
(2001) 04 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4462 of 2000

Gordhan Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 80, 89, 90

Citation : (2002) 2 RLW 844 : (2001) 4 WLN 621

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : B.L. Maheshwari, for the Appellant; R.P. Dave and Sangeet Lodha, for the Respondent

Final Decision : Dismissed

Judgement

Chauhan, J.—The instant writ petition has been filed for quashing the judgment and order of the State Transport Appellate Tribunal dated 7.11.2000 (Annex.9), by which the revision filed by respondent No. 4 has been allowed and the variation of conditions of permit in favour of petitioners has been quashed.

2. The facts and circumstances giving rise to this case are that petitioners are the stage carriage permit-holders on Pillibanga Mandi to Manewallah intra-regional route falling under the territorial jurisdiction of the Regional Transport Authority, Bikaner (for short, "the R.T.A."). The said route runs in 52 Km. in length and altogether 10 permits had been granted on the said route. Petitioners applied for variation of conditions of their permit under the provisions of Section 80 of the Motor Vehicles Act, 1988 (for short, "the Act") to curtail the portion between 24 PBN to Rajasthan Canal and for inclusion of Premapura, 24 PBN, 1 LLP, 3 LNP to Rajasthan Canal. The R.T.A., Bikaner considered the matter in its meeting held on 28.3.2000 (Annex.3) and resolved to grant the applied variation, i.e. curtailment and inclusion. Respondent No. 4 filed a revision against the said Resolution of the R.T.A. dated 28.3.2000 and subsequent order dated 27.5.2000 before the State Transport Appellate Tribunal (for short, "the Tribunal")

on the ground that the impugned variation was against the public interest and, thus, as it caused great inconvenience to the commuters, it was liable to be quashed. Persons living there had to pay more fare and spend more time. The Tribunal has allowed the revision. Hence this petition.

3. Mr. B.L. Mahoshwari, learned counsel for the petitioners, has urged that respondent No. 4 had no locus standi to maintain the revision before the Tribunal as he was not an "aggrieved person" within the meaning of Section 89/90 of the Act; the revision was barred by limitation as the same had been filed after expiry of the statutory limitation and the finding recorded by the Tribunal that variation was against the public interest, is perverse.

4. On the other hand, Mr. Sangeet Lodha, learned counsel for the respondent No.4, has defended the judgment of the Tribunal urging that public interest is supreme and as the order has been passed in public interest, it does not require to be quashed.

5. I have considered the rival submissions made by the learned counsel for the parties.

Issue of Locus Standi:

6. Section 89 and 90 of the Act provide for remedy of appeal and revision against the order passed by the R.T.A. by the "person aggrieved." The Tribunal has held that as by diversion the respondent No. 1 suffered personal inconvenience because of nonavailability of the vehicle from his village and he had to travel nine kilometres to reach the distance of four kilometres and spend more money, he was a person aggrieved. While considering this issue, the Tribunal has oversimplified the problem. The Tribunal ought to have defined the said expression in context of the Act. The "person aggrieved" means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. "Person aggrieved" means a person who is injured or he is adversely affected in a legal sense. (Vide K.N. Lakshminarasimaiah v. Secretary, Mysore S.T.A.T., (I).

7. Whether a person is injured in strict legal sense, must be determined by the nature of the injury considering the special facts and circumstances involving in each case. A fanciful or sentimental grievance may not be sufficient to confer a standi to sue upon the individual. There must be injuria or a legal grievance, as the law can appreciate and not a stat pro ratione voluntas reasons

8. In Thiruvengadam v. Muthu Chatiar (2) it has been held that a person can be said to be aggrieved if apart from the general interest, such a person, as a member of the public, has particular or special interest in the subject matter supposed to be wrongly decided.

9. In S.M. Transport Ltd. v. Raman & Raman (3), the Full Bench of Madras High Court, while considering the provisions of Madras Motor Vehicles Act, considered the issue and approved the law laid down in Rex v. Richmond Confirming

Authority, Ex-parie Hobbit, (4) and Rex v. Groom, ex-parte, Cobbotd, (5), and laid down the principle as under:-

"The true principle is to determine whether the applicant has an interest distinct from the general inconvenience which may be suffered by the law being wrongly administered."

10. In Gram Sabha v. Ramraj Singh (6), the Allahabad High Court held that the expression "person aggrieved" does not include a person who suffers from psychological or imaginary injury; the person aggrieved must necessarily be one whose rights or interest are adversely affected or jeopardised."

11. Thus, it is evident from the aforesaid that "person aggrieved," in context of the Motor Vehicles Act, has to be restricted to the person which has wrongfully been deprived of something or wrongfully refused something or his interest/title is adversely affected, but the same does not require a very liberal and wide interpretation.

