

(1970) 01 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 60 of 1966

Surendra Mohan Chaurasiya

APPELLANT

Vs

State Transport Appellate Authority, M.P., Gwalior and Others

RESPONDENT

Date of Decision : 29-01-1970

Acts Referred:

Central Provinces and Berar Motor Vehicles Rules, 1942 — Rule 45, 73
Motor Vehicles Act, 1939 — Section 57, 57(3), 57(5), 57(7), 64

Citation : AIR 1970 MP 230 : (1972) ILR (MP) 218 : (1970) JLJ 298 : (1970) 15 MPLJ 253 : (1970) MPLJ 253

Hon'ble Judges : Bishambhar Dayal, C.J.; R.J. Bhawe, J.; A.P. Sen, J

Bench : Full Bench

Advocate : R.K. Tankha, for the Appellant; V.S. Dabir, (for No. 3), A.S. Usmani, (for Nos. 6 and 7) and K.B. Sinha, (for No. 9), for the Respondent

Judgement

Bishambhar Dayal, C.J.

This petition arises out of a Motor Vehicles case and has been referred to a Full Bench because of an apparent conflict of views in different Division Benches of this Court on the question whether the State Transport Appellate Authority can remand a case to the Regional Transport Authority for a reconsideration of the matter when evidence is already on record and the State Transport Appellate Authority can dispose of the case on merits.

The brief facts which have given rise to this writ petition are that the Regional Transport Authority, Rewa, advertised for applications for one permit on the Panna-Jabalpur route, 35 operators applied before the Regional Transport Authority. On the 24th June, 1963 the Regional Transport Authority granted a permit to Surendra Mohan Chaurasiya, who has filed the present petition, and dismissed the other applications. Out of the operators whose applications had been rejected, 12 persons filed appeals before the State Transport Appellate Authority, One appeal had been filed by the Madhya Pradesh State Road Transport Corporation, which was appeal No. 314 of 1963. This appeal was

allowed on the ground that the Regional Transport Authority had no power to reject the application in default, and the case was remanded to the Regional Transport Authority. The Regional Transport Authority had rejected the application for a permit made by this Corporation on the ground that no one appeared on behalf of the applicant in spite of notice. The appeals of Pritam Singh, Jan Sewa Transport Co-operative Society, Baldeo Prasad Shanker Prasad, and Peer Mohammad Haji Zumman were allowed by the State Transport Appellate Authority on the ground that the appeal of the Madhya Pradesh State Road Transport Corporation had also been allowed and had been remanded for disposal on merits, The appeals of Ramkrishna Dolan Prasad and Jayaram Prasad were dismissed as non-maintainable on technical grounds, while the appeals of Sindh Driver Transport Co., Sarda Narain Transport, B. D. Shukla, and Jabalpur Transport were dismissed as no one appeared to press the appeals.

From the above narration of facts it appears that five appeals were allowed and remanded by the State Transport Appellate Authority without going into the facts of the case. The first contention of learned counsel for the applicant in this Court was that the State Transport Appellate Authority was wrong in remanding these cases, in fact, the Appellate Authority should have itself gone through the evidence and decided the matter finally; and there was no justification for remanding the case when the evidence was on record. It was also contended by learned counsel that the Appellate Authority was wrong in remanding the case of the Madhya Pradesh State Road Transport Corporation merely upon the ground that the Regional Transport Authority had no right to dismiss the application in default. His contention was that the Regional Transport Authority was right in rejecting the application of the Corporation when no one appeared in support of the application in spite of service of notice.

I may first take up the second point as it can be disposed of shortly. The main contention of learned counsel in this connection is that under Rule 45 (f) the Regional Transport Authority was entitled to call for a personal appearance of any applicant and if in spite of that order any applicant failed to appear the Regional Transport Authority had jurisdiction to reject the application in default. The rule is as follows:

"The Provincial or the Regional Transport Authority; as the case may be, may summon any applicant for a permit to appear before it and may decline to grant the permit until the applicant has so appeared either in person or by an agent authorised by him in writing and until the applicant has furnished such information as may reasonably be required by the Authority in connection with the application."

