

(1989) 12 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.P. No. 293 of 1989

Shivchand Amolakchand Bus Operator, Shivpuri	APPELLANT
Vs	
State Transport Appellate Tribunal, Gwalior and Others	RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1939 — Section 46, 47(1)
Motor Vehicles Act, 1988 — Section 217, 217(2)(4), 68F(1D), 71(3)

Citation : AIR 1990 MP 300 : (1990) 35 MPLJ 720 : (1990) MPLJ 720

Hon'ble Judges : T.N. Singh, J; S.K. Dubey, J

Bench : Division Bench

Advocate : N.K. Shejwalkar, for the Appellant; D.V. Nigudkar, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Singh, J.

In this writ petition, the order passed on 13-1-1989 by State Transport Appellate Tribunal, for short, the "Tribunal" is impugned mainly on the ground that the Tribunal acted without jurisdiction in rejecting petitioner's appeal and in upholding the order passed on 29-10-1986 by Regional Transport Authority, Gwalior, for short, the "RTA", by which petitioner's prayer for renewal of stage carriage permit No. 11/Stage/72 on the route Shivpuri to Vijaypur Via Tentra, Pohari and Gaswani was rejected.

In order to appreciate the contention of petitioner's counsel Shri Shejwalkar, it is necessary to narrate briefly the history of petitioner's permit aforesaid. On 26-7-1970 he had made application as contemplated under Section 46 of the Motor Vehicles Act, 1939, for short, the "old Act", which was notified in the Gazette (M.P. Rajasthan) on 30-4-1971. With the petition copies thereof are annexed as Annexures A and B respectively. By an order passed on 12-7-1971, R.T.A. had rejected the application of the petitioner and against that order, he had preferred an appeal. He succeeded in appeal and was granted the permit

applied for a period of three years from 9-2-1972 to 8-3-1975. The first renewal application was made by him on 19-10-1974 before the term expired and the prayer was allowed. Renewal was granted from 9-3-1975 to 8-7-1978. In revision, that was challenged by respondent No. 3 of the instant petition, Madhya Pradesh State Road Transport Corporation, for short, the "MPSRTC". At this stage, for first time, it was noted that a proposed scheme of nationalisation, Scheme No. 11M, had been published on 28-3-1975 and, therefore, renewal could not be granted in view of Section 68F(1D) of the old Act. Although the revision was allowed, a direction was made to keep the application of the petitioner for renewal pending till finalisation of the said Scheme. It is, however, not disputed that the petitioner is operating on the route in question on the strength of temporary permit and he has virtually monopolised the route till today, for the last seventeen years.

Admittedly, proposed Scheme No. 11M was "approved" and finalised as per Gazette Notification Annexure S-4, dated 4-8-1978. But, it is also an admitted fact that petitioner's initial entitlement was affected by another Scheme which was "proposed" scheme, namely, Scheme No. 27-M. That was "proposed" on 22-10-1971 (Annexure S-1) and "approved" and finalised on 12-4-1985 (Annexure S-2). These facts are noted in the impugned order. However, notwithstanding pendency of his application dated 19-10-1974, the petitioner filed two more renewal applications on 3-10-1977 and 12-3-1985 and all those applications were kept pending until they faced wholesale rejection on 29-10-1986, giving rise to the unsuccessful appeal of the petitioner in which the impugned order was passed.

The Tribunal, in passing the impugned order, took the view that it was not necessary to consider, if the renewal applications were time-barred as done by the RTA. On the other hand, according to Tribunal, petitioner had no right to renewal which he could enforce as the original grant made in his favour by this Tribunal on 16-2-1972 was itself without jurisdiction. It is indeed in this connection that the Tribunal noted in the impugned order the effect of the two Nationalisation Schemes Nos. 27-M and 11-M which had been "proposed" respectively on 22-7-1971 and 28-3-1975. Because of the mandatory provision of Section 68F (1D) of the old Act, that view of the Tribunal is unassailable. We also accept Tribunal's conclusion, based on decision of this Court in Rao Bhupendra Singh Vs. Smt. Gopal Kunwar Umash and Another, ; Shyam Bihari Vs. State of Madhya Pradesh, and the well-known English decision in Anisminic's case (1969) 1 All ER 208, that an order made by the Tribunal without jurisdiction is nullity and such an order confers no right on any party. The Tribunal also rejected appellant's contention that the original application for grant of permit be deemed pending and entitlement of the appellant (herein the petitioner) be adjudged on the basis of that application.

Before us also, Shri Shejwalkar pressed the same contention and has cited two Bench decisions of this Court reported in Madhya Pradesh State Road Transport

Corporation Vs. The State Transport Authority, M.P., Gwalior and Another, (MPSRTC v. STAT) and The Madhya Pradesh State Road Transport Corporation Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, (MPSRTC V. STAT). Learned counsel for the MPSRTC, respondent No. 3, has distinguished those decisions on facts, submitting that orders passed in those cases initially were not similarly effected by Section 68F(1D) though he conceded that in both cases, this Court has concurrently taken the view that during the currency of the disability ensuing from Section 68F(1D), applications for non-temporary stage carriage permit are to be kept pending till approval of the proposed scheme in question because dismissal of application for renewal of permit was not expressly contemplated thereunder.

