Sanjeev Kapoor vs Ntpc Ltd. & Anr on 1 December, 2022

Author: Satish Chandra Sharma

Bench: Chief Justice, Subramonium Prasad

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ LPA 383/2021
SANJEEV KAPOOR
Through: Mr. Om Prakash Gupta,

versus

NTPC LTD. & ANR. ..
Through: Mr. Sanjoy Ghose, Seni
with Ms. Urvi Mohan, A

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
ORDER

% 01.12.2022

1. The present review petition arises out of Judgment dated 14.10.2022 passed by this Court in LPA 383/2021.

2. The facts of the case reveal that the Petitioner preferred a writ petition bearing W.P.(C) 14006/2019, being aggrieved by his Transfer Order bearing Order No.319/2019 dated 06.12.2019 issued by National Thermal Power Corporation Ltd. wherein he was transferred from the post of Junior Chemist at NTPC, Faridabad, Haryana to the post of Junior Officer, Energy Efficiency Monitor Group at Regional Inspection Office, Chennai.

3. The learned Single Judge after hearing the parties at length passed a detailed and exhaustive Order dismissing the writ petition vide Judgment dated 27.09.2021, against which an LPA was preferred. This Court after considering all the grounds raised by the Appellant, dismissed the LPA vide Judgement dated 14.10.2022. The instant review petition has now been filed by the Appellant raising the same grounds which are raised in the LPA and the writ petition.

4. This Court while deciding LPA 383/2021 vide Judgment dated 14.10.2022 has observed as under:-

> "10. The scope of interference by a court exercising its jurisdiction under Article 226 of the Constitution of India in matters of transfer is well settled and has been crystallized in a catena of judgments. A writ court cannot substitute the role of the

transferor or sit over its decision as an appellate authority and such situations may only warrant interference when they are hit by malafides, based on extraneous considerations as opposed to considerations of public interest and administrative exigencies or are in outright contravention of mandatory provisions governing transfers.

11. In N.K. Singh vs. Union of India, (1994) 6 SCC 98, the Hon ble Apex Court has observed as under:

"23. ... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated." (emphasis supplied)

12. Similarly, in State of M.P. v. S.S. Kourav, (1995) 3 SCC 270, the Hon ble Apex Court held as under:

"4. ... The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background or foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place.

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6. ..... This Court cannot go into that question of relative hardship. It would be for the administration to consider the facts of a given case arid mitigate the real hardship in the interest of good and efficient administration. If there is any such hardship, it would be open to the, respondent to make a. representation to the Government and it is for the Government to consider and take appropriate decision in that behalf. " (emphasis supplied)

13. In light of the aforementioned pronouncements, it is clear that the discretion of a writ court to interfere in transfer matters must be exercised sparingly. Therefore, what ought to be examined in the facts and circumstances of the present case is whether the transfer of the Appellant is hit by malafides and is based on extraneous considerations or is in contravention of the terms and conditions of the transfer policy governing his employment. Whether or not a transfer order causes inconvenience or personal difficulties to the transferee is not a ground for interference with the transfer order in exercise of this Court s writ jurisdiction.

14. One of the grounds basis which the Appellant is assailing the Impugned Judgment and the transfer order is that the transfer order was in retaliation of the Appellant s actions and initiative as the General Secretary of the employees union and other proceedings filed by him against denial of entitled promotions. Insofar, findings of malafide in administrative issues, especially transfer orders is concerned, the principle laid down in terms of the judgments of the Hon ble Apex Court is that there should sufficient and proper evidence and such a finding should not be reached capriciously. In Union of India v. Ashok Kumar, (2005) 8 SCC 760, the Hon ble Apex Court has observed as under: -

"21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab [(1964) 4 SCR 733 : AIR 1964 SC 72] .) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar [(2003) 4 SCC 579 : 2003 SCC (L&S) 528])."

