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(2002) 04 SC CK 0029

Supreme Court of India

Case No: W.P.(C) No.-000509-000509 / 1997

Rupa Ashok Hurra APPELLANT

۷s

Ashok Hurra and Another RESPONDENT

Date of Decision: April 10, 2002

Acts Referred:

• Supreme Court Rules, 1966 - Order 40 Rule 1, Order 40 Rule 5, Order 40 Rule 6

• Constitution of India, 1950 - Article 32, 124, 129, 131, 132, 133, 134, 136, 137, 138, 141, 142, 144, 226

- Indian Penal Code 1860 &mdash Section 193
- Code Of Civil Procedure, 1908 Section 114

Citation: AIR 2002 SC 177 : (2002) 2 CompLJ 193 : (2002) 3 GLR 290 : (2002) 3 GLR 2138 :

(2002) 3 JT 609: (2002) 3 SCALE 406: (2002) 4 SCC 388: (2002) 2 SCR 1006

Hon'ble Judges: S. P. Bharucha, C.J; U. C. Banerjee, J; Shivaraj V. Patil, J; S. S. M. Quadri, J; S. N. Variava, J

Bench: Full Bench

Advocate: Party in person in WP No. 374 of 200 Soli J. Sorabjee, Attorney-General, Shanti Bhushan, P.A. Mohammed, Anil B. Divan, Rajiv Dutta, K.K. Venugopal, D.A. Dave, Parag P. Tripathi, Ranjit Kumar, Rajeev Dhavan and P.S. Mishra, Kamini Jaiswal, Aishwarya Rao, Bipaakkhu Borthakur, P. Vittal Rao, Gunwant Dara, Sudha Gupta, Vikas Singh, Yunus Malik, Pallavi Parmar, Prashant Chaudhary, Prashant Bhushan, Sanjeev K. Kapoor, Narender Verma, Vishal Gupta, Sanjay Pathak, Anil Mittal, K.K. Mohan, A.T. Patra, S. Sukumaran, Nipun Malhotra, Sonia Hurra, Divyang K. Chhaya, Varun Goswami, A.P. Medh, Dhruv Mehta, K.C. Kaushik, Prateek Jalan, Manish Singhvi, R.N. Poddar, C. Radhakrishna, Sushma Suri, S.N. Terdal, Sanjay R. Hegde, Satya Mitra, G. Prakash, K.B. Rohatgi, Aparna Rohatgi Jain, Manoj Aggarwal, Ranji Thomas, Javed M. Rao, Vineet Sinha, Ashok Aggarwal, Rajendra Pd. Saxena, B.S. Banthia, V.B. Saharya, Rakesh K. Khanna, Reetesh Singh, Surya Kant, Sunita Sharma, Rekha Pandey, D.S. Mahra, Bimal Roy Jad, Vineet Kumar, V.K. Sidharthan, B.K. Khurana, S. Muralidhar, S. Vallinayagam and Neeru Vaid, for the Appellant;

Final Decision: Dismissed

Judgement

Syed Shah Mohammed Quadri, J.

These writ petitions have come up before us as a Bench of three learned Judges of this Court referred the first mentioned writ petition to a Constitution Bench observing thus:

"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 aintained 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."

- 2. The other writ petitions were tagged to that case.
- 3. In these cases the following question of constitutional law of considerable significance arises for consideration: whether an aggrieved person is entitled to any relief against a final judgment/order of this Court, after dismissal of review etition, either under Article 32 of the Constitution or otherwise.
- 5. In our endeavour to answer the question, we may begin with noticing that the Supreme Court of India is established by Article 124 of the Constitution which specifies its jurisdictionand powers and enables Parliament to confer further jurisdictionand powers on it. The Constitution conferred on the SupremeCourt original jurisdiction (Articles 32 and 131); appellatejurisdiction both civil and criminal (Articles 132, 133, 134); discretionary jurisdiction to grant special leave to appeal(Article 136) and very wide discretionary powers, in theexercise of its jurisdiction, to pass decree or make such order asis necessary for doing complete justice in any cause or matterpending before it, which shall be enforceable throughout theterritory of India in the manner prescribed (Article 142); powerslike the power to withdraw any case pending in any High Courtor High Courts to itself or to transfer any case from one HighCourt to another High Court (Article 139) and to reviewjudgment pronounced or order made by it (Article 137). Conferment of further jurisdiction and powers is left to be provided by Parliament by law (Article 138). Parliament is also enabled to confer further powers on the Supreme Court(Articles 134(2), 139, 140). Article 141 says that the lawdeclared by the Supreme Court shall be binding on all courtswithin the territory of India and Article 144 directs that allauthorities civil and judicial, in the territory of India, shall act inaid of the Supreme Court. It is a Court of record and has all thepowers of such a Court including power to punish for contemptof itself (Article 129).
- 6. Since the jurisdiction of this Court under Article 32 of the Constitution is invoked in these writ petitions, we shalladvert to the provisions of Article 32 of the Constitution. It is included in Part III of the Constitution and is quotedhereunder:

- "32. Remedies for enforcement of rightsconferred by this Part. -
- (1) The right to move the Supreme Court byappropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issuedirections or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any othercourt to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause(2).
- (4) The right guaranteed by this article shall notbe suspended except as otherwise provided forby this Constitution."
- 7.A perusal of the Article, quoted above, shows it containsfour clauses. Clause (1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III fundamental rights. Byclause (2) the Supreme Court is vested with the power to issuedirections or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari whichever may be appropriate for the enforcement of any of the rights conferred by Part III. Without prejudice to the powers of the Supreme Court in the aforementioned clauses (1) and (2), the Parliament is enabled, by clause (3), to empower bylaw any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). The constitutional mandate embodied in clause (4) is that Article 32 shall not be suspended except asotherwise provided for by the Constitution.
- 8. Inasmuch as the Supreme Court enforces the fundamentalrights by issuing appropriate directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, it may be useful torefer to, in brief, the characteristics of the writs in general andwrit of certiorari in particular with which we are concernedhere. In English law there are two types of writs -- (i) judicial procedural writs like writ of summons, writ of motion etc. which are issued as a matter of course; these writs are not invogue in India and (ii) substantive writs often spoken of as highprerogative writs like writ of quo warranto, habeas corups, mandamus, certiorari and prohibition etc.; they are frequently resorted to in Indian High Courts and the Supreme Court. "Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court into the King"s Bench for review or to remove indictments for trial inthat court; mandamus was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a

