
(1962) 06 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 50 of 1962

The Ambala Bus Syndicate Private Ltd.	APPELLANT
Vs	
State Government and Others	RESPONDENT

Date of Decision : 01-06-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 151

Citation : AIR 1963 P&H 92

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Advocate : H.R. Sodhi, for the Appellant; J.S. Wasu and R. Sachar, General, for the Respondent

Final Decision : Dismissed

Judgement

I.D. Dua, J.—The Ambala Bus Syndicate Private Ltd. has applied under Article 226 of the Constitution for quashing the order of the Secretary to Government, Punjab, Transport Department dated the 1st of June 1961, whereby he reviewed his earlier order as also that of his predecessor. A writ in the nature of mandamus has also been prayed for directing the respondents to do their duty according to law and the Prescribed Appellate Authority (Respondent No. 4) is similarly sought to be prohibited by this Court from hearing the appeal again which has been finally disposed of according to law.

2. The allegations on which this petition is based are that the petitioner-company is operating efficient passenger bus service on various routes in Ambala District, including:

- (i) Kharar -- Ambala via Banur; and
- (ii) Sirhind -- Rupar via Morinda and Korali.

The company was incorporated in 1943 under the scheme of rationalisation, the promoters and shareholders being all old transport operators engaged in

transport business for a large number of years. Messrs Patiala Bus Service (Private) Ltd. (respondent No. 5) which operates on routes within the jurisdiction of the Regional Transport Authority, Patiala, decided to obtain a fresh permit for Chuni-Machhli-Khara route, about 95 per cent of which Sails within the jurisdiction of the Regional Transport Authority, Ambala.

But instead of applying to the Regional Transport Authority, concerned, it approached the Patiala Authority and the said Authority entertained the application treating it as an application for extension of the existing route of the respondent-company. No publication was effected and no applications were invited for grant of fresh permits on this route. The petitioner-company was also given no information. On the 22nd of June, 1958 when the matter was taken up in the meeting of the Patiala Authority, the petitioner having come to know of the agenda appeared before the Authority and raised objections. They were, however, not heard by the Authority concerned and the respondent-company was allowed the extension of Sirhind-Chuni-Machhli route up to Kharar, as prayed.

The petitioner went up in appeal to the Provincial Transport Controller, but he did not hear the appeal on merits, as he should have done; on the other hand he informed the petitioner that the matter of the grant or extension on the route in question would be laid before the State Transport Authority on the 3rd of September, 1958, at Chandigarh. The Managing Director of the petitioner-company appeared before the State Transport Authority presided over by the Provincial Transport Controller, who was also the Prescribed Appellate Authority. The petitioner submitted its objections, but no decision thereon was ever communicated by the State Transport Authority to the petitioner.

The Regional Tiansport Authority, Patiala, however, took up the matter after the alleged approval of the State Transport Authority and on behalf of the petitioner-company objections were filed but the State Transport Authority did not hear the same on the excuse that the State Transport Authority had already made the decision. It is averred in the writ petition that the Regional Transport Authority did not bring to bear its independent mind on the consideration of the question of grant of fresh permits which was wrongly and illegally described to be an extension of route.

3. The petitioner-company, however, preferred an appeal from the order of the Regional Transport Authority, Patiala, dated the 3rd of January, 1959, granting extension of the route permit to respondent No. 5. This appeal was heard by the Provincial Transport Controller who allowed it holding that the jurisdiction for grant of extension was confined only to the Regional Transport Authority Ambala. The impugned order of the Patiala Authority was thus set aside.

Respondent No. 5 took the matter on revision u/s 64(h), Motor Vehicles Act, as amended in this State, but the said revision was dismissed by Shri R. S. Talwar on the 24th of May, 1960. Respondent No. 5 is then said to have filed a revision petition describing it both as revision/review and this was done after Shri Talwar

had handed over charge of his duties as Secretary, Transport Department, and was succeeded by Shri Prem Sarup, I. A. S. The petitioner described this revision) review petition to be wholly incompetent and Shri Prem Sarup also dismissed it on the 16th of September, 1960. A writ petition filed by respondent No. 5 in this Court (Civil Writ No. 1136 of 1960) was also dismissed on the 18th of July, 1960.

