

(1970) 01 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 324 of 1967

Hazarilal Gupta

APPELLANT

Vs

State Transport Appellate Authority, M.P. and Others

RESPONDENT

Date of Decision : 05-01-1970

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(8), 64

Citation : AIR 1970 MP 220 : (1974) ILR (MP) 84 : (1970) JLJ 287 : (1970) 15 MPLJ 284 : (1970) MPLJ 284

Hon'ble Judges : Bishambhar Dayal, C.J.; Suraj Bhan Grover, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant;

Final Decision : Dismissed

Judgement

Bishambhar Dayal, C.J.

This is a petition by Hazarilal Gupta, who had applied for the variation of the conditions of his stage carriage permit by adding a route to it from Sonori to Satna. This variation in his condition was refused by the Regional Transport Authority. He filed an appeal against that order before the State Transport Appellate Authority. The State Transport Appellate Authority held that no appeal lies against an order refusing to vary the condition of a permit. Against this order of the State Transport Appellate Authority the present writ petition has been filed, and the contention of learned counsel for the applicant is that a wrong view has been taken with regard to the maintainability of the appeal.

The contention of learned counsel is that an application for adding a new route is to be treated for all purposes as an application for the grant of a permit. The last part of Sub-section (8) of Section 57 of the Motor Vehicles Act, 1939 (hereinafter called the Act), is as follows :

"shall be treated as an application for the grant of a new permit,"

The contention is that since it is to be treated as an application for the grant of a permit, the refusal of such an application must also be treated as the refusal of an application for the grant of a permit, and that consequently an appeal would lie u/s 64 (a) of the Act, which is as follows:

"Any person-

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit."

In support of his argument, learned counsel relied upon *Ramanlal Chunnilal Vs. Transport Appellate Tribunal, Rajasthan, Jaipur and Others*, . A Division Bench of that Court at p. 179, first column held:

"When by the new amendment the application for varying the conditions of a non-temporary permit by the inclusion of a new route or routes or a new area is equated with a fresh application for the grant of a new permit, we see no reason why Section 64 (a) of the Act should not come into play."

We are unable to agree with this line of reasoning. Section 57 (8) of the Act clearly provides that this application should be treated as an application for the grant of a new permit. It does not carry the fiction further, and does not provide that the application shall be deemed to be an application for a new permit. The purpose of the legislature was only to apply the procedure applicable to the applications for grant of new permits to those for variation of the conditions. It is one thing to apply the same procedure for the hearing and disposal of the application, and quite another to make the orders upon those applications also appealable as if they were orders passed upon an application for a new permit. It is well known that a right of appeal is a right which must be provided expressly by the legislature, and unless it is clearly provided, it cannot be inferred by analogy. Simply because the procedure for disposal of an application for alteration of a permit is to be the same as that for the disposal of an application for the grant of a new permit, the provision of an appeal in the one case cannot be applied to the other. The relevant part of Section 64 of the Act, which is the only section providing for appeals in these matters is as follows:

"Any person-

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit, or by any variation of the conditions thereof."

On the plain language of Clause (a), provision is made for appeals in two kinds of cases. The first part deals with the refusal to grant a new permit, and the second part deals with the attaching of a condition to a permit granted to him. There is no provision for filing an appeal against a refusal to vary the conditions of a permit. Clause (b) quoted above makes the matter further clear, for it expressly

provides for appeals in cases where the conditions of a permit are varied. Clause (b) also provides for two kinds of cases. The first part deals with revocation or suspension of a permit and the second part with any variation of the conditions of a permit. It does not speak of refusal to vary the conditions of a permit. When the legislature has expressly provided for appeals in the case of variations of the conditions of a permit, it is unjustifiable to infer that an appeal would be competent under some other clause which does not deal with appeals against refusal of variations at all.

In *Bhan Singh Vs. Regional Transport Authority and Others*, , a Division Bench of the Allahabad High Court presided over by Bhargava C. J. (as he then was) answered a question which was referred to the Bench. The question referred was "whether an order passed by the Regional Transport Authority on an application under subsection (8) of Section 57 of the Motor Vehicles Act, 1939 is appealable to the prescribed authority u/s 64 of the Act". The learned Judges posed the question in two forms; either such an application is refused or it is granted. Obviously, if it is granted, an appeal is provided. Then they consider the question of appeal in the case where the application is refused. First, they deal with Section 64 (b) and hold :

"On the other hand, if an order does not vary any of the conditions of the permit, Clause (b) of Section 64 would not apply and no appeal under that provision would lie."

They then proceed to consider the applicability of Clause (a) of Section 64 and hold: "As regards Clause (a) of Section 64, we are of the opinion that its provisions cannot apply to an order made on an application u/s 57 (8).... We are also in agreement with Hon"ble R.S. Pathak J, that an application for varying the conditions of a permit u/s 57 (8) cannot be deemed to be an application for the grant of a permit."

After considering the provisions of the Act and the authorities on the point, we are of the view that no appeal lies u/s 64 of the Act against an order refusing to vary the terms of a permit by adding a new route. The petition is accordingly rejected. Since no one appears for the respondents, there shall be no order for costs. The security deposit shall be refunded to the petitioner.