12. In Ashok Auto Service of Betin v. Union of Indian and Ors (7), while considering the issue of locus standi of a person to file a writ petition in the High Court in respect of the provisions of the Motor Vehicles Act, 1939 (for short, "the Act, 1939") placing reliance on the judgment of the Hon"ble Supreme Court in State of Orissa v. Madhan Gopal (8), the Court held that the existence of a right in favour of the writ petitioners is the foundation for the exercise of jurisdiction under Article 226 of the Constitution. Reliance was also placed upon the judgment of the Supreme Court in Kalyan Singh v. State of U.P. (9), wherein the Hon"ble Apex Court enunciated the proposition that the right to maintain a writ postulates a subsisting personal right in the claim which the petitioner makes and in the protection of which he is personally interested. The existence of a legal right is a condition precedent to approach the Court/Tribunal. (Vide Calcutta Gas Co. (Propriety Lmt.) v. State of West Benga, and Ors. (10); Mani Subrat Jain and Ors. v. State of Haryana (11); State of Kerala v. Smt. A. Lakshmikutty (12); State of Kerala v. K.G. Madhavan Pillai and Ors. (13); Rajendra Singh v. State of M.P. and Ors. (14); and Ravi Lakshmibai Akshetriya Gramin Bank v. Chand Bihari Kapoor and Ors. (15).

13. The term "person aggrieved" was also considered and defined in Re" Sidebotham (16), wherein it has been observed as under:-

"The words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received If some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something."

14. Thus, in the wake of the above, it has to be held that a "person aggrieved" under the provisions of the Motor Vehicles Act has to be considered differently

from the person interested as enshrined in the provisions of Section 9 of the Land Acquisition Act, 1894 and the expression has a limited meaning that "a person aggrieved" has to satisfy the Tribunal for maintaining the revision that there has been violation of law which has caused substantial prejudice to his legal rights. Thus, there must be violation of his judicially enforceable rights. A mere personal inconvenience or his mental agony, psychological sufferings etc. may not confer a right to sue on him.

15. In *Secretary. R.T.A., Gunlur and Ors. v. E. Ramarao and Ors.* (17), the Kull Bench of Andhra Pradesh High Court considered the effect of having no provision in the Act corresponding to the proviso to Section 47 (1) of the Act, 1939 and observed as under:-

"We are of the view that Parliament intended to negative any right to the existing operators either to submit their representations or to a right of hearing u/s 71(1) or Section 80(2) of the New Act. It is, therefore, not open to the Court to imply principles of natural justice and add further restriction than what Parliament has considered sufficient, according to its new legislative policy."

16. The provisions of Section 80 provide that application for variation of a permit may be considered as an application for the grant of new permit. Thus, in view of the above, if even the existing operators of a route do not have a locus standi to raise objection at the time of grant of permit, it is beyond imagination that local residents would have any right to be heard either at that stage or at a later stage.

17. The provisions contained in Section 47 of the Act, 1939 enabled the association representing persons interested in provisions of Road Transport Authorities or local authorities or police authorities to make representations at the time of grant of permit on the route. However, there is no provisions analogous to the same in the Act. Therefore, where the Legislature consciously has made a departure and deprived the local authorities and association complains to have any grievance at the time of grant of a permit, such a remedy cannot be conferred by judicial interpretation as it would amount to legislation, which is not permissible in law.

18. In *Union of India and Anr. v. Deoki Nandan Aggarwal* (18), the Hon'ble Supreme Court held as under:-

"it is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous..... The Court cannot and words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set al naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities (Vide *P.K. Unni Vs. Nirmala Industries and others*

[OVERRULED], ; Mangilal Vs. Suganchand Rathi, Sri Ram Ram Narain Medhi Vs. The State of Bombay, ; Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur, ; Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others, ; Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, ; G. Narayanaswami Vs. G. Pannerselvam and Others, ; N.S. Vardachari Vs. G. Vasantha Pai and Others, ; Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, ; and Commissioner of Sales Tax, U.P. Vs. Auriaya Chamber of Commerce, Allahabad,).

