(2025) 12 GUJ CK 1868

In the Gujarat High Court

Case No : R/Misc. Civil Application No. 2798 Of 2024 In R/Special Civil Application No. 15108 Of 2022

State Of Gujarat & Anr APPELLANT

Vs

Ashokkumar Surajbhan Jat RESPONDENT

Date of Decision : 19-12-2025

Acts Referred:

Limitation Act, 1963 — Article 137
All India Tourist Vehicle (Authorisation Or Permit) Rules, 2021 — Rule 2(d)
Code Of Civil Procedure, 1908 — Section 114, Order 47, Order 47 Rule 1
Supreme Court Rules, 1966 — Order 40
Motor Vehicles Act, 1988 — Section 2(7), 2(40), 2(43), 66(1), 88(1), 88(9), 182A(4)
Indian Penal Code, 1860 — Section 494

Citation : (2025) 12 GUJ CK 1868

Hon'ble Judges : Bhargav D. Karia, J;Mauna M. Bhatt, J

Bench : Division Bench

Advocate : Manisha Luvkumar Shah, Siddharth Rami, Anshin Desai

Final Decision : Dismissed

Judgement

Bhargav D. Karia, J

1. Heard learned Additional Advocate General Ms. Manisha Luvkumar Shah with learned Assistant Government Pleader Mr. Siddharth Rami for the applicants and learned Senior Advocate Mr. Anshin Desai with learned advocate Mr. Ramkrishna B. Dave for the respondent.

2. This application is filed seeking review of the judgment and order dated 1.12.2022 passed in Special Civil Application No.15108 of 2022 by this Court [Coram: Hon’ble Ms. Justice Sonia Gokani(As Her Ladyship was then) and Hon’ble Ms. Justice Mauna M. Bhatt].

3. The main grievance of the applicant State of Gujarat is the observation made in paragraph no.19 of the judgment that tourist vehicle having an All India Permit does not have to pay any additional tax or fees once it is paid at the time

of obtaining the All India Permit.

4. Brief facts of the case are that the respondent original petitioner is the owner of Omni Bus Contract Carriage bearing registration No. RJ51 PA 5494 having All India Permit. The respondent also paid tax of Rs. 60,000/- at the quarterly rate valid for the entire country at Rajasthan from where such permit was granted.

5.The applicant no.2 by Challan dated 12.03.2022 seized and detained the said vehicle on the ground that though the Bus was having 33 sleepers and 8 sitting capacity at the time of obtaining permission, when the bus was intercepted and detained, 38 sitting capacity was found which was in violation of section 182A(4) of the Motor Vehicles Act, 1988 (For short “the Act, 1988”) . Applicant no.2 demanded tax for the period from April, 2021 to March, 2022 with penalty and interest amounting to Rs.8,28,042/- which was paid by the respondent on 07.04.2022 and an amount of Rs.75,000/- was also recovered as compounding fees by the authority and a declaration was also obtained on 17.03.2022.

6.It is the case of the applicants that a panchnama was drawn by the Regional Transport Office on 25.03.2022 which reflected 38 sleeper and on the same day Rajasthan Vehicle Authorities uploaded fresh permission for the vehicle which permitted 36 sleeper and one seating capacity.

7. Thereafter, the applicant no.2 again seized and detained the said Bus after two days of the release from parking place on 09.04.2022 by issuing Challan and demand notice of Rs.65,000/- towards compounding fees was issued once again.

8. The applicants received letter dated 11.05.2022 from Regional Transport Office, Bhilwara with regard to change of permit wherein 36 sleeping capacity and one seating capacity was permitted and it was stated that physical observation was made on 09.03.2022 when the vehicle was at Rajasthan and accordingly, the applicants addressed letter to Regional Transport Office, Bhilwara requesting to provide the details of fees paid by the respondent and dimensions of the motor vehicle including height, length, width overhanging, gangway etc.

9. On 08.06.2022, the details were sought from Regional Transport Office, Bhilwara regarding the details of fees paid by the respondent for alteration of vehicle and dimension of the vehicle at the time of inspection followed by reminder letter dated 19.09.2022.

10. On 25.11.2022 an email was addressed to the Commissioner of Transport, Rajasthan stating that motor vehicle in question was altered in Vahan portal during detention period at Regional Transport Office, Ahmedabad and request was made to provide copy of photograph or video of inspection for

11. Being aggrieved by detention and seizure of the bus by the applicants, the respondent requested for release of the Bus. However, the Bus was not released and therefore, the respondent preferred a petition with a prayer to direct the applicant no.2 to set aside the demand of Rs.65,000/- and to grant refund of Rs.9,03,042/-.

