
(2001) 08 MP CK 0066
In the Madhya Pradesh High Court

M.P. State Road Transport Corporation	APPELLANT
Vs	
Ram Prasad Purohit and Others	RESPONDENT

Date of Decision : 18-08-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 103, 104, 105, 66, 67
Road Transport Corporations Act, 1950 — Section 3

Citation : (2002) 1 ACC 34 : (2001) 2 JLJ 392 : (2001) 3 MPLJ 339

Hon'ble Judges : S.S. Jha, J;N.G. Karambekkar, J

Bench : Division Bench

Judgement

S.S. Jha, J.

This Letters Patent Appeal is filed against the judgment and order passed by Vacation Judge in writ petition No. 797/1999 on 27.5.1999. This appeal is filed by Madhya Pradesh State Road Transport Corporation and State Transport Undertaking u/s 103 of the Motor Vehicles Act. Dispute relates to temporary permit inter-State route from Bhopal to Kota via Biaora, Bhojpur. This route is inter-State between Madhya Pradesh and Rajasthan. The route between Bhopal to Kota not in the schedule of any scheme of nationalisation of 182 kms. of this route overlaps Nationalised route and is specially reserved for State Transport Undertaking. Respondent No. 1 Ram Prasad Purohit is interested in plying Stage Carriage services on this exclusive portion of route and he has made various attempts to get permit on Bhopal-Kota and Bhopal-Neemuch route which covers 182 kms. of route from Bhopal to Bhojpur exclusively reserved for State Transport Undertaking. Earlier Ram Prasad Purohit was granted Stage Carriage permit over this route. In W.P. No. 1025/1997, this Court has held that grant of permit to respondent No. 3 is against provisions of law. While considering the scope of Section 105 of Motor Vehicles Act, 1988, (hereinafter referred to as the Act of 1988), this Court relying upon the judgment of Apex Court in the case of Karnataka State Road Transport Corporation Vs. Secretary, Karnataka State Transport Authority and Others, , held that the permit could not be given to private operator for any part of the inter-State route and order passed by the

S.T.A.T. to that extent was found against law. In the judgment of Karnataka State Road Transport Corporation (supra), the Apex Court interpreted the provisions of Section 68-FF of Motor Vehicles Act, 1939, which is identical to Section 104 of the Act and it was held that the proviso to Section 104 only entitles the party to a temporary permit when the State has not applied for grant of regular permit. Similarly u/s 104 of the Act, no temporary permit could be granted to a private individual over the route which forms part of the scheme. In the case before the Division Bench, respondent No. 1 Ram Prasad was party and before the Single Judge Dinesh Chandra Purohit, son of respondent No. 1 was party. Concealing all the earlier judgments, another petition was filed before this Court challenging the grant of permit to appellant-M.P. State Transport Corporation over the inter-State route. The case was listed before the Vacation Judge stating therein that the State Transport Undertaking has not paid tax amounting to Rs. 430 crores. Opportunity was given to Counsel for undertaking to file counter-affidavit/return in opposition to writ petition by 27th May, 1999, vide order dated 24.5.1999. On 27.5.1999, petition was allowed. Counsel for appellant submitted that an application to file certain document was moved on 24.5.1999 to be taken on record. No orders were passed on that application and case was hurriedly fixed for 27.5.1999 for hearing on admission and on 27.5.1999 Counsel for appellant namely Mr. Arvind Dudawat was required to go to Indore on account of some urgent work and he has moved an application for adjournment in the Court for 27.5.1999. On 27.5.1999, Law Officer of the Corporation appeared when the case was called for hearing and prayed for adjournment as the Counsel for appellant was unable to attend. Adjournment was refused and he was directed to engage any other Lawyer. Case was again called for hearing and was heard on 27.5.1999. Counsel was newly engaged who argued on the question of admission and submitted that respondent No. 1 has no locus standi in the light of earlier judgment of this Court and the case was not urgent to be heard during summer vacation. The judgment of this Court delivered in W.P. No. 771/1998 (Annexure P/I) by Hon. Mr. Justice S.P. Shrivastava was not brought to the notice of the Vacation Judge where the similar question between the same parties was considered and the effect of requirement of Rule 72(3) of Motor Vehicles Rules and It was held in this petition that taking into consideration the implications arising out of the observations made by the Division Bench of this Court. In the decision of this Court passed in W.P. No. 1223/1997 (Annexure P/6) in the case of Sukh Sagar Transport Proprietor v. State Transport Appellate Tribunal and Ors. it is held that deficiencies sought to be relied upon by the petitioner do not appear to have been substantiated at all and in the facts and circumstances of the case, it could not be held to be fatal so as to disentitle the contesting respondent (appellant in this appeal) to have the permit in question remain in his possession. This petition was decided between respondent No. 1 and appellant. Counsel for the appellant then submitted that the earlier judgments passed by this Court were not at all taken into consideration while delivering the judgment by the Vacation Judge. The judgment in the writ petition wherein it is held that Rule 72 of the Motor

