

M/S Brahmaputra Concrete Pipe Industries Etc. Etc.

V.

The Assam State Electricity Board and Others

(Miscellaneous Application (Civil) No. 2045 of 2022)

IN

(Curative Petition (Civil) Diary No. 23828 of 2020)

IN

(Review Petition (Civil) No. 789 of 2019)

IN

(Civil Appeal No. 8450 of 2016)

26 February 2024

[Aniruddha Bose* and Sudhanshu Dhulia, JJ.]

Issue for Consideration

Whether registry has the power to dismiss a curative petition solely on the ground that no averment has been made to the effect that the review petition was dismissed by circulation.

Headnotes

Supreme Court Rules, 2013 – Ord. XLVIII r.2 (1) – Curative petition – Registry's power to dismiss – Dismissal of review petition in open court after oral hearing and not by circulation – Curative petitions filed thereagainst – Order of the registrar declining registration of curative petitions on the ground that no averment made to the effect that the review petition was dismissed by circulation – Legality:

Held: Instant matter ought to be decided by a Bench of this Court and not by the Registry – Registry cannot be vested with power to decide whether a review petition, after being dismissed in open Court hearing, merited relook through the curative jurisdiction – That would be a judicial exercise – A curative petition arising from an order dismissing a review petition upon hearing in open Court must contain a plea or prayer seeking excuse from compliance of making averment as contained in Ord. XLVIII r. 2(1) – Proper course for the Registry on receiving such a petition with a prayer to be excused from the above requirement would be to obtain instructions from the Judge in chambers and thereafter communicate such instructions to the parties – r. 2, second part, provides that the

* Author

**M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others**

Registrar herself can direct the applicant to serve the other party with a notice of motion returnable before the Court while she opines that it is desirable that the application should be dealt with in the open Court but would not apply where the applicant approaches this Court after the review petition is dismissed in open court hearing – In cases where review plea is dismissed by circulation, the curative petition has to be circulated first to a Bench of three senior-most Judges of this Court and the Judges who passed the judgment complained of, if available – Thereafter, the course prescribed in sub-clauses (2), (3) and (4) of r. 4 of Ord. XLVIII would be followed as may be applicable – In the instant appeal, said course not followed when the order was passed declining registration of the curative petition – Said order being contrary to the provisions of the Rules, thus, set aside, however, not a fit case to remand the matter to the Registrar as substantial time has lapsed – No case made out for invoking the curative jurisdiction to take relook into the case – Purpose would not be served in sending the matter back to the Chamber Judge for instructions in the given circumstances. [Paras 18, 19, 21, 22, 23]

Supreme Court Rules, 2013 – Ord. XLVIII – Curative petition – Limitation for filing:

Held: Curative jurisdiction being a special jurisdiction derived from inherent power or jurisdiction of this Court, the limitation prescribed for filing of review petition cannot be extended to apply in the cases of curative petition – Curative jurisdiction of this Court does not flow from its power to review, but this jurisdiction is derived from Arts 129 and 142 of the Constitution of India – Moreover, r. 3 of Order XLVIII specifically stipulates that curative petition has to be filed within reasonable time from the date of judgment or order passed in a review petition – No timeframe has been formulated in the 2013 Rules either for filing a curative petition. [Para 11]

Case Law Cited

Rupa Ashok Hurra vs Ashok Hurra and Another, [2002] 2 SCR 1006 : (2002) 4 SCC 388 – followed.

P.N. Eswara Iyer and Others vs Registrar, Supreme Court of India, [1980] 2 SCR 889 : (1980) 4 SCC 680; Rama Rao Poal vs Samaj Parivartana Samudaya, Curative Petition (Civil) D. No.35404/2015; Mohd. Arif vs Registrar, Supreme Court of India, [2014] 11

Digital Supreme Court Reports

**SCR 1009 : (2014) 9 SCC 737; Union of India & Ors.
vs M/s. Union Carbide Corporation & Ors., Curative
Petition (Civil) Nos. 345-347 of 2010 – referred to.**

List of Acts

Supreme Court Rules, 2013; Constitution of India; Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.

