
(2012) 09 P&H CK 0250
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3423 of 2012 (O and M)

Manjit Kaur

APPELLANT

Vs

State Transport Appellate Tribunal and Another

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31, 34, 34(1), 34(3)
Motor Vehicles Act, 1988 — Section 89

Citation : (2013) 1 RCR(Civil) 446

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : B.S. Sudan, for the Appellant; Suvir Sehgal, Addl. A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—Learned counsel for the parties have been heard at length. Challenge in the present writ petition is to the order dated 11.7.2012 (Annexure P-5) passed by the State Transport Appellate Tribunal, Punjab, whereby the appeal preferred u/s 89 of the Motor Vehicles Act, 1988 filed by the present petitioner against the order dated 7.10.2008 passed by the Secretary, Regional Transport Authority, Jalandhar has been dismissed having been held to be barred by limitation.

2. Brief facts of the case are that the petitioner is the widow and legal heir of late Sh. Jaspal Singh, who had been granted one regular Stage Carriage Mini Bus Permit No. 401/Mini/ASR with four return trips daily on Rayya to Khadoor Sahib via Jallalabad route. Such permit was valid up to 29.11.2005. The husband of the petitioner had submitted an application for renewal of the permit which had been received in the office of the Secretary, Regional Transport Authority, Jalandhar on 20.12.2005. Such application was rejected by respondent No. 2 on 7.10.2008. Husband of the petitioner expired on 18.10.2008. The present petitioner being the widow/legal heir preferred an appeal u/s 89 sub clause (1) of the Motor

Vehicles Act, 1988 against the order dated 7.10.2008 on 22.4.2010. A stand was taken that the petitioner had become aware of the order dated 7.10.2008 on 26.3.2010. The State Transport Appellate Tribunal, Punjab vide impugned order dated 11.7.2011 has dismissed the appeal of the petitioner dated 22.4.2010 holding the same to be barred by limitation.

3. Learned counsel for the petitioner would make a reference to Rule 85 of the Punjab Motor Vehicles Rules, 1989 (herein after referred to as Rules), wherein the period of limitation has been prescribed for filing an appeal against an order passed by the State or Regional Transport Authority. Rule 85 of the rules reads in the following terms:-

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.

4. On the strength of Rule 85 of the Rules, learned counsel would contend that the remedy by way of an appeal against an order passed by the State Transport Appellate Tribunal to a person aggrieved of any such order is within a period of 30 days from the date of "receipt of the order". The precise submission raised on behalf of the petitioner, accordingly, is that the period of limitation would commence not from the date of knowledge of the order or from the date of the order itself but from the date of receipt of the order as has been stipulated in clear and unambiguous terms in the statutory provisions.

5. Per contra, learned State counsel in support of the impugned order would place heavy reliance upon a Full Bench judgement of this Court rendered in case of Jagtar Singh Vs. The State Transport Appellate Tribunal and Others,). Learned State counsel would submit that the precise question that fell for consideration before the Hon''ble Full Bench in Jagtar Singh's case (supra) was as to whether the period of limitation prescribed for filing an appeal under Rule 85 of the Rules against the 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 passing thereof. In the case of Jagtar Singh it had been held 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 passing of such order. It had further been held that the question as to whether or not the aggrieved party had any such knowledge

would have to be examined by the Tribunal in each case depending upon the peculiar facts and circumstances.

6. A perusal of the impugned order dated 11.7.2011 (Annexure P- 5) would itself reveal that while rejecting the appeal filed by the present petitioner on the ground of limitation it had been reasoned that intimation in regard to the order dated 7.10.2008 passed by the Regional Transport Authority had been sent to the permit holder namely Sh. Jaspal Singh through registered letter dated 15.11.2008. It has further been noticed that the post envelope which was available on the record would clearly reveal that the registered letter had been received back undelivered with the report that the addressee had expired. Accordingly, the entire basis for rejecting the appeal on the ground of limitation is that intimation regarding passing of the order dated 7.10.2008 had been sent to the permit holder through registered letter. It has also weighed with the State Transport Appellate Tribunal that the attorney of the permit holder had appeared in the meeting of the Regional Transport Authority in pursuance to which the impugned order had been passed and accordingly, it was held that the appellant had acquired knowledge of the impugned order.

