

Mistakes & Duty of Courts

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1.1 An act should be done in the manner prescribed or not at all : Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other way. See:

- (i) State of Kerala Vs. Kerala Rare Earth & Minerals Ltd., (2016) 6 SCC 323 (Three-Judge Bench)
- (ii) Ram Chandra Keshav Adke Vs. Govind Toti Chavare, AIR 1975 SC 915 (Three-Judge Bench).

1.2 Power must be exercised in the manner prescribed by law : Where law requires a thing to be done in a certain manner, it has to be done in that manner or not at all. A power must be exercised in the manner provided by law. See :

- (i) Dhananjaya Reddy Vs State of Karnataka, (2001) 4 SCC 9
- (ii) State of UP Vs. Singhara Singh, AIR 1964 SC 358.

Note : *It was a case where the Magistrate had not obtained the signature of the accused on his confessional statement recorded u/s 164(4) of the CrPC.*

1.3 Exercise of power in a manner other than prescribed by law is necessarily forbidden: It is settled law that where law requires a thing to be done in a certain manner or where a power is given to do a certain thing in a certain manner, the thing must be done in that way or manner or not at all and other methods of performance are necessarily forbidden. This is what the maxim "ex pressio unius est exclusio alterius" means. See:

- (i) J. Jayalalithaa Vs State of Karnataka, (2014) 2 SCC 401.
- (ii) Dhananjaya Reddy Vs. State of Karnataka, (2001) 4 SCC 9 (para 23)
- (iii) Ram Chandra Keshav Adke Vs. Govind Joti Chavare, AIR 1975 SC 915
- (iv) State of UP Vs. Singhara Singh, AIR 1964 SC 358

1.4 Procedure other than statutory procedure cannot be adopted even if there is unanimous understanding of Central and State Governments : A procedure other than statutory procedure cannot be adopted even if there is unanimous understanding of the Central Government and the State Governments on a non-statutory procedure. All methods other than statutory methods are necessarily forbidden. What cannot be done directly cannot be done indirectly to defeat statutory scheme. See : Manohar Lal Sharma Vs. Principal Secretary & Others, (2014) 9 SCC 516 (Three-Judge Bench).

2. What could not be done directly cannot be done indirectly also : It is well recognized principle of law that what could not be done directly can also not be done indirectly. See :

- (i) H.H. Maharajadhiraj Madhav Rao Jiwaji Rao Sindia Bahadur Vs. Union of India, AIR 1971 SC 530 (Eleven-Judge Bench)
- (ii) Madanlal Fakir Chand Dudhedia Vs. Shree Changdev Sugar Mills Ltd. AIR 1962 SC 1543
- (iii) M/s. Taxi Owners United Transport Vs. State Transport Authority, Orissa, AIR 1983 SC 281.

3.1 Procedural irregularities not to be allowed to defeat the ends of justice : Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substt. or other relief should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates—Procedural defects or irregularities which are curable should not be allowed to defeat the substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. Procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

- (a) The mortality of justice at the hands of law troubles a Judge’s conscience and points an angry interrogation at the law reformer.
- (b) The object is to expedite the hearing and not to scuttle the same.
- (c) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.
- (d) Actus curiae neminem gravabit (an act of court shall prejudice no man)
- (e) Lex non cogit ad impossibilia (the law does not compel a man to do what he cannot possibly perform) See:
 - (i) Ashok Kumar Kalra Vs. Surendra Agnihotri, (2020) 2SCC 394 (Three-Judge Bench).
 - (ii) Shaikh Salim Haji Abdul Khayumsab vs. Kumar & ors., 2006 (1) ARC 334 (SC)
 - (iii) Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench)

3.2 Procedural defects when fatal : The procedural defects or lapses would not vitiate the proceedings except under the following circumstances:

- (i) where the statute prescribing the procedure, also prescribed specifically the consequence of non-compliance.
- (ii) where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it.
- (iii) where the non-compliance or violation is proved to be deliberate or mischievous.
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.
- (v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant. See : Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench).

