

CURATIVE PETITIONS- MEANING, SCOPE AND PROCEDURE

The concept of curative petitions was laid down by the court in the case of *Rupa Ashok Hurra v. Ashok Hurra & Anr.*¹ In this case a Writ Petition was filed against the order of dismissal of a review petition by the Hon'ble Supreme Court of India. The decision in this case was given by a Constitutional Bench.

1. BACKGROUND

The main question that arose before the Hon'ble Supreme Court of India is stated as follows-

"Whether the judgment of this Court dated March 10, 1997 in civil Appeal No.1843 of 1997 can be regarded as a nullity and whether a writ petition under Article 32 of the Constitution can be maintained to question the validity of a judgment of this Court after the petition for review of the said judgment has been dismissed are, in our opinion, questions which need to be considered by a Constitution Bench of this Court."

The SC initially discussed the scope of Writ Petitions and concluded that Writs can't be issued by a High Court against the same or another High Court under Article 226 of the Constitution. It was also said that the Supreme Court can't issue a Writ against a decision of the High Court under Article 32, but can only exercise appellate jurisdiction under Articles 132, 133, 134 and 136 of the Constitution. Further, it was held that a smaller or larger bench of the Supreme Court can't issue a writ under Article 32 against another bench of the Supreme Court. This was affirmed after referring to various decisions of the SC.

2. FINALITY OF ORDERS PASSED BY THE SUPREME COURT

The position with regards to finality of an earlier order of the Supreme Court and its effect, a Constitution Bench laid down the principle in the case of *In Re: Cauvery Water Disputes Tribunal*², stated as below-

"... Secondly, a decision given by this Court can be reviewed only under Article 137 read with Rule 1 of Order XL of the Supreme Court Rules, 1966 and on the conditions mentioned therein. When, further, this Court overrules the view of law expressed by it in an earlier case, it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decision. It does so in exercise of its inherent power and only in exceptional circumstances such as when the earlier decision is per in curiam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and productive of public mischief."

In effect, the Supreme Court laid down that if a review petition has been dismissed then the decision can be overruled only if there exist exceptional circumstances or the decision is manifestly wrong. However, the overruling of the decision can't take place on the basis of a review petition but in the future when a different case is heard and the bench feels that the decision expressed earlier is not correct or suffers from infirmities.

3. POWER OF THE COURT UNDER ARTICLE 142

Arguments were advanced on behalf of all the parties, including the Attorney General and other Senior Advocates, involved in this case that even if the SC can't review its decisions under Article 137 on the ground that they have

¹ 2002 (4) SCC 388: AIR 2002 SC 1771

² 1993 Suppl.(1) SCC 96

attained finality, an opportunity might be granted by the Hon'ble Court under the exercise of its inherent powers in order to prevent gross miscarriage of justice. The SC then relied on the decision passed by the Hon'ble Supreme Court in the case of *Harbans Singh v. State of U.P.*³, in which the execution of the death penalty of the Petitioner was stayed by the SC. In this case, the petitioner's Special Leave Petition, Review Petition and petition for clemency by the President of India were all dismissed. Explaining the scope of their inherent powers, the SC held-

"Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice."

The Hon'ble Supreme Court finally held as follows-

"47. The upshot of the discussion in our view is that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may re-consider its judgments in exercise of its inherent power."

4. **GROUND AND REQUIREMENTS FOR CURATIVE PETITION**

The Hon'ble Supreme Court laid down the following conditions in order that a Curative Petition may be admitted by the Supreme Court-

- a. If the Petitioner establishes the violation of principles of natural justice by proving 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.
- b. If a learned Judge, who is a part of the bench adjudicating the case, fails to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the subsequent judgment adversely affects the petitioner.

In addition to these grounds, the Hon'ble Supreme Court also laid down the following conditions-

- The petitioner has to specifically state that the grounds mentioned in the curative petition had been taken in the review petition and it was dismissed by circulation.
- A Senior Advocate has to certify that the curative petition has fulfilled all the requirements above.

5. **PROCEDURE FOR CURATIVE PETITION**

- a. The Curative Petition will be sent to a bench comprising of the 3 senior most judges along with the judges who passed the order, which is being appealed against, if available.
- b. If the majority of the judges feel that the Curative Petition deserves to be heard, it will be sent to the Bench which passed the original orders (as far as possible), in order to seek re-consideration.

³1982CriLJ795

- c. The Bench may seek the assistance of a Senior Advocate as Amicus Curiae in the matter.
- d. However, if it is held by the Bench at any stage that the Curative Petition is frivolous and devoid of merit, it may impose exemplary costs on the Petitioner.