

(1973) 04 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 127 of 1972

Dhanna Singh

APPELLANT

Vs

State Transport Appellate Tribunal, Gwalior and Others

RESPONDENT

Date of Decision : 30-04-1973

Acts Referred:

Motor Vehicles Act, 1988 — Section 57(7), 64
United State of Gwalior, Indore and Malwa (Madhya Bharat) Motor Vehicles Rules,
1949 — Rule 80

Citation : AIR 1973 MP 218 : (1975) ILR (MP) 8 : (1973) JLJ 748 : (1973) 18
MPLJ 653

Hon'ble Judges : P.K. Tare, C.J.; R.J. Bhawe, J.; A.P. Sen, J

Bench : Full Bench

Advocate : R.S. Dabir, S.R. Hasan, M.C. Gupta, A.S. Jha, G.P. Namdeo and Ku.
Rao, for the Appellant; M.N. Phadke and P.C. Pathak, for the Respondent

Judgement

Tare, C.J.

A Division Bench of this Court presided over by Bishambhar Dayal. C. J. and S. M. N. Raina, J. has referred the following question to a larger Bench:

"Which is the material date for commencement of limitation under Rule 80 of the United State of Gwalior, Indore and Malwa (Madhya Bharat) Motor Vehicles Rules, 1949 (Samvat 2006) in the case of an objector to whom Section 5T (7) of the Motor Vehicles Act, 1939 is not applicable?"

Rule 80 of the United State of Gwalior, Indore and Malwa (Madhya Bharat) Motor Vehicles Rules. 1949 (Samvat 2006). is as follows:--

"Rule 80 (a).-- Appeals against the orders of a Regional Transport Authority.-- 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 State Transport Authority appointed by the Chairman from a panel, nominated by the State Government of

members of that authority, and any person preferring an appeal against the order 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 State 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 together with a fee of Rs. 25.

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 State Government, may nominate a member of the panel to act for the Chairman.

(b) Upon receipt of an appeal in accordance with sub-rule (a), the appellate authority may appoint a time and place for the hearing of the appeal, giving the Regional Transport Authority and the appellant not less than thirty days' notice and shall in that case, order the appellant to deposit such fee not exceeding Rs. 25/- as the appellate authority may specify."

The present reference arises on the following facts. The present petitioner, Dhannasingh, without any applications being invited applied on 11-9-1968 for a stage carriage permit on the route Gwalior to Bhandar via Dabra, Datia-Unnao, which consisted of 57 miles of Pucca route and 14 miles of Kutcha route. His application was kept pending for investigation of scope on the route. It was found that there was scope, but the route prescribed was Bhandar-Gwalior via Bahadurpur. Datia-Dabra and consequently, applications were invited for that route by advertisements published on 23-5-1969. In all 36 applications were received. The petitioner Dhannasingh's application was kept pending. Dhannasingh filed a Writ petition in the High Court as no action was being taken on his application. His application along with other 36 applications was, however, published in the Madhya Pradesh Rajpatra, dated 22-8-1969. and they were put up for consideration in a meeting of the Regional Transport Authority on 25-10-1969. At that time it was discovered that the application of Dhannasingh was for a different route, namely, Gwalior-Bhandar via Dabra. Datia and Unnao. It was different from the route Bhandar-Gwalior via Bahadurpur. Datia and Dabra. It was decided that Dhannasingh's application should be separately dealt with. The Writ petition filed by Dhannasingh in the High Court was withdrawn by him as his application was being dealt with by the Regional Transport Authority. His application was considered by the authority on 15-11-1969. Two other persons, namely, Sardool Singh and Gurdayal Singh had also made applications on 20-9-1969, which were within one month from the date of publication dated 22-8-1969. Dharam Singh (respondent No. 3) was an objector in those proceedings. It was suggested that the Regional Transport Authority should consider the application of Dhannasingh alone, but by order dated 26-12-1969 the authority held that Dhannasingh's application would be considered along with other applications or objections that were filed within time from the date of publication of the notice.

By order dated 16-3-1970. the Regional Transport Authority considered the objections filed by Dharamsingh, Sardooisingh. Gurdayalsingh. Sindh Transport Company and Manoharlal Tuli, who had objected to the grant of a permit in favour of the petitioner, Dhannasingh. After consideration of the application and the objections, the Regional Transport Authority granted a stage carriage permit in favour of the petitioner, Dhannasingh on Gwalior-Bhander route via Dabra, Datia and Unnao for one return trip daily for a period of three years on the usual terms. The petitioner had also undertaken to replace the bus by a latest model within a period of one year. The applications of others and the objections were rejected.

