

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

M.P. No.214 of 2022

Between:-

M/s Mahadev Pradhan Proprietor Shailadeep Pradhan, aged about 51 years, Bus Operator, R/o Housing Board, Old Bus Stand, Rewa.

.....Petitioner

And

1. State of Madhya Pradesh through its Special Secretary, Transport Department, Vallabh Bhawan, Bhopal (M.P.).
2. The Regional Transport Authority, Shahdol Division, Shahdol (M.P.).
3. Manglani Bus Service through Proprietor Ayaldas Mangalani, S/o Late Tolaram Manglani, Bus Operator R/o Shop No.08, New Bus Stand, Shahdol (M.P.).

.....Respondents

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M.P. No.213 of 2022

Between:-

M/s Mahadev Pradhan Proprietor Shailadeep Pradhan, aged about 51 years, Bus Operator, R/o Housing Board, Old Bus Stand, Rewa.

.....Petitioner

And

1. State of Madhya Pradesh through its Special

Secretary, Transport Department, Vallabh Bhawan, Bhopal (M.P.).

2. The Regional Transport Authority, Shahdol Division, Shahdol (M.P.).
3. Manglani Bus Service through Proprietor Ayaldas Mangalani, S/o Late Tolaram Manglani, Bus Operator R/o Shop No.08, New Bus Stand, Shahdol (M.P.).

.....**Respondents**

Date of Order	04.05.2022
Bench Constituted	Single Bench
Order delivered by	Hon'ble Mr. Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of the counsel for parties	For Petitioner: Mr. H.C. Kohli, Advocae and Mr. Pramesh Jain, Advocate For respondent Nos.1 and 2/State: Mr. C.M. Tiwari, Government Advocate. For respondent No.3: Mr. Brajesh Kumar Dubey, Advocate
Law laid down	1. Right of Appeal- If an application for grant of permit under Section 80 of the Act, 1988 is moved and at the same time, an application seeking renewal of permit is pending before the same Authority and only the application for renewal of permit is considered and allowed by the Authority, it would amount to rejection of permit to other and under such circumstances, the aggrieved person on whose application

	<p>no order is passed, can prefer an appeal under Section 89(1) of the Act, 1988.</p> <p>2. If the applications under Sections 80 as well as 81 of the Act, 1988 are pending before the Authority for the same route and even for same timing, then there is no bar with the Authority to decide both the applications simultaneously, whereas it would be otherwise convenient in the interest of justice to decide those applications simultaneously after giving opportunity of hearing to the parties concerned so as to avoid any conflicting order in the fact situation of the case.</p>
Significant Para Nos.	9, 10 and 12.

Reserved on : 05.04.2022

Delivered on : 04.05.2022

(O R D E R)

Since the issue involved in both these petitions is one and the same, therefore, with the joint request of learned counsel for the parties, they are heard and decided by this common order. For the sake of convenience, facts of M.P. No.214 of 2022 are being taken note of.

2. By the instant petition filed under Article 227 of the Constitution of India, the petitioner calls in question the legality, validity and propriety of order dated 31.12.2021 (Annexure-P/1) whereby the State Transport Appellate Tribunal, Gwalior, after setting aside the order dated 15.09.2020 passed by the Regional Transport Authority (respondent No.2), remitted the matter to it

for deciding the application preferred by respondent No.3 for grant of permit along with the petitioner's application for renewal of permit analogously.

3. Facts of this petition *multum in parvo* are that the petitioner while holding a regular carriage permit for the route Rewa-Amarkantak one single trip by two vehicles in rotation which was valid up to 23.05.2020, has preferred an application under Section 81 of the Motor Vehicles Act, 1988 (in short the 'Act, 1988') before respondent No.2 for renewal of his permit for a further period of five years. Respondent No.2, in turn, vide order dated 15.09.2020 (Annexure-P/3) has allowed the petitioner's application for renewal of permit for a further period of five years up to 24.05.2025.

(3.1) Challenging the order dated 15.09.2020 (Annexure-P/3), respondent No.3 preferred a petition i.e. W.P. No.11407 of 2021 [Manglani Bus Service Vs. The State of Madhya Pradesh and others] before this Court wherein the main grievance of respondent No.3 was that while considering the application for renewal of permit of present petitioner, respondent No.2 had not considered the objection raised by him. However, it was also apprised to the Court that though the respondent No.3 preferred an appeal, but due to outbreak of COVID-19, it could not be decided. Thereafter, this Court vide order dated 09.11.2021, disposed of that petition, directing the Appellate Authority to decide the pending appeal of the

respondent No.3 within a period of 45 days. Subsequently, the Appellate Authority vide order dated 31.12.2021 (Annexure-P/1), after setting aside the order passed by the Regional Transport Authority, remitted the matter to it observing therein that the Authority without considering the objection submitted by respondent No.3, allowed the application preferred by the present petitioner for renewal of his permit. The Appellate Authority had also directed the Regional Transport Authority to decide the fresh application for grant of permit on the same route submitted by respondent No.3 along with the petitioner's application for renewal of permit analogously.

