

(1955) 12 MP CK 0010

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Case No. 31 of 1955

Akhtari Begum

APPELLANT

Vs

The Appellate Authority for Madhya Bharat and Others

RESPONDENT

Date of Decision : 10-12-1955

Acts Referred:

Constitution of India, 1950 — Article 223, 226, 227
Motor Vehicles Act, 1939 — Section 44, 47(1), 57, 58, 58(2)

Citation : AIR 1956 MP 175

Hon'ble Judges : B.K. Chaturvedi, J;A.H. Khan, J

Bench : Division Bench

Advocate : Sanghi, Newaskar and Kutumbale, for the Appellant; Deputy Govt. Advocate for Opponents No. 1 and 2 and Chaphekar, for Opponents No. 3, for the Respondent

Final Decision : Allowed

Judgement

Chaturvedi, J.—The Petitioner Akhtari Begum has filed a petition under Article 226 as well as Article 227 of the Constitution of India for issuing a writ in the nature of certiorari, mandamus or prohibition for quashing the order dated 30-3-1955 passed by Respondent 1 the Appellate Authority for Madhya Bharat constituted u/s 44, Motor Vehicles Act. The application arises under the following circumstances.

2. The Petitioner Akhtari Begum and Respondent 3 Shaikh Ahmed reside at Mehidpur and ply motor buses on hire. The Petitioner held a permit granted to her by the Regional Transport Authority, Southern Region, for plying her motor buses on the route Mehidpur town to Mehidpur Railway Station for the period 1-1-1951 to 31-2-1954. Shaikh Ahmed also held similar permits for plying his motor buses on the same route.

After some time it was resolved to extend the route for bus transport between Mehidpur town and Mehidpur Railway Station to Nagda Railway Station by extending the permit of one of the permit-holders for the existing route to Nagda

Railway Station. Respondent 2, therefore, invited applications. The Petitioner as well as Respondent 3 submitted their applications which were published in the Madhya Bharat Government Gazette dated 17-4-1952.

On 29-5-1952, these applications were considered at the meeting of the Regional Transport Authority (Respondent 2), which passed an order in favour of the Petitioner extending her permit to the new route i.e. between Mehidpur Railway Station and Nagda. In other words, the permit held by the Petitioner for plying her bus between Mehidpur town and Mehidpur Railway Station for the period ending 31-3-1954 was amended and extended to Nagda.

The application filed by Respondent 3 Shaikh Ahmed was rejected. Aggrieved by this order, Shaikh Ahmed preferred Appeal No. 26 of 1952 to the Authority (Respondent 1) u/s 44, Motor Vehicles Act. This appeal did not come up for hearing before Respondent 1 (the Appellate Authority) before 16-4-1954. The permit granted to Petitioner was due to expire on 31-3-1954. She therefore, made an application u/s 58, Motor Vehicles Act to the Regional Transport Authority, Southern Region, for renewal of her permit for the route Mehidpur town to Nagda via Mehidpur Railway Station. This application was duly published by Respondent 2 in the Madhya Bharat Government Gazette dated 25-2-1954 as required by Section 57 read with Section 58(2) Motor Vehicles Act and representations against the applications were invited.

No representation having been filed, not even by Ahmed (Respondent 3), the Petitioner's application for renewal was granted on 29-3-1954 her permit was renewed upto 30-3-1957.

3. Meanwhile on 16-4-1954, Respondent 3 Shaikh Ahmed's Appeal No. 26 of 1952 came up for hearing before Respondent 1 and was disposed of by judgment dated 26-4-1954. From the judgment itself it appears that Mr. Chitale, on behalf of the Petitioner, had raised a preliminary objection the appeal had become infructuous. But this simple proposition of law could not be acted upon by Respondent 1 the Appellate Authority for Madhya Bharat constituted u/s 64, Motor Vehicles Act and the appeal was heard and decided on 26-4-1954 against the Petitioner.

A review application was also rejected by Respondent 1 stating that no provision for review is made in Motor Vehicles Act. On 12-5-1954, the Regional Transport Officer, Indore, asked the Petitioner to stop plying her vehicle between Mehidpur Railway Station and Nagda.

The Petitioner, then lodged a protest by telegram and urged that the appellate judgment dated 26-4-1954 could only affect the previous permit which had already expired on 31-3-1954; that the existing permit which was for the period 1-4-1954 to 31-3-1957 could not be affected and that Respondent 2 had filed no objection against the grant of renewal to the Petitioner.

The Regional Transport Authority on 31-5-1954 made an order holding that it

was prior permit which entitled the Petitioner to a preference for renewal and since Respondent 1 had in Appeal. No. 26 of 1952 held that the prior permit had been improperly granted to the Petitioner, the order renewal also fell to the ground.

The Petitioner, therefore, again preferred the appeal against this order to Respondent 1. This appeal i.e. No. 64 of 1954 was heard on 22-1-1955 and decided on 30-3-1955. Respondent 1 dismissed the Petitioner's appeal and upheld the judgment of Respondent No. 2. Being aggrieved by the order dated 31-5-1954 passed by Respondent 2 and the order dated 30-3-1955 passed by Respondent 1 the Petitioner has come to this Court for the issue of a writ for quashing the order under Articles 226 and 227 of the Constitution of India.

4. The dispute related to the permit granted in favour of the Petitioner upto 31-3-1954 between Mehidpur town and Nagda Railway Station. The date, in our opinion, was material, for after 31-3-1954 applications for fresh permit would have been invited or the existing permit would have been renewed. Section 58(2), Motor Vehicles Act says:

A permit may be renewed on an application made and disposed of as if it were an application for a permit:

Provided that, other conditions being equal, an application for renewal shall be given preference over new applications for permits.