For the application of this rule, it is necessary that the Regional Transport Authority must summon the applicant to appear before it; and if he does, not so appear either in person or through an authorized agent, the Regional Transport Authority may refuse to grant a permit. But in the present case, the notice which was sent to the State Road Transport Corporation was not a notice under this

rule. The Regional Transport Authority at first published a notice u/s 57(3) of the Motor Vehicles Act, but in that publication it did not specify a date on which the applications and representations were to be heard and merely stated that a date would be given later. It was in pursuance of this promise to give a date later that the notices were issued informing the date on which the matter would be taken up and the parties were informed that, they could appear either in person or through an authorized representative. The notice is Annexure A to the petition, and I am not satisfied that this is the notice which the Regional Transport Authority served under Rule 45 (f). I therefore do not agree with the petitioner on this point.

This leads me to the next point as to whether the Regional Transport Authority can reject an application for a permit merely on the ground that the applicant was absent. The only provisions in the Act relating to the disposal of these applications by the Regional Transport Authority which throw light on this subject are Section 57, Sub-sections (5) and (7) which are as follows:

"(5) When any representation such as is referred to in Sub-section (3) is made, the Regional Transport Authority shall dispose of the application as a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative."

"(7) When a Regional Transport Authority refuses an application for a permit of any Kind, it shall give to the applicant in writing its reasons for the refusal."

The language of these two sub-sections does not envisage a dismissal on account of the absence of a party. The very fact that for such refusal reasons have to be given by the Regional Transport Authority indicates that that application must be decided on merits. This Sub-section (7) envisages refusal of the permit and not a dismissal of the application. If at the time of the hearing the Regional Transport Authority finds that the facts appearing on the record in favour of a particular applicant are not sufficient to give him preference over the others, the Regional Transport Authority can reject the application on that ground, but it does not appear that the legislature contemplated that the application should be dismissed for default. Another consideration which would lead to the same conclusion is that there is no provision in the Act for restoration of such applications if dismissed for default. There being no power to restore an, application which is once dismissed for default, it would lead to a great hardship in some cases where the applicant may be a very good applicant, but he, having been prevented from appearing by unavoidable reasons on the date of hearing, would- lose his chance, although upon the record there is sufficient material to show that he is the best operator, and he would get no other chance of being considered again.

It was suggested on behalf of the applicant that an authority which dismisses a matter for default may also be deemed to have an inherent power of restoring it when it finds that there was sufficient reason for non-appearance on the previous

date. There are two serious objections to this line of argument. In the first place, the power to restore, unless it be due to some apparent mistake of the dismissing authority itself, cannot be inherent in all authorities, except when it is given by statute; and in the second place such a power to restore not only would upset the order in favour of that applicant but would affect a number of other persons who had applied and whose cases had been considered on the previous occasion. It would further complicate matter by dislodging the person who got the permit and had invested money for starting the service, for no fault of his. I, therefore, think that on a plain reading of the Act, the power to dismiss for default is not vested in the Regional Transport Authority. The same view was taken by this Court in *Shri Balwant Transport Co. (Pvt.) Ltd. v. State Transport Appellate Authority*, Misc. Petn. No. 121 of 1964, D/- 11-8-1964 (Madh Pra) by a Division Bench, which has been noted and followed by the State Transport Appellate Authority in the present case. I see no reason to take a different view.

Another question which was canvassed at the Bar, and for the decision of which this case was particularly referred to a Full Bench, is the power of remand of the State Transport Appellate Authority, and under what circumstances that power should be exercised. The matter came up for decision in this Court several times. It was considered in *Manibhai Shankerbhai Patel v. State Transport Authority*, Misc. Petn. No. 1 of 1962, D/-23-2-1962 (Madh Pra). It was again considered in *M/s. AH Ahmad Sons v. Regional Transport Authority, Rewa*, Misc. Petn. No. 53 of 1962, D/- 30-3-1962 (Madh Pra) and it was stated:

"The appellate authority has the same power as the Regional Transport Authority in the matter of grant or refusal of permits. That being so, where the material on record is sufficient to enable the appellate authority to decide upon the claims of different applicants and to pronounce an order, it is essential for the Tribunal to decide the matter for itself to avoid unnecessary delay in the disposal of the case."

