

(1990) 02 MP CK 0030
In the Madhya Pradesh High Court
Case No : M.P. No. 92 of 1990

V.D. Balani Bus Service

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 80, 90
States Reorganisation Act, 1956 — Section 51(2)

Citation : (1990) JLJ 322 : (1990) MPJR 817 : (1990) 35 MPLJ 732 : (1990) MPLJ 732

Hon'ble Judges : T.N. Singh, J;S.K. Dubey, J

Bench : Division Bench

Advocate : Arvind Dudhawar, D.V. Nigudkar, J.P. Gupta, Amicus Curiae, for the Appellant;

Final Decision : Dismissed

Judgement

T.N. Singh, J.

At two levels, same question of jurisdiction arises for decision in this case. The question is, what is the ambit of jurisdiction of a State Transport Appellate Tribunal, for short, STAT (herein, respondent No. 1) u/s 90 of the Motor Vehicles Act, 1988, for short, the Act, and whether the impugned order passed by the said respondent is liable to be quashed by writ of certiorari. The question also is whether, sitting at this Bench, we possess the requisite jurisdiction to issue a writ of mandamus against respondent No. 2, Regional Transport Authority, Hoshangabad Division, Bhopal.

First, few facts which are short and simple. The petitioner firm is engaged in transport business at Itarsi in the district of Hoshangabad of this State. As per Annexures P/1, P/2, P/3, P/4, he filed on 30-12-1989 four separate applications for operating vehicles on four different routes within the jurisdiction of respondent No. 2. On those routes, he has averred, on temporary permits,

vehicles of different operators have been allowed to run for the last four years. Because applications of the petitioner for non-temporary permits were kept pending, operation on the route on temporary permits was detrimental to his interests. He approached therefore, STAT (respondent No. 1), in revision, praying for a direction to respondent No. 2 for the same to be included for consideration in the agenda for the meeting of the RTA concerned, to be held on 24-1-1990. By the impugned order passed on 16-1-1990, the revision application was dismissed by the Tribunal taking the view that it had no jurisdiction to give any direction in the nature of mandamus and the revision was not maintainable. Hence, this petition, which was filed on 19-1-1990.

When this matter came before us on 23-1-1990, it was submitted by Shri Dudhawati that in petitions of similar nature, we had earlier made directions prayed against concerned Regional Transport Authority in different parts of the State taking the view that that Authority had a public duty to perform u/s 80 of the Act as new procedure was simplified for the applications made for non-temporary permit to be disposed of expeditiously. However, we felt that time had come to examine if such petitions could be validly entertained at this Bench to open a flood-gate by which our dockets would be inundated. Accordingly, we requested Senior Counsel of this Court Shri J. P. Gupta to assist us as amicus curiae and indeed, later, assistance of Shri D. V. Nigudkar was also similarly enlisted because Shri Nigudkar has been representing M. P. State Road Transport Corporation and interest of the Corporation generally was likely to be affected. Counsel on both sides have addressed us and cited case law, to be discussed hereinafter. However, we place on record our appreciation for the assistance rendered by counsel appearing for the petitioner as also Sarvashri J. P. Gupta and D. V. Nigudkar.

"We address ourselves to the first question and extract section 90 of the Act:

"90. Revision. - The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard".

Be it mentioned in this connection that under the Act, a State Transport Appellate Tribunal has been constituted u/s 89(2) and it is empowered to hear appeals preferred u/s 89(1) and also revisions preferred u/s 90. There is no other function assigned to the Tribunal under the Act. A plain reading of section 90 makes it clear that power and jurisdiction thereunder can be exercised by the Tribunal when there is an "Order" made by the State Transport Authority or the Regional Transport Authority. The Tribunal is vested with the jurisdiction to call for the records of the "case" in which the "Order" impugned is made to determine whether such order is "improper or illegal". The Tribunal may pass in revision "such order in relation to the case as it deems fit", but that order obviously can be passed in the case when the tribunal is in a position to reach the finding that the named authority's order passed in the case was either proper or legal; or improper or illegal. The tribunal is not authorised u/s 90 to pass any order in vacuum, of the nature of a "direction" to the authorities named. If the "case" is pending before any of the named authorities, but no order is passed therein, there is no scope for an application to be preferred for revision u/s 90 for "direction" concerning that case. That position is clearly indicated by the first and the second provisos which speak of the period of limitation specified with regard to the "date of the order impugned".

