
(2015) 03 MP CK 0144

In the Madhya Pradesh High Court

Case No : Writ Petition No. 883 of 2015

Mahendra Gupta and Others

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 15-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1988 — Section 2(38), 2(40), 48, 68, 72(2)

Citation : (2015) 2 MPJR 9

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : H.D. Gupta, Senior Advocate and R.D. Sharma, for the Appellant

Final Decision : Allowed

Judgement

Sujoy Paul, J.—Petitioners and respondent No. 3 are in loggerheads on the question of validity of impugned order 15.12.2014. In this petition filed under Article 226 of the Constitution, the petitioners/bus operators have assailed the order dated 15.12.2014 (Annexure P/1) issued by State Transport Authority (STA). The brief facts necessary for adjudication of this matter are that the petitioners have permanent permit for two routes between Gwalior to Bhandar and Gwalior to Datia. Respondent No. 3 also has a permanent permit for the route Gwalior to Jhansi. Respondent No. 3 preferred an application dated 30.09.2014 (Annexure P/7). In the said application, it was prayed that the time schedule for movement of his vehicle be modified as per the prayer made in the said application. In addition, it is prayed that as per the modified schedule prayed for, the vehicle of respondent No. 3 be permitted to stop at various places including Dabra and Datia. On this application, the parties were heard by the STA.

2. Shri H.D. Gupta, learned Sr. Counsel for the petitioners, submits that the application of respondent No. 3 shows that he has prayed for twin relief namely (1) change of timing and (2) variation/stoppage permission. By taking this court to various items notified under M.P. Motor Vehicle Rules, 1994 (for brevity, the

"Rules of 1994"), it is contended that respondent No. 3 was required to pay two sets of fees. It is contended that, admittedly, Annexure P/7 was filed by only paying Rs. 1500/- as fees. In view of twin reliefs, two sets of fees i.e. Rs. 1500 each (Total Rs. 3000/-) was required to be paid. In absence of paying the requisite fees which was a condition precedent, the application was not entertainable. Shri Gupta further submits that the relevant items 16, 17 and 18 published under rule 145 of the Rules, leave no room for any doubt that payment of two sets of fees, as aforesaid, was a mandatory condition. By placing reliance on a judgment of Division Bench of this Court reported in 1964 MPLJ 347 (Azad Hind Motor Transport Co-op. Society Vs. Regional Transport Authority, Indore and others), it is contended that such application without payment of requisite fees could not have been entertained. In addition, it is contended that this kind of defect of non-payment of adequate fees is not even a curable defect.

3. Shri H.D. Gupta further contended that as per Section 48 of Motor Vehicles Act, 1988 (for brevity, the "Act") the route can be permitted to be changed only in public interest and such request may be made either by authorities or by public at large. This cannot be done on the request of stake holder or operator. Reliance is placed on 1989 MPWN 154 (Ramswaroop Shrivastava Vs. State Transport Appellate Tribunal, M.P.). To elaborate, Shri Gupta relied on Vivek Dwivedi and Another Vs. Prem Narain and Others, AIR 1999 MP 1 : (1999) 1 J LJ 61 : (1998) 2 MPLJ 618 wherein it was held that timings are given to facilitate the traveller and not for favouring any operator at the cost of others. Attention is drawn on page 5 of writ petition wherein time table is reproduced by the petitioner. By taking this Court to the said time table, it is contended that time table is fixed in such a manner by the STA that it will benefit the respondent No. 3 at the cost of petitioner. It is further contended that it will encourage racing and result into serious clash of time. Shri Gupta further submits that although this ground is not specifically raised in the petition but plain reading of order Annexure P/1 shows that the STA was consisting of a Chairman and two members. The matter was admittedly heard by three members but the order was delivered by two members. In the order itself it is mentioned that one member Shri Sanjay Chaudhary was transferred after hearing of the matter took place. He submits that serious constitutional defect emerged in view of the transfer of one of the member and therefore, it was not open for other two members to deliver the order. For this reason alone, it is contended that order is liable to be set aside.

4. Shri K.N. Gupta, Sr. Advocate for the respondent No. 3 supported the order. He submits that if definition of "route" is read with Section 80(3) of the Act, it will be clear that in the present case there was no "variation" in relation to "route" or permit. In absence of variation, the respondent No. 3 was not required to pay the twin fees as contended by the petitioners. It is submitted that entry 16 and 17 under Rule 145 make it clear that twin fees was not required to be paid. It is further contended that section 68 makes it clear that STA should not be consisting of less than a stipulated number of members. Even two members

are competent to pass the final order. It is urged that even if third member was there and decided in favour of the petitioner, the majority view would prevail and it is, admittedly, in favour of respondent No. 3. Thus, it is contended that absence of one member has not caused any prejudice to the present petitioners. He also relied on Rules 63 and 65 of Rules, 1994 to contend that powers are there to decide the matter when the strength of existing members is 2/3rd of the total members. The present strength of members in Annexure P/1 satisfies the said requirement and therefore, no interference is warranted.

