W.P. No.6873/2016

(Rakesh Yadav Vs. State of M.P.)

16.12.2016

Shri K.N. Gupta, Sr. Advocate with Shri N.K. Gupta, Sr. Advocate with Shri M.S. Jadon, Advocate for the petitioners.

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1. The present order also disposes of W.P. No. 7021/16 which involves almost identical facts and grounds and both these petitions have been heard analogously.

2. The facts available in W.P. No. 6873/16 are being taken into consideration.

3. The challenge in this petition under Article 226/227 of Constitution of India is to the final order dated 16.09.2016 passed by the State Transport Appellate Tribunal(for brevity STAT) by which the appeal of respondent no.4 assailing grant of regular permit for the interstate route from Gwalior to Rewa to the petitioners (including 5 petitioners in W.P. No.6876/16 and 2 petitioners in W.P. No. 7021/16), has been allowed to the extent of holding the grant of permits in favour of petitioners to be unlawful on merits and remanding the matter to the STA with direction to reconsider all the 12 valid applications and while doing so, permitted the said 12 applicants to ply their buses on the route in question to avoid inconvenience to the public.

4. Learned counsel for the rival parties are heard.

5. CONTENTIONS OF PETITIONER

The challenge to the impugned order is primarily on the

following grounds:

1. The direction for remand is dehorse the provisions of Rule 143(4) of the M.P. Motor Vehicle Rules .

2. STAT failed to take upon itself the exercise of re-consideration of the 12 valid applications thereby obviating the need for remand. The full Bench decision of this Court in the case of ***Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority M.P. Gwalior and others*** reported in ***AIR 1970 MP 230*** is relied upon.

3. STAT has failed to appreciate that the order of remand ought to be confined to the parties to the lis and could not have stretched to even cover applicants who were not before the STAT.

4. The STAT has failed to appreciate Sec 71(3)(a) of the Motor Vehicle Act. The STAT wrongly relied upon Sec 71(3)(a) to pass the impugned order since the said provision is applicable exclusively to the routes in towns with population of not less than 5 lacs whereas the route in question was not a city route.

5. Remand is further unlawful as it permits fresh applicants to jump in the fray as it is contended that it is settled principle of law that the position of law applicable at the time of consideration of the application would apply.

6. Appeal before STAT was not maintainable without impleading the persons who had filed their objections before the STA.

7. Remand orders by STAT is unsustainable as the impugned order of the STA was not set aside. It is

submitted that without setting aside the order of STA, direction for remand could not have been given.

CONTENTION OF RESPONDENTS

6. Per contra, the learned counsel for the State and respondent no.4 have raised the following contentions:

1. The petitioner no.2, 4 and 5 do not have spare vehicle as the spare vehicle proposed by them was plying on some other route.

2. Writ petition against the order of remand is not maintainable as orders of such kind are interlocutory in nature for which the decision of Apex Court in the case of ***Babulal Nagar & Others Vs. Shree Synthetics Ltd. & Others*** reported in ***AIR 1984 SCC 1164*** and in the case of ***Mangal Prasad Tamoli (Dead) by LRs Vs. Narvedshwar Mishra (Dead) by LRs*** reported in ***AIR 2005 SC 1964*** are pressed into service.

3. The order of remand by STAT is sustainable on the strength of expression "_ _ _ may pass such other order _ _ _" found in Rule 143(3) of Motor Vehicle Act.

4. Emphasizing the limited scope of interference under Article 227 of the Constitution of India, the decision of Apex Court in the case of ***Shalini Shyam Shetty Vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329*** is pressed into service.

5. The STAT consciously did not set aside the order of the STA to prevent disruption in plying of vehicles on the route in question thereby preserving public

interest.

6. The full Bench decision in the case of ***Surendra Mohan Chaurasiya(supra)*** is not applicable as it is distinguishable on facts.

7. The order of remand by STAT is tenable in law as the Code of Civil Procedure which is applicable to the proceedings before the STA by virtue of Rule 143(5) of the Motor Vehicle Act recognizes the concept of remand by higher forum without disturbing the order impugned of the lower forum under Order 41 Rule 23, 23(A) and Rule 25 of CPC.

FINDINGS

7. For the purpose of grant of eight(8) inter state stage carriage permits on the route in question, 77 applications were received out of which, 33 were taken up for hearing. Out of these 33 applications, 21 were rejected leaving behind 12 valid applications on which consideration was made. The appellant before the STAT/respondent no.4 herein was also one of the 12 valid applicants. The STAT found that the assessment of comparative merit of 12 applicants undertaken by STA was solely based on the attributes of the model of vehicle proposed by the applicants as main vehicles and of stand-by vehicle. None of the other attributes contemplated by Sec 70(1)(e) and 71(3)(d) of the Act of 1988 and Rule 70 of 1994 Rules were considered. Noticing the said fallacy in the decision making process of STA, the STAT came to the conclusion that the merit ranking arrived at by the STA was skewed as it did not reflect the true picture of the twelve (12) applicants being arrayed in a

sequence showing them in descending order of merit. The STAT further found that if all the attributes prescribed by law were kept in mind by the STA, then an altogether different merit ranking would have emerged. In sum and substance, the STAT found that relevant considerations were ignored in the process of decision making by the STA.

