
(2000) 05 RAJ CK 0061
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1410 of 2000

Shanker Lal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2001) 1 RLW 301 : (2000) 3 WLN 421

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : B.L. Maheshwari, for the Appellant;

Judgement

Shethna, J.

(1). The State of Rajasthan and State of Haryana entered into a reciprocal transport agreement in respect of Sidhumukh to Bhiwani Via Tosham Inter-State route. The said agreement was dated 5/6/7/8.2.1968 as stated in para 2 of the petition. As per the said agreement, daily one return trip would be performed by the nominees of the State of Rajasthan and accordingly, the competent authority in the State of Rajasthan sanctioned one stage carriage permit on the said route.

(2). On 3.6.96, the petitioner submitted an application for a permit in the prescribed form in respect of the aforesaid route. The copy of the said application dated 3.6.96 in the prescribed form is at Annex.1. However, the said application of the petitioner was rejected by member, R.T.A., Bikaner on the ground that the petitioner had not produced any proof regarding his residence nor he has produced any cash receipt regarding the payment of application fees.

(3). According to the petitioner, the aforesaid decision of Member, R.T.A., Bikaner taken on 11.9.96 was not received in writing, therefore, on 30.9.97, he submitted an application for certified copy of the impugned order dated 11.9.96 passed by R.T.A. Bikaner which was received by him on that very day i.e. on 30.9.97. After receiving the certified copy of the order, he preferred an appeal

before the State Transport Appellate Tribunal, Rajasthan at Jaipur (for short "the Tribunal") on 22.10.97. However, the learned Tribunal dismissed the said appeal by its order dated 6.12.99 on the ground that the appeal was time barred and also on the ground that the petitioner cannot avail the vacancy which is existing under the new reciprocal transport agreement (An-nex.2). This has been challenged by the petitioner in this petition filed under Article 226/227 of the Constitution and it is prayed that the impugned order at Annex. 2 passed by the Tribunal on 6.12.99 dismissing his appeal no. 563/97 be quashed and set aside and the non-petitioners be directed to issue the permit on the impugned route to the petitioner on a vehicle of the prescribed model.

(4). Learned counsel Mr. Maheshwari for the petitioner relying upon the Division Bench judgment of this Court in the case of Daudayal vs. State Transport Appellate Tribunal, Jaipur & Ors. (1) submitted that the learned Tribunal committed grave error in dismissing the appeal only on the ground of limitation being lime barred. He, therefore, submitted that the impugned order passed by the Tribunal be quashed and set aside and the respondents be directed to issue a permit on the impugned route in favour of the petitioner on a vehicle of the prescribed model.

(5). From the impugned order at Annex.2 passed by the Tribunal, it is clear that the application dated 3.6.96 (Annex.1) filed by the petitioner seeking permit on the said route in question was dismissed by the R.T.A., Bikaner - respondent no. 3 on 11.9.96 in the presence of the petitioner as well as his learned counsel by a reasoned order mainly on two grounds that (1) he has not produced any proof regarding his residence and (2) he has not produced any receipt regarding the application fees as stated in para no.4 of the petition. It also appears from the impugned order at Annex.2 passed by the Tribunal that a fresh reciprocal transport agreement dated 9.7.97 was arrived at between the State of Rajasthan and State of Haryana, which was published in Rajasthan Gazette dated 15.7.97. Under the said agreement, a scope of two single trips and two permits have been fixed in so far as the State of Rajasthan is concerned whereas the earlier agreement dated 5 to 8.2.1968 was confined to number of daily trips to be performed. The fresh agreement dt. 9.7.97 resulted in creating one vacancy for the grant of a stage carriage permit on the said route. (See para 6 of the petition).

(6). It appears from the impugned order at Annex.2 that the fresh agreement was published in the paper on 22.7.97 and on coming to know about this fresh agreement. The petitioner applied for the certified copy of the order passed by R.T.A., Bikaner dated 11.6.96 rejecting his application on 30.9.97 which was received by him on the same day and thereafter on 22.10.97, he filed an appeal before the State Tribunal and challenged the impugned order dated 11.9.96 passed by R.T.A., Bikaner.