4. The Secretary, Transport Department, in spite of having first dismissed review petition, it is alleged, again heard the parties and this time remanded the case to the Appellate Authority on the 1st of June, 1961. By means of this order, it is alleged, the Secretary not only reviewed the previous order of: his predecessor dismissing the revision petition on the 24th of May, 1960, but also reviewed his own order dated the 16th of September, 1960, refusing to review the order of his predecessor. This exercise of the power of review is assailed in the present proceedings and is described to be wholly illegal, arbitrary, mala fide and without jurisdiction.

On behalf of the respondent this order has, however, been sought to be upheld on the basis of a Full Bench authority of this Court in Jagir Singh Sobha Singh and Another Vs. Settlement Commissioner, Pepsu and Others, . This authority, it is argued, lays down the general and broad proposition that every tribunal has inherent power to recall its wrong orders and, according to the respondent, it is so irrespective of time limit or of the grounds of error which is sought to be rectified. Dulat, J., who prepared the main judgment in the reported case, observed that every tribunal has inherent power to correct its own errors if circumstances make it necessary in the interest of justice and that such inherent power is necessarily implied in the setting up of any authority on whom responsibility of deciding any matter rests. If a tribunal, and for that matter any other legal authority, decides to recall an order on the ground that it is invalid the act of recall cannot, according to Dulat, J., be quashed merely on the ground that no such recall is permitted by any express provision of a statute. The State in the reported case (it was not a court) was held not debarred from recalling an invalid or unjust and erroneous order made by it previously.

Reliance has also been placed on the decisions cited before the Full Bench for the view canvassed, e.g., Aijaz Ahmad Vs. Nazirul Hasan and Another, , and Assistant Custodian Evacuee Property v. Rattan Chand 55 PLR 336. Two unreported Single Bench decisions, after the Full Bench decision, have also been quoted in support of this view: Shivalak Transport Co., Ltd. v. Secretary to Govt. Punjab, Transport Department, Civil Writ No. 511 of 1960 decided by Bishan Narain, J. on 8-12-1960 and Smt. Morni Devi v. State of Punjab, Civil Writ No. 825 of 1958 decided by Grover, J. on 1-5-1959.

5. As against these, the petitioner has cited Rameshwar Sinha and Another Vs. State of Bihar and Others, , where a Division Bench of that Court ruled that no authority or Court can claim by implication a power to revise its own order and it is purely a question of statute in absence of which there cannot be a valid review

of orders. That case dealt with Motor Vehicles Act and negated the claim of power to review made on behalf of Ramnath Prasad Vs. State Transport Appellate Authority and Others, , also lays down the same principle. It was observed to be well settled that a power of review is not inherent in any authority and that the moment a right to decide is exercised the authority becomes *functus officio*, except for the matter of grave clerical error, or mistakes committed by the authority, for which the authority is responsible. Except for correcting its own mistakes there can be no inherent power to review apart from the statute.

Anandram Ayaldas v. Damodardas. AIR 1956 A P 44, also lays down that a right of review is not inherent and it does not exist unless granted by statute. This case also is concerned with Motor Vehicles Act and inherent power of review was motived in the case of tribunals under this Act. Sampu Gowda Hanume Gowda v. State of Mysore AIR 1953 Mys 156, is also a Full Bench decision holding that jurisdiction or power to review cannot be assumed or imported in the absence of any specific provision therefore or of even indication of the conditions for the exercise of it. Sri Sri Sri Ramachendra Maradaraj Deo Garu Zamindar of Khallikote and Attagada Estates Vs. Beero Pollai and Another, , is another Full Bench decision in which again it is held that a Court has no power to review unless specially conferred on it. An earlier decision of the Madras Court in Anantharaju Shelly v. Appu Hegade AIR 1919 Mad 244, also held that the power to review is not inherent in a Court and can only be exercised if it is permitted by statute. The counsel has in this connection questioned the correctness of the Full Bench decision and has submitted that it requires re-examination.

6. Now in the Full Bench case the question referred for authoritative decision by the Full Bench was:

"Whether an order made by the Revenue Minister acting as the State Government could be subsequently cancelled by the State Government?"