12. By judgment and order dated 01.12.2022, the coordinate Bench of this Court after taking into consideration the submissions made by both the sides, observed in paragraph no.19 as under:

"19. So far as the collection of tax is concerned, learned AGP has drawn our attention to the All India Tourist Vehicle (Authorisation or Permit) Rules,2021 and particularly Rule 3, which permits the application for authorisation or grant of permit. Definition clause 2(d) states "Permit" as thus:

"2(d) "permit" means a permit issued by the Transport Authority to enable a tourist vehicle operator owner to ply tourist vehicle throughout the territory of India without payment of taxes or fee levied by the State of Union territory through which it plies."

This being a tourist vehicle, having All India Permit, it does not need to pay any additional taxes or any fees, that may be levied by the State or Union territory once it is paid. Here also, it is not being disputed that the vehicle has All India Permit and change that had been made by the Rajasthan authority, also has been specifically conveyed from the document dated 25/03/2022. Not eventually it is collection of tax or interest, which has been collected for alleged unauthorised trips, is missing and first detaining plus seizure order dated 12/03/2022. More is it in the second order also, which has detained the vehicle from 09/04/2022. Justification of the second seizure would amount to our embracing to the action, which we have found to be not only highhanded but contrary to the provisions of law and also, amounting to asking the citizen to do an impossible task. As in 24 hours time, nobody can change even the sitting capacity of one seat, which officer concerned found in the driver seat. Not to talk about the additional three sleepers, etc., which no longer had been illegal in wake of subsequent permit of 25/03/2022 issued by the Rajasthan State. It is also so much essential and necessary for the officer to respect the action of other authority unless there is a forgery or fraud found because the parameters adopted by the officer for satisfying itself are also not what was being justified by any of the provisions of the Rules. Resultantly, the petition is allowed partially. Let there be an immediate release of the vehicle. Report of which, shall come to this Court in 24 hours', with a direction to refund the tax amount to the tune of Rs.4,88,760/- with interest of Rs.52,957/-, which is already paid to the Rajasthan Government by the petitioner. As the sametime, demand of sum of Rs.65,000/- (Rupees Sixty Five Thousand) needs to be quashed and set aside."

13. The applicants being aggrieved by the aforesaid order preferred Special Leave to Appeal (C) No.20323/2023 before the Hon'ble Supreme Court which was disposed of by the following order:

"Upon hearing the counsel teh Court made the following

ORDER

Delay condoned.

We have heard Shri Balbir Singh, learned ASG appearing for the petitioner(s) at length.

The main grievance of the petitioners is with regard to the direction issued by the High Court for refund of the tax collected earlier being Rs.4,88,760/- with interest of Rs.52,957/-, which is stated to have been paid to the

Rajasthan Government by the petitioners at the time of obtaining All India Permit and a similar demand being made by the State of Gujarat. In the circumstances, the High Court has directed refund of the said sums as well as quashing demand of Rs.65,000/- which was once again demanded two days after the release of the vehicle. However, the High Court has directed that the amount of penalty and compounding fees collected by the Department for the first time when the vehicle was seized need not be refunded to the respondent herein.

Learned ASG submitted that such directions could not have been issued when the grievance of the respondent was with regard to the second demand notice issued demanding a sum of Rs.65,000/- only, which in any case has been quashed Since, these issues would also require consideration of factual aspects in the sense, whether the respondent herein was right in seeking refund of the aforesaid amounts in the writ petition and other such related issues, we think it is just and proper to permit the petitioners herein to seek review of the impugned order.

In the circumstances, the Special Leave Petition is disposed of reserving liberty to the petitioners herein to seek review of the impugned order.

It is needless to observe that if such a review petition is filed, the same shall be considered in accordance with law and having regard to the factual matrix of the case and by bearing in mind that the respondents herein had an All India Permit in respect of the vehicle in question.

Pending application(s) shall stand disposed of.”

14. Learned Additional Advocate General Ms. Manisha Luvkumar submitted that on account of the observations made in paragraph no.19 of the judgment dated 01.12.2022, the applicant 15. It was submitted that as per the provisions of section 66(1) of the Act, 1988 read with section 88(1) and section 88(9) of the Act, 1988, the State of Gujarat is entitled to recover the tax, penalty and interest as the owner of the motor vehicle is required to have necessary permit from the State Transport Authority authorising the manner in which the vehicle is to be used in that region for which permission is issued.

16. It was submitted that the permit can only be used at the region and such permit is not valid in any other region, unless the same is countersigned by the respective Regional Transport Authority of the other region where it is sought to be plied. It was therefore, submitted that as per the provisions of section 88(9) and section 88(14) of the Act, 1988, only exception carved out is for the purpose of promoting tourism and for grant of permit for validity through out India or in

State not less than three in number.

