Municipal Board, Pushkar

Vs

State Transport Authority, Rajasthan and Ors

Civil Appeal No. 332 of 1962

(CJI P. B. Gajendragadkar, N. Rajgopala Ayyangar, A. K. Sarar, K. N. Wanchoo, K. C. Das Gupta JJ)

21.11.1962

JUDGMENT

DAS GUPTA, J. –

At Pushkar in Rajasthan exists a tank which has long been considered one of the holiest places of the Hindus and a well known place of pilgrimage. By the east of the lake runs road approximately north to south. The Ghats for getting into the lake are situated contiguous west of this road. Several Dharmshalas and at least one Gurudwara have been established by the side of this road not far from the lake. A temple of Hanumanji stands east of the road, a short distance from the southern edge of the lake. Another temple close to the road is the temple of Rangji. This is situated very near the Ghats and to the east of the road. There is also a temple of Brahamaji further away towards the north but on this very road a little away from where the road further north east from the edge of the lake meets, another Road, Ganera Deedwana Nagar. Towards the south of the Dharamashalas the road goes on to Ajmer. The police station of Pushkar is situated at some distance police station of Pushkar is situated at some distance from the Pushkar lake. The police station stands on a road which goes on towards Ganera Deedwana Nagar to the north; and on the south joins the road to Ajmer. Thus the road running north to south by the side of the police station and the road running by the east of the Ghats of the lake meet a short distance north of the police station and a greater distance towards the south. In this way the two roads form a somewhat irregular figure almost like a triangle. The pilgrims use this road in coming to the lake and for this purpose can avail of a number of motor transport services. The dispute which is the subject-matter of the present appeal is as regards the location of the bus stand at Pushkar for these numerous motor transport services.

For many years the bus stand was located by the side of the road which runs east of the lake, a little away to the north of Hanumanji's temple and very near the Dharamashalas. On May 24, 1948, the Municipal Board of Pushkar passed a resolution that the Bus stand should be shifted to another site by the side of the road which passes by the police station. By the same resolution it was resolved to construct a passenger shed, piyaoo, baths, latrines, urinals and other facilities for the convenience of the passengers at the new bus stand as proposed. The Regional Transport Authority in its meeting held on December 3 & 4, 1959, considered this proposal and passed a resolution in the following words :-

> "The Bus stand for Pushkar will be the plot of land at the junction of the Hallows Road with Ganera Road near the Police Station and Kalkaji's Temple. The present bus stand on the northern Patri between Hanumangarhi Temple and Brahmannandji's Baghichi will cease to be a bus stand and will be a bus stop only. The buses will not

pass through the city. They will go back from the bus stop to the new bus stand. The Municipal Board will provide the necessary facilities. The buses will shift to the new bus stand after such facilities are provided."

It was not however until June 28, 1960, that a public notification was issued in pursuance of the resolution. On that date a notification was issued notifying the public of the resolution of the Regional Transport Authority fixing the new stand for buses at Pushkar and discontenting the old stand but directing that it will be sued as bus stop. The notification further stated that the buses shall not pass through the city but will proceed to the new stand back from the bus stop and that except the above-mentioned bus stand no other place shall be used as a bus stand in Pushkar. It was after this notification was issued, that the new arrangement came into force.

Long before this notification was made, two residents of Pushkar, Jai Narain and Madan Mohan moved before the State Transport Authority an application for revision of the decision of the Regional Transport Authority changing the bus stand. This application purported to be under s. 64A of the Motor Vehicles Act. It was heard by the State Transport Authority on February 18, 1960, and was rejected the same day. On April 13, 1960, five bus operators of the Ajmer Pushkar route moved a fresh application for revision under s. 64A of the Motor Vehicles Act against the Regional Transport Authority's decision to change the stand. This application was decided by an order dated January 6, 1961. The State Transport Authority rejected the preliminary objection raised by the respondent's counsel that no revision lay against the Regional Transport Authority's order and also the objection that the matter in dispute had already been heard and decided on February 18, 1960 and the State Transport Authority had no right to review its own order. It also rejected the contention that the contention that the revision petition was barred by limitation. Coming to the merits of the case the State Transport Authority was of opinion that the proposed new bus stand was likely to be a source of inconvenience to women pilgrims and children and that the old bus stand should be retained from the point of view of both public utility and convenience. Accordingly, the State Transport Authority allowed the application for revision and reversed the decision of the Regional Transport Authority and directed that the old bus stand should continue to be recognised as the official bus stand for the Pushkar town.

