

(2009) 12 KAR CK 0105

In the Karnataka High Court

Case No : Writ Appeal No's. 3848-3853 and 3879 of 2009

Smt. Shalini Jain

APPELLANT

Vs

The Karnataka State Transport Authority and Others

Mr. Melwin Lewis Vs The Karnataka State Transport Authority
and Smt. Shalini Jain

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Karnataka Motor Vehicles Act, 1988 — Section 89, 89 (1) (g)
Karnataka Motor Vehicles Rules, 1989 — Rule 80, 85, 89

Citation : AIR 2010 Kar 81 : (2010) ILR (Kar) 278 : (2010) 1 KCCR 356

Hon'ble Judges : V. Gopala Gowda, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : M.E. Nagesh and S.V. Krishna Swamy, in W.A. Nos. 3848-3853/2009 and B.R. Sundararaja Gupta, in W.A. No. 3879/2009, for the Appellant; A.R. Shardamba, for R1 in W.A. Nos. 3848-3853/2009, B.R.S. Gupta, for R2 in W.A. Nos. 3848-3853/2009, C.V. Kumar, for R3 in W.A. Nos. 3848-3853/2009, A.S. Parashara Kumar, for R4, 6 and 9 in W.A. Nos. 3848-3853/2009, B.R. Shyledra, for R5 in W.A. Nos. 3848-3853/2009, A. Anada Shetty and R. Raja Shekhar for R7 in W.A. Nos. 3848-3853/2009 and A.R. Sharadamba, AGA in W.A. No. 3879/2009, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—These appeals are filed by the appellant-permit holder aggrieved by the impugned order dated 8-10-2009 passed by the learned Single Judge in W.P. Nos. 28713-28718/2009 in whose favour the Karnataka State Transport Authority (in short "the KSTA") granted variation of conditions of the permit with the timings proposed by the permit holder. Another rival operator in the connected appeal is aggrieved by the order of the learned Single Judge setting aside the same in so far as it relates to extending interim order for the period of 4 weeks on 8-10-2009 as far as the appellant is concerned in respect of the appeal No. 2153/2007 before the KSTA, urging various facts.

2. The brief facts are stated for the purpose of examining the rival legal contentions to find out as to whether the order impugned in the writ petitions is legal and valid. The permit holder filed an application before the 1st respondent KSTA seeking for variation of permit No. 75/DK/99-2000 for the route from Mangalore to Karkala via: Kaikamba with proposed timings u/s 80 of the Motor Vehicles Act 1988 (hereinafter called as "MV Act" in short). That application came up for consideration before KSTA on 16.12.2003. The said authority resolved to grant variation of condition of permit as sought for by the appellant herein in the first batch of appeals with a direction to the permit holder to obtain the endorsement of variation of permit within 30days from the date of receipt of proceedings from the Secretary of the KSTA. As per Annexure-D dated 31.7.2004, Endorsement of variation of condition of permit was made by the Secretary of KSTA.

