



2026:AHC:46030-DB

"AFR"

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 4232 of 2024

Reserved on 21.1.2026

Delivered on 27.2.2026

Mushtaq Ahmad

Petitioner

versus.

State Of Up And 6 Others

Respondent

Counsel for Petitioner(s) :

Alok Singh, Ramendra Pratap
Singh

Counsel for Respondent(s):

C.S.C.

HON'BLE AJIT KUMAR, J.

HON'BLE SWARUPAMA CHATURVEDI, J.

1. Heard Sri Ramendra Pratap Singh, learned Senior Advocate assisted by Sri Alok Singh, learned counsel for the petitioner and Sri S.K.Srivastava, learned Additional Chief Standing Counsel for the State respondents.

2. Briefly stated facts of the case are that in terms of Government Order dated 08th March, 2000 and consequential amended Government Order dated 20th April, 2001 fisheries department of the State published notice for auction of reservoir in district Sonbhadra and Mirzapur namely, Dhandhraul Reservoir and Baraudha Reservoir, Class I and Class III category respectively for fisheries on 8th December, 2014 and petitioner being highest bidder was granted fisheries lease in respect of Dhandhraul reservoir, Class

I category, for a lease rent of Rs. 60,00,000/- per year, extendable to next two years on a year to year basis. The standard *qua* fisheries rights in reservoir came to be awarded to the petitioner on 17.12.2014 for the financial year 2014-15 and petitioner immediately undisputedly deposited 25 percent amount to Rs. 15 lacs before Auction Committee. The agreement was entered and petitioner spent money on seeds to grow fishes for the purposes of fishing. In order to lay eggs/ seeds in the clean reservoir seeds for growing fish for the fishing purposes and to start with fishing, petitioner was directed to enter an agreement vide letter dated 18th March, 2015 and was directed to deposit entire dues by 31st March, 2015, failing which interest would accrue @ 2 percent per month on delayed payment and in the event he failed to make deposits, tender lease *qua* fishing rights would automatically stand terminated.

3. Petitioner since failed to deposit any further amount, he was served with another notice on 25th June, 2015 to deposit remaining amount of Rs. 45 lacs alongwith interest by 30th June, 2015, else amount will be recoverable as arrears of land revenue. Petitioner replied to this notice vide letter dated 30th June, 2015, lamenting upon conduct of the people managing the dam, in opening the dam gate, which resulted in the grown fishes get slipped into canal from the reservoir and resultantly he suffered huge loss and resultantly he could not do much fishing and since this was done without notice to petitioner, he could not do anything in the matter and hence considering the quantum of remaining there in the reservoir, the contract money deposited was sufficient. Vide letter dated 14th July, 2015, petitioner informed to Joint Director of fisheries' department that as against expected 850 quintal of fish, he could fish out only 45.5. quintal of fish from the Dhandhraul reservoir and this was informed to the officers of the department who were posted at the reservoir. However, since there was serious disputed questions of fact as per arbitration clause under the agreement, one Bhishm Lal Vermal , Director Fisheries, U.P. was appointed as an arbitrator who

