



CURATIVE JURISDICTION – THE LAST RESORT TO ADDRESS MISCARRIAGE OF JUSTICE

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The curative jurisdiction of the Hon'ble Supreme Court of India serves as a mechanism for self-regulation, ensuring that individuals have recourse against final judgments or orders that may have resulted in injustice. In essence, the apex court of the country has the power to correct its own judgements after they have become final. To meet the ends of justice, even a final judgement of the final court is open to challenge.

The concept of curative petition was introduced in the landmark case of *Rupa Ashok Hurra v. Ashok Hurra*, wherein the court had affirmed its authority to reconsider its own judgments under exceptional circumstances to prevent abuse of process and address gross miscarriages of justice.

Criteria for entertaining a Curative Petition: Grounds on which a curative petition may be entertained are as under:

- Violation of principles of natural justice
- Apprehension of bias.
- Abuse of process of law.
- Gross miscarriage of justice.

Procedure and guidelines for filing curative petition before the Hon'ble Supreme Court of India:

- Certification by Senior Advocate: The curative petition must be accompanied by a certification from a senior advocate, highlighting the substantial grounds for its consideration as well as fulfilling the conditions for filing of a curative petition.
- The curative petition is first circulated to a bench comprising of the three senior-most judges, along with the judges who passed the order challenged in the petition, if available.
- Hearing: If the majority of the judges conclude that the matter needs a hearing then it is listed for consideration preferably before the same bench which had passed the

judgement in challenge. Curative petitions are typically decided by judges in chambers, although open-court hearings may be granted upon specific request.

- A senior advocate may be appointed by the bench to assist as an amicus curiae at any stage of the proceedings.
- In the event the bench holds that the curative petition lacks merit and is vexatious, it may impose exemplary costs on the Petitioner.

The Hon'ble Supreme Court of India in *Brahmaputra Concrete Pipe Industries vs Assam State Electricity Board and Others* held that the procedure for filing a curative petition is governed under Order XLVIII of the Supreme Court Rules, 2013. The Court clarified that in the event the pre-requisite conditions for filing a curative petition are not met the registrar of the Court has no power or jurisdiction to decline the petition and the same must be decided only by the Bench of the Apex Court either before the chamber judge or in open court.

Recent Judgement

Recently, the Hon'ble Supreme Court of India in "*Delhi Metro Rail Corporation Limited vs Delhi Airport Metro Express Private Limited*" utilized its extraordinary powers through a curative petition to reverse its previous judgment passed in the year 2021, on the ground that there was a fundamental error. An Arbitral Award directing Delhi Metro Rail Corporation (**DMRC**) to pay approximately Rs. 8,000 to Delhi Airport Metro Express Private Limited (**DAMEPL**), a consortium led by Reliance Infrastructure Limited has been overturned.

Background of the Dispute

In 2008, DMRC entered into a concession agreement with DAMEPL for providing metro rail connectivity between New Delhi Railway Station and the Indira Gandhi International airport along with several other locations. As per the terms of the Agreement, DAMEPL was to design, supply, install, conduct testing and commissioning of the railway system within a period of two years and maintain the Delhi Airport Metro Express. DMRC was to undertake the requisites clearances, bear cost of land acquisition as well as civil structures.

During the tenure of the Agreement, DAMEPL issued a notice to DMRC wherein it raised safety concerns on the operation of the metro line and requested DMRC to cure the defects. Thereafter, the concession agreement was terminated by DAMEPL and disputes arose between the parties.

Legal proceedings ensued, culminating in an Arbitral Award passed in favor of DAMEPL, directing DMRC to pay approximately Rs 8,000 crore.

An application seeking to set aside the Arbitral Award was filed by DMRC before the Hon'ble High Court of Delhi, which was upheld on the ground that the Arbitral Award is a reasoned order and a plausible view had been taken by the Ld. Arbitral Tribunal. The order passed by the Ld. Single Judge of the Hon'ble High Court of Delhi was partly set aside by the Division Bench of the Hon'ble High Court of Delhi on the ground that the Arbitral Award is perverse and falls under the ambit or preview of "patently illegal".

The government appealed the order passed by the Division Bench before the Hon'ble Supreme Court of India which led to the decision being overturned in favour of DAMEPL. A review petition was filed by DMRC which was dismissed on 23rd November 2021. Subsequently, a curative petition was filed by DMRC against the order dismissing the review petition.

Issues involved in the curative petition filed DMRC:

1. Whether the curative petition filed by DMRC is maintainable or not.
2. Whether the Apex Court in a Special Leave Petition was justified in restoring the Arbitral Award which had been set aside by the Division Bench, High Court of Delhi on the ground that it suffers from patent illegality.

What prompted the Apex Court to entertain the petition, especially in a case involving arbitral award having attained finality?

The Supreme Court while allowing the curative petition referred to the judgement of *Rupa Ashok Hurra v. Ashok Hurra* (supra) to hold that while it is not possible to exhaustively enumerate the circumstances for entertaining a curative petition, failure to reconsider a judgement wherein there is miscarriage of justice would amount to oppression of judicial conscience which would cause irremediable injustice.

The court applied the contours of patent illegality and perversity settled in *Associate Builders vs Delhi Development Authority and Ssangyong Engineering & Construction Private Limited vs NHA* to hold that the Arbitral Award is unreasoned and has ignored vital evidence. The Arbitral Award ignored vital evidence which goes into the root of the matter and interpreted the terms of the contract which no reasonable person could arrive at.

It was held that the judgement passed by two judge bench of the Hon'ble Supreme Court which interfered with judgement of the Division bench of the High Court has resulted in miscarriage of justice.

Further, the Apex Court held that the findings of the Division Bench of High Court were borne out of the record and were not based on misappreciation of facts or law. By setting aside the judgement passed by the Division Bench of High Court, the Supreme Court in Special Leave Petition restored a patently illegal award which saddled a public utility with an exorbitant liability. This caused a grave miscarriage of justice warranting the exercise of extra ordinary jurisdiction of the Hon'ble Supreme Court.

Conclusion

The judgment in DMRC case reiterates the importance of curative jurisdiction as a safeguard against judicial errors and the judiciary's commitment to justice, fairness as well as equity in dispute resolution. The Supreme Court of India by allowing the curative petition, underscored the importance of upholding the integrity of arbitration proceedings and rectified the miscarriage of justice. The ruling in the judgment reaffirmed the judiciary's role in rectifying an erroneous award and curing grave miscarriages of justice while bringing about a significant development in arbitration law.