

(1988) 09 AHC CK 0076

In the Allahabad High Court

Case No : Writ Petition No's. 17087 and 17088 of 1988

Jagdish Lal and Others

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 07-09-1988

Acts Referred:

Constitution of India, 1950 — Article 22, 226

Motor Vehicles Act, 1939 — Section 41, 44, 47, 57, 57(3)

Citation : (1989) 1 AWC 234

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Ghildyal, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—These two petitions involve common question of law and facts, therefore, it is proper to dispose of them by common order.

2. These petitions are directed against the common orders dated th August, 1988 and 8th August, 1988 passed by State Transport Appellate Tribunal U.P. Lucknow allowing the appeals u/s 64 of Motor Vehicles Act, 1939 (for short the Act), preferred by the Respondents 3 to 16 against the Petitioners who were granted Stage Carriage Permits by the Regional Transport Authority, and remanding the case to the Regional Transport Authority for decision afresh.

3. The short question for determination is whether the State Transport Appellate Tribunal while deciding appeals u/s 64 of the Act has power to pass an order of remand and whether the application made by Abdul Shami Khan, the Respondent No. 16 (the Respondent No. 15 in the next case) before the Regional Transport Authority Bareilly, can be disposed of subsequently by the Regional Transport Authority Moradabad created vide notification dated 5-12-80.

4. The portrayal of essential facts are these. The Petitioners were granted regular stage carriage permits by Regional Transport Authority Bareilly and the

applications of Respondents were rejected except the application of Abdul Shami Khan, who was also one of the Appellants before the Respondent No. 1, his application was neither decided nor published as required u/s 57(3) of the Act. After dismissal of the applications of the Respondents (except Abdul Shami Khan whose application was not disposed of) they preferred different appeals before the Respondent No. 1 and in those appeals present Petitioners were the Respondents it was held by the Respondent No. 1 that the application of Abdul Shami Khan, the Respondent no 15/16 was not published as required by Section 57(3) of the Act nor the same was presented before the Regional Transport Authority hence the respective and comparative merits of all the applications could not be decided. The Respondent No. 1 accordingly allowed the appeals and remanded the matter to the Regional Transport Authority for decision afresh.

5. Learned Counsel for the Petitioners urged that there was no power of remand with the State Transport Appellate Tribunal while deciding an appeal u/s 64 of the Act. It was further urged that the application for the grant of permit on Bilaspur-Ahri-Shishgarh was within the jurisdiction of Regional Transport Authority Bareilly therefore that application made by Abdul Shami Khan cannot be decided by Regional Transport Authority Moradabad and the same cannot be made basis for the order of remand passed by the Appellate Tribunal. Reliance was placed on a Division Bench decision of this Court dated 29-9-78 in Civil Misc. Writ Petition No. 8527 of 1978 Smt. Premalata v. State Transport Appellate Tribunal Lucknow and Turabuddin Haji Niaz Ahmad and Others Vs. The Commissioner, Meerut Division, Meerut and Others, .

6. On the other hand learned Counsel, representing Respondents, urged that there is nothing to suggest that State Transport Appellate Tribunal shall have no power of making remand, hence in suitable cases the order of remand could be made. It was further urged that even though Regional Transport Authority Moradabad was subsequently created vide a notification u/s 44(i) but it has jurisdiction to decide the application made earlier before the Regional Transport Authority Bareilly as there could be no gap interregnum in the exercise of powers conferred by Chapter 4. Reliance was placed on a Division Bench decision of this Court in Ratan Lal Gupta v. Mohd. Ramjani 1973 ALJ 131.

7. Learned Counsel for the parties agreed that these petitions may be disposed of finally at this stage.

8. As regards the first submission of learned Counsel for the Petitioners regarding the power of remand with State Transport Appellate Tribunal while exercising powers u/s 64 of the Act, Section 64 provides the right of appeal to persons who feel aggrieved by the order of Regional Transport Authority. That may be an order of refusal to grant permit or an order of refusal to grant permit to the person succeeding on the death of holder of permit. It may be stated that the word "appeal" is derivative from Latin Word "Appellate" which means to call upon. The word "appeal" means the judicial examination by a higher Court of the decision of a inferior Court. There are a number of clauses u/s 64 and these

clauses deal with different situation each of which is independent of the other. Infact party claiming the right of appeal has to indicate that he was aggrieved by the order of Regional Transport Authority as contemplated under different clauses of Section 64. It need not be stated that the appeals are the creation of the Statutes and when the right of appeal is created the Statute indicates the scope within which that appeal has to be decided. This right of appeal is a vested right.