3. Being aggrieved of the said resolution, respondent Nos. 2 to 7 filed appeal Nos. 2153, 2176, 2179, 2184 and 2266/07 before the Karnataka State Transport Appellate Tribunal ("KSTAT" in short) challenging the grant: of variation made in favour of appellants permit on 15.11.2003, urging various grounds. According to respondents 2 to 7, the said appeals were filed within 30days from the date of receipt of the certified copy of the resolution from the KSTA and in accordance with Rule 89 of the Karnataka Motor Vehicle Rules, 1989 (in short "the Rules"). Therefore, there is no need for them to file an application seeking condonation of delay in filing the appeals. No doubt, it is a case of respondents 3, 4 and 6 in their appeals affidavits were filed at the time of filing their appeals explaining the delay in approaching the KSTAT. The said appeals were disposed of after hearing them together by passing the common Judgment dated 31.8,2009 with reference to the memo filed by the grantee permit holder on 22.5.2008. It is the case of the grantee permit holder that memo is conditional one. The KSTAT was required to accept the memo either in toto or reject the same or decide the case on merits after considering rival legal contentions urged in the appeals. That has not been done by the KSTAT in the instant case and not decided the appeals on merits. No doubt, the rights of the grantee permit holder and the respondents 2 to 7 the rival operators without there being condonation of delay application filed by them in their appeals and not examined the inordinate delay of nearly four years. The learned Presiding officer adverting to the memo filed by the Appellant herein would have either decided the appeals on merits or accepted the memo in totality filed by her. He has set aside the resolution of the KSTA and remanded the matter to RTA, Dakshina Kannada on the basis of memo filed by the grantee permit holder as she had given up the extension of route from Pumpwell Circle to Nithilapadavu and back one round trip given to her earlier. The extension route sought by the permit holder comes within the intra-State in respect of which RTA has got jurisdiction and therefore it remanded to it for the purpose of harmonising the timings after considering the grievances of Respondent Nos. 2 to 7.

4. The ground of attack in the writ petitions of the grantee permit holder in

challenging the order of the STA is that, the learned Presiding Officer has not accepted the memo in entirety, accepting the same in part and she has not agreed for setting aside the grant of variation of permit and he had set aside the same and remanded the matter to the RTA for considering the grievance of Respondent Nos. 2 to 7 and claim of the permit holder which amounts to deciding the case on merits without examining the rival legal contentions urged in the Appeals particularly, when the appeals of the respondent Nos. 2 to 7 are barred by limitation.

5. The learned Counsel Mr. Nagesh has placed reliance upon the Full Bench decision of Punjab and Haryana High Court reported in AIR 2009 P & H 114 in support of his legal contention that Rule 89 of the Karnataka Motor Vehicles Rules, 1989 (hereinafter called as KMV Rules) which is required to be interpreted keeping in view Section 80 and 89 of the Act "within 30 days" from the date of receipt of the order must be construed as 30 days from the date of order passed as interpreted by the Full Bench of Punjab and Haryana High Court and also placed reliance upon the Division Bench Judgment of this Court reported in ILR 1987 KAR 2830 in support of his legal submission made on behalf of grantee permit holder which has held that the parties cannot confer jurisdiction upon the Court, when the appeal is barred by limitation and the Court will have to consider time barred appeal at the time of examining the legal contentions urged in the appeals filed by the rival operators, This liberty was given to the grantee permit holder in the earlier in W.A. 1312/08 dated 1.7.2009, wherein she has challenged the order passed by the learned Single Judge in WP 10486/08. However, order dated 30.6.2008 passed by the KSTAT was not interfered with in the said writ-petition hence she has challenged the same in the said writ appeal urging various grounds. This Court while disposing of the appeal at paragraph-3 in the order passed in the writ Appeal given liberty to her stating that the order passed by the KSTAT is in the nature of interim order and in the event the final order being passed on merits by it against the interest of the grantee permit holder she can challenge the said order as well as interim order also. It could not be proper to entertain against such interim order. With the said liberty the writ appeal was disposed of. Therefore, it was incumbent upon the STAT to decide the cases as to whether there is delay in filing the appeals keeping in view the Division Bench Judgment of this Court referred to supra and also Full Bench decision of Punjab & Hararyana High Court. If the learned Presiding Officer of the STAT proceeded not accepting the memo filed by the grantee permit holder in entirety and not doing so and allowing the appeals setting aside the resolution passed by the STAT in favour of grantee permit holder rendered the order void abinitio in law and has assumed the jurisdiction without deciding the question of limitation. The learned Single Judge without examining this important aspect of the matter with regard to memo filed by the grantee permit holder in the appeals disposed of the writ petition affirming the order. Therefore, the appeals are filed by the grantee permit holder in the Appeals urging various grounds and prayed for setting aside the impugned order in these appeals and to quash the order impugned in the

writ petitions.