Against this order of the State Transport Authority the Municipal Board of Pushkar moved the High Court of Rajasthan under Art. 226 of the Constitution and prayed for appropriate writs or directions, setting aside the State Transport Authority's order of January 6, 1961. The main grounds on which this relief was sought were : (1) that the order of the Regional Transport Authority had been made under s. 76 of the Motor Vehicles Act and was therefore not liable to revision; (2) that, in any case, the application was barred by imitation; and (3) that the State Transport Authority having already rejected one application in revision against the Regional Transport Authority's order changing the bus stand could not entertain another application on absolutely the same grounds. The High Court came to the conclusion that there was no substance in any of these contentions and rejected the application.

It is against this decision of the High Court that the present appeal has been filed by the Municipal Board, Pushkar, with special leave.

In support of the appeal the learned Attorney-General has contended that the High Court's decision on all these three points was incorrect. He has reiterated before us that the order of the Regional Transport Authority changing the bus stand must be held to have been made under s. 76 of the Motor Vehicles Act and therefore not liable to revision, that the application for revision was barred

by limitation and thirdly, that in any case, the first revision application having been rejected, a second revision application did not lie inasmuch as on the rejection of the first revision application the Regional Transport Authority's order had ceased to exist having merged in the State Transport Authority's order.

The first question that arises for decision therefore is whether the Regional Transport Authority's order has been made under s. 76 of the Motor Vehicles Act, or, as urged on behalf of the respondents, it was made under s. 68 of the Act. Section 76, it was to be noticed, is in Chapter VI of the Motor Vehicles Act which deals with the control of traffic. Section 68 is in Chapter IV which deals with the control of transport vehicles. Section 76 gives power to the State Government or any authority authorised in this behalf by the State Government "to determine places at which motor vehicles may stand either indefinitely or for a specified period of time" and also to determine the places at which public service vehicles may stop for a longer time than it necessary for the taking up and setting down of passenger. According to the learned Attorney-General it is under this power to determine a place at which motor vehicles may stand indefinitely or for a specified period of time that the location of a bus stand is and can be determined by the State Government or any other authority by it in this behalf.

The rival contention on behalf of the respondent is that the determination of places at which motor vehicles may stand either indefinitely or for a specified period of time means the determination of parking place while the determination of places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers, contained in the latter portion of s. 76 means the determination of halting stations. Neither of these, it is urged, has anything to do with the provision of a bus stand. A bus stand, it is argued on behalf of the respondents, means the place where a bus service either commences or terminates. This according to the learned Solicitor-General, who appeared for the respondents, has to be done under a rule made under s. 68(2)(r) of the Act, giving power to the Regional Transport Authority to fix bus stands. Section 68 empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV. The second sub-section provides that without prejudice to the generality of the power just mentioned rules under this section may be made with respect to all or any of the matters mentioned in the clause set out in the sub-section. Of these cl. (r) is in these words :-

Section 68 (2)(r).

> "prohibiting the pricking up an setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place."

In order to make an effective rule under this clause under s. 68(2), it is said, it is first necessary to have duly notified stands. This clause contemplates, it is urged, that a rule has to first provide for the notification of certain stands for transport vehicles and, secondly, for prohibiting the picking up and setting down of passengers by stage or contract carriages inter alia at places other than the stands which have been duly notified. The learned Solicitor-General has further urged that the question whether the fixation or alternation of bus stands can be made under s. 76 or s. 68 of the Act is no longer res integra and must be taken to have been decide in favour of his contention in T.B. Ibrahim v. Regional Transport Authority, Tanjore [[1953] S.C.R. 290].

There is, in our opinion, force in this argument, T.B. Ibrahim, the application in that case, had a bus stand at a site belonging to himself. On February 21, 1950, the Regional Transport Authority, Tanjore declared that bus stand as unsuitable and with effect from April 1, 1950, altered the starting and terminal points by means of two resolutions purporting to have been passed under s. 76 of the Motor Vehicles Act. When the validity of these resolutions was challenged before the Madras High Court by a petition under Art. 226 of the Constitution the High Court held that s. 76 did not authorise the respondent to close the previous but stand and quashed the orders. On November 10, 1950, the Regional Transport Authority of Tanjore, after hearing the appellant Ibrahim and the Municipality passed a resolution that for good and proper reasons, viz., the convenience of the travailing public reasons, viz., the convenience of the travelling public the Transport Authority had resolved to alter the starting places and termini of all public service vehicles, other than motor cabs, arriving at and proceeding from Tanjore from the existing bus stand to another area of the town. Against this resolution a fresh petition under Art. 226 was filed in the High Court but the petition was dismissed. Against the High Court's order, Ibrahim appealed to this Court by special leave and it is the judgment in that appeal which has been reported in [1953] S.C.R. 290.

The impugned resolution was passed by the Transport Authority under Rule 268 of the Madras Motor Vehicles Rules, as amended. The amended Rule was in these words :-

> 268. In the case of public service vehicles (other than motor cabs) the transport authority may after consultation with such other authority as it may consider desirable and after notice to the parties affected, fix or alter from time to time for food and proper reasons, the starting places and termini between which such vehicles shall be permitted to be used within its jurisdiction. A list of such places shall be supplied by such authority to every holder of a permit for such vehicles at the time of grant of or renewal of permits.