issued a notice to the petitioner on 17th February, 2016 to appear and to put up his defence. The arbitrator further passed an order on 4th March, 2016 to the effect that since matter was engaging attention in a pending arbitration, therefore, recovery certificate dated 3rd December, 2015 for a sum of Rs. 49,27,905/- should not have been pressed into service. However upon this assurance that arbitration was going, petitioner withdrew his complaint made before consumer forum and order to that effect was passed by presiding officer of the consumer forum on 30th September, 2016. It is further noticeable that sole arbitrator stood transferred and consequently matter of arbitration was referred to Arbitration Committee appointed by the concerned Secretary, State of U.P. under his order dated 21st September, 2016. This committee consisted of Dr. Nazul Haq, Managing Director of Fisheries, Cooperative Societies Ltd. Lucknow as Chairman with N.S. Rahmani, Chief Manager of Fishing Development Board and A.K.Lal, Deputy Director, Headquarters, Directorate of Fisheries, member of Secretary. The matter was contested before Arbitration Committee by petitioner and ultimately arbitration committee arrived at a conclusion that since maximum fishes got slipped away into the canal on the opening of dam sluice gate reducing to lowest level of water in the reservoir, hence not much fishing could be done and fishing was only to the extent of 45.5 quintals as against 850 quintals, for which lease was awarded. The Arbitration Committee reached out to the conclusion that fishing for the financial year 2014-15 could be only of 45.5 quintals of which, the average cost would be Rs.4.60 lacs and petitioner since had already deposited Rs. 15 lacs as security amount in terms of bank guarantee of Rs, 9.93 lacs with respondent and since Rs. 22 lacs has been determined as lowest price and of contract amount money deposited by petitioner to the tune of Rs. 24.93 lacs was more than 22 lacs, hence there was no loss caused to the department. It was a finding returned by the Arbitration Committee that since contract was not there on "as is where is" basis, it was duty of the department to have ensured enough water in the reservoir in the event if sluice

gates were to be opened so as to ensure that fishes do not get slipped away into the canal causing loss to contractor and hence contractor cannot be held responsible for the loss. The Arbitration Committee, thus, concluded that though loss was caused to the department but since fish lease had already been cancelled, therefore, government should waive off recovery dues taking sympathetic consideration of the matter. Upon this arbitration, judgment being submitted to the State Government, the State Government accepted the same and waived off recovery vide order dated 16th March, 2017. Paragraphs 4 and 5 of the order are important and hence reproduced hereunder:

“4- उपरोक्तानुसार गठित मध्यस्थत समिति द्वारा उपलब्ध करायी गयी अपनी आख्या में यह अवगत कराया गया कि सिंचाई विभाग मत्स्य विभाग द्वारा लापरवाही, दोषपूर्ण सेवा व अनुचित व्यापार प्रक्रिया अपनाते हुए बगैर सूचना दिये ही धंधरौल जलाशय के डैम व घाघरा मुख्य नहर को एकाएक खोल देने व जलाशय को शून्य जलस्तर पर कर देने से डैम व घाघरा नहर के जल निकासी मार्ग से जलाशय की करोड़ों रुपये की मछलियां घाघरा नदी व घाघरा मुख्य नहर में गिर/ बह जाने के कारण ठेकेदार द्वारा मत्स्य विभाग के निर्धारित लक्ष्य 850 कुन्तल के सापेक्ष 45.5 कुन्तल मछलियाँ जलाशय के निकाली जा सकी। आख्या में यह भी उल्लेख किया गया है कि आगामी वर्ष में धंधरौल जलाशय का न्यूनतम मूल्य रु0 22.00 लाख ही निर्धारित किया गया है, जो कि वर्ष 2014-15 में श्री मुश्ताक द्वारा भुगतान की गयी धनराशि रु0 24.93 लाख (रु0 15 लाख 25 प्रतिशत तथा रु0 9.93 लाख जमानत राशि) की तुलना में कम है। पूर्व तथा आगामी वर्ष में प्राप्त राजस्व के सापेक्ष विभाग को कोई हानि नहीं हुई है। अतः मध्यस्थता समिति द्वारा ठेकेदार श्री मुश्ताक अहमद कि प्रार्थना पत्र में किये गये निवेदन व वर्णित परिस्थितियों में गुण दोष के आधार पर अवशेष राशि को आर०सी० के माध्यम से वसूली को माफ करने पर शासन स्तर से सहानुभूति पूर्वक विचार कर निर्णय लिये जाने की संस्तुति की गयी।

5- इस सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि शासन द्वारा मध्यस्थता समिति द्वारा की गयी संस्तुति के अनुसार ठेकेदार श्री मुश्ताक अहमद पुत्र स्व० इसहाक अहमद निवासी पूरब मोहाल हामिदनगर जनपद सोनभद्र पर धंधरौल जलाशय की अवशेष धनराशि/किश्त रु0 49,27,905 (रु० उनचास लाख सत्ताइस हजार नौ सौ पांच मात्र) की आर०सी० के माध्यम से वसूली को माफ किये जाने का निर्णय लिया गया है।

