

(1967) 03 AHC CK 0024
In the Allahabad High Court
Case No : Writ Petition No. 720 of 1965

Babu Khan and Another

APPELLANT

Vs

The Regional Transport Authority, Meerut Region, Meerut and
Others

RESPONDENT

Date of Decision : 31-03-1967

Acts Referred:

Motor Vehicles Act, 1939 — Section 64
Uttar Pradesh Motor Vehicles Rules, 1940 — Rule 72

Citation : AIR 1969 All 119

Hon'ble Judges : Lakshmi Prasad, J

Bench : Single Bench

Advocate : A.J. Fanthome, for the Appellant; Standing Counsel (for No. 2), K.S. Verma, B.N. Sharma and Bireshwar Nath, (for No. 5), for the Respondent

Final Decision : Allowed

Judgement

Lakshmi Prasad, J.—This is a petition under Article 226 of the Constitution. The Regional Transport Authority, Meerut, by a notification published in the U. P. Gazette dated the 27th of June, 1959, invited applications for five stage carriage permits on the Bulandshahr, Siana, Garhbugrasi route. A number of persons including opposite parties nos. 3 to 6 applied. The applications were published in due course in the Gazette dated the 2nd of January, 1960 and it was notified that these will be taken up for consideration at the meeting dated the 23rd of January, 1960. The said meeting was not held for some reason not relevant for the purpose of this case. Then another notification in the Gazette dated the 7th of April 1962, appeared notifying the meeting to be held on the 8th, 9th and 10th of May, 1962. That meeting was adjourned to the 29th and 30th of May and the 2nd of June, 1962. It was at this last mentioned meeting that eight persons out of the numerous applicants were granted permits. Srimati Rama Devi is one of those eight persons. The permit granted to her was valid for a period of three years from 11-6-1962 to 10-6-1965. Some of those who were not granted permit by the Regional Transport Authority preferred appeals. One such appeal

was preferred by opposite party No. 5. She preferred her appeal on 24-10-1962. A copy of the memorandum of appeal is annexure 4. She did not implead any of the grantees in her appeal. She impleaded only the Regional Transport Authority as respondent in the appeal. It may be because, as is alleged in paragraph 4 of the memorandum of appeal (Annexure-4), she was under an impression that a vacancy was left unfilled after the grant of eight permits, and she pressed her claim for that 9th vacancy.

2. On the 1st of August, 1964 a joint transfer application u/s 59(1) of the Motor Vehicles Act was made by the petitioners and Srimati Rama Devi. It was published in the Gazette dated the 27th of August, 1964, for objections. No objection was filed. The Regional Transport Authority at its meeting dated the 30th and 31st of October, 1964 allowed the transfer of permit granted to Srimati Rama Devi by her to the petitioners and on 13-11-1964 the change was actually effected by entering the names of the petitioners in place of that of Rama Devi in the permit. On 24-3-1965 the petitioners applied for renewal of their permit which was to expire in June, 1965. The application for renewal was published in the Gazette dated the 3rd of April, 1965. No objection was filed. The Regional Transport Authority at its meeting dated the 6th of May, 1965 allowed renewal to the petitioners for a period of three years from 11-6-1965 to 10-6-1968. In appeal No. 175 of 1962 filed by Srimati Shamim Banu which was one of the several appeals preferred against the order of the Regional Transport Authority (Annexure 1) the appellate authority passed an order on the 27th of August, 1965 (Annexure 7) in the following terms:--

"It has been pointed out on behalf of the appellant that Sri Haji Peeru, one of the respondents, has died. It was also brought to my notice that some of the respondents have transferred their permits to others. She is, therefore, directed to bring the legal heirs of Sri Haji Peeru and also the persons in whose favour the permits have been transferred on record. The appeals are adjourned to 20-10-1965."

It was on the date of the aforesaid order that opposite party No. 5 moved an application in her appeal No. 412 of 1962 for impleading all the eight grantees as respondents and the appellate authority allowed the application on the same date with the result that on 27-8-1965 all the eight grantees of permit including Srimati Rama Devi were ordered to be impleaded as respondents in Appeal No. 412 of 1962. The petitioners were, however, not made parties to this appeal either at that stage or at any subsequent stage till it came to be disposed of by the impugned order dated the 16th of November, 1965 (Annexure 8) cancelling the permit of Srimati Rama Devi and allowing the permit granted to her to opposite party No. 5 the appellant in Appeal No. 412 of 1962.

3. The present petition is filed to have the above mentioned appellate order dated the 16th of November, 1965 Annexure 8 quashed for the reasons which shall appear from the discussion of the arguments raised at the bar.

