

(1971) 07 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 25 of 1971

Gajendra Singh and Another

APPELLANT

Vs

The Transport Appellate Tribunal, Rajasthan, Jaipur and
Others

RESPONDENT

Date of Decision : 23-07-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1939 — Section 60
Rajasthan Motor Vehicles Rules, 1990 — Rule 86
Rajasthan Motor Vehicles Taxation Act, 1951 — Section 11

Citation : AIR 1973 Raj 42

Hon'ble Judges : R.D. Gattani, J

Bench : Single Bench

Advocate : R.R. Vyas, for the Appellant; S.T. Porwal, for the Respondent

Final Decision : Partly Allowed

Judgement

R.D. Gattani, J.—This is a petition under Articles 226 and 227 of the Constitution for getting the order of the Transport Appellate Tribunal Rajasthan, Jaipur (Hereinafter referred to as the T. A. T.) dated 4-12-1970 (Ex. P-11) and the resolution of the Regional Transport Authority, Jaipur (hereinafter referred to as the Authority) dated 17-2-1970 (Ex. P-7) quashed upon the following allegations;

2. That the petitioners are doing the business of Transport in the name of Messrs. Gajendra Singh Hari Ram --theirs being a partnership firm though unregistered; that the petitioners obtained a non-temporary permit on Bharatpur --Kathumar via Kumher, Sinsini and Nagar route valid for three years vide Ex. P-1 that on 2-2-1968 they applied for renewal of that permit; that their application for renewal of the permit was published in the Rajasthan Rajpatra dated 25-4-1968, but nobody filed any objection to it; that the said application was considered by circulation and was accepted also with the result that the petitioners' permit was renewed upto 25-4-1971, but Gajendra Singh petitioner who is the working partner of the firm came to know of that on 25-11-1969 and

on that very day he submitted to the Secretary of the R. T. A. the permit obtained for making renewal endorsement; that he was told that renewal would be endorsed after obtaining tax clearance reports that the Secretary of the R. T. A. served upon the petitioners a notice informing that there was an arrear of Rupees 3828.12 of road tax against the petitioners; that in spite of the fact that the petitioners were prepared to pay whatever the road tax was the permit was not renewed and the petitioner Gajendra Singh on 26-2-1970 was informed by the Secretary of the R. T. A. that the permit held by the petitioners was cancelled on 17-2-1970 by the R. T. A. (vide Ex. P-7) and that in the meanwhile the R. T. A. had fixed the scope of two permits with one return trip on petitioners' route on 25-11-1968 vide Ex. P-6.

3. It was further alleged that the petitioners did not receive any notice from the R. T. A. u/s 60 of the Motor Vehicles Act (hereinafter referred to as the Act), nor had they any notice of the meeting in respect of bearing of any complaint against them; as such they appealed against the said resolution of the R. T. A. (Ex. P-7) before the T. A. T., that the T. A. T. registered the appeal and on 8-5-1970 suspended the operation of Ex. P-7 as well vide Ex. P-8, but before that respondents Nos. 3 and 4 were granted permits on this route and respondent No. 4 had availed of the permit as well, but the permit of respondent No. 3 Ex. P-9 stood cancelled because of peremptory condition imposed in it and the failure of the respondent of availing of the permit within the time prescribed.

4. Then it has been alleged that the T. A. T. on 4-12-1970 dismissed the appeal of the petitioners vide Ex. P-11 on the preliminary ground that the power filed before it was signed by Gajendra Singh only and not by Hari Ram as well in spite of the fact that the counsel of the petitioners wanted some time to remove the defect, if any, in that power.

5. The writ petition has been opposed by respondent No. 4 only. Other respondents have not appeared before this Court,

6. It was first contended by the learned counsel for the petitioners that the petitioners have been carrying on the business in the firm name of Gajendra Singh Hari Ram, applied also in the name of the firm for the grant of the permit; as such the signature of one partner only in the power before the T. A. T. was sufficient as in the case of a partnership firm every partner in the business of the firm acts as agent and representative of the rest of the partners, In my opinion, the petitioners cannot be allowed to take this stand before the Court as for the first time it is in this Court that they have taken the stand that theirs is an unregistered firm. When asked if this stand was taken by them before the T. A. T. in the memo of appeal, the learned counsel of the petitioners had to reply in negative. It was then urged that the counsel who represented the petitioners had requested the T. A. T. for an adjournment for removing the defect in the power, but he was not allowed. From the impugned order of the T. A. T. It does not appear that any such request was made and even if it was made and refused that would, in my opinion, not give any right to the petitioners to move this

Court to exercise its extraordinary power in the favour of the petitioners.

7. Then it was argued on behalf of the petitioners that the order of the R. T. A. (Ex. P-7) being illegal and without jurisdiction the petitioners can challenge it directly in this Court. The learned counsel for the contesting respondent raised an objection to this. It was urged by him that the impugned resolution of the R. T. A. was passed on 17-2-1970 and this writ petition was filed on 11-1-1971 i.e. after about 11 months of the passing of the impugned resolution and this delay itself is sufficient for ousting the petitioners. More so when they have not given any plausible explanation for the delay and laches on their part

