
(2009) 01 P&H CK 0082
In the Punjab And Haryana At Chandigarh

Jagtar Singh

APPELLANT

Vs

The State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 18
Motor Vehicles Act, 1988 — Section 66, 80, 89
Registration Act, 1908 — Section 73, 77

Citation : AIR 2009 P&H 114 : (2009) 154 PLR 245 : (2009) 1 RCR(Civil) 928

Hon'ble Judges : T.S. Thakur, C.J.;Surya Kant, J

Bench : Division Bench

Judgement

T.S. Thakur, C.J.—The short question that falls for consideration in this writ petition is whether the period of limitation prescribed for filing an appeal under Rule 85 of the Punjab Motor Vehicle Rules, 1989 (hereinafter called the "Rules") against an order passed by the State or Regional Transport Authority commences from the date of receipt of the said order or the date on which the aggrieved party acquires actual or constructive knowledge about the making thereof. Rule 85 of the Rules reads as under:

Rule 85. Appeal against orders of State or Regional Transport Authority: (1) A person desiring to prefer an appeal against an order of the State or a Regional Transport Authority referred to in Sub-section (1) of Section 89 shall, within thirty days of the receipt of the order, prefer an appeal in the form of a memorandum, in duplicate, one copy of which shall bear a court fee stamp of one hundred rupees to the State Transport Appellate constituted under Sub-section (2) of Section 89 (hereinafter referred to in these rules as the appellate authority) setting forth concisely the grounds of objection to the order of the State or a Regional Transport Authority, as the case may be together with a certified copy of that order.

2. A plain reading of the above would show that the remedy by way of an appeal against an order passed by the State Regional Transport Authority is available to

the party aggrieved of any such order for a period of 30 days from the date of the "receipt of the order." That the period of limitation should start running not from the date of the order but from the date of the "receipt of the order" is somewhat unusual. Generally the statutes provide for the period of limitation to be reckoned from the date the order under challenge is passed. The rationale behind the peculiarity of the rule is, however, abundantly clear from the second proviso to Section 80(2) of the Motor Vehicles Act, 1988 (hereinafter called the "Act"), which enjoins upon the authority passing an order refusing to grant a permit, the duty to furnish to the applicant in writing "its reasons for refusal of the same." The second proviso reads as under:

Provided further that where a (Regional Transport Authority, State Transport Authority or any prescribed authority referred to in Sub-section (1) of Section 66) refuses an application for the grant of a permit of any kind under this Act, it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter.

(emphasis is supplied).

3. A combined reading of Sections 80, 89 of the Motor Vehicles Act and Rule 85 of the Rules makes it manifest that the State or Regional Transport Authority passing an order appealable u/s 89 is by reason of Second proviso to Section 80(2) obliged to provide to the applicant whose application has been declined, the reasons in writing for such refusal. This implies that the State or Regional Transport Authority is required to communicate any order made by it that refuses an application for grant of a permit of any kind, which order in turn is required to contain reasons for such refusal. In an ideal situation, no sooner an order is passed by the State or Regional Transport Authority against an application refusing to grant a permit of any kind under the Act, the same must be communicated to the party seeking such permit, who can then resort to the remedy of an appeal u/s 89 of the Act open to it within the time stipulated under Rule 85 of the Rules. It is the failure of the State or Regional Transport Authorities to comply with that requirement that has given rise to considerable litigation in this Court, in which the aggrieved parties have often claimed that they did not have any knowledge of the passing of the order as the order in question was never communicated to them. The practice of not communicating the order to the parties concerned was noticed by a Division Bench of this Court in *Banda Bahadur Highways Private Limited, Ludhiana v. State Transport Appellate Tribunal, Punjab* and Ors. Civil Writ Petition No. 9982 of 1996 disposed of on 16.7.1997 and the need for communication of the order emphasized in the following passage:

Before parting with the same, it deserves to be mentioned as it had come to our notice that respondent No. 2 is adopting a practice not to inform the persons whose applications have been refused. As noted above, it some times creates a situation which leads to un-necessary litigation. In accordance with the acts and the rules, respondent No. 2 should inform the party about the order so passed.

