

(1955) 12 MP CK 0014
In the Madhya Pradesh High Court
Case No : Civil Revision No. 96 of 1955

State Transport Authority, Bhopal

APPELLANT

Vs

Sehore Ashta Joint Motor Service

RESPONDENT

Date of Decision : 16-12-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115(c)

Citation : (1955) 12 MP CK 0014

Hon'ble Judges : Mathur, J.C.

Bench : Single Bench

Advocate : R.R. Bhambani, Govt, for the Appellant; U.P. Chugani, for the Respondent

Judgement

Mathur, J.C.

1. This is a revision application by the State Transport Authority, Bhopal, through its Secretary, defendants, against the order of Shri S. N. Shrivastava, Additional District Judge, Bhopal, granting a temporary injunction to the Sehore-Ashta Joint Motor Service, through its Secretary, plaintiffs thereby restraining the defendant applicant from issuing permits to two other persons on the Bhopal-Sehore and Bhopal-Ichhawar routes.

2. The facts of the case are not in dispute and the only point for consideration is whether the discretion exercised by the appellate court was proper or was exercised with material irregularity so as to entitle this court to interfere with that order.

3. The plaintiff is running its buses on the Bhopal-Ashta route. Later on, the State Transport Authority decided to issue two more permits to other persons for the Bhopal-Ashta and Bhopal-Ichawar routes. A part of the route is common to both, with the result that the plaintiff, though plying its buses on the Bhopal-Ashta route, filed the present suit for declaration that the decision of the State Transport Authority in increasing the number of buses and in granting new

permits for the two routes was arbitrary, illegal, ultra vires, in excess of jurisdiction and authority, and not in accordance and conformity with the facts, law, equity and principles of natural justice. It was accompanied by an application for temporary injunction with almost the same allegations.

The City Munsiff granted an ex parte injunction but it was virtually set aside when contested by the applicant. The City Munsiff, however, ordered that only temporary permits should be issued so that if the decision in the case was in favour of the plaintiff, the permits may no longer be valid. The State Transport Authority went up in appeal against this order and desired the setting aside of the order for the grant of temporary permits on the ground that the State Transport Authority had no power to issue a temporary permit in the circumstances where a permit (permanent, not for a fixed period) had to be issued.

The plaintiff filed a cross-objection praying that the temporary injunction as originally prayed for be granted. The learned Additional District Judge dismissed the appeal and allowed the cross-objection with the result that the State Transport Authority was restrained, for the pendency of the suit from issuing the permits, whether temporary or permanent. The defendant has now come up in revision against this order.

4. Before commenting upon the merits of the case it would be proper to briefly indicate how the jurisdiction is to be exercised by the various courts. The grant or refusal of a temporary injunction is governed by three well-established principles, viz.

- (1) if the plaintiff has made out a prima facie case,
- (2) if the balance of convenience is in his favour i.e. it would cause greater inconvenience to the plaintiff if the injunction is not granted than the inconvenience to which the defendant or persons claiming through him would be put to if the temporary injunction is granted, and
- (3) if the plaintiff would suffer an irreparable injury.

The grant or refusal of a temporary injunction is a matter of discretion and no party can, before the decision of the suit, claim a temporary injunction as a matter of right. This is apparent from the fact that no party is entitled to a judgment in its favour unless both the parties have been heard. The provision for temporary injunction has, therefore, been incorporated in the CPC for a specified purpose, so that as a result of an unlawful act the plaintiff may not be put to any irreparable injury.

Even if the temporary injunction is refused, the plaintiff has a right to proceed with the suit, either as already drafted or after amendment so as to incorporate all the possible relief's which could be asked for in the circumstances after the refusal of the temporary injunction. In other words, it is discretionary with the trial court whether to grant or refuse a temporary injunction. When an order

under O. 39, C. P. C, with regard to a temporary injunction is of a discretionary nature and an appeal lies against such an order, tire appeal will be treated more like a revision.

