
(1968) 01 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 154 of 1967

Bundelkhand Motor Transport Co. Bus Operator	APPELLANT
Vs	
State Transport Appellate Authority and Others	RESPONDENT

Date of Decision : 29-01-1968

Acts Referred:

Central Provinces and Berar Motor Vehicles Rules, 1942 — Rule 73
Constitution of India, 1950 — Article 136

Citation : AIR 1968 MP 215 : (1969) ILR (MP) 901 : (1968) JLJ 811 : (1968) 13 MPLJ 707 : (1968) MPLJ 707

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J.; K.L. Pandey, J

Bench : Full Bench

Advocate : M.N. Phadke and Y.S. Dharmadhikari, for the Appellant; R.S. Dabir, B.S. Dabir and R.K. Tankha for Respondent (Nos. 3 and 4), for the Respondent

Final Decision : Dismissed

Judgement

Pandey, J.

This is a petition under Articles 226 and 227 of the Constitution to call up and quash by certiorari an order dated 4th March 1967 whereby the State Transport Appellate Authority allowed two appeals filed by Chaurasia & Co. (respondent 4) and remanded the case to the Regional Transport Authority. Rewa, for considering and deciding afresh its two applications for fresh grant in lieu of renewal of two stage carriage permits for the Chhatarpur-Darnoh route. The Appellate Authority reiected the contention that the appeals were barred by time and, in so doing, it relied upon two Division Bench decisions of this Court, namely, Dhanrajmal and Co. v. State Transport Appellate Authority 1962 MPLJ 929 and Azad Hind Motor Transport Co-operative Society v. Regional Transport Authority. Indore. 1964 MPLJ 347. When this petition came up for hearing, it was argued that these two decisions required reconsideration. Since that could be done by a larger bench, this Full Bench was constituted to hear and dispose of the petition.

The facts of the case, which are somewhat involved, may be shortly stated. Chaurasia Transport Company (respondent 3) held two stage carriage permits for the Chhatarpur-Damoh route expiring on 31st December 1963 and 1st January 1964 respectively. The respondent 3 applied for renewal of those permits. While the petitioner and Chaurasia & Co. (respondent 4) objected to the renewal, the latter applied for fresh grants also in lieu of renewal. By an order dated 2nd April 1964, the Regional Transport Authority, Rewa, overruled the objections, renewed the two permits in favour of the respondent 3 and impliedly dismissed the applications for fresh grant made by the respondent 4. Being aggrieved, the petitioner filed an application for revising the order of renewal. By an order dated 7th April 1965, that application was allowed and the order renewing the permits was quashed by the State Transport Authority. The respondent 3 then filed Miscellaneous Petition No. 188 of 1965 in this Court calling in question the aforesaid order of the State Transport Authority, but it was dismissed on 13th July 1966. An application for review of this Court's order and another application for special leave to appeal to the Supreme Court against that order were also dismissed.

Consequent upon rejection of the applications of the respondent 3 for renewal of the two permits, the Regional Transport Authority, Rewa, by an order dated 23rd July 1966, invited applications for those two vacancies. The petitioner, who made applications for those permits on 27th July 1966, has challenged that order in revision which is pending before the State Transport Authority.

On 13th September 1966, the respondent 4, who it may be recalled had, besides objecting to the renewals, applied for fresh grant in lieu thereof, filed two appeals nos. 95 and 296 of 1966 against the order dated 2nd April 1964 by which his applications for fresh grant were dismissed. It may be mentioned here that the respondent 4 was not a party to the revision against the order of renewal or to the miscellaneous petition No. 188 of 1965 aforesaid with the consequence that he was not prevented from exercising his right of appeal. By the impugned order dated 4th March 1967, these two appeals were allowed mainly because the applications of the respondent 4 for fresh grant were not considered on merits. As already indicated in the opening paragraph, the contention that the appeals were barred by time was rejected.