अतः उपरोक्तानुसार आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करे।”

English Translation by this Court:

“ 4. It has been apprised by above constituted arbitration committed vide its report that because of carelessness flawed service and illegal application of business rules and that too without notice the gate of reservoir dam and that of the main Dhandhraul Canal were opened which resulted in bringing dam water in its lowest level and

fishes worth crores of rupees slipped away into Dhandhraul reservoir and main canal for which only 45.5 quintals of fishing could be done under the contract. This has also been submitted in the report that in subsequent order through rains the price of Dhandhraul reservoir were fixed as Rs. 22 lacs, which was less than Rs. 24.93 lacs (15 lacs price 25 percent of the contract and Rs. 9.93 lacs secured amount) already deposited. There was no loss caused to the fishing department comparing previous year and the coming year rainy season. Accordingly, arbitration committee recommends State Government to write-off liability of petitioner by way of recovery of setting of the amount already paid taking sympathetic consideration in the matter.

5. I have been directed to state in this matter that government has decided to write-off the remainder amount of recovery Rs. 49,27,905 in the light of recommendation made by the arbitration committee in favour of contractor Mustaq Ahmad, S/o Ishak Ahmad, R/o East Mohal, Hamidnagar, district Sonbhadra.

Accordingly, necessarily, it may be proceeded "

4. This order, however, came to be recalled on 30th June, 2017 not assigning any specific reason, but only recording a fact that upon re-examination of report submitted by Arbitration Committee, it was found that there was no transparency and proper appreciation of evidence and documents before Arbitration Committee arriving at conclusion to recommend for waiving off of debts, consequently recovery came to be issued on 11th July, 2017 for a sum of Rs. 49,27,905/-. Petitioner challenged this order on the ground that authority has proceeded *ex parte* in recalling order, which was not proper administrative exercise of power.

5. Writ petition being Writ C No. 37592 of 2017 was entertained and interim protection was granted, but subsequently while petition was allowed setting aside the order and recovery order dated 30.6.2017 dated 11th July, 2017 and also recovery citation dated 21st July, 2017, remitting matter to the Principle Secretary, Department of Animal Husbandry and Fisheries, Government of U.P. Lucknow to decide afresh. Now after matter was remitted, again an order came to be passed on 9th January, 2024 rejecting the representation of the petitioner dated 19.9.2023 being baseless and directing for 90 percent of recoverable amount of Rs. 49,27,905/- from the petitioner and 10 percent from the Chief Fish Development

Officer. This order, therefore, was awarded in a sense that the order dated 30th June, 2017 stands modified.

6. Two fold arguments have been advanced by learned Senior Advocate appearing for the petitioner:

(a) Once arbitral award had been passed holding petitioner not guilty for violating any terms of contract though department suffered loss, thus findings became final and were subject to review only in the event arbitration petition was filed before District Judge and thereafter an appeal preferred, if aggrieved; and

(b) Administrative exercise of power by the State to accept Arbitration Committee recommendation could not have been recalled unless and until findings came to be returned and that order was obtained by fraud and/or misrepresentation and that the order was without any authority of law and this being no fact position of the case earlier, order dated 16th March, 2017 could not have been recalled.

7. Yet another argument has been advanced by Sri Singh, learned Senior Advocate appearing for the petitioner that matter was remanded by court only for a limited purpose and this is to the extent that petitioner was to be heard as order was passed without hearing, but opportunity of hearing does not mean that authority which is vested with power can pass order reviewing/recalling is earlier order on merits when it was no questioned. Thus Mr. Singh submits that petition deserves to be allowed and order as well as recovery deserves to be quashed.