7.1 While concluding, the STAT held the order of STA to be unlawful. However, while holding so, the STAT in public interest to avoid inconvenience to passengers due to disruption of traffic on the route in question did not set aside the order of STA and allowed the buses to ply on the route and in the meantime directed the STA to reconsider all the 12 valid applications on their own comparative merit in accordance with law after taking into account all the relevant attributes prescribed by law under Sec 70 & 71 of 1988 Act and Rule 70 of 1994 Rules.

ANSWER TO GROUNDS RAISED BY PETITIONER

8. Taking up the first ground raised by the petitioner regarding the scope of Rules 143(4) of the Motor Vehicle Act/Rules, this Court is of the considered view that sweep and ambit of the said provision is wide enough to include power to remand. For ready reference and convenience, Rule 143(4) is reproduced below:

RULE 143(4)

> *The Tribunal may after following the procedure prescribed in Sections 89 and 90 of the Act and after further inquiry, if any, as it may consider necessary confirm, vary or set aside the order against which the appeal or revision is preferred or may pass such other order in relation thereto as it deems fit and shall make an order*

accordingly.

8.1 The ancillary arguments advanced in view of Rule 143(5) of 1994 Rules is that the power of remand assuming the same is vested with the Tribunal, is required to be exercised within the parameters laid down by the CPC. For ready reference Rule 143(5) of 1994 Rules is reproduced below:

RULE 143(5)

> *Unless otherwise expressly provided in the Act or in these Rules, the procedure laid down in the Code of Civil Procedure 1908(V of 1908) shall, so far as may be, followed in all proceeding under these rules.*

8.2 Rule 143(4) of 1994 Rules empowers the Tribunal to decide the appeal and revision after conduction of an inquiry by either confirming, verifying, setting aside or by passing such other order as it deems fit. The contention of learned counsel for the respondent that the term "may pass such other orders, as it deem fit" is the repository of power which has been exercised by the Tribunal in the present case while remanding the matter.

8.3 To deal with these arguments, it is essential to know the exact construction of the term " *so far as may be*", which can be deciphered from the following verdict of the Apex Court in the case of ***Pratap Vs. Director of Enforcement, F.E.R. Act***". reported in ***AIR 1985 SC 989,*** relevant extract of which is reproduced below:

> *…..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.

8.4 In view of the above, it is evident that the procedure laid down in CPC made applicable to the proceedings in appeal and revision before the STAT does not bind the Tribunal in strict sense so as to render the end result vitiated. Order 41 Rule 23, 23A, 24, and 25 CPC deal with remand. True it is that these provisions in CPC recognizes two types of remand. The first is the remanding of case after setting aside the judgment and decree against which the appeal is filed, while the other class of case is that when remand is made for conduction of inquiry by the lower Court on an issue framed by the Appellate Court without setting aside the judgment and decree against which appeal is filed.

8.5 In the instant case, the STAT while passing the impugned order has passed the following directions:

- The non-consideration of all the relevant attributes provided in Section 70(1)(e) and Section 71(3)(d) of the Act of 1988 has rendered the order of STA vitiated in law.
- Thus, the appeal of the appellant before the STAT assailing the order of STA of rejection of his application for grant of regular permit is allowed.
- The prayer of the appellant before the STAT for cancelling eight regular permits issued by the STA was declined, since STAT found that on merits the appellant could secure higher merit in respect of only one regular permit.
- The STAT on the ground of public interest of preventing disruption of traffic on the route in question declined to cancel the regular permits granted to eight applicants.

- Thus, by invoking the provisions of Rule 143(4) of the Rules of 1994, STAT directed the STA to reconsider the comparative merit of all the twelve valid applications including that of the appellant before the STAT and for this purpose remanded the matter to STA.
- Finally, the STAT to the extent indicated above set aside the order of the STA.

8.6 The specific relief granted by the STAT as enumerated above elicits that the order of STA has been set aside with certain reservations and observations and therefore it cannot be said that the impugned order before the STAT was not set aside before remand was made. The exhaustive definition of remand evident from the Rule Order 41 CPC would not strictly bind the STAT. Tribunal has been given wider powers by the Legislature by allowing it to pass different kinds of orders as enumerated in Rule 143(4) of the Rules of 1994, including such other order as it deems fit, meaning thereby that in a given situation to do complete justice and to prevent failure of justice, the Tribunal is vested with power and authority to adopt procedure in variance to the procedure laid down in CPC provided while doing so, principles of natural justice, fair play and good conscience, rationality, reasonableness and public policy are kept in mind .

