
(2007) 03 MP CK 0022

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14012 of 2006

Ram Kishan

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 72(3)

Citation : (2007) 3 MPLJ 190

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : H.C. Kohli, for the Appellant; S.S. Bisen, Government Advocate for Respondents No. 1 to 3 and Subodh Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

petitioner is a member of Scheduled Caste community and availed special scheme of Raftar Yojna of the State Government by obtaining Mini Bus bearing Registration No. MP15-D 5495. Mini Bus was given to a group of four persons including the petitioner by the Collector, Sagar vide order dated 24-4-1997 for commercial use. A temporary permit was granted in favour of the petitioner for Sagar to Bilhara route (three times a day) from April, 2005 to July, 2005.

The petitioner made an application on 10-9-2004 to R.T.O., Sagar for grant of permanent permit for the aforesaid route which was accepted and a permanent Permit No. 28/05 was granted in favour of the petitioner on 25-11- 2005.

The order of grant of permanent permit (marked as Annexure/P-4) was challenged in Revision No. 566/2005 by Respondents No. 4 and 5 before S.T.A.T. on the ground that relevant documents requisite under Rule 72(3) of M. P. Motor Vehicles Rules, 1994 were not submitted along with the application. Learned S.T.A.T. found that the petitioner was in arrears of penalty and interest payable under the M. P. Motoryan Karadhan Adhiniyam. Consequently, the revision

petition has been allowed vide impugned order dated 18-9-2006 contained in Annexure/P-13. Petitioner has challenged the same in the present writ petition.

It is stated in the petition that the said rule was substantially complied with and the petitioner was granted permanent permit in a valid manner. An objection on the ground of conflict in timings was also wrongly raised.

Respondent No. 5 submitted his return and supported the impugned order. It has been stated in the return that the petitioner had committed default in making payment of penalty and interest under the aforesaid rules and permanent permit granted in his favour has been rightly cancelled.

Heard the submissions of Shri H. C. Kohli, Counsel for the petitioner, Shri S.S. Bisen, Government Advocate and Shri Subodh Pandey, Counsel for

Respondent No. 5 and perused the record in the light of the submissions advanced by the learned counsels.

Shri Kohli, learned counsel for the petitioner mainly contended that the petitioner was not in arrears of any kind of penalty or interest payable under the provisions of M.P. Motoryan Karadhan Adhiniyam, 1991. The tax was duly paid by the petitioner as revealed in page Nos. 36-40, 42-44 and 46 of the writ petition. The amount so paid/deposited by the petitioner has not been taken into consideration by the learned S.T.A.T. while passing the impugned order. It has been further contended that Rule 72(3) has been held to be not mandatory by Division Bench of this Court in M.P. State Road Transport Corporation Vs. Ram Prasad Purohit and Others, and consequently, the application for permanent permit cannot be legally dismissed for want of compliance of the aforesaid provision. Further, he submitted that the vehicle in question was seized for a period from 2-2-2005 to 7-4-2005 and no tax was payable during this period. Therefore, the application for grant of permanent permit could not have been dismissed for want of payment of tax pertaining to the aforesaid period. Outstandings against the penalty and interest cannot be taken into consideration since, the petitioner was not served with any notice of demand. There was no conflict regarding timing of the petitioner's vehicle and that of the private respondent. The reliance of the learned S.T.A.T. on the decision rendered in W.P. No. 1616/1996 has also been challenged on the ground that the said decision is based on a case of renewal of permit and not on a fresh grant.

Shri Bisen, learned Government Advocate and Shri Subodh Pandey, learned counsel for Respondent No. 5 countered the submissions of Shri Kohli on the basis that Rule 72 of the M.P. Motor Vehicles Rules applies to the case of fresh grant as well as of renewal of permit. Most of the entries contained in page Nos. 36-40, 42-44 and 46 have been considered by the learned S.T.A.T. who found ultimately that the petitioner was a defaulter in the matter of penalty and interest payable under the M. P. Motoryan Karadhan Adhiniyam. It has been contended that even, if, two entries were not taken into consideration by the learned revisional authority, no prejudice has been caused to the petitioner who

has been clearly established to be a defaulter at least in the matter of penalty and interest. Conflict in timings is clearly revealed in page No. 44 of the writ petition. Thus, it has been submitted that the impugned order contained in Annexure/P-13 has been rightly and validly passed and no interference is warranted in exercise of Articles 226 and 227 of the Constitution of India.