The words "as if it were an application for a permit" mean and imply that an application for the renewal of a permit will be treated on the same basis as an original application for a permit. The provisions of Section 47(1) govern such application, and, therefore, in deciding the question whether to grant or refuse a permit, the Regional Transport Authority can take into account any representations made by any person, body or association interested in road transport facilities.

This is also the view taken in para 7 of (S) AIR 1955 Sau 57, Jamnagar Motor Transport Union Ltd. v. State of Saurashtra (A). It may be noticed this Respondent 3 Shaikh Ahmed had appealed against the order of the R.T.A., Southern Region, permitting the Petitioner to ply her bus upto 31-3-1954. He had not made any representation against the renewal of the permit uptill 1957.

It would, therefore, appear that the order of renewal of permit in favour of the Petitioner had become final and Respondent 1 (the Appellate Authority) could not have interfered with this order. We are not concerned with the delay in taking up the appeal for arguments before the expiration of the period of permit.

But once the period of the permit, which was the subject-matter of the appeal, had expired, the Appellate Authority could not have adjudicated upon the rights of the parties because the appeal had in fact become infructuous. Under no provision of law the appeal could have been heard on 13-4-1954 when the permit granted to the Petitioner, which was the subject-matter of appeal, had

expired on 31-3-1954.

In our opinion, the order passed by the Appellate Authority on 26-4-1954 in Appeal No. 26 of 1952 was unauthorised. The Appellate Authority had no jurisdiction to pass this order and no jurisdiction to pass an order affecting the renewal of permit from 1-4-1954 to 31-3-1957.

We, therefore, come to the conclusion that the Appellate Authority in hearing the appeal on 16-4-1954 and in passing the order on 26-4-1954 acted without jurisdiction and this error is apparent on the face of the record and has resulted in manifest injustice.

We must, therefore, set aside this order. The order passed by the Regional Transport Authority on 31-5-1954 and the order passed by the Appellate Authority on 30-3-1955 in Appeal No. 64 of 1954 in justifying the order dated 26-4-1954 in Appeal No. 26 of 1952 will also be set aside.

5. Mr. Chaphekar, learned Counsel on behalf of Respondent 3 Shaikh Ahmed, compared the renewal of permit with the renewal of a lease under the Transfer of Property Act and showed a ruling, *Kishen Datt Ram v. Mumtaz Ali Khan* 5 Cal 198 (PC) (B), in which it was held that the renewal of a term obtained by the mortgagee of the expired term comes from the same root and is subject to the same equity.

In our opinion, this ruling is not at all relevant to the case and the renewal of a permit to ply a motor on hire is something entirely different from renewal of a lease of land. The two can not be compared with one Anr. . The Transfer of Property Act has no resemblance with the Motor Vehicles Act and the explanation of expression in one Statute cannot be applied to a similar expression in Anr. statute which is entirely different in scope.

We do not like to discourage Counsel from showing us what light expression in one Statute may throw upon the meaning of Anr. . But there are certain limits which have been laid down, and these must be considered before rulings are cited in the Court. In this connection, it is observed at p. 124 in *Craies on Statute Law*, 1952 Edition:

In considering what light one Statute may throw upon the meaning of Anr. Statute, it is necessary to ascertain what assistance may be derived, firstly from Statutes which are in part *materia* with the Statute under consideration and secondly from earlier Statute not precisely in *parimateria*, but in some way relating to or affecting the same subject-matter.

It will be obvious that the Transfer of Property Act is not in *pari materia* with the Motor Vehicles Act, nor is it related to or affects the same subject-matter. Secondly, the ruling, about the renewal of a lease was entirely irrelevant in this case.

In our opinion, there is no force in the contention of either Mr. Chaphekar or the

Deputy Government Advocate. We are definitely of opinion that Appeal No. 26 of 1952 could not have been heard when the period of the permit had expired, and the order passed was beyond jurisdiction.

6. It is true that the Petitioner ought to have come to this Court after 26-4-1954 and ought not to have frittered her energies in contesting the validity of the order passed before the Regional Transport Authority and again before the Appellate Authority.

No limitation is, however, provided for an application under Article 223. Ordinarily it is to be presented as soon as practicable after the event that furnishes a cause for the relief claimed. As the Petitioner did not come to this Court immediately after 26-4-1954, we think it will be justifiable to deprive the Petitioner of her costs.

7. The result is that we allow this application and quash the order passed on 26-4-1954 by the Appellate Authority (Respondent 1) in Shaikh Ahmed's Appeal No. 26 of 1952. The order of the Regional Transport Authority dated 31-5-1954 and the order of the Appellate Authority dated 30-3-1955 in Appeal No. 64 of 1954 will also be set aside. The order of the Regional Transport Authority (Respondent 2) granting the Petitioner's application for renewal will, therefore, stand. No order as to costs.

Abdul Hakim Khan, J.

8. I agree with my learned brother that the order of the Appellate Authority is wrong and must be quashed. Appeal No. 26 of 1952 was before the Appellate Authority against the grant of a license that extended the route of the Petitioner. But this license along with its extension admittedly expired on 31-3-1954 and to hear and decide an appeal after its expiry on 26-4-1954 served no good purpose.

9. It seems that this point was pressed before the Appellate tribunal (mention is made of it in the judgment) but unfortunately it did not sufficiently attract the tribunal's notice and was dismissed without assigning any reason.

There is no doubt that the appeal had become infructuous and an order passed in the circumstances might have served as a guidance in other cases in the future, if some question of principle was involved in appeal, but so far as the passing of any effective order about the expired license was concerned, the tribunal could not revive the license, the period of which had run out just a one cannot revive a dead horse by flogging.