3.3. Procedural lapses when not to defeat substantive justice ? : Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substitution or other relief should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates. Procedural defects or irregularities which are curable should not be allowed to defeat the substantive rights or to cause injustice. Procedure is a hand-maiden to justice and the same should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The **recognized exceptions** to this principle are as under:

- (i) Where the statute prescribing the procedure also prescribed specifically the consequence of non-compliance.
- (ii) Where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it.
- (iii) Where the non-compliance or violation is proved to be deliberate or mischievous.

- (iv) Where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.
- (v) In case of memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant. See :
 - (i) Uday Shankar Triyar Vs Ram Kalewar Prasad Sing, 2006 (1) ARC 1 (SC) (Three-Judge Bench) (*it was an appeal where vakalatnama signed by the appellant was not presented with the memorandum of appeal and the appeal was dismissed by the Addl. District Judge. The Hon'ble Supreme Court held that permission to sign the vakalatnama should have been granted*).
 - (ii) Bihar State Electricity Board Vs. Pohowra Kankanee Collieries Ltd., 1984 (suppl.) SCC 597 (*where vakalatnama was not filed with the memo of appeal*)
 - (iii) Shastri Yagnapur Das Ji & Others Vs Muldas Pohundaradas Vaishya & Others, AIR 1966 SC 1119 (*where vakalatnama was in favour of "X" but the memorandum of appeal was signed and filed by "Y"*)

3.4 Procedural law cannot be a tyrant but a servant, not an obstruction but an aid to justice : In the case noted below, the Hon'ble Supreme Court has ruled that the procedural law cannot be a tyrant but a servant, not an obstruction but an aid to justice :

- (a) Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the hand maid and not the mistress, a lubricant, not a resistant in the administration of justice.
- (b) The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.
- (c) The object is to expedite the hearing and not to scuttle the same.

- (d) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.
- (e) Actus curie heminem gravabit (an act of court should prejudice no man)
- (f) lex non cogit ad impossibilia (the law does not compel man to do what he cannot possibly perform) See : Saikh Salim Haji Abdul Khayamsab Vs. Kumar & Others, 2006 (1) ARC 334 (SC)

Note : *It was a case under Order 8, rule 1 CPC for extension of time for filing written statement beyond 90 days.*

3.5 Lapse of procedure when to be ignored ? : If violation of any procedural law does not cause any prejudice, it has to be treated as directory despite the use of the word "shall". See : Shivjee Singh Vs. Nagendra Tiwary, AIR 2010 SC 2261.

4.1 Omission to take signature of witness on his deposition not to render his deposition inadmissible: Where deposition of witness was recorded on commission but signature of the witness was not taken on it, it has been held by a Three-Judge Bench of the Supreme Court that correctness and authenticity of the deposition of the witness could not be disputed for want of signature on his depositions. Defect of not taking signature is not fatal to reception of deposition in evidence. See: Owners and Parties interested in M.V. 'Vali Pero' Vs. Fernando Lopez, AIR 1989 SC 2206 (Three-Judge Bench). Note : Section 114(e) of the Evidence Act is also relevant here.

4.2 Unsigned judgment is valid: Order 20, rule 3 CPC requires that the judgment should be dated and signed by the judge in open court at the time of its pronouncement. In the case noted below where the judgment did not bear signature of the judge, the Supreme Court held that: "As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding

this differ but they do not form essence of the matter and if there is irregularity in carrying them out, it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication. See: Surendra Singh Vs. State of Uttar Pradesh, AIR 1954 SC 194.

4.3 Unsigned, defective vakalatnama and its correction : Where in an appeal, the Vakalatnama signed by the appellant was not presented with the memorandum of appeal and the appeal was dismissed by the Addl. District Judge, the Supreme Court held that permission to sign the Vakalatnama should have been granted. See :

- (i) Bihar State Electricity Board Vs. Bhowra Kankanee Colliveries Ltd., 1984 (suppl.) SCC 597(vakalatnama was not filed with the memo of appeal)
- (ii) Shastri Yagnapurudasji Vs. Muldal Bhundaradas Vaishya, AIR 1966 SC 1119 (Vakalatnama was in favour of “X” but the memorandum of appeal was signed and filed by “Y”).