The limitation prescribed for filing such appeals is contained in Rule 73(a) of the Central Provinces and Berar Motor Vehicles Act. (see Rules?) 1940, which is in force in the Vindhya Pradesh region It reads:

"(a) The authority to decide an appeal against the orders of a Regional Transport Authority under Clauses (a), (b), (c), (d), (e), (f) and (g) of Section 64 of the Act shall be the Chairman and two members of the Provincial Transport Authority appointed by the Chairman from a panel, nominated by the Provincial Government, of members of that authority, and any person preferring an appeal against the orders of a Regional Transport Authority in respect of such matter shall, within thirty days of the receipt of such order, excluding the time requisite

to obtain copies of the order, do so in writing to the Secretary of the Provincial Transport Authority in the form of a memorandum (in duplicate) setting forth concisely the grounds of objection to the order of the Regional Transport Authority, accompanied by a certified copy of that order.

Provided that when illness or other cause renders it impossible or inexpedient for the Chairman to hear an appeal, the Chairman or, in his absence the Provincial Government, may nominate a member of the panel to act for the Chairman."

An identical Rule -- Rule 80(a) of the Motor Vehicles Rules 1949 of the United State of Gwalior, Indore and Malwa (Madhya Bharat) -- came up for consideration in 1962 MPLJ 929 (supra), The Division Bench which decided that case stated;

"It is clear from the Rule that an appeal therein mentioned had to be filed "within thirty days of the receipt of such order" meaning the order of a Regional Transport Authority sought to be challenged in the appeal. In our opinion, it is implicit in the rule that a copy of the order had to be supplied to the party before the limitation could commence to run against him. This is in keeping with Sub-section (7) of Section 57 of the Motor Vehicles Act. 1939, which requires a Regional Transport Authority refusing an application for a permit of any kind to give to the applicant in writing its reasons for the refusal".

This was followed in 1964 MPLJ 347 (supra) where the Division Bench observed:

"The limitation for an appeal u/s 64 of the Motor Vehicles Act, 1939, commences to run from the date on which the reasons for the refusal of an application are communicated; 1962 MPLJ 929 (supra). In the instant case, the intimation dated 3rd May 1961 (Annexure B) communicated to the petitioner only the fact that its application was rejected. The reasons for such refusal should be regarded as having been communicated to it when it received the copy on 25th May 1961. If the reasons be regarded as so communicated on 25th May 1961, the appeal filed on 25th June 1961 is admittedly well within time."

Shri Phadke, learned counsel for the petitioner, made the point that the view taken in the two Division Bench decisions required reconsideration for several reasons, namely,--

(i) Rule 73(a) does not prescribe the starting point of limitation to be the date on which the reasons for the order are communicated to the aggrieved party.

(ii) Section 57(7) of the Motor Vehicles Act, 1939, requiring reasons for the refusal to be communicated to the applicant, has been enacted upon other considerations and it could not be taken into account for interpreting Rule 73 (a).

(iii) The limitation of 30 days prescribed by that Rule is not confined only to cases of refusal within the meaning of Clause (a) of Section 74 of the Act and covers all other cases enumerated in several clauses of that section in respect of which there is a statutory right of appeal.

(iv) If the expression "the receipt of such order" in Rule 73(a) be interpreted as

necessarily implying that an authenticated copy of the order has to be communicated to the aggrieved party, such copy could very well be used for filing an appeal and it is altogether meaningless to provide for further exclusion of time requisite for obtaining certified copies of the order.

(v) Upon a proper reading of Rule 73(a), the expression, "the receipt of such order" occurring therein should be construed as "the receipt of knowledge of such order" or shortly "the knowledge of such order".

Under Sub-section (1) of Section 68 of the Act, the State Government has power to make rules for the purpose of carrying into effect the provisions of Chapter IV, including Sections 57 and 64 of the Act, and the generality of that power is not exhausted or limited by the specific items mentioned in Sub-section (2) of Section 68. Therefore, it was competent to the State Government to make a rule relating to limitation for filing appeals, which would take into account the requirement that, u/s 57(7) of the Act, reasons for the refusal have to be communicated to the aggrieved party. Even apart from that consideration, the provisions of Sections 47, 48 and 64 and the rules framed u/s 68 of the Act, including Rule 73, make it abundantly clear that Regional Transport Authorities and State Transport Appellate Authorities created by the Act function in a quasi-judicial capacity. *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, and *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, . That being so, reasons must be given for any order passed by a Regional Transport Authority or a State Transport Appellate Authority, more particularly when it is subject to a further appeal or an appeal to the Supreme Court under Article 136 of the Constitution: *Harinagar Sugar Mills v. Shyam Sunder*, AIR 1961 SC 1669; *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, ; *Bharat Raja Vs. The Union of India (UOI) and Others*, and *Pragdas v. Union of India* 1967 MPLJ 869 (SC).

