MADHYA PRADESH HIGH COURT

Beharilal Chaurasiya

Vs.

Regional Transport Authority

Misc. Petn. No. 32 of 1960
(P.V. Dixit, C.J. and K.L. Pandey, J.)

29.07.1960

JUDGMENT

Dixit, C.J.

1. This is an application under Articles 226 and 227 of the Constitution of India by a person who holds stage carriage permits for certain routes including Chhatarpur-Damoh route within the jurisdiction of the Regional Transport Authority, Rewa. The applicant seeks a writ of certiorari for quashing an order of the State Transport Authority passed on 26-11-1959 in the following circumstances.

2. On 15-1-1958 one Ramnath Pande, claiming himself to be the Vice-President of Sagar Transport Development Company of Chhatarpur, filed an application under section 59 of the Motor Vehicles Act, 1939, before the Regional Transport Authority on behalf of his Company for the transfer of the Company's permit for Chhatarpur-Damoh route in favor of the petitioner Company, praying that the name of the petitioner Company be entered in permit No. 50 held by the Sagar Transport Development Company in respect of Chhatarpur-Damoh route.
The petitioner agreed to this transfer of the permit. On 6-2-1958 the Regional Transport Authority made an order permitting the transfer of the permit. The opponent No. 3, Kishorilal, proprietor of Bundelkhand Motor Transport Company, then preferred a revision petition under section 64-A of the Motor Vehicles Act, on 24-3-1958 before the State Transport Authority for setting aside on various grounds the order of the Regional Transport Authority sanctioning the transfer.
After the filing of the revision petition, the State Transport Authority gave to the opponent No. 3 a notice to show cause why the revision petition should not be dismissed as barred by time is response to this notice the said opponent stated that he

had applied for a copy of the order of the Regional Transport Authority on 8-2-1958; that the copy of the order was supplied to him on 27-2-1958; and that, therefore, excluding the time taken by him in obtaining the copy of the order the revision petition was within time. The State Transport Authority did not pass any order as to whether the opponent No. 3 was entitled to claim that the time required for obtaining the copy of the order of the Regional Transport Authority should be excluded in computing the period of limitation prescribed by the proviso to Section 64-A of the Motor Vehicles Act. Apparently the State Transport Authority was satisfied with the cause shown, and treating the revision petition as within time proceeded to hear it on merits. The State Transport Authority took the view that the transfer of the permit was granted without any proper enquiry into the genuineness of transaction and that the application for transfer was not published as required by law and was also not disposed of in the same manner as an application for grant of a permit. Accordingly the State Transport Authority made an order remanding the case to the Regional Transport Authority with the direction to publish the application of the Sagar Transport Development Company for the transfer, for inviting the objections, and then to dispose of the petition after an enquiry into the question whether the transfer was genuine.

3. Sri Dabir, learned counsel for the petitioner, first urged that under section 3 of the Limitation Act and Section 64-A of the Motor Vehicles Act the State Transport Authority was debarred from entertaining the revision petition as it was filed after the lapse of thirty days from the date of the order of the Regional Transport Authority and the opponent No. 3 was not entitled to claim that the time required for obtaining the copy of the order of the Regional Transport Authority should be excluded in computing the period of limitation. Learned counsel complained that the State Transport Authority altogether omitted to consider this question of limitation and suggested that the matter should be remitted to the State Transport Authority for determination of that question.

4. This case no doubt raises an important question of limitation to which the State Transport Authority did not give the consideration it deserved. But ay there is no dispute as to the material dates having a bearing on the question, it is not necessary to remit the matter to the State Transport Authority for determination of the question of limitation, which is now one of pure law.

5. Section 64-A of the Motor Vehicles Act no doubt says that the 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 thirty days from the date of the order. There is no provision in the Motor Vehicles Act for the exclusion of the time required for obtaining a copy of the order of the Regional Transport Authority sought to be revised under section 64-A. Here, admittedly, the revision petition was filed by the opponent No. 3 more than thirty days after the date of the order of the Regional Transport Authority. The question, therefore, arises whether by virtue of Section 29(2) Limitation Act the operation of Section 12(2) of the Limitation Act is attracted and the time taken by opponent No. 3 in obtaining a copy of the order of the Regional Transport Authority can be excluded hereunder. Section 29(2) runs as follows :

> "Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed there for by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed there for in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law-
> (a) the provisions contained in Section 4, Sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and
> (b) the remaining provisions of this Act shall not apply".

