

(1992) 07 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 27 of 1982

M.P. State Road Transport Corporation

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 16-07-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 58(2), 58(4)
Motor Vehicles Act, 1988 — Section 81(5)

Citation : (1992) 2 MPJR 40 : (1992) 37 MPLJ 931 : (1992) MPLJ 931

Hon'ble Judges : S.K. Chawla, J;R.C. Lahoti, J

Bench : Division Bench

Advocate : D.V. Nigudkar, for the Appellant; M.G. Khedkar,A.G.A. and J.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Chawla, J.

In this writ petition, filed a decade back, the M. P. State Road Transport Corporation, challenges a revisional order passed by S.T.A.T., M. P., Gwalior dated 25-1-1982 (Annex. D) renewing stage carriage permit of respondent No. 3, M/s. Prabhat Transport Company.

First a few facts which are uncontroverted. Respondent No. 3, M/s. Prabhat Transport Company, is a private route operator which held an old regular stage carriage permit of the year 1962 (permit No. 41/62) over inter-State route Achalpur-Chincholi via Betul. The said permit was issued by "S.T.A., M.P., Gwalior and was countersigned by S.T.A., Maharashtra under the terms of reciprocal agreement. The permit was being renewed from time to time. The last validity of the permit expired on 25th of July, 1980. Meanwhile respondent No. 3, i.e. the permit holder, made an application for renewal of the said permit to S.T.A., M. P., Gwalior, 180 days in advance i.e. on 28-1-1980. On 16-5-980, the petitioner in the present petition, i.e. the M.P.S.R.T.C. filed an objection to the renewal of the said permit, as well as applied for a fresh grant of permit in lieu of renewal.

There was delay in the hearing of the matter because the Chairman of the S.T.A. was transferred. The hearing took place after about 19 months from the time the renewal application was made. The hearing by the S.T.A. thus took place on 25-8-1981, which was followed by an order, Annex. B, on the following day i.e. on 26-8-1981. By that order both the renewal application made by respondent No. 3 and application for fresh grant in lieu of renewal made by the petitioner-Corporation were directed to be kept pending. The consideration which weighed with the S.T.A. in directing that both the applications shall be kept pending was that on 12-12-1990 a draft scheme No. 87 of nationalisation had been published covering also the route in question. Respondent No. 3 feeling aggrieved by the said order of S.T.A. went in revision to S.T.A.T., M. P., Gwalior. The M.P.S.R.T.C. on its part apparently felt satisfied with the order of the S.T.A." and took no steps to challenge that order before the S.T.A.T. In the revision filed at the instance of respondent No. 3, the S.T.A.T. passed the impugned order dated 25-1-1982 (Annex. D) renewing the permit of respondent No. 3. This writ petition has been filed by M.P.S.R.T.C. challenging that order of the S.T.A.T. It is also pertinent to mention here that the new Motor Vehicles Act of 1988 came into force on 1-7-1989 repealing the previous Act of 1939. The above said draft scheme No. 87 could not receive approval of State Government and ultimately lapsed on 1-7-1990.

A perusal of the order of S.T.A. (Annex. B) would show that the said authority was of the view that the matter fell within the purview of Section 68-F(ID) of Motor Vehicles Act, 1939. This provision placed an embargo on the grant or renewal of permits, except temporary permits in certain circumstances, during the interregnum between the date of publication of draft scheme and date of publication of approved scheme in respect of proposed nationalised routes or portions thereof. The purpose behind this provision was that rights of private route operators might not be created or even their once existing rights might not be renewed to the prejudice of the proposed nationalisation scheme. But with respect to permits expiring after the date of publication of the draft scheme, an exception was made in the proviso to Section 68-F(1D) by providing that such permits might be renewed for a limited period; but renewal of even such permits was to cease to be effective on the publication of the approved scheme. What was to happen if a private route operator, although his permit expired before the date of publication of the draft scheme, had applied for renewal of his permit well within time and had not been guilty of laches? If his renewal application remained pending for no fault on his part and in the meanwhile the draft scheme was published, was he also to be refused renewal if only because the draft scheme had been published; although the renewal application if dealt with in proper time might have resulted in renewal of his permit before the date of publication of the draft scheme, in which case his permit would have come within the ambit of the proviso to sub-section (ID) of Section 68-F? To deal with such situation, the Supreme Court enunciated a rule, couched as a rider to proposition No. 2, in the decision *The Cheran Transport Co. Ltd. Vs. Kanan Lorry Service and*

Another, The rule was that if a permit holder whose permit was about to expire diligently did all that he needed to do and all that he could, that is to say, applied for renewal 120 days in advance, he thereby set in motion legal machinery for grant of renewal which should have ordinarily culminated within 120 days. If the renewal process got delayed, he could not be penalised. If a draft scheme in such a situation was published before the actual grant of renewal, that would not intercept or extinguish the process of renewal already set in motion. The renewal in such a situation might be considered and allowed even subsequent to the date of the publication of draft scheme. To such a situation to, the benefit of the proviso to sub-section (ID) of Section 68-F might be extended. The S.T.A.T., following this dictum of the Supreme Court, set aside the S.T.A.'s order and after considering the renewal application of respondent No. 3, allowed it by the impugned order, Annex. D.

