

(1965) 09 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 202 of 1965

Madhya Pradesh State Road Transport Corporation

APPELLANT

Vs

R.C. Roy Poddar and Others

RESPONDENT

Date of Decision : 28-09-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 64

Citation : AIR 1966 MP 226 : (1968) ILR (MP) 64 : (1966) JLJ 70 : (1966) 11 MPLJ 37 : (1965) MPLJ 149

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; R.K. Tankha, for the Respondent

Final Decision : Allowed

Judgement

Pandey, J.

This is a petition under Articles 226 and 227 of the Constitution to call up and quash by certiorari an order passed by the State Transport Appellate Authority on 1st January 1965.

The facts giving rise to this petition shortly stated, are these. The Regional Transport Authority, Rewa, invited applications for stage carriage permits for the Rewa-Bhopal route. Twenty-two persons separately applied for those permits. On 21st March 1960, when these applications came up in due course for a public hearing, the Regional Transport Authority suggested to 6 of the applicants that they should make a joint application for two return trip permits for the route. Those operators promptly took up the suggestion and made there and then the required application. Thereupon, by an order dated 21st March 1960, the Regional Transport Authority granted one return trip permit to 3 of those 6 applicants, and another like permit to the remaining 3 applicants, namely, Messrs Ashok Transport Company, Messrs Continental Travels and S.S. Pande. The applications made by the other 16 applicants were rejected. As many as five of

these unsuccessful applicants separately appealed against the order passed by the Regional Transport Authority. By an order dated 7th September 1962, the State Transport Appellate Authority affirmed the earlier order with only one modification. The applications made by Messrs Ashok Transport Company and Messrs Continental Travels were received beyond time. The Appellate Authority condoned the delay in regard to the application of Messrs Ashok Transport Company, but declined to do so in regard to the one made by Messrs Continental Travels. One of the appellants, Shriram Khanna, was substituted in place of Messrs Continental Travels. This was the only modification made by the Appellate Authority. The order passed by it was, however, challenged before us in Miscellaneous Petitions Nos. 420 of 1962 and 38 of 1963, which were partially allowed. We took the view that, since the application made by Messrs Ashok Transport Company was received beyond time, no permit could be granted on the basis of that application. The operative part of our order dated 28th April 1964 reads :

" In the view we have taken, the two petitions partly succeed and are allowed to the extent hereinafter indicated. The grant of the second return trip permit for the route in favour of the respondents 3, 6 and 9 is quashed as unsustainable only in so far as it relates to the respondent 6 because the application made by it was not in accordance with the requirements of Section 57 (2). The case is remanded to the Appellate Authority for deciding the question of the grant, which has been quashed, afresh with advertence to the observations we have made in the last paragraph." When the case went back to the Appellate Authority, it heard and disposed of only two of the five appeals, namely, those that were preferred by the respondents 2 and 3 here perhaps because they had filed the aforesaid. Miscellaneous Petitions Nos. 420 of 1962 and 38 of 1963. By the impugned order, which the Appellate Authority passed on 1st January 1965, the respondent 2 was substituted in place of Messrs Ashok Transport Company for the second return trip permit.

The petitioner has challenged the Appellate Authority's order dated 1st January 1965 mainly on the ground that, since it had preferred an appeal against the order passed by the Regional Transport Authority, Rewa, and, by force of this Court's order dated 28th April 1964, that appeal revived though for the limited purpose of selecting a suitable operator to take the place of Messrs Ashok Transport Company, the Appellate Authority was bound to consider its claims on merits. Having heard the counsel, we have formed the opinion that this contention is clearly well founded and must be accepted. When we partially quashed the grant of the second return trip permit and directed that the question of the grant to that extent be decided afresh, the legal effect of the order passed by us was that, for the purpose of reaching that limited decision, the position obtaining before the order quashed by us was restored, all the appeals were revived and the Appellate Authority was obliged to freshly consider the claims of the five appealing operators, though for the limited purpose of selecting which of them should take the place of Messrs Ashok Transport Company. There is no

analogy between the case of an Appellate Authority giving the advantage of its remand order made u/s 64 of the Motor Vehicles Act, 1939, to a non-appealing unsuccessful competitor for a stage carriage permit and this Court quashing, by a high prerogative writ issued under Article 226 of the Constitution, an erroneous order passed by an Appellate Authority and directing it to decide the matter afresh which necessarily implied that it had to be so decided in the same circumstances in which it was originally decided. We must, therefore, reject the suggestion that only the two operators, who moved this Court under Article 226, could claim the benefit of the order passed in those proceedings.

The learned counsel for the respondent 2, however urged that, for the disposal of the appeal filed by that respondent, a notice was issued to the petitioner and its counsel appeared on 2nd October 1964 but he did not raise any objection that the petitioner's appeal must be re-heard and its claims too must be freshly considered. It is difficult to accept this contention in view of the averments made in paragraph 9 of the petition to the effect that such an objection was actually raised and the Appellate Authority had verbally observed that it would be dealt with in the final order. In any event, this is at best disputed question of fact which cannot be availed of in these proceedings for founding or sustaining the contention. This is quite apart from the legal position that nothing that a party to the proceedings did, or did not do, could relieve, or be regarded as relieving, the Appellate Authority of its obligation to carry out the directions of this Court.

The result is that the petition succeeds and is allowed. The order passed by the Appellate Authority on 1st January 1965 is quashed and the case is remitted to that Authority for a fresh decision with advertence to the observations we have made in the foregoing paragraphs of this order. The contesting respondent 2 shall bear its own costs and pay those incurred by the petitioner to whom the security amount shall be refunded. Hearing fee Rs. 100.