
(1984) 09 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Special Appeal No. 4 of 1975

Daudayal	Vs	APPELLANT
State Transport Appellate Tribunal and Others		RESPONDENT

Date of Decision : 24-09-1984

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 18

Citation : (1984) WLN 779

Hon'ble Judges : K.S. Lodha, J;D.P. Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.P. Gupta, J.—The short question which arises in this appeal is as to whether the appeal filed by the appellant Daudayal before the Transport Appellate Tribunal was time barred and the learned Single Judge was justified in allowing the writ petition filed by the respondent No. 3, M/s Garg Transport Company on this ground alone.

2. The facts which are not in dispute are that both the appellant and respondent Orde 1, M/s Garg Transport Company, filed applications for grant of non-temporary stage carriage permits on Bharatpur-Dholpur viz Roopbas, Badi-Desori-Jogaar route (hereinafter called "the route"). The Regional Transport Authority, Jaipur considered all the applications for grant of permits on the route in its meeting held from January 6 to January 8, 1966 but the matter could not be decided in that meeting as same information was sought from the Director of Transport, Rajasthan. After the receipt of the information, the matter was further heard by the Regional Transport Authority, Jaipur on January 17, 1966 and a permit was granted to the respondent No. 3, M/s Garg Transport Company amongst others, while the appellant Daudayal was not granted a permit and obviously his application for grant of permit was rejected. Daudayal, appellant applied on June 15, 1966 for a copy of the order of resolution passed by the Regional Transport Authority. After obtaining a copy thereof on June 22, 1965.

Daudayal filed an appeal against the impugned order passed by the Regional Transport Authority, Jaipur dated January 27, 1966 before the State Transport Appellate Tribunal, Rajasthan. Jaipur (hereinafter called "the Tribunal") on July 1, 1966. The Tribunal by its order dated July 13, 1972 ultimately allowed the appeal preferred by Daudayal and set aside the permit granted by the Regional Transport Authority, to M/s Garg Transport Company and granted a permit to Daudayal appellant on the route.

3. M/s Garg Transport Company preferred a writ petition in this Court. The learned Single Judge by his order dated November 10, 1972 allowed the writ petition on the ground that the appellant Daudayal had filed an appeal against the resolution of the Regional Transport Authority, Jaipur dated January 27, 1966 and July 1, 1966, the same was barred by time, as the appeal was not preferred within the statutory period of one month and that the Tribunal had no jurisdiction to entertain the time barred appeal. According to the learned Single Judge, the appellant Daudayal had applied for a copy of the resolution of the Regional Transport Authority on June 15, 1966 and filed the appeal on July 1, 1966, after the expiry of the time limit of one month provided by law for filing the appeal.

4. In this appeal it is urged by learned Counsel for the appellant that the learned Single Judge was not justified in holding that the appeal filed by the appellant was barred by time. Rule 108(b) of the Rajasthan Motor Vehicles Rules, 1951 provides that any person preferring an appeal u/s 64 of the Motor Vehicles Act, 1939 against the order passed by the Regional Transport Authority (for short "the RTA") can do so in writing within 30 days of the receipt by him of such order, by presenting to the Appellate Tribunal a memo of appeal accompanied by a certified copy of the order appealed from. Rule 108(b) runs as under:

(b) Any person preferring an appeal against much an order of the State Transport Authority or a Regional Transport Authority, shall within thirty days of the receipt by him of such order, do so in writing by presenting to the Appellate Tribunal a memorandum of appeal in duplicate, setting forth concisely the grounds of objection against the order appealed from, accompanied by a certified copy thereof.