(3.2) Being aggrieved with the order dated 31.12.2021 (Annexure-P/1), the petitioner has preferred this petition.

4. Mr. Kohli, learned counsel for the petitioner submits that as per Section 81 of the Act, 1988, no other application except the application for renewal of permit can be decided by the Regional Transport Authority and, therefore, direction issued by the Appellate Authority for deciding both the applications viz. renewal of permit and grant of fresh permit, is contrary to law. He submits that the order passed by the Regional Transport Authority on 15.09.2020 (Annexure-P/3) whereby renewal of permit has been granted to the petitioner, is not appellable as per Section 89 of the Act, 1988. However, he submits that the order passed by the

Regional Transport Authority whereby renewal of permit has been granted in favour of the petitioner is revisable because as per Section 90 of the Act, 1988, against the order passed by the said Authority, a revision is maintainable. He further submits that though this Court had disposed of the petition preferred by respondent No.3 with a direction to avail the alternative remedy of appeal, but it does not mean that the Appellate Authority acquires the jurisdiction to entertain the appeal as he does not have the jurisdiction to decide the appeal and, therefore, the impugned order passed by the Authority is without any jurisdiction and liable to be set aside. In support of his contention, learned counsel for the petitioner has placed reliance upon the orders reported in **2009 (4) MPLJ 482 [Parihar Transport Company Vs State of M.P. and others]** and **2021 (II) MPJR 123 [Mohd. Farhan Khan Vs. State of M.P. & Ors]**.

5. Learned counsel for respondent No.3, on the other hand, has opposed the submissions made by learned counsel for the petitioner and submitted that respondent No.3 had preferred an application for grant of fresh permit for the same route and even for same timing which was pending before the Authority, but without deciding the same, the Authority decided the application for renewal of permit preferred by the present petitioner in his favour, therefore, respondent No.3 preferred an appeal before the Appellate Authority. He has further submitted that the order passed by the Appellate Authority is well within his jurisdiction and while passing the impugned order, nothing wrong has been committed by the said Authority.

6. I have heard the arguments advanced by learned counsel for the parties and perused the record.

7. After hearing the rival submissions made by learned counsel for the parties, the questions emerge to be decided are that under the circumstances when application for renewal of permit preferred by the petitioner had been considered by the Regional Transport Authority granting permanent permit in favour of the petitioner, then as to how an appeal under Section 89 of the Act, 1988 was maintainable and secondly, as to whether any direction can be issued by the Appellate Authority to decide the application for grant of permit made under Section 80 of the Act, 1988 along with an application for renewal of permit made under Section 81 of the Act, 1988 together?

8. Considering the rival submissions made by learned counsel for the parties and on perusal on record, I am of the opinion that it is an admitted fact that the permit was earlier granted in favour of the petitioner for the route Rewa-Amarkantak one single trip in rotation which was valid up to 23.05.2020 and thereafter, renewal application was made by the petitioner before the Regional Transport Authority and the said Authority vide order dated 15.09.2020 after allowing his application, granted permit in his favour for a further period of five years. It is also an admitted fact that respondent No.3 had moved an application under Section 80 of the Act, 1988 for grant of fresh permit for the same route along with certain objections for which the petitioner had already been granted permit. As per the objections raised by respondent No.3, the validity of permit granted in favour of the petitioner was

till 23.05.2020, but prior to that the petitioner was under heavy dues of taxes and renewal of permit can be granted in favour of the petitioner only after clearing the default and, therefore, it was claimed by respondent No.3 that the said route is lying vacant as without clearing the default, renewal of permit is impermissible and, therefore, as per respondent No.3, fresh application for grant of permit filed by him on 29.05.2020 should be considered by the Authority. However, the Regional Transport Authority without giving any opportunity of hearing or without deciding the application preferred by respondent No.3 for grant of permit in his favour, allowed the application preferred by the petitioner for renewal which amounts to rejection of application of respondent No.3.

9. As per the petitioner, since no order was passed by the Authority rejecting the application preferred by respondent No.3, therefore, as per the requirement of Section 89 of the Act, 1988, which reads as under:-

“89. Appeals.—(1) Any person—

- (a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or
- (b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or
- (c) aggrieved by the refusal to transfer the permit under section 82, or
- (d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or
- (e) aggrieved by the refusal of renewal of a permit, or

(f) aggrieved by the refusal to grant permission under section 83, or

(g) aggrieved by any other order which may be prescribed,

may, within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

[(2) The State Government shall constitute such number of Transport Appellate Tribunals as it thinks fit and each such Tribunal shall consist of a judicial officer who is not below the rank of a District Judge or who is qualified to be a Judge of the High Court and it shall exercise jurisdiction within such area as may be notified by that Government.]

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), every appeal pending at the commencement of this Act, shall continue to be proceeded with and disposed of as if this Act had not been passed.”

the appeal could not have been filed by respondent No.3 before the Appellate Authority because under such a circumstance, Section 90 of the Act, 1988 comes into operation which deals with the revisions and reads as under:-

“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.”