8. Meeting the above submission Sri S.K.Singh, learned Chief Standing Counsel raised three points:

a. There was no concept of Arbitration Committee and only single member arbitrator was to appoint and hence committee could not have acted as an arbitrator;

b. Arbitration Committee's order dated 17.10.2016 was only recommendation, and therefore, it was open for the State government to have taken a different stand.

c. The order passed by Secretary is based on sound legal principle of justice as opportunity of hearing was afforded, inasmuch as, sufficient material was there to doubt the findings returned by the arbitration committee.

9. In support of his above submission, Sri Srivastava, emphasized upon a point of law that once party had entered an agreement with another party, it was bound by arbitration of the agreement, and therefore, petitioner was required to deposit entire lease rent by 31st March, 2015 and in any case by extended period of 30th June, 2015. He argued that subsequent report dated 5.12.2023 raised by Director, Fisheries, reservoir water could not be emptied or could not be brought to its minimal level by opening the sluice gate of dam to allow fishes pushed in reservoir to get overflowed with water through gate. Thus, according to him finding returned by the Arbitration Committee was perverse. He also reiterated a fact position that Arbitration Committee colluded with petitioner in recording a finding in his favour by concluding that he was liable to the dues and amount already deposited by him could not have been set off against dues. He submitted that against all these members of the Arbitration Committee, disciplinary proceedings had been initiated.

10. Having heard learned counsel for the respective parties and having perused the records, two legal points emerged for our consideration:

i. Whether the State Government was bound by Arbitration Committee's report as an award and to question it, it could have applied only under Section 34 of the Arbitration and Conciliation Act, 1996 and not otherwise

ii. Whether Secretary who represented State Government could have recalled his earlier order accepting the report/

recommendation of Arbitration Committee without there being any averment or recitals coming in the order impugned that earlier order was obtained by fraud and/or misrepresentation.

11. Coming to the first aspect involved in the matter, we find there to be no quarrel between the parties as to arbitration clause, nor there is any quarrel in respect of the matter of reference made to arbitrator as State Government itself had appointed one Bhism Lal Verma as an arbitrator.

12. The averment has been made vide paragraph 28 that arbitrator was transferred from department of fisheries to revenue department and said arbitration matter was thereafter referred to a three member committee appointed by the State Government through order passed by Special Secretary dated 21st September, 2016. Paragraph 28 of the writ petition runs as under:

"28. That the sole Arbitrator was transferred from the Department of Fisheries and Revenue Department, hence the Arbitration matter was referred to the three member Arbitrator committee. The appointment of three member Arbitrators committee were made by office order dated 21.09.2016. Section 2d defines about Arbitrational Tribunal. Section 10 of the Arbitration and Conciliation Act, 1996, defines about numbers of Arbitrator. The photocopy of the order dated 21.09.2016 is being filed here and marked as Annexure No. 18 to this writ petition"

13. This appointment of Arbitration Committee has not been denied, rather allegations have been made against petitioner that since he did not appear before sole arbitrator, he closed arbitration proceeding on 7.4.2016 and in the circumstances, government was compelled to appoint three member arbitration committee. Paragraph 36 of the counter affidavit runs as under:

"That the contents of paragraph no. 28 of the writ petition, as stated, are absolutely wrong and incorrect, hence vehemently denied. It is wrong to say that the sole arbitrator was transferred from the department of fisheries and revenue department, hence the arbitration matter was referred to the three-member Arbitrator Committee. It is reiterated that the petitioner himself did not appear and cooperate the sole arbitration proceedings, it is therefore, the sole arbitrator closed the arbitration proceeding vide order dated 7.4.2016. Thereafter, the Government proceeded to appoint three member Conciliation Committee."

14. This above quoted paragraph 36 of the counter affidavit has been sworn on the basis of record, but no records have been appended in form of order dated 7.4.2016 by which it could be inferred that arbitrator had closed the arbitration proceedings, instead what we find is that order of Secretary of the State Government appointing a three member arbitration committee does not refer to any such order. Thus in absence of specific denial to what has averred in paragraph 28 in the writ petition, it is liable to be assumed a that three member arbitration committee came to be appointed by the State Government after sole arbitrator had stood transferred.