5. In addition, Shri K.N. Gupta further submits that petitioners have deliberately made a wrong declaration that there is no other efficacious remedy available to them. It is contended that petitioners filed two review petitions before the authority but did not disclose about the same in the present petition. Thus, petition deserves to be dismissed for suppression of material facts. He further submits that order impugned shows that there was a racing between certain vehicles and therefore, in public interest, impugned order is passed. It need not to be interfered with. No other point is pressed by learned counsel for the parties.

6. I have heard learned counsel for the parties and perused the record.

7. Learned counsel for the parties during the course of argument fairly admitted that at present Appellate authority is not functional. I deem it proper to first deal with last contention of Shri K.N. Gupta wherein he stated that petition suffers from deliberate suppression of facts and misrepresentation. A plain reading of para 3 of the writ petition shows that petitioner has declared that at present there is no other efficacious, effective remedy available to him. Declaration of the petitioner is not that remedy is not at all available to him under the law. He declared that "at present" the remedy is not available to him. In para 2 of the petition, he disclosed that appellate Tribunal is not functional and despite filing revision under Section 90 of the Motor Vehicle Act, it cannot be heard and therefore, petitioner is knocking the door of this court I find no suppression whatsoever in the said paragraphs and therefore, petition cannot be dismissed on this score. Moreso, when admittedly the next higher statutory authority is not functional. This is settled in law that party cannot be made remediless. Merely because filing before revisional authority is continuing, that cannot be treated as an efficacious remedy available to the present petitioners who have also prayed for grant of interim relief by filing separate application. Accordingly, this objection of other side is overruled.

8. So far the question of filing of review petition by the petitioners and its suppression is concerned, I do not see much merit in this contention. No statutory provision could be shown which may throw light about availability of any remedy of review under the Act. In *Trilok Singh Dutta and Others Vs. State Transport Authority, Bihar*, AIR 1985 Patna 87, a Division Bench of High Court opined that power of review is creation of statute. There exists no power with State Transport Authority to review its own order either suo motu or pursuant to any application for review made by any person. Thus, even if review applications

are filed and the same are not disclosed in the petition, it cannot be said that suppression of said fact by the petitioner disqualifies him from obtaining any relief. The general rule about suppression of material fact is evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken. See, S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, AIR 2004 SC 2421 : (2004) 121 CompCas 99 : (2005) 4 CompLJ 503 : (2004) 3 SCALE 374 : (2004) 7 SCC 166 : (2004) 3 SCR 56 . Thus, I am unable to hold that the petition suffers from any such material fact because of which it should be thrown and petitioners should be deprived to address the court on merits.

9. It is contended by the petitioners that the application of respondent No. 3 was containing two sets of relief, for which two sets of fees were payable. The stand of respondent No. 3 is diametrically opposite. It is contended that he has prayed for only one relief, namely, change of time for its movement. On the aspect of stoppage, it is contended by respondent No. 3 that it does not fall within the ambit of "variation" as per section 80(3) of the Act. This aspect needs serious consideration.

10. Section 2(38) of the Act defines "route", which reads as under:-

"(38) "route" means a line of travel which specified the highway which may be traversed by a motor vehicle between one terminus and another."

Section 2(40) of the Act defines "Stage carriage", which reads as under:--

"(40) "Stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;"

Section 80(3) reads as under:-

"80.--Procedure in applying for granting permits -

(1) xxxxx

(2) xxxxx

(3) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing number of the trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit.

Provided that it shall not be necessary so to treat an application made by the

holder of stage carriage permit who provides the only service on any route to increase the frequency of the service so provided without any increase in the number of vehicles: Provided further that -

(i) in the case of variation, the terminal shall not be altered and the distance covered by the variation shall not exceed twenty-four kilometers;

(ii) in the case of extension, the distance covered by extension shall not exceed twenty four kilometers from the termini, and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof."

(Emphasis Supplied)

11. This is not in dispute between the parties that initial permit granted in favour of the respondent No. 3 was with regard to his non-stop travel between two stations, namely, Gwalior and Jhansi. Admittedly, as per the original permit, the vehicle of respondent No. 3 was required to reach Jhansi without there being any stoppage in between. In the application, Annexure P/7, the respondent No. 3 has prayed for change of timing for the movement of his stage carriage and also prayed for the stoppage at Dabra and Datia.

