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A.P.S.R.T.C. AND ORS.

v.

ABDUL KAREEM

JANUARY 12, 2007

B

[DR. ARIJIT PASAYAT AND H.K. SEMA, JJ.]

C

*Constitution of India, 1950—Article 137—Review application, in guise of application for clarification—Maintainability of—Held, not maintainable—Supreme Court Rules, 1966—Order XL—Practice and Procedure—Abuse of process of Court.*

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By the present application, the applicant who was Respondent in the concerned civil appeal, has prayed for clarification of the judgment passed by this Court in the said appeal.

The question which arises for consideration is whether in the guise of application for clarification, review of the earlier judgment is being sought for and hence such an application cannot be maintained and is liable to be rejected.

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Dismissing the IA, the Court

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HELD : 1. The petition is in essence and substance seeking for a review under the guise of making an application for clarification apparently being fully aware of the normal procedure that such applications for review are not, unless Court directs, listed for open hearing in court, at the initial stage at least, before ordering notice to the other side and could be summarily rejected, if found to be of no *prima facie* merit. The move adopted itself is unjustified, and could not be countenanced also either by way of review or in the form of the present application as well. The nature of relief sought, and the reasons assigned are such that even under the pretext of filing a review such an exercise cannot be undertaken, virtually for re-hearing and alteration of the judgment because it is not to the liking of the party, when there is no apparent error on record whatsoever to call for even a review. The said move is clearly misconceived and nothing but sheer abuse of process, which of late is found to be on the increase, more for selfish reasons than to further or strengthen the cause of justice. The device thus adopted, being otherwise an impermissible move by mere

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change in nomenclature of the applications does not change the basic nature of the petition. Wishful thining virtually based on surmises too, at any rate is no justification to adopt such undesirable practices. If at all it should be for weightly and substantial reasons. [Para 5] 890-B-E] A

2. By describing an application as one for “clarification” or “modification” though it is really one of review a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open Court. What cannot be done directly cannot be permitted to be done indirectly. The Court should not permit hearing of such an application for “clarification”, “modification” or “recall” if the application is in substance a clever move for review. [Para 7] [891-A-B] B C

*Delhi Administration v. Gurdip Singh Uban and Ors.*, [2000] 7 SCC 296, relied on.

CIVIL APPELLATE JURISDICTION : I.A. 3 of 2006 in Civil Appeal No. 7797 of 2003. D

From the final Judgment and Order dated 31.10.2002 of the High Court of Judicature, Andhra Pradesh at Hyderabad in W.A. No. 1209/2002.

Ms. K. Radha Rani, P. Vijay Kumar and D. Mahesh Babu, for the Appellants. E

P.S. Narasimha (for M/s P.S.N. & Co.) for the Respondent.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J. :** 1. By this application, the applicant who was the respondent in the appeal has prayed for clarification of the order dated 2.8.2005 in the concerned Civil Appeal No. 7797 of 2003. F

2. It is stated that the applicant (respondent in the civil appeal) is living in penury, has no means to pay back the amount which is sought to be recovered. The pension amount has already being attached and the balance is now being sought to be recovered. G

3. Learned counsel for the appellant-Corporation on the other hand submitted that in the guise of application for clarification, review of the judgment is being sought for. H

A 4. By order dated 2nd August, 2005 it was held that the learned Single judge and the Division Bench had erroneously granted the benefits of increment notionally to the applicant during the period when he was out of service.

B 5. The petition is in essence and substance seeking for a review under the guise of making an application for clarification apparently being fully aware of the normal procedure that such applications for review are not, unless Court directs, listed for open hearing in court, at the initial stage at least, before ordering notice to the other side and could be summarily rejected, if found to be of no *prima facie* merit. The move adopted itself is C unjustified, and could not be countenanced also either by way of review or in the form of the present application as well. The nature of relief sought, and the reasons assigned are such that even under the pretext of filing a review such an exercise cannot be undertaken, virtually for re-hearing and alteration of the judgment because it is not to the liking of the party, when D there is no apparent error on record whatsoever to call for even a review. The said move is clearly misconceived and nothing but sheer abuse of process, which of late is found to be on the increase, more for selfish reasons than to further or strengthen the cause of justice. The device thus adopted, being otherwise an impermissible move by mere change in E nomenclature of the applications does not change the basic nature of the petition. Wishful thinking virtually based on surmises too, at any rate is no justification to adopt such undesirable practices. If at all it should be for weighty and substantial reasons.

F 6. It is to be noted that a review application can be filed under Article 137 of the Constitution read with Order XL of the Supreme Court Rules, 1966 (in short the Rules). Rule 3 of Order XL is significant. It reads as follows:-

G “Rule 3 - Unless otherwise ordered by the Court an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party. An application for review shall as far as practicable be circulated to the same Judge or Bench of Judges H that delivered the judgment or order sought to be reviewed.”

7. In *Delhi Administration v. Gurdip Singh Uban and Ors.*, [2000] 7 SCC 296, it was held that by describing an application one for “clarification” or “modification” though it is really one of review a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open Court. What cannot be done directly cannot be permitted to be done indirectly. The court should not permit hearing of such an application for “clarification”, “modification” or “recall” if the application is in substance a clever move for review.

8. The application cannot be maintained and is rejected.

B.B.B.

I.A. dismissed.