
(1980) 12 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 330 of 1976

Thakur Vishweshwarsharan Singh

APPELLANT

Vs

State Transport Appellate Tribunal, Gwalior and Others

RESPONDENT

Date of Decision : 02-12-1980

Acts Referred:

Constitution of India, 1950 — Article 143
General Clauses Act, 1897 — Section 21
Motor Vehicles (Amendment) Act, 1969 — Section 1(2), 25
Motor Vehicles Act, 1939 — Section 58

Citation : AIR 1981 MP 121 : (1981) JLJ 440 : (1981) 26 MPLJ 377 : (1981) MPLJ 377

Hon'ble Judges : G.P. Singh, C.J.; U.N. Bhachawat, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; V.S. Dabir and A.G. Dhande and S.L. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.

The petitioner held a permit for the route Rajgarh-Badnagar via Sardarpur which was granted to him in 1956. The last renewal of this permit expired on 31st January, 1971. The petitioner made an application for renewal on 20th November, 1970. The application was within limitation u/s 58 of the Motor Vehicles Act, 1939 as it stood before its amendment by Section 25 of the Amending Act No. 56 of 1969. An application for renewal under the unamended Section 58 had to be filed not less than 60 days before the expiry of the permit. Section 58 as amended requires that the application for renewal of the permit shall be made not less than 120 days before the date of its expiry. Applying Section 58 as amended, the petitioner's application for renewal was dismissed by the Regional Transport Authority, Indore. That order was maintained by the State Transport Appellate Authority in appeal. The petitioner challenges these orders by the petition under Article 226 of the Constitution.

Act No. 56 of 1969 received the assent of the President on 29th December 1969. Section 1 (2) of this Act provides that it shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint, and different dates may be appointed for different provisions of this Act. By notification dated 27th February 1970 made in exercise of the power conferred by Section 1 (2) of the Amending Act, the Central Government appointed 2nd March 1970 as the date on which the provisions of the Act other than those specified in the notification came into force. A perusal of this notification which was published in the Gazette of India, dated 27th February 1970, will show that Section 25 of the amending Act was not one of the sections specified which were not to come into force on 2nd March 1970. The result of this notification was that Section 25 of the amending Act also came into force on 2nd March 1970. The Central Government, however, issued another notification on 6th June 1970 by which the earlier notification was modified and the enforcement of Section 25 of the amending Act with effect from 2nd March 1970 was cancelled and it was enforced with effect from 1st November 1970. Both these notifications are Annexures R-1 and R-2 to the return filed on behalf of respondent No. 5.

The argument of the learned counsel for the petitioner is that as the amendment made in Section 58 of the parent Act by Section 25 of the amending Act came into force on 1st November 1970 by the second notification issued u/s 1 (2), the limitation for the petitioner's application for renewal ought to be determined on the basis of the un-amended Section 58 for the reason that on the date when the amended Section 58 came into force by this notification the petitioner could not have complied with the amended section and filed his application for renewal before 120 days of the date of expiry. To meet this argument it is contended by the learned counsel for the respondents that the second notification issued by the Central Government u/s 1 (2) of the amending Act on 6th June 1970 was void and inoperative for the reason that it had the effect of repealing the operation of Section 25 for the period from 2nd March, 1970 to 31st October, 1970. In our opinion, the argument of the learned counsel for the respondents must be upheld. It is well settled that Parliament cannot delegate the power to repeal a law or even to amend it in any essential feature to the Executive Government or any other outside agency, (see *In re: Article 143, Constitution of India*, AIR 1951 SC 332, *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, . Section 1 (2) of the amending Act only confers on the Central Government a power to bring into force different provisions of the Act by issuing a notification. This power is in the nature of conditional legislation. Once a Section of the amending Act is brought into force by issue of a notification u/s 1 (2), the power u/s 1 (2) to that extent is exhausted. The Central Government has then no power under that provisions to cancel or modify the notification and thereby to repeal a provision of the Act which has been brought into force. Section 1 (2) must be construed consistent with the constitutional limitation that power of repeal of a law cannot be delegated. There is no scope here for applying the principle of construction,

embodied in Section 21 of the General Clauses Act 1897 that the power to issue a notification includes a power to rescind or amend it. The rule enacted in Section 21 is presumptive and can be displaced by the object and the context of the statutory provision conferring the power (The State of Bihar Vs. D.N. Ganguly and Others, . The object behind Section 1 (2) and the principle of constitutional limitation that power of repeal of a law cannot be delegated to displace the application of Section 21. If the second notification issued by the Central Government is given effect to, it will virtually mean that Section 25 of the amending Act which came into force on 2nd March, 1970 was retrospectively repealed from that date up to 31st October, 1970. No such power could be conferred on the Central Government and indeed is not conferred by Section 1 (2). The second notification Annexure R-2 must, therefore, be held to be invalid.

The effect of holding the second notification dated 6th June, 1970 invalid is that Section 25 of the amending Act must be taken to be in force from 2nd March, 1970. On that date there was no question of any vested right arising in favour of the petitioner. The petitioner could very well have made his application for renewal within the period of limitation as provided in Section 58 of the Motor Vehicles Act as amended by Section 25 of the amending Act. As the application for renewal was barred u/s 58 as amended, it was rightly dismissed on that ground by the transport authorities.

The petition is dismissed. There will be no order as to costs. Security be refunded to the petitioner.