

(1973) 09 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 150 of 1973

Jagdish Prasad and Another

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 14-09-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1973) 6 WLN 897

Hon'ble Judges : J.P. Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Jain, J.—This is a writ petition under Article 226 of the Constitution of India and it arises out of the following circumstances. Petitioners Jagdish Prasad and Sheolal hold one non-temporary permit on Mahuwa Deeg route since 1967. Two applications were published for the grant of non-temporary permits on the route, one was of the third respondent Kishanlal Brijeshkumar and the second application was of one Kalyan Sahai. The petitioners filed objections against the grant of permit to the third respondent on 24-2-1968. According to the petitioners the certified copy of the said objections is on record and marked Annexure Ex.P/2 It has been alleged by the petitioners that the copy of these objections was also sent to Kishanlal Brijeshkumar under a certificate of posting on 23-2-1968. The Regional Transport Authority Jaipur, vide its resolution No. 6 item No. 5/2 dated 6-5-1969 granted one non-temporary permit to Kishanlal Brijeshkumar and the application of Kalyan Sahai was rejected. The presence of the petitioner as objectors has been recorded in the order and they were heard. Being aggrieved of this order the petitioners preferred an appeal before the State Transport Appellate Tribunal (hereinafter referred to as the tribunal) on 4.6.1989. The original certificate of posting was submitted along with the memo of appeal and it was also accompanied by an affidavit of Jagdish Prasad, saying that the appellants submitted objections in writing against the application of Kishanlal

Brijeshkumar within the time allowed and they also sent a copy of the same to them under a certificate of posting on 23rd February, 1968. The petitioners obtained an ad-interim order from the Tribunal. This stay order was confirmed by the tribunal after hearing Kishanlal Brijeshkumar. In compliance with the stay order the permit was not obtained by them. This appeal was not heard for quite a long time. On 24.1.1973 an affidavit was filed by Kishan Lal before the Tribunal contending that the deponent (Kishanlal) did not receive any objections against his application for the grant of nonetemporary permit on Mahuwa Deeg route. This statement of Kishanlal was again controverted by the affidavit of Jagdishprasad filed by him on 31st January, 1973. The appeal was heard and the tribunal held that the mere sending of the objections by a certificate of posting was not enough to hold that the objections were received by Kishanlal Brijeshkumar on the interpretation of Section 57(4) of the Motor Vehicles Act (hereinafter referred to as the Act). The tribunal was of the opinion that it was the duty of the appellant to prove that the copy of the objections had reached the hands of the applicant. Since the requirement of Section 57(4) was not fulfilled, he dismissed the appeal as not maintainable within the meaning of Section 64(1) of the Act. It is this order that has been challenged before me by the petitioners.

2. Mr. Vyas learned Counsel appearing for the petitioners, submits that the tribunal has misconstrued the provisions of Section 57(4) of the Act. He has also urged that in the facts and circumstances of the case it was clearly established that the third respondent received the copy of the representation sent by the petitioners by certificate of posting. On the other hand, Mr. Maheshwari, learned Counsel representing Kishanlal Brijeshkumar, respondent No. 3, has supported the interpretation of Section 57(4) as put by the Tribunal. He has also referred to *K. Nirasimiah v. H.C. Singri Gowda and Ors.* 1965 (1) SCJ 552 in addition to Single Bench Decision of this Court in *Murari Lal Agarwat v. The Transport Appellate Tribunal, Rajasthan, Jaipur*, and Ors. (S.B. Civil Writ Petition No. 2134 of 1970, decided on 7th December, 1972) referred to by the Tribunal. Mr. Vyas has placed reliance on *M. A. Saddiqui v. Tribunal of S.T.A. Rajasthan* 1959 RLW 281 and an unreported Single Bench decision of this Court *Manimal Tejmal v. The Transport Appellate Tribunal, Rajasthan Jaipur* and Ors. (S.B Civil Writ Petition No. 169 of 1971, decided on 20-11-1972).