public duty. All three were called prerogativewrits." In England while issuing these writs, at least in theory, the assumption was that the King was present in the King"sCourt. The position regarding the House of Lords is describedthus, "of the Court of Parliament, or of the King in Parliamentas it is sometimes expressed, the only other supreme tribunal inthis country." in Rajunder Narain Rai Vs. Bijai Govind Singh(1836 (1) Moo. P.C. 117). They are discretionary writs but theprinciples for issuing such writs are well defined. In the pre-constitutional era the jurisdiction to issue the prerogative writswas enjoyed only by three chartered High Courts in India butwith the coming into force of the Constitution, all the HighCourts and the Supreme Court are conferred powers to issuethose writs under Article 226 and Article 32, respectively, of the Constitution. In regard to the writ jurisdiction, the HighCourts in India are placed virtually in the same position as theCourts of King"s Bench in England. It is a well-settledprinciple that the technicalities associated with the prerogativewrits in English Law have no role to play under ourconstitutional scheme. It is, however, important to note that awrit of certiorari to call for records and examine the same forpassing appropriate orders, is issued by a superior court to aninferior court which certifies its records for examination." Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the HighCourt for review so that the court may determine whether theyshould be guashed, or to guash such decisions. The order ofprohibition is an order issuing out of the High Court and directedto an inferior court or tribunal or public authority which forbidsthat court or tribunal or authority to act in excess of itsjurisdiction or contrary to law. Both certiorari and prohibition areemployed for the control of inferior courts, tribunals and publicauthorities."

9. Having carefully examined the historical background andthe very nature of writ jurisdiction, which is a supervisoryjurisdiction over inferior Courts/Tribunals, in our view, onprinciple a writ of certiorari cannot be issued to co-ordinatecourts and a fortiorari to superior courts. Thus, it follows that a High Court cannot issue a writ to another High Court; nor canone Bench of a High Court issue a writ to a different Bench ofthe same High Court; much less can writ jurisdiction of a HighCourt be invoked to seek issuance of a writ of certiorari to the Supreme Court. Though, the judgments/orders of High Courtsare liable to be corrected by the Supreme Court in its appellatejurisdiction under Articles 132, 133 and 134 as well as under Article 136 of the Constitution, the High Courts are notconstituted as inferior courts in our constitutional scheme. therefore, the Supreme Court would not issue a writ underArticle 32 to a High Court. Further, neither a smaller Benchnor a larger Bench of the Supreme Court can issue a writ underArticle 32 of the Constitution to any other Bench of the Supreme Court. It is pointed out above that Article 32 can beinvoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that no judicial order passed by any superior court in judicialproceedings can be said to violate any of the fundamental rightsenshrined in Part III. It may further be noted that the superiorcourts of justice

do not also fall within the ambit of State orother authorities under Article 12 of the Constitution.

10. In aresh Shridhar Mirajkar & Ors. vs. State of Maharashtra & Anr. [1966 (3) SCR 744] , some journalists fileda Writ Petition in the Supreme Court under Article 32 of theConstitution challenging an oral order passed by the High Courtof Bombay, on the Original Side, prohibiting publication of the statement of a witness given in open court, as being violative of Article 19(1)(a) of the Constitution of India. A Bench of ninelearned Judges of this Court considered the question whetherthe impugned order violated fundamental rights of thepetitioners under Article 19(1)(a) and if so whether a writ underArticle 32 of the Constitution would issue to the High Court. The Bench was unanimous on the point that an order passed bythis Court was not amenable to the writ jurisdiction of thisCourt under Article 32 of the Constitution. Eight of the learnedJudges took the view that a judicial order cannot be said tocontravene fundamental rights of the petitioners. Sarkar, J. wasof the view that the Constitution does not contemplate the HighCourts to be inferior courts so their decisions would not beliable to be guashed by a writ of certiorari issued by the Supreme Court and held that this Court had no power to issue awrit of certiorari to the High Court. To the same effect are theviews expressed by Shah and Bachawat, JJ. Though, in hisdissenting judgment Hidayatullah, J. (as he then was) held that ajudicial order of the High Court, if erroneous, could becorrected in an appeal under Article 136 of the Constitution, he, nonetheless, opined that the impugned order of the High Courtcommitted breach of the fundamental right of freedom ofspeech and expression of the petitioners and could be guashedunder Article 32 of the Constitution by issuing a writ ofcertiorari to the High Court as subordination of the High Courtunder the scheme of the Constitution was not only evident butalso logical. In regard to the apprehended consequences of hisproposition, the learned Iudge observed:

"It was suggested that the High Courts might issuewrits to this Court and to other High Courts andone Judge or Bench in the High Court and the Supreme Court might issue a writ to another Judgeor Bench in the same Court. This is an erroneous assumption. To begin with the High Courts cannot issue a writ to the Supreme Court because the writgoes down and not up. Similarly, a High Court cannot issue a writ to another High Court. Thewrit does not go to a court placed on an equal footing in the matter of jurisdiction. Where the county court exercised the powers of the High Court, the writ was held to be wrongly issued to it (See: In re The New Par Consols, Limited 1898(1) Q.B. 669."

(Emphasis supplied)

11. In <u>A.R.Antulay vs. R.S.Nayak & Anr. [1988 (2) SCC 602]</u>, the question debated before a seven-Judge Bench of thisCourt was whether the order dated February 16, 1984, passedby a Constitution Bench of this Court, withdrawing the casespending against the appellant in the Court of Special Judge and transferring them to the High

