

(2018) 05 MP CK 0041
In the Madhya Pradesh High Court
Case No : M.P. No.1227 OF 2017

Praveen Chourasiya

APPELLANT

Vs

State Of Mp And Others

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Constitution of India — Article 227

Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 72, 72(1), 72(3)(a), 73(3)(b)

Motor Vehicles Act, 1988 — Section 28, 38, 65, 90, 95, 96, 107, 111, 138, 159, 176, 211, 213

Citation : (2018) 05 MP CK 0041

Hon'ble Judges : PRAKASH SHRIVASTAVA, J

Bench : Single Bench

Advocate : N.N. Tripathi, Brajesh Kumar Dubey, Rahul Rawat

Final Decision : Dismissed

Judgement

Heard finally with consent.

By this miscellaneous petition under Article 227 of the Constitution, the petitioner has challenged the order dated 9/11/2017 passed by STAT allowing

the revision of the respondent No.3 and setting aside the order of the RTA dated 23/8/2016 by which the petitioner was granted regular permit for

Vehicle No. MP16/P-0405.

The facts in brief are that the petitioner had filed an application for grant of regular permit for the route Chhattarpur to Sabrai which was granted to

him by the RTA by order dated 23/8/2016. The said permit was subject matter of challenge before the STAT at the instance of the respondent

No.3 and by the impugned order while allowing the revision petition, the STAT has set aside the impugned permit mainly on the ground that the

vehicle in question was not in spare when the application for grant of permit was considered by the RTA.

Learned counsel for petitioner submits that the respondent No.3 being a competitor had no locus to challenge the order of the RTA and that the STAT

has committed an error in holding that the vehicle should be spare at the time of considering the application whereas the vehicle was required to be

spare at the time of filing of the application because the petitioner cannot keep the vehicle spare till the consideration of the application which may

take time.Â He further submits that the judgment of this court which has been relied upon by the STAT is not the correct judgment.

As against this, learned counsel for respondent No.3 has submitted that the respondent No.3 is also operating on same route and that in terms of

Sec.90 of the Motor Vehicles Act, the respondent no.3 has right to challenge the illegal permit which was granted to the petitioner and that the STAT

has not committed any error in passing the impugned order.

Having heard the learned counsel for parties and on perusal of the record, it is noticed that so far as the issue of locus of the petitioner is concerned,

the STAT has noted that the respondent No.3 is also operating on the same route. Section 90 of the Motor Vehicles Act giving right to file the revision

petition provides as under:-

â??90-- Revision.-- The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has

been made by a State Transport Authority or Regional Transport AuthorityÂ against which no appeal lies, and if it appears to the State Transport

Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport

Appellate Tribunal may pass such order inÂ relation to the case as it deems fit and every such order shall be final.

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of aÂ State Transport

Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order.

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is

satisfied that the applicant was prevented by good and sufficient cause from

making the application in time.

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.â??

Under Section 90 of the aforesaid Act, the person aggrieved with the order of RTA has right to file revision. Having regard to the aforesaid provision and the fact that the permit granted in favour of the petitioner affects the right of the respondent No.3, I am of the opinion that no illegality has been committed by the STAT in holding that the respondent No.3 had locus to file the revision.

Learned counsel for petitioner has placed reliance upon the judgment in the matter of Mithilesh Garg Vs. Union of India and others etc.(1992) 1 SCC

168, The Nagar Rice and Flour Mills and others Vs. N. Teekappa Gowda and Bros and others AIR 1971 SC 246, Jasbhai Motibhai Desai Vs.

Roshan Kumar, Haji Bashir Ahmed and others AIR 1976 SC 578, the order dated 30th June, 2015 passed in WP No.9845/2014 in the matter of Dilip

Manglani Vs. State of MP and 22nd November, 2017 passed in WP No.12662/2017 in the matter of Ravindra Nath Tripathi Vs. State of MP and

another, but these judgments mainly relate to the right of the operator to file objection, but counsel for petitioner has failed to point out from any of

these judgments that the issue relating to locus to file revision U/s 90 has been settled in his favour by these judgments.

