

(2004) 11 AHC CK 0191

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 269 of 1980

Mahabir Prasad and Others

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Motor Vehicles Act, 1939 — Section 134, 47(1), 47(3), 57, 58(2)

Citation : (2004) 11 AHC CK 0191

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : C.P. Ghildiyal, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—In 1968, the petitioners were granted a joint stage carriage permit on the Muzaffarnagar-Budhana-Kandhla-Issa Purlil and allied routes by the Regional Transport Authority, Meerut pursuant to which permit No. 1395 was issued in favour of the petitioners. Since then the permit was being renewed from time to time and the same was lastly renewed till 8.6.1977. On 21.2.1977, the petitioners sent an application for the renewal of the permit by post. On 30.3.1977 the petitioners sent another application for renewal in which they enclosed part-A of the permit which according to the petitioners could not be enclosed in the earlier application. The application dated 30.3.1977 was published on 29.10.1977. The petitioners filed an objection dated 17.11.1977 intimating that the application for renewal is dated 21.2.1977 and not 30.3.1977 and, therefore, necessary corrigendum be issued or published. It transpires that the application dated 21.2.1977 which was sent by post was received in the office of the respondents on 30.8.1977 and instead of issuing a corrigendum, the application dated 21.2.1977 was itself published on 21.2.1978. Before the authority, the petitioners filed two affidavits dated 30.1.1978 and 15.4.1978 stating therein that the application for renewal dated 21.2.1977 was sent by post on 22.2.1977.

2. Upon the publication of the applications of the petitioners dated 21.2.1977 and 30.3.1977, the respondent Nos.3 to 7 filed objections before the authority stating therein that the application for the renewal of the permit was belated and was barred by time. The respondents, contemplating that a vacancy was likely to be caused due to the non-renewal of the permit, also filed applications for the grant of a permit on the expected vacancy anticipating that the renewal would be / refused by the authority.

3. The Regional Transport Authority after considering the two applications of the petitioners and the objections of the respondents by its resolution dated 24.5.1978 renewed the permit of the petitioners and rejected the objections and the applications for the grant of a permit of the respondents.

4. Aggrieved by the resolution of the Regional Transport Authority, respondent No. 3 to 7 filed an appeal before the State Transport Appellate Tribunal. The Tribunal by its order dated 31.12.1979 allowed the appeal setting aside the resolution of the Regional Transport Authority.

5. The petitioners have now filed the present writ petition challenging the correctness of the order of the Tribunal dated 31.12.1979.

6. Heard Sri C.P. Ghildiyal, the learned counsel for the petitioners and the Standing Counsel for respondent Nos.1 and 2. No one appeared for the private respondent Nos.3 to 7.

7. The learned counsel for the petitioners submitted that the Tribunal had committed a manifest error of law in doubting about the genuineness of the application dated 21.2.1977 and further erred in holding that the application for the renewal of the permit was barred by 21 days as it treated the application dated 30.3.1977 as the first application for the renewal of the permit. The learned counsel for the petitioners submitted that the Tribunal further erred in holding that the application for the renewal of the permit was not received by the authority within six weeks before the expiry of the period and that the Tribunal erred in holding that the mere fact that the application was posted did not mean that the application was received by the authority within the prescribed period. The Tribunal, therefore, erred in holding that the application for the renewal of the permit was barred by time and that the petitioners were not entitled for the renewal of the permit.

8. Admittedly, the Regional Transport Authority came to the conclusion that the applications of the petitioners for the renewal of its permit was filed within time as contemplated u/s 58(2) of the Motor Vehicles Act, 1939. The Tribunal on the other hand came to the conclusion that the application dated 30.3.1977 was barred by 21 days and therefore, the permit could not be renewed. The Tribunal in its order, held that the application dated 21.2.1977 cast suspicion about the genuineness of the applications and that the same was not a genuine one. The Tribunal while arriving at this conclusion was swayed by the fact that the envelope containing the renewal application was addressed to the "Regional

Transport Officer Meerut" whereas the application dated 21.2.1977 was addressed to the Regional Transport Authority Meerut. On this basis, the Tribunal rejected the petitioners' application dated 21.2.1977 for the renewal of the permit.

9. In my view, the conclusion arrived by the Tribunal is based on surmises and conjectures. Admittedly, the application dated 21.2.1977 was received by the Regional Transport Authority on 30.8.1977. Therefore, the genuineness of the application dated 21.2.1977 cannot be doubted nor does it create any suspicion. The Tribunal doubted the genuineness of the application dated 21.2.1977 only on the basis that it was received by the Regional Transport Authority on 30.8.1977 and therefore, presumed that the petitioners had manipulated the entire matter. In my view, the presumption drawn by the Tribunal is wholly illegal, and without any basis. There is no finding that the application was anti-dated or that the certificate of posting was forged or that the certificate of posting did not relate to the application. On the other hand, the wrong address written on the envelope could be a reason for the delay which occurred in transit. Consequently, I do not find any valid reason to concur with the findings given by the Tribunal and, therefore, the findings on this issue is set aside.

10. Looking at another aspect of the matter, I find that the petitioners could not be blamed for the delay caused in transit. The petitioners had no control over the post office. In my view the petitioner could not be held responsible for the delay.

