Chaman Motor Services Raipur Vs Appellate Authority M.P.

Court: Madhya Pradesh High Court

Date of Decision: April 7, 1957

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (1957) JLJ 724

Hon'ble Judges: G.P. Bhutt, J

Bench: Single Bench

Advocate: A.P. Sen and Shukla, for the Appellant; G.B. Badkas, M.B. Pandye, R.M. Hajarnairs, M. Adhikari, D.A.G. and M.N. Phadke, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Bhutt, J.
This petition, under Art. 226 of the Constitution, is directed against the order of the Appellate Authority constituted under the

Central Provinces and Berar Motor Vehicles Act, 1939 (hereinafter called the Act), canceling a stage carriage permit that was granted to the

petitioner on route Raipur to Sambalpur via Kanker.

2. On the application dated 9-2-1953, the petitioner, Chaman Motor Service, Raipur, was granted a stage carriage permit on route Raipur to

Sambalpur via Kanker, by the Regional Transport Authority by its order dated 3-7-1953, Against that order respondent No. 3, Kanker Transport

Company, Raipur preferred appeals Nos. 165 and 166 of 1953 of the State Transport Appellate Authority, respondent No. 1. Respondent No.

5, the New Motor Transport Co, Durg also filed appeals Nos. 196 and 197 of 1953 as against that order. Similarly respondent No. 6, the Raipur

Transport Company Limited Raipur also preferred appeal No. 216 of 1953. In the meantime Respondent No. 3, Kanker Transport Company,

Raipur was succeeded by respondent No. 4, Danteshwari Transport Company, Raipur. The Appellate Authority heard appeals Nos. 165 of 1953

and 197 of 1953 together on 29-12.1953. Appeal No. 165/53 was dismissed on the ground that respondent No. 3 had no locus standi as it bad

merged with respondent No. 4. On the same date, appeal No. 166/1953 was held to have abated in consequence of the order in appeal No.

165/53. Appeal No. 197/53 was allowed and the case was remanded to the Regional Transport Authority with a direction to reconsider the

petitioner"s application along with the application of respondent No. 5 for grant of permit on route Dhamtari to Narayanpur via Kanker and

Sambalpur. In the meantime the permit that was granted to the petitioner was suspended. Appeal No. 216 of 1953, preferred by respondent No.

6, was ordered to be kept pending till the decision of the Regional Transport Authority.

3. The Regional Transport Authority took up the matter on 1-2-54 and again allowed the application of the petitioner and rejected that of

respondent No. 5. As against this decision, respondent No. 5 alone preferred appeal No. 54/1954. In the meantime respondent No. 3 filed M.P.

No. 60 of 1954 in this Court under Art. 226 and 227 of the Constitution, against the appellate Order in appeals Nos. 165 and 166 of 1953. The

M.P. Miscellaneous petition was allowed on 17-5-1954 and both the appeals were directed to be heard by the Appellate Authority.

4. In pursuance of the order of the High Court in M.P. No. 60/1954, the Secretary, State Transport Authority, issued notices to the petitioner for

hearing of the appeals Nos. 165 and 166 of 1953, and appeals No. 216 of 1953 and No. 54/1954, on 31-7-54. On this date the Appellate

Authority heard appeals Nos. 165, 166 and 216 of 1953 and hearing of appeal No. 54/54 was taken up on 2-8-54. After bearing appeal No.

54/54, the Appellate Authority orally announced that the appeals except that of respondent No. 5, namely, No. 54/1954 were allowed and that

appeal No. 54/1954 was allowed. The actual order, however, does not appear to have been signed until 23-8-1954. By this order the permit

granted to the petitioner was cancelled.

5. The validity of the Appellate order is challenged on the following grounds:--

(1) That the order was illegal inasmuch as it was not signed and dated on 2-8-54 when it was delivered.

(2) As the appellate Authority was constituted only for 31-7-1954, It became functus officio on 28-8-1954 and could not, therefore, deliver the

order.

(3) Appeals Nos. 165 and 166 of 1953 became in fructuous because they were directed against the order of the Regional Transport Authority

dated 3-7-1953, which was already vacated on 29-12-1953 in appeal No. 197/1953.

