

(2008) 07 UK CK 0005
In the Uttarakhand High Court
Case No : Writ Petition No. 1964 of 2007

S.K. Srivastava

APPELLANT

Vs

State Transport Appellate Tribunal and Another

RESPONDENT

Date of Decision : 25-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 89, 89(1)

Citation : (2008) 3 UC 1775

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Advocate : M.S. Bisht, for the Appellant; Bindesh Kumar Gupta, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.

CLMA No. 4623 of 2008:

1. On 10th October, 2007, four weeks" time was given to the Respondents to file the counter affidavit. Thereafter, about half a dozen adjournments were obtained by the Respondents for filing the counter affidavit and yet the counter affidavit was not filed. On 9th July, 2008, the Court passed a specific order closing the right of the Respondents to file the counter affidavit because the counter affidavit had not been filed till that date.

2. Through the medium of this Application, the following prayer has been made: "It is, therefore, most respectfully prayed that this Hon"ble Court may kindly be pleased to grant permission to the applicant / Respondent No. 2 to file counter affidavit condoning the delay caused in filing the counter affidavit in the present writ petition and further be pleased to take the counter affidavit on record, and / or pass such other / further order(s), which this Hon"ble Court may deem fit and proper in the circumstances of the case."

3. The application is supported by the affidavit of Assistant Regional Transport Officer, Dehradun.

4. First and foremost, the Application is not, itself, maintainable because, in the Application, there is no prayer for review or recall of the order dated 9th July, 2008. The Respondents should have known that unless that order is reviewed or recalled, no permission can be granted for filing of the counter affidavit.

5. Secondly, neither in the Application nor in the supporting affidavit, has one word been written as to why did the Respondents not file the counter affidavit in the past 9 months. There is no explanation whatsoever as to why could the Respondents not file the counter affidavit in last 9 months.

6. The Application is wholly misconceived and totally non-maintainable and, accordingly, is rejected with costs assessed at Rs. 15,000/- to be deposited in the High Court Legal Aid Fund within two weeks from today.

Writ Petition No. 1964 of 2007 (MIS):

7. On 14th November, 2006, Chairman, State Transport Appellate Tribunal, Uttarakhand, Dehradun ("Tribunal" for short) partly allowed Appeal No. 12 of 2004 filed by the Petitioner herein against the order dated 31st January, 2004 passed by the Regional Transport Authority ("R.T.A." for short). It directed the R.T.A. to reconsider the Petitioner's application for grant of route permit in accordance with law and on the merits of the case. The Petitioner filed Writ Petition No. 1853 of 2006 (M/S) in this Court. Vide judgment dated 20th April, 2007, this Court set aside the aforesaid order dated 14th November 2006 passed by the Tribunal and, by reviving the aforesaid Appeal No. 12 of 2004 and restoring it to its original position, remanded the matter to the Tribunal with directions to it to decide the appeal afresh. The main grievance, rather the only grievance, of the Petitioner in this Court was that the Tribunal, rather than having remanded the matter to the R.T.A., ought to have itself decided the issue whether the Petitioner was entitled to the grant of the permit or not and, if entitled, to grant him the permit.

8. Vide order dated 8th August, 2007, upon remand, the Tribunal this time made certain extensive observations, but ultimately, once again remanded the matter to R.T.A. to decide afresh, in accordance with law and on merits, the Petitioner's application for grant of route permit. The Petitioner's prayer for review of this order was rejected by the Tribunal vide order dated 3rd September, 2007. Aggrieved, the Petitioner has once again approached this Court for intervention.

9. Section 89 of the Motor Vehicles Act, 1988 ("Act" for short) provides that any person, aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, may appeal to the State Transport Appellate Tribunal. The Tribunal, after giving the Appellant and the Authority an opportunity of hearing, may give a decision upon the appeal, which shall be final. The relevant extract of Section 89 for ready reference is reproduced hereunder:

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 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.

10. There is no doubt whatsoever that the Tribunal, being an Appellate Forum constituted by and u/s 89 of the Act, has all the trappings of a regular appellate court and, therefore, it has all the powers, which are vested in or can be exercised by the State or Regional Transport Authority. The expression, "give a decision thereon which shall be final", occurring at the end of Sub-section (1) of Section 89 of the Act, clearly manifests unambiguous legislative intent that whatever powers are vested in and exercisable by the State or a Regional Transport Authority, can be exercised, with equal force, by the Tribunal. If, therefore, the R.T.A. has the power to grant the permit as well as the power to reject the application for the grant of permit, the Tribunal, exercising its appellate power u/s 89(1) of the Act, has similar powers, while disposing of the appeal, to either grant the permit or to reject the application for the grant of permit.

11. Actually, the judgment given by this Court on 20th April, 2007 in Writ Petition 1853 of 2006 (M/S), even though did not clearly specify and spell out the aforesaid proposition of law, by implication, it did convey that the Tribunal, while remanding the matter vide its order dated 14th November, 2006, had committed an error and, therefore, the appeal of the writ Petitioner was restored. The Tribunal should have actually understood the intent behind the aforesaid judgment of the High Court, but without understanding and appreciating it, it repeated the mistake of remanding the case once again to R.T.A.

12. For the foregoing reasons, this writ petition is allowed. The impugned orders dated 8th August, 2007 as well as 3rd September, 2007 passed by the Tribunal are quashed and set aside. Appeal No. 12 of 2004 is once again revived and restored to its original position with directions to the Tribunal to decide it again afresh in the light of the aforesaid observations, on its merits and strictly in accordance with law. Since the matter has been hanging fire for the last almost 6 years, it is directed that the Tribunal shall decide the matter within four months from the date of communication of this order.