6. Firstly, without there being an application filed by respondents 2 to 7 in the Appeals seeking for condonation of delay as held by the full Bench of this Court and Punjab and Haryana High Court. Secondly, STAT has assumed jurisdiction to dispose of the appeals on merits which is not permissible in law therefore order passed by the STAT is vitiated in law, the learned single Judge not noticing this important legal aspect of the matter passed the order impugned in these appeals also suffer from error in law. Therefore, it is submitted that on the above grounds, the grantee permit holder is entitled for the reliefs as prayed in her writ appeals.

7. The learned Counsel for respondent-2 Sri B.R.S. Gupta, for Respondent-3 Sri C.V. Kumar and Respondents 4 and 6 Sri A.S. Parasara Kumar and Counsel for R-5 Sri B.R. Shailendra sought to justify both the order of the learned Single Judge as well as the common Judgment passed by the STAT contending that the same are legal and valid for the reason that grant of variation permit in favour of the appellant-permit holders insists 24 kms, which is a statutory prohibition u/s 80 Sub-section Clause (ii) of second proviso. They further contended that if variation of the permit granted in favour of the permit holder falls within the inter-state route in respect of which the counter signature of the Kerala State in law was required, which was not directed to be obtained in the order passed by KSTA. Therefore, the order passed by the STAT on the basis of memo filed by the grantee permit holder upon that portion of the route falls within the intrastate and he has set aside that order and remanded the matter to RTA, Dakshina Kannada District, is perfectly legal and valid in law. Therefore, the same cannot be interfered with by this Court in exercise of its appellate jurisdiction and power as no substantial question of law would arise in these appeals for consideration of this Court. Further they have contended that once the grantee permit holder files a memo agreeing to send back the matter to the RTA for the purpose of harmonising the timings between her and rival operators Respondents 2 to 7 once again re-agitating the matter before this Court; regarding the jurisdiction of the STAT on the ground that appeals of the above respondents were barred by limitation as the same were filed by them beyond the period of limitation prescribed under the Rule as per Judgments of P & H Court and Supreme court and interpretation made to Rule 85 of P & H Motor Vehicles Rules, holding that appeal filed in that case was beyond period of limitation. The interpretation made to the Rule 85 of Punjab and Haryana Motor Vehicle Rules is not correct as the Rule 85, is very clear and it has been held by this Court that the aggrieved party can file the appeal within 30days from the date of receipt of the order before the STAT. Further it is contended by them that the learned Counsel for respondent-3 and 4 and 6 that though they filed affidavits explaining the delay in filing their appeals no doubt the same are not considered by the learned presiding officer of the STAT and the order dated 30.6.2008 passed by it amounts to condonation of delay in filing the appeals by them. No doubt the liberty is given to the permit holder/appellant by this Court in her aforesaid writ Appeal in this regard is

properly considered by it no doubt the STAT has not adverted to the same in its order. Non-the-less, the order impugned in the writ petitions passed by the STAT does not warrant interference is the view taken by the learned Single Judge, after adverting to the memo filed by her before the STAT and further contended that, grant of variation permit in favour of the permit holder affects the statutory right of the respondents Nos. 2 to 7, as they being rival operators in the same route deviation from the timings of one minute in the variation permit granted to the grantee permit holder their services will be adversely affected. Therefore, they are aggrieved parties and this aspect of the matter has been duly considered by the learned Presiding Officer and the learned Single Judge and passed order and rightly remanded the matter to the RTA for its consideration after giving up the extension route claim by the permit holder & it falls within intra-State, which claim is within the distance provided u/s 80 Clause (ii) of MV Act. Therefore, they would submit that the orders do not warrant our interference in these appeals by this Court.

