
(2013) 11 P&H CK 0292
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 22172 of 2010

Smt. Satinder Kaur

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 174 PLR 155

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—Applications were invited by the State Transport Authority, for grant of one stage carriage permit for plying three return trips daily on Amritsar-Othian via District Courts, Miran Kot Chowk, Rakala Saidpur Mour, Tola Nangal, Jhanjhoti, Bagge Kaian and Bagga Khurd route, through notice in the Motor Transport Gazette, weekly, Chandigarh dated 1.6.2001. Pursuant to the notice, two applications were received within the stipulated period. The State Transport Commissioner, exercising the power of Regional Transport Authority, Jalandhar, Patiala and Ferozepur, vide his order dated 25.10.2001 granted permit for the aforesaid route to Vipin Kumar, rejecting the claim of the petitioner on the ground that he had failed to appear either in person or through authorised representative and was not found interested to pursue his application. However, his application was considered on the basis of material furnished by him along with it and rejected. It was observed in the order dated 25.10.2001 that it would be communicated.

2. The petitioner filed statutory appeal u/s 89 of the Motor Vehicles Act, 1988 [for short "the Act"] against the order dated 25.10.2001 before the State Transport Appellate Authority, Punjab which was dismissed on 31.10.2006 on the ground that it was barred by limitation as the appeal had been filed after three years, four months and twenty nine days.

3. Learned counsel for the petitioner has submitted that limitation to file the appeal would start from the date of knowledge within 30 days thereof and since the order was not communicated, it was not barred by limitation as the appeal was immediately filed as soon as the petitioner came to know about the order challenged in appeal. In this regard, he has relied upon a Full Bench judgment of this Court rendered in CWP No. 8229 of 2007 titled as "Jagtar Singh v. The State Transport Appellate Tribunal and others" decided on 30.1.2009 to contend that the period of limitation prescribed for filing appeal would start running from the date the aggrieved party acquires actual or constructive knowledge of the making of the said order. Whether or not the aggrieved party had any such knowledge will, however, be a matter to be seen by the Tribunal in each case depending upon its peculiar facts and circumstances.

4. On the other hand, learned counsel for the State has submitted that limitation to file the appeal is prescribed under Rule 85 of the Punjab Motor Vehicle Rules, 1989 [for short the Rules"] and contends that when a person desires to prefer an appeal against an order of the State or a Regional Transport Authority referred to in sub Section (1) of Section 89 shall within 30 days of the receipt of the order, prefer an appeal in the form of a memorandum in duplicate, one copy of which shall bear a court fee stamp of one hundred rupees, to the State Transport Appellate constituted under Sub-section (2) of Section 89 setting forth concisely the grounds of objection to the order of the State or a Regional Transport Authority as the case may be together with the certified copy of that order. It is submitted that the petitioner had the constructive knowledge of the order having been passed because after the impugned order was passed in favour of Vipan Kumar, the permit was granted to him and he used it for plying the buses on that route for five years before he hanged his shoes. In this regard, he has also relied upon a Division Bench judgment of this Court rendered in LPA No. 888 of 2013 titled as "Patiala Golden Cooperative Transport Society Limited, Patiala v. The State Transport Appellate Tribunal, Punjab and others decided on 5.8.2013 in which the word "constructive" is defined to mean "inferred" rather than "directly expressed". It was held that the party would be having constructive knowledge of the order if the successful party has been found plying on the route in question for number of years.

5. I have heard learned counsel for the parties and after examining the record, I am of the considered opinion that even in the case of Jagtar Singh (Supra) reference has been made to the decision in the case of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, in which it was held that since the application made by the petitioner therein had been rejected and on the basis of permit granted, the opposite party had started plying on the route concerned, the petitioner therein would not be able to allege that he had no knowledge about the order having been passed because when the route is being operative, it is presumed that the affected party knows that the permit had been granted to other party, giving him constructive knowledge about the rejection of his request for the permit. In that eventuality, the affected party

cannot take the plea that the order was not communicated. In the converse case, if even after passing the impugned order, permit is not granted and route is not being operated, it could have been presumed by the petitioner that since the route is not being operated, therefore, the applications made by the petitioner as well as other party are still pending adjudication and no final decision has been taken but in the present case the facts are otherwise and thus, the petitioner cannot be allowed to take a plea of being ignorant about the impugned order which he had challenged after an inordinate delay of three years, four months and twenty nine days, whereas limitation to file the appeal is only 30 days. In view of the aforesaid discussion, I do not find any merit in the present writ petition and the same is hereby dismissed.