17. It was submitted that from undertaking filed by the respondent, it is clear that Omni Bus was plied as Stage Carriage and not as Contract Carriage which is permitted by All India Permit.

18. It was submitted that as per section 2(43) of the Act, 1988, tourist vehicle is defined as contact carriage.

19. It was submitted that Contract Carriage is defined in section 2(7) to mean a motor vehicle which carries a passenger or passengers for hire or reward under a contract for the use of such vehicle as a whole for carriage of passengers by a person with a holder of a permit in relation to such vehicle on time basis or from one point to another.

20. It was submitted that as per section

2(40), Stage Carriage means a vehicle which carries more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for the stages of journey.

21. It was submitted that All India Permit would apply only to Contract Carriage and not to Stage Carriage and therefore, once the All India Permit is granted to any vehicle by any Regional Transport Office of any State, the same permit would operate as per the provisions of Rule 2(d) of All India Tourist Vehicle (Authorisation or Permit) Rules,2021 (For short "the Rules,2021") which defines "permit".

22. It was therefore, submitted that the observations made in paragraph no.19 of the judgment and order dated 01.12.2022 would come in way of the State Government as the Transport Vehicles which are used as Stage Carriages and not covered by All India Permit would not be liable to any tax, liability or interest in State of Gujarat.

23. Learned AAG Ms. Luvkumar pointed out from the record that the vehicle in question was used as Stage Carriage as per the facts emerging from the record, more particularly, as per the declaration given by the respondent at the time of detention of the

24. In support of her submissions, reliance was placed on the decision of Hon'ble Supreme Court in case of Board of Control for Cricket in India and another v. Netaji Cricket Club and others reported in (2005) 4 Supreme Court Cases 741 wherein it is observed as under:

"88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Sec. 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.”

25. Reliance was also placed on the decision in case of Muthyala Sunil Kumar v. Union of India and ors. reported in (2024) 12 Supreme Court Cases 727.

26. It was therefore, submitted that the observations made in paragraph no.19 of the judgment may be modified and/or reviewed accordingly, in accordance with the provisions of the Act,1988.

27. On the other hand, learned Senior Advocate Mr. Anshin Desai with learned advocate Mr. Ramkrishna B. Dave for the respondent submitted that the apprehension raised on behalf of the State Government is misplaced as there is no observation in the order dated 01.12.2022 to even remotely suggest that the State Government cannot recover the tax in case if it is found that the transport vehicle having All India Permit is used as Stage Carriage.

28. It was submitted that any observation made in paragraph no.19 of the judgment are in facts of the case which clearly shows that the respondent authority had highhandedly sought to recover tax within two days from the date of payment of tax on 07.04.2022 including the compounding fees.

29. It was submitted that the observations made in paragraph no.19 of the judgment are to be construed in light of the facts of the case and the discussion made in the judgment regarding the payment of tax under All India Permit paid by the respondent as this Court has deprecated the justification of second seizure, more particularly, when the first detaining and seizure order dated 12.03.2022

30. It was also pointed out that this Court while considering the facts of the case has also taken into consideration that the applicant no.2 could not have questioned the permit issued by the Regional Transport Office at Rajasthan which permitted sleeper capacity of 36 and sitting capacity of one person when the panchnama was drawn on 25.03.2022.

31. It was pointed out that in the facts of the case, the Court had observed that once the All India Permit was granted to the transport vehicle in question which was conveyed by the document dated 25.03.2022 and when the tax, interest and penalty was collected by the applicants on 07.04.2022, there was no unauthorised trip to detain and seize the vehicle again on 09.04.2022.

32. It was therefore, submitted that this Court has made observations in light of the facts of the case and therefore, in absence of any mistake apparent on record, the application to review and/or modify such observations need not be

entertained.

33. It was also pointed out that Hon'ble Supreme Court while dismissing the Special Leave to Appeal filed by the applicants has only permitted the applicants to file review application for consideration of the factual aspect as to whether the respondent was right in seeking refund of the amount in the petition and such related issues.

34. It was submitted that the main grievance raised by the applicants was with regard to direction for refund of tax collected earlier being Rs.4,88,760/- with interest which was paid to the Rajasthan Government by the respondent authority at the time of obtaining the All India Permit and similar demand having been raised by the applicant.

35. It was pointed out that however in facts of the case, the Court has held that there does not appear any justification in collecting the tax to the tune of Rs.4,88,760/- with interest of Rs.52,957/-.