5. Thus, as appeal can be preferred by a person to the Appellate Tribunal within 30 days of the "receipt by him" of the order parsed by the RTA. Learned Counsel for the appellant contends that Rule 108(b) has to be read along with the provisions of Sub-section (7) of Section 57 and Sub-section (1) of Section 64 of the Motor Vehicles Act. Sub-section (7) of Section 57 provides that when the RTA refuses an application for permit of any kind it shall give to the applicant in writing its reasons for such refusal. Clause (a) of Sub-section (I) of Section 64 authorises any person aggrieved by the refusal of the RTA to grant a permit to file an appeal to the Appellate Tribunal within the prescribed time and in the prescribed manner. According to the learned Counsel for the appellant the words "receipt of much order occuring in their. 108(b) should mean the receipt of the reasons in writing according to the provisions of Section 57(7) of the Act and it is

urged by him that receipt of an order in writing, giving the reasons for such refusal, should be the starting point of limitation for the purposes of Rule 108(b). On the other hand, learned Counsel for respondent No. 3 contends the oral communication of the resolution of the RTA should amount to receipt of the order by him for the purposes of starting point of limitation under Rule 108(b). Learned Counsel for the respondent placed reliance upon the decision of a learned Single Judge of this Court dated August 24, 1971 in Mohd Yusuf v. Trimoir Appellate Tribunal, Jaipur and others SB. Civil Writ Petition No. 1922/70), wherein the learned Judge held that knowledge of the order by a party by oral communication of the resolution of the RTA will amount to receipt of the order by him. The learned Single Judge observed as under in the aforesaid case:

Whether Section 64 of the Act and Rule 108(b) of the Rules can be interpreted to convey clear and unambiguous imposition of the legislature with regard to the date of the commencement of the period of limitation. If the language of these provisions is capable of clear and unambiguous meaning then no reference to any other provisions is necessary for taking aid in the interpretation of these provisions. If on the other hand, the language is ambiguous and capable of different interpretation, the question will arise whether Section 57(7) of the Act or similar other provisions can have any relevance and be legitimately invoked for properly interpreting these provisions. Now, rule 108(b) of the Rules uses the expression "the receipt by him of such order". Although the rule requires that the appeal should be accompanied by a certified copy of the order, it does not mention the receipt by him of the copy of such order. It will be, therefore, reasonable to hold that the expression "receipt by him of such order" refers to the receipt of the original order. A reference to Chamber's Twentieth Century Dictionary shows that the word "receive" has various meanings and one of its meanings is "to learn of". Having regard to the expression "receipt by him of such order" and the omission of the word "copy" it will be proper and reasonable to hold that the word "receipt" in, this rule has been used to imply "the learning of or knowledge of the order by a party". It must follow that an oral communication of the resolution by the Transport Appellate Tribunal to a party will give knowledge to the party and will amount to the receipt of the order by him. The requirement, that the appeal shall be accompanied by a certified copy of the order also leads some support to this view.

The learned Single Judge drew strength for the aforesaid decision from the following observations made by their Lordships of the Supreme Court in Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others,

As we have already stated, there is no provision either in the Act or the Rules which requires the RTA to give a written decision with regard to the grant of a stage carriage permit. Nor is there anything in the Act or the Rules which by necessary implication throws a duty upon the RTA to give a written judgement in each case and to give reasons thereof along with the written decision. It is true

that Section 57(7) of the Act requires the RTA to give in writing the reasons if it refuses an application for a permit of any kind But in the case of a grant of a permit the statute does not impose any such duty upon the RTA. Mr. Phadke on behalf Of respondent No. 1 has been unable to point any section of the Act or any Rule from which a necessary implication can be drawn that such a duty is thrown upon the RTA.

(Emphasis added)

With great respect to the learned Single Judge, who decided Mohd Yusuf's case (supra) we may observe that their lordships of the Supreme Court themselves in Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, drew a clear distinction between the case of grant of a permit and the case of refusal of a permit. In the case of grant of a permit, undoubtedly the statute does not impose any duty upon the RTA to give a written judgement or to give reasons in writing for its decision but in case of refusal of a permit, Section 57(7) enjoins upon the RTA to give a written judgment and to give reasons for refusal in writing to the applicant. We may point out that in Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, their Lordships of the Supreme Court held that there was no general principle that a statutory Tribunal should always give its judgment in writing and should always give reasons thereof immediately with the pronouncement of the judgment and further observed as, under:

We are therefore of the opinion that in the absence of any statutory provision there is nothing wrong in principle if an administrative tribunal gives a decision orally and subsequently reduces to writing the reasons thereof and communicate it to the parties. (emphasis added).