In a recent Full Bench decision of this Court in Sindh Transport 1989 MPLJ 831, the scope and ambit of power of the Tribunal exercisable in appeal has been considered. In that case, a "direction" was prayed, and made; though of a different nature. R.T.A. concerned was directed by STAT to extend the period of the permit while disposing of the appeal, to compensate the permit-holder for the loss suffered by him due to non-operation of the permit during the pendency of the appeal. In answering the question referred to it for its opinion, the Full Bench held that the Tribunal did not possess any "inherent" power to make such a direction taking the view that there was no scope for exercise of such powers outside the Act. For this view, reliance was placed on the celebrated decision in Veerappa's case AIR 1962 SC 192. The direction was held to be ultra vires the Act; and as such non est in law. The ratio of that decision applies squarely, in our view, to the instant case.

Accordingly, we hold that the impugned order does not suffer any jurisdictional infirmity and does not merit any interference in our hands. Indeed, the position would have been different if the Tribunal had taken the contrary view and issued the direction prayed. In that case, the order would have been set aside; but nothing more, for reasons to follow.

It is true that as per Annexure P/6, in another matter, the Tribunal (respondent No. 1) had passed an order in revision on 22-12-1989, making a direction for consideration of application for regular permit of the revisionist, but that order is

not in challenge in this matter and parties are not before us. The only observation that we would like to make in regard to that order is that facts of that case were different. Suffice it to say that the order Annexure P/6 is not an order passed in a non-existent "case" in respect of a non-existent "order". Whatever that may be, we make it clear that the Tribunal does not possess jurisdiction for direction for disposal of any application made u/s 80 of the Act in the absence of any lis in regard to that application. We would also like to add that even if erroneously, such a direction has been made in any case by the Tribunal, that would not give any right to any other applicant to seek from the Tribunal a similar direction. Permitting that would be permitting one wrong to be compounded by another; and indeed ad infinitum. No person is permitted to benefit by the wrong act of any Court. It is only when a party suffers owing to events occurring in any interregnum in the course of proceedings, that the court has the power to remedy it as held in A.R. Antulay Vs. R.S. Nayak and Another, "errors in judicial findings, either of facts or law or operative decision conscientiously arrive at as part of the judicial exercise cannot be interfered with by resorting to the maxim actus curiae neminem gravabit."

The next question has different remnification. In that regard, we have to notice the statutory order, rather, quasi-constitutional constraints of this Bench. There may be a case for a mandamus against respondent No. 2, but we would not like to say on merits of petitioner's claim in that regard because we lack jurisdiction to pronounce on that claim, for reasons to follow. u/s 51(2), S. R. Act, the President is empowered to provide for establishment of a permanent Bench or Benches of a High Court of a new State (constituted under the Act) at one or more places within the State other than the principal seat of the High Court and for matters connected therewith after consultation with the Governor and the Chief Justice of the High Court of the State. In exercise of that power, the following order was passed on 28-11-1968:

"In exercise of the powers conferred by sub-section (2) of section 51 of the States Reorganisation Act, 1956 (37 of 1956), I Zakir Husain, President of India after consultation with the Governor of Madhya Pradesh and the Chief Justice of the High Court of Madhya Pradesh, hereby establish a permanent Bench of the Madhya Pradesh High Court at Gwalior and further direct that such Judges of the High Court of Madhya Pradesh, being not less than two in number, as the Chief Justice may from time to time nominate, shall sit at Gwalior in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the revenue districts of Gwalior, Shivpuri, Datia, Guna, Vidisha (Bhilsa), Bhind. and Morena:

Provided that the Chief Justice may, for special reasons, order that any case or class of cases arising in any such district shall be heard at Jabalpur".

In Abdul Taiyab Abbas Bhai 1976 MPLJ 767 : 1976 LLJ 706 , a Full Bench of this Court has upheld the validity of section 51(2), States' Reorganisation Act as also of the Presidential order afore-extracted. In that case, Apex Court's decision in