36. It was pointed out that the observations made in paragraph no.19 of the judgment are in relation to the contention raised on behalf of the State drawing the attention of the Court to Rule 2(d) of the Rules,2021 and in relation thereto, this Court has considered the effect of All India Permit which was not the question arising from the facts of the case as the Bus in question was already having All India Permit and subsequent permit having been issued by the Rajasthan State on 25.03.2022.

37. It was submitted that amount of tax of Rs.4,88,760/- was already paid for the period from April, 2021 to March, 2022 by the respondent and Rs.65,000/- was again demanded on 09.04.2022 which is ordered to be refunded to the respondent. It was pointed out that penalty of Rs.2,86,325/- and compounding fees of Rs.75,000/- are not ordered to be refunded when the vehicle was seized for the first time. It was therefore, submitted that the penalty and the compounding fees are not refunded.

38. Having heard the learned advocates for the respective parties and considering the facts of the case as well as observations made in paragraph no.19 of the judgment by which the applicants are aggrieved are based on the submissions made before the Court in relation to All India Permit. On perusal of the entire order wherein facts are narrated in detail, we are not able to find any reference to All India Permit having been the basis for the order of refund made by the Court inasmuch as there is no error apparent on record so as to review the order in any manner.

39. Reliance placed by learned AAG Ms. Luvkumar on the decision in case of Muthyala Sunil Kumar (supra) in not applicable in the facts of the case as in the said decision the Hon'ble Supreme Court has considered the legality of different State Governments levying and collecting Authorisation fee/Border Tax in violation of All-India Tourists Vehicles (Authorization/ Permit) Rules, 2023

whereas in facts of the case, this Court has considered the collection of tax by the applicant State inspite of having All India Permit for the Bus in question for the period from April, 2021 to March, 2022 for violation of the provisions of the Act, 1988 without any basis.

40. The principles for review of the order as held by the Apex Court can be summarised as under:

1) In case of Moran Mar Basselios Catholicos and another v. Most. Rev. Mar Poulose Athanasius and others reported in AIR 1954 SC 526, the Apex Court held as under:

“32.Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal.

Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XLVII, rule I of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified, grounds, namely (I) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was. passed,

(ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason.

It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule." See Chhajju Ram v. Neki(AIR 1922 PC 112). This conclusion was reiterated by the Judicial Committee in Bisheshwar Pratap Sahi v. Parath Nath(AIR 1934 PC 213] and was adopted by our Federal Court in Hari Shankar Pal v. Anath Nath Mitter(AIR 1949 FC 106). Learned counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of "mistake or error apparent on the face of the record" or some ground analogous thereto.

As already observed, out of the 99 objections taken in the grounds of review to the Judgment of the majority of the High Court only 15 objections were urged before the High Court on the hearing of the application for review. Although most of those points have been referred to by learned counsel for the appellants, he mainly stressed three of them before us. We now proceed to examine these objections.”

2) In case of Lily Thomas and others v. Union of India and others reported in (2000) 6 Supreme Court Cases 224, the Apex Court held as under:

“58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order XLVII of the CPC has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the Judgment in Sarla Mudgal 's case(1995 3 SCC 635). It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the court at the time of passing of the Judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the Judgment in Sarla Mudgal's case. We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned Counsel appearing for the parties seeking review of the Judgment. The only arguments advanced were that the Judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the Judgment. The words "any-other sufficient reason appearing in Order XLVII Rule 1 CPC" must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in Chajju Ram v. Neki Ram AIR 1922 PC 112 and approved by this Court in Moron Mar Baseless Catholics and Anr. v. Most Rev. Mar Poulose Athanasius and Ors. AIR 1954 SC 526. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. in T.C. Basappa v. Nagappa and Anr (AIR 1954 SC 440) this Court heldMuthyala Sunil Kumar v. Union of India and ors. that such error is an error which is a patent error and not a mere wrong decision. In Hari Vishnu Kamath v. Ahmad is Hague and Ors.(AIR 1955 SC 233) it was held:

...it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, CJ in - "Batuk K Vyas v. Surat Borough Municipality' (AIR 1953 Bombay 133), that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.

Therefore, it can safely be held that the petitioners have hot made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order XLVII Rule 1 of the CPC for reviewing the Judgment in Sarla Mudgal 's case. The petition is misconceived and bereft of any substance.”

3. In case of Board of Control for Cricket, India and another v. Netaji Cricket Club and others reported in AIR 2005 Supreme Court 592, the Apex Court held as under:

“89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the Order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".”

41. In view of the above conspectus of law and in absence of any error apparent on record, more particularly, when this court has passed the order on the basis of the facts emerging from the record, this application is not tenable and is accordingly dismissed. No order as to cost.