In *Nav Bharat Transport Co-operative Society V. S. P. Mitra*, Misc. Petn. No. 208 of 1963, D/- 31-8-1963 (Madh Pra), a Division Bench of this Court laid down the following principle:

"We have thus repeatedly pointed out that when" there is nothing which requires being enquired into or cleared up and the Appellate Authority is in as good a position as the Regional Transport Authority itself to consider the merits of the several applications and to pass such orders as the material on record justifies, there is no case for a remand".

The matter again came up before a Division Bench of this Court in *Capital Multipurpose Co-operative Society Ltd. Vs. Madhya Pradesh State Road Transport Co-operative and Others*,). In that case, the State Road Transport Corporation filed an objection against the renewal of a permit and prayed for a grant of permit to itself. The Regional Transport Authority on an adjourned date of hearing overruled one of the preliminary objections of the Corporation, and

thereafter straightway renewed the petitioner's permit. The Regional Transport Authority did not consider the respective merits of the applicants. The Corporation went up in appeal to the State Transport Appellate Authority, and the appeal was allowed and the case was remanded to the Regional Transport Authority for a fresh decision on merits according to law. Against that remand order a writ petition was filed in this Court and reliance was placed upon the previous decisions that the State Transport Appellate Authority should not have remanded the case but should have decided the case on the materials before it. In rejecting this petition, it was observed:

"There is even no indication in the order passed by the Regional Transport Authority as to whether there was any material before it on the basis of which it could consider the renewal application of the applicant and the Corporation's application for a permit to itself."

This observation would indicate that the case was decided on the basis that there was no material available to the State Transport Appellate Authority on which the Appellate Authority could dispose of the application on merits and to this extent this case is not in conflict with decisions noted above. But there are some observations made in the case which lead to the conclusion that a slightly different principle was laid down. For instance, it has been observed:

"The Regional Transport Authority's order does not reveal whether it fixed its mind on the applications and carefully examined the claims put forward by the parties. In these circumstances, the Appellate Authority was right in setting aside the order of the Regional Transport Authority The decisions relied on by learned counsel do not lay down an inviolable rule that in no case should the Appellate Authority remand a case to the Regional Transport Authority Such a rule, if rigidly followed, would only tend to encourage the Regional Transport Authority, which must in the first instance determine the comparative merits of the parties and then form its conclusion, to shirk the duty imposed on it But if in a case such as the present one, the Regional Transport Authority has totally failed to determine the competing claims of the parties on a consideration of the material on record and even failed to refer in its order to the material placed before it, then the Appellate Authority would be fully justified in remitting the matter to the Regional Transport Authority for a fresh decision."

It is important in a matter like the grant of permits that the question should be decided at the earliest possible opportunity, so that there may be no inconvenience to the travelling public and no uncertainty to the operators for a long time. It is therefore almost a necessity that if the material is on record the Appellate Authority should dispose of finally such a dispute and not remand the case to the Regional Transport Authority. Otherwise, after a fresh decision, there would again be an appeal to the State Transport Appellate Authority, and ultimately it would" be the State Transport Appellate Authority that would have to decide questions of fact. Under Rule 73(c) of the C. P. & Berar Motor Vehicles Rules, 1940, which are applicable to this region, the Appellate Authority has even

power to make such enquiry as it considers necessary and can pass any order as may be just and proper. The purpose of giving such wide powers to the Appellate Authority obviously is to avoid delay, so that the Appellate Authority may give a final decision and may not have to remand a case again and again. I am therefore of opinion that the mere fact of the Regional Transport Authority not having applied its mind to the facts of a particular case should not be sufficient to clothe the State Transport Appellate Authority with the power to remand a case to the Regional Transport Authority. The appellate power is not to be exercised for enforcing discipline upon the subordinate authorities, even at the expense of causing inconvenience to the public and the operators. If a particular Regional Transport Authority is not doing its duty properly, it will be for the administrative authority to take proper action against such a delinquent Regional Transport Authority. I, therefore, think that the proper principle on which a remand can be made by the State Transport Appellate Authority is that the material on record is insufficient to decide the matter and that the further enquiry which is necessary is such as cannot conveniently be undertaken by the Appellate Authority.