15. The facts do not point out that the transfer of the Appellant was accentuated by malafides. The affidavit filed by the Respondents indicate that the principal ground raised by the Appellant that there is a change in cadre or that all his promotion avenues has been foreclosed are unfounded. The Appellant has been transferred from NTPC, Faridabad to RIO, Chennai at an equivalent post and at the same pay scale. The transfer is not to a different grade. No prejudice has been caused to the Appellant by the transfer. The Appellant has been transferred by the competent authority and it cannot be said that the transfer order is bad in law.

16. As is evident from the judgments, courts do not interfere with routine transfers done for administrative exigencies. This Court, is, therefore, not inclined to interfere with the judgment passed by the learned Single Judge.

17. The LPA is dismissed. Pending applications, if any, stand disposed of."

5. Learned Counsel for the Applicant/Appellant has argued before this Court stating that the said Judgment deserves to be reviewed. A perusal of the review petition shows that the Petitioner has only tried to re-argue the case on merits which is not permitted in a review petition.

6. The scope of review is quite limited and review of a judgment can be done only in cases where there is an apparent error on the face of record. The Apex Court in the case of Haridas Das Vs. Usha Rani Bank (Smt) and Ors., (2006) 4 SCC 78, in paragraph 13 and 20 has held as under :-

> "13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason".

The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in Thungabhadra Industries Ltd. v. Govt. of A.P.1 held as follows: (SCR p. 186) "[T]here 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. ... where without any elaborate argument one could point to the error and say here is a

substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

20. When the aforesaid principles are applied to the background facts of the present case, the position is clear that the High Court had clearly fallen in error in accepting the prayer for review. First, the crucial question which according to the High Court was necessary to be adjudicated was the question whether Title Suit No. 201 of 1985 (sic 1 of 1986) was barred by the provisions of Order 2 Rule 2 CPC. This question arose in Title Suit No. 1 of 1986 and was irrelevant so far as Title Suit No. 2 of 1987 is concerned. Additionally, the High Court erred in holding that no prayer for leave under Order 2 Rule 2 CPC was made in the plaint in Title Suit No. 201 of 1985. The claim of oral agreement dated 19-8-1982 is mentioned in para 7 of the plaint, and at the end of the plaint it has been noted that the right to institute the suit for specific performance was reserved. That being so, the High Court has erroneously held about infraction of Order 2 Rule 2 CPC. This was not a case where Order 2 Rule 2 CPC has any application."

7. In the aforesaid case, the Apex Court has held that rehearing of a case can be done on account of some mistake or an error apparent on the face of the record or for any other sufficient reason. In the present case, there is no error apparent on the face of the record and the Petitioner in fact under the guise of review is challenging the order passed by this Court, which is under review. Similarly, the Apex Court in the case of State of West Bengal and Ors. Vs. Kamal Sengupta and Anr., (2008) 8 SCC 612, in paragraphs 21, 22 and 35 has held as under:-

> "21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.
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> 22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self- evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.
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35. The principles which can be culled out from the abovenoted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason"

appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."

8. In the aforesaid case, the Apex Court has held that a mistake or an error apparent on the face of the record means a mistake or an error which is prima-facie visible and does not require any detail examination. In the present case, the Petitioner has not been able to point out any error apparent on the face of the record, on the contrary this Court has decided the case on merits.

9. The Apex Court again dealing with the scope of interference and limitation of review in the case of Inderchand Jain (dead) Through LRs Vs. Motilal (dead) Through LRs, (2009) 14 SCC 663, in paragraphs 7, 22, 24, 29, 31 and 33 has held as under :-

"7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words "subject as aforesaid"

occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

> "17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:
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> „1. Application for review of judgment.--(1) Any person considering himself aggrieved--
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
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> (b) by a decree or order from which no appeal is allowed, or
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> (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order. *****
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> 22. Whereas the appellant-defendant filed a review application confined to the question that he was entitled to the restitution of the property and mesne profit in respect whereof the learned Single Judge of the High Court did not pass any specific order, the application for review filed by the respondent was on the merit of the judgment. The relevant grounds of review which have been placed before us relate to:
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> (i) Unconditional withdrawal of some amount by one of the creditors of the defendant as also the defendant himself.
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> (ii) The defendant's application before the executing court that he was ready and willing to get the sale deed executed on receipt of amount in cash and the said admission allegedly was not brought to the notice of the court.
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> (iii) While holding that there was no agreement to reduce the sale consideration, the High Court had ignored the fact that it was an admitted case of the parties, as stipulated in the contract, that the defendants would get the premises vacated from the tenants within three months.