Against the order of the Regional Transport Authority, the objector, Dharamsingh filed an appeal u/s 64 of the Motor Vehicles Act. 1939. In this appeal the question of limitation arose. Dharamsingh claimed that he had not known of the order of the Regional Transport Authority rejecting his objection, nor was the order communicated to him. According to him, he came to know of the order on 7-11-1970 and he applied for a certified copy of the order of the Regional Transport Authority. The copy was supplied to him on 20-5-1971 and the appeal was filed on 16-6-1971. Under these circumstances the question of limitation arose. Rule 80 of the Madhya Bharat, United State of Gwalior, Indore and Malwa. Motor Vehicles Rules, 1949 (Samyat 2006) provides for a limitation of thirty days from the date of receipt of the order. The learned Member of the State Transport Appellate Tribunal following the Full Bench decision of this Court in Bundelkhand Motor Transport Co. Bus Operator Vs. State Transport Appellate Authority and Others, held that the appeal filed by Dharamsingh against the order of the Regional Transport Authority was within limitation. It was specifically held that the limitation will begin from the date of obtaining copy of the order and as the copy was obtained on 20-5-1971. the appeal filed on 16-6-1971 was within limitation. During arguments before the Division Bench the learned counsel for the petitioner, Dhannasingh succeeded in casting some doubt on the correctness of the said Full Bench case and. therefore, the Division Bench referred the case to a larger Bench. It is to be noted that the said decision in Bundelkhand Motor Transport Co. Bus Operator Vs. State Transport Appellate Authority and Others, was delivered by a Full Bench of three Judges and if we accept that view as correct, this Full Bench consisting of equal number of Judges can certainly endorse the view expressed in the earlier Full Bench case, But in case if this Full Bench does not accept that view as correct, the only course open will be to refer the case to a still larger Bench of five Judges. It is, therefore, necessary to examine the reasoning of the earlier Full Bench in Bundelkhand Motor Transport Co. Bus Operator Vs. State Transport Appellate Authority and Others,

There can be no doubt that the present case was not governed by Section 57 (7) of the Motor Vehicles Act, 1939. Section 68 is the section relating to the rule-making powers. Section 64 of the Act provides for appeals and subsection (f) of that section specifically confers a right of appeal on the objector. But in the Rules no separate period of limitation is provided for objectors and consequently Rule

80 of the United State of Gwalior, Indore and Malwa (Madhya Bharat) Motor Vehicles Rules. 1949 (Samvat 2006) is the only rule which may be applied and which has come up for interpretation. The learned counsel for the petitioner challenges the correctness of the view as laid down in the Full Bench case of Bundelkhand Motor Transport Co. Bus Operator Vs. State Transport Appellate Authority and Others, . In this connection he urged that even according to the third respondent. Dharamsingh, he got knowledge of the order on 7-11-1970 and the third respondent could have no justification for waiting for such a long time and at any rate, if he applied for a certified copy late. he should bear the consequences. It is under these circumstances that we are required to decide the correctness or otherwise as to the interpretation of Rule 80 of the United State of Gwalior Indore and Malwa (Madhya Bharat) Motor Vehicles Rules, 1949 (Samvat 2006). put by the earlier Full Bench in Bundelkhand Motor Transport Co. Bus Operator Vs. State Transport Appellate Authority and Others, .

In this connection we might observe that if there is flaw in the language used by the legislature, the Court can certainly interpret the legislative provision in case of an ambiguity. But if there is deficiency, the Court cannot supply those deficiencies by judicial legislation, as laid down by their Lordships of the Supreme Court in Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another, . We are thus called upon not to indulge in judicial legislation, but to perform the task of interpretation in event of an ambiguity. On the other hand, if the law be clear enough that it is to be given effect to and an equitable consideration would be out of place, although hardship might be caused or one of the parties might get some advantage. We are not concerned with that at all. If the intention of the legislature be clear enough, that intention will have to be given effect to despite any other consideration. However, if there be no ambiguity and if the intention of the legislature be clear enough from the statutory provision itself, no question of interpretation or construction would arise as laid down by their Lordships of the Supreme Court in Commissioner of Income Tax, Assam and Nagaland etc. Vs. Shri G. Hyatt, .