When such places have been fixed every such vehicle shall start only from such places".

The very first ground that was urged in support of the second writ petition in the High Court was that Rule 268, as amended, was beyond the rule-making power conferred by s. 68(2)(r) of the Motor Vehicles Act. This contention was rejected by the High Court and was repeated before this Court and was rejected by this Court also. After setting out the material portion of s. 68, the Court pointed out that the purpose of Chapter IV was described by the compendious expression "control of transport vehicles", and the Provincial Government was invested with plenary powers to make rules for carrying out that purpose and then observed :-

> "Keeping in view the purpose underlying the Chapter we are not prepared to hold that the fixing or alteration of bus-stands is foreign to that purpose."

Dealing with the contention that s. 68(2)(r) does not confer the power upon the transport authority to direct the fixing or the alteration of a bus stand and therefore Rule 268 of the rules framed under that section was ultra vires, the Court observed thus :-

> "We are not prepared to accede to this contention. Sub-section 2(r) clearly contemplates three definite situations. It prohibits the picking up or setting down of passengers (i) at specified places, (ii) in specified areas, and (iii) at places other than duly notified stands or halting places."

> "If the power to make rules in regard to these matters is given to the Government, then it follows that a specified place may be prohibited from being used for picking up or setting down passengers. This will inevitably result in the closing of that specified place for the purpose of picking up or setting down of passengers. Similarly a specified area may be excluded for the same purpose. The expression "duly notified stands" is not defined in the Act, but it is reasonable to presume that a duly notified stand must be one which is notified by the Transport Authority and by none other. There is no warrant for the presumption that it must be notified by the Municipality."

The Court then discussed certain provisions of the Madras District Municipalities Act and said that these provisions did not affect the power of the Transport Authority to locate traffic control and that if Rule 268 was within the rule-making authority, it followed that it could not be challenged as being void because it was not consistent with some general law. The discussion on this point was concluded in these words :-

> "Section 68, sub-section (2)(r) involves both a general prohibition that the stand will cease to exist as well as a particular prohibition, namely, that passengers shall not be picked up or set down at a specified point. The order passed by the Transport Authority properly construed falls within the ambit of section 68, sub-section 2(r). Rule 268 under which the order impeached was passed is a rule framed under the plenary rule-making power referred to in section 68, sub-section (1). Sub-section (2)(za) says that a rule may be made with respect to any other matter which is to be or may be prescribed. This shows the existence of residuary power vested in the rule-making authority. It follows therefore that Rule 268 is within the scope of the powers conferred under section 68 of the Act."

We have deliberately made these extensive quotations from the previous of this Court because they clearly show, as nothing else can, that the Court had to consider in that case the question whether s. 68(2)(r) did confer upon the Transport Authority the power to direct fixing or alteration of a bus stand and answered the question in the affirmative. Ibrahim's case is thus a clear and direct authority for the proportion that under s. 68(2)(r) of the Motor Vehicles Act the State Government has power to frame rules empowering the Regional Transport Authority to fix or alter bus-stands. The notification of June 28, 1960, mentions Rule 134 of the Rajasthan Motor Vehicles Rules, 1955, as the source of the power under which the new bus stand was fixed, the old bus stand was discontinued and it was ordered that no other place except the new bus stand should be used as a bus stand at Pushkar. The material portion of Rule 134 reads thus :-

> "A Regional Transport Authority by notification in the Rajasthan Gazette, or by the erection of traffic signs which are permitted for the purpose under sub-section (1) of section 75 of the Act, or both, may, in respect of the taking up or setting down of passengers or both, by public service vehicles or by any specified class of public service vehicles .... require that within the limits of any municipality, or within such other limits as may be specified in the notification, certain specified stands or halting place only shall be so used."

This rule clearly empowers the fixation or alteration of bus stands.

In framing the Rajasthan Motor Vehicles Rules, 1951, of which Rule 134 form part the Rajasthan Government mentioned the numerous section which give the Government the power to frame rules

as the authority under which the rules were being made, viz., ss. 21, 41, 65, 68, 70, 71, (2), 73, 74, 75, 77, 80, 86, (2), 88, 90 and 91 of the Motor Vehicles Act, 1939. In view of this Court's decisions in Ibrahim's Case [[1953] S.C.R. 290.] it will be proper to hold that Rule 134 was made in exercise of the powers under s. 68. Accordingly, the order of the Regional Transport Authority fixing the new bus stand and discontinuing the old should be held to have been made under a rule made under s. 68 and thus liable to revision under s. 64A.

