
(2012) 02 AHC CK 0212

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11519 of 1982

Ganga Singh and others

APPELLANT

Vs

State Transport Appellate Tribunal, U.P., Lucknow and another

RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

Citation : (2012) 02 AHC CK 0212

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—The two petitioners namely Ganga Singh and Ramautar Singh have come to this Court by means of this Writ petition aggrieved by order dated 27.01.1982 passed by State Transport Appellate Tribunal respondent No.1 and have also sought a mandamus commanding respondents to issue permits to the petitioners in accordance with order dated 12/13.8.1975 of respondent No.2 i.e. Regional Transport Authority, Kanpur (hereinafter referred to as "RTA").

2. The record shows that this writ petition was admitted on 6.10.1982 and on stay application notice was issued. Subsequently since respondents failed to file counter affidavit, an interim order was passed on 22.7.1983 to the following effect:

"No counter affidavit filed. The respondents are directed to issue provisional permits to the petitioner without delay so as to enable them to ply their vehicles on the route in question till further orders."

3. Thereafter, in a ding dong manner, this writ petition has been repeatedly dismissed and restored. On 16.9.2003 it was dismissed for want of prosecution by Hon'ble R.K.Agrawal J. and the said order was recalled on 31.8.2007. Again it was dismissed on 25.10.2007 by Hon'ble V.K.Shukla, J as having rendered infructuous. Again it was restored on 21.2.2008 by Hon'ble Dilip Gupta J. Third time it was dismissed for want of prosecution on 18.11.2008 by Hon'ble S.U.Khan, J and restored on 19.9.2011.

4. The facts of this case would show that in the last more than thirty three years, the petitioners have enjoyed certain benefits which otherwise they would not have even under the order dated 12/13.8.1975 passed by respondent No.2, in pursuance whereof petitioners have sought a mandamus for issuance of permit.

5. The facts in brief may be narrated as under:

6. The matter relates to EtawahBidhunaBharthana route. Petitioners claim to have applied for grant of permit on the said route along with Pradip Kumar Misra, Jugal Kishore Saksena and Yogendra Shankar Tewari. The RTA in its meeting dated 12/13.8.1975 allowed the applications and granted one permit to each of the above persons i.e. petitioners and three incumbents namely Sri Pradip Kumar Misra, Jugal Kishore Saksena and Yogendra Shankar Tewari. It is claimed that while granting permits, RTA had directed parties to lift permit by 27.8.1975 failing which permits will stand revoked automatically.

7. The said order was not in the knowledge of the petitioners since on the date of meeting formal order was not pronounced but it was reserved. Later on when Sri Pradip Kumar Misra, Jugal Kishore Saksena and Yogendra Shankar Tewari approached RTA for permitting them to lift the permit, vide order dated 30.10.1977 it was denied. These three persons preferred Revision No.241 of 1977, 242 of 1977 and 245 of 1977 before Transport Appellate Tribunal (hereinafter referred to as "Tribunal").The revisions were allowed vide order dated 27.01.1978 along with revisions of some others.

8. Admittedly, till this date petitioners did not come into picture making any attempt to lift the permit. For the first time, it appears that petitioners approached RTA on 18.10.1978. They applied for certified copy of the order dated 12/13.8.1975 on 13.12.1978 which was supplied on 19.12.1978. The petitioners thereafter filed revision/appeal No.1090 of 1978 and 1091 of 1978 which was dismissed by the Tribunal on 16.4.1979 observing that appropriate course open to the petitioner is to first approach RTA. In these circumstances petitioners filed an application whereupon the matter was considered by RTA and on 12.5.1981 and it took the following decision:

"Heard the learned counsel for the applicant. In this case RTA decide as early as on 12/13.8.75 that 22 permits be issued which should be lifted by the applicants by 27.8.75 failing which permits will stand revoked automatically. The applicants did not avail of this opportunity in time and have now requested for extension of time. This case is more than five years old and it is not desirable to give extension of time for such a long period. The RTA therefore does not think it proper to extend the time. Thus applications are rejected. However applicant can apply for issue of permit under rules applicable at present."

9. Thereafter petitioners filed revision/appeal before Tribunal which has been dismissed by order dated 2.7.1982 which is impugned in this writ petition.

10. The petitioners" claim that order was reserved by RTA on 12/13.8.1975 has

been specifically denied in the counter affidavit. Even in the comments submitted by RTA before Tribunal, copy whereof has been filed as Annexure 3 to the writ petition, this fact of reserving the order has been denied. The petitioners have failed to show anything on record that order was reserved on the said date. Moreover, petitioners themselves have admitted that they had applied for permit along with three others and the other three approached RTA in 1977 itself yet petitioners kept silence. This explanation of petitioners is thus unbelievable and apparently incorrect. No irregularity or illegality otherwise could be shown by petitioners in the order of learned Tribunal rejecting their revision. The impugned order therefore warrants no interference.

