

**(1975) 07 MP CK 0009**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 759 of 1972**

Mulakhraj

APPELLANT

Vs

State Transport Appellate Authority, M.P. Gwalior and Others

RESPONDENT

**Date of Decision : 31-07-1975**

**Acts Referred:**

Central Provinces and Berar Motor Vehicles Rules, 1942 — Rule 73

**Citation :** AIR 1976 MP 45 : (1977) ILR (MP) 308 : (1975) JLJ 878 : (1975) 20 MPLJ 734

**Hon'ble Judges :** R.J. Bhawe, J; J.P. Bajpai, J

**Bench :** Division Bench

**Advocate :** V.S. Dabir, for the Appellant; H.C. Kohli, for the Respondent

**Final Decision :** Dismissed

## Judgement

Bajpai, J.

The petitioner claims a writ of certiorari for quashing the order passed by the State Transport Appellate Authority on 26-5-1972, filed as Annexure "C" by which the case regarding grant of a regular permit on Guna-Mungawali route has been remanded to the Regional Transport Authority for taking a fresh decision and disposing of the matter according to law.

The facts relevant for the purposes of this petition are that applications were invited for one return-trip permit on the aforesaid route by the Regional Transport Authority, Gwalior. The petitioner and other respondent Nos. 3 to 5, were co-applicants. After publication of the applications, the question of grant of permit was considered by the Regional Transport Authority in its meeting held on 3-10-1968. The Regional Transport Authority, however, rejected all the applications on 4-10-1968 on the ground that because a portion of about 38 miles of the route was covered by an approved scheme of nationalisation of transport services, known as scheme No. 54, the route was not available for grant of permit to other operators and was reserved for operation by the State

undertaking in accordance with the provisions of the aforesaid scheme of nationalisation. The petitioner and other respondents, Nos. 3 to 5, preferred an appeal before the State Transport Appellate Tribunal at Gwalior.

The Appellate Tribunal was, however, of the opinion that the Regional Transport Authority had wrongly rejected the applications on the ground which did not exist. As a matter of fact, the route in question was not reserved for exclusive operation by the State Undertaking according to clause 5 of the Nationalisation Scheme and as such the applications were liable to be considered on merits. It is evident from the order of the Regional Transport Authority that the applications were rejected without consideration on merits under a wrong notion that the route was not available for operation by other operators. The State Transport Appellate Tribunal, however, instead of itself taking a decision for grant of permit in favour of any operator, remanded the case to the Regional Transport Authority with a direction that the applications be disposed of by him according to law after considering the merits of the applicants. The appeals registered as appeal No. A-407/68 (by Mulakhraj -- the petitioner, No. A-048/68 (by Satyendra Prakash Tiwari -- respondent 3), No. A-4,74/69 (by Ramnath -- Respondent No. 4) and A-56/70 (by Vishan-das -- Respondent No. 5) were thus partly allowed and the cases were remanded to the Regional Transport Authority.

The petitioner challenges the aforesaid order of the State Government Appellate Tribunal on the following two grounds:--

(1) That the Appellate Tribunal could not and should not have sent back the cases to the Regional Transport Authority, but should have itself decided the same because all relevant material was available on record, and even if some further material was needed, the same could have been obtained by the Appellate Tribunal;

(2) That the operative part of the order of the Appellate Tribunal creates scope for considering the cases of even such applicants who had not preferred any appeal before the appellate Tribunal against the order rejecting their applications.

Shri V. S. Dabir, learned counsel for the petitioner relied on a Full Bench decision of this Court in Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, M.P., Gwalior and Others, . Shri Dabir contended that the ratio of the aforesaid decision by the Full Bench of this Court clearly laid down that the Appellate Tribunal was not justified in making the order of remand. He went to the extent of saying that there was no such power of remand with the Appellate Tribunal unless it was shown that the material on record was insufficient to decide the matter and that further enquiry, which was necessary, was of such a nature that it could not be conveniently undertaken by the Appellate Authority. He also relied on the language of Rule 73 (c) framed under the Motor Vehicles Act relating to the powers of the Appellate Authority.