5.1 To perpetuate an error is no heroism: In the case noted below, it has been held by the Hon'ble Supreme Court that to perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. See : Mayuram Vs. CBI, (2006) 5 SCC 752, (Para 11)

5.2 Court bound to rectify its mistake : Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. See : State of Orissa Vs. Mamata Mohanty, (2011) 3 SCC 436.

5.3 If an order is bad in its inception, it does not get sanctified at a later stage: It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action or development cannot validate an

action which was not lawful at its inception for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. See: State of Orissa Vs. Mamata Mohanty, (2011) 3 SCC 436 (Para 37).

5.4 Observance of principles of natural justice must while rectifying mistakes by Courts : Observance of principles of natural justice is must while rectifying the mistakes by Courts. See : Saikh Salim Haji Abdul Khayamsab Vs. Kumar & Others, 2006 (1) ARC 334 (SC)

5.5 Observance of principles of natural justice must while rectifying mistakes by Courts : Even when a mistake is to be rectified, principles of natural justice is required to be complied with. See : Shekhar Ghos Vs. Union of India, 2007 (66) ALR 180 (SC).

5.6 Providing hearing to the other side must before passing an order against him : Where a revision filed u/s 115 CPC was allowed by the High Court without issuing notice to the other side and thereafter the review petition wherein this fact was specifically pointed out was also dismissed by the High Court, it has been held by the Hon'ble Supreme Court that the same was grossly against the settled principles of natural justice. The right of a man to be heard in his defence is the most elementary protection and is the essence of fair adjudication. The Hon'ble Supreme Court made following observations in the case noted below :

"Even God did not pass a sentence upon Adam before he was called upon to make his defence. Adam, says God "where art thou, has thou not eaten of the

tree whereof I commanded thee that thou should not eat." See : Suresh Chandra Nanhorya Vs. Rajendra Rajak, 2006 (65) ALR 23 (SC)

6.1 Party not to suffer a wrong occasioned by the inaction or fault on the part of the Court : It is settled law that no person should suffer for inaction or fault on the part of the court. See :

(i) Jang Sing Vs. Brij Lal, AIR 1966 SC 1631

(ii) Mudit Verma V. Co-operative Tribunal, 2006 (63) ALR 208 (All)(LB)

Note : *It was a case of non-extension of temporary injunction on the date fixed despite application for extension of the same was moved by the party on the date fixed.*

6.2 Other party not to suffer for the mistake or negligence committed by the counsel for one party : It is true that if there is a bona fide mistake or negligence on the part of the lawyers, the party should not be made to suffer. But it is equally true that for the negligence of the counsel of one party, the other party should not suffer. See : Smt. Leela Bhanott Vs. Petrolube India, 2006 (64) ALR 403 (All) (DB) (Para 32)

Note : *It was a case of MACP wherein the counsel for the claimant, due to negligence, had failed to take steps and the case remained dismissed for a long time. Then it was held by the Division Bench that the opposite parties cannot be made to suffer and to pay interest for that period.*

6.3 Court not to do injustice to other party while doing justice to one party: In doing justice to one party, the court cannot do injustice to other party. See : Bhagwati Prasad Vs. Chandramaul, AIR 1966 SC 735 (Para 10)

Note : It was a case on other controversies and not on the point of mistake by court. This ruling has been referred to in Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. (2006) 6 SCC 94 (para 71)

6.4 Recall or review of order passed due to error of procedure or mistake : An order can be recalled or reviewed when proceedings are vitiated by error of procedure or mistake going to the root of the matter and invalidating entire proceedings. See : Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Mills Ltd., AIR 2005 SC 1782 (Three-Judge Bench).

6.5 Judicial order passed in favour of one party not to be recalled or modified without notice to that party : A judicial order passed in favour of one party cannot be recalled or modified without notice to that party. See : Rejendra Singh Vs. Upper Collector (Admin) Aligarh & Others, 2006 (5) ALJ 740 (All).