4. In the course of hearing before us, it was fairly conceded by Mr. Amol Rattan Singh that considerable difficulties had at times arisen for the aggrieved party on account of the neglect and/or apathy of the State or Regional Transport Authorities in the matter of communication of the orders passed by them to the parties concerned. It was urged that while the orders are now being communicated, the Tribunal would get flooded with cases, should this Court hold that the period of limitation would commence only from the date the order refusing to grant of permit is formally communicated to the person, who had applied for the same. It was contended by Mr. Singh that although Rule 85 of the Rules stipulates limitation of 30 days from the date of receipt of the order passed by the State or Regional Transport Authority yet actual or constructive knowledge of such order should also in the absence of any formal communication result in commencement of said period. A litigant, who has either actual or constructive knowledge of an order passed adverse to him cannot, argued Mr. Singh, be allowed to sleep over the matter and wait indefinitely for a formal communication of the order before filing an appeal against the same.

5. On behalf of the petitioner, it was, on the other hand, contended that the period of limitation ought to start only from the date the order is communicated to the party aggrieved by the same. At any rate limitation can not start running unless it is established that the party concerned had actual or constructive knowledge about the making of the order. Whether or not the party had any such knowledge would, according to learned Counsel for the petitioner, depend upon the facts and circumstances of each case.

6. The remedy by way of an appeal before the State Transport Appellate Tribunal is available to anyone aggrieved of an order passed by the State or Regional Transport Authority. That remedy is, however, subject to the condition that it is availed within the time prescribed for the purpose. A stipulation regarding the period of limitation available for invoking the remedy shall have to be strictly construed. That is because any provision by way of limitation is in the nature of a restraint on the remedy provided under the Act. So viewed two inferences are clear viz. (i) Sections 80 and 89 of the Act read with Rule 85 of the Rules make it obligatory for the authorities making the order to communicate it to the applicant concerned and (ii) the period of limitation for any appeal against the order is reckonable from the date of such communication. Thus far there is no difficulty. The question that adds an interesting dimension is whether a party, who knows about the order of rejection made by the State or Regional Transport Authority, can sit back and indefinitely wait for a formal communication of the order and file the appeal at his sweet will. Our answer to that question is in the negative. While it is true that communication of the reasons would imply communication of a copy of the written order itself, a party who knows about the making of an order cannot ignore the same and allow grass to grow under its feet and do nothing except waiting for a formal communication of the order or to choose a time of his convenience to file an appeal on a tenuous plea that even though he knew about the order, he was waiting for its formal communication to seek redress against

the same in appeal. Any interpretation of the provisions of Section 80 and 89 of the Act and Rule 85 of the Rules that would give rise to such an absurdity shall have to be eschewed. Diligence or the lack of it in seeking redress is a crucial aspect in matters relating to law of limitation. One can understand that if a party does not know about the making of the order either actually or constructively it may claim that the period of limitation would start running from the date it acquires knowledge of the making of an order but one cannot understand how a party, who has acquired knowledge of the making an order either directly or constructively can ignore the same and belatedly seek redress just because the authority making the order had made a default in formally communicating the order to him. Allowing a party to do so would amount to placing a premium on the lack of diligence of a party, who is remiss in seeking a remedy that was available to it.

7. We may at this stage refer to a few decision on the subject, which emphasize the importance of knowledge in the matter of limitation for the remedies available to the aggrieved party. These decisions no doubt deal with a converse situation from the one at hand but the principle enunciated in the same would, in our opinion, apply equally to both. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, ., the Supreme Court was examining the question whether the period of limitation for seeking a reference u/s 18 of the Land Acquisition Act, 1894, would commence from the date of award made by the Collector as stipulated under the said provisions or from the date the aggrieved party acquires knowledge of the same. On a review of the case law on the subject, their Lordship held that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. The Court declared that knowledge of the party affected by the award made by the Collector u/s 12 of the Land Acquisition Act, 1894 either actual or constructive was an essential requirement of. fair play and natural justice. Consequently, the expression "the date of the award" used in proviso (b) to Section 18(2) of the Act was held to mean "the date when the award is either communicated to the party or is known by him either actually or constructively." It will be unreasonable, observed the Court, to construe the words "from the date of Collector's award" used in the proviso to Section 18 in a literal or mechanical way.