Coming to the facts of this case, I find that on the above principle the State Transport Appellate Authority should have considered the merits of the State Road Transport Corporation, and if it had done so, it would not have been required to remand four other cases merely on the ground that the appeal of the Madhya Pradesh State Road Transport Corporation had been allowed and had been remanded. Such remands create a further complication that the persons who have not appealed or whose appeals have already been rejected on technical defaults will also get a right of being heard again by the Regional Transport Authority, unless the order of remand is expressly confined to particular persons. The most convenient procedure in such cases is for the State Transport Appellate Authority to dispose of the appeals finally as far as possible.

I consequently think- that the orders of remand passed by the State Transport Appellate Authority (respondent No. 1) in appeals Nos. 310, 314, 319, 333, and 334, all of 1963, are not justified. They are all set aside, and the cases are, returned to respondent No. 1 for disposal according to law. Parties shall bear their own costs. The security deposit shall be refunded to the petitioner.

Bhave, J.

11-A. I have read the Order prepared by my Lord the Chief Justice. I agree with the Chief Justice that no notice contemplated under Rule 45 (1) of the Rules framed under the Motor Vehicles Act was served on the M. P, State Road Transport Corporation by the Regional Transport Authority and that the Regional Transport Authority had no power to dismiss in default the application for grant of permit filed by the M. P, State Road Transport Corporation. I also agree with his Lordship that in this particular case the order of remand passed by the Appellate Authority should be quashed and the Appellate Authority should be directed to dispose of the appeals" according to law. I also agree that it is generally desirable that the State Transport Appellate Authority should dispose of

appeals as far as possible and that the remand should be avoided generally. I do not, however, agree with my Lord the Chief Justice with the proposition his Lordship has enunciated, namely;

"We therefore think that the proper principle on which a remand can be made by the State Transport Appellate Authority is that the material on record is insufficient to decide the matter and that the further enquiry which is necessary is such as cannot conveniently be undertaken by the Appellate Authority."

Under Section 45 of the Motor Vehicles Act, an application for a permit is required to be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. When the vehicle is to be used in more than one region, a counter-signature of that authority is also required to be taken. Section 46 then provides that the application must contain the particulars given in Clauses (a) to (f). The State authorities have prescribed necessary forms for that purpose. Section 47 then provides that the Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the matters prescribed under Clauses (a) to (f) of that section; they include, the interests of the public generally; the advantages to the public of the service to be provided, including the saving of time; the adequacy of other passenger transport services operating or likely to operate in the near future on the route; the benefit to any particular locality or localities likely to be afforded by the service; so on and so forth. The Regional Transport Authority is also required to take into consideration representations made by persons who are already carrying on the services. These provisions clearly indicate that an application for permit shall not be complete and shall not be entertained by the Regional Transport Authority unless it satisfies the requirements u/s 46. If an application, which satisfies the requirements, is filed, it would be difficult for any one to say that there is no material for deciding the application. But the matter does not stand at that time. The Regional Transport Authority is not only required to consider the application as such, but it has to consider the application having regard to the matters prescribed u/s 47 of the Motor Vehicles Act. The matters prescribed u/s 47 are all of local importance of which the Regional Transport Authority is in a position to have full knowledge, that authority being the authority on the spot. The same information may not be available to the Appellate Authority. It is, therefore, essential that the primary authority, namely, the Regional Transport Authority, which is conversant with the local situation, must first come to its own decision as to whether the permit should be granted or not having regard to the matters enumerated u/s 47 of the Motor Vehicles Act. When that discretion is exercised, one way or the other, by the Regional Transport Authority, the Appellate Authority may decide as to whether the discretion was properly exercised or not and whether the material, which was on record, was properly considered by the Regional Transport Authority or not. The mere fact that the Appellate Authority can also make some enquiry on its own is not sufficient to warrant the conclusion that the Appellate Authority should be asked to discharge the functions primarily entrusted to the Regional Transport

