

1 WA. No. 153/2015 and WA. No. 177/2015

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
(DB : SHEEL NAGU and S.K. AWASTHI J,J)

Writ Appeal No.153/2015

Pawan Arora

Vs.

Mahendra Gupta and Ors.

Writ Appeal No.177/2015

State of MP

Vs.

Mahendra Gupta and Ors.

Writ Appeal No. 153/2015

For Appellant: Shri K.N. Gupta Sr. Advocate with Shri Kumar Gaurav

For Respondents no. 1 and 2: Shri H.D. Gupta Sr. Advocate with
Shri Neerendra Sharma.

For Respondents no. 3 and 4/State. Shri Praveen Newaskar, Govt.
Advocate.

Writ Appeal No. 177/2015

For Appellant: Shri Praveen Newaskar Govt. Advocate.

For Respondents no. 1 and 2: Shri H.D. Gupta Sr. Advocate with
Shri Neerendra Sharma

Whether approved for reporting: Yes/No.

J U D G E M E N T

(Delivered on 22nd of March, 2017)

1. Present writ appeals No. 153/2015 and 177/2015 filed u/S. 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhinyam, 2005 assails the final order dated 17.03. 2015 passed in W.P. No. 883/2015.

2. Learned counsel for the rival parties are heard.

3. W.A. No. 177/2015 is preferred by the State while W.A. No.

153/2015 is preferred by one Pawan Arora who was respondent no. 3 in the petition in question.

4. This court refrains from entering into factual details as pure question of law is involved and the arguments of the learned counsel for the rival parties are restricted to the same, which does not require any elaboration of factual matrix.

5. The question of law involved is whether the State Transport Authority (STA for brevity) comprising of three members including the Chairman could have decided and pronounced the order impugned before the writ court with the signatures of only two members since in the meantime one of the two members was transferred out.

6. The relevant provision is contained in Rule 63 (6) of M.P. Motor Vehicle Rules 1994 (1994 Rules for brevity) which is reproduced below for ready reference and convenience:-

"63. State Transport Authority"

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) The quorum to constitute a meeting of the State Transport Authority shall be the Chairman or the nominated Chairman under the sub-rule (7) and two other members (whether official or non-official). If within half an hour from the time appointed for the meeting a quorum is not completed, the meeting shall be adjourned to such day and at such time and place as the Chairman or the acting Chairman nominated under sub-rule (7) may appoint and no quorum is necessary for holding the adjourned meeting.'

7. The writ court after hearing the parties at length and testing the submissions on the anvil of the above said statutory provision relating to quorum has held that since order impugned before the writ court was delivered under the signatures and two members (chairman & one member) as against the Chairman and two members finally hearing the case, the said order is void in the eyes of law.

8. Learned counsel for the State has contended by placing reliance on

the decision in the case of **Gokal Chand Jagan Nath v. Nand Ram Das-Atma Ram** reported in **1938 PC 292 (294)** and Sec. 99 and Sec. 99-A of CPC that the absence of the 3rd member signing the order of the STA at the time of its pronouncement and delivery can at best be termed as irregularity which cannot per se vitiate the order as the same pertains to the realm of procedure and not substantive law. It is submitted that procedure being hand maiden of substantive law cannot become the cause of nemesis for the latter.

9. Learned counsel for the appellant in WA No. 153/2015 refers to Sec. 68 (1) and (2) of 1988 Act besides placing reliance on Sec. 22 of the Motor Vehicles Act which provide for the composition of STA comprising of a Chairman + a maximum of four (4) members and thus it is urged that even less than three members can validly pass an order. Sec. 72 of 1988 Act is further pressed into service. As regards the provision of the 1994 Rules, learned counsel for the appellant refers to Rule 63 (4), (6) and (7) to emphasize that the concept of quorum is relatable to hearing and cannot be stretched to apply even at the time of passing and pronouncing of the final order by STA.

10. On the other hand learned counsel for the respondent in W.A. No. 177/2015 submits that provisions of Sec. 99-A of CPC are inapplicable to the fact situation herein as the same relate exclusively to orders passed u/S. 47 CPC. It is further urged that applicability of CPC is excluded by implication in view of the provisions of Rule 143 (5) of the 1994 Rules. Decision of the Apex Court in the case of **Ramaswamy Nadar v. The State of Madras** reported in **AIR 1958 SC 56** is relied upon.

