

(2007) 10 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 549 of 2006

Nishar Ahmed

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 88(6)

Citation : (2008) 1 WLN 322

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Judgement

Govind Mathur, J.—This petition for writ is directed to challenge validity, propriety and correctness of the judgment and order dt. 15.12.2005 passed by State Transport Appellate Tribunal, Rajasthan quashing the permit sanctioned by Regional Transport Authority, Chittorgarh (here in after referred to as "the RTA") for Begun-Rawatbhata route in favour of the petitioner by an order dt. 19.09.2003.

2. The facts leading to present controversy and necessary to be noticed for adjudication of instant petition for writ are as follows:

3. The Government of Rajasthan and the Government of Madhya Pradesh entered into a reciprocal transport agreement on 18.07.2001 with regard to operations of stage carriage on inter-State routes between Rajasthan and Madhya Pradesh. The agreement incorporated non-notified routes in Annex.-A and notified routes in Annex.-B. It was also agreed that the stage carriage permit of both the States countersigned prior to agreement dt. 18.07.2001 shall be valid till their validity.

4. The routes Chambal Dam to Begu via Ratangarh, Bhilwara to Bhainsrodgarh via Dhardi-Singoli, Begun and the route Chotisadri to Neemach via Dhamania were included in Annex.-B at Serial Nos.11, 13 and 33 respectively.

5. By a supplementary reciprocal transport agreement dt. 30.06.2003 the State of Madhya Pradesh and the State of Rajasthan agreed to shift three routes referred above to Annex.-A from Annex.-B. By the same agreement anew route Begun-Rawatbhata via Singoli was added in Annex.-A of the agreement dt. 18.07.2001. Relevant details of the agreement as set out are quoted below:

Begun-Rawatbhata via Singoli may be added in the Annex.-A of the said agreement. The scope of these inter-State stage carriage routes shall be as per Annex.-A.1, which shall become part of the Annex.-Act the existing reciprocal agreement dt. 18.07.2001.

6. The supplementary reciprocal agreement was published in Rajasthan Gazette on 17.07.2003 and in Madhya Pradesh State Gazette on 24.12.2003.

7. The RTA, Chittorgarh under an order dt. 19.09.2003 after considering 25 applications for grant of permit to operate stage carriage on Begun-Rawatbhata via Singoli route held 10 permits earlier granted covered under the limit of 15 permits fixed for Begun-Rawatbhata route and against remaining five vacancies granted five permits including one sanctioned in favour of the petitioner. The sanctioned permit was issued by the competent authority and was also countersigned by the competent authorities of Transport Department of the State of Madhya Pradesh.

8. By way of filing appeals a challenge was given to the order dt. 19.09.2003 by unsuccessful applicants before the State Transport Appellate Tribunal, Rajasthan and the Tribunal by its judgment dt. 15.12.2005 accepted the appeals and quashed the order impugned with a direction to consider applications afresh as per conditions referred in reciprocal agreement. While accepting the appeals the Tribunal held that (1) the supplementary reciprocal agreement was published in Rajasthan Gazette on 17.07.2003 and in the Gazette of Madhya Pradesh on 24.12.2003, therefore, as per provisions of Sub-section (6) of Section 88 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act of 1988") the RTA was having no authority or jurisdiction to sanction a permit for newly added route i.e. Begun-Rawatbhata via Singoli; and (2) the route Begun-Rawatbhata via Singoli was a new route added by supplementary reciprocal agreement and that was not existing in any prior reciprocal agreement, thus, for that route the permits sanctioned for other routes such as Bhilwara-Bhainsrodgarh/Chittorgarh-Bhainsrodgarh could not have been validated.

9. Feeling aggrieved by the judgment and order dt. 15.12.2005 this petition for writ is preferred mainly on following grounds:- (1) after participating before the RTA for grant of permit and on being unsuccessful in getting permit to operate stage carriage on Begun-Rawatbhata via Singoli the appellant respondents No. 4 to 7 were barred to challenge the order dt. 19.09.2003 as per the doctrine of estoppel by acquiescence and by deeds; (2) the supplementary reciprocal agreement dt. 30.06.2003 was nothing but a corrigendum to the reciprocal agreement dt. 18.07.2001, thus, the date of its coming into force is to relate back

with the date on which original reciprocal transport agreement came into force; and (3) the Begun-Rawatbhata via Singoli route was not a new route but was only a curtailment of Bhilwara-Bhainsrodgarh route referred in earlier reciprocal agreement, thus, the Tribunal by order impugned erred while treating it as a new route.

10. To support first contention, reliance is placed by counsel for the petitioner on several judgments, however, none of these actually substantiate the contention advanced.

11. In the case of Rukmini Amma Saradamma Vs. Kallyani Sulochana and others, , on confirmation by the Appellate Court an order of eviction from the rented premises a revision petition was preferred before the District Court and that was dismissed. A second revision petition there after was preferred before the High Court u/s 115 CPC and that was accepted by remitting the matter to the trial Court. On remit, the trial Court dismissed the application for eviction but the Appellate Court accepted the same and directed eviction of the tenant from rented premises. The Division Bench of the High accepted the revision petition by holding that bonafide need was not proved warranting eviction of the tenant. In an appeal by special leave it was urged that the order passed by the High Court at first instance remitting the matter to the trial Court was void as no second revision was permissible. While dealing with the argument Hon''ble Apex Court held that in pursuant to the order of remit party took a chance by participation in the proceedings before the trial Court, taking up matter to the appeal, thus, having acquiesced in these proceedings no question could have been raised to challenge the first remit order.