The learned Attorney-General stressed the fact that in Ibrahim's case this Court did not in so many words say that such an order fixing or altering bus stand cannot be made under s. 76 of the Act and contended that that case is no authority for holding that the order was not made under s. 76. Assuming for the sake of argument that that was so and that the order could also be made under s. 76 that would not affect or weaken the authority of Ibrahim's Case in so far as it decided that a rule empowering the Transport Authority to fix or alter bus stands can be made under s. 68(2)(r) of the Act. In that position there will be no escape from the conclusion that the Regional Transport Authority's order in the present case would be liable to revision under s. 64A.

It appears clear to us however that Ibrahim's case is also authority for the proposition that an order fixing or altering a bus stand cannot be made under s. 76. From the summary of what was discussed and decided in that case as has been given above, it appears that the Division Bench of the Madras High Court gave a categorical decision in the earlier writ petition that s. 76 did not authorise the Transport Authority to close the bus stand. It appears to us clear that this view was approved by this Court. Indeed, the reasoning which this Court adopted for deciding that s. 68(2)(r) of the Act contemplates the fixation or alternation of a bus stand would become considerably weakened and would not have been accepted by this Court if it thought that s. 76 itself authorised the Transport Authority to fix or close a bus stand.

We may make it clear that even if this binding authority in Ibrahim's Case had not been present we would have had no hesitation in holding that the fixation or alteration of a bus stand is made under a rule mad under s. 68 of the Motor Vehicles Act and cannot be made under s. 76. In our opinion, Chapter VI which deals with the question of "Control of traffic" in general has nothing to do with the fixation or alternation of bus stands. Section 76 has no doubt used the words "places at which motor vehicles may stand" and the learned Attorney-General tried to persuade us that this includes the fixation of what is known as bus stands. While the word "bus stand" has not been defined in the Act, we have no hesitation in accepting the contention of the respondents that a bus stand means a place where bus services commence or terminate. It is the place where the buses stand for commencing its transport service or where they stand after terminating their service, that is popularly known as a bus-stand. We do not think the words "places at which the motor vehicles may stand either indefinitely or for a specified period of time" can be reasonably interpreted to include a bus stand in the above sense. When it is remembered that Chapter VI in which s. 76 occurs, is intended to deal with the control of traffic it becomes clear that the determination of places at which the Motor Vehicles may stand either indefinitely or for a specified period of time means the "determination of parking places" while the determination of places at which public vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers means "halting stations for public service vehicles". It is well worth noticing that while determination of such places for stoppage, in the latter portion of the section can be in respect of public service vehicles only the determination of places of standing in the first part of the section is in respect of motor vehicles in general.

All things considered, it appears to us clear that s. 76 has nothing to do with the provision for bus

stands. Section 91(2)(e) which empowers the State Government to make rules for "the maintenance and management of parking places and stands" does not refer, in our opinion, to bus stands but to "stands" for motor vehicles which are in the nature of parking places determined under s. 76.

It is equally clear to us that the "control of transport vehicles" with which Chapter IV purports to deal should reasonably be expected to contain provisions for fixation of places where the transport vehicles may commerce their journey or terminate their journey, that is, the fixation of bus stands. When therefore, we find in s. 68(2)(r) the specific clause about "prohibiting the picking up and setting down of passengers..... at places other than duly notified stands," it is reasonable to think that the word "stand" was used there to mean "bus stands" in the sense of places where services terminate or commence. The scheme of the sub-section clearly shows that bus stands have first to be notified and regulatory orders can, and have to be issued thereafter. In the nature of things, the power to issue the necessary notification is implied in the provision.

The conclusion that necessarily follows from this is that the State Government has been given authority under this clause to make rules for the fixation of bus-stands by duly notifiying the same. Rule 134 in so far as it empowers the Regional Transport Authority to fix or alter bus stands is thus a rule made under the rule-making authority under s. 68. Even apart from the authority of Ibrahim's Case [[1953] S.C.R. 290.] therefore we are of opinion that the order of the Regional Transport Authority was made in pursuance of powers conferred on it by a rule made under s. 68(2)(r) of the Motor Vehicles Act and therefore liable to revision under s. 64A.

This brings us to the question of limitation. Section 64A provides that State Transport Authority shall not entertain any application from a person aggrieved by an order of the Regional Transport Authority unless the application is made within 30 days from the date of the order. According to the appellant, the impugned order was made by the Regional Transport Authority on December 4, 1959, and consequently the application for revision made by the respondents on April 13, 1960, was barred. It was suggested that in fact the respondents who moved the revision application on April 13, 1960, were aware of the order made by the Regional Transport Authority on December 4, 1959; but assuming that they had no such knowledge, the question of knowledge, it was urged, was totally irrelevant. The section has provided that no application shall be entertained unless it is made within 30 days from the date of the order and the courts cannot read it as within 30 days from the date of the knowledge of the order. In this connection the learned Attorney-General has drawn our attention to the decisions of the Privy Council in Nagendranath v. Suresh [A.I.R. (1932) P.C. 165], and General Accident Fire & Life Assurance Corporation Limited v. Jarmohomad Abdul Rahim [A.I.R. (1941) P.C. 6.] where it has been emphasised that in interpreting the provisions of limitation, "equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide." There can be no doubt that this principle has always been acted upon by the courts. This principle has recently been re-affirmed by this Court in Boota Mal v. The Union of India [[1963] 1 S.C.R. 70.].