Court of Bombay with a requestto the Chief Justice to assign them to a sitting Judge of the High Court for holding trial from day to day. [R.S.Nayak vs. A.R.Antulay (1984) 2 SCC 183 at 243], was a valid order. It is relevant to notice that in that case the said order was notbrought under challenge in a petition under Article 32 of theConstitution. Indeed, the appellant"s attempt to challenge theaforementioned order of the Constitution Bench before thisCourt under Article 32 of the Constitution, turned out to beabortive on the view that the writ petition under Article 32, challenging the validity of the order and judgment passed bythe Supreme Court as nullity or otherwise incorrect, could notbe entertained and that he might approach the court withappropriate review petition or any other application which hemight be entitled to file in law. While so, in the course of thetrial of those cases the appellant raised an objection in regard to the jurisdiction of the learned Judge of the High Court to try thecases against him. The learned Judge rejected the objection andframed charges against the appellant, which were challenged byhim by filing a SLP to appeal before thisCourt wherein the question of jurisdiction of the High Court totry the cases was also raised. It was numbered as CriminalAppeal No.468 of 1986 and was ultimately referred to a seven-Judge Bench. By majority of 5:2 the appeal was allowed and all proceedings in the cases against the appellant before the High Court pursuant to the said order of the Constitution Benchdated February 16, 1984, were set aside and quashed. Mukharji, Oza and Natarajan, JJ. took the view that the earlierorder of this Court dated February 16, 1984 which deprived theappellant of his constitutional rights, was contrary to the provisions of the Act of 1952 and was in violation of the principles of natural justice and in the background of the saidAct was without any precedent and that the legal wrong shouldbe corrected ex debito justitiae Ranganath Misra, J., with whom Ray, J., agreed, while concurring with the majority, observedthat it was a duty of the Court to rectify the mistake by exercising inherent powers. Ranganathan, J. expressed hisagreement with the view of the majority that the order was badbeing in violation of Articles 14 and 21 of the Constitution. However, he held that the said order was not one such order asto be recalled because it could not be said to be based on a viewwhich was manifestly incorrect, palpably absurd or patentlywithout jurisdiction. In that he agreed with Venkatachaliah, J. (as he then was) who gave a dissenting opinion. The learned Judge held that it would be wholly erroneous to characterise thedirections issued by a five-Judge Bench as a nullity liable to beignored and so declared in a collateral attack. However, fivelearned Judges were unanimous that the Court should act exdebito justitiae. On the question of power of the SupremeCourt to review its earlier order under its inherent powersMukharji, Oza and Natarajan, J. expressed the view that the Court could do so even in a petition under Articles 136 or Article 32 of the Constitution. Ranganath Misra, I. gave adissenting opinion holding that the appeal could not be treated as a review petition. Venkatachaliah, J. (as he then was) alsogave a dissenting opinion that inherent powers of the Court donot confer or constitute a source of jurisdiction and they are tobe exercised in aid of a jurisdiction that is already invested forcorrecting the decision under Article 137 read with Order

XLRule 1 of the Supreme Court Rules and for that purpose thecase must go before the same Judges as far as practicable.

- 12. On the question whether a writ of certiorari under Article32 of the Constitution could be issued to correct an earlier orderof this Court Mukharji and Natarajan,JJ. concluded that thepowers of review could be exercised under either Article 136 orArticle 32 if there had been deprivation of fundamental rights.Ranganath Misra, J. (as he then was) opined that no writ ofcertiorari was permissible as the Benches of the Supreme Courtare not subordinate to the larger Benches of this Court. To thesame effect is the view expressed by Oza, Ray, Venkatachaliahand Ranganathan,JJ. Thus, in that case by majority of 5:2 itwas held that an order of the Supreme Court was not amenable to correction by issuance of a writ of certiorari under Article 32of the Constitution.
- 13. In <u>Smt. Triveniben vs. State of Gujarat [1989 (1) SCC 678]</u>, speaking for himself and other three learned Judges of theConstitution Bench, Oza, J., reiterating the same principle, observed:

"It is well settled now that a judgment of court cannever be challenged under Articles 14 or 21 and therefore the judgment of the court awarding thesentence of death is not open to challenge asviolating Article 14 or Article 21 as has been laiddown by this Court in Naresh Shridhar Mirajkarvs. State of Maharashtra and also in A.R.Antulayvs. R.S.Nayak, the only jurisdiction which couldbe sought to be exercised by a prisoner forinfringement of his rights can be to challenge thesubsequent events after the final judicial verdict ispronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is whathas consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as towhether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be justand proper."

Jagannatha Shetty, J. expressed no opinion on this aspect.

14. We consider it inappropriate to burden this judgmentwith discussion of the decisions in other cases taking the sameview. Suffice it to mention that various Benches of this Courtreiterated the same principle in the following cases: A.R.Antulay vs. R.S. Nayak & Anr. [1988 (2) SCC 602], Krishna Swami vs. Union of India & Ors. [1992 (4) SCC 605], Mohd.Aslam vs. Union of India [1996 (2) SCC 749], Khoday Distilleries Ltd. & Anr. vs. Registrar General, Supreme Court of India [1996 (3) SCC 114], Gurbachan Singh & Anr. vs. Union of India & Anr. [1996 (3) SCC 117], Babu Singh Bains & Ors. vs. Union of India & Ors. [1996 (6) SCC 565] and P.Ashokan vs. Union of India & Anr. [1998 (3) SCC 56].

15. It is, however, true that in Supreme Court Bar Association vs. Union of India & Anr. [1998 (4) SCC 409], a Constitution Bench and in M.S.Ahlwat vs. State of Haryana & Anr. [2000 (1) SCC 278] a three-Judge Bench, and in other cases different Benches quashed the earlier judgments/orders ofthis Court in an application filed under Article 32 of theConstitution. But in those cases no one joined issue with regardto the maintainability of the writ petition under Article 32 of theConstitution. therefore, those cases cannot be read as authorityfor the proposition that a writ of certiorari under Article 32would lie to challenge an earlier final judgment of this Court. On the analysis of the ratio laid down in theaforementioned cases, we reaffirm our considered view that afinal judgment/order passed by this Court cannot be assailed inan application under Article 32 of the Constitution of India byan aggrieved person whether he was a party to the case or not.

16. In fairness to the learned counsel for the parties, werecord that all of them at the close of the hearing of these casesconceded that the jurisdiction of this Court under Article 32 ofthe Constitution cannot be invoked to challenge the validity of afinal judgment/order passed by this Court after exhausting theremedy of review under Article 137 of the Constitution readwith Order XL Rule 1 of the Supreme Court Rules 1966.

17. However, all the learned counsel for the parties as alsothe learned Attorney-General who appeared as amicus curiae, on the notice of this Court, adopted an unusual unanimousapproach to plead that even after exhausting the remedy of review under Article 137 of the Constitution, an aggrieved person might be provided with an opportunity under inherent powers of this Court to seek relief in cases of gross abuse of the process of the Court or gross miscarriage of justice because against the order of this Court the affected party cannot have recourse to any other forum.