8. The learned Counsel Mr. B.R.S. Gupta in the connected appeal has submitted that it is filed by the appellant for limited purpose, as the learned single Judge has allowed the grantee permit holder to operate her service on the basis of variation permit route in the route for the period of four weeks, which period is already expired and this Court has not extended the same in her appeals. Therefore, the said portion of the order of the learned single Judge does not survive for our consideration, his submission is placed on record. In view of the above submission the appeal has become infructuous.

9. These appeals were heard together at the stage of preliminary hearing with the consent of the learned Counsel for the parties. We have very carefully examined the relevant provisions of Sections 80, 89 of the KMV Act and Rule 88 of the of KMV Rules for the purpose of examining the following substantial questions of law in these appeals:

i) whether the appellant is justified in pressing the legal contentions that the appeals filed by respondents 2 to 7 are barred by limitation as provided under Rule 88 of KMV Rules?

ii) if the appeals are barred by limitation, non-filing of the application for condonation of delay by respondent Nos. 2 to 7 has vitiated the common order of the STAT?

iii) Whether the disposal of the appeals by the STAT by passing the common Judgment on the basis of memo filed by the grantee permit holder without accepting the same in its entirety and not adverting and considering the rival legal contentions on merits in the appeals setting aside the variation permit in favour of grantee permit holder is legal and valid?

iv) Whether the order of the learned single Judge is vitiated in law?

v) What order?

Answer to first & Second Point:

10. It is necessary for this Court to extract the relevant Clause (g) of Section 89 of the MV Act and Rule 88 of the KMV Rules, which read thus:

89. Appeals

(1) Any person-

(a) xxxxx

(b) xxxxx

(c) xxxxx

(d) xxxxx

(e) xxxxxx

(f) xxxxxx

(g) aggrieved by any other order which may be prescribed, 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.

Rule 88 of the MV Rules reads thus:

88. Appeals and revision: (1) An appeal to the State Transport Appellate Tribunal u/s 89, against the order of any Transport Authority, shall be made within thirty days of the date of receipt of the order by the person preferring the appeal. It shall be in the form of a memorandum submitted in duplicate setting forth the grounds of objection to the order appealed against, and shall be accompanied by a certified copy of the order appealed against and shall be affixed with a court-fee stamp of the value of rupees one hundred. The grounds of objection to the order shall be stated concisely and under distinct heads.

(Emphasis made by this Court)

11. The similar Rule 85 of P & H Motor Vehicles rules of 1989 fell for consideration before Full Bench of Punjab & Haryana High Court. It has examined the provisions of Sections 80(2) and Rule 85 of the Punjab Motor Vehicles Rules and decisions of Apex court and Madras High Court upon which, strong reliance is placed by the grantee permit holder, wherein the said High Court has interpreted the above provisions of the Act and Rules at paragraph- 6 and law has been laid down. It is necessary for us to extract paragraph-6 from the said Judgment:

6. The remedy by way of an appeal before the State Transport Appellate Tribunal is available to anyone aggrieved of an order passed by the State or Regional Transport Authority. That remedy is, however, subject to the condition that it is availed within the time prescribed for the purpose....

....

While it is true that communication of the reasons would imply communication of a copy of the written order itself, a party who knows about the making of an order cannot ignore the same and allow grass to grow under its feet and do nothing except waiting for a formal communication of the order or to choose a time of his convenience to file an appeal on a tenuous plea that even though he knew about the order, he was waiting for its formal communication to seek redress against the same in appeal. Any interpretation of the provisions- of Sections 80 and 89 of the Act and Rule 85 of the Rules that would give rise to such an absurdity shall have to be eschewed....

12. The interpretation made by the Punjab and Haryana High Court in the said Judgment is that, any other interpretation of the provisions of Sections 80 and 89 of the Act and Rule 85 of the Rules similar to Rule 88 of our rules that would give rise to such an absurdity shall have to be eschewed and further it is held that limitation starts from the date of the formal communication of the order. Rule 85 of the said rules makes it obligatory for the purpose of making order communicate to the applicant concerned the period of limitation starts for preferring an appeal against the order is from the date of such communication is reasonable interpretation.