11. However, it is evident from record that merely pursuant to an interim order passed by this Court petitioners have enjoyed permit on the route in question for the last almost 28 years and more. It has been stated by respondents very specifically that order of RTA taken in its meeting dated 12/13.8.1975 was announced on loudspeaker and there is nothing to disbelieve their statement. What prompted the petitioners to wait for years together and not to seek information about the consequence of their application has not been explained at all. The stand of petitioners that they had no knowledge of order had not been believed by authorities below and this Court do not find any irregularity therein. The consequence of not lifting of permit by the date prescribed therein was also mentioned in the order of RTA and result was that, after expiry of cut off date, application for grant of permit stood revoked. This part of order has not been challenged in this writ petition at all or even before the Tribunal.

12. That being so, question of compliance of order dated 12/13.8.1975 passed by RTA for the purpose of grant of permit ignoring further order that application shall automatically stand rejected is not permissible at all. In fact, after petitioners had failed to lift permit, order of RTA providing for consequences would come into operation resulting in rejection of petitioners application. Unless that part of the order of RTA is challenged, question of grant of permit to petitioners would not have arisen. The order of RTA is not under challenge in this writ petition. In absence thereof no relief to the petitioners can be granted.

13. I, therefore, find no reason to interfere with the order of Tribunal impugned in this writ petition affirming the view taken by RTA that question of permitting petitioners to lift permit, having failed to do so within the time prescribed in the earlier order, is not permissible.

14. Having said so, interesting question is that in the present case petitioners' application stood rejected under order dated 12/13.8.1975 since petitioners failed to lift the permit within prescribed time and consequences also provided in the order. That being so, there was no question of grant of permit to the petitioners. However, under an interim order passed by this Court petitioners have enjoyed and are still enjoying permit for plying their vehicles on the road in question for the last almost more than 28 years.

15. It is really unfortunate and shows that petitioners have taken a benefit which even as a final relief they could not have been entitled in view of the discussion made above. The benefit, petitioners have enjoyed under the interim order passed by this Court, amounts to undue enrichment. It has put respondents in a permanent loss or detriment.

16. It is well settled, when writ petition is dismissed it results as if no interim order was ever passed. This aspect has been clarified by several judgments of this Court and this view has been affirmed by the Apex Court in *Kanoria Chemicals and Industries Ltd. And others v. U.P. State Electricity Board and others.*, (1997) 5 SCC 772. In *Kanoria Chemicals and Industries Ltd.* (supra) the Apex Court has observed:

"It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and it is the duty of the Court in such a case to put the parties in the same position they would have been put for the interim orders of the court".

17. Instead of saddling this judgment with several other authorities on the same point it would be useful to refer a recent judgment of this Court in *Avinash Mohan (Dr.) v. State of U.P. and others*, (2008) 3 UPLBEC 2148 where most of these cases are relied and referred.

18. A Division Bench of this Court (of which I was also a member) in *Shri Ajai Kumar Dubey Vs. The Farrukhabad District Cooperative Bank Limited and others*, 2009 (3) ADJ 555 while considering the effect of interim order on dismissal of the writ petition has said:

"There is another facet of the issue. An ex parte interim order is normally granted considering a prima facie case, balance of convenience and irreparable loss but the Court cannot simultaneously put other side in a situation where on account of interim order other side would suffer irreparable loss. "Actus curie neminem gravavit" is now well accepted doctrine applicable in these circumstances. The act of the Court shall prejudice none. No person can claim that because of the interim order of the Court he is entitled to retain certain benefit, for which he is otherwise not entitled. The respondents despite having won the case cannot be put to a disadvantageous position, which it would not have faced. If the said litigation would not have commenced. Mere filing of a case and obtain of an interim order can never result in a situation giving a permanent advantage to petitioner and permanent disadvantage to the respondents, though, ultimately, the writ petition is found to be frivolous or lacking merit and is dismissed. In order to claim benefit of certain statutory provisions, which require continuance of person's service on a particular date, if would mean that such continuance is based on his own rights of the incumbent and not on the clutches founded on interim order of Court of law. This aspect has also been dealt with in detail by this Court in *Smt. Vijay Rani V. Regional*

Inspectress of Girls" Schools, RegionI, Meerut and others, 2007 (2) ESC 987 and we are in respectful agreement of the exposition of law laid down thereunder, which is fully applicable in the case in hand also. We have no hesitation in observing that the appellant here also cannot take any advantage flowing from the interim order, which he has obtained in the writ petition, which has ultimately been dismissed."

19. Moreover, continuance of petitioner's permit was not in his own right. It was pursuant to an order passed by this Court. It is well settled that an act of the Court shall prejudice none. No benefit founded on interim order passed by this Court can be given and retained when ultimately the writ petition finally fails.

20. In view of the above and the fact that petitioners have enjoyed interim order of this Court and that is how have obtained permit and plying their vehicles on the route in question for last 28 years and more, in my view, petitioners' writ petition is liable to be dismissed with costs which is compensatory for undue enrichment of the petitioners on the basis of mere an interim order of this Court.

21. The writ petition is accordingly dismissed with cost which I quantify to Rs.1 lac per annum per petitioner commencing from after one month from the date of interim order dated 22.07.1983 was passed till the date of dismissal of the writ petition i.e. today. Respondents are at liberty to recover the aforesaid cost from petitioners, if not paid by them within three months from today to the respondents as arrears of land revenue.