It follows that, when Rule 73(a) provides that an aggrieved party may prefer an appeal against an order of a Regional Transport Authority "within thirty days of receipt of such order", it is necessarily implied that the reasons for the order have thus been communicated to him. It is true that Rule 73(a) does not in terms provide that the limitation would commence from the time when the reasons for the order are communicated to the aggrieved party but the observations in the case of 1964 MPLJ 347 (*supra*) to the effect that limitation commences to run from the date on which the reasons for the refusal of an application for a permit is communicated should be regarded in the sense just indicated. This I think fairly disposes of the first three contentions.

Shri Phadke endeavoured to support his other contentions by arguing that, if the limitation does not commence to run until the aggrieved party has received a copy of the order, which is usually an authenticated copy, there can be no point in requiring him to file "a certified copy" of the order along with the memorandum of appeal and also excluding, in computing the period of limitation, the time requisite for obtaining the copy. In this connection, the counsel referred

to Surendra Singh and Others Vs. The State of Uttar Pradesh, ; Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and Vidyacharan v. Khub-chand AIR 1964 SC 1099 and sought to show by analogy that time should be regarded as running against the aggrieved party when he gets knowledge of the order. The first of these cases relates to a "judgment" within the meaning of Section 369 of the Code of Criminal Procedure. Bose J., who spoke for the Court, stated:

"In our opinion, a judgment within the meaning of these sections is the final decision of the Court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open Court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there; that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest -- the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter--can be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open Court. The exact way in which this is done does not matter. In some Courts, the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection."

(Page 196)

The second case arose out of proceedings under the Land Acquisition Act, 1894. In that case, the Supreme Court laid down that, since the remedy of the aggrieved party against the award of the Collector was with reference to "the date of the award" it meant the date on which the award was communicated to the party or was known by him either actually or constructively. The third case dealing with an election matter made a distinction between a judgment embodying the reasons for the decision and the order meaning the formal expression of the decision and reference was particularly made to the following passage:

"As u/s 90 of the Act, the Election Tribunal is directed to try election petitions as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, it is the duty of the Election Tribunal to give a statement of reasons for its decision. It is open to it to issue two documents-one embodying the reasons for the decision and the other, the formal expression of its decision: the former will be its judgment and the latter, its order. It may issue both in the same document in which case the judgment as well as the order is embodied in the same document. If so, it is manifest that an order made u/s 98 of the Act if it contains also the reasons for it, is a composite document satisfying the definition of a judgment as well as that of an order and thereby attracting the relevant provisions of Section 12 of the Limitation Act." (Pages 1113-4)

The CPC does not apply to proceedings under Chapter IV of the Act and it is a question whether an order without embodying the reasons could be treated as an order within the meaning of Rule 73 (a). In *Queen v. Thomas* 1892-1 QB 426, Wills J. pointed out that this would be a case:

"Where the applicants would have to appeal without knowing what were the grounds of the decision against her, and would not, therefore, be in the same position upon an appeal as she would have been if the grounds had been stated."

The diverse subject matters and schemes of the provisions of the several Acts interpreted in the three cases mentioned above are very different from those of Chapter IV of the Motor Vehicles Act, 1939, and therefore it is not permissible to interpret a rule like 73(a) framed under the Act in relation to limitation prescribed for appeals arising from certain proceedings under that chapter by analogy derived from statutes not in *pari materia*. So Craie states in his treatise on Statute Law:

"In the interpretation of statutes, the Courts decline to consider other statutes proceeding on different lines and including different provisions, or the judicial decisions thereon". (Sixth Edition, page 133)

Primarily the meaning and effect of a rule must be judged upon a fair and reasonable construction of the words used by the rule itself. Where, as in this case, they are clear and unambiguous and there is no inconsistency between the rule and the provisions of the Act under which it has been made, it is not reasonable to endeavour to construe it upon *a priori* notions derived from other statutes and then to take for that purpose, the help of the background or any other extrinsic aid. As Tindal C. J. stated long ago in the *Sussex Peerage Case* (1844) 11 Cl. & F 85:

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgivers". (Page 143)

In *R.L. Arora Vs. State of Uttar Pradesh and Others*, , Ayyangar J. stated:

""Authority is not needed for the proposition that the intention of the legislature is not a matter to be speculated upon. Interpretation or construction cannot mean that a Court first reaches a conclusion as to what in its opinion the legislature intend ed even though this involves attributing a meaning divorced from the words used, and then adjust the meaning to the conclusion it has reached". (Page 1244)

When the words employed in the rule *pro vide* for commencement of the limitation for appeals from the date of receipt of the order, implying specific knowledge of the order and the reasons therefor, there is no good ground for making, as suggested, any addition or, substitution with a view to construing the rule as providing for such commencement from an earlier point of time

It is also well to remember that provisions relating to limitation are, more or less, arbitrary so that one cannot seek to justify any one of them on the basis, of reason. In construing such provisions, equitable considerations are altogether out of place and the only safe guide is the strict grammatical meaning of the words employed. So, in AIR 1932 165 (Privy Council) . Sir Dinshah Mulla stated;

"Their Lordships think that nothing would be gained by discussing these varying authorities in detail. They think that the question must be decided upon the plain words of the article: "where there has been an appeal", time is to run from the date of the decree of the appellate Court. There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide".

(page 167)

In AIR 1941 6 (Privy Council) the Privy Council again laid stress on such construction of provisions of the Limitation Act and recalled with approval the following passage from Mitra's Tagore Law Lectures (1932), Vol. I, page 256:

"A law of limitation and prescription may appear to operate harshly or unjustly in particular cases, but where such law has been adopted by the State. . it must if unambiguous be applied with stringency. The rule must be enforced even at the risk of hardship to a particular party. The Judge cannot on equitable grounds enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised, by it"

Having regard to all these considerations, I am of the opinion that the view taken in the case of Dhanrajmal & Co., 1962 MPLJ 929 (supra) to the effect that, under Rule 73 (a), limitation for an appeal u/s 64 of the Act commences to run from the date of receipt of the order appealed against is correct. The case of 1964 MPLJ 347 (supra), which followed the earlier case, should be regarded as laying down the same law and not as indicating that limitation commences to run from any other point of time different from the date of receipt of the order"

On merits too, this petition deserves to be dismissed. Although, by a communication dated 8th April 1964 (Annexure D-8). the respondent 4 was intimated that its applications for fresh grant in lieu of renewal of the stage carriage permits For the Chhatarpur Damoh route were rejected, a copy of the order was not communicated to it and it was not "in receipt of such order" until 24th August 1966, when it obtained a certified copy it had applied for earlier. That being so. the two appeals filed by it were in time.

The only other point argued in support of the petition was that since the petitioner had raised the point that the applications filed by the respondent were

not in accordance with the provisions of Section 46 of the Act and were, therefore, invalid, the State Transport Appellate Authority had to decide the objection instead of remanding the case. This point had not been raised earlier before the Regional Transport Authority, Rewa. Even before the State Transport Appellate Authority, the point was not pressed and only the attention of that Authority was drawn to the fact that one of the applications for fresh grant was missing from the record, as would appear from sing from the record, as would appear from the following excerpt from its order:

"Learned counsel for the respondent No. 3 pointed out that the application of the appellant for fresh grant in lieu of renewal of permit No. 22/49 is not on record. This application could not be traced even after a careful search. Learned counsel for respondent No. 3 stated that he had certain objections to raise to the validity of the application. In the absence of the application and in view of the fact that the case is being remanded, it is directed that in the proceedings after remand the R. T. A. should bring on record the missing application and give full opportunity to the objectors to raise such objections as they may wish to in regard to the validity of the application and that the objections so raised should be considered and decided according to law".

Nay, the petitioner's counsel had conceded that the case would have to be remanded for a fresh decision on merits. In these circumstances, I am of opinion that the petitioner should not be allowed to urge in support of its petition this particular point.

In the result, I would dismiss this petition and direct that the petitioner should bear its own costs and pay out of the security amount those incurred by the respondent 4. I would fix Rs. 200/- as the counsel's fee

Dixit, C.J.

I agree.

Bhave, J.

I agree.

BY THE COURT

In the view taken by us, we dismiss this petition and direct that the petitioner shall bear its own costs and pay out of the security amount those incurred by the respondent 4. The remaining amount of security shall be refunded. We fix Rs. 200/- as Counsel's fee.