Here it is necessary to state that the order actually impugned as invalid in that case so far as is relevant for our purposes reads as follows:

"* * * that it has been decided that ex-Revenue Minister's order, dated 13-2-1953, being legally without jurisdiction and ultra vires, be ignored and no repartition need be done de novo."

It is obvious that by means of this order all that was decided was to ignore an ultra vires order which was considered to be without jurisdiction and the Full Bench while deciding the true controversy before it put its opinion thus:

"In the present case before us we are not going into the facts, nor investigating the circumstances, which might or might not ultimately justify the recall by the State Government of its previous decision. That is a matter for the learned Single Judge to decide after he has obtained all necessary information. We are at present only considering learned counsel's broad proposition that the State Government could have in no circumstance recalled its previous order and on

that ground alone the act of the State Government should be quashed." .

This in my view represents the real decision and if in the course of the judgment some general observations have been made they must, in my view, be construed in their own context and in the background of the precise question arising for determination.

7. Orders which are ultra vires and without jurisdiction are ordinarily considered as nullities and can, therefore, legitimately be ignored: they need not be cancelled or formally recalled by means of a review petition. It is fairly well-settled that when an order is without jurisdiction, it is never too late to give effect to the plea that it is a nullity. But orders which are not so vitiated do become final and to permit all such orders to be varied or reversed on the merits whenever a quasi-judicial tribunal or Court chooses to do so would, in my opinion, be too sweeping a proposition to canvass and uphold. I am, therefore, extremely doubtful if the full Bench decision is truly an authority for such a wide proposition of such far-reaching consequences. The brief discussion before the Court in that case, so far as it is possible to discern from the judgment, also suggests that it was perhaps not intended to uphold the existence of an inherent power in all quasi-judicial tribunals to vary on the merits all quasi-judicial orders without regard to time and without adverting to the nature of the error or infirmity attaching to those orders. Such a proposition might also come into conflict with the settled rule which attaches finality to orders. Correction of accidental slips or omissions or clerical or arithmetical mistakes or mistakes inadvertently made like the one found to exist in *Debi Bakhsh Singh v. Habib Shah* ILR All 331, or *In re In Re: S.N. Komarasawami Goundan*, , might well fall within the inherent power of Courts and quasi-judicial tribunals. It is one thing to say that clerical or accidental mistakes and errors may be corrected under inherent power, or ultra vires and wholly invalid orders which are without jurisdiction and, therefore, nullities, should be ignored or recalled or orders tainted with similar infirmities may be set right, it is quite another thing to throw over-board the established doctrine of *res judicata*. Against this, our judicial and quasi-judicial tribunals must carefully guard, and however tempting the considerations of administrative convenience in a given case of hardship, they are expected to resist the temptation and firmly decline to yield by assuming in themselves any inherent power to vary the final determinations, merely because they may be later shown to be wrong or unjust in some respect, for, otherwise there would be no finality to litigation and controversies and no solemnity of judgments and determinations

The respondent has, however, relying on the two unreported Single Bench decisions mentioned above, argued that I should follow those decisions, and hold that the Tribunals under the Motor Vehicles Act do possess an inherent power of review. It is true that I should ordinarily follow Single Bench decisions and that in case I do not agree with the view taken therein I should refer the matter to a larger Bench. That is a healthy and a wholesome practice deserving of adoption

and indeed is adopted by the Courts in this country, In the present case, however, I am inclined to take the view that the petitioner is not entitled to a high prerogative writ because of there being no grave or serious manifest injustice in the matter, with the result that I do not find called upon to refer the matter to a larger Bench for considering the question of the inherent power of review vesting in the tribunals under the Motor Vehicles Act. The question will perhaps have to be considered in a more suitable case when the point arises for direct determination. In the case in hand the matter having been merely remanded back to the Appellate Authority for considering the whole matter over again, I do not think there is any occasion for the exercise of the discretionary power of granting a prerogative writ. Bishan Narain, J. in Civil Writ No. 511 of 1960 (Punj) also declined to interfere on the ground that the matter had not been decided finally. Let the question be finally determined, and then the aggrieved party would have sufficient opportunity of having relief against the offending decision in accordance with law.

8. For the foregoing reasons this writ petition fails and is hereby dismissed, but with no order as to costs.