In the case before their Lordships orders were pronounced by the Regional Transport Authority on June 28/29, 1967, and minutes of the meeting in the form of resolutions were formally recorded on July 20,1967 and were communicated to the respondent No. 1 and other private operators on that very day. What their lordships held in the aforesaid case was that the procedure adopted by the RTA in pronouncing an oral order and thereafter reducing the same into in writing later on and communicating the reasons to the concerned parties did not contravene the provisions of the Motor Vehicles Act or the rules made there under nor any legal principle was thereby vitiated. In Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, the question as to starting point of limitation for the purpose of filing an appeal did not arise for consideration, yet their lordships drew a clear distinction between the cases relating to the grant of a permit and that relating to refusal to grant a permit and although in the case of refusal to grant a permit the requirement of giving reasons for refusal was emphasised by their Lordships by observing it is true that Section 57(7) of the Act requires the RTA to give in writing the reasons if it refuses an application for permit of any kinds it was held that the aforesaid provision was not applicable to the case of a permit. Thus, in

the case of grant of a permit reasons need not be recorded in writing nor they are required to be communicated to the persons to whom such permit is granted, but in the case of refusal to grant a permit, there is statutory requirement contained in Section 57(7) of the Act requiring the RTA to give in writing the reasons for refusal to grant a permit. Thus case of grant of a permit is distinguishable from the case of refusal to grant a permit. In the case of grant of a permit, the decision by the RTA may be oral and only the minutes may be recorded because there is no requirement in such a case of supplying a copy of the decision or communicating such decision or the reasons there for to any person. But the same principle cannot be made applicable to the case of refusal to grant a permit, where the law enjoins upon the RTA to record the reason is for refusal and communicate the same to the applicant whose application for grant of permit is refused. Although an oral order may, be initially pronounced, yet the law required that the order or resolution of the RAT should be reduced into writing subsequently, along with reasons for such refusal and the same has to be communicated to person whose application for grant of permit is rejected. Thus, the RTA is duty bound, u/s 57(7) of the Act, to record the reason in writing for refusal to grant a permit and to communicate the same to the concerned applicant and as such it cannot be held that mere knowledge of the rejection of the application for grant of a permit would be sufficient for commencement of period of limitation for filing an appeal because when the reasons are to be recorded in writing and are also required to be communicated to the concerned party an appeal could not properly be filed by that party without obtaining knowledge of the reasons for such refusal. With all respect we are unable to agree with the learned Single Judge who decided Mohd. Yusuf's case (supra) that no reference should be made to Section 57(7) while interpreting Rule 108(b) or Section 64 (1) of the Act or that the period of limitation should commence from the date of knowledge of the order and verbal communication of the decision at the time of taking the decision the should be taken as a date of commencement of limitation even in the case of refusal of the RTA to grant a permit. If a person, whose application for grant of a permit is rejected has to file an appeal within 30 days of the order by the RTA and even before the reasons for such decision are recorded by the RTA in writing then the requirement of Section 57(7) would be rendered as a meaningless formality, because subsequent supplying of reasons would be of no avail to the person to whom grant of a permit is refused. As a matter of fact the reasons for refusal to grant a permit are to be supplied to the person concerned u/s 57(7) in order to enable him to take further proceedings by way of appeal u/s 64(1)(a), if he desires to do so and in case he feels dissatisfied with the decision and the reasons contained in the resolution of the RTA. We are not impressed with the argument which prevailed with the learned Single Judge that there should be a common starting point of limitation in respect of all cases for filing appeals and the requirement contained in Section 57 relating to the refusal of a permit should not be allowed to influence the determination of the starting point of limitation. In our view the starting point of limitation for the purpose of filing an appeal u/s 64(1)(a) read