The new dimension added to the lis during the pendency of the writ petition, however, deserves special notice. The petitioner came before us on 27-2-1989 and obtained from us an interim order on 15-3-1989 in the matter, directing the R.T.A. concerned to stay consideration of application received pursuant to Gazette Notification dated 16-12-1988 (Annexure P/9). It appears that after RTA had refused petitioner's prayer for renewal the route was advertised, but this time, in accordance with provisions of Sub-section (1-A) of Section 47 of the old Act. The State Government is authorised thereunder to reserve certain routes for grant of stage carriage permit to Schedule Castes and Scheduled Tribes. That apart, during the pendency of the writ petition, Motor Vehicles Act, 1988, for short, the new Act, has come into force w.e. from 1-7-1989. These developments have a material bearing on the fate of the instant petition and as such, we are not required to consider submissions made by counsel in regard to the two decisions cited by Shri Shejwalkar. We may, nevertheless, observe, however, that our attention was drawn to two decisions of the apex Court in the case of Yogeshwar Jaiswal Vs. State Transport Appellate Tribunal and Others, and Phool Chand Gupta Vs. Regional Transport Authority, Ujjain and Others, wherein the apex Court deprecated delay in publication of "approved" schemes and they had quashed such schemes. On the basis of these two decisions, we have been asked to make a reappraisal of the view expressed in the two decisions of this Court by which long pendency of renewal applications have been sanctioned judicially making life of such applications co-extensive with the pendency of "approval" of the relevant schemes.

Assuming arguendo on the basis of this Court's decisions above referred; that petitioner's application (Annexure A), dated 26-7-1970, be deemed pending, the question to be decided would be of the effect of the enforcement of the new Act as the application was made under the old Act. We extract, therefore, the relevant portion of "Saving Clause" contained in Section 217 of the new Act :--

"217. Repeal and savings.-- (1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereafter in this section referred to as the repealed enactments) are hereby repealed.

(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments.-

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made or exemption granted or any confiscation made or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed _enactments and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act;

(Sub-clauses (b) to (f) not relevant) ** ** *

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application or Section 6 of the General Clauses - Act, 1897 (10 of 1897) with regard to the effect of repeals."

On the general scope and effect of a "Saving Clause", the general consensus is that such a clause is inserted *ex abundanti cautela* because rights vested under the repealed Act are not affected and derogation from that position under the general law is contemplated under such a clause to the extent provided therein. (Sec Crawford, p. 612; Craies, 7th Edti. p. 415; Maxwell, 12th Edn. p. 17). A Constitution Bench in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, has observed that such clauses are "introduced into Acts which repeal others, to safeguard right which, but for the saving would be lost. Evidently, when saving clause is provided in any enactment, it becomes a special law of interpretation in respect to matters it deals with and it circumscribes accordingly applicability of the general law of interpretation in regard to repeal of an enactment under the General Clauses Act. Support for this view can be read in their Lordships holding that the proviso in question of the relevant enactment construed by them was a saving clause which was meant to take the matter out of the relevant Section 7 of the Bombay General Clauses Act in order to "provide for a special saving". It is axiomatic that new rights cannot be derived from a saving clause. It must have the limited effect of protecting pre-existing rights only and this is manifested in the general law dealing with "Effect of Repeal" to be read in Clause (a) of Section 6 of the General Clauses Act of which we reproduce the relevant portion :

"6. Effect of repeal.-- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred

under any enactment so repealed; or (Sub-clauses (d) and (e) not relevant) and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Reading together Sub-sections (2)(a) and (4) of Section 217 of afore-extracted, of the new Act, along with Section 6(a) of the General Clauses Act, we entertain the view that any pending application for a stage carriage permit made under Section 46 of the old Act, which had lost its "force" cannot be kept alive for consideration and disposal under the new Act. In the instant case, petitioner's application must be deemed to have lost its force or efficacy as a result of its exhausting its object and purpose on being granted to him in appeal as per order Annexure-C, dated 16-2-1972. This conclusion emerges from the application variously of the provisions of the afore-extracted Clauses (a), (b) and (c) of Section 6. While revival of a lost or dead right is explicitly barred in Clause (a), the decision rendered in petitioner's appeal in his favour resulting in grant of permit to him on the basis of his application has to be regarded as "anything duly done" under the old Act as per Clause (b). It cannot also be said that under the old or "repealed" Act, any right was acquired or had accrued in terms of Clause (c) to the petitioner to have his application dated 26-7-1970 to be kept pending and such right is not affected by the new Act. He had made the application to secure a permit and that was granted but with respect to his right of renewal of the permit, he cannot say that rejection finally of renewal by the impugned order under the old Act would still leave unaffected his right of renewal and provisions of the new Act would not prevail in regard thereto. The ultimate remedy for enforcement of his right for renewal of the permit was exhausted by him when he had preferred the appeal in which the impugned order was rendered and, therefore, there remained no remedy to be "instituted, continued or enforced" under the old Act in regard to that right.