18. Mr.Shanti Bhushan, the learned senior counsel appearingfor the petitioner, submitted that the principle of finality of theorder of this Court had to be given a go-by and the case re-examined where the orders were passed without jurisdiction orin violation of the principles of natural justice, violation of anyfundamental rights or where there has been gross injustice. Heinvited our attention to Order XLVII, Rule 6 of the SupremeCourt Rules, 1966 and submitted that this Court had inherentjurisdiction and that cases falling in the aforementionedcategories should be examined under the inherent jurisdiction of this Court. According to the learned counsel Article 129would not be available to correct a judgment of this Court buthe pleaded that as from the order of the Apex Court no appealwould lie, therefore, an application, by whatever name called, which should be certified by a senior counsel in regard to existence of permissible ground, has to be entertained on any of the aforementioned grounds to correct a judgment of this Court. He cited Antulay's case, Supreme Court Bar Association's case and Ahlwat's case as instances in which this Court hadcorrected its earlier judgments. He advocated: (i) for oralhearing on

such an application and (ii) for hearing by a Benchof Judges other than those who passed the order on the groundthat it would inspire confidence in the litigant public.Mr.K.K.Venugopal, the learned senior counsel, whileadopting the arguments of Mr.Shanti Bhushan submitted thatthe provisions of Order XLVII, Rule 6 of the Supreme CourtRules, is a mere restatement of the provisions of Article 137 ofthe Constitution and that the inherent jurisdiction of this Courtmight be exercised to remedy the injustice suffered by a person. He suggested that a Constitution Bench consisting of seniorjudges and the judges who passed the order under challenge, could be formed to consider the application seeking correction of final orders of this Court. He added that to ensure thatfloodgates are not opened by such a remedy, an application forinvoking the inherent power of this Court might require that itshould be certified by a senior advocate and in case of frivolousapplication the petitioner could be subjected to costs. He reliedon the judgment of United States in United States of AmericaVs. Ohio Power Company [1 Lawyers" Ed. 2d 683] to showthat in every jurisdiction the courts have corrected their ownmistakes. He cited the judgment of this Court in Harbans Singh Vs. State of Uttar Pradesh & Ors. [1982] (2) SCC 101] to show that even after the dismissal of the Review Petition the SupremeCourt reconsidered its own judgment; he pleaded for layingdown guidelines in regard to entertaining such an application.Mr.Anil B.Divan, the learned senior counsel, submittedthat Article 129 of the Constitution declared this Court to be acourt of record so it would have inherent powers to passappropriate orders to undo injustice to any party resulting fromjudgments of this Court. He relied on the judgment of thisCourt in Supreme Court Bar Association"s case (supra) to showthat such a power was exercised by this Court and pleaded tofashion appropriate procedure for entertaining application toreconsider earlier judgment of this Court at the instance of anaggrieved person to do justice to the parties.

19. The learned Attorney-General argued that the remedyprovided under Article 32 of the Constitution would not be available to a person aggrieved by the final order of this Court; he nonetheless supported the contentions urged by other learnedcounsel that in case of gross miscarriage of justice, this Courtought to exercise its inherent powers by entertaining anapplication to examine the final order of this Court, even whena review was rejected, in the rarest of the rare cases. Accordingto him where the order was passed without jurisdiction or inviolation of the principles of natural justice, the case would fallin the rarest of the rare cases. He, however, contended that anorder of this Court could not be said to violate fundamental rights conferred under Part III of the Constitution and, therefore, on that ground no relief could be claimed. Hesubmitted that under Article 137 read with Order XL Rule 1 ofthe Supreme Court Rules, 1966 review of an order of this Courtis provided which will be considered by the same Bench unlessthe same Judges are not available by reason of demitting theoffice. In regard to reconsideration of the judgment under theinherent power of the Court he referred to the judgment of the Federal Court in Raja Prithwi Chand Lall Choudhry etc. Vs.Rai Bahadur Sukhraj Rai & Ors. etc.1940 (2) FCR 78.

Hesubmitted that for correction of a final judgment of this Courton the ground of lack of jurisdiction or violation of principle ofnatural justice, a curative petition could be entertained whichmight be heard by an appropriate Bench composed of the seniorJudges as well as Judges who passed the order.

20. Dr.Rajiv Dhavan, the learned senior counsel, argued that since the Supreme Court is the creature of the Constitution sothe corrective power has to be derived from the provisions conferring jurisdiction on the Supreme Court like Articles 32 and 129-140; such a power does not arise from an abstractinherent jurisdiction. The corrective power must be exercised o as to correct an injustice in a case of patent lack ofjurisdiction in a narrow sense, not in the Anisminic's broadersense, and gross violation of natural justice. Relying on thejudgment of House of Lords in R v Bow Street MetropolitanStipendiary Magistrate and others, ex parte Pinochet Grate(No.2)"s case 1999 (1) All ER 577 he has submitted that thisCourt has inherent power to correct its own judgment where aparty through no fault of his own has been subjected to anunfair procedure giving scope for bias. His further contentionis that the corrective power is a species of the review power and Articles 129, 137, Order XL Rule 5 and Order XLVII Rules 1 and 6 indicate that this Court has inherent power to set right itsown judgment. He referred to the decisions of this Court inAntulay"s case, Supreme Court Bar Association"s case, Ahlwat"s case and Triveniben"s case (supra) to impress upon usthat this Court has earlier exercised this power. He submittedthat the Supreme Court can also issue practice direction in thatbehalf.