8. Reference may also be made to a decision of the Madras High Court in *Annamalai Chetti v. Col. J.G. Cloetti* ILR Mad 189. In that case, the Court was dealing with Section 25 of the Madras Boundary Act, XXVIII, under which a suit to set aside the decision of the Settlement Officer could be brought within two months from the date of the award. The question that arose was as to when would the time begin to run. The High Court held that the time would begin to run only from the date on which the decision is communicated to the parties otherwise the party concerned might be barred from its right to appeal without

having any knowledge of the order being passed. To the same effect is the decision in *Swaminathan v. Lakshmanan Chettiar* AIR 1930 Mad 490 in which Sections 73(1) and 77(1) of the Indian Registration Act XVI of 1908 were being interpreted. It was held that in a case where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed, the expression within 30 days after the making of the order used in the said Section would mean within 30 days after the date on which the communication of the order reached the parties affected by it. Knowledge of the impugned award, order, decree or judgment has, thus, been taken to be crucial concomitant of the provisions stipulating the period of limitation to prevent remedies becoming time barred even when the parties affected by the orders had no knowledge about the order made against them.

9. The case at hand as noticed above presents a converse situation. Here the statute makes the period of limitation to start not from the date of the making of the order but from the date of the receipt of the same by the party affected by it. The question is whether knowledge about the making of the order against the party concerned should like the cases referred to earlier also give rise to start of limitation even when there is no formal communication of the order. Our answer to that question is in the affirmative. Knowledge whether actual or constructive of the order passed by the State or Regional Transport Authority should, in our opinion, result in commencement of the period of limitation. Decisions rendered by the Division Benches of this Court in *Jaspal Singh v. State of Punjab and Ors.* 2002(3) R.C.R. (Civil) 203 (P&H). Civil Writ Petition No. 14874 of 2000 disposed of on 29.8.2001, *Capt. Amrit Pal Singh and Ors. v. State Transport Appellate Tribunal, Punjab and Ors.* Civil Writ Petition No. 3544 of 2002, disposed of on 15.7.2002, *Mavi Bus Service Registered, Khanna v. State Transport Appellate Tribunal, Punjab and Anr.* Civil Writ Petition No. 7451 of 2005, disposed of on 21.5.2007 and in *Indian Bus Service (Regd.) Malerkotla v. State Transport Appellate Tribunal, Punjab and Ors.* Civil Writ Petition No. 3114 of 2003, disposed of on 4.8.2006 in our view correctly hold that in cases where the State or Regional Transport Authority has not communicated the order of refusal passed to the persons concerned, the period of limitation for filing an appeal would commence from the date when the parties concerned acquire knowledge of passing of the said order. We may, however, point out that the said decisions do not elaborate whether a person, who knows about the order made by the State or Regional Transport Authority, can still wait for a formal communication of the same before filing an appeal to the State Transport Appellate Tribunal. That aspect has been noticed only in *Banda Bahadur's* case (*supra*) referred to by us in the earlier part of this judgment. The Court had in that case formulated the following question:

Can a person who knows about the order, can still wait for orders and suddenly come up with the plea that since the order had not been communicated, he would file the appeal giving any date to his convenience as the date of the knowledge of the order.

10. Relying upon Raja Harish Chandra's case (supra), the Court answered the question in negative and held that since the application made by the petitioner had been rejected and a permit granted to the opposite party in November, 1988 and since the successful party had started plying on the route concerned, it was not possible to believe that the petitioner did not know or could not have had the knowledge of the making of the order for more than two years. When the route was being operated, observed the Court, the petitioner must be presumed to know that permit had been granted to the other party and not to it, thereby giving to the aggrieved party the constructive knowledge about the rejection of his request for a permit. We respectfully approve the reasoning given in the decision rendered by this Court in Banda Bahadur's case (supra) and hold that even in cases where there is no formal communication of the order passed by the State or Regional Transport Authority, the period of limitation prescribed for filing the appeal would start running from the date the aggrieved party acquires actual or constructive knowledge of the making of the said order. Whether or not the aggrieved party had any such knowledge will, however, be a matter to be seen by the Tribunal in each case depending upon its peculiar facts and circumstances. It will not, therefore, be necessary or proper for us to enumerate exhaustively situations in which such knowledge can be imputed to the party aggrieved, while examining whether or not the appeal is within limitation.

11. The reference is answered accordingly. The petition shall now be placed before the Appropriate Bench for hearing and disposal in accordance with law.