3. I have carefully considered the rival contentions. After an application for a stage carriage permit has been submitted before the Transport Authority, the concerned authority shall make the application available for inspection at the office of the authority and shall publish the application or the substance thereof in the prescribed manner together with the notice of the date before which representations in connection therewith may be submitted and the date not being less than 30 days from such publication, on which, and the time and place at which, the application and any representations received, will be considered. It has been provided by Section 57(4) that no representations in connection with the application referred to in Sub-section (3) shall be considered by Regional

Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation. The requirement of this sub-section obviously is that the representation must be made in writing and they must be made before the appointed date and a copy of any such representation must be furnished simultaneously to the applicant by the person making such representation. In the present case there is no dispute that the representation was made in writing and it was before the appointed date, filed in the office of the Regional Transport Authority. The controversy between the parties, however, is whether a copy of the representation was furnished simultaneously to the applicant by the petitioners who made the representation against the third respondent, who was the applicant. The word "simultaneously" clearly means at the same time. The use of this word creates a difficulty inasmuch as in majority of cases it will not be possible for the person making the representation to furnish the applicant a copy of the representation at the time when it is submitted in the office of the Regional Transport Authority. The interpretation of the word "simultaneously" came up for consideration in *M.A. Saddiqui v. Tribunal of S.T.A Rajasthan* 1959 RLW 281. Their Lordships while construing Section 57(4) considered the import of the word "simultaneously". They observed:

It is submitted on behalf of the applicant that under this provision it is the duty of the person making the representation to make that representation within the time allowed before the Regional Transport Authority and also see that a copy of the representation is received by the person applying for permit again within the time prescribed. We have considered the language of Section 57(4) and are of opinion that this meaning cannot and should not be given to it. There is no doubt that Section 57(4) provides a period of limitation within which representation has to be made to the Regional Transport Authority. It also provides for furnishing of a copy simultaneously to the person making the representation. Now simultaneously means at the same time. It is obvious that it will be impossible for any person who wants to make a representation to the Regional Transport Authority to supply a copy at the same time to the person applying for permit. The reason is that the person applying for permit is not expected to remain in attendance at the Regional Transport Authority's office for all the period which is allowed for making of representation in order that he may at the same time receive a copy of the representation to the Regional Transport Authority. If, therefore, the words "furnish simultaneously" are to be interpreted strictly, it will be impossible to comply with that condition. We are, therefore, of opinion that so long as the person making the representation has taken steps to see that a copy of the representation reaches the person applying for permit, reasonably soon after the representation is delivered to the Regional Transport Authority, he has substantially complied with the last part of Section 57(4). Two ways appear to us to be very obvious in which a person making the representation can furnish a copy simultaneously to the person applying for permit. He may, for example, along with his representation file before the Regional Transport Authority as

many copies as are necessary to be delivered to those against whom he is making the representation and ask the Regional Transport Authority to make arrangements for delivery or he may about the same time as he makes the representation to the Regional Transport Authority send a copy to the person applying, by post: So long as he has done either of these things, or utilises any other method which would result in the person applying the copy soon after the representation is delivered to the Regional Transport Authority, he has complied with the substance of the last part of Section 57(4). We do not see why it should be insisted upon that the party should also actually receive the copy of the representation before the period of limitation has expired. We are, therefore, of opinion that Section 57 (4) should be liberally interpreted and if so interpreted, all that it provides is that the Regional Transport Authority should receive the representation within the time allowed and at the same time, the person making the representation should take steps to see that a copy thereof reaches the person applying for permit. If he has done that, he has in our opinion, complied with Section 57(4).

4. In this case a copy of the objections was sent to the third respondent by post under a certificate of posting dated 23-2-68 It has been admitted by Mr. Maheshwari that the certificate of posting bears the right address of the applicant, Here reference may also be made to *Harihar Banerji and Ors. v. Ramshashi Roy and Ors.* AIR 1918 PC 102. Their Lordships of the Privy Council observed:

If a letter properly directed, containing a notice to quit, is proved to have been put into the post office, it is presumed that the letter reached the destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed and that presumption would apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted but strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself.

According to this authority the copy of the representation which was sent to the third respondent on 23-2-1968 at their address shall be presumed to have reached its destination and received by the addressee in regular course of business of the post office. Section 57(4) cannot be construed to mean that the person making the representation must show by positive evidence that the representation reached the hands of the person against whom it was made. Whether copy of representation has been furnished simultaneously in a given case within the meaning of the Sub-section (4) of Section 57, depends upon the facts and the circumstances of that case.