Section 64 of the Motor Vehicles Act provides for appeals to be filed by various persons, including an appeal to be filed by a person providing transport facilities who. having opposed the grant of a permit, is aggrieved by the grant thereof. The section further provides that the appeal may be filed within the prescribed time and in the prescribed manner to the prescribed authority. Section 68 (i) of the Act authorises the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV which includes the authority to prescribe limitation for filing the appeals contemplated u/s 64 of the Act. In exercise of the said power the State Government had made Rule 80 of the United State of Gwalior, Indore and Malwa (Madhya Bharat) Motor Vehicles Rules. 1949, which provided a limitation of thirty days from the receipt of the order appealed against. Rule 73 (a) of the C. P. and Berar Motor Vehicles Rules. 1940, is exactly in the same terms. That rule came for interpretation before a Full Bench of this Court in Bundelkhand Motor Transport Co. Bus Operator Vs. State Transport

Appellate Authority and Others, . In that case it was held:

"Rule 73 (a) of the Motor Vehicles Rules. 1940. prescribes limitation of 30 days for an appeal u/s 64 of the Act. This limitation is to be computed from the date of receipt of the order by the aggrieved party."

It was further held that 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; and that when 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 the purpose, the help of the background or any other extrinsic aid. It was, therefore, held in that case that till the order of the Regional Transport Authority was served on the appellant the limitation did not start to run. In support of this particular conclusion, the help of the provision of Section 57 (7) of the Act was taken into account under which the Regional Transport Authority is required to give the applicant in writing its reasons for the refusal of a permit and hence it was held that so long as the order, was not served on the appellant the limitation did not start to run. As in the case of an objector there is no such obligation on the Regional Transport Authority to serve the reasons in writing on the objector, whose objection is rejected, it was urged that the observations made by the Full Bench in Bundelkhand Motor Transport Co. Bus Operator Vs. State Transport Appellate Authority and Others, were not applicable to the case of an objector and so far as the objector is concerned the limitation should be presumed to have started running from the date of knowledge of the order. It was perhaps this reasoning that prompted the Division Bench to refer the aforesaid question for the decision of this Bench. It must, however, be noted that u/s 64 of the Motor Vehicles Act an appeal can be preferred not only by the persons whose applications for permit have been refused but also by objectors whose objections have been rejected and inasmuch as one common rule for all these appeals has been framed by the State Government, it is not open to us to say that any different limitation has been prescribed by the State Government in the case of objectors as asserted :by the other side. The language of the rule is clear. It says that the appeal shall be filed within thirty days of the receipt of the order, and not from the knowledge thereof. In the case of those persons for whom there is no obligation on the Regional Transport Authority to serve a copy of the order the limitation shall start running on the date they obtain a certified copy of the order because that would be the date on which the order in writing would be deemed to have been received by them. The conception of "knowledge" cannot be introduced in face of the clear wording of the rule. It is in this connection that the further observations of the Full Bench in Bundelkhand Motor Transport Co. Bus Operator Vs. State Transport Appellate Authority and Others, may be relevant. It was observed in that case: "..... 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." We have already noted that it is not for us to supply any lacuna left by the legislature. If the words are unambiguous, there is no question of any interpretation. The words ""within thirty days of the receipt of such order" in Rule 80 in question are unambiguous. The receipt of the order may be on the order being served on the person concerned by the Regional Transport Authority or on his own application for a certified copy; but till such an order is received no limitation starts against the person who wishes to prefer an appeal u/s 64 of the Motor Vehicles Act. We do not, therefore, find that there is any scope for reconsideration of the decision in Bundelkhand Motor Transport Co. Bus Operator Vs. State Transport Appellate Authority and Others, . In this view of the matter, we must hold that the State Transport Appellate Authority rightly relied on the abovesaid decision in coming to the conclusion that the appeal filed by the third respondent Sardar Dharam Singh was within limitation,

We would, therefore, answer the question referred to us as follows:

"The date of obtaining the copy of the order would be the date for commencement of limitation under Rule 80 of the United State of Gwalior. Indore and Malwa (Madhya Bharat) Motor Vehicles Rules 1949 (Samvat 2006) in the case of an objector to whom Section 57 (7) of the Motor Vehicles Act, 1939. is not applicable because that would be the date of the receipt of the order."

Let the case be sent back to the Division Bench for passing the order in the light of the opinion given by us above. In the circumstances of the case, we direct that there shall be no order as to costs of this reference which shall be borne by the parties as incurred.