List of Keywords

Curative petition; Registry's power to dismiss curative petition; Oral hearing and not by circulation; Registration of curative petition; Review petition; Dismissed in open Court hearing; Curative jurisdiction; Judicial exercise; Instructions from the Judge in chambers; Review plea; Remand; Limitation; Special jurisdiction; Inherent power or jurisdiction; Time frame.

Case Arising From

INHERENT JURISDICTION : Miscellaneous Application (Civil) No.2045 of 2022

In

Curative Petition (Civil) Diary No.23828 of 2020

In

Review Petition (Civil) No.789 of 2019

In

Civil Appeal No.8450 of 2016

From the Judgment and Order dated 31.10.2022 in D No.23828 of 2020 of the Supreme Court of India

With

Miscellaneous Application (Civil) Nos.2046, 2047, 2048 and 2050 of 2022 in Curative Petition (Civil) Diary Nos.23829, 23830, 23831 of 2020 and 14718 Of 2021 in Review Petition (Civil) Nos.786-787 of 2019 in Civil Appeal Nos.8442-8443 of 2016 with Miscellaneous Application (Civil) No.2049 of 2022 in Curative Petition (Civil) No.23833 of 2020 in Review Petition (Civil) No.788 of 2019 in Civil Appeal No.8445 of 2016

**M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others**

Appearances for Parties

Anand Sanjay M. Nuli, Dharm Singh, Ms. Nandiny Pandey, Suraj Kaushik, Akhila Wali, M/s. Nuli & Nuli, Advs. for the Appellants.

Vijay Hansaria, Sr. Adv., Ms. Kavya Jhawar, Ms. Sneha Kavita, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Aniruddha Bose, J.

The appellants before us are firms who are aggrieved by an order of a Registrar (J-IV) of this Court passed on 31.10.2022 declining registration of a set of petitions labelled as “curative petitions.” This was a common order passed in six similar petitions (including the one instituted by the appellant in the Miscellaneous Application No. 2045 of 2022, instituted by Brahmaputra Concrete Pipe Industries) founded on similar factual and legal grounds. These appeals have been filed under Rule 5 of Order XV of the Supreme Court Rules, 2013 (hereinafter the “2013 Rules”). In this judgment, we shall refer to the pleadings and orders made in Misc. Application No.2045 of 2022 treating it as the lead matter. The said Rule reads:-

***“Order XV
PETITIONS GENERALLY***

5. The Registrar may refuse to receive a petition on the ground that it discloses no reasonable cause or is frivolous or contains scandalous matter but the petitioner may within fifteen days of the making of such order, appeal by way of motion, from such refusal to the Court.

”

Digital Supreme Court Reports

2. The order of the Registrar, which is under appeal before us, reads:-

"The above mentioned Curative Petitions filed by M/s. Nuli & Nuli, Advocates against the judgment dated 18.12.2019 passed in the Review Petitions were heard and disposed of in the Open Court.

In this regard the relevant Rule 2(1), Order XLVIII, S.C.R., 2013 reads as under:

"The petitioner, in the curative petition, shall aver specifically that grounds mentioned therein had been taken in the Review Petition and that it was dismissed by circulation."

Since the aforesaid Review Petitions were disposed of in open court and not by circulation, the aforementioned Curative Petitions are declined for registration and are lodged under Order XV Rule 5 of Supreme Court Rules, 2013.

Inform the Advocate accordingly."

3. The origin of the dispute ultimately leading to passing of the aforesaid order relates to maintainability of a suit instituted by the appellant under "The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993" (the 1993 Act). The suit of the appellant was decreed by the Civil Judge, Senior Division, Tinsukia, Assam (Trial Court) but was dismissed by the High Court in appeal mainly on the ground of the suit not being maintainable. The High Court, inter-alia, held that the suit under the 1993 Act would not lie in respect of the transactions which had taken place prior to 23.09.1992, the date on which the Act became operational. The appeal against the High Court judgment was dismissed by a three Judge Bench of this Court on 23.01.2019. The plea of review of the said judgment also failed and the review petition was dismissed on 18.12.2019 after open court hearing. In this judgment, we shall deal with the legality of the Registrar's order refusing to receive the curative petitions of the appellants.
4. The 1993 Act was preceded by an ordinance permitting certain small scale industrial undertakings to claim interest on delayed payment. That ordinance was promulgated on 23.09.1992. The ordinance later

**M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others**

transformed into the aforesaid statute. A question arose as to whether the right to sue for interest under the said Act could relate back to delayed payments made under agreements entered into before the date of promulgation of the ordinance or not. A Full Bench of the Gauhati High Court opined that the right to claim interest under the said statute would not extend to agreements or contracts entered prior to 23.09.1992.