8. The impugned resolution was no doubt passed on 17-2-1970. but this cannot be denied that the petitioners filed an appeal against that resolution before the T. A. T. and the latter on 8-5-1970 had passed an interim order also in favour of the petitioners after registering the appeal vide Ex. P-8--of course ultimately the appeal was rejected by the T. A. T. on 4-12-1970 on the preliminary and technical ground. It cannot, therefore, be said that the petitioners sat silent after the passing of the impugned resolution of the R. T. A. and before they came to this Court. They can be said to be bona fide following a course for getting the impugned resolution set aside by the T. A. T. This circumstance can be taken into consideration favourably to the petitioners when the point of delay is to be decided. It is no doubt the duty of a litigant to come to this Court without delay in the matter of issue of writs and specially if a writ in the nature of certiorari is to be issued. At the same time if the Court finds that a particular authority while making the impugned order acted patently without any jurisdiction and thereby it caused irreparable loss to the petitioners then in suitable cases this Court would not mind if the petitioner comes to this Court within a reasonable time and without any avoidable delay. Moreover, unless extraordinary circumstances were pointed out, this Court after the issue of a rule nisi would be reluctant to allow the mischief of the impugned order to continue if that order is illegal and without any jurisdiction simply on the ground of alleged delay on the part of the petitioner. It might be stated here that the petitioners even on 11-1-1971 when they moved this Court were within a period of one year of the passing of the impugned resolution i.e. well within the time prescribed for the setting aside of such an order in a civil suit.

9. The objection of the learned counsel of respondent No. 4 in the matter of delay and alleged laches on the part of the petitioners is therefore devoid of merits.

10. Coming to the merits of the case. Section 60 of the Act speaks about the cancellation and suspension of permits. It lays down that the Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit. Of course one of the six conditions laid down in that section is to be fulfilled before action under that section is taken. There is a proviso to this section that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation. It is the case of the

petitioners and not denied by any of the respondents that no notice u/s 60 of the Act was given to the petitioners.

11. Ex. P-7 is the impugned resolution of the R. T. A. A perusal of this would reveal that the permit of the petitioners was not cancelled u/s 60 of the Act. On the other hand, according to the R. T. A., there was an arrear of tax amounting to Rs. 3829-12 against the petitioners; that a notice on form M. T. E. was issued to them, but no attempts were made by the petitioners to avail of the permit by squaring up the outstanding tax and as such the permit stood cancelled under the provisions of Rule 86 of the Rajasthan Motor Vehicles Rules. It is, therefore, to be seen what kind of the notice was issued to the petitioners and what does Rule 86 of the Motor Vehicles Rules lay down. The notice is Ex. P-14. It is under Rule 93, Sub-clause (1) of the Rajasthan Motor Vehicles Taxation Rules, 1951 and signed by Taxation Officer, Jaipur Region. It was sent to Messrs, Gajendra Singh Hari Ram stating that a sum of Rs. 3839.96 was due as arrears of tax and that they were to pay the tax within seven days of the service of the notice, otherwise it would constitute an offence u/s 11 of the Rajasthan Motor Vehicles Taxation Act, 1951. So one thing is clear from this notice even. It did not at all mention that upon failure to pay the arrears of taxation, the permit would be cancelled. Section 11 of the Rajasthan Motor Vehicles Taxation Act. of which there is a reference in Ex. P-14, reads as follows:--

"11. Penalties under this Act:--(1) Whoever contravenes any of the provisions of this Act, or of any rule made thereunder shall on conviction be punishable with fine which may extend to (Rs. 200) and in the event of such person having been previously convicted of an offence under this Act or under any rule made thereunder, with fine which may extend to Rs. 300/-".

Apparently this section has also nothing to do with the cancellation of permit.

12. We then come to Rule 86 of the Rajasthan Motor Vehicles Rules a reference of which is to be found in Ex. P. 7. the impugned resolution of the R. T. A. Obviously this rule, which reads as follows, has also nothing to do with the cancellation or suspension of a permit like the permit in question:--

"Rule 86. Permit -- entry of registration mark on: (a) Save in the case of a temporary permit, if the registration mark of the vehicle is to be entered on the permit and the applicant is not at the date of application in possession of the vehicle duly registered, the applicant shall! within one month of the sanction of the application by the Regional Transport Authority, or such longer period as the authority may specify, produce the certificate of registration of the vehicle before that authority in order that particulars of that registration mark may be entered in the permit,

(b) No permit shall be issued until the registration mark of the vehicle to which it relates has, if the form of permit so requires, been entered therein and in the event of any applicant failing to produce the certificate of registration within the prescribed period the Regional Transport Authority may revoke its sanction of the

application".

13. In these circumstances, the finding of the R. T. A. in Ex. P-7 that the permit in favour of the petitioners stood cancelled under Rule 86 of the Motor Vehicles Rules is not only contrary to law. but beyond the jurisdiction of the R. T. A. and is, therefore, liable to be set aside.

14. It might be stated here that this writ petition was not admitted before the petitioners filed a certificate from the Taxation Officer that all taxes in respect of the petitioners' stage carriage No. R. J. D. 1214 were fully paid up upto the period 31-3-1971. The petitioners filed a copy of the receipt also issued in their favour by the Motor Vehicles (Transport) Inspector, Jaipur, which shows that a sum of Rs. 1875/- was Paid by the petitioners on 19-1-1971 as arrears of tax and penalty.

15. The result, therefore, is that this writ petition partly succeeds. The finding of the R. T. A. contained in its impugned resolution Ex. P-7 dated 17th February, 1970, so far as it states that the permit of the petitioners of Bharat-pur -- Katumar route stood cancelled under the provisions of Rule 86 of the Rajasthan Motor Vehicles Rules is set aside. Let an appropriate writ be issued. The parties will bear their own costs.