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'No One Should Suffer Because Of...

'No One Should Suffer Because Of Court': Orissa High Court Judge Admits His 'Mistake Of Fact', Recalls Own Judgment In Review

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The **Orissa High Court** has recalled its judgment dismissing a writ petition without hearing the petitioner on the question of delay and also leaving out a material aspect during the course of hearing.

In a rare gesture, **Justice Sashikanta Mishra** candidly admitted to have fallen prey to a 'mistake of fact' while adjudicating the writ petition and thus, observed –

“

“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.”

Laconically put, the petitioner underwent a surgery for ovarian cyst on 21.10.1998 and during the course of such surgery, she also underwent 'tubectomy' i.e. permanent female sterilization. As per a resolution dated 19.10.1983 of the Department of Health, Government of Odisha, the couples, who have only two children and opt to voluntary undergo permanent sterilization, shall be entitled to hold 'Green Card'.

The Green Card holders are entitled to certain benefits, one of which being reservation of 5% seats in technical institutions. In the year 2023, the husband of the petitioner gave a representation seeking for issuance of Green Card in order to facilitate the admission of their daughter into a reputed government educational institution.

By an order dated 01.01.2024, the concerned hospital was asked to submit documents certifying successful tubectomy of the petitioner on 21.10.1998. However, the hospital could not furnish such document on the ground that the same got damaged in the 1999 super-cyclone. Therefore, due to unsuccessful verification of the required documents, the CDMO expressed his inability to issue the Green Card to the petitioner. Being aggrieved, the petitioner filed the writ petition.

Justice Mishra, after hearing contentions of both the sides, had dismissed the writ petition by an order dated 25.04.2025 on the primary ground that the plea is a 'stale' one, which has been made after a lapse of almost 27 years. In his words –

“She appears to have approached the authorities for the first time in the year 2023, which being turned down, she approached this Court in the year 2025. More than 27 years have been elapsed in the meantime. As already stated, the Petitioner has not submitted any explanation whatsoever for such belated approach before the authority. It is trite law that stale claims are not to be entertained by the authorities. It is also trite law that stale claims cannot be entertained by this Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India.”

A review was sought against the aforesaid dismissal order mainly on the ground that the petitioner was not heard on the question of delay for which she had no opportunity to bring to the Court's notice that the Government Resolutions do not specify any time limit for applying for Green Card. Further, the authorities did not reject the petitioner's claim on the ground of delay. rather because of non-availability of relevant documents.

The Court relied upon a catena of Supreme Court judgments to reiterate that the expression *“for any other sufficient reason”* appearing in **Order XLVII Rule 1 of CPC** incorporates situations where a mistake or misconception of fact or law has occurred, even if arising from an inadvertent error of the Court itself.

Examining the above principle against the factual backdrop, the Bench was convinced that the petitioner was actually not heard on the question of belated filing of the writ petition. Also, the Court admitted that absence of limitation period in the relevant resolutions for raising claim for Green Card had escaped its attention. Thus, inadvertently holding the claim to be stale, the writ petition was dismissed.

Acknowledging judicial fallibility and being conscious of the pernicious effect thereof, Justice Mishra was humble enough to observe –

"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."

Accordingly, the review was allowed by recalling the judgment in the writ petition dated 25.04.2025. The Registry was directed to list the said writ petition for hearing.

Case Title: Geeta Rath v. State of Odisha & Ors.

Case No: RVWPET No. 157 of 2025

Date of Judgment: October 27, 2025

Counsel for the Petitioner: Mr. Nihal Rath, Advocate

Counsel for the State: Mr. S. Behera, Addl. Govt. Advocate

Citation: 2025 LiveLaw (Ori) 145

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Mistake Of Fact (<https://www.livelaw.in/tags/mistake-of-fact>)

recall of judgment (<https://www.livelaw.in/tags/recall-of-judgment>)

Justice Sashikanta Mishra (<https://www.livelaw.in/tags/justice-sashikanta-mishra>)



IN THE HIGH COURT OF ORISSA AT CUTTACK
RVWPET No 157 of 2025

An application under Order XLVII Rule 1 read with Section 114 of Code of Civil Procedure.

Geeta Rath

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. N. Rath, Advocate

Vs.

For Opp. Parties : Mr. S. Behera,
[Addl. Government Advocate]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
27.10.2025

SASHIKANTA MISHRA, J.

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.

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Sashikanta Mishra,
Judge

*Orissa High Court, Cuttack,
The 27th October, 2025/ B.C. Tudu, Sr.Steno*

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