

(1984) 08 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 6482 of 1984

P.C. Varghese, Adv.

APPELLANT

Vs

R.T.A. Malappuram and Others

RESPONDENT

Date of Decision : 24-08-1984

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 170, 172, 212
Motor Vehicles Act, 1939 — Section 57, 64A

Citation : AIR 1985 Ker 44

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : K.C. Sankaran, for the Appellant; P. Ravindran, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—This original petition has been filed under Article 226 of the Constitution seeking to quash Ext. P13 judgment of the second respondent. State Transport Appellate Tribunal, Ernakulam. Petitioner holds a regular permit for the route Puduponnani-Guruvayur in respect of vehicle KRR 1031. Edappal is said to be an important place two kilometres away from the route. Petitioner gave Ext. PI application for variation of the route so as to touch Edappal that is, two single trips on the original route and four single trips on the varied routes u/s 37(8) Motor Vehicles Act (for short "the Act") and Rule 212, Motor Vehicles Rules, (for short "the Rules"). He also applied for a temporary permit on the varied routes. First respondent, R. T. A., Malappuram, took up both the applications and directed the application for variation of the route to be notified u/s 57(3) of the Act and rejected the application for temporary permit. The matter was duly notified. It is said that no representations were received against the proposal. The R. T. A. in due course considered the application but rejected it under Ext. P3 order. Petitioner herein filed revision petition No. 163/1983 before respondent 2 who allowed the same and remanded the matter for fresh consideration under Ext. P4 judgment. When the R. T. A. met again to reconsider the same,

petitioner's application was opposed by respondent 3 but variation was granted under Ext. P5 order. Timings were also revised under Ext. P6. Third respondent filed a revision petition challenging Ext. P5 order before respondent 2. Petitioner herein opposed the revision petition on the ground of the same being barred by limitation and also on merits. The Tribunal went into both the questions and allowed the revision and remanded the matter once again for fresh consideration. On the question of limitation, the Tribunal observed that the revision petition was not filed within 30 days of the date of the order but this technicality should not stand in the way of substantial justice being rendered by the Tribunal and since the order of the RTA was manifestly illegal, it has to be interfered with.

2. The main contention of the petitioner is that revision petition filed by respondent 3 before the Tribunal was actually barred by limitation and since there was no application or request to condone the delay. The Tribunal could not ignore the bar and allow the revision. Learned counsel for respondent 3 contended that as a matter of fact, there was no bar of limitation. According to respondent 3, he was not present when the RTA took the decision. Nor was the decision conveyed to him. Though the limitation prescribed is 30 days from the date of the order, in the facts and circumstances of the case, the starting point of the limitation must be from the date on which respondent 3 came to know the order or a copy of the order was received by him. If this be the starting point, there is no dispute that the revision was in time.

3. The revision petition was preferred u/s 64A of the Act. This section states that the Tribunal can suomotuoron an application call for the records of any case in which no appeal lies, examine the legality or propriety and may make such order as it deems fit. Further, the Tribunal shall not entertain any application from an aggrieved person unless the application is made within 30 days of the order. But such an application can be received if the Tribunal is satisfied that the applicant was prevented by sufficient cause from making the application in time. Rule 172 of the Rules contains substantially similar provisions. As the provision of law stands, a revision application has to be filed by the aggrieved party within 30 days of the order. How is the starting point for the purpose of limitation to be computed is the question for decision.

4. My attention is invited to the decision of the Supreme Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, . The provision in the Land Acquisition Act providing time limit of 30 days for filing an application for reference u/s 18, Land Acquisition Act, came up for consideration in this case. The Land Acquisition Act provided that if the person making the application was present or represented before the Collector at the time when he made the award, the application must be made within six weeks from the date of the award and in any other case within six weeks of the receipt of the notice from the Collector u/s 12(2) or within six months from the date of the Collector's award whichever shall first expire. The "phrase" from the date of the Collector's award" was the subject-matter of interpretation in the above case. The Supreme

Court took the view that the award is not a judicial or quasi-judicial decision but only an offer made by the Collector to pay the amount worked out in the award to the owner of the land as compensation. If the owner accepts it, that is an end of the matter. If, however, the owner is not prepared to accept it, Section 18 gives him the statutory right to have the dispute determined by court. The award being only a tender or offer made by the Collector, the making of the award must involve communication of the same to the party concerned, as that is the requirement of Contract Law. Therefore, the date of the award cannot be determined by reference to the time when the award is signed or determined by the Collector in his office. It must be made known to the party either actually or constructively. Therefore, the date of communication is the date of the award. Treating the award as an administrative decision taken by the Collector, since it ultimately affects the rights of the owner of the property, it is only fair and just that it is communicated to the party actually or constructively. Knowledge is necessary before the decision is brought into force and therefore it involves communication to party actually or constructively. Thus, "date of making the award" was construed as date of communication, actual or constructive, of the award to the party. This decision was followed by the Supreme Court in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, .

