

(1978) 01 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 439 of 1977

Mohd. Hafeez Khan

APPELLANT

Vs

State Transport Appellate Tribunal, Gwalior and Others

RESPONDENT

Date of Decision : 30-01-1978

Acts Referred:

Motor Vehicles Act, 1939 — Section 47
Partnership Act, 1932 — Section 4

Citation : AIR 1978 MP 116 : (1979) ILR (MP) 196 : (1978) JLJ 302 : (1978) 23 MPLJ 351 : (1978) MPLJ 351

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;S.S. Sharma, J;J.S. Verma, J

Bench : Full Bench

Advocate : P.C. Pathak, for the Appellant; V.S. Dabir and A.G. Dhande and S.Q. Hasan, for the Respondent

Judgement

S.S. Sharma, J.

This is a petition under Articles 226 and 227 of the Constitution of India for issuance of a writ of certiorari quashing the order, dated 30-8-1977 (Annexure-E), passed by the State Transport Appellate Tribunal.

When this petition came up before a Division Bench of this Court for admission, a copy of the decision, dated 3-3-1964, in Dharam Singh v. R. T. A. Gwalior (Misc. Petn. No. 436 of 1963) was brought to the notice of the Bench. In the opinion of the Division Bench, the question that was raised was of general importance and of frequent occurrence and so it felt that the point deserved to be considered by a larger Bench. Accordingly, it has come up before us.

The R. T. A. Bilaspur vide notification published in the Madhya Pradesh Rajpatra, dated 9-4-1976, declared scope for grant of a stage carriage permit on route Ambikapur-Nandamali via Darima for one return-trip daily. Prior to this, the permit had been granted to Motor Transport Worker, Ambikapur, but it was cancelled by the R. T. A. vide order, dated 6-2-1976, on account of no-operation.

In response to the aforesaid notification, the petitioner respondent No. 3 Shri Harbans Singh and the earlier permit-holder Motor Transport Worker applied for the grant.

The aforesaid applications were published in the Madhya Pradesh Rajpatra, dated 11-6-1976, inviting objections. In response to this, Messrs. Janta Transport Co-operative Society filed the objections against the applications of respondent No. 3 Harbans Singh and Motor Transport Worker. After hearing all the parties, the Regional Transport Authority granted permit to the petitioner for a period of three years on condition that he shall ply on the route a vehicle of the model of 1972 or of a later year which he shall put within one year.

Aggrieved by this grant in favour of the petitioner, respondent No. 3 Harbans Singh filed an appeal before the State Transport Appellate Tribunal. Before the Tribunal the petitioner filed certain documents to show that the Motor Transport Worker, whose permit on the route was cancelled earlier, was, in fact, a partnership firm, consisting of four partners, the petitioner being one of them, and that the partnership firm had been dissolved before the petitioner filed the application for the route in question. The documents and affidavits in this behalf that were filed have collectively been marked as Annexure-C. Besides these, the petitioner had also filed few other documents to show that respondent No. 3 was not a suitable person for the grant which have collectively been marked as Annexure-D.

The Tribunal, after hearing the parties, allowed the appeal, set aside the order of the Regional Transport Authority and granted the permit to respondent No. 3 on the condition that he shall ply a 1977-model bus on the route.

Respondent No. 3 in his return has alleged that the petitioner was the proprietor of the trading name "Motor Transport Worker" which held the stage carriage permit on the route in question. It also has been mentioned that from the records, both of the R. T. A. and the State Transport Appellate Tribunal, it is made out that the petitioner is the proprietor of the Motor Transport Worker. According to him, it were the lapses on the part of the petitioner in his individual capacity which had resulted in the cancellation of the permit. The respondent has averred that the documents marked by the petitioner as Annexures-C and D were not submitted to the Tribunal with notice to him and no such facts as are being put forth here were urged before the Tribunal.

The main grievance made by the learned counsel for the petitioner was about the following observation in para 7 of the impugned order, dated 30-8-1977, of the Tribunal:--

"No doubt, the respondent No. 2 had claimed the permit in question in his individual capacity but the fact has not to be ignored that he was the proprietor also of one Motor Transport works, who earlier had held the permit and whose permit came to be cancelled because of considerable non-maintenance of the service."

