
(1989) 08 MP CK 0019
In the Madhya Pradesh High Court
Case No : M.P. No. 3819 of 1989

Gandhi Travels

APPELLANT

Vs

Secretary, Regional Transport Authority and Another

RESPONDENT

Date of Decision : 25-08-1989

Acts Referred:

Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 70
Motor Vehicles Act, 1939 — Section 44, 44(2), 68F(1C)
Motor Vehicles Act, 1988 — Section 217(2), 68(2)

Citation : (1990) 35 MPLJ 210 : (1990) MPLJ 210

Hon'ble Judges : D.M. Dharmadhikari, J;B.C. Verma, J

Bench : Division Bench

Advocate : S.Q. Hassan, for the Appellant; M.V. Tamaskar, General, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Varma, J.

The petitioner holds a regular stage carriage permit on route Sidhi-Amiliya via Churhat. A part of the route is covered by a scheme proposed u/s 63 of the Motor Vehicles Act, 1939. The respondent No. 2, Rajbahore Patel filed an application for grant of temporary permit on this route. It was granted by the Regional Transport Authority. That permit expired on 6-7-1989. It appears that thereafter the respondent No. 2 applied for grant of another temporary permit. The petitioner objected to this. However, by order dated 5-7-1989, the Secretary, Regional Transport Authority granted the temporary permit for one month. The permit is Annexure-C. The petitioner's objections were overlooked. The petitioner has challenged this grant of temporary permit to the respondent No. 2. Ordinarily, the petitioner would have filed an appeal/revision to the State Transport Appellate Tribunal. It, however, came directly to this Court raising a question as to the competence of the Authority to grant the permit after the coming into force of the Motor Vehicles Act, 1988 with effect from 1-7-1989. This

Court, therefore, entertained this petition despite there being the alternative remedy of approaching the State Transport Appellate Tribunal.

The petitioner's contention has been that the appointment of Regional Transport Authority under 1939 Act (hereinafter called the old Act) is not saved and, therefore, the application by the respondent No. 2 for grant of permit could not be entertained unless the Authority is appointed under 1988 Act (the new Act). To appreciate this contention, certain provisions of both the Acts be noticed. Transport Authorities were constituted in the State by force of section 44 of the old Act. Sub-section (2) of section 44 prescribed that a State Transport Authority or a Regional Transport Authority shall consist of a chairman who has had judicial experience and in the case of a State Transport Authority, such other officials and non-officials, not being less than two, and, in the case of a Regional Transport Authority, such other persons (whether official or not), not being less than two as the State Government may think to appoint.....

The second proviso to that sub-section was as follows:

"Provided further that the State Government may -

(i) where it considers necessary or expedient so to do, constitute Regional Transport Authority for any reason so as to consist of only one member who shall be an official with judicial experience;"

By State amendment, this proviso was substituted as follows:

"Provided that if the State Government so thinks fit, the Regional Transport Authority may consist of a single official who has judicial experience." (vide M.P. Act No. 9 of 1961).

In the new Act, the provision for constitution of Transport Authority is contained in section 68. The proviso to sub-section (2) of that section is exactly similar to such proviso appended to sub-section (2) of section 44 of the old Act. A Regional Transport Authority in exercise of this power in Rewa Division has been constituted with effect from 11-8-1989. However, between 1-7-1989, i.e., after the new Act came into force, and until 10-8-1989, there was no such appointment and the appointment under the old Act continued. Even so, the petitioner alleges that the Commissioner who was appointed as Regional Transport Authority was transferred and there was, therefore, no person to act as Regional Transport Authority. The argument is that appointment of the Regional Transport Authority under the old Act is not saved in terms of the various saving clauses contained in section 217 of the new Act. The principal argument to support this contention has been that the provisions contained in section 217(2) (a) of the new Act, in so far as they relate to the appointment of Regional Transport Authority, are inconsistent with the provisions of the old Act in this behalf. We are unable to accept this contention and reject it for the reasons that follow.