It cannot be disputed that the Motor Vehicles Act is a special law prescribing by Section 64-A a period of limitation for a revision petition under that section. The argument of Sri Dabir was that Section 29(2) had no applicability here for the reason that the first schedule to the Limitation Act did not prescribe any period of limitation for a revision petition under section 64-A of the Motor Vehicles Act or for the matter of that for any revision petition, and, therefore, it could not be said that when Section 64-A provided for an application under that section a period of limitation, it prescribed "a period of limitation different from the period prescribed there for by the first schedule".

6. In our view, on a true construction of Section 29(2) Limitation Act the contention advanced by the learned counsel for the petitioner cannot be accepted. It is true that Section 29(2) cannot apply unless the special or local law prescribes for any suit,

appeal or application a period of limitation different from the period prescribed therefore by the first schedule". But it is not necessary for the applicability of that section that the difference in the period of limitation should arise by reason of specific prescription of limitation in the first schedule of the Limitation Act. Section 29(2) is a saving provision, and its real object is to provide that where there is a special law of limitation, it shall override the general law of limitation except to the extent expressly specified in, the section. What is, therefore, essential for the purposes of Section 29(2) is that the special or local law must vary or differ from schedule 1 to the Limitation Act by prescribing specific limitation period for any suit or appeal or application. The variation or difference may arise either because the first schedule prescribes a different period of limitation or because it omits to prescribe any period of limitation. A special law may provide a period of limitation and schedule 1 may omit to do so. None the less the special law would be different from the Limitation Act. Section 29(2) Limitation Act is not very happily worded. It must be construed so as to avoid absurdity. The expression "a period of limitation different from the period prescribed therefore by the first schedule" occurring in Section 29(2) cannot be construed as meaning that schedule 1 must also positively prescribe the period of limitation. Such a construction would not be in accordance with the intention of the Legislature and would lead to an absurdity. If the construction sought to be put by the learned counsel for the petitioner were accepted, the result would be that Sections 4, 9 to 18 and 22 will apply to the special law when that law prescribes for any suit, appeal or application a period of limitation different from that specifically prescribed there for by the first schedule. When the same period of limitation is prescribed in the schedule as well in the special law, these provisions of the Limitation Act will apply proprio vigore without the aid of Section 29(2). But the provisions will be inapplicable if the special law prescribes a period of limitation and the schedule omits to do so. In our judgment, it would be absurd to think that the Legislature intended that the aforesaid provision should apply in the first two cases only and not in the third case. We can think of no valid reason for such an exclusion of the application of Sections 4, 9 to 18 and 22 to a special law prescribing for any suit, appeal or application a period of limitation and schedule 1 omitting to prescribe any period there for. In our judgment, if the first schedule to the Limitation Act omits to prescribe any period of limitation for a particular suit, appeal, or application and the special law provides a period of limitation in such suits, appeals or applications, then Section 29(2) will apply to the special law.

7. We are greatly fortified in the above view by the observations of Chagla, C.J. in *Canara Bank Ltd. v. Warden Insurance Co. Ltd.,* [1] In that case the question of the applicability of Section 29(2) of the Limitation Act to the Bombay Land Requisition Act, 1948, came up for consideration. Section 8(3) of the Bombay Act contained a provision for an appeal against the decision of a special officer under section 8(1) and prescribed a period of limitation of sixty days from the date of the decision. Schedule 1 of the Limitation Act did not provide for a period of limitation for such an appeal. It was contended in the Bombay High. Court that the Bombay Land Requisition Act, 1948, was not a special law prescribing a period of limitation different from the period prescribed for an appeal under section 8(3) by schedule 1 to the Limitation Act. Rejecting this contention, the learned Chief Justice said :