(4) That the bearing of appeals on 31-7-1954 was bad in law because 30 days" notice was not given to the petitioner as required by the rules.

6. Before I deal with these points I may dispose of a preliminary objection raised on behalf of respondents Nos. 3 to 6. It was contended that as

various orders have been impugned by the petitioner, he ought to have filed separate petitions against each order, The matter out of which the

various appeals arise, was, however, only one and related to the grant of the permit asked for by the petitioner by his application dated 9-2-1953.

So far as the claim of respondent No. 5 was concerned, it also appears to be connected with the petitioner''s application and was dealt with jointly

with it. AS orders in the various appeals are inter connected, the petitioner is entitled to challenge them by one petition, The objection is

accordingly overruled.

7. Points 1, 2 and 4:--Rule 73 of the Rules framed under the Act provides that the authority to decide any appeal shall be the Chairman and 2

members of the Provincial Transport Authority appointed by him from a panel of members nominated by the provincial Government. The

Constitution of the appellate Tribunal, therefore, endures until the appeal is heard and decided and could not be limited only to the date on which

the hearing of the appeal is fixed. The rule further provides that upon receipt of an appeal, the Chairman shall appoint time and place for hearing it

and shall not give less than 30 days'' notice to the appellant, the Regional Transport Authority and other persons interested in the appeal. This

provision is, however, made only for the convenience of the parties and does not affect the hearing of the appeal If the notice was short, more time

could be prayed for by the petitioner. However the petitioner did not ask for any further notice and cannot, therefore, challenge the order on this

ground. Rule 73 also contemplates adjournment of the hearing of the appeal to any subsequent date. This obviously empowers the Appellate

Authority to adjourn an appeal whether its hearing commenced on the date fixed or not, and also to deliver the orders on any adjourned date of

hearing. There is nothing in the Act or the rules framed thereunder making provision for the delivery of the appellate orders. All that Sec. 60(2)

requires is that the Transport Authority which cancels or suspends a permit shall give to the holder in writing Its reasons for doing so. Neither Rule

73 nor Sec. 60 (2) prohibits the Appellate Authority from delivering the order orally and recording the reasons subsequently. None of these

objections to the validity of the bearing of the appeals or the orders passed by the Appellate Authority are, therefore, tenable.

8. Point No. 3:--As already stated the Appellate Authority did not by its order dated 29-12-55 set aside the order of the Regional Transport

Authority dated 3-7-1953, nor was the permit granted to the petitioner cancelled at that time. It cannot, therefore, be contended that appeals Nos.

163 and 166 of 1953 which were directed against the order of the Regional Transport Authority dated 3-7-1953 could not be heard and disposed

of. It is true that they were not technically directed against the subsequent order of the Regional Transport Authority dated 1-2.1954, but obviously

the parties were, by virtue of the order of this Court in M.P. 60/54, relegated to the position which they occupied at the time the previous order

was passed. The subsequent order, therefore, did not affect the right of respondents Nos. 3 and 4 in the matter of the hearing of their appeals de

novo as they were not bound by what happened subsequently in their absence. There is therefore, no force in the contention that the appeals Nos.

165 and 166 of 1953 had become in fructuous.

9. Coming to the impugned order, the Appellate Authority has given its reasons for the view that the state of traffic did not admit of opening any

new service and that the existing services were adequate. In coming to this conclusion, it has taken into consideration absence of any demand from

the public for a direct service and the suspension of some of the piecemeal services from time to time. It also took into consideration the nature of

the country and the paucity of the passengers going out towards Calcutta or Bombay sides for business. Whether or not one may agree with the

decision of the Appellate Authority on these reasons it cannot be said that there was any excessive exercise or non exercise of jurisdiction or any

apparent error on re cord which has resulted in manifest injustice. This Court would not therefore, scrutinize the matter for itself even if a different

view may be taken of it, See The Lokpriya Motor Service Partner ship Akola vs. Sk. Umrao and 3 others.

10. The petition is accordingly dismissed, but in the circumstances of the case, there shall be no order as to costs. The outstanding amount of

security shall be refunded to the petitioner.