5. I may also refer to another decision of the Supreme Court in *Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others*, In that case, the RTA passed a resolution proposing the shifting of a bus stand in 1959. The relevant notification was published only in 1960. It was challenged in revision long after the expiry of 30 days from the date of the decision but within 30 days of the notification. Question arose when exactly time started to run for the purpose of revision. The Court observed that in interpreting the provisions of limitation, equitable considerations are out of place and the strict grammatical meaning of the words is the only safe guide. The Court also took the view that "from the date of the order" in Section 64A "of the Act should not be read as "date of knowledge of the order" in the absence of clear indication to that effect. That is because in certain other provisions of the Act (Sections 13, 15, 16, 21E, 21F and 35) time limit has been prescribed from the date of knowledge of the order. Therefore, strict construction was to be followed. The Supreme Court proceeded to consider the exact meaning of the phrase "the date of the order". There was no order as such but only a resolution which under Rule 134 of the Rules was required to be notified publicly. It is only by such notification that a notified bus stand comes into existence and so long as the notification is not made, in law there was no effective fixation of a new bus stand or discontinuance of the old bus-stand. There could be no real grievance as long as notification had not been made. In this view, it was held that the date of notification is the date on which the order is finally made, it has also been referred to the observations of the Supreme Court in *Bootamal Vs. Union of India (UOI)*, where with reference to the provisions of the Indian Limitation Act it has been observed that equitable considerations are out of place and strict grammatical meaning of words has to

be adopted.

6. In *Assistant Transport Commissioner, Lucknow and Others Vs. Nand Singh*, , the Court had to consider Section 15, UP Motor Vehicles Taxation Act, which prescribed a period of 30 days from the date of the order as time for filing an appeal. The order was communicated to the party a few days after the date seen in the order. His appeal, was within 30 days of the date of receipt of the communication but beyond 30 days of the date seen in the order. The Supreme Court relying on *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, held that time would begin to run only from the date of receipt of the communication regarding the order. The court besides upholding the reasoning in the earlier case to the effect that the order must be made known either directly or constructively to the party affected by the order in order to enable him to prefer an appeal if he so likes, found an additional reason to support the conclusion. Mere writing of an order in the file kept in the Office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. The Court further observed that in a given case, the date of putting the order in communication under certain circumstances may be taken to be the date of the communication of the order or the date of the order but ordinarily and generally speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively, otherwise not.

7. This Court had occasion to construe the provision regarding limitation for filing an appeal u/s 23, Agricultural Workers Act, 1974 in *Joseph v. Dy. Collector 1982 KLT 904*. Section 23 provided for an appeal to the Agricultural Tribunal against the order passed by the conciliation officer to be filed within a period of 30 days from the date of the order appealed against. M. P. Menon J. in the course of judgment referred to the decisions of the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, ; *Bootamal Vs. Union of India (UOI)*,) and *Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others*, as well as the decision of the Privy Council in *AIR 1941 6 (Privy Council)* and observed that four theories were competing for supremacy, in the interpretation of provisions relating to limitation. One approach was to go by the literal or grammatical construction, ignoring considerations of equity and hardship. Another was to emphasise the purpose of the remedy, where a person's rights were affected and to hold that knowledge, constructive or actual, was necessary. Yet another was to fix up the point of time when it could be said that the order was effectively made, as distinct from the date of its mere making. The fourth was to postulate that an order was no order at all for the purposes of limitation, unless the party against whom it was passed had some means of knowing about it. The learned Judge took the view that in considering Section 23 of Agricultural Workers Act, literal or grammatical

construction could not be invoked. In the words of the learned Judge :

"a distinction can be drawn between statutory provisions merely dealing with limitation, and provisions designed to confer a right of appeal or of revision, with an added prescription of time. The approach in the latter types of cases is to find out and give effect to the true legislative intent. When Section 23, Agricultural Workers Act, provides for an appeal to be filed within 30 days, the intention is basically to provide for a remedy, and not to provide for a remedy by the left hand and make it illusory by the right, which will be the result of holding that the appeal should be filed within 30 days from the date of the order, even if the aggrieved party were to remain ignorant about the passing of the order during the whole of the period. Rules of interpretation should not strive to frustrate the legislative intent; they should be geared to the fulfilment of the legislative aim. If the purpose of Section 23 is to provide the aggrieved party with a right of appeal, and if it is held that the mere making and signing of the order and keeping it in the files will be sufficient for time to start running, the very purpose of the provision will be defeated. Alternatively, it can be held that the very concept of an appeal involves a right to complain about some mistake committed by the original authority, and that the party concerned cannot be expected to make such a complaint till he comes to know about the commission of the mistake."

