

**Court No. - 10**

**Case :-** WRIT - C No. - 3124 of 2019

**Petitioner :-** Ashok Verma

**Respondent :-** State Of U P And 2 Others

**Counsel for Petitioner :-** Manish Singh, Sushma Singh

**Counsel for Respondent :-** C.S.C.

**Hon'ble Siddhartha Varma, J.**

Heard learned counsel for the parties.

Show cause notice was issued to the petitioner as to why his license for carrying the firearm be not cancelled. On 3.6.2015, the petitioner had appeared before the District Magistrate, Varanasi. However, even before a reply was filed the firearm license was cancelled on 27.06.2017. The petitioner filed a Review Application, which was also dismissed on 12.07.2017. When, however, the Review Application was also dismissed, the petitioner challenged the orders dated 27.06.2017 and 12.07.2017 before the Appellate Forum and the Appeal was ultimately allowed on 5.3.2015 and the matter was remanded back to the District Magistrate, Varanasi. When the District Magistrate, Varanasi refused to interfere in the matter, after the matter was remanded back, the instant writ petition has been filed against the order dated 13.08.2018 as also against the cancellation order dated 27.06.2015.

Submission of learned counsel for the petitioner is that after the

District Magistrate had set-aside the order dated 12.07.2015 and had restored the Review Application, the Review/Recall Application ought to have been heard. He submits that it was incumbent upon the District Magistrate to have heard the Review Application, specially when the Appellate Court had returned a definite finding that the earlier order dated 27.06.2015 was passed without hearing the petitioner. Learned counsel for the petitioner relying upon a decision of the Supreme Court reported in 2018(11) SCC 470; (Seri Infrastructure Finance Limited vs. Tuff Drilling Private Limited) has observed that when a review was sought owing to the fact that the quasi judicial Authority had not afforded proper opportunity of hearing then Review Application was definitely maintainable.

Since the learned counsel for the petitioner relied upon the paragraphs 22, 23 and 24 of the aforementioned judgement, the same is being reproduced here asunder :-

" 22. Learned amicus curiae has referred to judgment of this Court in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal & Ors., 1980 (Supp) SCC 420. In that case this Court was considering the power of industrial tribunal to set aside its ex-parte award on being satisfied that there was sufficient cause. The Court also noticed that there was no specific express provision in the Act or the Rules giving the tribunal jurisdiction to do so. In Para 6, following was held:-

“6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal

should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.”

23. It is true that power of review has to be expressly conferred by a Statute. This Court in Paragraph 13 has also stated that the word review is used in two distinct senses. This Court further held that when a review is sought due to a procedural defect, such power inheres in every tribunal. In Paragraph 13, following was observed:-

13. .... The expression “review” is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.”

24. In Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. & Anr., (2005) 13 SCC 777, this Court again held that a quasi-judicial authority is vested with the power to invoke procedural review. In Paragraph 19 of the judgment, following was laid down:-

“19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error

of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal* it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.”

Learned Standing Counsel, however, in reply submitted that review is a creation of a statute and until it is provided in the statute, review did not lie. Further, the learned Standing Counsel submitted that the petitioner should have filed an Appeal against the order dated 13.08.2018.

Having heard the learned counsel for the petitioner and the learned Standing Counsel, the Court is of the view that when the Appellate Court after returning a categorical finding that the petitioner was not heard before the order dated 27.06.2015 was passed had restored the Review Application then it was incumbent upon the District Magistrate to have heard the Review Petition. Further as it has been held by the Supreme Court in 2018(11) SCC 470, every Tribunal has the power of review if there is a procedural defect. In the instant case when the petitioner was not heard definitely a Review was maintainable.

Further the Court is of the view that when a pure question of law was involved it was not necessary for the petitioner to have approached the Appellate Court.

Under such circumstances, the order dated 13.08.2018 is set-

aside, the Review Petition stands restored. The District Magistrate shall after affording an opportunity of hearing to the petitioner and also to the State, pass appropriate orders on the Review Petition within a period of two months from the production of a copy of this order. Copy of this order would be certified by the learned counsel.

With these observations the writ petition stands allowed.

**Order Date :- 25.10.2021**

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