
(1967) 03 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 344 of 1965

Shitaldas, Partner, Damodardas Shitaldas

APPELLANT

Vs

State Transport Appellate Authority and Others

RESPONDENT

Date of Decision : 24-03-1967

Acts Referred:

Central Provinces and Berar Motor Vehicles Rules, 1942 — Rule 73A
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 48, 64

Citation : AIR 1967 MP 255 : (1970) ILR (MP) 751 : (1967) JLJ 335

Hon'ble Judges : S.P. Bhargava, J; R.J. Bhawe, J

Bench : Division Bench

Advocate : R.K. Tankha, for the Appellant; K.K. Dube, Government Advocate and P.R. Naolekar, for the Respondent

Final Decision : Allowed

Judgement

Bhave, J.—By this petition under Article 226 of the Constitution, the petitioner seeks a writ of certiorari for quashing the order, dated 10th June, 1965, passed by the State Transport Appellate Authority Madhya Pradesh by which the petitioner's Appeal No. 224 of 1961 was dismissed by that authority as barred by limitation and the appeal (No. 201 of 1961) of the respondent No 3 was allowed and it was granted a permit on the route Hanumana-Tilgawan for one return trip daily.

2. The facts of the case are that the Regional Transport Authority, Rewa, by its notification, dated 9th September, 1961, had invited applications for grant of a stage carriage permit on Hanumana-Tilgawan route for one return trip daily. Various operators applied for the permit. The Regional Transport Authority Rewa, granted the permit to the respondent No 4, while the applications of the petitioner and the respondent No. 3 were rejected. They preferred appeals before the Appellate Authority as indicated above. In the meanwhile the permit granted to the respondent No 4 was cancelled u/s 60 of the Motor Vehicles Act. For one

reason or the other the appeal did not come up for hearing for a considerable time and in the meanwhile the Regional Transport Authority, Rewa, had issued a ceiling order. When the appeals came up for hearing before the Appellate Authority, the ceiling order had come into operation and that authority dismissed the appeal of the petitioner as well as that of the respondent No. 3 on the ground that grant of permit would result in piercing the ceiling. The petitioner alone challenged the order of the State Transport Appellate Authority by a petition under Article 226 of the Constitution (Misc. Petition No. 183 of 1964). That petition was allowed and the order of the Appellate Authority was quashed and the case was remitted to that authority for decision on merits.

3. On remand, the Appellate Authority dismissed the petitioner's appeal on the ground that the prescribed court-fee of Rs. 6 was not affixed to the memorandum of appeal when it was filed and that when the deficit was made good the appeal had become barred by limitation. Though the respondent No. 3 had not filed any writ petition challenging the order of dismissal of his appeal, the Appellate Authority proceeded on the assumption that his appeal was also revived when its original order was quashed by this Court and on that footing considered the appeal of the respondent No. 3 and granted it the permit by its order dated 10th June, 1965. That order is under challenge before us.

4. Shri Tankha, learned counsel for the petitioner, urged that the Appellate Authority was in error in holding that the appeal of the respondent No. 3 was also revived. He also urged that the Appellate Authority was in error in holding that the petitioner's appeal was barred by limitation.

5. In *Madhya Pradesh State Road Transport Corporation Vs. R.C. Roy Poddar and Others*, this Court no doubt held that when the order of a tribunal was quashed and the case was remitted to that tribunal for a fresh decision according to law, it was implied that it had to decide the case in the same circumstances in which it was originally decided and that if could not be held that only those who moved this Court in the petition could alone get the advantage of the order of this Court. But the Supreme Court has taken a contrary view in *Cumbum Roadways (P) Ltd. Vs. Somu Transport (P) Ltd. and Others*. It must, therefore, be held that the Appellate Authority was in error in treating the appeal of the respondent No. 3 as revived and in granting it the permit that part of the order of the Appellate Authority is, therefore, liable to be quashed.

6. In our opinion, the Appellate Authority was also in error in dismissing the appeal of the petitioner as barred by limitation. In the Vindhya Pradesh region the C.P. and Berar Motor Vehicles Rules, 1940, as applied to that region by the then Government of Vindhya Pradesh are applicable. Those Rules were amended in the year 1961 and the new Rule 73-A was added. By this rule the court-fee of Rs. 6 is made payable on a memorandum of appeal or an application by way of revision when presented to the State Transport Authority. This rule has been relied on by the Appellate Authority. But the rule nowhere mentions the "State Transport Appellate Authority" it refers only to the "State Transport Authority".

That the State Transport Authority, and the State Transport Appellate Authority are not the same and are distinct entities is obvious. The State Transport Authority is constituted in exercise of powers u/s 44 of the Motor Vehicles Act and is empowered to discharge duties with respect to the matters enumerated in Sub-section (3) of Section 44; while the State Transport Appellate Authority is constituted u/s 64 of the Act for the purposes of providing an Appellate Authority. Section 64-A also makes this clear. Under that section the State Transport Authority is made the revisional and supervisory authority in all those matters where an appeal does not lie. It is thus clear that the two authorities are distinct and are invested with different powers. It is true that no appeal lies before the State Transport Authority, and yet Rule 73-A speaks about a memorandum of appeal. It may be that the framers of the rule might have in view the Appellate Authority when they provided for the court fees both for the appeals and the revisions. But they have failed to mention the Appellate Authority. This lacuna in the rule has not been noted by the Appellate Authority. It is thus clear that no court-fee is prescribed under Rule 73-A for an appeal to be presented before the Appellate Authority and it must be held that the memorandum of appeal presented by the petitioner originally was not defective and that the appeal was filed within limitation.

7. In this view of the matter, it is not necessary to consider the other submissions made by Shri Tankha to the effect that the non-payment of court-fee within time was not fatal and that the Appellate Authority had jurisdiction to condone the delay.

8. The Appellate Authority has not considered the case of the petitioner on merits. Hence the case will have to be remitted to that authority.

9. For the abovesaid reasons, the petition is allowed. The order, dated 10th June, 1963, passed by the State Transport Appellate Authority, Gwalior, is quashed and the case is remitted to that authority for considering on merits the appeal of the petitioner only. The respondent No. 3 shall pay the costs of the petitioner. Hearing fee Rs. 100. The outstanding amount of the security deposit shall be refunded to the petitioner.