with rule 105(b) should be date of receipt of the order by the person to whom grant of permit is refused. Thus, where no duty is cast upon the RTA to record an order in writing or communicate the reasons in writing to the person concerned, the period of limitation may commence from the date of oral pronouncement of the order by the RTA, but in cases where there is a duty cast upon the RTA to record reasons in writing and communicate such reasons to the person concerned, as in the case of refusal to grant a permit, the period of limitation cannot commence until the order or a copy thereof is supplied by the RTA to the person whose application for grant of a permit has been refused. However, in case the applicant for grant of a permit himself applies and obtains a certified copy of the resolution of the RTA rejecting his application for grant of a permit, limitation would of course start from the date of receipt by him of certified copy of the resolution of the RTA, which in substance would amount to receipt of the order by the person concerned. But in case the person does not apply and obtain a certified copy of the order rejecting his application for grant of a permit, but waits for the communication of the order by the RTA, in case of refusal to grant a permit, the limitation cannot start to run merely from the date of verbal pronouncement of its decision by the RTA for the simple reason that in such a case a duty is cast upon the RTA u/s 57 (7) to record its reasons and give the reasons in writing to the person whose application has been rejected.

6. We are not unmindful of the fact that some account of uncertainty would be involved if such an interpretation is taken of the provisions of Rule 108 (b) and an appeal u/s 54 (7)(a) against the rejection of an application to grant a permit may be filed after several months of the pronouncement of the verbal order by the Act, after the person concerned whose application for grant of a permit has been refused obtains a certified copy of that order, but the RTA itself would be to blame for creating such a situation. The RTA should normally comply with the provisions of Section 57(7) soon after the verbal pronouncement of the order and should reduce the resolution, rejecting the application for grant of a permit, in writing and communicate at the earliest possible opportunity the reasons for its refusal to the person whose application for grant of a permit has been rejected.

7. The non-compliance with the provisions of Sub-section (7) of Section 57 could not be ignored as a mere irregularity in connection with the hearing and decision of the application for grant of a permit. In our view it is a positive provision and mandatory requirement engrafted in the Motor Vehicles Act to protect the rights of a person to whom grant of permit has been refused. While dealing with these provisions we should always bear in mind the basic concept that normally every citizen is entitled to ply his stage carriage on a public street or a highway, because a citizen has a fundamental right to carry on his business of plying transport vehicles on public pathway, the State, as a trustee on behalf of the public is empowered by the Constitution to impose such limitations and restrictions on the character and extent of the fundamental right of user of public pathways as may be required for protecting the rights of public generally, in

order to prohibit the running of numerous transport buses or stage carriages on narrower or congested roads endangering public safety and also to protect the citizens against unhealthy competition. Thus, the State is empowered to prescribe a limit on the use of public service vehicles on highways. That is why the provisions of the Motor Vehicles Act, which are in the nature of regulatory measures providing restrictions or limitations on the fundamental right of citizens to carry on their business of plying transport vehicles have been upheld as constitutionally valid. The law considers the grant of a permit as a rule and the refusal thereof as an exception in exercise of reasonable restriction of the fundamental right of a citizen. It is because of this reason that Section 57, which prescribes the procedure for grant of permits, requires reasons to be recorded and to be supplied to the concerned person only in the case of refusal of a permit, while in the case of grant of a permit, the RTA is neither required to record reasons nor to communicate the same. This appeal has also been emphasised by their Lordships of the Supreme Court in *Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others*, and this distinction between grant and refusal of permits has always to be borne in mind while dealing with the provisions of Motor Vehicles Act and the rules made there under.