Authority, which is better conversant with the local conditions. The enquiry envisaged is for the purposes of the satisfaction of the Appellate Authority as to whether the conclusions reached by the Regional Transport Authority are correct or not. When any statute entrusts any function to a particular authority, it is, in my opinion, always desirable that the authority alone should discharge that function. The appellate Authorities are only for the purposes of correcting the mistakes and not discharging the primary functions. For this reason I am of the view that the Appellate Authority would be justified in remanding the case where the Regional Transport Authority totally failed to determine the competing claims of the parties on a consideration of the material on record having regard to the provisions u/s 47 of the Motor Vehicles Act and has even failed to refer in its order to the material placed before it.

In the result, the orders of remand passed by the State Transport Appellate Authority in Appeals Nos. 310, 314, 319, 333 and 334, all of 1963, are quashed and the case is returned to the respondent No. 1 for disposal according to law. The parties shall bear their own costs. The security amount shall be refunded.

A.P. Sen, J.

The question referred to the Full Bench for a decision has been framed in the following terms:

"In the course of arguments in this case it appears that the decision of this petition hinges on the decision of one question whether the Regional Transport Authority is entitled to dismiss a petition for permit in default without going into the merits, in case the applicant does not appear before the Regional Transport Authority at the time of, hearing. This is a question of general importance and in view of the observations made in Misc. Petn. No. 121 of 1964, D/-11-8-1964 (Madh Pra) we think that the matter needs a full consideration."

On this question, my Lord the Chief Justice and my learned brother Bhawe, J. have both agreed that the Regional Transport Authority had in this case, no jurisdiction to dismiss in default of appearance, the application made by the Madhya Pradesh Road Transport Corporation for grant of a stage Carriage permit, following the decision in Misc. Petn. No. 121 of 1964. D/-11-8-1964 (Madh Pra) (supra). That conclusion of theirs rests on the finding that the notice served upon the Corporation was not a notice under Rule 45 (f) of the Madhya Pradesh Motor Vehicles Rules, 1940. In regard to both these aspects, I am in complete agreement with their view.

Their Lordships have, however, expressed different views in regard to the limits within which the State Transport Appellate Authority may remand a case to the Regional Transport Authority for a decision afresh, In view of the difference. I shall confine myself to an examination of this question alone.

The question whether the State Transport Appellate Authority, in dealing with an appeal u/s 64 of the Motor Vehicles Act, 1939, has the power to remand a case

to the Regional Transport Authority for a reconsideration or not, and the circumstances under which recourse to such power, if any, can be had, is one of importance.

The scope and extent of the appellate jurisdiction of the State Transport Appellate Authority depends on a construction of Section 64 of the Motor Vehicles Act, 1939, which confers a right of appeal, and Rule 73 of the Madhya Pradesh Motor Vehicles Rules, 1940, under which it is constituted. Section 64 of the Act only says that the persons specified therein may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall then give such person and the Regional Transport Authority an opportunity of being heard. A power of remand is not specifically mentioned in the section. Their Lordships of the Supreme Court have in *Ram Gopal Vs. Anant Prasad and Another*, stated:--

"Section 64 is not concerned with defining the powers of the appellate authority and does not purport to do so".

The question has therefore, to be determined with advertence to Rule 73, the material portions of which read as follows:--

"73. Appeals against orders of Regional Transport Authority.-- * * * * (c) On the date appointed for hearing an appeal, the appellate authority shall hear such persons as may appear, and after such further enquiry, if any, as it may deem necessary, confirm, vary or set aside the order against which the appeal is preferred and make any consequential or incidental order that may be just or proper."

On a plain reading of this rule, it is manifest that the power and jurisdiction of the State Transport Authority in the matter of grant or refusal of stage carriage permits, is co-extensive with those of the Regional Transport Authority. The grant of a jurisdiction necessarily implies the grant of all the powers necessary for its exercise. Rule 73 (c) confers powers and duties on the Appellate Authority in general terms. All powers and duties incidental and necessary for the effective exercise of its appellate jurisdiction are, therefore, included, by necessary implication. The law on the subject is stated in *Maxwell's Interpretation of Statutes*, 10th edition, p. 361, in these words:

"Where an Act confers a jurisdiction, It impliedly also grants the power of doing of such acts, or employing such means, as are essentially necessary to its execution." [See also, *Craies on Statute Law*, 6th edition, p. 111].