So far as the issue of spare vehicle is concerned, counsel for petitioner had advanced an argument before the STAT that on 9/6/2016 ie. on the date

of filing of the application before the RTA, the vehicle should be spare vehicle. The STAT has examined the matter factually and legally and has

found that the hearing of the application took place on 8/8/2016 and on the date of consideration of the application, the vehicle in question was not

spare, therefore, the petitioner was not entitled for the permit for that vehicle. The fact that on the date of hearing of the application the vehicle

was not a spare is not in dispute, but the contention of the learned counsel for petitioner is that the relevant date is date of filing of the application

and not the date of consideration of the application.

The issue which the counsel for petitioner is raising has been settled by the division bench of this court in the matter of Padam Chand Gupta Vs.

State Transport Authority and othersÂ 2014(1) MPLJ 124Â wherein the division bench of this court considering theÂ precise issue has held as

under:-

11. From the pleadings of the respondent No.2, it is clear that the respondent No.2 has not denied the fact that the tax of the vehicle was paid

upto 31.8.2012. Apart from this, the permit was surrendered on 31.8.2012 and thereafter the vehicle was spared. It means that the vehicle was not

available on the date of hearing of grant of permanent permit.

12. State Government has made rules named as Madhya Pradesh Motor Vehicles Rules, 1994 (hereinafter referred Rules of 1994) in exercise of

powers conferred by Sections 28, 38, 65, 95, 96, 107, 111, 138, 159, 176, 211 and 213 of the Motor Vehicles Act, 1988 (No.59 of 1988). Rule 72 of the

Rules of 1994 prescribes forms of application for permit. In accordance with the aforesaid Rule 72 (1) of the Rules of 1994, every application for

grant of permit in respect of any transport vehicle shall be in one of the following forms and in accordance with the aforesaid rule 72 (3)(a) in respect

of stage carriage permit, it would be in the form M.P.M.V.R.-42 (S.C.P.A.). Rule 72 (3) (b) of the Rules of 1994 prescribes that an application of

stage carriage permit shall be accompanied by certain documents and one of the condition is of certificate of registering authority in regard to

ownership of vehicle of the applicant.

Relevant rule is as under :-

(b) certificate from Registering Authority containing make, model and seating capacity of the vehicles owned by the applicant at the time of

making the application:

13. Appropriate form M.P.M.V.R.-42 (S.C.P.A.) has also been prescribed in accordance with rule, which is part VI of the Rules of 1994. Clause 8 of

the form is in regard to details of the vehicle which is to be offered to operate on the route applied for :

8. Details of the vehicle offered to operate on the route applied for :-

Vehicle No.....Model..... Make..... Seating Capacity..... (Proof to be enclosed).

There is also provision of reserved vehicle.

14. From the aforesaid statutory provisions, it is clear that an applicant has to

submit details of the vehicle, which was offered by him to operate on the route and he must be the owner of the vehicle at the time of making application which is the requirement of Rule 72 (3)(b) of the Rules of 1994 as mentioned above in the order.

15. At the time of making an application the respondent No.2 had leased out the vehicle to some other person.

16. The question that whether an application for stage carriage permit could be rejected on the ground that the particulars of the vehicle being used for

the services were not mentioned at the time of submitting the application has been considered by the Full Bench of Kerala High Court in E.L.

Narayanan and others Vs. R.T.A. Trichur reported in AIR 1980 Kerala 115.