9. There is a Latin Maxim " Sui jurisdictio data est eraequoque co cessa essa vindentur sine quibus junsdjctio explicari non potest," which obviously connotes that to whomsoever a jurisdiction is granted those incidental things, or powers also are supposed to be granted without which the jurisdiction cannot be exercised. In the instant case Section 64 (sixty four) enacts in brief that any person enumerated in different sub-clauses of Section 64 may prefer an appeal before the State Transport Appellate Tribunal created under Sub-clause (2) who shall after giving such persons an opportunity of being heard give a decision thereon which shall be final. The Appellate Tribunal has been conferred very wide jurisdiction to give a decision, which is not a defined term but that is a word with very comprehensive meaning. According to Webster's IIIrd New International Dictionary "decision" connotes, a determination arrived at after consideration, an act of settling or terminating by giving the judgment. According to Collin's Concise English Dictionary "decision" means judgment, conclusion, act of making up one's mind, determination. According to Jowitt's Law Dictionary "decision" means judgment, and judgment means judicial determination.

10. In other words Appellate Tribunal has been conferred jurisdiction to render a decision or deliver a judgment which may be a decision either finally disposing of the appeal or making an order of remand.

11. In N.K. Dharmadas Vs. State Transport Appellate Tribunal of Kerala and Others, the controversy was whether Appellate Tribunal u/s 64 of the Act has got power of remand or not and it was held that the Appellate Tribunal has jurisdiction to remand the matter as the appeal is infact a complaint to the superior body against injustice done or error committed by the inferior one with a view to correction or reversion. The remand by appellate factually determine what final judgment should be rendered.

12. In a Division Bench case of Rajasthan High Court in Roopchandra Basudev v. Transport Appellate Tribunal AIR 1971 Raj 119 considering scope of Sections 64(a) and 68(3) of the Act it was held that the Appellate Tribunal is not bound only to either confirm the order granting or refusing the permit but it has power of passing an order of remand if the circumstances justify the same.

13. In Division Bench decision of this Court in Smt. Premalata v. State Transport Appellate Tribunal Lucknow and Ors. (Supra) relied upon by the learned Counsel for the Petitioner, reliance was placed on a Single Judge decision in Mahendra Singh v. State Transport Appellate Tribunal 1976 ALR 58 : 1976 AWC 32 in which it was held that ordinarily the appellate Court has co-extensive power with the

trial Court and similarly the State Transport Appellate Tribunal has also co-extensive power to that of Regional Transport and in case the appellate tribunal remanded that matter just for rewriting the judgment that would be defective but in case some further evidence was to be recorded by the Regional Transport Authority in that event remand would be justified. In the aforesaid case of Mahendra Singh (Supra) entire evidence was led and was available before the State Transport Appellate Authority therefore, the order of remand was held to be unjustified. But in the instant case the application of Abdul Shami Khan was not published as required u/s 57(3) of the Act nor the representations were invited, in that event there was no such evidence before the appellate Tribunal to dispose of his appeal on merits-See R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others, .

14. Abdul Rehman and Others Vs. State Transport Appellate Tribunal and Others, Civil Appeal No. 1276 of 1975 and SLP (Civil No. 1852 of 1976 decided on 8th March, 1978) is a decision by their Lordships of Supreme Court indicating scope of Section 64 of the Act and indirectly upholding and declaring the proposition that the State Transport Appellate Tribunal has got power of remand. In that case State Transport Appellate Tribunal has remanded the matter before the Regional Transport Authority and thereafter the matter was decided by the learned Single Judge and Division Bench of this Court and the order of Appellate Tribunal was quashed. Their Lordships of Supreme Court considering the circumstances and scope of Sections 47, 57 and 64 of the Act maintained the order of remand passed by the Transport Appellate Tribunal and the decisions rendered by the learned Single Judge and Division Bench of this Court were overruled and the order of remand was maintained. I am of the considered opinion that wide sweep of the language, in which Section 64 is couched comprehends, an order of remand in appropriate cases.