We agree therefore that the words "date of the order" should not be read "as from the date of knowledge of the order" in the absence of clear indication to that effect. In this connection the learned Attorney-General has drawn our attention to several sections of the Motor Vehicles Act to show that where the legislature in prescribing the period of limitation intended that time should run from some other date than the date when the order was made clear indication of such intention was given. Thus s. 13 in providing for an appeal from an order made refusing or revoking a driving licence says that an aggrieved person may appeal "within 30 days of the service on him of the order". Section 15 which provides for an appeal from an order of the licensing authority

disqualifying a person from holding a driving licence lays down that an aggrieved person may appeal "within 30 days of the receipt of the order". Section 16 which provides for an appeal against certain orders of the Regional Transport Authority says that the aggrieved person may appeal "within 30 days of the receipt of intimation of such order". Section 35 which is another section providing for appeal says that the appeal may be made "within 30 days of the date of receipt of notice of the order".

There is considerable force therefore in the argument that if the legislature had intended that an application for revision under s. 64A may be made within 30 days from the date of intimation or knowledge of the order to the aggrieved person it would have said so; and in the absence of any such thing the court is bound to hold that the application will be barred unless made within 30 days from the date of the order by which the person is aggrieved. This still leaves open for investigation the problem as to what is the date of the order. According to the appellant the date when the Regional Transport Authority passed the resolution is the date of the order. Against this it is urged on behalf of the bus operators that it is the date when that resolution was brought into effect by the publication of the notification which should be considered to be the date of the order. In our opinion, the respondents' contention should be accepted. For, it is a fallacy to think that the date when the Regional Transport Authority passed the resolution was the date on which the fixation of the new-bus-stand or the discontinuance of the old bus stand was ordered. It has to be remembered in this connection that Rule 134 itself contemplates that the fixation or alteration of bus-stands would be made by a notification. It is only on such notification that a notified bus stand comes into existence. So long as the notification is not made there is in law no effective fixation of a new bus stand or discontinuance of the old bus stand.

The matter may be considered from another aspect. Section 64A provides for an application for revision by a person aggrieved by an order. It is the making of the order which gives rise to the grievance. In this case it is the fixation of the new bus stand and the discontinuance of the old bus stand by which the bus operators claim to have been aggrieved. It is easy to see that there is no real cause for grievance till such fixation and discontinuance of bus stands have been made by a notified order. In other words, the order has not been "made" till the notification has been published. Before that it is only an intention to make an order that has been expressed. That this distinction between the making of an order fixing or discontinuing a bus stand and the expression of an intention to make such an order was present in the mind of the Regional Transport Authority is abundantly clear from the language used by it. The resolution that was passed on December 4, 1959 - which according to the appellant was the date on which the impugned order was made - says :-

> "The bus stand for Pushkar will be the plot of land at the junction of the Hallows Road with Ganera Road near the Police Station and Kalkaji's Temple. The present bus stand on the northern Patri between Hanumangarhi Temple and Brahamanandji's Baghichi will cease to be a bus stand and will be a bus stop only. The buses will not pass through the city. They will go back from the bus stop to the new stand. The Municipal Board will provide the necessary facilities. The buses will shift to the new stand after such facilities are provided."

The Transport Authority did not follow this up on that date by a formal order. It is reasonable therefore to consider the passing of the resolution as the preliminary stage of the making of the order and the notification by which it was published as the final making of the order.

Our conclusion therefore is that the order fixing a new bus stand at Pushkar and discontinuing the

old bus stand was in effect made not on December 4, 1959, but on June 28, 1960, when the notification about the fixation of a new bus stand was published. It is this order, made on June 28, 1960, that was liable to revision and as the application for revision was made before that date - in anticipation of the notification - the plea of limitation raised on behalf of the appellant was rightly rejected by the Regional Transport Authority.

There remains for consideration the last contention raised on behalf of the appellant that inasmuch as the State Transport Authority rejected by its order dated February 18, 1960, the first application for revision of the Regional Transport Authority's order fixing or altering the bus stand, the Regional Transport Authority's order merged in the order of the State Transport Authority, the second application for revision was incompetent.