7. Having heard respective counsel and having perused the pleadings on record, I find that the present writ petition deserves to be allowed.

8. The Hon"ble Supreme Court in a recent judgement of The State of Maharashtra and Others Vs. Ark Builders Pvt. Ltd., was seized of the question as to whether the period of limitation for making an application u/s 34 of the Arbitration & Conciliation Act, 1996 for setting aside an arbitral award is to be reckoned from the date a copy of the award is received by the objector by any means and from any source, or it would start running from the date a signed copy of the award is delivered to him by the Arbitrator. Having examined Section 31 sub clause (5) of the 1996 Act, which provides that an arbitral award is to be made in writing and to be signed by the Members of the Arbitration Tribunal and such arbitral award having been made a signed copy is to be delivered to each party along with Section 34 of the 1996 Act, wherein it was provided that recourse to a court for setting aside an arbitral award may not be made after three months having elapsed from the date on which the party making that application had received the arbitral award, it was held in the following terms:-

13. The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed u/s 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside u/s 34(1) of the Act. The legal position on the issue may be stated thus. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner

prescribed by the law.

9. It was further concluded by the Hon''ble Apex Court in the following terms:-

17. In the facts of the case the appellants would appear to be driving undue advantage due to the omission of the arbitrator to give them a signed copy of the award coupled with the supply of a copy of the award to them by the claimant-respondent but that would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case.

10. The principles relating to statutory interpretation are settled inasmuch as when the words of a statute are clear, plain or unambiguous, then the courts are bound to give effect to that meaning irrespective of consequences. Rule 85 of the 1989 Rules is couched in clear and categorical language, whereby the remedy by way of an appeal against an order passed by the State Regional Transport Authority is available to the party aggrieved by any such order for a period of 30 days from the date of receipt of the order. I find that the State Transport Appellate Tribunal, Punjab in terms of passing the impugned order dated 11.7.2011 has completely overlooked such aspect and has erroneously dismissed the appeal having been barred by limitation without even adverting to any facts from which a conclusion could have been derived about the period of limitation having commenced from the date the order dated 7.10.2008 passed by the Regional Transport Authority, Jalandhar having been "received" by the appellant/present petitioner.

11. The judgement rendered by the Hon''ble Full Bench of this Court in Jagtar Singh's case (supra) would be clearly distinguishable inasmuch as in the light of the peculiar facts of that case, it had been held that a party who is in knowledge about the order of rejection made by the State or Regional Transport Authority cannot sit back indefinitely, wait for a formal communication of the order and thereafter prefer an appeal at his sweet will. In the light of the facts of the present case, there is no strong/positive evidence of acquisition of the knowledge of the order dated 7.10.2008 by the appellant/present petitioner. The inference drawn by the State Transport Appellate Tribunal merely on account of the fact that intimation of the order dated 7.10.2008 passed by the Regional Transport Authority had been sent through registered post would be of no consequence as the impugned order (Annexure P-5) itself notices that such registered communication had been received back undelivered as the addressee had expired. Still further the mere fact that the attorney of the permit holder had been present on the date of the proceedings of the Regional Transport Authority in pursuance to which the order dated 7.10.2008 had been passed also cannot be construed as circumstances leading to the actual knowledge of the order by the present petitioner. For the reasons recorded above the present petition is allowed. The order dated 11.7.2011 (Annexure P-5) passed by the State Transport Appellate Tribunal, Punjab dismissing the appeal filed by the petitioner against the order dated 7.10.2008 is set aside. The matter is remanded back to the State Transport Appellate Tribunal, Punjab to decide the appeal of the

petitioner afresh on merits and in accordance with law.

Parties through their counsel are directed to appear before the State Transport Appellate Tribunal, Punjab on 1.11.2012.