A word or two may now be said about the notification dated 16-12-1988, portion of which has been partially stayed on petitioner's prayer in these proceedings as observed earlier. This was done on the contention advanced by the petitioner that the situation created thereby impinges on petitioner's right to be considered grant of permit to him for the route in question on the basis of his application dated 26-7-1970 which, according to him, should be deemed alive. In this connection, we have to observe that none of the Clauses (a) to (f) of Section 217(2) makes any saving explicitly in regard to any application for permit under the Old Act pending disposal on the date of enforcement of the New Act. Clause (a) of Section 217(2) speaks only of "any notification, rule, regulation, order or notice issued or any appointment or declaration made or exemption granted" and by no stretch of imagination, any of expressions used advisedly by the Legislature in that manner can be construed to include an "application" also. If the Legislature had the intention to do so, it would have explicitly referred also to an "application" because that is the expression used in Section 46 or even in Section 47 of the Old Act under which the procedure for dealing with application

for stage carriage permit is laid down. The Legislature, according to us, has made its intention clear to limit saving in regard only to any "action taken under the replaced enactment" and it has said so in that regard using those words explicitly. In our view, the petitioner can also have no case against the impugned Notification dated 16-12-1988 because, though that is issued under the Old Act, that is "not inconsistent" with the provisions of the New Act and can be deemed to be issued under the correspondent provision of the New Act and is thereby saved. The said Notification issued in terms of Sub-section (1)(a) of Section 47 conforms to the provision enacted in Sub-section (3)(b) of Section 71 of the New Act. The Old and the New provisions, both envisage reservation in the matter of grant of stage carriage permit for Scheduled Castes and Scheduled Tribes and indeed, the two provisions are in *pari materia* achieving complete verbal congruence in the use of language. Having taken this view, it is impossible on our part to allow the petitioner to assert his right in regard to his application dated 26-7-1970 or even in regard to any one of his renewal applications made on 19-10-1974 or 3-10-1977 or 12-3-1985 as that would result in partial destruction of the impugned Notification dated 16-12-1988 despite that being saved expressly in terms of Sub-section (2)(a) of Section 217 of the new Act.

Writ jurisdiction is meant to interdict constitutional injustice and for redressal of grievances in regard thereto. It is discretionary jurisdiction and is not meant to promote unworthy causes of litigants who have no statutory or constitutional right to be enforced or have equity operating against them in any manner. Although the petitioner has claimed that the Tribunal acted illegally and without jurisdiction in granting him permit on 15-12-1972 on the basis of his application dated 26-7-1970, he has admittedly derived benefit of that order and that too over a long period of seventeen years. He cannot turn round and ask us to compound the illegal action of the Tribunal, which he had himself invited, by allowing him further benefit of the order passed by the Tribunal without jurisdiction. If we accept petitioner's contention, we will be doing what we are forbidden to do and will be throwing to the winds all considerations of public interest that lie in curbing monopolisation, which is constitutionally denounced. In *Prahlad Das Gupta Vs. Taneja Bus Service, Sheopur and Others*, this Court has observed with reference to the provisions of Section 46 et. seq. of the Old Act that those provisions are meant to subserve on the one hand "interest of public generally" and take care of "public convenience" and on the other hand, to exclude creation of monopolies in favour of any particular, private operator. In the New Act, Chapter VI contains provisions which are *pari materia* to those of Chapter IV-A of the Old Act and *Prahlad Das Gupta's* holding (*supra*) continues to be valid.

As a result of the discussion aforesaid, we reach the conclusion that the impugned order is not tainted by any error of law apparent on the face of the record. The Tribunal has rendered the said order on consideration of the relevant materials and has applied the correct law in reaching the conclusion that renewal application of the petitioner had been rightly rejected by MTA and that there was

no merit in petitioner's prayer for a direction to RTA to treat his original application dated 26-7-1970 to be alive and ripe now only for disposal, by issuance of permit for the route in question. We do not have any hesitation to hold that no case for certiorari is made out and that no mandamus even can be issued as prayed in regard to petitioner's application dated 26-7-1970. He has not laid and indeed cannot lay claim in respect of Notification dated 30-4-1971 published in that regard. That indeed is superseded by subsequent events; mainly and lately by the recent Notification dated 16-12-1988. An extract from the said Notification has indeed come on record as Annexure P/9 and operation thereof had been stayed by interim order passed on 15-3-1989.

In the result, the petition fails and is dismissed. The interim order dated 15-3-1989 stands vacated. There shall be no order as to costs.