21. Mr. Ranjit Kumar, the learned senior counsel, invited ourattention to various provisions of the Constitution dealing withdifferent types of jurisdictions of this Court and advocated thatin case of manifest illegality and palpable injustice this Courtunder its inherent powers could reconsider final judgment/orderpassed by this Court. He submitted that the composition of the Bench might include senior-most Judges along with the Judgeswho passed the order, if available. It is also his submission that while considering such curative petitions on the ground of manifest illegality and palpable injustice, in the rarest of rarecases, factors like the doctrine of stare decisis and the finalityand the certainty of the law declared by this Court are required to be kept in mind. He referred to the judgment of this Courtrendered by seven learned Judges in The Keshav Mills Co.Ltd. vs. Commissioner of Income-Tax Bombay North [1965 (2) SCR 908], which was followed by another Bench of sevenlearned Judges reported in Maganlal Chhaganlal (P) Ltd. vs.Municipal Corporation of Greater Bombay & Ors. 1974 (2)SCC 402 and by a Bench of five learned Judges in the case of The Indian Aluminium Co.Ltd. vs. The Commissioner of Income-tax, West Bengal, Calcutta [1972 (2) SCC 150. Hestressed that the power of re-consideration of an earlier decisionhad to be very restricted; when the power of review is verylimited and circumscribed as is evident from the decision of the Constitution Bench in Cauvery Water Disputes Tribunal 1993 Suppl.(1) SCC 96 and the Bench of three learned Judges in S. Nagaraj & Ors. vs. State of Karnataka & Anr.

1993 Suppl.(4)SCC 595 and in Ramdeo Chauhan vs. State of Assam [2001 (5) SCC 714] by three learned Judges and in the case of Lily Thomas & Ors. vs. Union of India & Ors. [2000 (6) SCC 224] the exercise of inherent power for correcting the manifestillegality and palpable injustice after dismissal of the reviewpetition has to be much narrower than the power of review. These contentions pose the question, whether an orderpassed by this Court can be corrected under its inherent powersafter dismissal of the review petition on the ground that it waspassed either without jurisdiction or in violation of the principles of natural justice or due to unfair procedure givingscope for bias which resulted in abuse of the process of the Court or miscarriage of justice to an aggrieved person. There is no gainsaying that the Supreme Court is theCourt of last resort - the final Court on questions both of factand of law including constitutional law. The law declared bythis Court is the law of the land; it is precedent for itself and forall the courts/tribunals and authorities in India. In a judgmentthere will be declaration of law and its application to the factsof the case to render a decision on the dispute between theparties to the lis. It is necessary to bear in mind that the principles in regard to the highest Court departing from itsbinding precedent are different from the grounds on which afinal judgment between the parties, can be reconsidered. Here, we are mainly concerned with the latter. However, when reconsideration of a judgment of this Court is sought thefinality attached both to the law declared as well as to the decision made in the case, is normally brought under challenge. It is, therefore, relevant to note that so much was the valueattached to the precedent of the highest court that in TheLondon Street Tramways Company, Limited Vs. The LondonCounty Council [LR 1898 Appeal Cases 375], the House ofLords laid down that its decision upon a question of law wasconclusive and would bind the House in subsequent cases andthat an erroneous decision could be set right only by an Act of Parliament. 22. In Hoystead & Ors. Vs. Commissioner of Taxation LR1926 AC 155 Lord Shaw

22. In Hoystead & Ors. Vs. Commissioner of Taxation LR1926 AC 155 Lord Shaw observed: "Parties are not permitted to begin fresh litigations because of new views they may entertain of thelaw of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result... If this were permitted litigation would have no end, except when legal ingenuity is exhausted."

23. To the same effect is the view expressed by the FederalCourt of India in Raja Prithwi Chand Lall Choudhary"s case(supra) placing reliance on dicta of the Privy Council inVenkata Narasimha Appa Row vs. Court of Wards 1886 (II)Appeal Cases 660. Gwyer, CJ. speaking for the FederalCourt observed:

"This Court will not sit as a court of appeal fromits own decisions, nor will it entertain applications to review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. It would in our opinion be intolerable and most prejudicial to the public interest if cases once decided by the Court could be re-opened and re-heard: "There is a salutary maxim which ought to

be observed by all Courts of last resort --Interest reipublicae ut sit finis lithium . Its strictobservance may occasionally entail hardship uponindividual litigants, but the mischief arising fromthat source must be small in comparison with thegreat mischief which would necessarily result fromdoubt being thrown upon the finality of thedecisions of such a tribunal as this."

24. In S. Nagaraj"s case (supra), an application was filed bythe State for clarification of the order passed earlier. It wasurged by the petitioner that any modification or recalling of theorder passed by this Court would result in destroying theprinciple of finality enshrined in Article 141 of theConstitution. Sahai, J. speaking for himself and for Pandian, J. observed:

"Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities oflaw can stand in its way. The order of the Courtshould not be prejudicial to anyone. Rule of staredecisis is adhered for consistency but it is not asinflexible in Administrative Law as in Public Law. Even the law bends before justice."

25. The learned Judge referring to the judgment of Raja PrithwiChand Lall Choudhury's case (supra) further observed :

"Even when there was no statutory provision and no rules were framed by the highest courtindicating the circumstances in which it couldrectify its order the courts culled out such power toavoid abuse of process or miscarriage of justice."

26. The position with regard to conclusive nature of theprecedent obtained in England till the following practicestatement was made by Lord Gardiner, L.C. in Lloyds Bank,Ltd. Vs. Dawson and Ors. [Note 1966 (3) All E.R. 77 onbehalf of himself and the Lords of Appeal in Ordinary,"They propose therefore to modify their presentpractice and, while treating former decisions ofthis House as normally binding, to depart from aprevious decision when it appears right to do so."The principle in regard to departing from an earlier viewby the House, after the said practice statement, is reflected inthe speech of Lord Reid in Jones Vs. Secretary of State for Social Services, Hudson Vs. Secretary of State for SocialServices (conjoined appeals) 1972 (1) All E.R. 145, whoobserved:

"The old view was that any departure from rigidadherence to precedent would weaken thatcertainty. I did not and do not accept that view. Itis notorious that where an existing decision is disapproved but cannot be overruled courts tend to distinguish it on inadequate grounds. I do not think that they act wrongly in so doing; they are adopting the less bad of the only alternatives open to them. But this is bound to lead to uncertainty for no one can say in advance whether in a particular case the court will or will not feel bound to follow the old unsatisfactory decision. On balance it seems to me that overruling such a decision will promote and not impair the certainty of the law.

27. But that certainty will be impaired unless thispractice is used sparingly. I would not seek tocategorise cases in which it should or cases inwhich it should not be used. As time passesexperience will supply some guide. But I wouldventure the opinion that the typical case forreconsidering an old decision is where some broadissue is involved, and that it should only be in rarecases that we should reconsider questions of construction of statutes or other documents."