5. In this judgment, we shall discuss the factual position involved in the petition filed by the appellant in the lead matter. Its case had ultimately reached this Court and in the judgment delivered on 23.01.2019, it was held by the three Judge Bench that the material date for instituting the suit for interest would depend on whether delivery was made by the supplier after coming into operation of the said statute or not. If that was the case, then a suit for recovery of interest on delayed payment would be maintainable in the opinion of the three Judge Bench. In the case of the appellant before us, the three Judge Bench found no evidence of any delivery being made subsequent to the statute becoming operational. What the appellant had sought to rely on was the dates of raising of bills subsequent to 23.09.1992. The three-Judge Bench of this Court was not satisfied that the goods were supplied subsequent to that date, in respect of which interest was being claimed on account of delayed payment.
6. As we have already indicated, the three Judge Bench of this Court dismissed the review petition in open court after oral hearing, finding no error apparent on the face of record of the judgment under review. It was thereafter the curative petition was instituted with which we are concerned in this judgment.
7. Under the Constitution of India or any other statutory provision, there is no specific jurisdiction conferred on this Court to entertain curative petitions excepting the Rules of this Court made in 2013. The Supreme Court Rules 2013 deals with the procedure for filing of curative petitions and we shall revert to these Rules later in this judgment. Article 137 of the Constitution of India lays down the jurisdiction of the Court to review its own judgment or order. Article 145 of the Constitution of India empowers this Court to make rules for regulating the general practice and procedure of the Court. The said two Articles read:-

Digital Supreme Court Reports***"137: Review of judgements or orders by the Supreme Court***

Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have the power to review any judgment pronounced or order made by it.

145: Rules of Court, etc.

- (1) *Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including –*
- (a) *rules as to the persons practicing before the Court;*
 - (b) *rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;*
 - (c) *rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III:*
 - (cc) *rules as to the proceedings in the Court under Article 139A;*
 - (d) *rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;*
 - (e) *rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court or such review are to be entered;*
 - (f) *rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;*
 - (g) *rules as to the granting of bail;*

**M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others**

- (h) rules as to stay of proceedings;
 - (i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
 - (j) rules as to the procedure for inquiries referred to in clause (1) of article 317.
- (2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.
- (3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five: Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal of the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.
- (4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.
- (5) No judgment and so such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the

Digital Supreme Court Reports

case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.”

8. The expression “curative petition” was used by Constitution Bench of this Court comprising of five Hon’ble Judges in the case of **Rupa Ashok Hurra -vs- Ashok Hurra and Another** [(2002) 4 SCC 388]. This Court, in the said judgment, opined that to prevent abuse of the Court’s process and to cure a gross miscarriage of justice, the Supreme Court may reconsider its judgments in exercise of its inherent powers. This inherent power or jurisdiction was traced to Articles 129 and 142 of the Constitution of India. It was inter-alia, held in this judgment:-

“50. The next step is to specify the requirements to entertain such a curative petition under the inherent power of this Court so that floodgates are not opened for filing a second review petition as a matter of course in the guise of a curative petition under inherent power. It is common ground that except when very strong reasons exist, the Court should not entertain an application seeking reconsideration of an order of this Court which has become final on dismissal of a review petition. It is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained.

51. Nevertheless, we think that a petitioner is entitled to relief ex debito justitiae if he establishes (1) violation of the principles of natural justice in that he was not a party to the lis but the judgment adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice, and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.

52. The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. The curative petition shall contain a certification

**M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others**

by a Senior Advocate with regard to the fulfilment of the above requirements.