Full Bench has held as under :-

“An application for grant of a stage carriage permit cannot be treated as invalid merely on the ground that it does not contain particulars of the

vehicle proposed to be used for the service nor can the applicant be disqualified or excluded from consideration on the said ground. If all other

qualifications are equal as between two applicants, one of whom had furnished in his application the particulars of his vehicle and the other hand

furnished such particulars only at a later stage before the matter was taken up for consideration by the Regional/State Transport Authority and the

vehicle offered by the latter is found to be of a later model and better quality (providing better comforts for the passengers) than the vehicle offered by

the former, the Regional/State Transport Authority will be perfectly justified in taking the view that it will be in the public interest to grant the permit to

the applicant who has offered the better vehicle. However, if in such a case the vehicles offered by both the applicants are found to be substantially of

the same type, quality, model etc. and if in respect of other matters both the applicants are equally qualified it will be open to the Regional/State

Transport Authority in its discretion to prefer for the grant the applicant who had furnished the particulars of his vehicle in the application itself treating

the said circumstance as a ground for treating the said circumstance as a ground for tilting the balance as between the two persons whose

qualifications are equal in all other respects.”

17. Hon'ble Supreme Court in the case of Maharashtra State Road Transport Corporation Vs. Mangruloir Joint Motor Service Co. (P) Ltd. reported in

AIR 1971 SC 1804 has held as under in this regard :-

“The High court was in error on the second question in holding that the Regional Transport Authority would have to consider the respective qualifications of the applicants as on the date of their applications and not as on the date of the actual consideration by the applications for the grant of permit.”

18. Hon'ble Supreme Court in the case of Esskey Roadways (Firm) Vs. Anandhakrishnan Bus Service reported in AIR 1994 SC 71 has held as under

in regard to consideration of relevant date on which the respective claims of the candidates have to be considered for grant of permit :-

“3. Another circumstance arose in Dhani Devi v. Sant Bihari case was that when one of the applicants before the consideration died and his L.Rs.

were brought on record. When it was questioned, this Court held that the L.Rs. are entitled to be considered as inhering the estate of the deceased

applicant for grant of permit. In A.S. Jalaluddin v. Balasubramania Bus Service (P) Ltd., the question arose that whether the applicant who secured

the residential qualification by establishing a branch office at one of the terminus of the route would be considered eligible as on the date of the

consideration.Â This Court held that he is entitled. In view of these considerations, it must be held that the date of consideration is the relevant date

for the purpose of considering the eligibility to grant the required marks under Section 46 of Act 4 of 1939. This law being in operation from 1970, we

do not think that it requires any reconsideration by this Court by a larger Bench.Â Accordingly, we hold that the date of consideration is the relevant

date on which the respective claims of the candidates have to be considered for award of the marks for grant of permit. It is made clear that this

declaration of law is confined to and peculiar of the statutory operation under Section 46 of Act 5 of 1958.”

19. It is clear from the above judgments that an applicant has to fulfill qualification required in the rule and in regard to availability of the vehicle at the time of passing of the order by the Regional Transport Authority.

20. Respondent No.2 had leased out his vehicle, which was proposed to be plied by him on the route in favour of the another person and it was

covered by another permit up to 31.8.2012, thereafter it was released when the permit was surrendered before the RTA. The tax of the vehicle was

also paid up to 31.8.2012. Hence, in our opinion, the respondent No.2 did not fulfill the criteria having a vehicle at the time of passing of the order by

R.T.A. for grant of permanent permit, he was not eligible to receive the permit.â??

The STAT has further placed reliance upon the judgment of the Gwalior Bench dated 9/10/2014 passed in WP No.4380/2014 in the matter of

Nirbhai Singh Vs. State of MP and others wherein the earlier judgment in the case of Padam Chand (supra) has been relied upon.

Having regard to the aforesaid, I am of the opinion that no patent illegality has been committed by the STAT in allowing the revision petition of the

respondent No.3.

That apart, in this miscellaneous petition under Article 227 of the Constitution, this court is exercising limited supervisory power and in this regard

the Supreme Court in the matter of Jai Singh and others Vs. Municipal Corporation of Delhi and Another reported in 2010(9) SCC 385 while

considering the scope of interference under Article 227 of the Constitution, has held that the jurisdiction under Article 227 cannot be exercised to

correct all errors of judgment of a court, or tribunal acting within the limits of its jurisdiction. Correctional jurisdiction can be exercised in cases

where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

In view of the aforesaid analysis, no case for interference in the impugned order is made out. The miscellaneous petition is accordingly dismissed.