Note : In this case, the Tehsildar Iglas, Aligarh, had recalled his order without notice to the party in whose favour the order was passed and the revision against that order was also dismissed by the ADM (Admin), Aligarh.

6.6 No review or recall of order passed in criminal cases due to bar of Section 362 CrPC : Due to the absolute bar of Section 362 CrPC, no criminal court can review or recall its own judgment or order. Even High Court cannot review or recall an order u/s 482 CrPC. See :

- (i) State of Kerala Vs. M.M. Manikantan, AIR 2001 SC 2145 (Three-Judge Bench)
- (ii) Sunita Jain Vs. Pawan Kumar Jain, 2008 (61) ACC 355 (SC)
- (iii) Adalat Prasad Vs. Rooplal Jindal, (2004) 7 SCC 338 (Three-Judge Bench)
- (iv) Minu Kumari Vs. State of Bihar, 2006 (55) ACC 541 (SC)
- (v) Hari Singh Mann Vs. Harbhajan Singh Bajwa, AIR 2001 SC 43
- (vi) Bindeswari Prasad Singh Vs. Kali Singh, AIR 1977 SC 2432.

7.1 Party not coming with clean hands not entitled to any relief : A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final. See :

- (i) Dalip Singh Vs. State of UP, (2010) 2 SCC 114.
- (ii) Krishna Kumar Vs. State of UP, 2010 (70) ACC 279 (All)(LB)(Para 7)

7.2 Equitable doctrines not to apply in the event of fraud etc : It is settled law that in the event of fraud or deceits etc. being played by a person, all equitable doctrines cease to apply to the case of such fraudster as has been ruled by the Hon'ble Supreme Court. *No person should be allowed to keep an advantage which he has obtained by fraud. Fraud can disqualify a man from job.* See:

- (i) District Primary School Council, West Bengal Vs. Mritunjoy Das and others, 2011 (3) SLJ 239
- (ii) Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education & others, (2003) 8 SCC 311

7.3 Fraud to vitiate even the most solemn act of the authority: It has been repeatedly laid down by the Supreme Court that fraud vitiates even the most solemn act. See:

- (i) State of AP Vs. T. Suryachandra Rao, 2005 (33) AIC 761 (SC)
- (ii) Bhavrao Dagdu Paralkar Vs. State of Maharashtra, 2005 (4) AWC 3460 (SC)
- (iii) N. Khosla Vs. Rajlakshmi, 2006 (63) ALR 534 (SC)
- (iv) M/s Reliance Salt Ltd. Vs. M/s Cosmos Enterprises & Others, 2007 (66) ALR 653 (SC).

7.4 Advantage obtained by a person by playing fraud not to be allowed to be retained: No person should be allowed to keep an advantage which he has obtained by fraud. Fraud can disqualify a man from job. See:

- (i) District Primary School Council, West Bengal Vs. Mritunjoy Das and Others, 2011 (3) SLJ 239
- (ii) Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education & Others, (2003) 8 SCC 311.

7.5 Appointment obtained by fraud is non est: An appointment obtained by fraud is non est. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine. See:

- (i) Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319
- (ii) Rajinder Singh Vs. Delhi Transport Corporation & Others, 2011 (3) SLJ 33(CAT) (Principal Bench, New Delhi).

7.6 Appointment procured on false Caste Certificate liable to be terminated: where the appointee had secured his appointment on the basis of false Caste Certificate, which on verification by the Scrutiny Committee, was found to be false after 10 years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same, it has been held by the Hon'ble Supreme Court that both the counts as above do not validate the Caste Certificate and the consequent illegal appointment because long service on a fraudulent appointment can be no defence. Similarly in the case of Arshad Jamil Vs. State of Uttarakhand & others, 2011 (3) SLJ 367 (SC), it has been ruled by the Hon'ble Supreme Court that an appointment based on wrong Caste Certificate can be terminated. See: Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319

