

(1987) 07 MP CK 0025

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 138 of 1985

Satyendra Prakash Tiwari

APPELLANT

Vs

State Transport Appellate Tribunal, M.P., Gwalior and Others

RESPONDENT

Date of Decision : 09-07-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 58(2), 64

Citation : AIR 1987 MP 257 : (1987) 32 MPLJ 690

Hon'ble Judges : N.D. Ojha, C.J.;C.P. Sen, J

Bench : Division Bench

Advocate : S.Q. Hasan and B.K. Rawat, for the Appellant; Y.S. Dharmadhikari and H.C. Kohli, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, C.J.

This letters patent appeal has been preferred against the judgment of a learned single Judge of this Court dated 30th November, 1985 in Misc. Petition No. 298 of 1985. The facts necessary for the disposal of this appeal in a nutshell are that applications for grant of stage carriage permit on Guna Sironj route were invited by the Regional Transport Authority. It appears that four applications were made, one by Moulana Bus Service, the other by Ved Sagar Sood, the third by Satyendra Prakash Tiwari and the fourth by M/s. Shakti Transport Service. The application of Moulana Motor Service was allowed on 24th August, 1977 and permit was issued accordingly to Moulana Motor Service for three years. Aggrieved by the order dated 24th August 1977, Ved Sagar Sood, Satyendra Prakash Tiwari and M/s. Shakti Transport Service preferred appeals before the State Transport Appellate Tribunal, being Appeals Nos. 308 of 1977, 331 of 1977 and 333 of 1977 respectively. During the pendency of these appeals, however, the three years' period of the permit granted to Moulana Motor Service came to expire. Before the expiry of the term of the permit, Moulana Motor Service made an application for renewal. Since an application made for renewal in view of Sub-

section (2) of Section 58 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) is to be made and disposed of as if an application for a permit, fresh applications for grant of permit were also invited. Among others, M/s. Kamla Bus Service made an application for the grant of permit. The R.T.A. by its order dated 27th June, 1981 rejected the application of Moulana Motor Service for renewal and the application of M/s. Kamla Bus Service was allowed. A perusal of the order of the R.T.A. dated 27th June 1981, a copy whereof is on record, indicates that the permit number which had been granted to Moulana Motor Service in 1977 and which was valid up to 29th December, 1980 was 42 of 1977. The application for renewal had been made by Moulana Motor Service of this permit No. 42 of 1977 and that by the order dated 27th June, 1981 aforesaid on the dismissal of the application for renewal it was this very permit No. 42 of 1977 which was granted to M/s. Kamla Bus Service. These facts are to be found in the first and the penultimate paragraphs of the said order dated 27th June, 1981.

Moulana Motor Service preferred appeal No. 93 of 1981 before the State Transport Appellate Tribunal against the order of the Regional Transport Authority dated 27th June, 1981 dismissing its application for renewal. This appeal was allowed by the State Transport Appellate Tribunal but on a writ petition being filed by M/s. Kamla Bus Service, being M. P. No. 133 of 1982, the order granting renewal to Moulana Motor Service was quashed with the result that the grant of permit in favour of M/s. Kamla Bus Service by order dated 27th June, 1981 stood revived.

At this place it may be pointed out that Ved Sagar Sood who was one of the co-applicants for the permit in 1977 and who had preferred appeal No. 308 of 1977 against the order of the R.T.A. dated 24th August, 1977 is said to have died on 24th April, 1978 and his heirs entered into a partnership in the name of M/s Kamla Bus Service. It is this Kamla Bus Service which was granted permit No. 42 of 1977 aforesaid consequent upon the dismissal of the application for renewal made by Moulana Motor Service. As is apparent from the record, on the death of Ved Sagar Sood, his widow, three sons, four daughters and M/s. Kamla Bus Service, Guna, were impleaded in his place in Appeal No. 308 of 1977 as appellants Nos. 1 to 9 and thus had ample opportunity to press Appeal No. 308 of 1977 filed by Ved Sagar Sood. The State Transport Appellate Tribunal by its order dated 4th June, 1985 dismissed Appeal No. 308 of 1977 filed by Ved Sagar Sood and Appeal No. 333 of 1977 filed by M/s. Shakti Transport Service, but allowed Appeal No. 331 of 1977 filed by Satyendra Prakash Tiwari. Accordingly, the order of the R.T.A. dated 24th August, 1977 whereby permit had been granted to Moulana Motor Service was set aside and regular stage carriage permit on the route concerned was granted to Satyendra Prakash Tiwari who was appellant in Appeal No. 331 of 1977. Aggrieved by this order, the heirs of Ved Sagar Sood including M/s. Kamla Bus Service referred to above filed Misc. Petition No. 298 of 1985 in which the order appealed against, dated 30th November 1985, has been passed. By this order the matter was permitted to the Tribunal for consideration of the question as to whether there had been no life in

the lis which had to be adjudicated by the Tribunal in the three appeals mentioned above after refusal of the application of Moulana Motor Service for renewal and grant of fresh permit in favour of M/s. Kamla Bus Service. The present appeal has been filed by Satyendra Prakash Tiwari whose Appeal No. 331 of 1977 was allowed and to whom permit was ordered to be granted by the State Transport Appellate Tribunal by its order dated 4th June, 1985.