53. *We are of the view that since the matter relates to re-examination of a final judgment of this Court, though on limited ground, the curative petition has to be first circulated to a Bench of the three seniormost Judges and the Judges who passed the judgment complained of, if available. It is only when a majority of the learned Judges on this Bench conclude that the matter needs hearing that it should be listed before the same Bench (as far as possible) which may pass appropriate orders. It shall be open to the Bench at any stage of consideration of the curative petition to ask a Senior Counsel to assist it as *amicus curiae*. In the event of the Bench holding at any stage that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner.*

54. *Insofar as the present writ petitions are concerned, the Registry shall process them, notwithstanding that they do not contain the averment that the grounds urged were specifically taken in the review petitions and the petitions were dismissed in circulation.”*

9. As would be evident from the aforesaid passages of the said judgment, one of the pre-conditions for filing a curative petition is that the petitioner must specifically aver that the grounds mentioned in such petition had been taken in the review petition and that it was dismissed by circulation. This is contained in paragraph 52 of the said report. The grounds on which a curative petition could be founded have been specified in paragraph 51 of the report in the case Rupa Ashok Hurra (*supra*). The provision pertaining to filing of curative petitions have been incorporated in Order XLVIII of the 2013 Rules. The said Rules, along with its sub-clauses is reproduced below:-

**“ORDER XLVIII
CURATIVE PETITION**

1. *Curative Petitions shall be governed by Judgment of the Court dated 10” April, 2002 delivered in the case of ‘Rupa Ashok Hurrah v. Ashok Hurrah and Ors.’ in Writ Petition (C) No. 509 of 1997.*

Digital Supreme Court Reports

2.
 - (1) *The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the Review Petition and that it was dismissed by circulation.*
 - (2) *A Curative Petition shall be accompanied by a certificate of the Senior Advocate that the petition meets the requirements delineated in the above case.*
 - (3) *A curative petition shall be accompanied by a certificate of the Advocate on Record to the effect that it is the first curative petition in the impugned matter.*
3. *The Curative Petition shall be filed within reasonable time from the date of Judgment or Order passed in the Review Petition.*
4.
 - (1) *The curative petition shall be first circulated to a Bench of the three senior-most judges and the judges who passed the judgment complained of, if available.*
 - (2) *Unless otherwise ordered by the Court, a curative petition shall be disposed of by circulation without any oral arguments but the petitioner may supplement his petition by additional written arguments.*
 - (3) *If the Bench before which a curative petition was circulated concludes by a majority that the matter needs hearing then it shall be listed before the same Bench, as far as possible.*
 - (4) *If the Court, at any stage, comes to the conclusion that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner.”*
10. The main point urged on behalf of the appellant is that the Registrar has no power or jurisdiction to decline registration of a curative petition and it should be decided by a Bench of this Court. There appears to be no decision directly on this point and we had requested Mr. Raju Ramachandran, learned Senior Advocate to assist us as an Amicus Curiae in this matter, a request he graciously accepted. Mr. Anand Sanjay M. Nuli has appeared on behalf of the appellants and we have already recorded his main submissions. Mr. Vijay Hansaria, learned Senior Counsel appearing on behalf of the respondent has

**M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others**

drawn our attention to the Order XLVIII of the 2013 Rules to point out that since this was a case where review petition was dismissed in open Court hearing after oral submissions were advanced, it does not satisfy the mandate of the five Judge Bench laid down in the case of Rupa Ashok Hurra (supra). Mr. Hansaria has also taken the point of delay in filing the curative petition. The review petition was dismissed on 18.12.2019 and the curative petition was filed on 31.10.2020, after a lapse of ten months. He has taken us through the provisions of Rule 3 of Order XLVIII of the 2013 Rules which requires a curative petition to be filed within a reasonable time from the date of judgment or order passed in the review petition. But the Rules do not provide any specific time period within which a curative petition has to be filed from the date of dismissal of the review petition. Thus, it ought to be left to the discretion of the Court while entertaining such petition to decide the question of delay.