We have gone through the judgment relied on by the learned counsel for the petitioner. The Full Bench comprised of Shri Bishambhar Dayal, the then Chief

Justice, Shri Justice R. J. Bhavé and Shri Justice A. P. Sen. Three separate judgments have been recorded. Shri Justice Bhavé dissented from the view expressed by Shri Bishambhar Dayal, the then Chief Justice, enunciating the proposition that there could be no remand unless the evidence was insufficient and that the further enquiry, which was necessary, was of such a nature as could not be conveniently undertaken by the Appellate Authority. Shri Bhavé, J., however, agreed that in the particular case, involved in the Full Bench decision, the order of remand passed by the Appellate Authority was liable to be quashed and the Appellate Authority was to be directed to dispose of the appeals according to law. Shri A. P. Sen, J., made the following observations in his judgment:--

"8.....An order of remand under Rule 73 (c) would be a proper order, if it is made by the Appellate Authority, in a case where there is no material or in which the material on record is not sufficient for reaching a decision on the point at issue or where there is some material defect in procedure which renders the proceedings before the Regional Transport Authority radically defective..... The Appellate Authority being itself a Court of fact, and having all the evidence in the case before it, and being specifically empowered to direct such further investigation into facts, as it may deem necessary, is entitled on such material or on the basis of such additional facts as come to light, to arrive at a different finding or come to a contrary conclusion, on that evidence, if in its opinion the Regional Transport Authority's finding was wrong."

These observations by Shri A. P. Sen J. clearly indicate that the Appellate Authority has full jurisdiction, in a case, to decide the case on facts also, if it finds that the findings of the subordinate authority are wrong and there is sufficient material on record to decide the issue. Shri Sen J. has also observed that the Appellate Authority could call for additional facts also and could reverse the wrong finding of the subordinate authority on the basis of such additional material. These observations cannot be said to enunciate the principle that the Appellate Authority is compelled and duty bound to decide the case finally even in the absence of any finding recorded by the subordinate authority or Tribunal and if it does not do so and remands the case by its order, then the same will be without jurisdiction. What course the Appellate Authority should adopt depends upon the nature of each case. If the facts and circumstances are present and the subject-matter needs immediate decision, it will be definitely open to the Appellate Authority to take a decision either on the basis of evidence already on record, or after taking additional evidence, but it does not necessarily mean that this course must be adopted as the only course so as to render any direction of remand as one without jurisdiction. This will be absolutely against the specific language, giving wide powers to the Appellate Authority by Rule 73 (c) to make any order that may be just and proper after setting aside the impugned order. The question of propriety of an order cannot be decided by any hard and fast rule of universal application. It always depends upon the facts and circumstances of each case. Under these circumstances, the perusal of the judgments of Shri

Bhave J. and Shri A. P. Sen J. makes it clear that the ratio of the majority view of the Full Bench case was not that there is no power to remand a case even in the absence of a finding by the original Court or a Tribunal.

Shri A. P. Sen J. further observed in paragraph 6 of his judgment that-

"The language of Rule 73 (c) is not, therefore, one of curtailment but it expressly leaves the questions at large before the Appellate Authority which has not only full jurisdiction and power in the matter of grant or refusal of permits just as the Regional Transport Authority has, but may in the exercise of that jurisdiction make such further enquiry as it deems expedient."

The question then is whether the power to remand a case must be regarded as having been conferred by necessary implications. It is certainly not excluded by the terms of Rule 73 (c) of the Motor Vehicles Act. Whether there is a special provision or not, the power to order a remand must be taken to be inherent in every Appellate Court or Tribunal in its very constitution as an appellate authority. In paragraph 7, Shri A. P. Sen, J. observed-

"Now, the Appellate Authority under Rule 73 (c) has a right to set aside the order against which the appeal is preferred. When it does so, it may go further and substitute its own order for the order appealed against or it may go so far and merely quash the order and require the Regional Transport Authority to restore the case to its file and decide it afresh. That construction of mine is clearly borne out by the language of Rule 73 (c)....."

