

Nemi Chand Jain

Vs

State Transport Appellate Tribunal, M. P., Gwalior and Others

Civil Appeal No. 995 of 1976

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

20.09.1976

JUDGMENT

SHINGHAL, J. –

1. This appeal by special leave is directed against the judgment of the Madhya Pradesh High Court dated January 3, 1975 in appellant Nemi Chand Jain's miscellaneous petition 394 of 1974.

2. M/s. Sheikh Rasool Transport Co. held a stage carriage permit for one daily return trip on Jabalpur-Mandla via Barela-Niwas route. The permit was cancelled and the route was notified. Fifteen persons applied for grant of permit on that route including the appellant and Khuwaja Garib Nawaz Bus Service. Regional Transport Authority Jabalpur, granted the permit to the appellant by its order dated September 8, 1972. Four appeals were filed against that order, including appeal 320 of 1972 of Khuwaja Garib Nawaz Bus Service. The appeals were fixed for hearing on different dates, but were disposed of by a common order of the State Transport Appellate Tribunal dated April 29, 1974. By that order the tribunal set aside the Regional Transport Authority's order in the appellant's favour and granted the permit to Khuwaja Garib Nawaz Bus Service. The appellant felt aggrieved because, according to him, the tribunal dismissed his appeal without giving him a hearing. The precise grievance was that when the case was taken up for hearing on January 11, 1974, the parties were present, but the tribunal adjourned the case for final hearing on March 11, 1974, at Gwalior. No one however appeared on behalf of Khuwaja Garib Nawaz Bus Service in its appeal 329 of 1972, on March 11, 1974, while counsel for appellant Nemi Chand and one other respondent were present. The tribunal did not hear those present and reserved the appeal for orders along with the connected appeals. One Trivedi however appeared before the tribunal on behalf of Khuwaja Garib Nawaz Bus Service on April 10, 1974. The tribunal's order sheet of that date recorded that Shri Trivedi stated before the tribunal that he could not attend on the last date due to unavoidable reasons and that his appeal maybe considered on merits as urged in the memorandum of appeal. The tribunal thereafter passed the aforesaid order dated April 29, 1974 by which it set aside the Regional Transport Authority's order in favour of appellant Nemi Chand and granted the permit to Khuwaja Garib Nawaz Bus Service. The appellant thereupon filed the aforesaid Miscellaneous Writ Petition 394 of 1974. Two other unsuccessful applicants did the same, but we are not concerned with them. As the High Court has dismissed the appellant's writ petition by its impugned order dated January 3, 1975, Nemi Chand has filed the present appeal.

3. The short question for consideration is whether there is justification for the argument of the counsel for the appellant that the tribunal disposed of the appeal and set aside the Regional Transport Authority's order in his favour without hearing the appellant.

4. It is not disputed before us, and is in fact quite clear from the notes of the proceedings of the tribunal, that when appeal 320 of 1972 of Khuwaja Garib Nawaz Bus Service was taken up for hearing by the tribunal, on March 11, 1974, no one was present on behalf of Khuwaja Garib Nawaz Bus Service which was the appellant. The counsel for respondent Nemi Chand, who is the present appellant, was present, but the tribunal did not hear anyone and simply reserved the case for order along with the connected appeals. There is therefore justification for the argument of the counsel for appellant Nemi Chand that he remained under the impression that the tribunal did not think it necessary to hear the arguments of the respondents as it had made up its mind not to make an order against them and to dismiss the appeal. It will be recalled that the tribunal simply recorded an order on March 11, 1974 reserving the case for decision along with the other appeals. There could therefore be no question of allowing the appellant to appear thereafter, without notice to the respondents, and at their back. The tribunal however allowed Shri Trivedi to appear on behalf of Khuwaja Garib Nawaz Bus Service on April 10, 1974, which had not been fixed as the date for taking up the case. Moreover the tribunal allowed Shri Trivedi to say that he could not attend the tribunal on the last date due to unavoidable reasons and that his appeal may be considered on merits as urged in the memorandum of appeal. Surprisingly enough, the tribunal gave that hearing to Shri Trivedi at the back of the respondents and did not even inform them that it had done so. The tribunal followed that up by its order dated April 29, 1974 by which the order granting the permit to Nemi Chand was set aside and the permit was granted to Khuwaja Garib Nawaz Bus Service. Nemi Chand was therefore taken by surprise for, as has been urged by his counsel, he could justifiably conclude that as appellant Khuwaja Garib Nawaz Bus Service did not appear on March 11, 1974, and the tribunal did not hear the respondents who were present, and reserved the appeal for order, the tribunal was not going to make an adverse order. At any rate, there can be no doubt that Nemi Chand was condemned unheard. His grievance in that respect is justified and should be removed.

5. Mr. Mehta appearing for the respondent has argued that the tribunal was justified in not dismissing the appeal on March 11, 1974 for non-prosecution on behalf of appellant Khuwaja Garib Nawaz Bus Service for, according to him, that was not permissible under Section 64 of the Motor Vehicles Act. Reference in this connection has been made to *Vajesingh Salambhai Naik v. State of Gujarat* [1966 Supp SCR 139 : AIR 1967 SC 148] and to the decision of the Madhya Pradesh High Court dated December 3, 1975 in *Asghar Ali Haji Mulla Tayyabali* [Miscellaneous Petition 1225 of 1975 decided on December 3, 1975 (MP)]. We do not think it necessary to examine the correctness of the legal proposition advanced by Mr. Mehta, but even if it were assumed that the appeal could not be dismissed for want of prosecution on March 11, 1974, it was not, for reasons already stated, permissible for the tribunal to allow Shri Trivedi to appear before it on April 10, 1974, and to make his submissions at the back of the respondents. So also, it was not permissible for the tribunal to give a decision adverse to the respondents on the merits, on the basis of the grounds which had been urged in the memorandum of the appeal and to condemn respondent Nemi Chand without informing him of the developments which had taken place on April 10, 1974 and without giving him a hearing. The decision in *Vajesingh Salambhai Naik's* case which was followed in *Asghar Ali Haji Mulla Tayyabali* turned on the provisions of Section 17(1) and 20 of the Bombay Merged Territories and Areas (Jagir Abolition) Act, 1953, were quite different, and is not directly in point.

6. The appeal is therefore allowed with costs, the impugned order of the High Court dated January 3, 1975 and the order of the tribunal dated April 29, 1974 in so far as it relates to appeal 320 of 1972 are set aside and the tribunal is directed to rehear the appeal and to decide it afresh according to law. As the matter has become quite old, the tribunal should rehear the appeal expeditiously. In the meantime, as it will not be desirable to disrupt the existing transport arrangements on the route, we direct that the status quo may be maintained for the time being.

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