Vehicles Rules is directory and not mandatory has not been considered. Copies of the orders are filed as Annexures P/6 and P/7 along with the memo of appeal. Instead of admitting the petition and passing orders on the question of an ad interim writ, petition was decided finally within a period of three days. Counsel for appellant submitted that there was undue haste in deciding the matter which has been concluded earlier by the judgments of Division Bench and Single Bench.

Counsel for respondent No. 1 submitted that the final order was passed with the consent of the parties and, therefore, there should not be any grievance about the final order. It will not be proper for us to comment anything contrary to which is recorded in the order-sheet. It was further submitted that the learned Single Judge has rightly held since appellant/Corporation is in heavy dues, therefore, appellant/Corporation is not entitled for permit. It has rightly been held that Rule 72(3) of the Motor Vehicles Act, 1994 (hereinafter referred to as the "Act") for grant of stage carriage permit on the route notified in the scheme shall be no application in the eye of law and directed grant of Stage Carriage permit to respondent No. 1. Counsel for appellant submitted that provisions of Rule 72 are framed u/s 70 of the Act forming part of Chapter V of the Motor Vehicles Act and he submitted that anything contrary contained in Chapter V is not applicable to State Transport Undertaking. Counsel for appellant invited attention to Section 103 of the Motor Vehicles Act and submitted that anything contained in Chapter V contrary to grant of permit shall not be applicable to State Transport Undertaking. In para 3 of the judgment, learned Single Judge has held that the application for the aforesaid permits had to be considered taking into account the provisions contained in Section 104 of the Motor Vehicles Act and then considering the rules framed under the Motor Vehicles Rules, 1988 known as Madhya Pradesh Motor Vehicles Rules, 1994, learned Single Judge has erred in relying upon the Rule 72, Sub-clause (3)(d) which stipulates that application for Stage Carriage permit as required under Sub-section (1) of Section 70 of the Act shall be accompanied by no, due certificate issued by the Regional Transport Officer and allowed the petition interpreting Rule 72 of Motor Vehicles Rules, 1994. Counsel for appellant, therefore, submitted that the judgment so delivered is contrary to the provisions laid down u/s 103 of the Motor Vehicles Act. Section 103 is reproduced below:

103: Issue of permits to State Transport Undertakings--(1) Where, in pursuance of an approved scheme, any State Transport Undertaking applies in such manner as may be prescribed by the State Government in this behalf for a Stage Carriage permit or a goods carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State Transport Undertaking, notwithstanding anything contrary contained in Chapter V.

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or, as the case may

be, the Regional Transport Authority concerned, may, by order--

(a) refuse to entertain any application for the grant of renewal of any other permit or reject any such application as may be pending;

(b) cancel any existing permit;

(c) modify the terms of any existing permit so as to--

(i) render the permit ineffective permit so as to,

(ii) reduce the number of vehicles authorised to be used under the permit;

(iii) curtail the area or route covered by the permit insofar as such permit relates to the notified area or notified route.