In Collector of Customs, Calcutta v. The East India Commercial Co. Ltd., Calcutta, [[1963] 3 S.C.R. 338.] this Court held that where once an order of original authority is taken in appeal to the appellate authority it is the order of the latter authority which is the operative order after the appeal is disposed of - whether the appellate authority reverses the order under appeal or modifies that order or merely dismisses the appeal and thus confirms the order without any modification. In Madan Gopal Rungta v. Secretary to the Govt. of Orissa [[1962] Supp. 3 S.C.R. 906.] this Court applied this principle of merger to orders passed by way of review and an order of the Central Government in effect rejecting the application of the appellant for the grant of a mining lease to him and confirming the rejection of the application of the appellant by the Orissa Government was held not amenable to the jurisdiction of the High Court of Orissa under Art. 226 of the Constitution in view of the fact that the Central Government was not located within the territories subject to the jurisdiction of the Orissa High Court on the ground that the Central Government's order rejecting the review petition and in effect rejecting the application of the appellant for grant of a mining lease was the operative order. It has been urged on the authority of these cases that the principle of merger should be applied to the cases of revision also where the revising authority reverses the order or modifies it or merely dismisses the revision application thereby confirming the order.

In our opinion, there is no scope for the application of the principle of merger to the facts of the present case. As we have pointed out above the order fixing a new bus stand and discontinuing the old bus stand was in effect, and in law, made not on December 4, 1959, but on June 28, 1960. The position therefore was that neither on the date when the first application for revision was made nor when the State Transport Authority disposed of that application, had any order of the Regional Tr__ansport Authority fixing the new bus stand and discontinuing the old bus stand, come into existence. The question of merger could onlarise if the revision was of an order that had come into existence. If even though an application for revision was made before the notification but the State Transport Authority had considered and disposed of the matter after the notification was made it would be possible and indeed reasonable to say that the application for revision should be deemed, at the time when the State Transport Authority, dealt with the matter, to be one for this completed order and the order of the Regional Transport Authority merged in the revising authority's order. As, however, the revising authority's order was also made before the notification had been published there was no operative order even by the State Transport Authority's order made on February 18, 1960. The contention that the second revision was incompetent, must therefore be rejected.

Two points which emerged during arguments at the Bar however require consideration. The first is that the application which the respondents bus-operators made on April 13, 1960, was also not for a revision of a complete order. As it was only this application for revision which has been dealt with by the State Transport Authority by its order of January 6, 1961, the question arises whether that

fact itself makes the order of the State Transport Authority bad and entitles the appellant to a direction quashing this order. It has to be noticed that the position in law that there was no complete order of fixation of a new bus stand and alteration of the old bus stand at Pushkar till the notification was made on June 28, 1960, was not present in the minds of either the applicants or the appellant, Municipal, Board, which appeared to oppose the application or even the State Transport Authority. It was not the appellant's case in the writ petition that the State Transport Authority's order of January 6, 1961, should be quashed, because it purported to revise an order which had no existence in the eye of law. On a consideration of all the circumstances, we do not think that the appellant can now claim an order for quashing the State Transport Authority's decision on this ground. In our opinion, it would be proper, in the special circumstances of the case, to hold that the State Transport Authority could, immediately after June 28, 1960, when the order was completed by the notification treat the application for revision made on April 13, 1960, pending before it on the date of notification, as an application for revision of the order as completed by the notification, and that, in substance, the order of January 6, 1961, was an order revising - not the decision of the Regional Transport Authority's order of December 4, 1959, but the Regional Transport Authority's order fixing a new bus stand at Pushkar, as completed by the notification of June 28, 1960.

The other point which was brought to our notice during the arguments at the Bar is that the order of the State Transport Authority dated January 6, 1961, was made without compliance with the second proviso to s. 64A. That proviso is in these words :-

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

This appears to us to make it necessary that before making any revisional order under s. 64A the State Transport Authority has to see that a person likely to be affected by that revisional order receives notice of the matter and is given a reasonable opportunity to be heard. The requirement of this proviso was admittedly not complied with before the State Transport Authority made the order on January 6, 1961, in the present case. If the High Court's attention had been drawn to this failure on the part of the State Transport Authority to comply with this statutory requirement, we have no doubt that the High Court would have felt compelled to quash the revisional order made.

Now, that we find that this statutory requirement was not complied with before the revisional order was made, we do not think it will be proper for us to ignore this infirmity in the order. It is true that the learned Attorney-General contended that as soon as the Court accepts the plea that the revisional order challenged by the appellant by their writ petition is invalid for the reason that the appellate authority did not comply with the provisions of s. 64A, the writ petition ought to be allowed and no opportunity can or should be given to the said authority to reconsider the matter. We are not impressed by this argument. We are satisfied that in the circumstances of this case, we ought to exercise our powers under Art. 142 of the Constitution and send the matter back to the revisional authority to be dealt with in accordance with law, because there is no doubt that by adopting this course full justice will be done between the parties.