12. In the case of Prasun Roy Vs. Calcutta Metropolitan Development Authority and Another, , it was held that long participation and acquiescence in the proceedings preclude such a party from contending that the proceedings were without jurisdiction.

13. In the case of Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, Hon''ble Supreme Court restrained a party from re-agitating a grievance that was consciously waived by the party concerned at an earlier stage.

14. In the case of Suneeta Aggarwal Vs. State of Haryana and Others, a candidate (appellant herself) did not choose to assail validity of an order declining her appointment and decided to participate in fresh selection proceedings was estopped to challenge the earlier order declining appointment on being unsuccessful in subsequent selection proceedings.

15. In the case of G. Ramanna Chowdary Vs. The Government of Andhra Pradesh Home (Transport III) Department and Others, , Division Bench of Hon''ble Andhra Pradesh High Court held that "having submitted to its jurisdiction and taken a chance of a favourable order, the petitioners cannot turn round and object to the jurisdiction of the Regional Transport Authority before the Appellate Authority, when the order of the Regional Transport Authority was against them. Such an

objection having not been raised before the Regional Transport Authority or the Appellate Authority could not have been taken before the Government.

16. In all the cases referred above the doctrine of estoppel by acquiescence or deeds was considered and applied, however, in the instant matter such doctrine is having no application. In the present case the RTA was considering applications for sanctioning permit for a route that as a matter of fact was not at all in existence in light of the provisions of Sub-section (6) of Section 88 of the Act of 1988. It is not in dispute that the supplementary reciprocal agreement was published in Madhya Pradesh State Gazette on 24.12.2003 but the RTA decided the applications on 19.09.2003 i.e. quite earlier than to acquisition of finality by reciprocal agreement. In view of the factual position above, in the instant matter on the date the RTA considered and decided the applications for sanctioning permit, no route was available in that regard. In such circumstances, the participation of the appellant respondents in the proceedings before the RTA is of no consequence. It is not a case of acquiescence but exercise of powers by an authority without having to do so. The RTA on 19.09.2003 was not having any authority to issue any permit regarding the route Begun-Rawatbhata via Singoli.

17. Beside whatever stated above, it is also well settled that the doctrine of estoppel does not operate against a statute and no question of estoppel arises, where both the parties, as in present case, were labouring under them is take of law. In the instant matter the RTA was operating against a statute, therefore, it is not acquiescence that may estop to challenge unauthorised exercise of powers by the RTA in sanctioning permits for the route Begun-Rawatbhata via Singoli.

18. I also do not find any substance in the second contention of counsel for the petitioner that the route Begun-Rawatbhata via Singoli was nothing but a corrigendum to the reciprocal agreement dt. 18.07.2001, thus, its date of coming into effect is to relate back with the date on which original reciprocal agreement came into force. From reading of the reciprocal agreement dt. 30.06.2003 it is apparent that the route Begun-Rawatbhata via Singoli was for the first time included in the reciprocal agreement and was placed in Annex.-B. A route that was not in existence prior to 24.12.2003 cannot be held to be in existence from the date of coming into force the earlier reciprocal agreement dt. 18.07.2001. The reciprocal agreement dt. 30.06.2003 also nowhere mentions that it shall be having application with retrospective effect.

19. Counsel for the petitioner to substantiate the contention that amendment tantamount to planting and drafting in original statute, placed reliance upon several judgments including *Raman Sahadevan Vs. R. Kesavan Nair*, *H.C. Narayanappa and Others Vs. The State of Mysore and Others*, *Siddalingamma and Another Vs. Mamtha Shenoy*, *Siddalingamma and Anr. v. Mamtha Shenoy* and *AIR 2002 Rajasthan 395 Vishnudutt v. Manoj Kumar and Ors.*, however, present one is not a case of planting or modification but is of introduction of absolutely a new route by a supplementary reciprocal agreement. The supplementary reciprocal agreement dt. 30.06.2003 to the extent it relates to

adding of Begun-Rawatbhata via Singoli route is not modification or amendment to the earlier reciprocal agreement dt. 18.07.2001 but is an extension to that. In view of it none of the cases, reliance on which is placed, is having application in present controversy.

20. I also do not find any force in the third contention of counsel for the petitioner that Begun-Rawatbhata via Singoli route was not a new route but was only a curtailment of Bhilwara-Bhainsrodgarh route referred in earlier reciprocal agreement. The simple reading of reciprocal agreement dt.30.06.2003 makes it abundantly clear that a new route was added by the agreement aforesaid. No route in the name of Begun-Rawatbhata via Singoli was ever existing in earlier reciprocal agreement.

21. For the reasons given above, I do not find any error in the judgment dt. 15.12.2005 passed by learned State Transport Appellate Tribunal, Rajasthan that may warrant interference of this Court under Articles 226 and 227 of the Constitution of India.

22. Accordingly, this petition for writ is dismissed with no order as to costs.