19. Thus, in view of the above, in strict legal sense, respondent No. 4 cannot be held to be a "person aggrieved" who could maintain the revision u/s 90 of the Act, But in the instant case, as the Court cannot lose sight of the fact that certain persons from the village of the respondent No. 4 had filed a Public Interest Litigation before this Court, i.e. Jagir Singh and Ors. v. State of Rajasthan and Ors. (19), challenging the same impugned Resolution of the R.T.A., wherein it had been contended that prior to the variation, the vehicles had been plying through the said route for last twenty-three years and the variation had caused great public inconvenience, thus, was liable to be quashed. The said writ petition was disposed of by the Division Bench of this Court vide Order dated 17.8.2000, observing that an alternative remedy was available to the writ petitioners therein, thus, the petition was rejected; however, liberty was given to them to invoke the remedy of revision. As the said writ petition had been filed in the representative capacity, the people in the village passed a resolution authorising respondent No. 4 to file the revision and it is in that context that the submission made by Mr. Lodha may not be held without substance for the reason that once this Court had passed an order, the learned Tribunal was not competent to hold that the revision was not maintainable at the behest of respondent No. 4. If present petitioners were aggrieved of the said order dated 17.8.2000, they ought to have approached this Court for modification or recalling of the said order dated 17.8.2000. Thus, inspite of the fact that in strict legal sense, respondent No. 4 may not have a right to maintain the revision, I cannot help the present petitioners as interference herewith would be tantamount to sitting in appeal over the Division Bench Order dated 17.8.2000 and the petitioners cannot succeed on that ground for the reason that they cannot take advantage of their own wrong as they allowed the order dated 17.8.2000 to attain finality.

Point of limitation:

20. The impugned resolutions were passed on 28.4.2000 and 27.5.2000. The period for filing a revision is thirty days, excluding the period of taking the certified copy of the resolutions. In the instant case, public interest litigation was filed, which was decided on 17.8.2000 and the copy of the same was made available to the counsel for petitioners herein on 28.8.2000 and after getting the resolution from the people at large to authorise respondent No. 4 to file a revision, it was presented after expiry of the period of limitation. Mr. Maheshwari has strongly urged that the Tribunal ought to have held the revision time

barred.

21. In the Assistant Transport Commissioner v. Nand Singh (20), the Apex Court held that the limitation for filing the appeal would run from the date of communication of the order, In P.C. Varghese v. R.T.A., Mallappuram and Ors. (21), the Court held that the time for filing a revision against an order of R.T.A. u/s 64-A of the Act, 1939 begins to run only from the date on which the applicant had actual or constructive knowledge of the order and not from the date of the order.

22. The law of limitation is founded on public policy which is enshrined in the legal maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time (Vide N. Balakrishnan v. M. Krishnamurthy (22)).

23. In Danda Rajeshwari v. Bodavula Hanumayamma and Ors. (23), the Hon'ble Supreme Court has laid down that where a party approaches the Writ Court directly and the Court, though has inherent jurisdiction to entertain the matter but exercising self-restraint in exercising its power under Article 226 of the Constitution, directs the parties to avail of alternative remedy, the Court can ask the alternative forum to entertain the matter even after expiry of the limitation as the matter remained pending before it. In Rameshwar Lal v. Municipal Council, Tonk and Ors. (24), the Hon'ble Supreme Court explained that if the party has approached the Writ Court within limitation and is relegated to the alternative forum, the principle enshrined in Section 14 of the Limitation Act will apply and the period, for which the matter remained pending before the High Court, can be taken into consideration for the purpose of limitation. Though normally, for application of Section 14, the Court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter.

24. In P.K. Ramchandran v. State of Kerala (25), the Hon'ble Supreme Court observed as under:-

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigors when the Statute so prescribes and the Courts have no power to extend the period of limitation on equitable ground."

25. Undoubtedly, the revision petition was time-barred. The Resolution dated 28.3.2000 and the order dated 27.5.2000 were challenged first before this Court and then the revision was filed through respondent No. 4 and as it was a matter of public interest and has been dealt with by the Division Bench in one way or the other, the issue of limitation loses its significance, though needless to say that in ordinary circumstances, the revision was hopelessly time-barred. But whether on that count the present petition must succeed, is an issue to be

considered alongwith the third important relevant issue: whether the variation granted by the R.T.A. could be in public interest or not?

26. The Tribunal has held that there was "good and sufficient cause" preventing the respondent No. 4 and it was worth acceptance even after expiry of the limitation period provided u/s 90 of the Act. In view of the aforesaid legal proposition, the finding recorded by the learned Tribunal cannot be allowed to be sustained and it is held that the revision was hopelessly time-barred. Moreso, there was no direction by the Court while disposing of the earlier writ petition to entertain the revision without considering the issue of limitation. Whether variation was in public interest:

27. Proviso to Sub-section (3) of Section 80 provides that variation or extension shall be made only after the Transport Authority is satisfied that such variation will serve the convenience of the public and that does not expedient to grant a separate permit in respect of the original route as was varied and extended or any part thereof. Therefore, the power of the Transport Authority is limited and it can be exercised only in cases where it fulfils the pre-conditions that Transport Authority must come to the conclusion that it was not expedient to grant a separate permit in respect of the original route as so varied and extended or variation was required for convenience of the public.