8. The view which we have expressed above also finds support from the decision of Madhya Pradesh High Court in *Dhanrajmal and Co. Indore v. The State Transport Appellate Authority M.P Gwalior and Ors.* ILR 1963 MP 875 wherein it was observed as under:

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 appellant in writing its reasons for the refusal.

9. The case view was also taken by a Bench of the Madhya Pradesh High Court in *Azad Hind Motor Transport Co-operative Society v. RTA Indore* 1964 Jabalpur Law Journal 145, where also it was held that the limitation for filing an appeal u/s 64 of the Motor Vehicles Act commence to run from the date on which the reasons for refusal of application are communicated to the person concerned.

10. Learned Counsel for the respondent relied upon a decision by one of us in *Gani Mohammed v. State Transport Appellate Tribunal* RLW 1976 201 but that case is clearly distinguishable as in that case the aggrieved party had as a matter of fact submitted an application for obtaining a certified copy of the impugned regulation of the RTA, but he mala fide did not obtain the certified copy from the office of the RTA for almost 2 1/2 years and in these circumstances was observed that it was the duty of the person who had applied for obtaining a certified copy to approach the authority concerned within reasonable time to obtain the certified copy applied for by him and that he should not have allowed the same to lie for an enormously long period of 2-1/2 years. That case was decided

mainly on the basis of the conduct of the appellant in malafide delaying the obtaining of the certified copy by allowing the case to lie for a very long period of 2-1/2 years and as such the decision in Gani Mohd."s case cannot be of any help in interpreting the provisions of Rule 108(b).

11. Learned Counsel for the respondent also referred to the decision of their Lordships of the Supreme Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, . In that case their Lordships were interpreting the words "the date of the Award" occurring in Section 16 of the Land Acquisition Act. It was observed that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved by reference to the making of the said order, the expression "the date of order" must mean either actual or constructive communication of the said order to the party concerned. It was held in that case that the knowledge of the party affected by the Award made by the Collector u/s 18 of the Land Acquisition Act, either actual or constructive, is an essential requirement of fair-play and natural justice. It may be observed that we are not interpreting the words "date of order" in the present case but the words "receipt of order", which mean something more than mere knowledge of the order, in the case of refusal to grant a permit, because of the statutory requirement contained in Sub-section (7) of Section 57 that the reasons for refusal must not only be recorded in writing but should also be supplied in writing to the persons whose application for grant of a permit is rejected.

12. In view of the aforesaid discussion, we are not inclined to agree with the view taken by the learned Single Judge in Mohd Yusuf"s case (Supra) so far as the question of interpretation of Rule 108(b) is concerned, with regard to its application to cases of refusal to grant permits. We may again make it clear that our decision shall not govern cases of grant of permits, where the reasons are neither required by any statutory provision or rule to be recorded in writing nor they are required to be communicated to the party concerned. We also make it clear that even in the case of refusal to grant a permit, if the party whose application for grant of a permit is rejected has applied for and has obtained a certified copy of the resolution of the RTA rejecting his application, then the limitation would begin to run from the date of obtaining of such certified copy, because it would substantially amount to the receipt by him of the order of refusal to grant a permit. However, if the person concerned, whose application for grant of permit has been rejected, does not apply for and obtain a certified copy of the order of rejection of his application, in that case the starting point of limitation for filing an appeal u/s 64 (1) (a) would be the date on which the RTA supplied to him in writing the reasons for refusal u/s 57 (7) of the Act.

13. While parting with the case, we may invite the attention of the Regional Transport Authorities in the State to the statutory requirement contained in Section 57 (7) of the Motor Vehicles Act to record the reasons for refusal to grant a permit in writing and to communicate the reasons for refusal recorded by it,

without all avoidable delay, to the persons whose applications for grant of permits are rejected.

14. No other point was argued before us by the learned Counsel for the parties.

15. In the result, the appeal is allowed and the order passed by the learned Single Judge dated November 14, 1972 is set aside and the writ petition filed by the respondent No. 3 is dismissed. The parties are left to bear their own costs.