15. In Abdul Rehman v. State Transport Appellate Tribunal (Supra) their Lordships of Supreme Court considering the scope of jurisdiction of this Court under Article 226 against an order of State Transport Appellate Tribunal made reference to the decisions in Kishanchand Narsinghdas Bhatia Vs. State Transport Appellate Authority and Others, and Sri Rama Vilas Service (P) Ltd. Vs. C. Chandrasekaran and Others, and observed as follows:

It is hardly necessary in this connection to reiterate the observations made by this Court in Kishanchand Narsinghdas Bhatia Vs. State Transport Appellate Authority and Others, that the High Court under Article 22 of the Constitution should be reluctant to interfere with or disturb the decision of specially constituted authorities or tribunals under the Act specially when the legislature has entrusted the task of granting or renewing the stage carriage permits to the aforesaid authorities or tribunals which are expected to be fully conversant with the procedure and practice and the relevant matters which should engage their attentions under the provisions contained in the Act. In dealing with applications for writs of certiorari under Article 226 of the Constitution in cases of the present

kind it is necessary to bear in mind that the High Court does not exercise the jurisdiction of an appellate Court and the findings or conclusions on questions of facts could hardly be re-examined or disturbed by it under Article 226 of the Constitution unless the well recognised tests in that behalf were satisfied-*vide Sri Rama Vilas Service (P) Ltd. Vs. C. Chandrasekaran and Others*, .

16. As stated above I am of the view that the State Appellate Tribunal while exercising jurisdiction u/s 64 of the Act can pass an order of remand also in appropriate cases and as the case of *Abdul Rehman v. State Transport Appellate Tribunal (Supra)* decided by their lordships of Supreme Court was not brought to the notice of Division Bench of this Court in *Smt. Prem Lata v. State Transport Appellate Tribunal Lucknow*, hence with all humility at my command, I am of the view that this Division Bench decision is no longer a good law.

17. Reverting to the next submission that the application of Abdul Shami Khan being made before the Regional Transport Authority Bareilly could not be disposed of by the subsequently created Regional Transport Authority Moradabad as the said application was not traceable rather it was withdrawn by the applicant suffice it to say that the Division Bench case of *Ratan Lal Oupta v. Mohd. Ramjani* 1973 ALJ 131 is complete answer to this submission. Scope of Section 44(Forty Four) was considered by the Division Bench and it was held that u/s 44(i) when a new Regional Transport Authority is created in respect of particular region, (as in the present case Regional Transport Authority Moradabad was created by a notification dated 29-7-81) in respect of that region only newly created authority can function and can exercise powers and not the old authority. Creation of new Regional Transport Authority Moradabad u/s 41 (Fourty one)(i) of the Act does not contemplate vacuum in relation to particular area. In other words there could be no gap interregnum in exercise of powers and functions conferred by Chapter 4. The application of Abdul Shami Khan could have been disposed of by Regional Transport Authority Moradabad after it was created. That application was traceable and not withdrawn by the applicant in respect of that application no publication u/s 57(3) of the Act could be made nor even the representations could be invited. In the case of *Turabuddin Haji Niaz Ahmad and Others Vs. The Commissioner, Meerut Division, Meerut and Others*, scope of Section 44(i) was not considered. That was infact a case on different facts and that was a decision rendered in view of the particular facts of that case. Hence that case is of no assistance to the Petitioners particularly in view of Division Bench decision of this Court *Ratan Lal Gupta v. Mohd. Ramjani (Supra)* in which scope of Section 44(i) of the Act has been explained. Applying priori and postariy reasoning I am of theview that the second submission is also devoid of merits. In view of the premises aforesaid both the petitions fail and are dismissed with no order as to costs.