The conferral of appellate jurisdiction on the Appellate Authority by Rule 73 (c) is in very general terms, it may not only "confirm, vary or set aside" the order against which the appeal is preferred, but it may also "make any consequential or incidental order" as may be "just or proper". In the exercise of that jurisdiction, it may also hold "such further enquiry", if any, as it "may deem necessary". The language of Rule 73 (c) is not, therefore, one of curtailment but it expressly leaves the questions at large before the Appellate Authority which

has not only full jurisdiction and power in the matter of grant or refusal of permits just as the Regional Transport Authority has, but may in the exercise of that jurisdiction make such further enquiry as It deems expedient. In other words, the appeal before the Appellate Authority is, virtually a continuation of the proceedings before the Regional Transport Authority, for the grant of a stage carriage permit,

The question then is whether the power to remand must be regarded as having been conferred by necessary implication. It is certainly not excluded by the terms of Rule 73 (c). Whether there is a special provision or not, the power to order a remand must be taken to be inherent in every appellate Court of Tribunal in its very constitution as an appellate authority. The absence of a power of remand would limit and to some extent negative the completeness of the power of such appellate authority. A power to entertain an appeal must comprise within its ambit the power to dispose of the appeal in any manner known to law. Now, the Appellate Authority under Rule V3 (c) has a right to set aside the order against which the appeal is preferred. When it does so, it may go further and substitute its own order for the order appealed against or it may not go so far and merely quash the order and require the Regional Transport Authority to restore the case to its file and decide It afresh. That construction of mine is clearly borne out by the language of Rule 73 (c), by the words "make any consequential or incidental order" as may be "just or proper", which appear therein.

As already observed, there is no express provision conferring a power of remand, and a fortiori, there is no provision in the Act itself or in the rules laying down any limitations on that power. Rule 73 (c) is couched in such general terms that it is difficult to define with any precision the limits of such power. But it is expected that the Appellate Authority, while remanding a case, should keep in view certain well settled judicial principles, A recourse should be had to the power of remand only in very exceptional circumstances where justice of the case demands it. An order of remand under Rule 73 (c) would be a proper order, if it is made by the Appellate Authority, in a case where there is no material or in which the material on record is not sufficient for reaching a decision on the point at issue or where there is some material defect in procedure which renders the proceedings before the Regional Transport Authority radically defective. In a case where there is material on record, on which a decision can be reached, the Appellate Authority would not be justified in remanding the case after setting aside the finding of the Regional Transport Authority or to direct it to reconsider the evidence. There is no point In such a case in compelling the Regional Transport Authority to re-hear the case again or review the material afresh in the hope that, perhaps, it might come to a different finding on that point of fact. The Appellate Authority being itself a Court of fact, and having all the evidence in the case before it, and being specifically empowered to direct such further investigation into facts, as it may deem necessary, Is entitled on such material or on the basis of such additional facts, as come to light, to arrive at a different

finding or come to a contrary conclusion, on that evidence, if in its opinion the Regional Transport Authority's finding was wrong. The remand of a case to the Regional Transport Authority would, in such circumstances, be wholly unjustified. Any other view is apt to cause serious public inconvenience as many of the routes would be left without any transport facilities, if the Appellate Authority were to have a carte-blanche in the matter of directing a remand, in all such cases.

As regards the order proposed, I agree that, in the circumstances of this particular case, the order of remand passed by the State Transport Appellate Authority should be quashed, with a direction that it shall rehear and decide the appeals afresh, in accordance with law, and that there should be no order as to costs of this petition.

BY THE COURT

The orders of remand passed by the State Transport Appellate Authority (Respondent No. 1) in Appeals Nos. 310, 314, 319, 333 and 334, all of 1963 are quashed, and the cases are returned to respondent No. 1 for disposal according to law. Parties shall bear their own costs. The security deposit shall be refunded to the petitioner.