15. In any view of the matter, once matter stood transferred to a three member arbitration committee, it will be taken as arbitration proceedings and Sri Sravastava, learned Additional Chief Standing Counsel could not point out anything from the relevant clauses of the agreement that there was a provision for appointment of a sole arbitrator and not a three member arbitration committee.

16. We have gone through terms of agreement entered between the parties and we do not find anything there to be any such thing in any of clauses which mandated for only sole /one member arbitrator. The relevant provision of agreement is quoted hereunder:

“11. जलाशय के ठेके के सम्बन्ध में किसी भी प्रकार का विवाद उत्पन्न होने की स्थिति में प्रकरण मध्यस्थ को दिया जायेगा। मध्यस्थ की नियुक्ति निदेशक मत्स्य द्वारा की जायेगी, जिनके द्वारा निर्णय अन्तिम एवं सभी पक्षों को मान्य होगा।”

English translation by this Court:

“In the event of any dispute relating to contract of reservoir, matter will be referred for mediation. Mediator shall be appointed by Director Fisheries who decision shall be final and shall be binding upon the parties.”

17. Thus, it is clear that there was a valid appointment of three member arbitration committee and it came to pass an award on 17.10.2016 settling payments already made by petitioner against recovery and directing for State to waive off recovery in terms of findings returned by the the Arbitration Committee. So finding part of the Arbitration Committee clearly records that as per agreement

petitioner was to do fishing to the tune of 850 quintals of fish from reservoir whereas he could do finishing only 45.5. quintals because water of the reservoir got at the bottom and most of the fishes slipped through sluice gate into canal and nearby area after it was opened and that too without notice to the petitioner. These findings were never assailed and hence would be taken for the purpose of arbitration as having a binding effect under the Arbitration and Conciliation Act, 1996. The Arbitration Committee's award could have been challenged of course, before District Judge under Section 34 of the Arbitration and Conciliation Act, 1996 but the State chose not question it but to accept the same. Accordingly on behalf of State Government an order came to be passed by under Secretary on 16th March, 2017 accepting report and writing off of the entire dues of the petitioner.

18. From the above quoted paragraphs (vide paragraph 3 above) of the order of the Under-Secretary dated 16th March, 2017, it has become absolutely clear that findings returned by the Arbitration Committee had been accepted in toto and consequently relief was granted to the petitioner but suddenly this order came to be recalled for no justifiable reasons, vide order dated 30th June, 2017. Findings returned in the order dated dated 30th June, 2017 given justified reason for recall was that the order passed by the Arbitration Committee was without proper appreciation of documents and suffered from lack of transparency, inasmuch as, report was *ex parte*. The reasons assigned in the order dated 30th June, 2017 vide paragraphs 2 and 3 of the order is reproduced hereunder:

"2. इस सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि प्रकरण में मध्यस्थता समिति द्वारा उपलब्ध करायी गयी रिपोर्ट/संस्तुति का पुनः परीक्षण करने पर यह पाया गया कि मध्यस्थता समिति द्वारा प्रकरण के सम्बन्ध में सम्पूर्ण तथ्यों का निष्पक्ष व पारदर्शी विश्लेषण न करते हुए एक पक्षीय आख्या प्रस्तुत करते हुए श्री मुस्ताक अहमद पुत्र श्री इस्हाक अहमद निवासी पूरब मोहान हामिदनगर जनपद सोनभद्र पर श्रेणी-1 क धंधरौल जलाशय जनपद सोनभद्र की अवशेष धनराशि/किश्त रू0 49,27,905/- की आर०सी० में माध्यम से वसूली को माफ किये जाने के सम्बन्ध में अनियमित रूप से अपनी संस्तुति शासक को प्रस्तुत की गयी।

