(2013) 09 MP CK 0265

In the Madhya Pradesh High Court

Case No : W. P. 8818 of 2012

Smt. Rekha Rajput APPELLANT

Vs

State of M.P. and Another RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A(1)
Motor Vehicles Act, 1988 — Section 81, 81(2), 81(3)

Citation : (2013) 09 MP CK 0265

Hon'ble Judges : S.K. Gangele, J;Rohit Arya, J

Bench : Division Bench

Advocate : N.K. Gupta and Mr. Sudhir Gupta, for the Appellant; Bhagwan Raj Pandey, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard counsel. The petitioner has filed this petition challenging the order Annexure P/1 passed by the State Transport Appellate Tribunal and the order Annexure P/2 passed by the Regional Transport Authority.

2. The petitioner was holding a regular permit of a stage carriage vehicle for the route Magroni to Shivpuri, three return trips daily. The permit was valid upto 31/5/2011. The petitioner submitted an application before the Regional Transport Authority for renewal of the permit on 3/6/2011. Alongwith the application, no application for condonation of the delay, nor any affidavit in support of condonation of the delay, was filed. The petitioner also did not submit any proof that she had paid the tax on the vehicle and there were no dues against the vehicle. Aforesaid application was rejected by the Regional Transport Authority vide order dated 2/11/2011 on the ground that the petitioner did not submit required documents alongwith the application for grant of permit and the application was barred by time, because it was not filed within the period of limitation and no application for condonation of the delay was filed. Against the aforesaid order, an appeal was filed before the State Transport Appellate Tribunal

which has also been rejected.

3. Learned counsel for the petitioner submits that it was not obligatory on the part of the petitioner to submit a proof in regard to payment of tax at the time of filing of the application for renewal. He further submits that it was also not obligatory on the part of the petitioner to submit an application for condonation of the delay alongwith the application for renewal of permit; however, it was obligatory on the part of the Regional Transport Authority to give an opportunity to the petitioner to submit an application for condonation of the delay.

4. Admittedly, the petitioner did not submit any application for condonation of the delay at the time of filing an application for grant of renewal of permit. Section 81(2) and (3) of the Motor Vehicles Act, 1988 [for brevity, the "Act"]. prescribes a procedure for submitting an application for grant of renewal of permit. Aforesaid provision reads thus:

81(2) A permit may be renewed on an application made not less than fifteen days before the date of its expiry.

(3) Notwithstanding anything contained in sub-section (2), the Regional Transport Authority or the State Transport Authority as the case may be, entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

5. From perusal of sub-section (3) of Section 81 of the Act it is clear that the Regional Transport Authority can entertain an application for renewal of permit after last date specified if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified. It means that without submitting an application for condonation of the delay, the Regional Transport Authority could not entertain an application for renewal of permit and it was obligatory on the part of the applicant to submit an application for condonation of the delay.

6. Admittedly, the petitioner did not submit an application for condonation of the delay before the Regional Transport Authority and an application for condonation of the delay was submitted before the State Transport Appellate Tribunal.

7. We have perused the order dated 2/11/2011 passed by the Regional Transport Authority. In the aforesaid order, it is mentioned that on behalf of the petitioner Mr. Shailendra Gupta appeared and he prayed for time to submit written arguments upto 14/11/2011. Thereafter, order was passed. It means that in spite of knowledge of the statutory requirement, the petitioner did not file any application for condonation of the delay. In our opinion, it was mandatory on the part of the petitioner to file an application for condonation of the delay, if she wanted to get benefit of section 81(3) of the Act.

8. Learned counsel for the petitioner relied upon a judgment of the Hon''ble Supreme Court in State of M.P. and Another Vs. Pradeep Kumar and Another, and

a Single Bench decision of this Court in Kishan Vs. State of MP, State of M.P. and Ors. : 2008(I) MPJR 87, and submitted that opportunity had to be granted by the Regional Transport Authority to file an application for condonation of the delay.

9. Judgment of the Hon''ble Supreme Court is in context of Order 41 Rule 3A(1) CPC. The language of Order 41 Rule 3A(1) CPC is quite different. It thus reads:

Application for condonation of delay. When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

10. Hence, the judgment cited by the learned counsel for the petitioner is not applicable in the facts of the present case in view of the provisions of section 81(3) of the Act.

11. In this view of the matter, in our opinion, it is not necessary to consider the second ground whether tax was paid or not or whether against the vehicle of the petitioner any tax was due. Hence, both the Authorities have rightly rejected the application of the petitioner for renewal of the permit. We do not find any merit in this petition.

12. At this stage, learned counsel for the petitioner prays that liberty be granted to the petitioner to file a fresh application for grant of permit. In our opinion, the petitioner is always at liberty for that purpose and no such observation is required. The petition is dismissed with no order as to costs.