Accordingly, we allow the appeal and quash the State Transport Authority's order made on January 6, 1961, and direct that the application for revision of the Regional Transport Authority's order as notified on June, 28, 1961, be disposed of by the State Transport Authority in accordance with law after giving public notice of the matter and thereafter giving every person concerned in the matter who wishes to be heard a reasonable opportunity of being heard. In the circumstances of the case,

we order that the parties will bear their own costs.

SARKAR, J. -

I have come to the conclusion that this appeal should be allowed.

The appellant is the Municipal Board of Pushkar in the State of Rajasthan. It passed a resolution sometime in 1958 that the bus stand near the Pushkar lake should be shifted to what it considered a more suitable place. Now the power to fix bus stand was given to the Regional Transport Authorities by r. 134 of the Rules framed by the Rajasthan Government under the Motor Vehicles Act, 1939. That rule provides as follows :

> Rule 134. "A Regional Transport Authority, by notifications in the Rajasthan Gazette, or by the erection of traffic signs which are permitted for the purpose under sub section (1) of section 75 of the Act, or both, may, in respect of the taking up or setting down of passengers or both, by public service vehicles or by any specified class of public service vehicles -
>
> (i) conditionally or unconditionally prohibit the use of any specified place or of any place of a specified nature or class, or
>
> (ii) require that within the limits of any municipality or within such other limits as may be specified in the notification, certain specified stands or halting places only shall be so used :
>
> #....."##

The appellant Municipality moved the Regional Transport Authority, Jaipur, for making an order shifting the bus stand to the place suggested by it. On December 3/4, 1959, the Regional Transport Authority passed a resolution accepting the appellant Municipality's proposal and providing that the bus stand would be shifted to the place suggested by the appellant Municipality and the old bus stand would cease to be used as such but would only be used as a bus stop. The resolution further provided that the appellant Municipality would provide certain facilities and the new bus stand would start functioning after the facilities had been provided.

> Now s. 64-A of the Motor Vehicles Act provides as follows :
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> S. 64-A. "The State Transport Authority may, either on its own motion or on an application made to it, call for the record of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper of illegal, the State Transport Authority may pass such order in relation to the case as it deems fit :

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

> #....."##

> Certain bus operators of Pushkar who are respondents in this appeal and whom I will refer to as the respondents, applied to the State Transport Authority on April 13, 1960, under s. 64A to quash the resolution of the Regional Transport Authority December 3/4, 1959. While this application was pending disposal by the State Transport Authority, the Regional Transport Authority issued a notification dated June 28, 1960, finally declaring and notifying to the public the fixing of the new bus stand. This notification was published in the "Rajasthan Gazette of July 14, 1960. It appears that there was this delay in issuing the notification of the Regional Transport Authority's notification of December 3/4, 1959, because in the meantime two other persons had moved the State Transport Authority under 64A to quash that resolution and also because the facilities which the appellant Municipality had been directed to provide had not till then been arranged for. That earlier petition under s. 64A was dismissed by the State Transport Authority on February 18, 1960, and thereafter the facilities required had been provided by the appellant Municipality. It is after all this that the notification of June 28, 1960, had been issued. The respondent's petition under s. 64A was allowed by the State Transport Authority by an order made on January 6, 1961. By that order the State Transport Authority directed that "the decision passed by the R.T.A. dated 3/4 December 1959 and upheld by the STA on 18.2.1960 be set aside and cancelled and the old Bus stand shall continue to be recognised as Official Bus stand for the Pushkar Town."

On February 10, 1961, the appellant Municipality filed a petition under Art. 226 of the Constitution in the High Court of Rajasthan for a writ quashing the order of the State Transport Authority of January 6, 1961. This petition was dismissed by the High Court. The appellant has now appealed to this Court against the decision of the High Court.

There were various points taken in support of this appeal, but I think that one of them must succeed and I propose in this judgment to discuss that point only. It was said on behalf of the appellant Municipality that there was an error apparent on the face of the record because the respondents' petition to the State Transport Authority under s. 64A had been filed after the period of thirty days limited for that purpose by the proviso to that section. It was contended on behalf of the respondents that this was not so for under s. 64A the period of thirty days had to be counted not from the date of the order - in this case the resolution of December 3/4, 1959 - but from the date when the respondents had the knowledge of that order. It was contended that if the period was counted from such date, then the petition was within time.

I do not think that the under s. 64A the period of thirty days has to be counted from the date that the party wishing to move under that section comes to have knowledge of the order sought to be set aside. My learned brother Das Gupta, J., has in the judgment just delivered by him discussed this question and with his view on that point I am in entire agreement. It is unnecessary for me to discuss this question further. Therefore, it would appear that the respondents' petition under s. 64A to set aside the order of December 3/4, 1959, was out of time and should have been dismissed. The State Transport Authority's decision that it was not out of time because the period of thirty days has to be counted from the date of the knowledge of the order was patently erroneous and therefore the appellant should have been held entitled to the writ by the High Court of Rajasthan.