8. Second application after rejection of the first application as not pressed can be moved : If the initial application having some technical flaws was dismissed as not pressed, the same does not operate as res judicata and a second application can

be moved for decision on merits. See : Jagmohan Malhotra Vs. Jai Kumar Misra, 2005(2) AWC 1812 (All)

9. Amendment like correction of Section in complaint to be allowed : Where the complainant had mentioned a wrong Section in the complaint and moved an application for amending the same but the Magistrate rejected the application, it has been held by the Allahabad High Court that the Magistrate ought to have allowed the application. Complaint could not have been dismissed merely for wrong mentioning of Section. See : 1980 ACC 19 (All).

10.1 Non-mentioning or wrong mentioning of law in petition or order and its consequences: It is well-settled principle of law that non-mentioning or wrong mentioning of a provision of law (in the petition or order) does not invalidate an order in the event it is found that a power therefor exists. It is settled law that once it is found that the power exists, the exercise of power under a wrong provision will not render the order illegal or invalid. Non-mentioning or wrong-mentioning of a statutory provision under which power was exercised and order was passed, would not vitiate the order for which there was a source under general law or a statute law. See:

- (i) Pradeep Ram Vs. State of Jharkhand, AIR 2019 SC 3193
- (ii) P.K. Palanisamy Vs. N. Arumughm, 2009 (77) ALR 122 (SC)
- (iii) T. Nagappa Vs. Y.R. Muralidhar, (2008) 5 SCC 633
- (iv) M.T. Khan & Others Vs. Govt. of Andhra Pradesh & Others, AIR 2004 SC 2934 (para 16)
- (v) High Court of Gujarat Vs. Gujarat Kisan Mazdoor Panchayat, (2003) 4 SCC 712
- (vi) (vi) Kishun Singh Vs. State of Bihar, (1993) 2 SCC 16

10.2 Action taken by authority within its jurisdiction not invalid for mentioning a wrong Section or other provision of law in its order: It is well-settled that if an authority has jurisdiction to take particular action, mere mention of incorrect provision or non-mention of correct provision does not make the action without jurisdiction unless the authority has no jurisdiction in the matter. See: Kaushalya Kanya Inter College, Moradabad Vs. State of UP, 2005 (2) AWC 1383 (Allahabad).

11. A wrong decision made earlier in some other case cannot be applied to another case: It is also settled legal proposition that Article 14 of the Constitution does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and, therefore, cannot be enforced by a citizen in Court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a similar wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. See:

- (i) Basawaraj Vs. The Special Land Acquisition Officer, AIR 2014 SC 746
- (ii) Chaman Lal Vs. State of Punjab, AIR 2014 SC 3640.

12.1 Amendment in procedural law during the pendency of the case to apply retrospectively to all pending proceedings : No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending and if by any Act of parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. In other words, a change in the law of procedure operates retrospectively and unlike the law relating to vested rights is not only prospective. See :

- (i) Shiv Shakti Co-operative Housing Society Vs. Swaraj Developers, 2003(3) AWC 2198 (SC)
- (ii) Anant Gopal Sheoray Vs. the State of Bombay, AIR 1958 SC 915 (Three-Judge Bench)
- (iii) Rani Kusum (Smt.) V. Kanchan Devi (Smt.) (2005) 6 SCC 705

12.2 Observance of procedural law amended during the pendency of proceedings: Well settled that when both the parties have led evidence on the point in issue, the burden of proof loses its importance and it is the duty and function of court to appreciate the evidence led by both the parties and to arrive at a finding on the basis of appreciation of evidence. See :

- (i) N.B. Calholies vs. Thuklam Parlo, AIR 1959 SC 31
- (ii) Laxman Prasad vs. Ram Kumar Singh, 1993 (II) LCD 728 (LB)
- (iii) Dhanesara vs. Smt. Sabira, 2005 प्रॉनि०प० 63 (सिविल) (LB)
- (iv) Arumugham vs. Sundarbal, 1993(3) AWC 2/104 (SC) (NOC)