11. Mr. Hansaria also referred to the thirty days' limitation period for filing a review petition in terms of Order XLVII, Rule 2 of the 2013 Rules. Our opinion on this point is that the curative jurisdiction being a special jurisdiction derived from inherent power or jurisdiction of this Court, the limitation prescribed for filing of review petition cannot be extended to apply in the cases of curative petition. We hold so because curative jurisdiction of this Court does not flow from its power to review, but this jurisdiction is derived from Articles 129 and 142 of the Constitution of India. Moreover, Rule 3 of Order XLVIII of the 2013 Rules specifically stipulates that curative petition has to be filed within reasonable time from the date of judgment or order passed in a review petition. No timeframe has been formulated in the 2013 Rules either for filing a curative petition.
12. Mr. Hansaria's further argument has been that the judgment in the case of Rupa Ashok Hurra (supra) requires to be reconsidered. But the aforesaid decision having been delivered by a high authority, of five Hon'ble Judges of this Court, we cannot test its legality or comment on the question as to whether it requires to be reconsidered or not. For this reason, we are unable to accept his submission on this point. He cited a decision of this Court in the case of P.N. Eswara Iyer and Others -vs- Registrar, Supreme Court of India [(1980) 4 SCC 680] in which distinction has been drawn between an original or first hearing of a matter and a relook thereto at the stage of review. In this judgment, it was held that

Digital Supreme Court Reports

the parameters for hearing these two proceedings are different. This judgment was delivered in connection with amendment of the Supreme Court Rules, 1966 dispensing with oral hearing of review petitions. But this authority does not aid the respondent, having been delivered in a different context under different set of Rules. In any case, oral hearing has not altogether been dispensed with in curative jurisdiction also and it has been left at the discretion of the Bench to decide as to whether the curative petitions ought to be dismissed by circulation without oral arguments or there shall be oral submission after notice to the opposite party. This procedure is contained in Rule 4 of Order XLVIII of the 2013 Rules which has been reproduced earlier in this judgment.

13. While in the case **Rupa Ashok Hurra** (supra), it was specified by the five Judge Bench that a curative petition must contain an averment that review petition was dismissed by circulation, the consequence of dismissal on oral hearing in open Court has not been specified in that judgment. Rules have been framed lifting the directions of this Court in the case of **Rupa Ashok Hurra** (supra) to statutory level. While testing the appellant's submissions, we shall refer to these Rules as well.
14. Mr. Ramachandran, learned Amicus Curiae has argued that the making of averment to the effect that the review petition was dismissed by circulation should not by itself guide the question of maintainability of a curative petition. His submission is that in terms of Order LV Rule 2 of the 2013 Rules, this Court has been vested with power to excuse from compliance with the requirements with any of the rules and if an application to that effect is made, the Registry should take instructions from the Judge in chamber in that regard and communicate the same to the parties. The said Rule further provides that if in the opinion of the Registrar, it is desirable that the application should be dealt with in open Court, she may direct the applicant to serve the other parties with a notice of motion returnable before the Court. Mr. Ramachandran has also cited an order passed on 08.02.2016 in the case of **Rama Rao Poal -vs- Samaj Parivartana Samudaya** [Curative Petition (Civil) D. No.35404/2015], in which this Court had initially directed that the question of maintainability ought to be decided by the concerned Bench. In the said order, a Coordinate Bench of this Court observed:-

**M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others**

"Two issues arise in the appeal. The first is whether a curative petition would be maintainable against an order passed in a review petition which has been heard in open Court. The second is whether the pre-conditions laid down in "Rupa Ashok Hurra vs. Ashok Hurra & Anr. ", (2002) 4 SCC 389, are satisfied. The Registrar has decided both the issues against the applicant/petitioner holding the curative petition to be not maintainable.

Upon hearing the learned counsel for the applicant/petitioner and after perusing the relevant provisions of the Supreme Court Rules, 2013, we are of the view that the aforesaid questions are to be decided by the Bench.

The Registry is therefore directed to circulate the curative petition in accordance with the relevant provisions of the Supreme Court Rules.

Appeal against the Registrar order is disposed of in the above terms."