It is for this reason that it has been held by almost all the High Courts that the appellate Courts are not to substitute their own opinion for any opinion expressed or the discretion exercised by the trial court, even though while sitting as a trial court, they might have passed a different order.

Thus, when the appellate Courts interfere with the discretion exercised by the trial court, they have got to consider the facts of the case and to decide whether these facts had been properly applied to the well-established principles. In other words, therefore, the appellate Courts can interfere with the order only if they find that the well-established principles had not been followed or the facts of the case are such as to justify an inference that the opinion expressed by the trial court is perverse.

If the appellate Court exercised its jurisdiction properly, no revision would lie and if a revision application is moved, it would be liable to dismissal. But where the appellate court does not properly exercise its jurisdiction and upsets the discretion of the trial court simply because it formed a different opinion of the facts, the revisional courts can interfere with the order of the appellate Court on the ground that the appellate Court did not exercise its jurisdiction properly or the jurisdiction so exercised was exercised with material irregularity.

5. In support of the opinion expressed by me above, I would refer to only a few reported cases. The first case is of the Calcutta High Court, - Durga Das Vs. Nalin Chandra Nandan and Others, , where it was observed as below :

The order passed under O. 38, R. 5 and O. 39, R. 1 are discretionary and an appellate Court will not interfere with the exercise of a lower court's discretion unless satisfied that the Judge acted on wrong principles. The mere fact that the appellate Court might have taken a different view is not a sufficient ground for interference. It the Judge rightly appreciates the facts and applies to those facts the true principles, that is a sound exercise of judicial discretion.

Similar observations were made in - AIR 1933 153 (Nagpur) and - "Daily Gazette Press Ltd. v. Karachi Municipality", AIR 1930 Sind 257 (C). The observations made by their Lordships of the Privy Council in - AIR 1949 156 (Privy Council) lead to the same inference.

It was observed by their Lordships of the Privy Council that when the Legislature did not provide for a right of appeal, the manifest intention was that the order of the trial court, right or wrong, should be final: and that Section 115, C. P. C, empowered the High Court to satisfy itself upon three matters: (a) That the order of the Subordinate Court was within its jurisdiction; (b) That the case was one in which the Court ought to exercise jurisdiction; and (c) That in exercising jurisdiction the Court had not acted illegally, that is, in breach of some provision

of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which was material in that it might have affected the ultimate decision.

It was further observed that if the High Court was satisfied upon those three matters, it had no power to interfere because it differed, however profoundly, from the conclusions of the subordinate Court upon questions of fact or law and there could be no justification whatsoever for the view that S. 115 (c) was intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate Courts.

It was in these circumstances that the order of the High Court, interfering with the order of the subordinate court on the ground that it had made a serious mistake in the application of the well established principles, was set aside. In other words, whenever the law provides for the exercise of a discretion by the trial court, the discretion so exercised is not to be lightly set aside unless it was against the law or the well established principles governing the passing of such an order.

6. The learned Counsel for the plaintiff non-applicants had invited my attention to two cases, one of the Allahabad High Court, - District Board of Farrukhabad and Others Vs. Ikhlaque Husain , and the other of the Rangoon High Court, -"Kamal Tobacco Co. v. A. G. Haji A. Rahim," AIR 1937 Rang 150 (F), in support of the contention that even though the case was one in which the appellate court should not have interfered with the exercise of discretion by the trial court, the revisional Court should not interfere with the discretion so exercised by the appellate court. I find nothing in these two reported cases in support of the above contention.

In District Board of Farrukhabad and Others Vs. Ikhlaque Husain the merits of the case were not at all considered in view of the fact that the plaintiff was reinstated to his position as Secretary of the District Board by the newly elected District Board. Similarly, in the Rangoon case (F), the above point was not at all raised and the order of the appellate court was challenged only on the ground that no appeal lay against the order of the trial Court refusing to grant a temporary injunction.

