

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 143 of 2021

Late Abdul Shafique Through His Successors Abdul Kadir Aged A32 Years S/o Late Abdul Shafique R/o Besides Sahara Battery, Maudhapara Raipur 492001

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Transport, Indrawati Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Chirman State Transport Authority Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
3. The Secretary State Transport Authority Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
4. Raoyal Travels Through Its Proprietor- Saiyyad Anwar Ali, Bus Stand Complex, Pandri, Raipur, Chhattisgarh.
5. Mohd. Akram Khan S/o Shri Abdul Gaffar Khan Shop No. 7, Bus Stand Complex, Pandri, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Sudeep Johri, Advocate
For State	:	Shri Raghavendra Verma, Govt. Advocate

**D.B. : Hon'ble Shri Justice P. Sam Koshy &
Hon'ble Shri Justice Parth Prateem Sahu**

Order On Board

12/11/2021

Per Parth Prateem Sahu, J.

1. The petitioner by this instant review petition sought to review of the judgment dated 4.10.2019 passed in WPC No.1413 of 2019 and connected matter.

2. In the writ petition, the petitioner has sought relief for declaring the amendment in Rule 66 (a-a) of the Chhattisgarh Motor Vehicles Rules 1994 (for short "*M.V. Rules*") brought into Rule 66 by way of amendment published in the official gazette dated 28th April 2018 to be *ultra vires* and further relief of quashing/setting aside the permit (Annexure P-5 to P-10 in writ petition) granted in favour of respondents No. 4 & 5. After hearing learned counsel for the petitioners therein both the writ petitions came to be dismissed by detailed impugned order.
3. Shri Sudeep Johri, learned counsel for the petitioner would submit that while deciding case, the Court failed to take note that State Government is not having powers to make amendment with regard to the jurisdiction vested with the authority for grant of permit under Section 72 of the Motor Vehicles Act, 1988 (for short "the MV Act") Act. Rule 66 (a-a) of the MV Rules not only override the powers and the authority as prescribed under Section 72 of the MV Act, but is also inconsistent with the Central Act. State Government cannot transgress the powers vested with the Regional Transport Authority by making an amendment in the Rules under the Rule making power. He pointed out that under Section 72 of the MV Act, it is only the State Transport Authority having the jurisdiction to grant permit. Section 96 (2) (xi) of the MV Act as discussed in the impugned order even does not provide the powers to State Government to make Rules with regard to grant of permit under the MV Act, Section 71 is checkmate of Section 72 of the MV Act, wherein the authority for considering the Stage Carriage Permit is specified as Regional Transport Authority. The Rule under challenge, is contrary to the Act. It is settled law that Rule cannot override the main Act. When there is any conflict between Rules and Act, it is the Act which will prevail, which was not considered primarily while passing the impugned order. Order passed considering the precedents deals with the old Motor Vehicles Act of 1939 and was not applicable to the Facts of the Case. The Court while passing impugned order, overlooked the Notification wherein routes have been shown in Table "A" from 1 to 18 and there is no route for Raipur to Saraipali and therefore no permit can be issued under "Rajdhani Bus Service". In view of the above submissions, learned counsel for the petitioner would submit that

impugned order is illegal and hence is liable to be reviewed.

4. Learned counsel for respondents No. 1 to 3/State submits that the grounds raised by the petitioner in this review petition is in fact the grounds of appeal. There is no specific pleadings or submission of learned counsel for the petitioner of any error apparent on the face of record. Hence the review petition cannot be entertained and is liable to be dismissed. The review petitioner cannot be permitted to re-agitate his entire case in the garb of review application.
5. We have heard learned counsel for the respective parties and perused the records.
6. Perusal of the grounds raised, submissions made by learned counsel for review petitioner would show that the petitioner has challenged the legality and propriety of the impugned order. Grounds raised by the review petitioner has already been considered in the impugned order at length from para- 18 to 30 elaborately.
7. The petitioner, by this review petition, is making an attempt for re-hearing of the writ petition on merits. Scope of review under Order 47 Rule 1 CPC is very limited. It is primarily only to correct the mistakes and not to substitute the view. Review petition cannot be heard and considered as an appeal. Points raised in the writ petition once heard and decided cannot be permitted to re-agitate as a ground of review even if the view taken in the order/judgment under review is erroneous.
8. Hon'ble Supreme Court in the case of **Meera Bhanja (Smt.) Vs. Nirmala Kumari Choudhary (Smt.)** reported in (1995) 1 SCC 170 has held thus :-

“8. It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, C.P.C. In connection with, the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to

review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and Ors.* , speaking through Chinnappa Reddy, J., has made the following pertinent observations :

“It is true as observed by this Court in *Shivdeo Singh Vs. State of Punjab*, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent mis-carriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.”

9. In the case of **Parsion Devi and Ors. Vs. Sumitri Devi & Ors.** reported in (1997) 8 SCC 715, it was held:-

“10..... There is a clear distinction between an erroneous decision and *an error apparent on*

the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an *erroneous* decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which was not of such a nature, "which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J..”

10. In the case of **Surendra Kumar Vakil & Ors. Vs. Chief Executive Officer, MP and Ors.**, reported in (2004) 10 SCC 126, Hon'ble Supreme Court has held thus:-

“10.....A point that has been heard and decided cannot form a ground for review even if assuming that the view taken in the judgment under review is erroneous.”

11. In the case of **Rajinder Singh Vs. State of Haryana & Ors.** reported in (2005) 12 SCC 322, it was held thus:

“2..... We find that all the pleas are in substance a reiteration of the grounds that were urged during the hearing of the appeals and, therefore, cannot be the grounds for entertaining a review petition. The petitioner cannot be permitted to seek a rehearing in the garb of review petition.”

12. In the case of **Asharfi Devi (dead) through LRs Vs. State of Uttar Pradesh and Ors.** reported in (2019) 5 SCC 86, it was held thus:

“18. It is a settled law that every error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code though it can be made subject matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case.”

13. In the case of **Shanti Conductors Pvt. Ltd. Vs. Assam State Electricity Board & Ors.** reported in (2020) 2 SCC 677, it was held

“25. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer the judgment of this Court in *Parsion Devi and Others Vs. Sumitri Devi and Others*, (1997) 8 SCC 715, wherein in paragraph 9 following has been laid down:

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.”

14. In view of the grounds taken and submissions made by learned counsel for the petitioner as discussed above, it is apparent that the grounds raised in the review petition has already been considered and decided. We do not find any error apparent on the face of record so as to exercise

the jurisdiction under review as provided under Order 41 CPC .

15. For the foregoing, review petition is liable to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Parth Prateem Sahu)
Judge

Praveen