
(2016) 04 MP CK 0060
In the Madhya Pradesh High Court
Case No : W.P. No. 7690 of 2015

Mahendra Sharma

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 66, Rule 67, Rule 82
Motor Vehicles Act, 1988 — Section 68, Section 72

Citation : (2017) 1 MPLJ 426

Hon'ble Judges : Shri S.C. Sharma, J.

Bench : Single Bench

Advocate : Mr. A.S. Kutumble, Sr. Counsel with Mr A. Jain, Advocate, for the Intervenor in W.P. No. 7690 and 7590 of 2015; Mr. A.S. Kutumble, Sr. Counsel with Mr A. Jain, Advocate, for the Intervenor in W.P. No. 7978 of 2015; Mr. O.P. Solanki, Learned Counsel, for t

Final Decision : Allowed

Judgement

S.C. Sharma, J. - Regard being had to the similar controversy involved in above cases, they have been heard analogously together with the consent of the parties and a common order is being passed in the matter. Facts of WP No.7690/2015 are narrated as under:-

2. The petitioners before this court are Inter State Permit Holders and they are having valid permit issued from time to time by the Regional Transport Authority as well as by the State Transport Authority. Permanent permits were issued in favour of the petitioners and they were given a time schedule keeping in view the reciprocal arrangement, which is in existence with the State of Rajasthan as well as with the State of Madhya Pradesh.

3. Petitioners grievance is that on the website of Madhya Pradesh Transport Department, a list was published, including as many as 1500 permits and it was for changing the timings in respect of the permits issued to various transporters.

4. The first ground raised by the learned counsel for the petitioners is that Motor Vehicles Act, 1988 read with Madhya Pradesh Motor Vehicle Rules, 1994 provides for grant of Stage Carriage Permits and in respect for inter state permit the State Transport Authority is a competent Authority to grant permits and for Intra State Permit, the Regional Transport Authority is competent to grant permits. His contention is that change of timing amounts to issuance of fresh permits and the same cannot be done by the Secretary to the Regional Transport Authority.

5. Learned Sr. Counsel has drawn the attention of this court towards a notification issued by State Government (Annexure-P-5) dated 01-05-2013, by which the State Government in exercise of powers conferred u/s 68 of the Motor Vehicles Act, 1988 has notified Regional Transport Authority in respect of various regions. His contention is that by virtue of the aforesaid notification the Regional Transport Authority u/s 68 is competent to entertain an application u/s 72 of the Motor Vehicles Act, 1988 and, therefore, the list placed at Website by the Secretary to the Regional Transport Authority for change of timing is without jurisdiction. He has vehemently argued before this court that the Regional Transport Officer, who is Secretary to the Regional Transport Authority does not have any jurisdiction in the matter and the entire exercise initiated by the Secretary is bad in law.

6. Reply has been filed in the matter and the Regional Transport Officer, who is Secretary to R.T.O has gone to the extent in saying in paragraph-8 of the reply that he has taken a policy decision to change the timing, keeping in view the statutory provisions as contained u/s 72 of the Motor Vehicles Act, 1988. Return is silent as to how the Secretary has assumed the jurisdiction of the Regional Transport Authority. The return nowhere reflects under which provisions of law the Secretary R.T.A., who is Regional Transport Officer, Indore has assumed the jurisdiction or powers have been conferred upon him to act as Regional Transport Authority. Thus, the return does not disclose the sources of power derived by the Secretary. It is an undisputed fact that list has been published by R.T.O. is for change of timings. It has been vehemently argued that this exercise has been done only to oblige blue eye operators and timings have been changed at the behest of the Regional Transport Officer.

7. Reliance has been placed upon a judgment delivered by the Division Bench of this court in the case of Krishan Ballav Sharma and another v. State Transport Authority M.P. and another reported in 1992 J.L.J. 225. The attention of this court has been drawn towards paragraph-6 of the aforesaid judgment wherein the division Bench of this court has held that grant of frequency amounts to grant of fresh permits. Learned counsel has vehemently argued before this court that by the impugned notification issued in the website, the frequency is being changed and, therefore, as it amounts to grant of fresh permit, it is only the Regional Transport Authority/State Transport Authority who can pass an order and not the R.T.O, who has issued the impugned notices.

8. The intervenor has also filed the application and matter has been argued by

the intervenor also. The intervenor has drawn the attention of this court towards Annexure-I-2 dated 22-06-2016 and his contention is that Regional Transport Authority has delegated his powers to Regional Transport Officer.

9. This court has carefully gone through the Annexure-I-2 dated 22-06-2016, which in fact has not been issued under the Motor Vehicles Act, 1988 or under the Motor Vehicle Rules, 1994. Mentioning of one line that R.T.A. has ordered issuance of aforesaid notice will not mean that powers have been delegated by Regional Transport Authority to Regional Transport Office and therefore the arguments canvassed by the learned counsel for the intervenor is of no help to the intervenor.

10. In the present case the undisputed fact is that notice has been issued by the Secretary to the Regional Transport Authority which is on record Annexure-P-1 and a list of about 1500 permits is on record for change of timings. It is reiterated that no notification delegating the powers upon Regional Transport Officer has been brought to the notice of this court. In fact it is Regional Transport Authority, who is competent to grant permit, keeping in view Section 72 of the Motor Vehicles Act and Regional Transport Authority is appointed u/s 68 of the Motor Vehicles Act. Not only this in the matter of grant of Inter State Permit, there is a reciprocal arrangement between various States. Two States Agreement are on record ie Annexure-P-2 and P-3. Certain permits have been granted keeping in view the reciprocal arrangement and the impugned publication in the Website is also going to effect this Inter State Permit as change of timing will amount to grant of fresh permit as held by Division Bench of this court in the case of Krishan Ballav Sharma(supra).

11. This court is of the considered opinion that in absence of delegation of powers the Secretary to the R.T.A. has transgressed his jurisdiction and, therefore, the impugned notification issued by the Secretary deserves to be quashed and it is accordingly quashed. It is further clarified that all action taken pursuant to the notification issued by the Secretary to the R.T.A. are also quashed. However, it is made clear that in case fresh permit is required to be granted in the matter or timing are to be changed, the Regional Transport Authority or the State Transport Authority shall follow the prescribed procedure as prescribed under the Motor Vehicles Act, 1988 read with Motor Vehicles Rules, 1994.

With the aforesaid, the petition stands disposed of.