(iv) The appellant had prayed for an alternative relief viz. that he was ready to get the decree for specific performance of contract by paying Rs 1,15,000. The court did not consider the evidence of DWs 1 to 6 in their proper perspective.

(v) The court did not consider that the property could not be restored back to the appellant-

defendant and as such the court should have exercised its discretionary jurisdiction.

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24. An appeal is a continuation of the suit. Any decision taken by the appellate court would relate back, unless a contrary intention is shown, to the date of institution of the suit. There cannot be any doubt that the appellate court while exercising its appellate jurisdiction would be entitled to take into consideration the subsequent events for the purpose of moulding the relief as envisaged under Order 7 Rule 7 read with Order 41 Rule 33 of the Code of Civil Procedure. The same shall, however, not mean that the court would proceed to do so in a review application despite holding that the plaintiff was not entitled to grant of a decree for specific performance of contract.

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29. Order 41 Rule 1 of the Code stipulates that filing of an appeal would not amount to automatic stay of the execution of the decree. The law acknowledges that during pendency of the appeal it is possible for the decree-holder to get the decree executed. The execution of the decree during pendency of the appeal would, thus, be subject to the restitution of the property in the event the appeal is allowed and the decree is set aside. The court only at the time of passing a judgment and decree reversing that of the appellate court should take into consideration the subsequent events, but, by no stretch of imagination, can refuse to do so despite arriving at the findings that the plaintiff would not be entitled to grant of a decree.

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31. Contention of Mr Venugopal that the defendant having accepted novation of contract but only the quantum of the amount being different, the court could have asked the respondent-plaintiff to deposit a further sum of Rs 24,000 cannot be accepted for more than one reason. Apart from the fact that such a contention had never been raised before the appellate court, keeping in view the finding of fact arrived at that there had in fact been no novation of contract, such a course of action was not open. In any view of the matter, the same would amount to reappreciation of evidence which was beyond the review jurisdiction of the High Court.

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33. The High Court had rightly noticed the review jurisdiction of the court, which is as under:

> "The law on the subject--exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarised as hereunder:
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> (i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.
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> (ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.
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> (iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.
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> (iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.
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> (v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit."

In our opinion, the principles of law enumerated by it, in the facts of this case, have wrongly been applied."

10. The Apex Court in the case of S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, (2009) 10 SCC 464, in paragraphs 12 and 26 has held as under :-

> "12. An 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. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.
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> 26. As held earlier, if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self-evident, review is permissible and in this case the High Court has rightly applied the said principles as provided under Order 47 Rule 1 CPC. In view of the same, we are unable to accept the arguments of learned Senior Counsel appearing for the appellant, on the other hand, we are in entire

agreement with the view expressed by the High Court."

11. The Apex Court while dealing with the scope of review has held that re-appreciation of evidence and rehearing of case without there being any error apparent on the face of the record is not permissible in light of the provisions as contained under Section 114 and Order 47 Rule 1 of Code of Civil Procedure, 1908.

12. Since no error on the face of record has been pointed out by the Petitioner and the Petitioner has only sought to re-argue the entire case once again on merits and has re-agitated the points already argued, this Court is not inclined to entertain the review petition.

13. Accordingly, the review petition is dismissed.

SATISH CHANDRA SHARMA, CJ SUBRAMONIUM PRASAD, J DECEMBER 01, 2022 hsk