

(1981) 04 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1027 of 1979

Champa Lal

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 14-04-1981

Acts Referred:

Motor Vehicles Act, 1988 — Section 64(1)(a)

Citation : (1981) WLN 155

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—Petitioner, Champalal, has filed this writ petition, claiming, himself to be a bus vehicle opertator and has made the following prayer:

It is, therefore, humbly prayed that the writ petition may kindly be accepted and a writ in the nature of certiorari or any other writs, order or direction which may be deemed proper in the circumstances of the case be kindly issued, setting aside and quashing the order of the State Transport Appellate Tribunal, Jaipur dated 5-3-79 to the extent of making direction to the R.T.A. that the period of 4 months allowed to the petitioner for engaging a higher model vehicle should not be extended, and order dated 3-7-79 passed by Secretery R.T.A, Bikaner.

2. The Order of the State Transport Appellate Tribunal, Rajasthan, Jaipur, (hereinafter called to as "the Tribunal"), dated the 5th March, 1979, contains the following important directions:

When the appellant does not have a ready vehicle even today and the respondents had already obtained permits on the vehicles which were offered by them then the subsequent fact that the respondent No. 3 has taken permission to sell the vehicle and replace it with a higher model will not lower his position vis-a-vis the appellant. It is an admitted position that respondent No. 3 has not so far replaced his vehicles and is not plying on the route at all, but as the

Secretary RTA has already granted him 4 months time to replace the vehicle, then in view of this permission his permit should not be cancelled. However, it is necessary to make a direction to the RTA that this period of 4 months allowed to him for engaging a higher model vehicle should not be extended.

3. In this appeal before the Tribunal, Loonaram was the appellant and Champalal was the respondent No. 3. The discussion, in the order dated the 5th March, 1979, goes to show that the appeal of Loonaram was rejected substantially on this ground and the direction, mentioned above, was one of main grounds for rejecting appeal of Loonaram. It is surprising that the petitioner, Champalal, now wants to take a somersault and get rid of this direction also. It is difficult to appreciate that when he has sold vehicle under an express understanding, that he would replace it within 4 months, why should he try to riggle out of it now.

4. Shri B.L. Maheshwari, who appeared for the petitioner submitted that the Tribunal was not competent in an appeal filed by Loonaram to impose such a restriction or fetter or limitations in respect of period given for the replacement to Champalal and it was beyond jurisdiction of the Tribunal.

5. I have given serious consideration to the above submission of Shri Maheshwari, but I find, myself, unable to appreciate it. The jurisdiction of the Appellate Tribunal is co-extensive with that of the Regional Transport Authority or any of its delegated authority. Once, the appeal is entertained, the entire matter is open before the Appellate Tribunal for a fresh consideration. The only rider can be that no adverse order should be passed against a party without hearing him.

6. This Court in *Satyanarain v. S.T.A.T.* 1980 WLN 571 observed as under:

In the appeal u/s 64, Clause (1), Sub-clause (a) of the Motor Vehicles Act there are no fetters, no limitations, no restrictions and riders on the powers of the appellate authority while considering the appeal against the refusal to grant a non-temporary permit.

I am of the view that the powers u/s 64(1) Sub-clause (a) the powers of the State Transport Appellate Tribunal are co-extensive with that of the Regional Transport Authority.

7. The above view finds full support by judgment of Full Bench of High Court of Madhya Pradesh in *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, M.P., Gwalior and Others*, whereby it has been held as under:

Another question which was canvassed at the Bar, and for the decision of which this case was particularly referred to a Full Bench, is the power of remand of the State Transport Appellate Authority, and under what circumstances that power should be exercised. The matter came up for decision in this Court several times. It was considered in *Manibhai Shankerbhat Patel v. State Transport Authority, Misc. Petn. No. 1 of 1962, D/-23-2-1962 (Madh Pra)*. It was again considered in *Ali Ahmed Sons v. Regional Transport Authority, Rewa, Misc. Petn. No. 53 of 1962, D/- 30-3-1962 (Madh. Pra)* and it was stated:

The appellate authority has the same power as the Regional Transport Authority in the matter of grant or refusal of permits. That being so, where, the material on record is sufficient to enable the appellate authority to decide upon the claims of different applicants and to pronounce an order, it is essential for the Tribunal to decide the matter for itself to avoid unnecessary delay in the disposal of the case.

In *Nav Bharat Transport Co-operative Society v. S.P. Mitra*, Misc. Petn. No. 208 of 1963, D/- 31-8-1963 (Madh Pra), a Division Bench of this Court laid down the following principle:

We have thus repeatedly pointed out that when there is nothing which requires being enquired into or cleared up and the Appellate Authority is in as good a position as the Regional Transport Authority itself to consider the merits of the several applications and to pass such orders as the material on record justifies, there is no case for a remand.

The conferral of appellate jurisdiction on the Appellate Authority by Rule 73(c) is in very general terms. It may not only "confirm, vary or set aside" the order against which the appeal is preferred, but it may also "make any consequential or incidental order" as may be "just or proper". In the exercise of that jurisdiction, it may also hold, "such further enquiry". The language of Rule 73(c) is not, therefore, one of curtailment but it expressly leaves the questions as large before the Appellate Authority which has not only full jurisdiction and power in the matter of grant or refusal of permits just as the Regional Transport Authority has, but may in the exercise of that jurisdiction make such further enquiry as it deems expedient. In other words, the appeal before the appellate authority is, virtually a continuation of the proceedings before the Regional Transport Authority for the grant of a stage carriage permit.

8. The above observations would show that the Appellate Tribunal was competent to consider the entire matter afresh and its jurisdiction was not limited one. It is also not without significance that the issue involved was of cancellation of permit and in order to avoid cancellation, the Appellate Tribunal became stringent for enforcement of the condition of four months, The petitioner, having avoided cancellation inspite of his failure to ply the vehicle on the route, cannot be allowed now to get extensions indefinitely from the Regional Transport Authority and thus deprive the travelling public of the bus facilities. I am, therefore, of the opinion that the Tribunal was perfectly justified, in prohibiting the Regional Transport Authority from granting any further extension. As a matter of fact, this was also liberal approach because the failure of the petitioner in providing services by failure to put the vehicle could have been enough in a given case to cancel the permit. Granting of extension after extensions deprives the travelling public of the facilities of bus services, as operators who have not got a ready vehicle manage extension on the one pretext or the other which is against the public interest.

9. In view of the above. I am firmly of the opinion that the direction of the Tribunal for not extending four months period, was perfectly justified both on facts and in law.

10. The result, that this writ petition therefore, fails and is hereby dismissed without any order as to costs.