12. Section 72(2) of the Act deals with conditions of permit. The conditions (v) and (vi) read as under:-

"(v) that the stage carriage shall be operated within such margins of deviation from the approved time-table as the Regional Transport Authority may from time to time specify.

(vi) that within municipal limits and such other areas and places as may be prescribed, passengers or goods shall not be taken up or set down except at specified points."

(Emphasis Supplied)

A plain reading of condition (v) aforesaid makes it clear that it deals with time table for the purpose of movement of stage carriage whereas condition (vi) aforesaid deals with the specified points from where passengers or goods can be taken up by the operator. Thus, there exists two distinct entries and conditions in the permit issued by the competent authority. Section 80(3) of the Act makes it clear that application preferred for the purpose of varying the conditions of permit can be entertained. The pivotal question needs to be decided is whether the prayer in the application for seeking stoppage amounts to "variation" or not? In my view, it amounts to variation. The opening sentence of sub-section (3) of Section 80 is "an application to vary the conditions of any permit.....".

If it is read with Section 72(2)(vi), it is clear that seeking stoppage at specified point or its variation from the points mentioned in the main permit amounts to

variation. Any good dictionary will tell that variation means "change in the form, position, state, or quality of something: modification, alteration etc. (See, Webster's Third New International Dictionary). The effect of allowing the prayer of respondent No. 3 vide Annexure P/7 amounts to "variation" in one of the conditions mentioned in section 72(2) of the Act. Thus, it very much amounts to variation as per section 80(3). Rule 145 of Rules of 1994 prescribes "fees". It is made clear that the fee which shall be charged under the provisions of the relevant chapter is specified in the table. Learned counsel for both the parties relied on Entries 16 and 17 of the said table. It is apposite to quote Entries 16 and 17, which read as under:-

"16. In respect of an application for extension or variation in area or routes on a Permit or Countersignature of Stage Carriage/Contract Carriage permit.

Rs. 1,500.00

17. In respect of an application for change of timing of Stage Carriage/reserve Stage Carriage permit.

Rs. 1,500.00"

13. A bare reading of Entry 16 makes it clear that in respect of an application seeking variation in area or route, the applicant needs to pay Rs. 1500/-. Entry 17 deals with an application seeking change of timing. Thus, there are two distinct entries relating to change of timing and regarding variation in the route. The word "variation" used in section 80(3) read with Entry 17 is wide enough to include a prayer in which number of stoppage are sought to be modified, varied or changed. Thus, I find force in the argument of the petitioners that the application of respondent No. 3 was containing two reliefs for which two sets of fees were payable. The petitioners have placed reliance on the judgment of Azad Hind Motor Transport Coop. Society (supra), which is based on interpretation of Rule 50-A(3) of the erstwhile rules. However, even as per rule 145 of 1994 Rules, it is clear that the fee is chargeable for the purpose of entertaining an application. Putting it differently, rule 145 is couched in a mandatory language that the fees shall be charged as per the table specified below. The application must be filed along with the requisite fees because the Statute nowhere gives liberty to pay the fees at belated stage. In Azad Hind Motor Transport Coop. Society (supra), this Court opined that the requisite fees should accompany the application and without fee the application is defective, incomplete and invalid. The said defect is not even curable. In my view, although rule 145 of 1994 rules is differently worded, it must be given same meaning. The person seeking more than one relief based on different entries of the table aforesaid must pay the adequate number of court fees, which is related with his number of prayer. In other words, if the application seeking variation covers more than one entry of the said table, the number of fees must be in terms of and equal to number of entries. The respondent No. 3's application contains twin reliefs, which are covered in two different entries of said table, he must pay fees prescribed as per

the relevant entries of the said table. The said fee was required to be paid along with application and not at a later stage. Thus, I find error in the order of STA in entertaining the application without ensuring that it is pregnant with adequate amount of fees.

14. The impugned order of STA dated 16.10.2014 is attacked on yet another ground. It is contended that the petitioners took a specific stand before the STA that a sizable portion of the route of petitioners and respondent No. 3 is common. If desired time table is allotted, racing and clash of time is inevitable. It is seen that by Annexure P/8, the petitioners have filed their objection/written submission. This Court in *Ramswaroop Shrivastava (supra)*, opined that paramount consideration for granting route permit is to extend the maximum benefit to the traveling public. The consideration should not be therefore, based on the desire of permit holder but it should be based on following consideration:-

(a) The convenience of the travelling public, keeping in view the advantage of saving time,

(b) The journey not being broken in between, etc.. It was further held that for considering the aforesaid the representation of association representing the interest of travelling public, i.e. (i) Local bodies, (ii) Local authorities, (iii) District Advisory committee and (iv) Police authority, may be taken into consideration while fixing timings. The timing can be changed only in public interest and not on mere asking by the operator.