8.7 In view of the above, the question no.1 raised by the petitioner stands answered in the negative.

9. The question no. 2 again deals with the same issue of remand and since this Court has held and explained above the wide powers exercised by the STAT, it is obvious that merely because the STAT did not take upon itself the exercise of reconsideration of 12 valid applications instead of remanding the matter, the same cannot be successfully raised as the

ground for interference in the limited supervisory jurisdiction of this Court under Article 227 of the Constitution of India where this Court is obliged to ensure the Tribunal and Courts functioning under its territorial jurisdiction act within the bounds of their jurisdictional limits set by law. By remanding the matter, the Tribunal has not over stepped out its jurisdictional limit.

10. The third question raised by the petitioner is of the STAT decided the *lis* in respect of even those parties which were not before it. The array of respondents in the cause title before the STAT reflects that there were eight respondents who were applicants before the STA and in whose favour regular permit was granted by the STA. While remanding the case, the STAT has directed reconsideration of the matter by the STA of all the 12 valid applications whose case had been considered by the STA while granting eight regular permits which came to be challenged before the STAT. Apparently, eight permit holders who were respondents before the STAT and the appellant i.e. nine valid applicants out of 12 valid applicants were before the STAT thereby leaving aside three applicants.

9.1 The STAT after finding that all attributes prescribed by law u/S 71(6) and Sec 71(3)(d) of the Act of 1988 r/w Rule 70 were not taken into account by the STA while considering the 12 valid applications remanded the matter. If the STAT while remanding the case would have restricted the STA from considering only 9 valid applications, then the three other valid applicants who where not before the STA would have been left out. Whenever, the higher authority remands the matter after finding the decision making process to be invalid, then the best course available is to direct the subordinate authority to reconsider the case of not only the parties before the higher authority, but to

undertake a fresh exercise of consideration of all the eligible candidates, notwithstanding the fact that some of them are not before the higher forum. This would not only satisfy the demand of justice, but would also be in public interest, as the competent authority will be able to choose the best from amongst all available candidates. Wider the field of choice, the better are the chances of finding the most meritorious.

9.2 Thus, the question no.3 by the petitioner stands answered in the negative.

10. As regards the question no.4 of STAT quoting the wrong provision u/S 71(3)(a), it is seen from the scheme of Act & Rules that Sec 71(3)(d) of the Act of 1988 read with Rule 70 of the 1994 Rules are the provisions which lay down the attributes which STA is obliged to consider while deciding upon the question of grant of regular permit.

10.1 True it is that Sec 71(3)(a) of the Act of 1988 relates exclusively to grant of stage carriage permit within the city routes in town with population of less than 5 lakhs which apparently does not apply to the case at hand, however, mere quoting of wrong provision cannot lead to vitiation of the order passed by the authority provided the power exercised is traceable in the relevant statute. In the instant case, the above said three provisions clearly laying down the attributes to be considered by the STA while granting/refusing regular permit and therefore mere wrong mention of the provision Sec 71(3)(a) by the STAT is of no avail to the petitioner. For this purpose, Apex Court decision in the case of ***Collector of Central Excise, Calcutta Vs. Pradyumna Steel Ltd.*** reported in ***(2003) 9 SCC 234*** can be pressed into service. Relevant para is reproduced below for convenience and ready reference:

> *3. It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. Thus, there is a clear error apparent on the face of the Tribunal's order dated 23.06.1987. Rejection of the application for rectification by the Tribunal was, therefore, contrary to law.*

11. The question no.5 raised by the petitioner has already been answered in shape of answer to the earlier question no.2 and 3 and therefore the said question no.5 is decided against the petitioner.

12. The question no.6 is that appeals before STAT were not maintainable as all those applicants who had filed their objections before the STA besides the 12 valid applicants were not impleaded as parties. The right to approach the STAT was vested in the persons aggrieved by the decision of STA. However, objectors who did not approach the STAT by filing appeal are presumed to be not aggrieved. Merely because certain persons who had filed objections and were not before the STAT, cannot by itself vitiate the order of STAT, especially when the STAT has taken into account and heard all the eight persons who had been benefited by the order of STA. Thus, the said question is also decided against the petitioner.

13. The last question no.7 further relates to remand which has already been answered in shape of answer to question no.1 and therefore needs no elaboration. Thus question no. 7 is answered against the petitioner.

14. Several decisions have been cited by the counsel for respondent which are not being adverted to in view of the nature

of order passed herein.

15. In view of the above discussion, this Court is of the considered view that STAT has not transgressed any of its jurisdictional limits set by law and further that the impugned order does not suffer from any error apparent on the face of record. Merely because, a different view is possible cannot be a ground for interference in the limited supervisory jurisdiction under Article 227 of the Constitution of India. For this purpose, the decision of Apex Court in the case of ***Shalini Shyam Shetty Vs. Rajendra Shankar Patil (2010) 8 SCC 329*** is worthy of reference.

16. Accordingly, the present petition under Article 227 of the Constitution of India deserves to be and is therefore rejected *sans cost*.

(Sheel Nagu)
Judge

(Rajeev Kumar Dubey)
Judge

sh/-