13. Further the Punjab and Haryana High Court at paragraph-7 after referring to the Apex Court Judgment in the case of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, , wherein the Apex Court has considered the question of period of limitation for seeking reference u/s 12 of the Land Acquisition Act, 1894 would commence from the date of award made by the Collector as stipulated under the said provisions or from the date the aggrieved party acquires knowledge of the same. The relevant portion of paragraph-7 of the said Judgment is extracted hereunder:

7. These decisions no doubt deal with a converse situation from the one at hand but the principle enunciated in the same would, in our opinion, apply equally to both. In Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, , the Supreme Court was examining the question whether the period of limitation for seeking a reference u/s 18 of the Land Acquisition Act, 1894, would commence from the date of award made by the Collector as stipulated under the said provisions or from the date the aggrieved party acquires knowledge of the same. On a review of the case law on the subject, their Lordships held that where the rights of a person are affected by any order and limitation is prescribed for the enforcement, of the remedy by the person aggrieved against the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. The Court declared that knowledge of the party affected by the award made by the Collector u/s 12 of the Land Acquisition Act, 1894 either actual or constructive was an essential requirement of fair play and natural justice. Consequently, the expression the date of the award used in proviso (b) to

Section 18(2) of the Act was held to mean the date when the award is either communicated to the party or is known by him either actually or constructively. It will be unreasonable observed the Court, to construe the words "from the date of Collector's Award used in the proviso to Section 18 in a literal or mechanical way.

8. Reference may also be made to a decision of the Madras High Court in *Annamalai Chetti v. Col. J.G. Cloete* ILR 6 Mad 189. In that case, the Court was dealing with Section 25 of the Madras Boundary Act, XXVIII, under which a suit to set aside the decision of the Settlement officer could be brought within two months from the date of the award. The question that arose was as to when would the time begin to run. The High Court held that the time would begin to run only from the date on which the decision is communicated to the parties otherwise the party concerned might be barred from its right to appeal without having any knowledge of the order being passed. To the same effect, is the decision in *Swaminathan alias Chidambaram Pillai Vs. Lakshmanan Chettiar and Another*, in which Sections 73(1) and 77(1) of the Indian Registration Act XVI of 1908 were being interpreted. It was held that in a case where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed the expression within 30days after the making of the order used in the said Section would mean within 30 days after the date on which the communication of the order reached the parties affected by it. Knowledge of the impugned award, order, decree or judgment has, thus, been taken to be crucial concomitant of the provisions stipulating the period of limitation to prevent remedies becoming time barred even when the parties affected by the orders had no knowledge about, the order made against them.

(Emphasis supplied by this Court)

14. The combined reading of paragraphs 6, 7 and 8 of said Punjab and Haryana High Court case would makes it clear that the law regarding period of limitation is laid down holding that period of limitation starts for filing the appeal u/s 89 of MV Act from the date of communication or the constructive or actual knowledge of the date of the order. In view of the aforesaid decision of Punjab and Haryana High Court on the basis of Apex Court Judgment and Madras High Court Judgment referred to in the above case, it would construe that the appeal has to be filed within 30days from the elate of knowledge of communication or knowledge of actual or constructive knowledge of the order passed by the Authority. In this case, respondents 2 to 7 are not parties to the proceedings before KSTA. The constructive or actual knowledge is relevant date for reckoning the period of 30days for filing appeals by them before the STAT as observed by the Full Bench decision of Punjab and Haryana High Court, referred to supra. The Motor Vehicles Act is a enactment. Section 89 of the Act confers statutory right upon an aggrieved party for filing an appeal u/s 89 of MV Act before STAT includes person is not a party to the proceedings, if, such persons is aggrieved of the order passed by either RTA or KSTA whether the interpretation made by the