8. Learned counsel have referred me to a few other decisions and I shall briefly refer to the same. The decision in *G.R. Nanjundaswami v. Mysore State Transport Appellate Tribunal* AIR 1972 Mys 6 dealt with filing of a revision against a resolution fixing the number of stage carriage permits u/s 47(3). Relying on certain observations in *Pushkar Municipal Board case*, the Court took the view that the period of limitation started to run from the date of resolution and not from the date of knowledge of the aggrieved party. A full Bench of the Madhya Pradesh High Court took a slightly different stand in *Dhanna Singh Vs. State Transport Appellate Tribunal, Gwalior and Others*, . The Court had to interpret Rule 80 United State of Gwalior. Indore and Malwa (Madhya Bharat) Motor Vehicles Rules, which prescribed a time limit of "30 days of the receipt of such order" for filing an appeal. These words are certainly unambiguous and did not require any interpretative exercise. It was pointed out before the Court that while Section 57(7) of the Act required the R. T. A. to give the applicant in writing its reasons for the refusal of a permit, there is no such obligation cast on the R. T. A. in the case of an objector. But the Court noticed that u/s 64 of the Act, an appeal can be preferred not only by the unsuccessful applicant but also by the objector whose objections have been rejected and in as much as one common rule for appeals has been framed by the State Government, it is not open to the Court to say that any different limitation has been prescribed in the case of objectors. On the language of the rule, it is clear that appeal should be filed within 30 days of the receipt of the order and not from the knowledge thereof and in the case of persons for whom there is no obligation to serve a copy of the order, limitation would start running on the date they obtain a

certified copy of the order because that would be the date on which the order in writing would be deemed to have been received by them. Of course, the decision resulted in the objector getting more time to file appeal since in order to apply for a certified copy, he would have certainly had knowledge of the order. In *Chhotey Lal Singh Vs. The State Transport Appellate Tribunal, U.P., Lucknow and Another*, the Allahabad High Court took the view that u/s 64 of the Act read with Rule 72, U. P. Motor Vehicles Rules, the period of limitation for appeal against the order rejecting the application for permit commences only when a copy of the order is served by the R. T. A. as contemplated by Section 57(7) of the Act.

9. Facts of the decisions referred to above except those in Joseph's case and Danna Singh's case are easily distinguishable. Nevertheless, observations of the Supreme Court in the decisions mentioned above lay down the approach to interpretation of provisions prescribing time for availing statutory remedy. As pointed out by M. P. Menon J. in Joseph's case, there are different approaches. Ordinarily, what is required is to avoid equitable considerations and depend on plain and grammatical meaning of words. But then such an approach at times would go against the scheme of the statutory provisions which provide a statutory remedy. In those cases, there may not be justification to depend on plain and grammatical meaning of the words used. The Court has to look at the statutory provisions, the statutory remedy prescribed and the procedure for exercising the statutory remedy provided and adopt that construction which would subserve the statutory purpose. Actually, that was what was done in the three decisions of the Supreme Court referred to above and in the other decisions also except that of the Mysore High Court in *G. R. Nanjundaswami's* case. With great respect, it is difficult to agree that the decision in *G. R. Nanjundaswami's* case is correct. In that decision, the principles laid down in *Pushkar Municipal Board* case were correctly applied.

10. Section 64A of the Act which provides a revisional remedy stipulates that the application must be made within 30 days of the order. Rule 172 of the Rules reiterates this provision. Of course, there are certain other rules such as Rr. 170 and 225 where the limit prescribed is 30 days of the receipt of the order appealed against. In those cases, certainly, there would be no difficulty in interpreting the provisions of the Rules. They are clear and unambiguous and subserve the statutory purpose. But, it appears to me that the provision of limitation in Section 64A of the Act and Rule 172 of the Rules must be read along with latter portion of Rule 172 which states that the application shall be accompanied by the original or a certified copy of the order or proceedings against which the application is preferred. The person aggrieved by the impugned order, whether or not he was present at the time of the passing of the order, whether or not copy of the order was served on him, is required to produce either the original or a certified copy of the order along with the application. In these circumstances, to hold that the time stipulated for filing the application would start to run from the date on which the order was made or

signed or the decision was arrived at, would amount to stultifying the statutory remedy. He cannot produce the original unless it is served on him. He cannot produce a certified copy unless it is supplied to him. Where it is not supplied to him by the authority, he must be in a position to apply for and obtain a certified copy. This would postulate the presence of actual or constructive knowledge of the order in him. That is the basis of the provision. The expression "30 days from the date of the order" must be understood in this way. Time will begin to run only from the date on which he had actual or constructive knowledge of the order as the case may be, of the impugned order.

11. Ext. 7 is a copy of the memorandum of revision filed before the Tribunal. In para 3 it is stated that the impugned decision was taken without notice to the existing operators who are affected. This has not been specifically denied in the remarks of the Secretary of the R. T. A. (Ext.PU). The Tribunal in para 9 of the Judgment has noticed that though the impugned order appears to have been passed on 13-2-84, it was despatched only on 21-2-1984. It could have been received, if at all, only after 21-2-1984. Revision petition was filed on 19-3-1984, that is, within 30 days of the despatch of the copy of the order. In the circumstances, he could have known actually or constructively of the order only after 21-2-1984, since, admittedly, it was not passed in his presence. In these circumstances,, I have to hold that the revision petition was filed within time. Therefore, the main challenge of the petitioner against the judgment of the Tribunal fails to the ground.

12. The Tribunal has only quashed the impugned decision and remanded the matter for fresh consideration. I do not think there are any grounds made out to interfere with the remand order. The entire matter is at large for fresh consideration by the R. T. A. In the circumstances, this Court will not be justified in interfering with the same under Article 226 of the Constitution. The original petition is accordingly dismissed.