4. The petition is opposed by opposite party No. 5.

5. I have heard learned counsel for the petitioners and learned counsel for opposite party No. 5.

6. The first contention raised by the learned counsel for the petitioners is that in so far as Srimati Sarojni, opposite party No. 5 did not appear before the Regional Transport Authority as appears from its order Annexure 1 she had no right to maintain the appeal. I am unable to accept the contention. When opposite party No. 5 had put forth her case in her application for a permit it was for the authority to judge the relative merits of the various applicants before it and to grant permits to persons it thought suitable for the purpose. The failure on the part of opposite party No. 5 to appear before the Regional Transport Authority did not in any manner absolve it from its obligation indicated above. So if opposite party No. 5 felt that the decision contained in Annexure 1 refusing to grant her a permit was unfair she had every right to challenge its propriety and correctness by an appeal irrespective of the fact whether or not she had appeared before the Regional Transport Authority at the particular meeting at which the application came up for consideration, I, therefore, repel the contention.

7. The next contention raised by the learned counsel for the petitioners is that a perusal of the memorandum of appeal Annexure 4 shows that opposite party No. 5 never sought a permit for herself in place of any of the eight permits granted to different persons by the Regional Transport Authority and her only grievance which she wanted to be redressed by means of her appeal was that she deserved to be granted a permit as against the 9th vacancy which had been kept unfilled by the order under appeal. It is thus urged that if that was the scope of appeal filed by opposite party No. 5, there was no occasion for the appellate authority, opposite party No. 2 to grant her permit by cancelling the permit of one of the eight grantees. In the alternative he argues that in case the appeal (Annexure 4) be taken to cover the case that opposite party No. 5 asserted her preferential right to a permit as against one of those granted permits by the Regional Transport Authority then the appeal should be held to be incompetent in so far as notwithstanding the requirement of Rule 72 of the U. P. Motor Vehicles Rules opposite party No. 5 failed to implead any of the eight grantees when she instituted her appeal in 1962 and took no steps to implead them till August 1965, long after the expiry of the period of limitation prescribed by the aforesaid rule for filing an appeal.

There has been a lot of controversy with regard to these points urged by the learned counsel for the petitioners. Learned counsel for opposite party no, 5 has contended with reference to the allegations in paragraph 3 of the memorandum of appeal (Annexure 4) that opposite party No. 5 in effect did raise the question that she was entitled to a permit in preference to those granted permits by the Regional Transport Authority. In other words he contends that there is no warrant to confine the appeal of opposite party No. 5 only to a permit for the 9th vacancy

even though she might have urged that also as one of the grounds in appeal. With regard to the alternative contention raised by the learned counsel for the petitioners, the contention of the learned counsel for opposite party No. 5 is that notwithstanding the use of the word "shall" in Rule 72, the provision, regarding the impleadment in appeal of the persons likely to be affected by the result of the appeal, is only directory and not mandatory.

As regards the question of limitation he points out that the expression "suit" as defined in the "Limitation Act", whether we refer to the old or the new Limitation Act, does not include an appeal and that being so, whether we refer to Section 22 of the old Limitation Act or to Section 21 of the New Limitation Act, the provision therein can have no application to an appeal and hence no question of limitation arises on the score that the various grantees including Srimati Rama Devi, the transferor of the petitioners, came to be impleaded in the year 1965 whereas the limitation for filing an appeal had expired in 1962. He thus contends that so long as the appeal itself was filed within limitation, the appellant was competent to have the various grantees impleaded at any time during the pendency of the appeal without offending any rule of limitation,

8. Having considered the various arguments indicated above I have come to the conclusion that the contention of the learned counsel for opposite party No. 5 that no question of limitation arises because of the impleadment of Srimati Rama Devi at a late stage and that the appeal of opposite party No. 5 must be taken to cover the question that she was entitled to preference as against the grantees is not without substance. But that by itself does not appear to be of any great consequence. The fact remains that the petitioners were never impleaded as respondents to appeal No. 412 of 1962. I am not prepared to accept the contention of the learned counsel for opposite party No. 5 that since Srimati Rama Devi was impleaded as a party in the appeal and the petitioners are her transferees, they are as much bound by the result of the appeal as Srimati Rama Devi herself. This would have been the position had Srimati Rama Devi been impleaded in appeal prior to the transfer in favour of the petitioners.