However, I am not convinced with the submissions made by learned counsel for the petitioner for the reason that if a fresh application is moved for grant of permit along with certain objection even for the same route for which permit had earlier been granted and application for renewal of that permit is pending before the same Authority, then it was obligatory for the sanctioning Authority to consider not only the renewal application but also the objection, if any, is filed against the said renewal and also to consider the fresh application for grant of permit for the same route and even for the same timing simultaneously, but that has not been done and only the application for renewal of permit has been considered and allowed which itself indicates that the fresh application for grant of permit filed by respondent No.3 for the same route and even for the same timing has been cancelled and, therefore, the person aggrieved like respondent No.3 has every right to approach the Appellate Authority to challenge the order passed by the Regional Transport Authority which has been done by respondent No.3 in the present case and, therefore, the Appellate Authority did nothing wrong while entertaining the appeal preferred by respondent No.3 on the ground that the Regional Transport Authority while considering the petitioner's

application for renewal of permit, had neither considered the application for grant of fresh permit preferred by respondent No.3 nor considered the objection raised by him in respect of renewal of permit filed by the petitioner and as such, the said Authority has failed to discharge its obligations and duties in a proper manner. Thus, the order passed by the Appellate Authority entertaining the appeal does not suffer from any irregularity or illegality and as such, the impugned order is well within the jurisdiction of the Appellate Authority.

10. So far as the submission made by learned counsel for the petitioner that the application for grant of fresh permit and application for renewal of permit cannot be decided simultaneously as the Authority should decide those applications independently without clubbing the same is concerned, I am not convinced with the same because there is no bar in the Act itself that the Authority which has to grant the fresh permit considering the application, if any, is moved under Section 80 of the Act, 1988 is the same Authority which can consider the application for renewal permit for the same route and even for the same timing, therefore, the Authority can decide both the applications simultaneously. However, if the aforesaid submission made by learned counsel for the petitioner is accepted then that may create an ambiguous position and there might be every possibility of passing different orders on the same subject matter, therefore, to avoid such inconvenience, it would be convenient for the Authority to decide all those applications in one stroke by passing

a common order that too after giving opportunity of hearing to parties concerned.

11. More so, the cases of **Parihar Transport Company** (supra) and **Mohd. Farhan Khan** (supra) on which learned counsel for the petitioner has placed reliance are not applicable in the present case because here in this case, respondent No.3 filed an application for grant of fresh permit along with objection with regard to renewal of application filed by the present petitioner, but the Regional Transport Authority while allowing the application for renewal of permit filed by the petitioner, neither taken note of the objection raised by respondent No.3 nor decided his application for grant of fresh permit and as such, it amounts to cancellation of application submitted by respondent No.3 whereas the fact situation of the aforesaid cases are altogether different with the present case.

12. The Division Bench of this Court in a case reported in **1993 MPLJ 34 [Pt. Ramprashad Purohit Vs. State Transport Appellate Tribunal and others]** relying upon the case of Supreme Court reported in **AIR 1959 SC 851 [Ram Gopal Vs. Anant Prasad and another]** in paragraph-7 of its order has observed as under:-

“7. The case before us is even stronger. Admittedly, the appeal is against the refusal of permit under Section 89(1)(a) of the Act. There is no other provision barring the appeal against refusal to grant permit. The only objection is there being no right given by the Act to challenge a grant of permit and as allowing the appeal of the petitioner would result in setting aside grant of permit to the respondent No. 3, in effect, it is an appeal against the grant of permit to respondent No. 3 which has not been provided for by the Act. Applying the

ratio of Ramgopal' s case (supra) to the present case, it has to be held that since the right of appeal against refusal to grant permit is available to the petitioner, his appeal cannot be thrown out as not maintainable only because if the appeal is allowed, the result will be that the grant of permit to respondent No. 3 shall have to be set aside. If the consequences of allowing the appeal inevitably is setting aside grant of permit to respondent No. 3, it cannot be helped. The right of appeal of the petitioner cannot be allowed to become infructuous of defeated only because it will result in setting aside grant of permit against which no appeal is provided by the Act. When the legislature intended to provide for an appeal against refusal to grant a permit, it shall be deemed to have intended to grant such right of appeal in all circumstances and contingencies which may arise. We, therefore, hold that the appeal of the petitioner was maintainable and the decision of the State Transport Appellate Tribunal in this regard holding it to be untenable, cannot be sustained.”

In view of the aforesaid, it is clear that respondent No.3 could file the appeal even against the grant of permit in favour of present petitioner. Although, here the case of respondent No.3 is at better footing because he had also moved an application under Section 80 of the Act, 1988 for grant of fresh permit raising objection that the petitioner's permit cannot be renewed for certain reasons. Thus, the ground with regard to maintainability of appeal raised by learned counsel for the petitioner is without any substance and is hereby rejected.

13. *Ex consequentia*, the petitions filed by the petitioners being *sans* merit, are hereby **dismissed**.

(SANJAY DWIVEDI)
J U D G E