7. The only point for consideration, therefore is if the appellate court was justified in interfering with the discretion exercised by the trial Court that refused to grant a temporary injunction as desired by the plaintiff non-applicants. The learned City Munsiff had considered all the three aspects governing the grant or refusal of temporary injunctions.

He was of opinion that the plaintiffs had established a prima facie case, that no irreparable injury would be caused to him if injunction is refused and that the balance of convenience was in favour of the defendant and not of the plaintiff.

It is true that in expressing his opinion on some of these points, the Munsiff did

not give his reasons in detail, but if his finding is supported by the circumstances of the case, there would be no ground for interference with the discretion of the trial court. What the appellate court did was to interfere with the order after taking into consideration some of the decisions of my predecessors. I shall refer to them in another part of this order. But it must be observed that the discretion of the trial court was interfered with very lightly by the appellate court which it should not do while entertaining the appeal against the virtual refusal of a temporary injunction.

8. For the purpose of the present proceeding, it is not necessary to express any opinion as to whether the plaintiff had succeeded or not in making out a prima facie case as it is highly probable that any observation if made by me on the merits of the case may unconsciously influence the decision of the trial court. Any observation which this Court can make at this stage on the merits of the case would be a cursory one and not a final one, in the sense that the suit should not be decided by the trial court in accordance with these observations.

In view of the fact that my decision on the other two points is the same as expressed by the trial court, it is all the more necessary not to consider the merits of the case as to whether the plaintiff had made out a prima facie case or not.

9. The question whether an irreparable injury could be caused to the plaintiff was recently considered by me in - "Abdul Hameed Khan v. State Transport Authority, Bhopal", Civil Revn. No. 99 of 1955 (Bhopal) (G) decided on 23-11-1955. To repeat all the reasoning contained in that order would be a waste of time. It may simply be observed that it would not be difficult for the plaintiff to prove the loss suffered by it as a result of the introduction of two more passenger buses on the Bhopal-Sehore-Ashta and the Bhopal-Sehore-Ichawar routes, by proving its income during the past few years giving out the income month by month or according to the seasons, if the income was fluctuating from time to time. The loss suffered could also be proved by taking into consideration the income of the two new buses from the Bhopal-Sehore-Ashta or on the Bhopal-Sehore portion of the Bhopal-Ichawar route.

After the plaintiff had led such evidence, the burden would lie upon the party challenging the accuracy of those figures to lead evidence as to what would have been the probable loss suffered by the plaintiff. To say that a party must prove beyond any doubt the actual loss suffered by it would be to ask for something which is impossible, as it would be impossible for any party to say, except for breaches of contract, as to what the income would have been if the fresh permits to other persons on the two routes had not been issued. In these circumstances, it must be held that no irreparable injury would be caused to the plaintiff if the injunction is not granted.

10. The balance of convenience is more favorable to the defendant; to be more correct to say, to the persons to whom the permits would have been issued had

the injunction not been granted. It would be easier for the plaintiff to establish the loss suffered by it as a result of the issue of fresh permits, than it would be for the new permit-holders to prove what their income would have been if they were plying their buses on the two routes; in other words, the loss suffered by them as a result of the issue of the injunction order the passengers which would have traveled in the buses of these new permit holders cannot easily be determined, as it can be that the passengers were more satisfied with the old bus owners and consequently were inclined to show favour to them than to the new bus owners.

Further, if the injunction is granted, these persons would be deprived of the source of income and would be put to inconvenience which would in no way be less than the inconvenience to which the plaintiff would be put to if the injunction is refused.