It has been urged by learned counsel for the appellant that the legal position on the point which the learned single Judge by the Judgment appealed against has required to be decided by the Tribunal, stands already decided by several decisions of this Court and consequently there was no occasion to remand the matter to the State Transport Appellate Tribunal for deciding the said point. The crucial question which falls for consideration in the present Letters Patent Appeal, therefore, is as to whether on the dismissal of the application for renewal made by Moulana Motor Service and grant of fresh permit in favour of M/s. Kamla Bus Service, the three appeals pending before the State Transport Appellate Tribunal against the order of the R.T.A. dated 24th August, 1977 became infructuous and consequently Appeal No. 331 of 1977 filed by Satyendra Prakash Tiwari was erroneously allowed by State Transport Appellate Tribunal. This, in substance, was the plea raised by the petitioners before the learned single Judge in M. P. No. 298 of 1985 and it is really this question which the Tribunal has been required to decide by the judgment appealed against.

For the respondents, on the other hand, it was urged by their learned counsel that since a fresh permit was granted to M/s. Kamla Bus Service even though in proceedings for renewal of the permit and since M/s. Kamla Bus Service was not one of the applicants for permit at the initial stage in 1977 nor was it a party in the appeal preferred by Satyendra Prakash Tiwari, the three appeals, including that of Satyendra Prakash Tiwari, had really become infructuous as a consequence of the grant of fresh permit in favour of M/s. Kamla Bus Service and the order of the Tribunal allowing Appeal No. 331 of 1977 and granting a permit in favour of Satyendra Prakash Tiwari could not be sustained. According to him, the learned single Judge did not commit any error in requiring the Tribunal to decide this question.

Having heard learned counsel for the parties, we find substance in the submission made by learned counsel for the appellant that in view of the legal position as it stands settled by decisions relied on by learned counsel for the appellant, the writ petition deserved to be decided on merits and there was really no occasion for remanding the matter to the Tribunal. In Jabalpur Transport Development Co., partnership firm Vs. State Transport Appellate Authority and Others, a permit had been granted to M/s. Sheikh Rasool Motor Transport Company which was subsequently cancelled because the permit-holder failed to comply with an order. In view of the vacancy caused by cancellation of the permit, application were made for regular stage carriage permits. An objection was raised by M/s. Sheikh Rasool Motor Transport Company to the grant of fresh

permit on the ground that it had preferred an appeal which was pending. However, a regular permit was granted to J.T. Development Co. subject to the condition that the permit shall stand cancelled if the appeal of M/s. Sheikh Rasool Motor Transport Company was allowed. When the appeal filed by M/s. Sheikh Rasool Motor Transport Company came up for hearing, an application was made by J. T. Development Co. for being impleaded as a party to the appeal on the ground that it had subsequently obtained a permit on the route and should be regarded as "any other person interested in the appeal". This application was, however, rejected by the State Transport Appellate Tribunal. Ultimately the appeal filed by M/s. Sheikh Rasool Motor Transport Company was allowed and the permit granted to J. T. Development Co. was cancelled. This order was challenged by J. T. Development Co. in a writ petition before this Court. While dismissing the said writ petition it was held by a Division Bench of this Court, relying on the law laid down by the Supreme Court in *V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore*, .

"It would appear from the case of *V.C.K. Bus Service Ltd.* case (supra) that the condition impugned here is not a modification or alteration of the terms of the permit. It is a condition subsequent on the happening of which the permit would stand cancelled. That being so, there is no legal obstacle to laying down such a condition when granting a permit. Nay, even if the condition were not there, the Supreme Court case is an authority for the view that, in the circumstances of this case, it could be implied. The reason is that the reversing appellate order wipes out the order appealed against and stands in its place for all legal purposes."

This view was reiterated by another Division Bench of this Court in Misc. Petition No. 505 of 1973 decided on 5th January, 1979 *Manohar Transport Service, Katni v. State Transport Appellate Authority, M. P., Gwalior and others*. In that case, a permit had been granted on a particular route to Ramkrishna Dolanprasad Puranik. This permit expired on 25-3-1969 and the permit-holder made an application for renewal. This application was rejected by the R.T.A. and an appeal was preferred by the permit-holder before the State Transport Appellate Tribunal against that order and another appeal against the order refusing renewal of counter-signature. During the pendency of these two appeals, the R.T.A. notified the route for fresh grant and ultimately a permit was granted in favour of Manohar Transport Service. Subsequently, the appeals aforesaid filed by Ramkrishna Dolanprasad Puranik were allowed by the State Transport Appellate Tribunal and renewal of its permit was granted. This order was challenged by Manohar Transport Service in the aforesaid writ petition which was, however, dismissed. One of the pleas raised by Manohar Transport Service in the aforesaid writ petition was that since the petitioner was not made a party in the appeals, the order allowing the appeals and granting renewal of permit in favour of Ramkrishna Dolanprasad Puranik was not binding on the petitioner nor could it nullify its permits. This plea was rejected relying on the decision in the case of *J. T. Development Co. (supra)*. It was held that the notification inviting applications and grant of permit in favour of the petitioner were all subject to the decision of