11. It is not in dispute that the Motor Vehicle Act does not prescribe any particular method for receiving the application before the authority concerned. Therefore, an application could also be sent by post.

Section 58(2) of the Motor Vehicle Act states as under:-

"(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit:

Provided that the application for the renewal of a permit shall be made,

(a) in the case of a stage carriage permit or a public carrier's permit, not less than (one hundred and twenty days) before the date of its expiry; and"

12. From the aforesaid, it is clear that the application for the renewal of the permit must be made 120 days before the expiry of the permit. The petitioners made an application dated 21.2.1977 and posted it on 22.2.1977. In my view there was sufficient compliance and the petitioners had discharged their obligations in that respect. The petitioners could not be held to be responsible merely because the application was received belatedly by the respondents. The Tribunal committed an error in holding that the Post Office was the agent of the petitioners and that the petitioners alone was responsible for the delay.

In Bhikha Lal and Ors. v. Munna Lal, AIR 1974 366, a full Bench of this Court held-

"Further, I find myself unable to concur with the view that because of Section 44(1) of the Post Office Act the post office must necessarily be treated as the agent of the remitter and in no case of the payee."

And

"Moreover, if the circumstances so warrant, the post office may in a given case, be treated as a common agent both of the creditor as well as the debtor. The legal concept of a common agent of both parties to a transaction is not without judicial precedent."

And

"Thus, assuming that by reason of Section 44(1) of the Post Office Act, the post office is the statutory agent of the tenant, it can still be held to be the agent of the creditor also, provided the circumstances of the case justify that inference."

In *Shoran Lal Sharma v. Deputy Director of Education (1) Region Meerut and Ors.*, this Court, held that where the mode of preferring an appeal was not prescribed and the appeal sent by post was delayed on account of inefficient working of the postal department, in such cases, the delay should be condoned.

13. Thus, in the present circumstances of this case, I am of the opinion that the petitioners could not be held responsible for the delay that had occurred in the delivery of the letter which contained the application for the renewal of the permit. In any case, the delay, if any, was liable to be condoned considering the peculiar facts and circumstances of the case.

14. There is one other aspect that needs to be considered. The present controversy was raised when the Motor Vehicles Act, 1939 was applicable. Against the impugned order, the petitioners filed the present writ petition and an interim order was granted staying the operation of the order of the Tribunal. As a result of the interim order, the private respondents did not get any permit to ply their vehicles. On the other hand, in view of Section 134 of the Act, the petitioners continued to ply their vehicle during the pendency of the proceedings before the Tribunal and even during the pendency of the writ petition. The petitioners have filed a supplementary affidavit, which has not been controverted, stating therein that during the pendency of the writ petition, the authority had been renewing the permit of the petitioners from time to time.

15. The Motor Vehicles Act, 1939 was repealed and replaced by Motor Vehicles Act, 1988. Under the new Act the procedure for the grant of a permit has been liberalized.

16. In *Mithilesh Garg, Vs. Union of India and others etc. etc.*, , the Supreme Court held:-

"A comparative reading of the provisions of the Act and the old Act makes it clear that the procedure for grant of permits under the Act has been liberalized to such an extent that an intended operator can get a permit for asking irrespective of

the number of operators already in the field. u/s 57 read with Section 47(1) of the old Act an application for a stage carriage permit was to be published and kept for inspection in the office of the Regional Transport Authority so that the existing operators could file representations/ objections against the said application. The application, along with objections, was required to be decided in a quasi-judicial manner. Section 47(3) of the old Act further permitted the imposition of limit on the ground of permits in any region, area or on a particular route. It is thus obvious that the main features of Chapter IV "control of transport vehicles" under old Act were as under:

1. The applications for grant of permits were published and were made available in the office of the Regional Transport Authority so that the existing operators could file representations;
2. The applications for grant of permits along with the representations were to be decided in quasi judicial manner: and
3. The Regional Transport Authority was to decide the applications for grant of permits keeping in view of the criteria laid down in Section 47(1) and also keeping in view the limit fixed u/s 47(3) of the Act. An application for grant of permit beyond the limited number fixed u/s 47(3) was to be rejected summarily.

The Parliament in its wisdom has completely effaced the above features. The scheme envisaged u/s 47 and 57 of the old Act has been completely done away with the Act. The right of existing-operators to file objection and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of brining in the Act was to liberalize the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalization, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision u/s 71(3)(a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs."

17. Consequently under the Motor Vehicles Act, 1988 a permit could be granted merely on the asking. This could be a reason why the private respondents are no longer interested in contesting the matter. The private respondents were earlier contesting the matter for grant of a permit in the hope of a vacancy occurring on account of the non-renewal of the permit. Now under the Act of 1988, in view of the liberalization policy, a permit is given on the mere asking.

18. Thus, in my view, upholding the order of the Tribunal would serve no useful purpose. If the petitioners' permit is not renewed, they could easily apply for a

fresh permit which would be given on the mere asking.

19. Consequently, looking from all aspects of the matter, I see no reason why the order of the Tribunal should be allowed to continue. Therefore, in view of the aforesaid, the writ petition is allowed and the order of the Tribunal is quashed. The petitioners are entitled for the renewal of the permit. In the circumstances of the case, there shall be no order as to cost.