

(2023) 03 UK CK 0060
In the Uttarakhand High Court
Case No : Special Appeal No. 56 Of 2023

Saurabh Sharma	Vs	APPELLANT
State Of Uttarakhand & Others		RESPONDENT

Date of Decision : 22-03-2023

Acts Referred:

Motor Vehicle Act, 1988 — Section 89, 89(a), 89(b)
Motor Vehicles Act, 1939 — Section 63A(2)(c)

Citation : (2023) 03 UK CK 0060

Hon'ble Judges : Vipin Sanghi, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Amar Murti Shukla, Vikas Pande

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

Delay Condonation Application (IA No.01/2023)

1. Learned counsel for the respondents does not fairly oppose the delay in preferring the present special appeal.
2. For the reasons stated in the affidavit filed in support of the delay condonation application, the delay condonation application is allowed, and the delay of 67 days in preferring the special appeal is, hereby, condoned.

Special Appeal No.56 of 2023

3. The present special appeal is directed against the order dated 05.12.2022, passed by the learned Single Judge, in Writ Petition (M/S) No.2988 of 2022, on the ground that the appellant has an alternative efficacious remedy under Section 89 of the Motor Vehicle Act, 1988 against the order passed by the Secretary of the State Transport Authority dated 16.11.2022, whereby the permission granted to the appellant to ply vehicles between Ballupur to Parade Ground has been withdrawn, as a consequence of the vacation of the stay order

granted by this Court on 21.10.2022, in Writ Petition (M/S) No.2119 of 2022.

4. The submission of learned counsel for the appellant is that an appeal under Section 89 of the Act would not lie against the order impugned in the writ petition, since the same has not been passed either by the State, or by the Regional Transport Authority, and that the same has been passed by the Secretary of the State Transport Authority.

5. Section 89 of the Motor Vehicles Act reads as follows:-

“89. Appeals.—(1) Any person—

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit under section 82, or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such counter-signature, or

(e) aggrieved by the refusal of renewal of a permit, or

(f) aggrieved by the refusal to grant permission under section 83, or

(g) aggrieved by any other order which may be prescribed, may, within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

[(2) The State Government shall constitute such number of Transport Appellate Tribunals as it thinks fit and each such Tribunal shall consist of a judicial officer who is not below the rank of a District Judge or who is qualified to be a Judge of the High Court and it shall exercise jurisdiction within such area as may be notified by that Government.]

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), every appeal pending at the commencement of this Act, shall continue to be proceeded with and disposed of as if this Act had not been passed.

Explanation.—For the removal of doubts, it is hereby declared that when any order is made by the State Transport Authority or the Regional Transport Authority in pursuance of a direction issued by the Inter-State Transport Commission under clause (c) of sub-section (2) of section 63A of the Motor Vehicles Act, 1939 (4 of 1939), as it stood immediately before the commencement of this Act, and any person feels aggrieved by such order on the ground that it is not in consonance with such direction, he may appeal under sub-section (1) to the State Transport Appellate Tribunal against such order but not

against the direction so issued.”

6. We do not find any merit in this submission for the reason that only clause (a) of Section 89 mentions the words “State or a Regional Transport Authority”, in relation to the refusal to grant a permit, or in relation to any condition attached to a permit granted to a person. Clause (b) of Section 89 which reads that “aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof”, is not preceded by the words “State or a Regional Transport Authority, or the like”. Therefore, an appeal against the order impugned in the writ petition would clearly lie under Section 89 of the Motor Vehicles Act.

7. For the aforesaid reason, we do not find any merit in this appeal, and the same is accordingly dismissed.

8. Pending application, if any, also stands disposed of.