11. The learned Counsel for the non-applicant has invited my attention to an order of my predecessor, Sathaye, J. C, when he issued an interim injunction in Civil Revn. No. 74 of 1953 (Bhopal) (H) and also to the final orders passed by Puranik Actg. J. C. in this very case, and has urged that the earlier decision of Sathaye J. C. to the contrary can be differentiated on the ground that Civil Revn. No. 74 of 1953 (Bhopal) (H) pertained to a case where permits had not actually been issued, while the earlier cases were where permits had already been issued. Such a differentiation is, in my opinion, not proper.

Under the Motor Vehicles Act the State Transport Authority has to take a decision whether or not to issue a permit for plying passenger buses on a route and thereafter it is the duty of the office in its executive capacity to issue the permit. The State Transport Authority can, of course, withhold the permit if any fraud or misrepresentation was committed by the applicants and not where they had given all the facts and no concealment of facts of a material nature was intentionally done by them.

Permits issued can be cancelled or suspended only if there has been a contravention of the law or the rules. In the present case there was no likelihood of contravention of rules as no permits had been issued and the passenger buses had not come on the road. Consequently, after the State Transport Authority took a decision, the permit was for all material purposes issued, and in fact, the applicants, in whose favour the order was passed by the State Transport Authority, could validly ask for the issue of the permits.

There appears, therefore, no justification to differentiate between cases where the permit had been issued, or where the permits were at stage of being issued. Of course, the only difference would be that in one case the plaintiff was somewhat late in approaching the court, while in the other, he was extra clever to ensure that he did not suffer any loss at least for a few years till the decision of the suit as a result of additional passenger buses plying on the route.

To refuse an injunction simply because the plaintiff was late by a day or two or to

grant the injunction because the plaintiff came to the court at once shortly before the issue of the permit, is, in my opinion, no criterion to govern the grant or refusal of temporary injunctions, which must always be decided on the merits of the case and not on the extra speed shown by a party.

12. For reasons given above, I am of opinion that the appellate court was in the wrong in upsetting the order of the trial court simply because it formed a different opinion of the facts of the case.

The jurisdiction exercised by the appellate court was thus not in accordance with the law and would be deemed to have been exercised with material irregularity so as to entitle this court to interfere in revision by restoring the order of the trial court.

In passing, I would further add that the acts or orders of a public authority to which the sanctity of good faith and correctness attaches, should not be lightly upset, as there is every possibility that thereby the administration would be adversely affected. This, however, does not mean that the courts of law, while deciding cases, cannot upset the orders of the public authority if they are illegal or against the mandatory provisions of the law. Such an order has to be passed after hearing the parties in full and taking into consideration the law on the subject, but for the time no final decision is given in the case, the courts ought to start with the presumption that the official acts had been regularly performed in accordance with the rules.

Further, where no irreparable injury is likely to be caused to the plaintiff and the balance of convenience is not in his favour, it is all the more necessary that the discretion should not be exercised in favour of the plaintiff.

13. As regards the order passed by the trial court, it was brought to my notice that under S. 62 of the Motor Vehicles Act, temporary permits could be issued for specified purposes only i.e. for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or for the purposes of a seasonal business, or to meet a particular temporary need.

In the present case the permits are not to be issued for conveyance of passengers on special occasions, nor for purposes of a seasonal business. It cannot also be said that the permits are to be issued to meet a particular temporary need. When the additional passenger buses are to regularly ply on the two routes, it can rightly be inferred that the need proved to the satisfaction of the State Transport Authority was of a permanent nature and not a temporary one. In these circumstances, the order of the trial court for the issue of temporary permits only was in direct contravention of S. 62 of the Motor Vehicles Act. Such an illegal order cannot be maintained and will be liable to be set aside.

14. For reasons given above, the revision application is hereby allowed with cost the order of the appellate court is set aside and the order of the learned City Munsif is restored subject to the modification that there would be no direction as

to the issue of temporary permits. The result, therefore, is that the application for temporary injunction dismissed with costs of this court and of the appellate court. Counsel's fee of this court is fixed at Rs. 25/-, if certified, or the amount shown in the certificate, whichever is less.