

(1959) 09 PAT CK 0014

In the Patna High Court

Case No : M.J.C. No's. 770 to 772 and 791 of 1958

M.N. Sharma and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1908 — Section 12, 12(2), 29(2)
Motor Vehicles Act, 1939 — Section 64A

Citation : AIR 1960 Patna 212

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J

Bench : Division Bench

Advocate : P.R. Das and Saptami Jha, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. A common question of law arises for determination. in all these applications which have been heard together, namely, whether the order of the Minister of Transport of the Bihar Government, dated 4-10-1958, made u/s 64A of the Motor Vehicles Act, as introduced by the Bihar Amendment (Bihar Act XXVII of 1950) is illegal because the application was made by the Rajya Transport, opposite party No. 4, on 25-3-1957, long after the period of limitation as prescribed by the section had expired. Section 64A of the Motor Vehicles Act, as introduced by the Bihar Amendment, is in the following terms :

"64A. The State Government may, on application made to it in this behalf, within thirty days of the passing of the order in the course of any proceedings taken under this Chapter by any authority or officer subordinate to it, call for the records of such proceedings, and after examining such records pass such order as it thinks fit".

2. It is the admitted position that in all these cases the respective petitioners filed appeals u/s 64 of the Motor Vehicles Act before the State Transport

Appellate Authority against the order of the East Bihar Regional Transport Authority, Bhagalpur, refusing the renewal of the permits. The appeals were heard by the State Transport Appellate Authority and on 25-1-1957, the appeals were allowed by a joint judgment, and the applications of the petitioners for renewal of their permits were granted with regard to the routes in question. On 25-3-1957, opposite party No. 4, Rajya Transport, Bihar, made an application to the State Government for a revision of the order of the State Transport Appellate Authority.

The application was heard by the Transport Minister on 10-7-1958. On 4-10-1958, the application was allowed by the Transport Minister and the order of the State Transport Appellate Authority in favour of the petitioners was set aside. An argument was advanced on behalf of the petitioners before the Minister of Transport that the application of the Rajya Transport u/s 64A was barred by limitation. This argument was rejected by the Minister of Transport on the ground that the order of the State Transport Appellate Authority was communicated to the parties on 23-2-1957 and so the representation of the Rajya Transport made on 25-3-1957 was within the time-limit of thirty days prescribed by Section 64A of the Motor Vehicles Act.

3. On behalf of the petitioners the main argument put forward by learned counsel is that the Minister of Transport had no jurisdiction to entertain or to dispose of the application of the Rajya Transport u/s 64A of the Motor Vehicles Act, because the application under this section was made by the Rajya Transport to the State Government beyond the period of thirty days "of the passing of the order" by the State Transport Appellate Authority. In our opinion there is no merit in this argument. It is true that Section 64A of the Bihar Amendment imposes a limit of thirty days for the presentation of an application u/s 64A from the order of the State Transport Appellate Authority. But the language of Section 64A must be read in the context of Section 12(2) of the Limitation Act, which is in the following terms :

"12. (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded."

Reference must also be made in this connection to Section 29(2) of the Limitation Act, which provides as follows :

"29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law -

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply".

It is clear, therefore, that Section 12 of the Limitation Act applies to the present case and the question arises whether opposite party No. 4, the Rajya Transport, was entitled to exclude the period of time from 25-1-1957 to 2-3-2-1957, in computing the period of limitation prescribed u/s 64A of the Motor Vehicles Act. An argument was addressed on behalf of the petitioners that there is no material in the present case to show on which date the order of the State Transport Appellate Authority was communicated to the Rajya Transport. The Minister of Transport has however stated in his order dated 4-10-1958, that the order of the Appellate Authority was communicated to the parties on 23-2-1957.

The question as to the date of communication of the order to the parties is manifestly a question of fact, and we do not think that the question can be agitated by the petitioners in these writ applications. In any case, there is no material produced on behalf of the petitioners to show that the date of communication of the order given in the order of the Minister of Transport is erroneous. We, therefore, proceed on the assumption that the order of the State Transport Appellate Authority was communicated to the parties on 23-2-1957.

If that is correct, the Rajya Transport was entitled to deduct the period of time from 25-1-1957 to 23-2-1957, u/s 12 of the Limitation Act in computing the period of limitation. It follows, therefore, that the application u/s 64A was presented before the Minister of Transport by opposite party No. 4 within the period of thirty days allowed by Section 64A, and learned counsel for the petitioners is unable to make good his point that the application u/s 64A before the Minister of Transport was barred by limitation.

The view that we have taken is supported by a decision of the Calcutta High Court in *General Electric Co. of India Ltd. and Another Vs. Corporation of Calcutta and Another*, where it is pointed out by the learned Judge that the words "the time requisite for obtaining a copy" in Section 12 of the Limitation Act are not inapplicable in those cases where the appellant is not required to obtain a copy at his own expense by applying for it but is entitled by statute to get a copy from the authority or authorities concerned within a certain time.

In a case of this description the time taken by the authorities concerned to supply the copy would legitimately be "time required for obtaining the copy", so far as the appellant is concerned, and he will be entitled to its exclusion u/s 12(2) of the Indian Limitation Act in the matter of computation of the period of limitation. It is true that in the present case there is no statutory requirement that the State Transport Appellate Authority should send a copy of the appellate order to the parties concerned. But it appears that after hearing argument in the case the State Transport Appellate Authority fixed no date for pronouncing the

judgment.

It is stated in the order of the Minister of Transport that it is not the practice of the Appeal Board of the State Transport Authority to give any notice to the parties about the signing of the order of the Appeal Board, Nor was in fact any notice given, to the parties by the Appeal Board about the date of pronouncing the order or of signing the order, and the only time and the only means by which any of the parties could know about the order in these cases was when the order was communicated to the parties concerned by post. In our opinion, the provisions of Section 12 of the Limitation Act are applicable in the circumstances of the present case and opposite party No. 4, the Rajya Transport, was entitled to deduct the period of time taken by the Appellate Authority in communicating the order, namely, from 25-1-1957. to 23-2-1957, in computing the period of limitation for making the representation u/s 64A of the Motor Vehicles Act. We accordingly hold that the representation of opposite party No. 4 u/s 64A was not barred by limitation and the argument of counsel for the petitioners on this point must fail.

4. In our opinion, there is no case made out for grant of a writ under Article 226 of the Constitution. All these cases accordingly fail and are dismissed with costs. There will be a consolidated hearing fee of Rs. 200/- in all these cases.