Sri Nasiruddin Vs. State Transport Appellate Tribunal, was considered and followed because the expression "in respect of cases arising in" was found to be common to the Presidential Order extracted as also of the "Amalgamation Order" of Nasiruddin's case. As a constitutional requirement for exercise of jurisdiction under Article 226 was found related to "cause of action", that requirement was equated to the requirement of Amalgamation Order in Nasiruddin's case in the context of the expression "in respect of cases arising in such areas as Oudh". It was held, if the cause of action arises wholly within Oudh areas, then Lucknow Bench will have jurisdiction and for causes of action arising wholly outside Oudh, Allahabad will have jurisdiction. It was further held, if the cause of action arises in part in the specified Oudh areas and part of cause of action arises outside the specified areas, it was open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Relying on this holding, in K.P. Govil's case 1987 MPLJ 396 : 1987 LLJ 341, this Court's Full Bench held that if the cause of action arises wholly or in part at the place or places within a specified revenue district, the Gwalior Bench will have jurisdiction to hear and decide the case. It was further held that in cases of orders impugnable the cause of action arises at place where the order is made and also the place where consequences fall on the persons concerned. A writ of mandamus was prayed in that case and in another case, Devendra Bahadur Singh 1989 MPJRC 721, a Division Bench of this Court was required to consider if a certiorari could be issued when the Board of Revenue had confirmed the order passed by the subordinate authority. This Court rejected the objection to the maintainability of the petition holding that there can be no difference in cases decided by the Board which had confirmed, or reversed the order, of the subordinate authority. Because, the operative order was of the final authority; whether it had reversed, modified or confirmed the original order. There was merger of two orders.

The question to be decided in this case is, if the petitioner has any cause of action, partly or wholly, that can be said to have arisen in any of the specified districts under the Presidential Order in regard to which this Court is enabled to exercise jurisdiction. The facts which are admitted in evidence are that the petitioner himself as also the routes and the seat of respondent No. 2, all lie at a place outside the specified areas. The petitioner himself is resident of Hoshangabad district. So also the routes. Office of Respondent 2, is in Bhopal district. Those districts are outside the specified areas to which the jurisdiction of this Bench extends according to the Presidential Order. It is true that R.T.A. (respondent No. 2) has not made any order as yet and mandamus is sought against him for that purpose. It is also true that with that object, the petitioner has moved first the Tribunal and then, this Court. However, we have held hereinabove that the Tribunal's order is a legal and valid order as we have confirmed Tribunal's refusal to issue the mandamus prayed. Shortly put, therefore, whether this Bench's jurisdiction can be said to be attracted either by fortuitous or by concealed litigative misadventure undertaken at Gwalior where the seat of respondent No. 1 is located, in the absence of merger of two orders.

A similar situation arose in *State of Rajasthan and Others Vs. Swaika Properties and Another*, in which case, notice of acquisition of land situated in Rajasthan was served at Calcutta and writ of mandamus being prayed at Calcutta, the petition was entertained and rule nisi was also issued to the concerned authorities in the State of Rajasthan at Jaipur. The order was set aside holding that mere service of notice could not give rise to a cause of action as service of notice was not an integral part of the cause of action. Their Lordships held, cause of action was a "bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant". They held the entire cause of action arose within the State of Rajasthan as the entire proceedings culminating in the acquisition of land in question had arisen in State of Rajasthan. In the instant case, writ of mandamus being prayed, in regard to a proceeding for grant of non-temporary permit in area outside the specified areas of this Bench's jurisdiction, the ratio of the holding of *M/s. Swaika Properties (supra)* applies squarely. The tenuous nexus designedly established by the petitioner by his concealed misadventure, would form no part of the cause of action. There was no scope for approaching respondent No. 1 in revision, only to attract this Bench's jurisdiction. The petitioner having made applications to an authority located outside the specified areas in respect of routes also lying outside the specified areas, no territorial nexus is established between his right to the grant of permits under those applications with any one of the specified areas. In our view, the language of the Presidential Order requires substantial territorial nexus to be established between any of the specified areas and the place at which the right to claim the writ or its enforcement arises to provide basis for the prayer a mandamus which is issued to enforce public duties of public authorities. And, that is signally wanting in the instant case. Evidently, the case for a certiorari would be different as errors of law are corrected in the records of subordinate Tribunals when orders are or have to be passed by such jurisdiction of the Court issuing mandamus.

Reliance was placed by Shri Dudawat on a Full Bench case, *Thangalkunju v. Venkitachalam* AIR 1954 TRA. 131, as also on a Single Bench decision in *Serajuddin and Co. Vs. The State of Orissa and Others*, but those have no relevance to the question confronting us. In those cases, the question was of the High Court's extra-territorial writ jurisdiction unlike intra-territorial jurisdiction of this case. In both cases, it was held that writ can issue against the non-resident respondent. However, we must still observe that decision in *Sirajuddin's* case has been affected by the holding of Apex Court's decision in *Swaika Properties' case (supra)* and that decision may not be good law any longer. This we say because service of notice at Calcutta in *Sirajuddin's* case was held sufficient to invoke High Court's jurisdiction there, in respect of mines in Orissa.

For reasons aforesaid, we have no hesitation to hold that the petition is not maintainable and it is accordingly dismissed.