

2nd May, 2023

ADVENT OF CURATIVE PETITIONS IN INDIA

1 BACKGROUND

- 1.1 The concept of Curative Petitions is quite a recent one in the Indian legal history. The Supreme Court ('SC') had only dealt with this concept – in the year 2002.
- 1.2 A Curative Petition is a legal remedy available to a person who has exhausted all other legal remedies and is aggrieved by the final order or judgment of the SC. However, it is pertinent to note that the term "Curative Petition" has not been defined anywhere in the Constitution of India or in any other statute. "Petition" has not been defined anywhere in the Constitution of India or in any other statute.
- 1.3 The SC took this issue into consideration in the case of *Rupa Ashok Hurra v. Ashok Hurra & Anr. (2002) 4 SCC 388*; wherein a Constitutional Bench, while acknowledging that the concept of curative petitions exists by virtue of inherent and extra-ordinary powers exercised by the Supreme Court of India under Article 142, laid down the grounds for instituting a curative petition before it.

2 INTRODUCTION

- 2.1 The SC is the highest forum for adjudication of matters in India, which is equipped with the supervisory jurisdiction over all the other inferior courts in India. Thus, it can be said that an order or a judgment passed by the SC cannot be appealed before any other forum in India. It can be said that an order or a judgment passed by the SC cannot be appealed before any other forum in India.
- 2.2 However, a seminal issue arising from the aforesaid is – whether an aggrieved person is entitled to any relief against the final order or judgment of the SC, even after dismissal of the review petition?

3 BRIEF FACTS & ISSUE(S) DEALT

- 3.1 The aforesaid issue was brought through a batch of

writ petitions before a three-judge bench of the SC which referred the matter to the Constitutional Bench for its opinion.

- 3.2 Issue – Whether the judgment of Supreme Court in a civil appeal filed before it, can be regarded as nullity and whether a petition under Article 32 of the Constitution or otherwise, can be maintained to question the validity of an order or judgment of SC, after the review petition has also been dismissed?

4 EXERCISE OF WRIT JURISDICTION BY THE HIGHER COURTS IN INDIA

- 4.1 The Supreme Court has been established through the Constitution as under Article 124, under the head Chapter IV – The Union Judiciary, which prescribes for the jurisdiction, procedure, qualifications, and powers of the Supreme Court.
- 4.2 The SC exercises its power as conferred to it by the Constitution of India having original jurisdiction under Article 32 and 131; appellate jurisdiction – Article 132 (civil appellate jurisdiction – Article 133 & criminal appellate jurisdiction – Article 134), discretionary jurisdiction to grant special leave to Appeal – Article 136 and very-wide discretionary power – Article 142. Further, to review its own judgment – Article 137 and the power to punish for contempt of itself – Article 129 of the Constitution.

5 JUDGMENT & DISCUSSION

- 5.1 The majority opinion was pronounced by Hon'ble Justice Quadri, Chief Justice Bharucha, Hon'ble Justice U. C. Banerjee, Hon'ble Justice S. N. Variava and Hon'ble Justice S. V. Patil and has made the following observations with regard to the nature and extent of powers vested with the Supreme Court –



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5.2 *First*, since the jurisdiction in the case was invoked under Article 32 of the Constitution, the court dealt with whether the SC can further adjudicate a matter under Article 32. It noted that this provision entails supervisory jurisdiction upon SC with the power to issue writs of *habeas corpus*, *prohibition*, *mandamus*, *quo warranto* and especially *certiorari*. Being supervisory in nature, these writs cannot be issued to subordinate courts or to a superior court

5.3 The court relied on the case(s) of *Naresh Shridhar Mirajkar v. State of Maharashtra*, *A.R. Antulay v. R. S. Nayak & Triveniben v. State of Gujarat* and took the view that a judgment passed by the Supreme Court is not amenable to correction by writ of *certiorari* under Article 32.

5.4 *Second*, if not under Article 32, then whether an order of the SC can be corrected under the exercise of its inherent powers after the dismissal of review petition, on the ground that the order was passed either without jurisdiction or in violation of principles of natural justice or has been subjected to an unfair procedure giving scope for bias, which resulted in abuse of process of the SC or miscarriage of justice to the aggrieved? To this the SC acknowledged that it is the final court on questions of fact and law. The law declared by the SC is the law of the land; and is a precedent on itself and all other inferior courts in India.

5.5 To that extent the SC tried to strike a balance between the concept of *stare decisis* and the legal maxim *interest reipublicae ut sit finis litium*. It be noted that Order XL Rule 5 of the Supreme Court Rules (*erstwhile*) bars further review viz. the same matter or question of law or fact. But the principle of finality is not more important than rendering justice in a cause. Further, that delivering justice in the rarest of rare cases shall prevail over *stare decisis*, especially when declining to reconsider the judgment would be oppressive to judicial conscience.

5.6 It relied on the *Harbans Singh case*, *A.R. Antulay v. R.S. Nayak* and *M.S. Ahlawat v. State of Haryana* to conclude that the final judgment of the SC can be reconsidered *ex debito justitiae* under the exercise of its inherent powers to prevent abuse of its process and to cure a gross miscarriage of justice.

5.7 *Third*, what should be the requirements to entertain a curative petition under the exercise of inherent powers of the SC? The SC noted that unless very strong case exists the SC should not reconsider its final judgment. Thus, a person is entitled to this relief *ex debito justitiae* if it is established that –

- i There has been violation of principles of natural justice.
- ii That the Ld. Judge failed to disclose any factors that could lead to scope for apprehension of bias.
- iii The petitioner shall specifically mention the grounds taken in the review petition which was dismissed by the court.
- iv The curative petition shall be accompanied by certificate by a Senior Advocate certifying that the petition fulfils the criteria mentioned in the *Ashok Hurra case*.
- v Further, it must be accompanied by a certificate by a Supreme Court Advocate on Record (AoR) stating that the petition is the first curative petition in the impugned matter.
- vi It must first be circulated to a Bench comprising of three senior-most judges of the Supreme Court and preferably with those judges who passed the judgment at issue.

5.8 Pursuant to the above discussed judgment, an amendment into the Supreme Court Rules has been brought-in under Order XLVII, through which the above-mentioned requirements have been included as a law laid down in the legislation.

6. Conclusion

6.1 The concept of curative petitions has provided a significant addition to the Indian legal system. It ensures that justice is not denied to anyone, subject to the same because of violation of principles of natural justice or leading to an irreparable infringement of rights of an individual. It inclines towards delivering justice over finality of an order passed and departure from the rule of *stare decisis*. Further, it upholds the rule of law and provides for relief *ex debito justitiae* to an individual.