(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the State Transport Authority or any Regional Transport Authority under Sub-section (1) or Sub-section (2).

It is submitted that it is mandatory on the part of the State Transport Authority or Regional Transport Authority to issue permit to the State Transport Undertaking, notwithstanding anything to the contrary contained in Chapter V. (underline by the Court). Thus non obstante clause is used. Chapter V consists of Sections 66 to 96. Rule 72 of Motor Vehicles Rules relates to grant of permit u/s 70 of the Act. Anything contrary contained in Chapter V shall not be applicable to State Transport Undertaking. Private operator will be entitled for temporary permit, if Corporation has not filed application for any notified area or route. Finding of Vacation Judge that the application so filed by the State Transport Undertaking is no application in the eye of law does not appear to be correct. Since question of payment of tax was involved we have directed Counsel for State to address the Court on this question. Counsel for State has categorically stated that four recovery measures are being taken by the State Government. However, so long as scheme exists, appellant/ Corporation cannot be deprived from plying its vehicles on the specified routes. He further submitted that if on nationalised route appellants are stopped from plying vehicles then there is likelihood of chaos and many passengers will be stranded on roads and passengers will suffer great inconvenience.

Counsel for respondent No. 1 Mr. J.P. Gupta, Sr. Advocate has placed reliance on the judgment of this Court in the case of State of M.P. through Officer Incharge (Dy. Transport Commissioner) v. S.T.A.T. Gwalior and Anr. passed in W.P. No. 1616/96, wherein it is held that no operator can be permitted to ply a vehicle on a route without payment of taxes and dues. He also referred to a judgment in the case of Arbind Kumar Singh Vs. Nand Kishore Prasad and Others, and also referred to a judgment in the case of Vikram Shitole and another Vs. Madhya Pradesh State Road Transport Corporation and others, , wherein it is held that the State Transport Corporation having regular permits alone are permitted to ply its stage carriage on the notified route. No permission can be given to

unemployed graduates to ply their stage carriages on notified route under self-employment scheme. Apex Court has held that cancellation of their permits by authority is proper. Counsel for appellant has placed reliance in the case of District Manager, APSRTC, Vijayawada v. M.K. Sivaji and Ors. reported in AIR 2001 SC 383, and submitted that it is held that judicial discipline requires that Single Judge should either follow the Division Bench or refer the matter to Larger Bench. He cannot take different view. He further submitted that the road transport which is established u/s 3 of the Road Transport Corporation Act is under the control of the State Government and u/s 3 of the Road Transport Corporation Act, it is the State Government which may either perform the function itself or establish a Corporation which would be performing functions which are basically public functions because the State Government establishes a Corporation and that Corporation is an establishment distinct from the State Government does not ipso facto mean that Corporation is not under the control of the State Government.

Considering the facts of the case, we find that respondent No. 1 has not brought to the notice of the Vacation Judge the earlier judgments delivered between the parties. Petitioner before the Writ Court was a party to earlier petition wherein scope of Rule 72 was also considered. On bare perusal of Section 103 of the Act, it is apparent that permit shall be granted to State Transport Undertaking, notwithstanding anything contrary to Chapter V. Rule 72 which has been referred by the learned Single Judge refers to Section 70 of the Motor Vehicles Act which forms part of Chapter V, as such anything contained contrary to Chapter V will also include the rules made thereunder. Considering the facts of the case, learned Vacation Judge grossly erred in holding that provisions of Sub-rule (3) of Rule 72 and Subsection (1) of Section 70 are mandatory and applicable to State Transport Undertaking. The Vacation Judge has lost sight of provisions of Sections 103 and 104 of the Act and earlier judgments between the parties were not considered. It was not open for learned Single Judge to deal with the matter at new premises wherein it has been earlier held that Rule 72 is not mandatory.

In such facts and circumstances of the case, this appeal succeeds and is allowed and the judgment passed by the Vacation Judge is set aside and writ petition filed by respondent No. 1 is dismissed with costs. Counsel's fee Rs. 1,000/- if certified.