As already indicated the transfer in favour of the petitioners was given effect to in November, 1964 whereas Rama Devi came to be impleaded in August, 1965. There appears to be absolutely no basis for contending that the impleadment of Srimati Rama Devi, though effected in August, 1965, would relate back to the date of institution of the appeal which was instituted in October, 1962. I do not agree with the contention of the learned counsel for opposite party No. 5 that the provision in Rule 72 in regard to the impleadment of persons affected by the appeal is only directory and not mandatory. In support of his contention that the said provision be treated as directory the learned counsel places reliance on the following observations occurring in paragraph 7 of the judgment of their Lordships of the Supreme Court in Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur,

"The question whether a particular provision of a statute which on the face of it

appears mandatory -- inasmuch as it uses the word "shall" as in the present case--or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory."

It is obvious from the observations reproduced above that in deciding whether a particular provision is directory or mandatory language alone cannot be the basis but several other considerations have to be taken into account and such considerations include the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the subject. It may be that Section 64 of the Motor Vehicles Act does not specifically provide for the impleadment of the persons affected by the result of the appeal even though it specifically mentions that the appellant, and the Regional Transport Authority shall be given an opportunity of being heard, the fact nonetheless remains that Section 64 envisages that the appeal is to be filed within the time prescribed and in the manner prescribed.

That being so, it is competent to the rule-making authority to frame rules prescribing limitation and also the manner including the array of parties. It cannot be denied that the rule requiring the impleadment of persons to be affected is a wholesome rule in so far as it gives effect to the principle of natural justice that no order can be passed to the prejudice of a person behind his back. Considering all these facts there it appears to be no justification for not giving effect to the mandatory language of the rule under consideration and I, fail to see anything in the Supreme Court case referred to above to detract from the view I take in regard to the interpretation of Rule 72. It thus must be held that Rule 72 is mandatory and not directory. And that being so, the failure of opposite party No. 5 to implead Srimati Rama Devi on the date of the appeal would necessarily mean that there was no appeal pending against Srimati Rama Devi till she came to be impleaded in August, 1965.

It may be that it was open to the appellate authority to implead Srimati Rama Devi even in August, 1965 but that does not mean that her impleadment in August, 1965 would mean that the controversy between opposite party No. 5 and Srimati Rama Devi arising in appeal subsequent to her impleadment was there before the appellate authority right from the date of the appeal. Once that view is accepted it is evident that there was no controversy in regard to grant of permit to Srimati Rama Devi on the date she made the transfer in favour of the

petitioners. And hence the petitioners, having taken the transfer prior to any controversy in regard to the permit of which they took a transfer, were necessary party to the appeal of opposite party no. 5 if she took it into her head to challenge the permit granted to Srimati Rama Devi so as to assert her preferential claim to a permit as against Srimati Rama Devi. For these reasons my conclusion is that the appellate authority was incompetent to give a decision affecting the petitioners without impleading them as respondents in the appeal.

9. The above finding by itself is sufficient to grant relief to the petitioners. Still I may notice another contention raised by the learned counsel for the petitioners and which also appears to be not without substance.

10. The last contention urged by the learned counsel is that the appellate authority erred in comparing the case of opposite party No. 5 with Srimati Rama Devi alone and in cancelling the permit of Srimati Rama Devi so as to give it to opposite party No. 5 on coming to the conclusion that opposite party No. 5 appeared to be better entitled to a permit as compared to Srimati Rama Devi. He argues that in such cases the duty of the authority concerned is to compare the relative merits of all the grantees vis-a-vis the appellant in order to come to a definite conclusion as to the case of which of the grantees is the worst so as to make room for the appellant. In support of his contention he places reliance on the unreported decision of a Division Bench of this Court in the case of Jagdish Singh Yadav v. State Transport Appellate Tribunal, U. P. Lucknow, Special Appeal No. 157 of 1966, D/- 20-4-1966 (All). A certified copy of the judgment in the said case has been produced before me. It clearly supports the contention of the learned counsel. That the appellate authority in the instant case failed to do so is obvious from a perusal of that portion of the impugned order which deals with Appeal No. 412 of 1962 filed by opposite party No. 5. In the circumstances it must be held that the impugned order stands vitiated also for the reason that the appellate authority while considering the question if or not opposite party No. 5 was better entitled to a permit as against the grantees did not judge the relative merits of the grantees vis-a-vis the appellant but confined itself only to the comparison between the claim of opposite party No. 5 and that of Srimati Rama Devi.

11. No other point has been urged before me.

12. In the end the petition is allowed with costs and the impugned order Annexure 8 is quashed with the direction that the appellate authority shall proceed to dispose of Appeal No. 412 of 1962 afresh in the light of the observations made in the body of the judgment.