3. उक्त प्रकरण में सम्यक विचारोपरान्त पूर्व ठेकेदार श्री मुस्ताक अहमद पुत्र श्री इस्हाक अहमद निवासी पूरब मोहान हामिदनगर जनपद सोनभद्र पर श्रेणी-1 क धंधरौल जलाशय जनपद सोनभद्र की अवशेष धनराशि/किश्त रू0 49,27,905/- (रू० उन्चास लाख सत्ताईस हजार नौ सौ पाच मात्र) की आर०सी० के माध्यम से वसूली को माफ किये जाने

हेतु विषयक शासन के उक्त संदर्भित आदेश संख्या 1959/सत्रह-म-2016-0-9(320)/2016 दिनांक 16 मार्च 2017 को तत्कालीन प्रभाव से निरस्त किया जाता है।

कृपया उपरोक्त तत्काल आवश्यक कार्यवाही सुनिश्चित करते हुए कृत कार्यवाही से शासन को भी अवगत कराने का कष्ट करें।

भवदीय

30.06.17

डा० सुधीर एम० बोबडे

मुख्य सचिव"

English Translation by this Court:

"2. In this regard I have been directed to state that after re-examining the report/recommendation of the arbitration committee and having analysed in an impartial and transparent manner, it has been found that arbitration committee had submitted ex parte report directing/recommending for writing off the dues of Rs. 49,27,905/- in respect of class I reservoir Dhandhraul of which contract was awarded to Mustaq Ahmad S/o Ishhaq Ahmad, R/o- East Mohan, Hamidnagar, district Sonbhadra .

3. Having examined the matter comprehensively regarding liability imposed upon Mustaq Ahmad S/o Ishhaq Ahmad, R/o- East Mohan, Hamidnagar, district Sonbhadra of Rs. 49,27,905 through recovery certificate in respect of Dhandhraul reservoir, the order being no.1959/17-M-2016-0-9(320)/2016 dated 16th March, 2017 issued to write-off of dues, is hereby cancelled.

Please do needful measures accordingly immediately. "

19. Recitals as contained in the above quoted paragraphs amounted to reviewing the order passed earlier by the under Secretary dated 16th March, 2017. If the Chief Secretary or the Special Secretary is taken to be higher authority, then it amounted to an appeal sitting over and above the order of the Under-Secretary which in our considered view may be a gross indiscipline for want of statutory provision may invite disciplinary action. Power of review cannot be, therefore, available, but power to recall would of course, be available provided, it is brought to the notice of the authority that earlier the order was obtained by fraud/misrepresentation or of course, in the event order was without authority of law. What we find is that in earlier order dated 16th March, 2016, there was absolute discussion on the findings returned by the Arbitration Committee, but in order of recall dated 13th June, 2017, there was no reason assigned as to why this finding earlier accepted was bad.

Upon being challenged before this Court ,this order came to be set aside by the court by a detailed judgement dated 26th April, 2023 directing for reconsideration of the matter and passing order afresh. The Court basically quashed the order for the reason that order was passed by the Secretary to the Government without affording opportunity of hearing. Now this time, petitioner represented the matter and the order was passed after considering the representation.

20. One of the arguments advanced by Sri Singh, learned Senior Advocate appearing for the petitioner was that merely for a fact that matter was remanded, it did not mean that authority got vested with power to take fresh decision on merits. It was further argued before this Court that it would remain question of law as to whether order passed by Secretary on behalf of the State after applying its mind could have been recalled in the absence of any finding of misrepresentation or fraud.

21. The legal position as emerges out in the case of **Indian Bank v. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550**, the Supreme Court vide paragraph 20 has held thus:

"20. By filing letter No.2775 of 26.8.91 along with the Review Petition and contending that the other letter, namely, letter No.2776 of the even date, was never written or issued by the respondent, the appellant, in fact, raised the plea before the Commission that its judgment dated 16.11.93, which was based on letter No. 2776, was obtained by the respondent by practising fraud not only on the appellant but on the Commission too as letter No.2776 dated 26.8.91 was forged by the respondent for the purpose of this case. This plea could not have been legally ignored by the Commission which needs to be reminded that the Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as Fraud and Justice never dwell together (Fraus et jus nunquam cohabitant). It has been repeatedly said that Fraud and deceit defend or excuse no man (Fraus et dolus nemini patrocinari debent).