11. Learned counsel Shri Dudawat, Advocate appearing for the appellant no. 2 in WA No. 177/2015 primarily submits that after coming into effect of the 1988 Act the process for grant of permit has been considerably liberalized. It is submitted that the scheme of Sec. 68 providing for constitution of STA contemplates Chairman + maximum of four (4) members but in view of provision of the first and the second proviso to Sec. 68 (2) of 1988 Act even a one member STA can validly

function and deliver orders. It is further submitted that Rule 63 (6) of 1994 Rules which is heavily relied upon in the impugned order, relates more to convening meeting of STA rather than passing of any order. The decision of the Apex Court in the case of **Gokal Chand Jagan Nath v. Nand Ram Das-Atma Ram** reported in **AIR 1938 PC 292(294)** is relied upon, to emphasize the point that if a statute is silent about the consequence that may entail for noncompliance of any procedural provision then a decision rendered without complying with procedural provisions may not be sufficient to vitiate the order ultimately passed. In sum and substance Shri Dudawat submits that the lack of quorum was a mere irregularity and not an illegality which could vitiate the order passed by the STA.

12. Before considering the citation relied upon by the rival parties it would be appropriate to deal with the statutory provision pressed into service by the learned counsel for both sides.

13. Sec. 99-A of the CPC has been wrongly pressed into service as it does not relate to the issue involved herein for the simple reason that the said provision is confined for its application to orders passed u/S. 47 of CPC which relates to execution proceedings.

14. As regards Sec. 99 CPC the same is meant to save any error defect or irregularity in an order passed by the Court which does not relate to merits from becoming cause of reversal, varying or remand at the hands of appellate authority. The provision of Sec.99 CPC is inapplicable where the quorum is statutorily provided. This court is of the considered view that in such a situation where a meeting comprising statutorily provided quorum hears the matter but less number of members forming the minimum statutorily quorum sign the final order, then the said order cannot be termed to be valid in law. If the argument of learned counsel for the petitioner is accepted then the purpose of introducing the minimum quorum by way of statutory provision would become redundant thus the defect of non signing by one of the members forming the minimum statutory quorum is not a mere technical defect

but goes to the root of the matter and renders the order nonest in the eyes of law thereby excluding the application of Sec. 99 CPC.

14.1. Rule 143 (5) is relied upon to contend that while deciding appeals and revisions the STA/RTA shall take recourse to procedure laid down by CPC unless otherwise expressly provided in 1988 Act or the 1994 Rules. True it is that 1994 Rules provide for application of the procedure prescribed in CPC while considering and deciding appeals and revisions. However Rule 143 (5) employs the term 'so far as may be', which is a clear indication that the adoption of procedure of CPC for the purpose of appeals and revision under 1994 Rules is not automatic and wholesale, but the extent of adoption depends upon the discretion of revisional and appellate authority and the demand of attending facts and circumstances. This expression 'so far as may be' has been interpreted by the Apex Court in the case of **Dr. Pratap Singh and Anr. v. Director of Enforcement** reported in **AIR 1985 SC 989** in the following manners:

"In order to give full meaning to the expression "so far as may be", sub-sec. (2) of S. 37 should be interpreted to mean that broadly the procedure relating to search as enacted in S. 165 shall be followed. But if a deviation becomes necessary to carry out the purposes of the Act in which S. 37 (1) is incorporated, it would be permissible except that when challenged before a court of law, justification will have to be offered for the deviation. Case law discussed."

14.2. In view of the above there is no automatic or en-block adoption of procedure under CPC, for deciding appeals and revisions by STA under 1994 Rules. Moreso, the present case appears to be a case which concerns the question of quorum prescribed statutorily in Rule 63 (6) which does not concern the procedure under CPC.

14.3. Moreover reliance is placed on the provisions of Sec. 68 (2) to draw the inference that an order can be validly passed by the RTA comprising of less than three members. Provisions of Sec. 68 of the 1988 Act prescribe the STA to comprise of Chairman and such other members not more than four (4) in number. Thus this provision merely deals with maximum number of members that can form and constitute STA but does not provide for minimum requisite number of members for validly

holding a meeting of RTA. In other words the provisions of Sec. 68 (2) do not deal with quorum.

14.4. One of the counsel also placed reliance on Rule 64 of the 1994 Rules. This Rule relates exclusively to Regional Transport Authority whereas the present case deals with State Transport Authority. Thus Rule 64 has no application to the lis herein.

14.5. Rule 63 (6) is relevant and pertinent to the issue involved which is already reproduced hereinabove. The quorum under Rule 63 (6) categorically provides Chairman/person nominated by the Chairman and two other members who may be official or non-official. Thus for business to be transacted in a valid meeting (not adjourned meeting) of STA it should necessarily comprise of Chairman+ two members.

15. In the instant case the decision was taken in a meeting of STA which comprised of Chairman and two other members whose description is given in para 18 of the impugned order. All three heard the matter and closed it for passing orders. However when order was delivered one of the members Shri Sanjay Chowdhry Transport Commissioner was not available to sign the order for having been transferred out. The order however was delivered with signature of the Chairman and one member namely Shri Rajiv Sharma, Chief Engineer PWD and therefore undoubtedly and undeniably the order was not signed and delivered by the quorum.

