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(2025) 10 OHC CK 0029

Orissa HC

Case No: RVWPET No 157 Of 2025

Geeta Rath

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

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**Date of Decision:** Oct. 27, 2025

**Acts Referred:**

- Code Of Civil Procedure, 1908 &mdash; 47 Rule 1

**Hon'ble Judges:** Sashikanta Mishra, J

**Bench:** Single Bench

**Advocate:** N. Rath, S. Behera

**Final Decision:** Allowed

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### Judgement

Sashikanta Mishra, J

1. This is an application filed by the petitioner seeking review of judgment dated 25.04.2025 passed by this Court in W.P.(C) No.4050 of 2025. By the said judgment, the petitioner's case was dismissed on the ground of belated approach to this Court.

2. The facts, relevant only to decide the review application are that the petitioner had filed the aforementioned writ petition seeking the following relief:-

*"It is therefore most humbly prayed that this Hon'ble Court may graciously be pleased to admit this writ applications, issue Rue NISI in the nature of writ of mandamus directing the Opp. Parties to issue green Card in favour of the petitioner on the basis of surgery certificate dtd. 23.10.1998 within a stipulated period"*

3. The petitioner's case is that she had undergone surgery for ovarian cyst by endoscopy on 21.10.1998 and in course of such surgery, she also underwent Tubectomy as a measure of family planning. The husband of the petitioner had submitted a representation before the Director of Family Welfare, Odisha for issuance of Green Card enclosing the discharge certificate. As per Government of Odisha Health Department Resolution dated 19.10.1983, Green Cards were issued to individuals having two children and opting for the terminal method of tubectomy/vasectomy. Such Green Card holders are entitled to certain concessions as detailed in the resolution including reservation of 5% seats in technical institutions. Since the petitioner had undergone the surgery at Shanti Hospital, Research and Diagnosis Center, Cuttack necessary documents relating to the same were sought for but the Managing Director of the Hospital informed that the

relevant records had been damaged during the Super Cyclone in 1999. On such grounds the request of the petitioner for issuance of Green Card was turned down. Challenging the rejection of her claim, the petitioner had filed the writ petition with the prayer quoted before.

4. After hearing both sides, this Court took note of the fact that though the petitioner had undergone surgery on 21.10.1998, she had not mentioned anything in the writ petition as to why she remained silent for all these years without raising claim for issue of Green Card as per provision of the relevant government resolution. Since 27 years had elapsed and the delay had never been explained, this Court, treating it as a stale claim dismissed the writ petition.

5. The petitioner has filed this review application mainly on the ground that she was not heard on the question of delay but an adverse order was passed against her on such ground. Had she been given the opportunity, she would have brought it to the notice of this Court that the Government Resolutions dated 19.10.1983 and 18.11.1998 do not specify any time limit for applying for Green Card nor any for filing of applications. The petitioner's claim was never rejected by the authorities on the ground of delay but because of non-availability of relevant documents. Therefore, unless the judgment is recalled and the writ petition is heard again on its merit, the petitioner would be seriously prejudiced.

6. Heard Mr. Nihal Rath, learned counsel for the petitioner and Mr. S. Behera, learned Addl. Government Advocate for the State.

7. Mr. Rath would argue that the question of belated filing of the writ petition was never raised during hearing. Moreover, the petitioner's claim was never rejected by the authorities on the ground of delay as the government resolutions do not specify any period for raising the claim. Mr. Rath therefore submits that this is a good ground to review the judgment and to re-hear the same on its own merit.

8. Mr. Behera, learned AGA would submit that if the petitioner is aggrieved, she may prefer appeal before the higher forum against the impugned judgment. She cannot seek to re-open the matter in the garb of review, which is actually an appeal. Mr. Behera, however, fairly submits that the question of belated filing of the writ petition was not raised during hearing of the writ petition.

9. Law relating to review is well settled. In the case of *M/s. Tungabhadra Industries Ltd., Kurnool Vs. The State of Andhra Pradesh*, reported in AIR 1964 SC 1372, the Supreme Court held as follows:-

*A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborated argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out"*

10. In the case of *Rajender Kumar & Others v. Rambhai*, (2007) 15 SCC 513, the Supreme Court held that first and foremost requirement of entertaining a review application is that the order, review of which is sought (a) suffers from any error apparent on the face of the record, and (b) permitting the order to stand will lead to failure of justice. It is equally well settled that review lies only when there is an error apparent on the face of the record and that fallibility is by the oversight of the Court. Further, if a party has not been granted opportunity of hearing on a particular point, the judgment can be reviewed. In *Shivdeo Sing Deo and Others vs. State of Punjab and others*, reported in AIR 1963 SC 1909, it was held that the entire concept of writ jurisdiction is founded on equity and fairness and if the Court has committed a mistake, it should be removed by entertaining a review application so that the result may not lead to miscarriage of justice as rectification of an order stems from the fundamental principle that justice is above all. The provision of Order XLVII Rule-1 CPC permits review even on the mistake of fact or on ignorance of material facts. The review jurisdiction should be exercised to prevent miscarriage of justice or to correct grave and palpable errors committed by the Court.

11. The Supreme Court has further clarified that the expression 'for any other sufficient reason' in Order XLVII Rule 1 CPC is of wide import and encompasses situations where a mistake or misconception of fact or law has occurred, even if arising from an inadvertent error of the Court itself. The doctrine *actus curiae neminem gravabit*, that no one should suffer because of an act of the Court reinforces the power of review in such circumstances to ensure that procedural or factual errors committed by the Court do not result in injustice.

12. Tested on the touchstone of the position of law as referred to in the judgments cited in the preceding paragraphs, this Court finds that the petitioner was actually not heard on the question of belated filing of the writ petition. Secondly, the fundamental fact that the Government Resolutions dated 19.10.1983 and 18.10.1998 do not provide any time period for raising a claim for issue of Green Card had escaped attention of this Court. Thus, holding that the claim of the petitioner was stale, the writ petition was dismissed. The materials on record available in the writ petition clearly demonstrate that the petitioner's claim was not rejected by the authorities on the ground of delay but for non-availability of documents. So, the justifiability of the rejection of the claim on the above ground was to be adjudicated in the writ petition. But this Court proceeded from a different perspective and dismissed the writ petition on the ground of belated filing. From what has been narrated before, this amounts to a mistake of fact committed by the Court resulting in miscarriage of justice. This Court, therefore finds considerable force in the submission of the petitioner.

13. For the foregoing reasons therefore, the application for review is allowed. The judgment dated 25.04.2025 passed by this Court in W.P.(C) No.4050 of 2025 is hereby recalled. The Registry is directed to list the said writ petition for hearing.