28. In Fitzleet Estates Ltd. Vs. Cherry (Inspector of Taxes) 1977 (3) All E.R. 996 Lord Wilberforce observed :

"My Lords, in my firm opinion, the 1966 PracticeStatement was never intended to allow and shouldnot be considered to allow such a course. Nothingcould be more undesirable, in fact, than to permitlitigants, after a decision has been given by thisHouse with all appearance of finality, to return tothis House in the hope that a differently constitutedcommittee might be persuaded to take the viewwhich its predecessors rejected. True that theearlier decision was by majority: I say nothing asto its correctness or as to the validity of thereasoning by which it was supported. That therewere two eminently possible views is shown by thesupport for each by at any rate two members of theHouse. But doubtful issues have to be resolved and the law knows no better way of resolving themthan by the considered majority opinion of theultimate tribunal. It requires much more thandoubts as to the correctness of such opinion tojustify departing from it."

Lord Edmund-Davies observed:

"My Lords, I respectfully share your views that the Chancery Lane decision 1966 (1) All.E.R. 1 was correct. But even had I come to the opposite conclusion, the circumstances adverted to are such that I should not have thought it "right" to depart from it now. To do so would have been to open the flood gates to similar appeals and thereby to impair that reasonable certainty in the law which the Practice Statement [Note 1966 (3) All E.R. 77 itself declared to be "an indispensable foundation upon which to decide what is the law and its application to individual cases"."

29. The law existing in other countries is aptly summarised by Aaron Barak in his treatise thus:

"The authority to overrule exists in most countries, whether of civil law or common law tradition. Even the House of Lords in the United Kingdom is not bound any more by its precedents. The Supreme Court of the United States was neverbound by its own decisions, and neither are those of Canada, Australia, and Israel."

30. To what extent the principle of stare decisis binds thisCourt, was considered in the case of Keshav Mills Co. Ltd.(supra). The question before a Constitution Bench of Sevenlearned Judges of this Court was: to what extent the principle stare decisis could be pressed into service where the power of this Court to overrule its earlier

decisions was invoked. The Court expressed its view thus:

"When this Court decides questions of law, itsdecisions are, under Article 141, binding on allcourts within the territory of India, and so, it mustbe the constant endeavour and concern of thisCourt to introduce and maintain an element ofcertainty and continuity in the interpretation of lawin the country. Frequent exercise by this Court ofits power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, mayincidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should he sitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the saidview is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions."

31. In Maganlal Chhaganlal"s case (supra), a Bench of sevenlearned Judges of this Court considered, inter alia, the question: whether a judgment of the Supreme Court in Northern IndiaCaterers" case was required to be overruled. Khanna, J.observed:

"At the same time, it has to be borne in mind thatcertainty and continuity are essential ingredients ofrule of law. Certainty in law would beconsiderably eroded and suffer a serious set back ifthe highest court of the land readily overrules theview expressed by it in earlier cases, even thoughthat view has held the field for a number of years. In quite a number of cases which come up beforethis Court, two views are possible, and simplybecause the Court considers that the view not takenby the Court in the earlier case was a better viewof the matter would not justify the overruling ofthe view. The law laid down by this Court isbinding upon all courts in the country underArticle 141 of the Constitution, and numerouscases all over the country are decided inaccordance with the view taken by this Court. Many people arrange their affairs and largenumber of transactions also take place on the faithof the correctness of the view taken by this Court. It would create uncertainty, instability andconfusion if the law propounded by this Court onthe basis of which numerous cases have beendecided and many transactions have taken place isheld to be not the correct law."

- 32. In the case of The Indian Aluminium Co. Ltd. (supra), the question before a Constitution Bench of five learned Judgeswas: when can this Court properly dissent from a previous view?
- 33. In regard to the effect of an earlier order of this CourtSawant, J. speaking for the Constitution Bench observed inCauvery Water Disputes Tribunal's case (supra) as

follows:

"The decision of this Court on a question of law isbinding on all courts and authorities. Hence underthe said clause the President can refer a question oflaw only when this court has not decided it. Secondly, a decision given by this Court can bereviewed 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 lawexpressed by it in an earlier case, it does not do sositting in appeal and exercising an appellate jurisdiction over the earlier decision. It does so inexercise of its inherent power and only inexceptional circumstances such as when the earlierdecision is per incuriam or is delivered in the absence of relevant or material facts or if it ismanifestly wrong and productive of publicmischief. [See: Bengal Immunity Company Ltd. Vs. State of Bihar (1955 (2) S.C.R. 603)]

34. In the cases of Ramdeo Chauhan (supra) and LilyThomas (supra), the question before the Court was, the scope of the power of review of a judgment of this Court under Article 137 of the Constitution read with Section 114, Order XLVII of the C.P.C. and Order XL Rule 1 of the Supreme Court Rules, 1966.

35. In the case of Ex parte Pinochet Grate (No 2) (supra), on November 25, 1998 the House of Lords by majority 3: 2restored warrant of arrest of Senator Pinochet who was theHead of the State of Chile and was to stand trial in Spain forsome alleged offences. It came to be known later that one ofthe Law Lords (Lord Hoffmann), who heard the case, had linkswith Amnesty International (A.I.) which had become a party tothe case. This was not disclosed by him at the time of thehearing of the case by the House. Pinochet Grate, on comingto know of that fact, sought reconsideration of the saidjudgment of the House of Lords on the ground of an appearance bias not actual bias. On the principle of disqualification of ajudge to hear a matter on the ground of appearance of bias itwas pointed out,

36. "The principle that a judge was automatically disqualified from hearing a matter in his own causewas not restricted to cases in which he had apecuniary interest in the outcome, but also applied to cases where the judge"s decision would lead to the promotion of a cause in which the judge was involved together with one of the parties. That didnot mean that judges could not sit on cases concerning charities in whose work they were involved, and judges would normally be concerned to reuse themselves or disclose the position to the parties only where they had an active role astrustee or director of a charity which was closely allied to and acting with a party to the litigation. In the instant case, the facts were exceptional in that AI was a party to the appeal, it had been joined in order to argue for a particular result and the Law Lord was a director of a charity closely allied to AI and sharing its objects. Accordingly, he was automatically disqualified from hearing the appeal. The petition would therefore be granted and the matter referred to another committee of the House for rehearing per curiam"

37. On the point of jurisdiction of the House to correct anyinjustice in an earlier order, it was observed:"In principle it must be that your Lordships, as theultimate court of appeal, have power to correct anyinjustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remainsunfettered. In Cassell & Co. Ltd. v Broome(No.2) 1972 (2) All ER 849:1972 AC 1136 your Lordships varied an order for costs alreadymade by the House in circumstances where the parties had not had a fair opportunity to addressargument on the point."

