
(1981) 12 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 749 of 1981

Smt. Anima Devi

APPELLANT

Vs

Secy Regional Transport Authority and Others

RESPONDENT

Date of Decision : 15-12-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1939 — Section 60, 64

Citation : (1982) 1 GLR 77

Hon'ble Judges : D. Pathak, Acting C.J.; T.C. Das, J

Bench : Division Bench

Advocate : A.S. Bhattacharjee and M.K. Sarma, for the Appellant; P. Prasad, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D. Pathak, Actg. C.J.

1. Heard Mr. A.S. Bhattacharjee for the Petitioner as well as Mr. P. Prasad, learned Counsel on behalf, (SIC) passed by the Presiding Officer, (SIC) Transport Appellate Tribunal.

2. The brief facts giving rise to this petition are that on 26th of January, 1981, the Petitioner took out her stage carriage vehicle to the road but due to the Assam Bandh declared on that day it was not possible for her to ply the vehicle. On these facts the Petitioner was served with notice for cancellation of her stage carriage permit on the ground that the Petitioner did not ply her vehicle on 26.1.1981 and thereby violated the provision of Section 60(i)(e) of the Motor Vehicle Act, 1939, The Petitioner showed cause but on 26.2.81 her permit was cancelled by the Regional Transport Authority, Nowgong. The Petitioner being aggrieved preferred an appeal u/s 64(e) of the Motor Vehicle Act before the State Transport Appellate Tribunal. The appeal was fixed for hearing on 3.6.81. On that day, before the Counsel for the Appellant could appear, the learned Presiding

Officer took up the appeal for hearing and while he was dictating the order, the Counsel for the Appellant appeared but the appeal was dismissed for non-prosecution. Meanwhile, the learned Counsel filed an application for restoration of the appeal on the same day. By the impugned order the learned Tribunal refused to restore the appeal to the file on the ground that the Tribunal does not have any power to restore the appeal to file after setting aside the order of dismissal under Order 9 Rule 9 read with 151 of the Code of Civil Procedure. Be that as it may, we are not going to the question as to whether there is any power on the part of, the Tribunal to restore the appeal to file under the aforesaid provisions but we feel that this is a fit case where the appellate authority should have heard the appeal on merit. We are inclined to hold that by invoking our power under the provision of Article 227 of the (SIC). we should remand the case to the appellate authority for disposal in accordance with law at an early date. Accordingly the order dated 3.6.81 as well as the order dated 26.8.81 are set aside.

3. In the result, the petition is allowed. The Rule is made absolute but we pass no order as to cost. Mr. Prasad learned Counsel appearing on behalf of the State does not seriously challenge the remand order that we have now passed.