5. That apart, there is another important circumstantial evidence on record. The petitioners were present as objectors before the Regional Transport Authority. No objection was raised by Kishanlal Brijeshkumar, that they did not receive the copy of the objections against them and therefore Jagdish Prasad Shival were

not entitled to be heard against the grant of permit to them. After the appeal was filed before the Tribunal, an ex-parte stay order was obtained. The stay was confirmed after hearing Kishanlal Brijesh Kumar by the Tribunal. Kishanlal or/and Brijeshkumar did not choose to file their affidavit till 24-1-1973. On that date for the first time Kishanlal filed the affidavit that he did not receive a copy of the representation filed by the petitioners. He did not say in that affidavit that Brijesh Kumar as well did not receive the copy of the representation. No affidavit of Brijeshkumar was filed. In this view of the evidence, there is over-whelming material on the record to hold that the copy of the representation was received by the third respondent and the claim set up by Kishanlal in his affidavit was wholly untenable. In view of the observations by Wanchoo, G.J. in the case of M.A. Siddaqui referred to above, the petitioner adopted the course of furnishing the copy of the representation to the applicants by post and if they have been found to have done so the requirement of Section 57 (4) are complied with.

6. The tribunal has placed reliance on the decision in Murari Lal's case. The facts in that case were distinguishable. One Murari Lal was granted a permit by the Regional Transport Authority. Govind Narain and Harjit Singh filed a joint appeal. Harjit Singh withdrew from the appeal and Gobind Narain alone remained as the appellant. A preliminary objection was raised before the Transport Appellate Tribunal that Govind Narain had not filed objections u/s 57(4) and a copy of objections was not furnished to Murari Lal. The Transport Appellate Tribunal found a copy of representation on the record of the case. Without deciding the second part of the objection, it held the appeal as maintainable and on merits the permit granted to Murarilal was set aside. Murari Lal came in this Court under Article 226 of the Constitution of India and challenged the order of the Tribunal. The contention of Murari Lal in this Court was that Govind Narain did not furnish him with a copy of the representation. The learned Judge dealing with that case, found the impugned order silent about this objection. Govind Narain did not controvert this objection. He even failed to file an affidavit to inform this Court that he supplied Murarilal with a copy of representation. In face of these, Gattani, J. found that the second part of Section 57(S) was not complied with. He held that the appeal of Govind Narain before the Tribunal was not maintainable & accordingly the order setting aside the permit of Murarilal was not sustained and the writ petition was allowed. From these facts it is abundantly clear that the learned Judge was not called upon to interpret Section 57(4). He only decided the matter in the peculiar facts and circumstances of that case.

7. The case of Manmal Tejrnal referred to above is again a decision of Gattani, J. On the facts of that case the learned Judge held Section 57(4) was complied with. The respondent did not contest the case. This decision cannot therefore be an authority for the proposition involved in the present case.

8. In the Supreme Court case referred to by Mr. Maheshwari the question involved related to some provision under the Mysore Town Municipalities Act. They were called upon to construe the provision of Section 23(9) of that Act. The

proviso read as follows:

Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the whole number of the Councillors and at least fifteen day's notice has been given of the intention to move the resolution.

9. The contention before their Lordships was that 15 days' notice of the intention to move the resolution was not given. In that context their Lordships held that "sending" the notice did not amount to "giving" notice. It was also observed that as soon as the person with a legal duty to give notice despatches the notice to the address of the person to whom it is to be given, "the giving" is not complete. These observations have no application to the facts of the present case.

10. In view of the interpretation that I have given above to Section 57(4) and the foregoing discussion the tribunal has clearly erred in holding that the petitioner had not laid foundation for filing the appeal u/s 64(f). In my opinion, the appeal was maintainable. The Tribunal did not decide the case on merits.

11. In the result, the writ petition is allowed, the order dated 2-2-1973 of the State Transport Appellate Tribunal is set aside, and the tribunal is directed to decide the appeal of the petitioners on merits as soon as it is possible. In the circumstances of the case, I direct the parties to bear their own costs.