following those guidelines. Consumer pump was sanctioned to the respondent-original petitioner. It was also installed and all the necessary ancillary things like fixing of tank, obtaining of necessary certificates were also fulfilled. Only commissioning of the pump had not started for many months in spite of repeated requests and hence the petition was filed in this Court. It is not the case of the applicant in the affidavit-in-reply filed to the original petition as well as in this application that sanctioning of the consumer petrol pump in favour of the respondent-original petitioner was contrary to these guidelines. Therefore in the circumstances, said document at page 26 does not assist the applicant for seeking review of the order passed by this Court.

[6] The document at page 28 is also a letter issued by the Under Secretary to Government of India, Ministry of Petroleum and Natural Gas dated 12-9-1996 to the Chairman of the applicant as well as the other Chairmen of other Petroleum Corporations and Companies. In para 1 of the said letter it has been stated that the Ministry has been receiving complaints that the oil companies are not following the guidelines contained in the letter dated 2-11-1992 and, therefore, lot of complaints are received and bickering is going on among the oil companies and then the second part of the said letter is beginning as under:

> "In view of the above, the policy for sanctioning of consumer pumps has been reviewed by the Government and it has been decided that the Oil Companies will now follow the following guidelines procedure with immediate effect for sanctioning of Consumer Pumps : "
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> Thereafter guideline Nos. 1 to 4 are mentioned. But this letter is of no use to the applicant because the applicant has already sanctioned the consumer pump to the respondent No. 20-1-1995. Sanctioning of the consumer pump for the respondent-original petitioner had already taken place before issuance of this letter and therefore said guidelines could not be made applicable to the respondent-petitioner's claim.

[7] The third document is at page 30 and it is also a letter dated 19-11-1996 addressed by the Under Secretary to Government of India, Ministry of Petroleum and

Natural Gas to Director (Marketing), IOC, BPCL, GPCL and IBP Co. Ltd., all of Mumbai. Said letter is running as under:

> "I am directed to enclose a copy of the list of consumer pumps commissioned against Industry norms in Andhra Pradesh, and to say that the Government has taken a serious view of the sanctioning of consumers pumps by the Oil Companies in violation of the Government guidelines on the subject. The Oil Companies are directed to stop supplies with immediate effect to all the consumer pumps,sanctioned in violation of the guidelines in Andhra Pradesh as well as other States/Uts. A report on the action taken may kindly be sent to this Ministry. Yours faithfully, (H.C. Khurana)"
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> If the above documents/letters are taken into consideration then it would be quite clear that said letters are of no help to the applicant in seeking the review of the order passed by this Court in SCA No. 3887/96. It is very pertinent to note that it is not the claim of the applicant either in this application or in its reply in the original petition of SCA No. 3887/96 that the consumer pump sanctioned to the respondent in this application and original petition is sanctioned in violation of any guideline given by the Ministry of Petroleum and Natural Gas.

[8] Thus all three documents/letters produced by the applicant along with his application are not of any help to the applicant for seeking the review of the order passed by this Court. The applicant has not made any claim that there is existence of any mistake or error apparent on the face of record or existence of any analogous ground. If the averments made in the application are considered then it would be quite clear that the applicant wants me to decide the case again as the applicant feels that my earlier decision is faulty or even incorrect. It is settled law that the Court cannot under the guise of review arrogate to itself the power to decide the case over and again because either it feels or the applicant feels that the appreciation of evidence, etc., done formerly was faulty or even incorrect. Review cannot be granted on the ground that decision is erroneous on merits as such a ground being appropriate for an appeal.

[9] One of the grounds taken by the applicant in the application is that the Central Government was a necessary party to the original proceedings and in the absence of the Central Government no proper relief could be granted to the original petitioner but no such pleading was made by the applicant in the original proceedings in the affidavit-in-reply as well as in the four additional affidavits filed by the applicant. It is settled law that entirely a new ground which was not raised earlier could not be considered for the first time at the time of review stage.

[10] Thus I hold that present application deserves to be rejected and I accordingly reject the same. In the circumstances the parties to bear their respective costs.