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IS CURATIVE PETITION DIFFERENT FROM A SECOND REVIEW PETITION?

INTRODUCTION

Rupa Ashok Hurra Vs. Ashok Hurra (2002) was the case that laid down the option of filing a Curative Petition. It is the last constitutional resort available where the court can revise its judgment after the review petition has been dismissed. It should be noted that the term 'Curative Petition' is not mentioned anywhere in the Constitution of India. The procedure by which the Supreme Court gets the authority to create such a petition is by reading articles 137 and 142 together. Under Article 142 the Supreme Court has the inherent power to review its final judgment that would otherwise result in a miscarriage of justice[1]. This power to review is granted by Article 137 to review any of the judgments pronounced by the Supreme Court. Before the concept of curative petition came into being, review petitions marked the finality of a Supreme Court judgment beyond which no measure was allowed. In defining review, the Supreme Court means to re-examine or reconsider a final judgment[2]. The Supreme Court acts in the same manner in curative petitions as it does in review petitions only the words to describe the two are different.

ANALYSIS

Contrary to public perception, a curative petition does not mean going back to the Supreme Court and telling it that its decision is wrong, rather, it involves pointing out to the Court that a fundamental miscarriage of justice had been brought about as a result of a flawed judicial decision-making process[3]. When the Supreme Court entertains the curative and review

[1] Rupa Ashok Hurra Vs. Ashok Hurra and Anr, (2002) 4 SCC 388 at P. 416, Para 49.

[2] S. Nagaraj V. State of Karnataka 1993 Supp (4) SCC 595, P. 619, Para 19.

petitions it thereby acknowledges the errors and mistakes made by it in judgements which are corrected through the review process.

The power of review cannot be exercised more than once[4]. The Supreme Court held that a second review after dismissing the first is an abuse of the process of the court[5].

The Supreme Court has laid down very stringent procedures for the filing of curative petitions as compared to the review petitions. Despite this stringency, many curative petitions have been filed and dismissed. In my opinion, the incentive of the public behind filing unwarranted curative petitions is for the court to find mistakes in the impugned judgment.

A) SCRUTINIZING THE HANDLING OF THE POWER OF REVIEW BY THE SUPREME COURT

Upon scrutinizing how the Supreme Court handles its power of review, we see that it is inconsistent with its approach. In the past, the Supreme Court has been lenient with the rules that pertain to review and in the present, it prescribes highly strict procedures for curative petitions that are difficult to comply with. As seen in the Antulay case, the appellant came before the court under Article 136 to challenge a Supreme Court judgment[6]. The court exercised its review power without insisting that the formalities of a review application be met. Even though the Antulay case had held that a judgment could not be criticized via a writ petition under Article 32[7], the writ petitions filed under Article 32 in the Hurra case were admitted.

B) ANALYSIS BETWEEN CURATIVE AND REVIEW PETITIONS

- The manner in which the Supreme Court pays attention to the Curative and Review petitions –

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[3] Raghav Shankar, 'Supreme Court Got It Right in the Bhopal Curative Petition' (2011) 46 Economic and Political Weekly 19 at P. 20 <https://www.jstor.org/stable/pdf/23017868.pdf?refreqid=fastly-default%3A0636482ea13f962a567419a99fbe0e5b&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results&acceptTC=1> accessed 3 May 2024.

[4] The Supreme Court under Article 145 of the Constitution can from time to time make rules for regulating its practice and procedure. Under this power, the Supreme Court propounded, The Supreme Court Rules, 1966; O-XL Order XL, Rule 5 of the Supreme Court Rules, 1966 provides that where an application for review of any judgment and order has been made and disposed of, no further application for review is maintainable in the same matter.

[5] M.S.L. Patil v. State of Maharashtra, (1999) 9 SCC 231

[6] A. R. Antulay v. R. S. Nayak (1988) 2 SCC 670, P. 670, Para 79

[7] See an appendix of A. R. Antulay v. Union of India (1984) 3 SCR 482, 483 (The matter had been disposed of by a divisional Bench) at P. 764 of A. R. Antulay v. R. S. Nayak (1988) 2 SCC 602 judgment.

a) The curative petitions are circulated to the three senior most judges of the Supreme Court (including the CJI of India) as well as the judges who had passed the impugned judgment if they are available.
b) The review petitions are circulated to the judges who had passed the impugned judgment.

- It is mandatory to acquire a certificate of a senior counsel in both the reviews. This requirement is necessitated to claim that very strong reasons exist and it is imperative for the Supreme Court to admit the petition. But in the case of Curative petitions, if the Court feels that strong reasons do not exist for admission of the petition, it can impose exemplary costs on those petitions. This is not the case in review petitions.

- Grounds that permit the admission of the petitions –

a) The grounds laid down in the Hurra case are the only grounds that would allow the admission of a curative petition by the Court. These grounds are based on the principles of natural justice.
b) For review petitions, the Court has taken the grounds for filing review petitions as illustrative and not exhaustive. These grounds are broader and not just restricted to natural justice.

CONCLUSION

In relation to Curative petitions, it is understood that it is the Court's discretion to choose to admit or dismiss them based on whether they are fulfilling the parameters set forth by the Hurra judgment. The fact that till now hardly any petitions have thrived amongst all the curative petitions that are filed shows that it is quite difficult to make out a case within the parameters set by the Hurra case. Along with this, the Court should take into consideration that the formality of filing the curative petitions should not bar anyone from approaching the Supreme Court and getting justice. In my opinion, Curative petitions are second review petitions with stringent procedures that have to be fulfilled. The Court should have ideally proceeded by adopting Article 145 of the Constitution. Even though Article 137 of the Constitution grants the Supreme Court the power to review any of its final decisions, it is not restricted to only one time use in relation to a final Supreme Court decision. It is through the Supreme Court's pronouncement and exercise of its power under Article 145 that review power has been used

only once in any relevant final Supreme Court decision. Even though amending order 40 of the Supreme Court Rules, 1966, would be an elaborate procedure it would have been the most sensible way to deal with the queries put forward by the writ petitions in the Hurra case. By choosing to formulate the procedure based on a judgment and wanting to deliver instant justice the Supreme Court sacrificed the principles of constitutionalism.