

(2001) 01 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4456 of 1991

Nirmala Devi

APPELLANT

Vs

Regional Transport Authority, Kanpur and Others

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 59(1), 62(2)

Citation : (2001) 01 AHC CK 0043

Hon'ble Judges : A.K.Yog, J

Final Decision : Allowed

Judgement

A. K. Yog, J.—Heard learned counsels for the petitioner as well as the respondents and perused the record of the case

2. Smt. Nirmala Devi petitioner has approached this Court under Article 226, Constitution of India and seeks to impugn the judgment and order dated 9th January, 1991 (Annexure 4 to the writ petition) by means of which Respondent No. 2/State Transport Appellate Tribunal, U.P., Lucknow, passed an order of remand directing Chairman, Regional Transport Authority, Kanpur (Respondent No. 1) to decide the matter afresh.

3. Detailed facts of the case are not required to be noted as the legal question, raised by the learned counsel for the petitioner, can be decided without referring to the same.

4. Learned counsel for the petitioner submitted that order of remand cannot be justified in view of the facts of the case mentioned in the impugned order and State Transport Appellate Tribunal (Respondent No. 2) has failed to discharge its statutory obligation to decide the appeal before it on merit and none of the conclusions/finding of the Appellate Tribunal in the impugned order warranted its approach to send the case back for de novo hearing of all of the matter and thus, saddling the parties with unnecessary expenses besides waste of time of the

authorities and concerned parties.

5. The State Transport Appellate Tribunal, narrated facts of the case, noted its long and chequered history (Para 12 of the order); referred to huge bulk of the case; observed that it attempted to ransack the relevant record; referred to Section 59 (1) and Section 61 (2) of the Motor Vehicles Act (Old) and observed, "if I go by the words that precede the order impugned, they speak of Section 61 (2) of the old Act, which could not have been deployed by the R.T.A." In Para 16 of the order it is observed that "in fact, the matter was not taken up in its correct perspective by the R.T.A. and it had allowed itself to be swayed by so many factors which I can say as irrelevant and in germane to the controversy in issue before it"(R.T.A.).

6. The State Transport Appellate Tribunal undoubtedly failed to discharge its statutory obligation and erred in not deciding the matter on merit. Jurisdiction or power to remand can be exercised by a Court/Tribunal only on limited grounds permissible under law.

7. The State Transport Appellate Tribunal/Respondent No. 2 does not say that the matter in issue could not be decided on the basis of material already existing on record, also party applied before it for filing any particular material for deciding a particular issue, which remained to be adjudicated by the Court/Tribunal whose order was under appeal.

8. Reference is made to the judgment dated 30th August, 1968 in C.A. No. 1610 of 1968 in the case of Indian Army and Police Equipment Factory and others v. Kanodia Brothers and another, decided by the Apex Court wherein the Supreme Court has observed:

?A first appeal is a rehearing and if the parties have led all the evidence they desired, it is the duty of the First Appellate Court to give its own conclusion upon the evidence before it. If a trial Court does not properly understand the pleadings of the parties or it does not decide according to the evidence led upon these pleadings, it is for the appellate Court to reverse the findings and give its own findings; again if an issue has been decided by the trial Court in a very perfunctory manner, it is for the first appellate Court to give its decision. The High Court has ample powers to remand in cases where the ends of justice so demand. But in the instant case there is no scope for a fresh trial and throw away all the costs which have been incurred upto date. The High Court had no object of saying that fresh evidence may be adduced in the case. If it was necessary to have some additional evidence, the High Court could itself exercise powers under Order 41, Rule 27 of CPC, and if that rule did not enable it to call for additional evidence, it would be merely by passing the provisions of that rule to send the case back for fresh trial.?

9. It is not disputed, rather conceded to by the counsel for the parties that appellate powers of State Transport Appellate Tribunal comprise of jurisdiction to decide both questions of facts and law as could be done by the authority below

it. The State Transport Appellate Tribunal exercised parallel and co extensive powers as possessed by Regional Transport Authority (Respondent No. 1).

10. In view of the above, the impugned order of remand dated 9th January, 1991 (Annexure4 to the writ petition) is quashed. State Transport Appellate Tribunal/ (Respondent No. 2) is directed to decide appeal in accordance with law.

11. Writ Petition stands allowed.

12. No costs. Petition allowed.