(1999) 05 MP CK 0016

In the Madhya Pradesh High Court

Case No : Writ Petition No. 797 of 1999

Pandit Ram Prasad Purohit APPELLANT

Vs

State Transport Appellate Tribunal and Others RESPONDENT

Date of Decision : 27-05-1999

Acts Referred:

Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 72(3)
Motor Vehicles Act, 1988 — Section 104, 70(1)

Citation : (1999) 2 MPLJ 388

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : J.P. Gupta and Tapan Trivedi, for the Appellant; D.V. Nigudkar, for the Respondent

Judgement

S.P. Srivastava, J.

Heard Shri J.P. Gupta, Sr. Advocate with Shri Tapan Trivedi, learned counsel for the petitioner as well as shri D. V. Nigudkar, learned counsel representing the contesting respondent No.3

Perused the record.

Taking into consideration the facts and circumstances of the case with the consent of the learned counsel for the parties, this writ petition is being disposed of finally at this stage.

The relevant facts as they emerge from the record indicate that the respondent No. 3 had moved an application for a permanent permit for operating its stage carriage on the route in question which had been rejected vide the order dated 5-6-1996 whereafter it had applied for a temporary permit for plying its stage carriage on the same route. This temporary permit had been granted for the period 1-4-1999 to 31-5-1999.

The petitioner had also moved an application for temporary permit for plying the stage carriage on the same route which has been refused under the impugned order in view of the restriction as contained u/s 104 of the Motor Vehicles Act. Hence, this writ petition.

The applications for the aforesaid permits had to be considered taking into account the provisions contained in Section 104 of the Motor Vehicles Act, 1988. This provision reads as under :-

"Restriction on grant of permits in respect of a notified area or notified route.- Where a scheme has been published under sub- section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme.

Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of the area or route."

On 24-5-1999, the learned counsel for the petitioner had urged that since road-tax amounting to Rs. 430.00 crores was due against the respondent No. 3 which had not been paid so far, the application filed by it seeking the grant of temporary permit was not entertainable.

The learned counsel for the respondent No. 3 had taken time to obtain the instructions in this regard to indicate as to whether the liability for the payment of road-tax amounting to Rs. 430.00 crores stands fastened on the Madhya Pradesh State Road Transport Corporation as claimed and as to whether the said liability stood discharged.

The learned counsel for the respondent No. 3 has stated that although the exact amount of the road tax due could not be ascertained but the fact that the road-tax is due against the respondent No. 3 is not disputed.

The State of Madhya Pradesh had framed rules under the provisions of the Motor Vehicles Act, 1988 which are known as Madhya Pradesh Motor Vehicles Rules, 1994.

Rule 72 sub-clause (3)(d) of the aforesaid Rules stipulates that the application for stage carriage permit as required under sub-section (1) of Section 70 shall be accompanied by a no due certificate issued by the Regional Transport Officer concerned.

In the present case, the learned counsel for the petitioner has asserted that the provisions contained in Rule 72 sub-clause (3)(d) has been extended to cover even the applications where the grant of temporary permits is sought for. In this connection, reliance has been placed on the notification issued by the Sachiv, Rajya Parivahan Pradhikar, Madhya Pradesh dated 1-3-1996, prescribing that all the applicants for temporary permits were required to annex along with their applications no due certificate in regard to the payment of the road-tax.

It may be noticed, that the proviso to Section 104 of the Motor Vehicles Act, 1988 stipulates that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of the area or route.

The contention urged on behalf of the petitioner is that in the present case since ''no due certificate'' in regard to the discharge of the liability in regard to the payment of the road-tax has not been filed by the respondent No. 3, it''s case has to be taken to be at par with a case where no application for a permit has been made by the State Transport Authority inasmuch as the application filed by it was not liable to be entertained at all. It has been urged that the cases where no application has been moved for a permit and the cases where the application has been moved but such an application is not entertainable stand at par as in case the application for a permit is not liable to be entertained it virtually amounts to no application for a permit having been, made. Mere physical filing of such an application cannot take away the benefit extended to ''any person'' contemplated under the proviso to Section 104 of the Motor Vehicles Act, 1988.

It must not be lost sight of that in determining either the general object of the legislature or the meaning of its language in any particular passage it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should in all cases of doubtful significance be presumed to be the true one.

It appears to me that taking into consideration the legislative intent underlying the proviso referred to hereinabove is to provide an exception where in the absence of any entertainable application having been filed by the State Transport Undertaking, the application filed by any other person has to be taken as entertainable subject to the condition contemplated under the said proviso.

I am of the further considered opinion that the expression "no application for a permit" has to be given a wider meaning and a case where an application is not entertainable or it is not permissible under the law, to grant a permit to the State Transport Undertaking, it has to be taken as if there was no application for a permit as envisaged under the proviso referred to hereinabove.

In the aforesaid connection, it may be noticed that taking into consideration the ratio of the decision of the Apex Court in its decision in the case of Arbind Kumar Singh Vs. Nand Kishore Prasad and Others, , it is apparent that failing to produce the clearance certificate in respect of the tax liability clearly disentitles the applicant for the grant of a permit.

In the present case, the temporary permit of the respondent No. 3 is going to expire on 31-5-1999, whereafter the question in regard to the grant of a temporary permit for the route in question has to be considered afresh.

In the circumstances, taking into consideration the facts and circumstances as brought on record as well as those noticed hereinabove, this writ petition is disposed of finally providing that the applications seeking either the grant of a permanent permit for plying the stage carriage on the route in question or the temporary permit for the plying of the stage carriage on the route in question shall be considered by the respondent No. 2 taking into account the implications arising under the notification issued by the Rajya Parivahan Pradhikar dated 1-3-1996, referred to hereinabove and in the light of the observations made hereinabove.

There shall however be no order as to cost.