(7). The learned Tribunal was of the opinion that though the order of rejection was passed by the R.T.A., Bikaner way back on 11.9.96, the petitioner kept mum

for nearly 13 months and applied for certified copy of the order only after new agreement was published in paper on 22.7.97. Even then, there was a delay of nearly 2 months and 8 days because the petitioner had applied for certified copy on 30.9.97. The learned Tribunal further held that even after receiving the certified copy, the petitioner waited for 21 days and filed the appeal before it only on 22.10.97. Therefore, the Tribunal was of the opinion that the appeal was filed beyond the period of limitation which was to be filed within 30 days from the date of order and in view of the judgment reported in the case of S.P. Chengalvaraya Naidu vs. Jagannath (2), and it held that no benefit can be given to the petitioner and the appeal was required to be dismissed on the ground of limitation. The learned Tribunal also observed that the new agreement was arrived at between the State of Rajasthan and State of Haryana on 15.7.97 which was published in paper on 22.7.97 and the petitioner submitted an application on 3.6.96, therefore, in view of the judgment of Hon''ble Supreme Court in the case of R.Obali Swami Naidu vs. Addl. S.T.A.T. Madras (3), it held that the permit cannot be issued under the new agreement because the petitioner had applied for permit under the old agreement of 1968. Thus, on merits also, the Tribunal was of the opinion that the petitioner had no case. However, in the operative part of the order, the Tribunal has observed that the appeal was dismissed on the ground of limitation.

(8). In Daudayal's case (supra), the Division Bench has held that the limitation does not start from the date of knowledge or date of pronouncement of the order but it starts from the date of receipt of the order. Their Lordships were also not unmindful of the fact that some account of uncertainty would be involved if such an interpretation is taken of the provisions of Rule 108(b) and an appeal u/s 54(1)(a) against the rejection of an application to grant a permit may be filed after several months of the pronouncement of the verbal order.

(9). In fact, Hon''ble Gupta, J., speaking for the Division Bench in Daudayal's case, sitting as a Single Judge has held in the case of Gani Mohammed vs. The State Transport Appellate Tribunal (4) that the appeal filed after two and a half years is patently barred by limitation and it was the duty of the appellant to approach R.T.A. for certified copy within reasonable period.

(10). As stated earlier, though the R.T.A., Bikaner rejected his application for grant of permit way back on 11.6.96 in the presence of the petitioner as well as his counsel, the petitioner kept quiet and even did not apply for the certified copy of the order till 30.9.97 for a long period of nearly 15 months. It is clear that he woke up only after new agreement of 1997 was published in paper on 22.7.97 and he wanted to get the benefit of that. No explanation whatsoever has been given by the petitioner for such a gross delay. It is true that on the receipt of the certified copy of the petitioner, the appeal filed before the Tribunal was within the period of 30 days because after receiving the certified copy of order on 30.9.97, he filed the appeal on 22.10.97 before the Tribunal but the present case of the petitioner is covered against him by the judgment of Hon''ble Gupta, J. in Gani

Mohammed's case as the present petitioner took undue time of 15 months in applying for certified copy of the order rejecting his application passed by the R.T.A., Bikaner.

(11). It may be stated that though the learned Tribunal dismissed the appeal of the petitioner on the ground of delay, the learned Tribunal did consider the case of the petitioner on merits also and on merits, it found that the petitioner applied for permit under the old agreement, therefore, he will not be entitled to get the permit under the new agreement. It seems that this view has been taken by the learned Tribunal in view of the recent Supreme Court judgment that while deciding the case on the ground of limitation, the court should also examine as to whether there is any substance on merits in the case or riot.

(12). Before parting I must state that there is a challenge to the Order dated 6.12.99 passed by the Tribunal in appeal but there is no challenge whatsoever to the order passed by R.T.A., Bikaner rejecting his application on 11.9.96. In fact, that order is not at all produced before this court by the petitioner along with this petition.

(13). Lastly, it must be stated that though this petition is labelled as a petition under Article 226/227 of the Constitution but strictly speaking it is a petition under Article 227 of the Constitution, The scope of which is very narrow and limited as held by the Hon''ble Supreme Court in the case of Mohd. Yunus vs. Mohd. Mustaqim (5) that the High Court cannot even correct error of law committed by the subordinate courts in its supervisory jurisdiction. In this case, considering overall picture of the matter, I am of the opinion that the impugned order at Annex.2 is not required to be interfered by this Court in its supervisory jurisdiction under Article 227 of the Constitution keeping in mind the attitude of the petitioner in filing the appeal before the Tribunal after a period of fifteen months of the passing of the main order of rejection by R.T.A., Bikaner on 11.9.96.

(14). In view of the above discussion, this petition fails and is hereby dismissed.

(15). Stay petition is also dismissed.