
(1982) 01 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 73 of 1982

Bhadreswar Boro

APPELLANT

Vs

Presiding Officer, S.T.A. Tribunal and Another

RESPONDENT

Date of Decision : 20-01-1982

Acts Referred:

Motor Vehicles Act, 1939 — Section 64

Citation : AIR 1982 Guw 86

Hon'ble Judges : T.C. Das, J;K.M. Lahiri, J

Bench : Division Bench

Advocate : K.C. Das, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—This writ application has come up for admission. The respondents are well represented by Mr. P. Prasad, the learned Govt. Advocate. We have perused the impugned order and find that it would cause unnecessary delay in dispensation of justice if we issue a Rule and hear the parties who are well prepared, to argue the case. Surely, it would come up for disposal after a couple of years and the petitioner would be deprived of his rightful relief. To uphold the cause of justice, we suggested to the learned counsel for both the parties about full hearing and final disposal of the matter right today. The learned counsel have agreed to our suggestion. Therefore, upon hearing the learned counsel for the parties, we proceed to dispose this writ application under Article 226 of the Constitution of India.

2. The intrinsic facts of the case: The petitioner appealed u/s 64 of the Motor Vehicles Act, 1939, for short "the Act". The appeal came up for admission on 21-12-81. On that date the learned Presiding Officer, State Transport Appellate Tribunal, Assam, Gauhati for short "the Tribunal", dismissed the appeal solely on the ground that "none for the appellant" was present to press the appeal. Later, the petitioner turned up and filed an application for restoration of the appeal, which was turned down by "the Tribunal" on 29-12-81 on the score that it had no

jurisdiction to restore the appeal to file. In this writ application the petitioner questions the validity of the orders as well as the jurisdiction of the Tribunal to make the lethal order of dismissal.

3. The crucial question is whether the learned Tribunal had jurisdiction vested in it by or under the law to dismiss the appeal u/s 64 of "the Act" on the ground of absence of the appellant and/or his counsel.

The relevant extracts of the provisions of Section 64(1) of "the Act" are as follows:--

"64 (1) Any person * *

* * *

may, within the prescribed time and in the prescribed manner, appeal to the State Transport Tribunal constituted under Sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

4. It is indubitable that there is no prescribed procedure for hearing such an appeal but the mandate of Section 64 of "the Act" is to "give a decision" on the appeal. Now, the question that crops up is whether at the stage of admission, if the appellant and/or his counsel does not turn up, is it the obligation of the Tribunal, (a) to adjourn the case, or, (b) to dismiss it for default of the parties, or (c) to render an ex parte order admitting or rejecting the appeal? In our opinion the mandatory provision of Section 64 of "the Act" enjoins the Tribunal to give a decision even at the stage of admission. There is no power conferred on the Tribunal to dismiss an appeal for default of the parties, as we have in other procedural laws. Such power of dismissal for default of the parties is by necessary implication prohibited in the statute. In our opinion at the admission stage, the learned Tribunal should peruse the Memo of appeal and the impugned order and thereafter render its decision giving reasons in support thereof. In the absence of the parties the Tribunal may adjourn the proceedings. However, it is not desirable to do so unless the Tribunal thinks it fit to adjourn. The discretionary power to adjourn the date of hearing is implicit in Section 64 of "the Act". The power to dismiss an appeal at the admission stage, not on merit but for default of appearance of the appellant is drastic and penal. Such lethal power must be conferred on the Tribunal by the statute creating it or the relevant rules under the statute. The power of dismissal of an appeal, in such contingency, is nowhere to be found in "the Act" or "the Rules" framed thereunder. It follows, therefore, that such powers have not been conferred on the Tribunal and if the Tribunal so dismisses an appeal it amounts to exercise of jurisdiction not vested in it by law; it must be held to be an order without jurisdiction.

5. In a different context, similar question came up for consideration in *Workmen of Sotai T. E. v. Labour Court* AIR 1965 Gau 80 and *Associated Industries*

(Assam) v. Jadumoni Bhanjo 1971 LabIC 1005, where the scope and procedure of enquiry by the Labour Court u/s 33(5) of the Industrial Disputes Act, 1947 came up for consideration of this Court. In the last named decision P.K. Goswami, C. J. speaking for the court laid down the scope and procedure of enquiry by the Labour Court u/s 33(5) of the Industrial Disputes Act. The Labour Court dismissed an application u/s 33(2) of the Industrial Disputes Act for the absence of the applicant. The petitioner contended that there was no power in the Labour Court to dismiss the application merely for the absence of the petitioner. His Lordship has observed that Section 33(5) of the Industrial Disputes Act clearly indicates that the Labour Court "shall hear the application and pass such order" in relation thereto as it deems fit. Following the principles of Workmen of Sotai T. E. (supra) the Division Bench held that there was no power in the Labour Court to dismiss an application for non-prosecution and it was duty-bound to dispose the same on merit.

6. While interpreting Section 80 of the Assam Co-operative Societies Act, 1949, as extended to Manipur, a Division Bench of this Court gave similar construction in Abdul Karim v. Abdul Latif 1974 ALR 327. It has been held that the Assam Co-operative Societies Act does not prescribe any procedure for disposal of an appeal and there is also no power to dismiss an appeal in the absence of a party, as such, notwithstanding absence of any provision similar to Order 41, Rule 18 of the Civil P. C. there is no bar on the appellate authority to revive an appeal, dismissed for default of the counsel. The decision is also an authority for the proposition that in the absence of clear investment of a power in an appellate authority to dismiss an appeal for default of appearance, it has no power of dismissal; it is bound to dispose of the appeal on merit.

7. For the foregoing reasons and on the authority of the decisions referred above we have no hesitation to hold that the appellate authority was incompetent to dismiss an appeal for non-prosecution merely on the ground of absence of a party. Such power has not been conferred on the Tribunal either expressly or impliedly by the statute creating the Tribunal.

8. In the result we hold the order of dismissal of the appeal for non-prosecution and/or for non-appearance of the party was absolutely without jurisdiction and the order cannot be sustained. Accordingly we quash the impugned order dated 21-12-81 and all other subsequent orders and direct the Tribunal to restore the matter to file, issue notice to the appellant, post the matter for admission and upon hearing the appellant pass such order as it deems fit, strictly in accordance with the provisions of Section 64 of the Act".

9. The petition is allowed. There will be no order as to costs.