

M/s Gurcharan Singh Baldev Singh

Vs

Yashwant Singh and Others

Civil Appeal No. 2568 of 1991

(M. H. Kania, R. S. Sahia JJ)

15.11.1991

JUDGMENT

SAHAI, J. –

1. The only legal question that arises for consideration, in this appeal directed against judgment of the Madhya Pradesh High Court is, if an application filed by an operator for renewal of his permit under Section 58 of Motor Vehicles Act, 1939, became extinct and was rendered non-existent, in eye of law, after coming into force of Motor Vehicles Act, 1988 or 1988 or it being a right within meaning of clause (c) of Section 6 of General Clauses Act survived and continued despite repeal of 1939 Act.

2. The appellant, holder of a permit, for operating stage carrier on route Eklera-Narsingharh in district Rajgarh, applied for its renewal, as required, on October 18, 1988, 120 days before the date of its expiry on February 18, 1989 under Section 58(2) of the 1939 Act. The application was published on June 23, 1989, under Section 57(3) of the Act. But before renewal could be granted 1988 Act came into force on July 1, 1989. The respondent who, too, had applied on December 30, 1988 for a fresh permit on the same route and on the same time schedule, withdrew his application and filed a fresh application on May 18, 1990. The Regional Transport Authority after considering both the applications, allowed renewal of the appellant's permit from February 18, 1989 to February 18, 1994. The application of respondent was rejected as that could be considered only if the appellant's existing permit was cancelled, but since the appellant was operating on the route regularly and paying taxes etc. there was no reason to refuse renewal. In an appeal the State transport Appellate Tribunal held that no appeal against renewal was maintainable against which the respondent filed writ petition which was allowed and it was held that right to seek renewal of permit under the Motor Vehicles Act was not a vested right. It was merely an inchoate right which ripens into a right only on being granted. But before this could happen the 1939 Act was repealed. Effect of it was that the application ceased to exist. Thus there was nothing pending which could empower the Regional Transport Authority to grant renewal.

3. In this correct ? Could the application for renewal be dismissed only because of enforcement of 1988 Act or the right of the appellant to get his application under the earlier. Act decided in accordance with law subsisted and survived under the new Act as well ? The answer shall depend on construction of Section 217, the repealing and saving provision, in 1988 Act read with Section 6 of the General Clauses Act. Sub-section (1) of Section 217 of 1988 Act repeals 1939 Act. But sub-section (2) saves certain notifications, rules, regulations, Acts etc. Clause (b) of sub-section (2) reads as under :

"217.(2) Notwithstanding the repeal by sub-section (1) of the repealed enactment, -
(b) any certificate of fitness or registration or licence or permit issued or grant under the repeated enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been passed."

On strength of this it was urged on behalf of the respondents that the only saving was in respect of unexpired period of a permit. However, what is relevant is sub-section (4) of Section 217 which provides as follows :

"217.(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clause Act, 1897 (10 of 1897) with regard to the affect of repeals."

How such a provision should be construed was explained by this Court in Brihan Maharashtra Sugar Syndicate Ltd. v. Janardan Ramchandra Kulkarni ((1960) 3 SCR 85 : AIR 1960 SC 334 : 30 Comp Cas 468). It was held that such provision was not by way of abundant caution and any proceedings pending under repealed Act could be continued in view of Section 6 of General Clauses Act. Section 658 of Companies Act, 1956 which was a repealing an saving provision which was considered by the Court read as under :

"658. The mention of particular matters in Section 645 to 657 or in any other provision of this Act shall not prejudice the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with respect to the effect of repeals."

It should be noticed that phraseology of Section 658 of the Companies Act and sub-section (4) of Section 217 of the Motor Vehicles Act, 1988 is identical. Therefore the reasoning given in the decision squarely applies for construction of sub-section (4) of Section 217. Consequently it could not be, successfully argued that sub-section (2) of Section 217 is exhaustive and sub-section (4) should be read by way of abundant caution and applied only to the filed which is already covered by sub-section (2) Section 6 of the General Clauses Act may now be extracted :

"6. Effect of repeal. - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not -

#(a) * * *(b) * * *##

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

#(d) * * *(e) * * *##

The objective of the provision is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability. The controversy thus narrows down to if the renewal of a permit under 1939 Act was a right. In other words whether any right accrued to the appellant under the repealed Act which could be said to continue unaffected by the repeal of the Act. A permit could be renewed under Section

58(2) of 1939 Act which read as under :

"58.(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit :

Provided that the application for the renewal of a permit shall be made,

(a) in the case of a stage carriage permit or a public carrier's permit, not less than one hundred and twenty days before the date of its expire, and

(b) in any other case, not less than sixty days before the date of its expire :

Provided further that, other conditions being equal, an application for renewal shall be given preference even new applications for permits."

Although the section uses the word 'may' but read with proviso it creates a preferences in favour of a permit holder to claim renewal if other conditions were equal. A holder of a permit thus stands on a better footing. The preference created by sub-section (2) of Section 58 for consideration of the permit and its grant cannot be said to be a more inchoate right, or a right which does not exist in law. It may not be a vested right or a fundamental right but it certainly is civil right which could be enforced in a court of law and any authority acting in contravention of it can be forced to act in accordance with it. For instance, if a Regional Transport Authority under the old Act refused renewal even though the person applying for renewal was in all respects similar to other new applicants then it could be corrected either by the tribunal or by way of writ petition under Article 226. Therefore it is a right which is enforcement in law. The right accrued to appellant as he had already applied for renewal and his application had been notified. The legal machinery was set in motion by him. He therefore had a right to get his application for renewal processed and considered in accordance with 1939 Act. It would be too artificial to say that it was not a right or it had not accrued under 1939 Act. Therefore, in our opinion by virtue of Section 6(c) of the General Clauses Act the right of the appellant to get his application considered and decided in accordance with law was saved by sub-section (4) of Section 217 of Motor Vehicles Act.

4. In *Cheran Transport Co. Ltd. v. Kanan Lorry Service* ((1977) 1 SCC 604, 606 : (1977) 2 SCR 389, 390 : AIR 1977 SC 114) it was held that the setting in motion of a legal process in accordance with law for renewal of permit was itself a right. This principle was laid down by this Court even when a scheme under Section 68(f) had been published which debarred grant or renewal of any permit yet the Court was of the opinion that since there was undue delay and the applicant had done all that he could do in law he could not be deprived of his right of consideration of his application for renewal so long the scheme was not published. This was against approved in *D. Nataraja Mudaliar v. State Transport Authority Madras* ((1978) 4 SCC 290 : (1979) 1 SCR 552 : AIR 1979 SC 114). The Court pointed out that a permit holder had an ordinary right of renewal. It is thus obvious that the High Court committed a manifest error of law in throwing out the application of renewal at the new Act had come into force.

5. Does the new Act indicate any intention to the contrary ? No express provision debarring renewal of permits, applied for under old Act could be pointed out. Reliance was placed on absence of preferential provision under Section 81 of the Act which provides for renewal of permits. It was urged that there was a definite departure from the old Act therefore any right under the old Act, could not be continued under the new Act. The submission does not appear to be sound. The new

Act is a legislation on the same subject. Section 81 specifically provides for renewal. It cuts across the argument of intention to the contrary. Rather it is alive by sub-section (4) of Section 217. The scheme of renewal having been continued even under new Act mere absence of preference clause in Section 81 of the new Act could not be construed as destroying the claim for renewal set in motion under the old Act.

6. In the result this appeal succeeds and is allowed. The order passed by the High Court is set aside. Parties shall bear their own costs.

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