Much emphasis has been made on the Division Bench decision of this Court in M.P. State Road Transport Corporation Vs. Ram Prasad Purohit and Others, wherein it has been held that the provision of Sub-rule (3) of Rule 72 and Sub-section (1) of Section 70 are not mandatory. This Court is here concerned with Rule 72(3) of Motor Vehicles Rules, 1994 which reads as under:

Rule 72(3): The application for Stage Carriage Permit or reserved stage carriage permit as required under Sub-section (1) of Section 70 shall be accompanied by the following documents, namely:

- (a) an authentic route map along with certified distance between various stages and certificate regarding motor ability of the route from the departments which have control over such road;
- (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;
- (c) details of the stage carriage and reserved stage carriage permits already held by the applicant;
- (d) no dues certificate issued by the Regional Transport Officer concerned;
- (e) declaration duly certified by an officer of the Madhya Pradesh State Road Transport Corporation authorised by the Managing Director about the portion and distance of the route covered by any nationalization scheme; and
- (f) any other information as may be required by the Transport Authority.

Under the aforesaid Rule, an application for stage carriage permit or reserved stage carriage permit as required under Sub-section (1) of the Section 70 of the Motor Vehicles Act, 1988 shall be accompanied by the documents including no dues certificate issued by the Regional Transport Officer concerned. Since, this provision has been held to be not mandatory, the petitioner was not required to submit such a no dues certificate along with the application for permit. This would merely mean that such a no dues certificate may be supplied even later on. Only on account of the said provision having been held to be not mandatory, it does not mean that an applicant who is in arrears of dues would become entitled for consideration of his case for grant of permit.

Learned counsel for the petitioner has been unable to establish that the entire tax including composition fees and interest was already paid at the time of consideration of his application for grant of permit. He contended that the vehicle was seized on 2-2-2005 and remained under seizure upto 7-4-2005. Accordingly,

no tax was payable during this period. There is no material on record to prove the seizure of the vehicle during the said period. Moreover, the petitioner could have provided this information with supporting documents along with the application for grant of permit. This apart, the petitioner could have submitted the intimation of non-use in Form K to the Taxation Authority concerned under Rule 11 of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991. This having not been done, it is not open to the petitioner to contend that the vehicle was not in use during the aforesaid period and no tax was payable for the same.

It may further be seen that under Rule 5 of the M.P. Motoryan Karadhan Adhiniyam, 1991 the tax is liable to be paid upto 10th of each month. If the same is not paid composition fees and interest is payable. It is clear from Annexure/P-7 that the petitioner was in arrears of dues in the nature of tax, composition fees and interest at the time of consideration of the application for grant of permit. This being so, the petitioner was not entitled to permit.

The contention of Shri Kohli, learned counsel that the impugned order Annexure/P-13 is vitiated on account of non-consideration of few of the entries revealed in Annexure/P-6. This Court is acting in exercise of writ jurisdiction and not appellate jurisdiction. Since, the petitioner failed to establish that entire tax, composition fees and interest was paid at the time of consideration of the application for grant of permit, no prejudice would be caused, if merely certain entries placed on record were not considered because the fact remains is that there were arrears of tax, composition fees and interest due on the petitioner.

Learned counsel Shri Kohli, prays that the matter may be remanded to the revisional authority who would consider the same. I do not accept this contention because the petitioner having failed to establish the deposit of entire liability of tax, composition fees and interest, his application for grant of permit was not liable to be allowed.

As regards conflict in timings, the same is found to be involved in Annexure/P-6. However, the petitioner having not been found entitled for the permit on account of dues towards composition fees and interest, no fruitful purpose would be served on remand.

In the result, the petition is without any substance and the same is hereby dismissed, however, without order as to costs.

Petition dismissed.