And it was held,

"An appeal to the House of Lords will only bereopened where a party through no fault of its own,has been subjected to an unfair procedure. Adecision of the House of Lords will not be variedor rescinded merely because it is subsequentlythought to be wrong."

- 38. We may notice here that in these cases except in RajaPrithwi Chand Lall Choudhary (supra) and Ex parte PinochetGrate (No.2) (supra), the question was in what circumstancesthe ratio in the earlier judgment of the highest court havingprecedent value could be departed. In the aforementioned twocases the decision was rendered on an application seekingreconsideration of the final judgment of the Federal Court andHouse of Lords respectively. In view of the specific provisionof Article 137 of the Constitution read with Order XL Rule 1 ofthe Supreme Court Rules, conferring power of review on thisCourt, the problem in entertaining a review petition against itsfinal judgment which its precursor the Federal Court had toface, did not arise before this Court.
- 39. The petitioners in these writ petitions seek re-consideration of the final judgments of this Court after theyhave been unsuccessful in review petitions and in that thesecases are different from the cases referred to above. Theprovision of Order XL Rule 5 of the Supreme Court Rules barsfurther application for review in the same matter. The concernof the Court now is whether any relief can be given to thepetitioners who challenge the final judgment of this Court,though after disposal of review petitions, complaining of thegross abuse of the process of Court and remedial injustice. Ina State like India, governed by rule of law, certainty of lawdeclared and the final decision rendered on merits in a lisbetween the parties by the highest court in the country is ofparamount importance. The principle of finality is insistedupon not on the ground that a judgment given by the apex Courtis impeccable but on the maxim "Interest reipublicae ut sitfinis lithium
- 40. At one time adherence to the principle of stare decisiswas so rigidly followed in the courts governed by the EnglishJurisprudence that departing from an earlier precedent wasconsidered heresy. With the declaration of the practicestatement by the House of Lords, the highest court in Englandwas enabled to depart from a previous decision when itappeared right to do so. The next step forward by the

highestcourt to do justice was to review its judgment inter parties tocorrect injustice. So far as this Court is concerned, we havealready pointed out above that it has been conferred the powerto review its own judgments under Article 137 of the Constitution. The role of judiciary merely to interpret and declare the law was the concept of bygone age. It is no moreopen to debate as it is fairly settled that the courts can so mould and lay down the law formulating principles and guidelines asto adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice. In the recentyears there is a discernable shift in the approach of the finalcourts in favour of rendering justice on the facts presented be fore them, without abrogating but by-passing the principle offinality of the judgment. In Union of India and Anr. etc. Vs. Raghubir Singh (Dead) by Lrs. etc. etc. [1989 (2) SCC 754] Pathak, CJ. speaking for the Constitution Bench aptly observed:

"But like all principles evolved by man for there gulation of the social order, the doctrine ofbinding precedent is circumscribed in itsgovernance by perceptible limitations, limitationsarising by reference to the need for re-adjustmentin a changing society, a re-adjustment of legalnorms demanded by a changed social context. This need for adapting the law to new urges insociety brings home the truth of the Holmesianaphorism that "the life of the law has not beenlogic it has been experience"(Oliver WendellHolmes: The Common Law, p.5), and again whenhe declared in another study (Oliver WendellHolmes: Common Carriers and the Common Law, 388) that ",(1943) 9 CLT 387the law is foreveradopting new principles from life at one end", and "sloughing off" old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by theintroduction of new extra-legal propositionsemerging from experience to serve as premises, orby experience-quided choice between competinglegal propositions, rather than by the operation oflogic upon existing legal propositions, that thegrowth of law tends to be determined (Julius Stone: Legal Systems & Lawyers Reasoning, pp.58-59)"

41. The concern of this Court for rendering justice in a causeis not less important than the principle of finality of itsjudgment. We are faced with competing principles - ensuringcertainty and finality of a judgment of the Court of last resortand dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principle of natural justice or apprehension of bias due to a Judge whoparticipated in decision making process not disclosing his linkswith a party to the case, or abuse of the process of the court. Such a judgment, far from ensuring finality, will always remainunder the cloud of uncertainty. Almighty alone is the dispenserof absolute justice - a concept which is not disputed but by afew. We are of the view that though Judges of the highest Court do their best, subject of course to the limitation of humanfallibility, yet situations may arise, in the rarest of the rarecases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally andmorally to rectify the error. After giving our

anxious consideration to the question we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have toprevail over the policy of certainty of judgment as though it is essentially in public interest that a final judgment of the finalcourt in the country should not be open to challenge yet theremay be circumstances, as mentioned above, wherein declining to reconsider the judgment would be oppressive to judicialconscience and cause perpetuation of irremediable injustice. It may be useful to refer to the judgment of the SupremeCourt of United States in Ohio Power Company"s case (supra). In that case the Court of Claims entered judgment for refund oftax, alleged to have been overpaid, in favour of the tax payer.On the application of the Government a writ of certiorariagainst that judgment was declined by the Supreme Court of United States in October 1955. The Government sought re-hearing of the case by filing another application which wasdismissed in December 1955. A second petition for hearingwas also rejected in May 1956. However, in June 1956 theorder passed in December 1955 was set aside sua sponge (of itsown motion) and that case was ordered to be heard along withtwo other pending cases in which the same question waspresented. In those two cases the Supreme Court held against the tax payer and, on the authority of that judgment, reversedthe judgment of the Court of Claims. Four learned members of the Court, in per curiam opinion, rested the decision "on the ground of interest in finality of the decision must yield wherethe interest of justice so required". Three learned membersdissented and held that denial of certiorari had become final andought not to be disturbed. Two learned members, however, didnot participate. 42. This Court in Harbans Singh''s case (supra), on anapplication under Article 32 of the Constitution filed after thedismissal of SLP and the review, reconsideredits judgment. In that case, among others, the petitioner andanother person were convicted u/s 302 of I.P.C. andsentenced to death. In the case of one of the remaining twoconvicts, the Supreme Court commuted the death sentence tolife imprisonment. While staying the death sentence of thepetitioner, A.N.Sen, J. in his concurring opinion, noticed the dismissal of the petitioner's special leave, review petitions and the petition for clemency by the President and observed:

"Very wide powers have been conferred on thisCourt 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 Courtretains 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."