But it was then said that the date of the order of the Regional Transport Authority was not December 3/4, 1959, but June 28, 1960. This was presumably put on the ground that the order could under r. 134, earlier set out, be made by notification and in this case the notification was made on

June 28, 1960. Under that rule a bus stand could be fixed by the erection of traffic signs also but I will leave this method out of consideration as it was not followed in this case. It have some doubt whether the contention that the order mentioned in s. 64A, is for the purpose of the present case, the order contained in the notification, is right, but I will assume that to be so.

If the Regional Transport Authority's order was made only on June 28, 1960, as the respondents contend, then their application under s. 644 was not barred by limitation for in fact it was made before that date. But that gives the respondents no advantage. They had by their petition under s. 64A asked that the Regional Transport Authority's order of December 3/4, 1959, be quashed. Now, on the respondents own argument, that order was not an order under s. 64A at all and could not be set aside under that section. Therefore, again the order of the State Transport Authority setting aside the Regional Transport Authority's resolution of December 3/4, 1959, was incompetent on the face of it. That resolution was exhypothesi not an order liable to be revised under s. 64A. The State Transport Authority's order of January 6, 1961, was even on this basis patently erroneous and without jurisdiction and so liable to be set aside by a writ.

Then it was said that it was in the power of the State Transport Authority to treat the petition under s. 64A filed on April 13, 1960, and pending on June 28, 1960, the date of the notification, as an application to set aside the order contained in that notification. Now, I do not think the State Transport Authority suo motu could do so. It is for the petitioner to decide what relief he would ask in his application under s. 64A. The State Transport Authority could not against the wish of the petitioner alter his prayer. Here the respondents never asked that their application under s. 64A should be treated as an application to set aside the order contained in the Notification of June 28, 1960. However that may be, even if the State Transport Authority could treat the petition of April 13, 1960, as asking for quashing of the Regional Transport Authority's order of June 28, 1960, it did not in fact do so. This is evident from the State Transport Authority's order of January 6, 1961, where in considering the question of limitation it proceeds on the basis that the period of thirty days provided in s. 64A is to be counted from the date of the knowledge of the order which would be insensible if it had treated the petition as one to set aside the order of June 28, 1960. Nowhere in its judgment of January 6, 1961, does the State Transport Authority refer to the notification of June 28, 1960. In the operative part of its order which I have earlier set out it expressly set aside and cancelled the Regional Transport Authorities resolution of December 3/4, 1959, and it is only as consequential thereto that it stated that "the old Bus stand shall continue." Even in their affidavit in opposition to the petition under Art. 226 the respondents themselves did not make the case that the State Transport Authority had treated their applications under s. 64A as an application to set aside the order contained in the notification of June 28, 1960. In that affidavit they stated that "the revision filed by the respondents before the S.T.A. was within the prescribed time as the same was filed within about a week of the respondents' knowledge of the R.T.A.'s order." They clearly even then proceeded on the basis that their application under s. 64A had been an application to set aside the resolution of December 3/4, 1959. No doubt the High Court did not accept the view that the period of thirty days provided by s. 64A has to be counted from the date of the knowledge of the order sought to be impugned. It said that it was the notification which was the source of the respondents' grievance and, therefore, their petition under s. 64A was not out of time. The High Court wholly omitted to notice that the petition asked nothing concerning the notification of June 28, 1960.

Therefore, it seems to me that it is to no purpose to consider whether the State Transport Authority could treat the respondents' petition under s. 64A as having been filed on or after June 28, 1960, to cancel the order contained in the notification of that date. In fact, it did not do so. It was neither for

the High Court nor it is for this Court now to amend the application under s. 64A and treat it as one for setting aside the Regional Transport Authority's order contained in the notification of June 28, 1960. That application was never before either of these Courts. If the respondents themselves had made an application for such amendment, then the application would have been dismissed if on its date, thirty days from the date of the notification had passed. Now on the dates when the State Transport Authority and the High Court passed their orders, the period of thirty days so counted had passed. On those dates the respondents could not successfully ask for an amendment of their application under s. 64A. It, therefore, seems to me that if the order of the Regional Transport Authority is to be taken as having been made on June 28, 1960, then the respondents' petition under s. 64A was incompetent because it sought an order for setting aside the Regional Transport Authority's resolution of December 3/4, 1959, and under s. 64A that order could not be affected at all. In my view, the appellant Municipality was clearly entitled to a writ quashing the order of the State Transport Authority of January 6, 1961.

I would, therefore, allow the appeal with costs.

BY COURT : By majority judgment the appeals are allowed and the matter sent back for disposal in accordance with law. Parties to bear their own Costs.

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