

**M.i.S.C. Karmachari Sangh (intuc) Vs. State of Madhya Pradesh and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/510950](http://sooperkanoon.com/510950)

**Court :** Madhya Pradesh

**Decided On :** Mar-15-2002

**Reported in :** [2002(93)FLR1236]; (2002)IVLLJ233MP

**Judge :** S.S. Jha, J.

**Appeal No. :** W.P. No. 384/2000

**Appellant :** M.i.S.C. Karmachari Sangh (intuc)

**Respondent :** State of Madhya Pradesh and ors.

**Disposition :** Application dismissed

**Judgement :**

**S.S. Jha, J.**

1. Respondents have moved an application (LA. 1408/2002) for recalling and modification of the order dated January 21, 2002. This application is vehemently opposed by counsel for petitioner and it is submitted by counsel for petitioner that his application is not maintainable. Reliance is placed upon the judgment in the case of Budhia Swain and Ors. v. Gopinath Deb and Ors., AIR 1999 SC 2089 : 1999 (4) SCC 396. Attention was invited to para 8 of the judgment, wherein it is held that the power to recall the judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be

pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. Right to seek vacation of a judgment may be lost by waiver, estoppel, or acquiescence. It is further held that any order can be recalled if (i) the proceedings culminating into the order suffer from inherent lack of jurisdiction and such lack of jurisdiction is patent; (ii) there exists fraud or collusion to obtain the judgment; (iii) there has been a mistake by the Court prejudicing a party; or (iv) judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

2. Counsel for the petitioner submitted that the order of stay was passed in presence of both the parties. No grounds are made out for recalling the order. The application as filed is not maintainable and deserves to be dismissed.

3. Counsel for respondents submitted that certain perishable goods are likely to be lost which are worth crores of rupees. As such, respondents may be permitted to sell the moveable stock.

4. On perusal of the order dated January 21, 2002, it is apparent that the order was passed after hearing both the parties and the order so passed was appealable and no appeal is filed by the respondents.

5. In the light of the judgment delivered in the case of Budhia Swain (supra) the application is not maintainable and is dismissed.