21. In Smith v. East Elloe Rural District Council (1956) AC 736, the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, Lazarus Estates Ltd. v. Beasley (QB at p. 712). Denning, L.J. said:

" No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

22. This view has been further approved by Supreme Court in the matter in the case of **Budhia Swain and Others v. Gopinath Deb and Others (1999)4 SCC 396**, in which the Supreme Court vide paragraph 6 has held thus:

“What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC 550] Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order.

*i) obtained by fraud practised upon the court,
(ii) when the court is misled by a party, or*

(iii) when the court itself commits a mistake which prejudices a party.

In A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372 : AIR 1988 SC 1531, para 130] (vide para 130), this Court has noticed motions to set aside judgments being permitted where

(i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented,

(ii) a judgment was obtained by fraud,

(iii) a party has had no notice and a decree was made against him and such party approaches the court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.”

23. From the above sound legal principle of law enunciated in above cited decisions, it is clear that authority is not vested with power to recall its order for the sake of recall only. The authority is hide bound in law to record reasons and justify its action for recalling order.

24. In our considered view an order if does not suffer from any misrepresentation or fraud or an order in not bad for want of authority of law , it is to be taken as genuine order passed after due application of mind and hence such order cannot be permitted to be recalled. We find apt here to mention that while this court remanded the matter, it did not set aside the order of under Secretary dated 16th March, 2017 accepting the report/recommendation of three member arbitration committee. It recommend the matter for hearing petitioner as the order dated 11th July, 2017 recalling the order 30th June, 2017 was being set aside. After going through the entire order impugned in this petition, we find that there is no

whisper of misrepresentation or fraud in getting order 30th June, 2017 passed, rather the findings are that recommendation of arbitration committee are flawed one. Secretary tried to sit over and above the recommendations of the Arbitration Committee which was earlier accepted by the State Government to test whether it was a mere recommendation or it was a complete award under order passed by Arbitration Committee. This remand does not empower the authority to travel beyond findings returned to a different conclusion than what has been returned by Arbitration Committee. Thus without challenging the matter under Section 34 of Arbitration and Conciliation and Act, 1996, the government is bound to accept recommendation of the arbitration committee.

25. In view above, first point stands answered in favour of petitioner and against the State.

26. Coming to second point as to whether order could have been recalled. We have already held above held that order of recall does not pass the test of principles upon which a recall can be justified qua administration or *quasi judicial* action .

27. Besides above, we find that under the order impugned new report has come to be relied upon which is dated 5th December, 2023 much after cancellation of lease. There was no occasion for respondents to have obtained report only in the year 2023 more than eight years expiring since 2015. The maintenance of reservoir and minimum level of water was an issue in 2015 and what happened in 2015 cannot be said to have remained same in 2023. For investigation or enquiring a matter of incident happened in the year 2015, there was absolutely no occasion for calling a fresh report in 2015 to test the order passed on the basis of report available in the year 2015. No recitals contained in the order impugned go on to demonstrate that this report of the year 2023 was shown to the petitioner at any point of time. The entire order is based upon report which shows that minimum level of water was maintained and the reservoir cannot be emptied and hence findings were bad.

28. In our considered view findings returned on the basis of documents available in 2016 cannot be disturbed on the basis of some new report obtained after 8 years. This was certainly beyond scope of enquiry by the State to dilute the findings arrived at in the arbitration proceedings. The order of recall even on merits is bad. Thus order of recall cannot be sustained in law.

29. In view of above, writ petition thus succeeds and is allowed. The order dated 9.1.2024 passed by Additional Chief Secretary, U.P. Government, Annexure No. 1 is quashed and consequential order dated 18.1.2024 passed by respondent no. 4 (Annexure no. 2) if any shall be automatically quashed.

30. No order as to cost.

February 27 , 2026

Sanjeev

(Swarupama Chaturvedi,J.)

(Ajit Kumar,J.)