These observations are clearly in consonance with the observations made by Shri Bhave J. Under these circumstances, even if the impugned order of remand in the Full Bench case was quashed by this Court, the said decision does not lay down any such proposition as suggested by Shri V. S. Dabir, learned counsel for the petitioner. The existence of a power to pass any order cannot be construed so as to take away the jurisdiction of the Appellate Authority to remand a case, if it does not itself pass any order on merits of the case on the ground that subordinate Tribunal or Court had not at all given any finding. It is true that in a particular case where it was brought to the notice of the Court that further remand will cause great hardship, for instance, a case under the Motor Vehicles Act involving grant of permit over a route not provided with any transport facility or in immediate need of additional facilities of transport, the Appellate Authority may itself decide the case even in the absence of any finding by the subordinate Court. But this does not mean that it must do so.

In this case, the applications were rejected on the sole ground that the route was not available for operation by others. This was under a wrong notion about the effect of the scheme of nationalisation. Where cases are dealt with and considered on merits by the subordinate authority, i.e. the Regional Transport Authority, there is always a larger scope for proper scrutiny and screening of the applicants even at the instance suo motu of the Regional Transport Authority, because while deciding grant of permit, the larger interest of travelling public is

the main factor. Even if various applicants are not able to bring sufficient material, the Regional Transport Authority is always equipped with necessary data land records and is in a position to check and verify the various allegations and counter-allegations made by the parties. All this cannot be done so conveniently by the Appellate Authority i.e. the State Transport Appellate Authority.

Thus, if in the absence of any such case of urgency or public inconvenience, brought to the notice of the Appellate Authority, the case is remanded for a fresh disposal by the Regional Transport Authority, such an order does not become either illegal or without jurisdiction so as to call for interference by us in exercise of our jurisdiction under Articles 226/227 of the Constitution of India. The ratio of the Full Bench decision, as discussed above, also does not render such an order of remand as illegal or without jurisdiction.

A perusal of the judgment recorded by Shri Bishambhar Dayal, the then Chief Justice, makes it clear that he also did not rule out the possibility of making an order of remand. He was mainly concerned with the facts and circumstances that delay in disposal of the applications for grant of permits causes great inconvenience to the travelling public and the proper and convenient procedure in such cases would be to dispose of the appeals finally as far as possible. As observed in paragraph 9 of the judgment, his Lordship expected that remand should not be made only to enforce judicial discipline and, therefore, the proper principle on which a remand order can be made was that the material on record was insufficient to decide the matter and the further enquiry could not be conveniently undertaken by the Appellate Authority.

The other members of the Bench i.e. Shri Bhav J. and Shri A. P. Sen J. have not gone to this extent. Their observations in this respect keep the question of making a remand at large before the Appellate Authority in his discretion according to the facts and circumstances of each case. For the reasons stated above, we find that the first contention urged by the petitioner is of no avail and cannot be accepted so as to invalidate the order passed by the Appellate Authority in the present case.

So far as the second contention is concerned, reading of the operative part of the order in paragraph 6 of Annexure C, as a whole, makes it clear that the remand was confined to the cases concerning the four appeals preferred before the Appellate Authority. The Appellate Authority has, in the beginning of paragraph 6, made a specific order regarding success in part of the four appeals and then it has been observed that the order dated 4-10-1968 passed by the Regional Transport Authority is set aside and, therefore, it has been stated that the cases are remanded to the Regional Transport Authority, Gwalior, with the direction that examination of those cases be made de novo, in the light of the provisions of the Scheme and then appropriate decision on merits be taken thereafter. The specific mention of the words -- "these cases are remanded" and "examination of those cases be made de novo" is sufficient enough to indicate that the order of remand

is confined only to the cases, which were pending in appeal before the Appellate Authority and the details of which have been specifically quoted in the operative part of the order. Thus, this ground of attack also fails.

The petition, therefore, deserves to be dismissed and is accordingly dismissed with costs. Counsel's fee Rs. 100. The amount of security, if any, disposed be refunded to the petitioner after deductions of costs.