16. The writ court has held that though the proceedings took place before the Chairman+ Two members when quorum was complete but by the time the order was signed one of the members got transferred out and the order could be delivered with signatures of Chairman and only one member and therefore the writ court held that at the time of the passing of the order the quorum was not present, which persuaded the writ court to truncate the order of the STA.

17. The decision of the Apex Court in the case of **Ramaswamy Nadar (supra)** is pressed into service. In this case the Apex Court was hearing an appeal by special leave against an order of the Single Bench

of the Madras High Court setting aside the order of acquittal passed by the trial court. The case was heard by a three judge bench of the Apex Court but before the judgment would be pronounced one of the members of the Bench Mr. Justice Menon expired. The Apex Court went ahead and delivered the judgment by appending a note at the foot of the judgment which is worthy of reproduction:

"When hearing of this appeal was finished last week by a Bench consisting of three of us, B.P. Sinha, P. Govinda Menon and J.L. Kapur, J.J., we announced that we had come to the conclusion that the appellant should be acquitted. We also indicated that the judgment will be delivered the week following. The draft of the judgment was sent to late Mr. Justice Menon last week and he had approved of it. What we are now delivering are the reasons of the judges who constituted the Bench; but it will be signed by two only of us on account of the unexpected death of Mr. Justice Menon."

18. A bare perusal of the above note indicates that the nature of the judgment to be delivered by the Apex Court was concurred with by all the three judges of the bench and this unanimity of mind was made known at the time of the conclusion of the hearing by all the three judges. Moreover the draft judgment was also sent to Late Justice Menon who had approved the same before expiring. Thus the Apex Court found that mere delivery of the judgment was left to be accomplished. The Apex Court went ahead and delivered the judgment with the signatures of only two members.

18.1. In the instant case there is nothing on record to indicate that the STA with complete quorum heard the matter and before one of the members Shri Sanjay Chaudhry was transferred out any draft order was got approved from the said transferred member. Moreover, the record also does not indicate that any view was expressed by the Chairman + two members of STA at the time of hearing of the matter about the nature of order to be passed. In the absence of any such compelling circumstances herein the verdict of the Apex Court is of no avail to the appellant.

18.2. Another decision relied upon is of a single bench in the case of **A. Shanta Rao v. State Transport Appellate Tribunal** reported in **AIR 1985 AP 256**. In the said case before Andhra Pradesh

High Court the question was whether the order passed by STA under the signatures of Chairman alone could stand the test of law. The Andhra Pradesh High Court observed thus in paragraph 23 of the judgment :

"23. I view of my conclusion of point 1 the view taken by the Tribunal without looking into the minutes of the State Transport Authority cannot be sustained When all the members of the State Transport Authority had signed in the minutes of the meeting, there can be no objection for the issue of the order in the name of the Chairman alone. There is clear evidence that all the members have applied their minds to the facts of the case and the conclusion mentioned. The order of the State Transport Authority is therefore valid So far as the second point is concerned, as I stated earlier it is not necessary to hold that the reasoned order of the State Transport Authority prepared by he Secretary is illegal. Further the said question was not raised before the Tribunal."

19. From the above it is clear that all the members forming the statutory quorum of STA had signed the minutes of the meeting which clearly indicates that all of them had applied their minds to the decision and therefore no fault was found in the subsequent action of issuing the order with the signature of Chairman alone. Case in hand does not disclose from record, that Chairman and atleast two members had signed the minutes of meeting of STA. Thus this judgment too is of no assistance to the petitioner.

20. Judgment of the Privy Council in the case of **Gokal Chand (Supra)** is also relied upon, which in the considered opinion of this court is distinguishable on facts and thus of no avail to the appellants.

21. From the above, it is evident that in the instant case there is no material to compel this court to conclude that the Chairman and the two members who heard the matter had come to a particular decision by way of expressing the same on board while reserving the case for orders or by making any endorsement on notesheet/ minutes of the meeting of STA in that regard. If the argument of learned counsel for the appellant is accepted that mere nonpresence of one member cannot vitiate order passed under the signature of Chairman and one member, then the concept of quorum statutorily provided under Rule 63 (6) shall become otiose.

22. Moreso it is pertinent to note that the concept of prevailing of

majority view in matters before STA is not contemplated by the Scheme of 1988 Act or the 1994 Rules. Thus taking the view as projected by the learned counsel for the appellant would be doing offence to the very intent and object behind the 1998 Act and 1994 Rules.

23. In view of the above, this court is of the considered view that no fault can be found with the decision of the writ court which is accordingly upheld.

24. Consequently, the writ appeals stands dismissed.

(SHEEL NAGU)
Judge
22/3/2017

(SK AWASTHI)
Judge
22/3/2017

ar