the appeals filed by Ramkrishna Dolanprasad Puranik. These decisions were followed in a later case being Misc. Petition No. 70 of 1983, decided on 26-4-1983, Jagdish Singh v. The Regional Transport Authority, Gwalior and others.

It is true that in the instant case the order refusing renewal of the permit in favour of Moulana Motor Service remained undisturbed as seen above, but in our opinion, in view of the law laid down in the aforesaid cases, it has hardly any bearing on the point in question. The question of grant or refusal of renewal of the permit of Moulana Motor Service granted by order dated 24th August, 1977 could arise only if the said grant was valid in law. Since the order dated 24th August, 1977 was challenged in the three appeals referred to above by those who were co-applicants along with Moulana Motor Service and whose applications for grant of permit had been rejected, the validity of the grant in favour of Moulana Motor Service in pursuance of the order dated 24th August, 1977 was obviously subject to the result of the three appeals filed against that order. The proceedings for renewal which included proceedings for grant of fresh permit in the event of dismissal of the renewal application were consequently all subject to the decision of the three appeals which had been filed against the order dated 24th August, 1977. In case the application for grant of permit made by Satyendra Prakash Tiwari whose Appeal No. 331 of 1977 was allowed by the State Transport Appellate Tribunal, had been granted by the R.T.A. itself by its order dated 24th August, 1977, it is he who would have been entitled to renewal of the permit on its expiry and in the event of his permit being renewed, no question of granting any fresh permit to anyone else could have arisen. The making of the application for renewal of the permit by Moulana Motor Service, the order dismissing the application for renewal and the order granting permit to M/s. Kamla Bus Service were all the result of the erroneous order passed by the R.T.A. on 24th August, 1977 whereby permit was granted to Moulana Motor Service and not to Satyendra Prakash Tiwari who in appeal filed by him was found to be better entitled to the permit than Moulana Motor Service. As held in the cases referred to above, even if M/s. Kamla Bus Service had not been heard at all in the three appeals against the order of the R.T. A. dated 24th August 1977, the order of the State Transport Appellate Tribunal allowing the appeal of Satyendra Prasad Tiwari would not have been illegal. In the instant case, however, it would be seen that consequent upon the death of Ved Sagar Sood who was the appellant in Appeal No. 308 of 1977, the respondents who were the petitioners in the writ petition were all impleaded as appellants in that appeal and since the three appeals were heard and decided together, the respondents had ample opportunity to put forward their case before the State Transport Appellate Tribunal.

In view of the foregoing discussion, we are of the opinion that the three appeals filed before the State Transport Appellate Tribunal against the order of the R.T.A. dated 24th August, 1977 had not become infructuous on the grant of permit in favour of M/s. Kamla Bus Service consequent upon the dismissal of the

application for renewal of its permit made by Moulana Motor Service. Since the appeals had not become infructuous and had to be decided on merits by the State Transport Appellate Tribunal and were so decided, it would serve no useful purpose in requiring the State Transport Appellate Tribunal to decide the aforesaid question as to whether the said appeals had or had not become infructuous. The order appealed against passed by the learned single Judge, therefore, cannot be sustained.

It was then urged by learned counsel for the respondents that the order passed by the State Transport Appellate Tribunal allowing Appeal No. 331 of 1977 filed by Satyendra Prakash Tiwari has been challenged in the writ petition on other grounds also dealing with the merits of the said order and in the event of the order of the learned single Judge being reversed, the writ petition has to be heard on these grounds. Indeed, we were inclined to hear the merits of the writ petition also simultaneously but since it transpired that the original record of the writ petition which had been instituted at Gwalior had not been sent for it could not be done. Now, in view of the amended rules in this behalf, the writ petition will have to be heard by a Division Bench and not by a learned single Judge. Learned counsel for the parties made a joint statement that the writ petition may be heard at the Main Registry at Jabalpur after the receipt of the record.

In the result, this appeal succeeds and is allowed and the judgment of the learned single Judge dated 30th November, 1985 is set aside. The office is directed to send for the record of the writ petition from the Bench Registry, Gwalior, immediately and to list the writ petition for hearing at Jabalpur as soon as the record is received. In the circumstances of the case, there shall be no order as to costs.