43. In Antulay's case (supra), the majority in the seven-JudgeBench of this Court set aside an earlier judgment of theConstitution Bench in a collateral proceeding on the view thatthe order was contrary to the provisions of the Act of 1952; inthe background of that Act without precedent and in violation of the principles of natural

justice, which needed to be correctedex debito justitiae.

44. In Supreme Court Bar Association's case (supra), on anapplication filed under Article 32 of the Constitution of India, the petitioner sought declaration that the DisciplinaryCommittees of the Bar Councils set up under the AdvocatesAct, 1961, alone had exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law forprofessional or other misconduct and that the Supreme Court ofIndia or any High Court in exercise of its inherent jurisdictionhad no such jurisdiction, power or authority in that regard. AConstitution Bench of this Court considered the correctness ofthe judgment of this Court IN Re: Vinay Chandra Mishra [(1995) 2 SCC 584]. The question which fell for consideration of this Court was : whether the punishment of debarring anadvocate from practice and suspending his licence for aspecified period could be passed in exercise of power of thisCourt under Article 129 read with Article 142 of theConstitution of India. There an errant advocate was foundquilty of criminal contempt and was awarded the punishment of simple imprisonment for a period of six weeks and was also suspended from practice as an advocate for a period of threeyears from the date of the judgment of this Court for contemptof the High Court of Allahabad. As a result of that punishmentall elective and nominated offices/posts then held by him in hiscapacity as an advocate had to be vacated by him. Elucidatingthe scope of the curative nature of power conferred on the Supreme Court under Article 142, it was observed:

"The plenary powers of the Supreme Court underArticle 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court byvarious statutes though are not limited by thosestatutes. These powers also exist independent of the statutes with a view to do complete justicebetween the parties. These powers are of verywide amplitude and are in the nature of supplementary powers. This power exists as aseparate and independent basis of jurisdiction apartfrom the statutes. It stands upon the foundationand the basis for its exercise may be put on adifferent and perhaps even wider footing, toprevent injustice in the process of litigation and todo complete justice between the parties. Thisplenary jurisdiction is, thus, the residual source of power which the Supreme Court may draw upon asnecessary whenever it is just and equitable to do soand in particular to ensure the observance of thedue process of law, to do complete justice betweenthe parties, while administering justice according to law. It is an indispensable adjunct to all otherpowers and is free from the restraint of jurisdictionand operates as a valuable weapon in the hands of the Supreme Court to prevent "clogging orobstruction of the stream of justice"."

45. Inspite of the width of power conferred by Article 142, theConstitution Bench took the view that suspending the advocatefrom practice and suspending his licence was not within thesweep of the power under the said Article and overruled thejudgment in Re V.C.Mishra's case (supra).

- 46. In M.S.Ahlwat''s case (supra), the petitioner, who wasfound guilty of forging signatures and making false statementsat different stages before this Court, was inflicted punishmentunder Section 193 IPC in Afzal vs. State of Haryana [1996 (7) SCC 397]. He filed an application under Article 32 of theConstitution assailing the validity of that order. Taking note ofthe complaint of miscarriage of justice by the Supreme Court inordering his incarceration which ruined his career, actingwithout jurisdiction or without following the due procedure, itwas observed that to perpetuate an error was no virtue but tocorrect it was a compulsion of judicial conscience. Thecorrectness of the judgment was examined and the error wasrectified.
- 47. In the cases discussed above this Court reconsidered itsearlier judgments, inter alia, under Articles 129 and 142 whichconfer very wide powers on this Court to do complete justicebetween the parties. We have already indicated above that thescope of the power of this Court under Article 129 as a court of and also adverted to the extent of power under Article 142 of the Constitution.
- 48. The upshot of the discussion in our view is that thisCourt, to prevent abuse of its process and to cure a grossmiscarriage of justice, may re-consider its judgments inexercise of its inherent power.
- 49. The next step is to specify the requirements to entertainsuch a curative petition under the inherent power of this Courtso that floodgates are not opened for filing a second reviewpetition as a matter of course in the guise of a curative petitionunder inherent power. It is common ground that except whenvery strong reasons exist, the Court should not entertain anapplication seeking reconsideration of an order of this Courtwhich has become final on dismissal of a review petition. It isneither advisable nor possible to enumerate all the grounds onwhich such a petition may be entertained.
- 50. Nevertheless, we think that a petitioner is entitled torelief ex debito justitiae if he establishes (1) violation of principles of natural justice in that he was not a party to the lisbut the judgement adversely affected his interests or, if he was aparty to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice and(2) where in the proceedings a learned Judge failed to disclosehis connection with the subject-matter or the parties givingscope for an apprehension of bias and the judgment adversely affects the petitioner.
- 51. The petitioner, in the curative petition, shall averspecifically that the grounds mentioned therein had been takenin the review petition and that it was dismissed by circulation. The curative petition shall contain a certification by a SeniorAdvocate with regard to the fulfillment of the aboverequirements.
- 52. We are of the view that since the matter relates to re-examination of a final judgment of this Court, though onlimited ground, the curative petition has to be first circulated toa Bench of the three senior-most Judges and the Judges whopassed the judgment complained of, if available. It is onlywhen a majority of the learned

Judges on this Bench concludethat the matter needs hearing that it should be listed before thesame Bench (as far as possible) which may pass appropriateorders. It shall be open to the Bench at any stage ofconsideration of the curative petition to ask a senior counsel toassist it as amicus curiae. In the event of the Bench holding atany stage that the petition is without any merit and vexatious, itmay impose exemplary costs on the petitioner.

- 53. Insofar as the present writ petitions are concerned, theRegistry shall process them, notwithstanding that they do notcontain the averment that the grounds urged were specificallytaken in the review petitions and the petitions were dismissed incirculation.
- 54. The point is accordingly answered.