Punjab and Haryana High Court with regard to Rule 85 is based on the decisions of the Apex Court. The object of Section 89 of the MV Act confers certain statutory powers upon State Government to make a rule and prescribe the period of limitation for filing appeal. Since the prescription of a period of limitation either under the provisions of the Act or under the rules for filing an appeal applicable by an aggrieved party before the STAT and therefore the period of limitation as prescribed under schedule to the Limitation Act, 1963 is not applicable in the MV Act, it is not expressly ousted the applicability of the provisions of Limitation Act to the proceedings under the MV Act then in view of Section 29(2) of Limitation Act, the provisions contained u/s 4 to 24 shall apply to the proceedings of MV Act.

15. In view of said provisions of the Act, if the appeal is not filed within 30 days by the respondent Nos. 2 to 7 from the date of actual or constructive knowledge of the order of the KSTA, they are also entitled to get the benefit of Section 5 of the Limitation Act, for the reason that applicability of the above provisions of the Limitation Act has not been expressly ousted in the provision of the Section 89(1) (g) r/w. Rule 89 of the KMV Rules.

16. In this view of the matter, interpretation made by the Full Bench of Punjab and Haryana High Court in the case referred to supra with all fours applicable to the fact situation and undisputedly. in the case on hand, there is no application filed by any one of respondents 2 to 7 before the STAT along with their appeals seeking condonation of delay in filing the appeals challenging the order of the KSTA. They have stated that they have filed appeals within 30days from the date of receipt of the certified copy of the impugned order passed by the KSTA, the question regarding the delay in filing appeals was raised by the permit holder, the said contention was rejected by the STAT vide its order dated 30.6.2008, which order was challenged before this Court in the writ petition and in the writ appeal order this Court rightly given liberty to grantee permit holder to challenge the correctness of the order if the order on merits is passed against her. Respondents 2 to 7 have pleaded that they had constructive and actual knowledge of the date of the order impugned in the appeals is within 30days from the date of the receipt of the order. They have challenged the order of the KSTA by filing the appeals within 30 days from the date of receipt of certified copy of the order from KSTA.

17. In this view of the matter, placing reliance by the learned Counsel for the grantee permit holder upon the Division Bench Judgment reported in Mahboob Pasha Vs. Syed Zaheeruddin and Others, , wherein the Division Bench of this Court after interpretation of the expression prescribed period as per Clause (j) of Section 2 of the Limitation Act interpreted and held that the period of limitation will be to accordance with Sub-sections (1) and (3) of the Act and it is further held that it is the duty of the Court to decide the question as to when the limitation commences, depending upon the nature of the suit and it cannot be founded on the submission made by the counsel for the parties. Further when

the appeal is preferred, application made after prescribed period of limitation though limitation has not been stated as a defence therefore, it is duty of the Court to decide the question of period of limitation in view of the observation made at paragraph-6 of the Judgment of Punjab and High Court, referred to supra.

18. The aforesaid decisions aptly applicable to the fact situation of the case on hand as respondent Nos. 2 to 7 had the knowledge of the order in the appeal passed by the KSTA before 30days from the date of receipt of the certified copy of the order. Therefore, the period of limitation for filing appeals by them should be reckoned from the date of knowledge of the order passed by the KSTA. In this view of the matter, rightly application is filed by the grantee permit holder in the appeals contending that the same are not maintainable in law for non-filing of condonation of delay application by respondent Nos. 2 to 7. The said plea has been rejected by the STAT without applying the provisions of the MV Act and Rule and law on the question and therefore the said order is not only contrary to the Full Bench decision of Punjab and Haryana High Court and also the Division Bench decision of this Court, referred to supra. This important aspect of the matter has not been examined by the learned Single Judge. Therefore, the order impugned in the appeals in this regard is vitiated in law. Accordingly, we hold that, the period of limitation for filing appeal by an aggrieved person u/s 89(1) (g) read with Rule 89 of the KMV Rules in LIS I be reckoned from the date of either communication of the order by the authority or actual knowledge of the order, if. he has filed application seeking permit or any other person including the rival operator has got right to challenge either the permit or variation of the permit. In the instant case, respondent Nos. 2 to 7 have specifically pleaded that the appeal is filed within 30 days from the date of receipt of certified copy of the order from the KSTA. Therefore, the contention urged on behalf of the respondent Nos. 2 to 7 that: there is no need for filing an application for condonation of delay invoking their statutory right u/s 5 of the Limitation Act, on the basis of Section 29(2) of the Limitation Act is wholly untenable in law. Therefore, order passed by the STAT on 30.6.2008 in the appeals of respondent Nos. 2 to 7 is bad in law. Therefore, the same is liable to be quashed. Accordingly quashed.