A Division Bench of this Court in *Vivek Dwivedi (supra)* opined that the timings are given to facilitate the travellers and not for favouring one operator at the expense of the other. If the impugned order is tested on the anvil of said principle laid down by this Court, it will be clear that STA has considered the claim of respondent No. 3 in juxtaposition to the permit issued in favour of Shri Mahendra Yadav and Shri Ghanshyam Motwani. In order to streamline the timing with said two persons, timing in favour of respondent No. 3 is changed. The petitioners have raised specific objection that it will be to their detriment. The STA dealt with this objection only in one paragraph by drawing conclusion that there is no clash of timings between the petitioners and the respondent No. 3. No reasons are assigned as to why the specific objection of the petitioners that a big portion of the route and time is same between the petitioners and respondent No. 3 (paras 1 and 2 of the objection, Annexure P/8) is not trustworthy. This is trite in law that reasons are heartbeat of conclusion. The Apex Court in *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, (2010) 9 JT 362 : (2010) 9 SCC 496 : (2010) 10 SCR 1070 : (2010) 8 UJ 4022 , opined that even the administrative authorities must assign reasons. In absence of reasons the conclusion cannot be permitted to stand. The STA without assigning any reason has merely stated that the decision is taken in public interest. However, as noticed by this Court in *Ramswaroop Shrivastava (supra)*, the decision must be based on certain relevant considerations, which have not been taken into consideration in the impugned order.

15. The last question raised by the parties is about the competency of the STA in passing the impugned order, Although there is no pleading in this regard in this petition. However, learned senior counsel Shri K.N. Gupta has not disputed the fact that the matter was heard by three members and order is passed by two members. This fact is also evident from the order itself (Annexure P/1). The Apex Court in Anil Kumar Gupta and Others Vs. State of U.P. and Others, (1995) 5 JT 505 : (1995) 4 SCALE 573 : (1995) 5 SCC 173 : (1995) 2 SCR 396 Supp held that contention in regard to glaring illegality although not specifically raised in the writ petition but is self evident can be taken into consideration. Admittedly, the STA was consisting of three members, namely, Shri Pramod Agarwal, Principal Secretary, Transport Department (Chairman), Shri Sanjay Chowdhary, Transport Commissioner (Member) and Shri Rajiv Sharma, Chief Engineer, PWD (Member). Admittedly, when the matter was heard by the Tribunal, it was consisting of three members aforesaid. However, before the order could be delivered, Shri Sanjay Chowdhary stood transferred. In this factual backdrop, the question is whether the STA was competent to deliver the order.

16. Rule 63(6) of the Rules of 1994 reads as under:-

"63. State Transport Authority-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) The quorum to constitute a meeting of the State Transport Authority shall be the Chairman or the nominated Chairman under the sub-rule (7) and two other members (whether official or non-official). If within half an hour from the time appointed for the meeting a quorum is not completed, the meeting shall be adjourned to such day and at such time and place as the Chairman or the acting Chairman nominated under sub-rule (7) may appoint and no quorum is necessary for holding the adjourned meeting."

(Emphasis Supplied)

This provision makes it clear that the quorum consists of a Chairman or his nominated person and two other members. Thus, ordinarily to meet the quorum, in total three members are required. However, this condition is not applicable when in the first meeting the quorum was not complete and it is adjourned for some other day or time. In the present case, at the time of hearing of the matter, the quorum was complete and, therefore, question of adjournment for want of quorum did not arise. Before delivering the order, one member stood transferred. Shri K.N. Gupta, learned senior counsel relied on rule 65 of 1994 Rules in this regard. However, there is no provision in this rule which deals with

this eventuality. In my view, the question is not of majority view among members. The argument of Shri Gupta was that even if third member would have been there and opined in favour of the petitioners, there would have been no difference because the majority view would be still in favour of the respondent No. 3. In my opinion, the core issue is regarding constitution of the STA and not about the majority view if constitution itself is defective, the question of minority or majority view has no significance. Since the matter was heard by all the members and meeting was neither adjourned nor covered by any other conditions of the Rules of 1994, the final order ought to have been delivered by all the members. If quorum of the STA was short by one member, its very constitution became defective. For this reason also the impugned order passed by STA is liable to be interfered with.

As analyzed above, the impugned order cannot sustain judicial scrutiny. Resultantly, the order dated 15.12.2014 (Annexure P/1) is set aside. Petition is allowed. No costs.