Shri Nigudkar, learned counsel for the petitioner argued that the petitioner-Corporation too had applied for grant of fresh permit in lieu of renewal well before the prescribed time. The petitioner too was not guilty of laches in prosecuting its application. By the same token by which the renewal application of respondent No. 3 was considered even after the publication of draft scheme, the petitioner's application for fresh grant in lieu of renewal also deserved to be considered and the S.T.A.T. ought to have decided either in favour of respondent No. 3 or the petitioner whose merit was found to be superior.

We find it difficult to accept the above argument. It is true that an application for renewal of a permit under the repealed Act was made and disposed of as if it were an application for a permit, vide sub-section (2) of Section 58, Motor Vehicles Act, 1939. All the same, there was and is a basic difference between a renewed permit and a new permit. In the case of a renewable permit, once renewal is granted, the renewal relates back to the last date of the expiry of such permit vide sub-section (4) of Section 58 of Motor Vehicles Act, 1939 and the corresponding provision of Section 81(5) of the new Act of 1988. The continuity of the life of the renewed permit is thus ensured. Such is not the case with respect to a fresh permit. The life of a fresh permit comes into existence for the first time on the date of its grant. The result is that with respect to renewed permit falling within the dictum of Charan's case (*supra*) it can be said that although renewal order was passed after publication of the draft scheme, the renewal having related back, had taken place before the date of the draft scheme, so that the permit was alive even on the date of publication of the draft scheme, attracting proviso to sub-section (ID) of Section 58-F. This cannot be said with respect to a fresh grant of permit made after the date of the publication of draft scheme. About such a permit it cannot be said that it was in existence from a prior date and continued to be alive on the date of the publication of the draft scheme. We are of the view that the ratio in Charan's case (*supra*) has to be confined to the case of a renewed permit and cannot be extended to fresh grant of permit even in the situation described in Charan's case. Reference may be made to a decision of our own High Court in support to this view. That

decision is Punjab Sikh Regular Motor Service, Bilaspur v. Union of India and Ors. in 1987 MPLJ 776. In that case applications for fresh permits were made before publication of draft scheme. There was delay in the disposal of those applications and those applications came to be granted after the publication of the draft scheme in respect of routes specified in the draft scheme. It was held that delay was immaterial and those permits granted after the publication of the draft scheme were void and rightly cancelled by the S.T.A.T. in view of the bar contained in Section 68-F(1D). It was observed that Charan's case related to a renewed permit and not to a fresh grant of permit. We are of view that the same token by which renewal was permitted to respondent No. 3 could not be applied to the case of grant of fresh permit in lieu of renewal made by the petitioner and that the S.T.A.T. was not wrong in not considering the merits of the petitioner vis-a-vis respondent No. 3.

It is also not without significance that the petitioner did not challenge the S.T.A.'s order (Annex. B) in so far as it directed keeping pending of its application for fresh grant in lieu of renewal. The petitioner did not file a revision against that part of the order. On the other hand, respondent No. 3 feeling aggrieved by other part of the order by which the S.T.A. directed even his renewal application to be kept pending, went in revision against the order before the S.T.A.T. The petitioner having been satisfied with the S.T.A.'s order in so far as it directed keeping of its applications pending, and having failed to challenge that part of the order in revision before the S.T.A.T., cannot now be heard to say that even its applications should have been considered. This is apart from the fact, as we have already pointed out, that the ratio of Charan's case (supra) was not applicable to the petitioner's case of grant of fresh permit in lieu of renewal and hence its application was rightly not considered by the S.T.A.T.

The broad fact which one cannot help noticing is that respondent No. 3 has been operating on his permit for the last 30 years. That permit came, if at all, under a cloud because of the publication of draft scheme. That cloud was removed with the lapsing of the scheme on 1-7-1990. The permit is now above challenge in the situation presently obtaining. There is in the circumstances hardly any occasion or justification for interference with the impugned order of the S.T.A.T. in exercising our writ jurisdiction. It is not at all obligatory to exercise this jurisdiction unless justice of the case so demands.

Learned counsel for respondent No. 3, argued that the application for fresh grant in lieu of renewal made by the petitioner, which was directed to be kept pending, has lapsed after coming into force of the new Motor Vehicles Act of 1988 but that renewal application made on behalf of respondent No. 3 on the other hand did not lapse but survived for consideration even after the new Act. We do not feel called upon to decide this question as the same is not necessary for the decision of the present writ petition.

For the foregoing reasons, we see no merit in this writ petition. The same is accordingly dismissed. No order as to costs. The outstanding amount of security,

if any, shall be refunded to the petitioner.