19. For the reasons stated supra, Our answer to the first and second points is period of limitation for filing the appeals against the order of STAT is 30days from the date of actual or constructive knowledge of the order to a person other than the applicant before STAT and also the appeals are barred by limitation from the date of order passed by KSTA. Accordingly, we answer the above points in favour of the grantee permit holder.

20. The third point is also answered in favour of grantee permit, holder for the following reasons:

We have carefully read common Judgment passed by STAT. It has adverted to the rival legal contentions and not considered and answered the same either

accepting the case of grantee permit holder or respondent Nos. 2 to 7 on merits. The learned Presiding Officer of STAT on the memo filed by permit holder, wherein she has been given extension of route and she had agreed in the memo to send back the matter to RTA, after giving up her extension route which is granted on her application, with a direction to RTA of Dakshina Kannada District to harmonise the timings between her and the other rival operators respondent Nos. 2 to 7 for the purpose of re-assigning timings only. That has not been accepted by the learned Presiding Officer. He has set aside the order impugned in the appeals and remanded the case to the RTA accepting her memo in part as she had given up her claim in respect of extension route of 4 kms falls within inter-State jurisdiction and thereafter remanded the case to RTA for its reconsideration of her claim for variation of permit. The learned Presiding Officer of the STAT either accepted the memo in its entirety or rejected the same and decided the appeals on merits. In the instant case, that has not been done by the learned Presiding Officer. On this ground alone, the order passed by it is vitiated in law and therefore liable to be rejected.

21. Answer to point No. IV.

In view of our answer to point Nos. (i) to (iii) in favour of the permit holder, the learned single Judge has not considered the above legal aspects at the time of examining the correctness of the order of the STAT in the writ petitions. Therefore, we have to hold that the order of the learned single Judge is vitiated in law, liable to be set aside. Accordingly, we have to answer the above point in favour of the grantee permit holder.

22. For the reasons stated supra, the common Judgment passed by STA is liable to be quashed. The matter is remitted back to it to re-examine the appeals after giving opportunity to respondent Nos. 2 to 7 to file condonation of delay applications and consider the same and pass order keeping in view the decision of the Supreme Court regarding exercise of its discretionary power regarding the delay in filing the appeals on the basis of ratio laid down by the Supreme court in the case reported in State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, paragraph-11 and thereafter decide the appeals of respondent Nos. 2 to 7 on merits.

23. For the reasons stated supra, the appeals filed by grantee permit holders are hereby allowed by setting aside the order of the learned Single Judge. Accordingly, WP Nos. 28713-718/09 are allowed by quashing the common order dated 30.6.2008 on the application and the common Judgment dated 31.8.2008 passed by the Tribunal. Rule is issued in the writ petition. Matter is remitted back to the STAT with a view to facilitate respondent Nos. 2 to 7 to file condonation of delay application and dispose of the same keeping in view the law laid down by the Apex Court on the question of delay, which is referred to supra and decide the case on merits within eight weeks from the date of receipt of a copy of this order.

24. The parties shall appear before the appellate authority on 18.12.2009.

25. The WA 3879/09 is dismissed as it has become infructuous.