According to him, the impugned order is vitiated because of the Tribunal having wrongly taken the petitioner to be the proprietor of the Motor Transport Worker which, in fact, was a partnership firm. He went on to say that the past bad record of that partnership could not be taken into consideration against the petitioner as he had applied for the permit in his individual capacity. In support of his contention, he relied on the following observations in Dharam Singh's Case (M. P. No. 436 of 1963 D/- 3-3-1964 (Madh Pra)) (supra).

"This application must be granted. It is plain enough that the firm M/s. Hassa Nand Dharamsingh of which the petitioner was a partner was altogether a different entity from the petitioner in his individual capacity. That being so, if the operational record of the firm was adverse, that could not on any principle be taken into consideration for determining the suitability of the petitioner in his individual capacity for the grant of a permit on the route in question. The transport authorities went altogether wrong in rejecting the petitioner's application for the grant of a permit to himself on the basis of the record of the firm of which the petitioner was a partner."

We have first to examine as to what is the legal connotation of "partnership." Their Lordships of the Supreme Court in *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, have observed that partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners, while in the case of a company it stands as a separate juristic entity distinct from its shareholders. In yet another decision in *Her Highness Maharani Mandalsa Devi and Others Vs. M. Ramnarain (P) Ltd. and Others*,) their Lordships, while considering Order XXX of the Civil P. C., observed that the legal fiction must not be carried too far and it is for some purposes that the law has extended a limited personality to a firm which is not a legal entity. The persons who are individually called partners are collectively called a firm and the name under which their business as carried on is called the firm name.

A partnership contains three elements, viz., an agreement entered into by all the persons concerned; the agreement must be to share the profits of a business; and the business must be carried on by all or any of the persons concerned acting for all. The last element shows that the persons of the group who conduct the business do so as agents for all the persons in the group and are, therefore, liable to account to all. It is this last element which comes into play to find solution to the problem before us.

As has been laid down in numerous decisions, the main consideration which has to be taken into account in granting permit u/s 47 of the Motor Vehicles Act is the interest of the public in general and the advantages to the public of the service to be provided. While determining this question the past performance, if any, besides other factors, has also to be considered. If as a fact it is known that the business was being carried on by one or more of the partners acting for all and the performance had been unsatisfactory, we find no reason as to why the

bad operational record of that firm could not be taken into consideration if those or any of them who in fact had been carrying on the business acting for all apply for a permit. Such person or persons have no escape from the past bad operational record of the firm. No doubt, this will always be a question of fact. Whenever the past bad record of a partnership firm is placed before the Authority or Tribunal, it has to find out on the basis of the material before it whether the applicant or applicants for the permit was or were, in fact, acting for all in that partnership firm. We are, therefore, of the opinion that Dharam Singh's Case (M. P. No. 436 of 1963 D/- 3-3-1964 (Madh Pra)) (supra) has not been correctly decided.

Learned counsel for the petitioner then urged that there is no procedure for recording of evidence or for proving facts before the Regional Transport Authority or the Tribunal. For this reason, according to him, it would not be possible for a party to prove or disprove the aforesaid fact. We are not at all impressed with this line of argument. It was not disputed that questions of fact do arise in cases of grant of permits and the parties put their rival contentions on those facts by way of affidavits and documents. That being so, we fail to understand why could not facts relating to the aforesaid question be also placed before the authorities in the manner in which other facts are being placed.

Learned counsel for the petitioner sought support to his contentions from the language of Section 127-A of the Motor Vehicles Act. This section deals with the offences by companies. According to this section, if the person contravening any provisions of the Act is a company, then every person who, at the time the offence was committed, was incharge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. The proviso to this Sub-section (1) of Section 127-A exonerates any such person from liability if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. Sub-section (2) of this section further provides that notwithstanding anything contained in Sub-section (1), if the offence is committed by a company and it is proved that the offence is committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. In the Explanation--for the purposes of this section--"company" has been defined as "any body corporate and includes a firm or other association of individuals;" and "director" in relation to a firm, meaning as "a partner in the firm". In our opinion, the question before us cannot be solved by taking aid of this section. That apart, even assuming it to be applicable, it lends support to the reasoning which has been adopted by us and thus goes against the petitioner.

We are, therefore, of the opinion, that the bad operational record of a

partnership firm is a relevant fact when any of the partners of that firm applies for a grant of permit. The weight, however, to be attached to that bad record would be a question of fact depending upon the circumstances of each case. The decision in Dharam Singh's case, (M. P. No. 436 of 1963 D/- 3-3-1964 (Madh Pra)) in our opinion, does not lay down the correct law on the point.

The case be now placed before the Division Bench.