15. That proceeding had also reached the Coordinate Bench in appeal from an order of a Registrar. Subsequently, however, a Bench of this Court comprising of four Hon'ble Judges dismissed the curative petition on 29.03.2016.
16. Moreover, in the judgment of this Court in the case of Mohd. Arif -vs- Registrar, Supreme Court of India [(2014) 9 SCC 737] it has been observed that where death sentence is awarded, a right of limited oral hearing shall be given to the convict at the stage of review petition. Subsequently, in the case of Union of India & Ors. -vs- M/s. Union Carbide Corporation & Ors. [Curative Petition (Civil) Nos.345-347 of 2010], a five Judge Bench of this Court by an order passed on 14.03.2023, upon hearing the parties in exercise of its curative jurisdiction chose to dismiss the same. In this proceeding the Court was examining a curative petition brought by Union of India seeking to re-open the settlement arrived at in the case arising out of Bhopal gas tragedy that occurred in 1984. Earlier review petitions questioning the settlement order stood dismissed and Union of India had not asked for review thereof. Mr. Ramachandran has submitted that the earlier review petitions were dismissed after hearing in open Court and in spite of that, the Constitution Bench chose to hear the parties invoking curative jurisdiction of this Court.

Digital Supreme Court Reports

17. In the decision of this Court in the case of Union Carbide (supra), the Constitution Bench of this Court in substance reaffirmed the direction contained in the case of Rupa Ashok Hurra (supra) limiting the scope of curative petitions by holding :-

*"28. We have great hesitation in allowing such a prayer and granting such *sui generis* relief through the means of curative petitions. Although this Court in Rupa Ashok Hurra chose not to enumerate all the grounds on which a curative petition could be entertained; the Court was clear in observing that its inherent power ought not to be exercised as a matter of course, and that it should be circumspect in reconsidering an order of this Court that had become final on dismissal of the review petition. Nevertheless, looking at the nature of the matter before us, it would be advisable to also examine the curative petition(s), apart from the aforesaid preliminary objection."*

18. What is apparent from the tenor of the aforesaid judgments is that the question of maintainability of a curative petition has to be ultimately examined by a Bench of this Court. The composition of such bench has also been laid down in the case of Rupa Ashok Hurra (supra). This has further been incorporated in Rule 4 of Order XLVIII of the 2013 Rules. But the question of composition of the Bench can arise only after the curative petition is entertained. The point with which we are dealing with in this judgment is not whether the curative petition ought to be dismissed by circulation or not. The issue we have to address is as to whether Registry has the power to dismiss a curative petition solely on the ground that no averment has been made to the effect that the review petition was dismissed by circulation. We accept the submission of Mr. Ramachandran that this is a matter which ought to be decided by a Bench of this Court and not by the Registry. This is a judicial exercise. That is what in effect flows from the Bench of coordinate strength in its order of 08.02.2016 in the case of Rama Rao Poal (supra). Moreover, while in the case of Rupa Ashok Hurra (supra) certain conditions have been prescribed on satisfaction of which a curative petition would lie, there is no discussion or stipulation in the judgment that in absence of averment to that effect, the curative petition ought to be dismissed at the registration stage itself. Further, the grounds on which the Registrar may refuse to receive a petition have been

**M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others**

enumerated in Rule 5 of Order XV of the 2013 Rules. In the order under appeal, the aforesaid Rule has been referred to. But this Rule does not empower the Registrar to decline registration of a curative petition on the ground as disclosed in declining registration of the present curative petition. Hearing of a review petition in open Court cannot be brought within the ambit of the expression “that it discloses no reasonable cause” as employed in Rule 5 of Order XV of the 2013 Rules. That factor would be, at best, a technical shortcoming. Considering the importance of the question raised before it, in the case of Union Carbide (supra) the Constitution Bench of this Court chose to examine the curative petition in spite of there being dismissal of the review petition in open Court hearing though ultimately the curative petition stood dismissed.