28. "Public" means pertaining to the people, State or community, in Venkataraman Devaru v. State of Mysore (26), the Hon"ble Apex Court observed that in its ordinary meaning, "public" includes any section of the society. The expression "public" is referred to the joint body of the citizens. It means that its share in or participate in or enjoy by people at large otherwise it is common to all. (Vide Azam Khan v. State of Andhra Pradesh (27). As the expression is to be understood in the context of the Statute, "public convenience" for the purpose of the Act may include the local residents and persons visiting the area from outside. Therefore, while considering the application for variation etc., the Authority has to reach a conclusion that the variation was required in public interest.

29. In Praveen Ansari v. State Transport Appellate Tribunal (28), the Hon"ble Supreme Court observed as under:-

"The authority under the Act must not ever lose sight of the fact that the primary consideration must be the service available to the travelling public. While interpreting the provisions of the Motor Vehicles Act, undoubtedly, the competing claims between the Corporation and the other private operators may be examined with reference to the provisions of the Act. But the over-all consideration, namely, the service is for the benefit of the travelling public should never be over-looked for a moment."

30. In the instant case, the learned Tribunal, after appreciating the entire evidence, reached the conclusion that the variation was not in the public interest and there was no cogent reason for allowing such variation and further held that in case the R.T.A. was much interested in the variation, there was no legal

prohibition to grant extra permits on the said variateci route.

31. In exercise of its powers under Article 227 of the Constitution of India, this Court has very limited scope of interference as per the law laid down in *Mohd. Yunus v. Mohd. Muslaqum and Ors.* (29), wherein it has been held that even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution and the power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal etc. has resulted in grave injustice. (Vide Constitution Bench judgments of the Apex Court in *O.N. Banerji v. P.R. Mukherjee* (30); and *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals* (31). For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and dehors the factual and legal position on record. (Vide *Nibaran Chandra Bag v. Mahendra Nath Ghughu* (32); *Kukmanand Bairotiya v. The State of Bihar and Ors.* (33); *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha and Ors.* (3-1); *Laxmikant R. Bhojwani v. Pratapsing Mohansingh Pradesh* (35); *Reliance Industries Ltd. v. Pravinbhai Jasbhai Patel and Ors.* (36); *Pepsi Food Ltd. and Anr. v. Sub-Judicial Magistrate and Ors.* (37); and *Virendra Kashinath Ravat and Ors. v. Vinayak N. Joshi and Ors.*, (38).

32. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (Vide *Rena Drego v. Lalchand Soni and Ors* (39); *Chandra Bhushan v. Beni Prasad and Ors* (40); *Savitrabai Bhausahab Kevate and Ors. v. Raichand Dhanraj Lunja* (41); and *Savita Chemical (P) Ltd. v. Dyes & Chemical Workers' Union and Anr* (42). Unless the findings are patently erroneous and dehors the factual and legal position on record, exercising the power under Article 227 of the Constitution may not be justified and in that eventuality disturbing the findings of facts would amount to jurisdictional error. (Vide *Dattatraya Laxman Kamble v. Abdul Kasul Moulali Kotkunde and Anr.* (43). Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciating of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (Vide *Union of India and Ors. v. Himmat Singh Chahar* (44). Similarly, in *Ajaib Singh v. Sirhind Co-operative Marketing cum Processing Service Society Ltd.* (45), the Hon'ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/courts below as the same is not permissible in proceedings under Article 226/227 of the Constitution.

33. In *Mohan Amba Prasad Agnihotri v. Bhaskar Balwant Aheer* (46), the Hon'ble

Supreme Court held that jurisdiction of High Court under Article 227 is not appellate but supervisory and, therefore, it cannot interfere with the findings of facts recorded by the Court below unless there is no evidence to support the finding or the finding is totally perverse.

34. In absence of any compelling reason or circumstance, I am not in a position to hold that finding of facts that variation was not meant for "public convenience", is perverse or based on no evidence or requires interference by this Court.

35. To sum up, in strict legal sense, the revision petition had been filed time barred and respondent No. 4 had no locus standi to maintain the revision; but as the variation was not in public interest, no interference is required. Moveso, the orders do not require to be reversed, as quashing of the same would revive a wrong and illegal order. (Vide *Gadde Venkateswara Rao v. Government of Andhra Pradesh and Ors.* (47); *Maharaja Chintamani Saranath Shahdeo v. State of Bihar and Ors.* (48); and *Mallikarjuna Muddnagal Nagappa and Ors. v. State of Karnataka and Ors.* (49).

36. Thus, in view of the above, the petition does not present special features which may warrant interference by this Court and it is accordingly dismissed. There shall be no order as to costs.