Section 217(1) repeals any corresponding Act in force in any State immediately

before the commencement of the new Act in that State. Sub-section (2) of section 217 is as follows:

"(2) Notwithstanding the repeal by sub-section (1) of the repealed enactment, -

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made or exemption granted, or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under, the repealed enactments, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act;"

A reading of this sub-section (2)(a) shows that any appointment made under the repealed enactment in force before the commencement of the new Act, shall be deemed to have been made under the corresponding provision under the new Act if it is not inconsistent with the provisions of the new Act. This would mean that the appointments of the Regional Transport Authority made u/s 44 of the old Act shall be deemed to have been made u/s 68 of the new Act if the appointments are not inconsistent with the provision of this section 68. Shri Hassan, learned counsel for the petitioner, in his bid to demonstrate the inconsistency between the two provisions only submitted that the State amendment in the old Act was required to be made despite the second proviso to section 44 of the old Act. This, according to learned counsel, means that the State amendment contained something different from the original context of proviso to sub-section (2) of section 44 of the old Act. Learned counsel, however, failed to demonstrate any thing in the State amendment which could be said to be in addition or contrary to or inconsistent with that proviso. Instead, what we find is that in the proviso to section 44, the State Government in general is given power to constitute Regional Transport Authority consisting of only one member who shall be an official with judicial experience if the State Government considers necessary or expedient so to do. While in the State amendment, the State Government of M.P. was entitled to take similar action if it "so thought fit." The qualification of the single official so appointed as Regional Transport Authority was to remain the same, i.e., the judicial experience. There, thus, appears to be no inconsistency. "Inconsistency" means incompatible, dissonant, inharmonious, inaccordant, inconsonant, discrepant, contrary, contradictory, not in agreement, incongruous, or irreconcilable. Thus, in the light of this meaning assigned to the term "inconsistent", we find ourselves unable to agree with the learned counsel for the petitioner that the State amendment to second proviso to section 44 under which the Regional Transport Authority was appointed is in any way inconsistent with a similar proviso appended to section 68 of the new Act. That being so, the appointment of the Regional Transport Authority made under the old Act for Rewa region as well must be deemed to be made under the new Act until it was superseded by the appointment made under the new Act with effect from 11-8-1989.

The next contention by the learned counsel for the petitioner has been that the delegation of granting temporary permits u/s 62 of the old Act in favour of the Secretary by the Regional Transport Authority ceased because the appointment of the Regional Transport Authority made under the old Act was not saved by force of section 217 of the new Act. We have held above that the appointment of the Regional Transport Authority so made under the old Act should be deemed to have been made under the new Act and, therefore, delegation of authority of granting temporary permits u/s 62 of the old Act may also be deemed to be valid even on the enforcement of the new Act. It was, however, contended that this delegation of authority to grant temporary permits could in no case authorise the delegatee, viz., Secretary, to grant temporary permits on routes covered under a proposed scheme. It was added that since the route in question was partly covered under a proposed scheme (which fact was not denied by the respondent), the delegatee, viz., Secretary, could not grant temporary permit on that route. There appears to be substance in this contention. The Regional Transport Authority could delegate such function only if it was so authorised under the rules made in that behalf u/s 68. The State of M.P. has made rules also in exercise of powers u/s 68 of the old Act. The rules are called "M.P. Motor Vehicles Rules, 1974." Rule 70 of these Rules contains a limit of powers of delegation by the Regional Transport Authority. According to clause (vi) of this rule 70, the Regional Transport Authority is entitled to delegate to the Secretary or Assistant Secretary the power to grant a temporary permit u/s 62 and sub-sections (4) and (6) of section 63 of the old Act. Apparently, the Regional Transport Authority is not entitled to delegate its function to grant any permit u/s 68-F(1-C) of the old Act. We, however, leave the matter at that in the instant case because of two reasons: (i) that the period of the grant of temporary permit has itself expired, and (ii) that Annexure-B shows that the permit appears to be granted by the Regional Transport Authority. It is true that the petitioner has pleaded that the permit was actually granted by the Secretary. Annexure-B, however, indicates that the Secretary at A to A in that document mentioned that the decision will be taken at arrival of the Regional Transport Authority but from the portion B to B, it appears as if the grant was actually made by the Regional Transport Authority. That being so, we do not propose to make any order as to upholding or setting aside that grant on this second limb of the arguments advanced by the learned counsel.

For the aforesaid reasons, we dismiss this petition. There shall be no order as to costs.