19. Now we shall turn to the question as regards the course open to the Registry after it finds a curative petition lacking the averment to the effect that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. We have referred to two precedents where this Court chose to invoke its curative jurisdiction after the respective review petitions were dismissed in open Court. Registry cannot be vested with power to decide whether a review petition, after being dismissed in open Court hearing, merited relook through the curative jurisdiction. As we have already observed, that would be a judicial exercise. The Registry in a situation of this nature, cannot keep the matter pending as “defective” either, as is done in the cases of delayed filing of petition unaccompanied by applications for condonation of delay. We are referring to this context by way of an illustration only. In such a situation, filing of an application for condonation of delay would cure the initial defect and it would be for the Court to decide as to whether the delay has to be condoned or not. In cases like the present one, curing the defect would not be within the Registry’s jurisdiction. We also do not think an appeal under Order XV Rule 5 of the 2013 Rules would be the proper course, as under that Rule situations in which Registry can refuse to entertain a petition have been clearly expressed. Failure to make averment in terms of Rule 2(1) of Order XLVIII of the 2013 Rules is not one of the conditions which vests the Registry to refuse to receive a curative petition in itself.
20. In our opinion, the course to be followed by the Registry in a proceeding of this nature is contained in Order LV Rule 2 of the

Digital Supreme Court Reports

2013 Rules. This was the submission of the learned Amicus Curiae and we quote below the said Rule:-

**"ORDER LV
POWER TO DISPENSE AND INHERENT POWERS**

2. An application to be excused from compliance with the requirements of any of the rules shall be addressed, in the first instance, to the Registrar, who shall take instructions of the Judge in Chambers thereon and communicate the same to the parties, but, if, in the opinion of the Registrar, it is desirable that the application should be dealt with in open Court, he may direct the applicant to serve the other party with a notice of motion returnable before the Court.

- ”
21. We are of the view that a curative petition arising from an order dismissing a review petition upon hearing in open Court must contain a plea or prayer seeking excuse from compliance of making averment as contained in Order XLVIII Rule 2(1) of the 2013 Rules. The proper course for the Registry on receiving such a petition with a prayer to be excused from the above requirement would be to obtain instructions from the Judge in chambers and thereafter communicate such instructions to the parties. In the second part of Rule 2 it is provided that the Registrar herself can direct the applicant to serve the other party with a notice of motion returnable before the Court while she opines that it is desirable that the application should be dealt with in the open Court. The said part of the Rule would not apply in a case where the applicant seeking to invoke curative jurisdiction approaches this Court after the review petition is dismissed in open court hearing. The applicant for invoking curative jurisdiction, in such a situation, as we have already observed, must file an application praying to be excused from compliance with Rule 2(1) of Order XLVIII of the 2013 Rules and such application shall also contain a request

**M/S Brahmaputra Concrete Pipe Industries Etc. Etc.
v. The Assam State Electricity Board and Others**

for the matter to be placed before the chamber judge for proper instructions. In other cases pertaining to curative petitions, in which the review plea is dismissed by circulation, the curative petition has to be circulated first to a Bench of three senior-most Judges of this Court and the Judges who passed the judgment complained of, if available. Thereafter, the course prescribed in sub-clauses (2), (3) and (4) of Rule 4 of Order XLVIII of the 2013 Rules shall be followed as may be applicable.

22. So far the present appeal is concerned, this course was not followed when the order was passed declining registration of the curative petition. This order, in our opinion, is contrary to the provisions of the Rules and thus, we set aside the impugned order.
23. We, however, do not consider it fit to remand the matter to the Registrar as the curative petitions were filed in the year 2020 and substantial time has lapsed since then. We have ourselves gone through the initial order passed in the Special Leave Petition as also the order of the Review Court. We have perused the curative petitions as well. We do not think any case has been made out by the appellant for invoking the curative jurisdiction to take relook into the appellant's case. Hence, we refrain from entertaining the curative petitions. We do not think any purpose would be served in sending the matter back to the Chamber Judge for instructions in the given circumstances.
24. We record our appreciation for the assistance given to us by Mr. Ramachandran, learned senior counsel as Amicus Curiae.
25. The appeal shall stand disposed of in the above terms.
26. This judgment will cover five other miscellaneous applications which are in effect appeals from the order of the Registrar and all these appeals shall stand disposed of in the same terms.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal disposed of.