> "The period of limitation may be different under two different circumstances. It may be different if it modifies or alters a period of limitation fixed by the first schedule to the Limitation Act. It may also be different in the sense that it departs from the period of limitation fixed for various appeals under the Limitation Act. If the first schedule to the Limitation Act omits laying down any period of limitation for a particular appeal and the special law provides a period of limitation, then to that extent the special law is different from the Limitation Act. We are conscious of the fact that the language used by the Legislature is perhaps not very happy, but we must put upon it a construction which will reconcile the various difficulties caused by the other sections of the Limitation Act and which will give effect to the object which obviously the Legislature had in mind, because if we were to give Section 29(2) the meaning which Mr. Adarkar contends for, then the result would be that even section 3 of the Limitation Act would not apply to this special law. The result would be that although an appeal may be barred by limitation, it would not be liable to be dismissed under section 3. If possible we must try and avoid such a startling result and we are sure that the Legislature did not intend that such a result should come about by the language used by it".

8. Therefore on a true and sensible construction of Section 29(2) it must be held that for the purpose of that section the Motor Vehicles Act is a special law Section 64-A of which prescribes a period of limitation different from the period prescribed there for by the first schedule to the Limitation Act. This, however, does not dispose of completely the objection of the learned counsel for the petitioner that the revision

petition was out of time. Learned counsel further submitted that even if the Motor Vehicles Act was a special law to which Section 29(2) was applicable, Section 12 of the Limitation Act would not apply as its applicability was excluded by the very language of Section 64-A Motor Vehicles Act which enjoins upon the State Transport Authority not to entertain any application against an order of the Regional Transport Authority unless it was made within thirty days from the date of the order.

We do not agree. The language of clause (a) of Section 29(2) is plain enough to show that when a special or local law falls within Section 29(2), then Sections 4, 9 to 18 and 22 of the Limitation Act prima facie apply unless "expressly excluded" by the special or local law. The words "expressly excluded" in clause (a) of Sub-Section (2) of Section 29 mean 'specifically mentioned as excluded' and not the exclusion inferred as a result of logical process of reasoning. No such exclusion of Section 12 Limitation Act is to be found in the Motor Vehicles Act. It was then argued that even if Section 12(2) of the Limitation Act applied to the Motor Vehicles Act, the opponent No. 3 could not deduct copying time for filing the revision petition as under Section 12(2) time for obtaining copies was to be excluded only in case of an appeal, an application for leave to appeal and an application for a review of judgment; and that an application under Section 64-A of the Motor Vehicles Act did not fall under any description of the application mentioned in Section 12(2) of the Limitation Act. This is a substantial objection which must prevail. The fact that clause (a) of Section 29(2) Limitation Act makes Section 12 applicable to a special or local law does not mean that every provision of Section 12 will necessarily apply to every case under the special or local law irrespective of question whether the particular Sub-Section sought to be applied is in terms applicable to such a case, where the application in respect of which limitation is sought to be computed is not one of the types referred to in Sub-Section (2), then the time taken in obtaining copies cannot be excluded in making such computation.

9. The decision in *Govindji Murarji v. Commissioner of Sales Tax, Madhya Pradesh,* [2] is an authority for this proposition. In that case it was held that by virtue of Section 29(2) the period prescribed by Section 23(1) of the C. P. and Berar Sales Tax Act would be regarded as the period prescribed by the First Schedule to the Limitation Act for the purpose of section 3 of the Limitation Act, and Sections 4, 9 to 18 and 22 would apply. It was further held that as Section 12(2) of the Limitation Act applied to appeals, applications for leave to appeal and applications for review of judgments, therefore the copying time could not be deducted in computation of the limitation for

an application to the Board of Revenue under section 23(1) of the C. P. Sales Tax Act as such an application did not fall under any of the categories enumerated in Section 12(2) of the Limitation Act. The learned Judges deciding the case reported in ILR (1955) Nag 515 : AIR 1955 Nagpur 113 (supra) expressed their dissent from the decision in *Mohanlal Hardeo Das v. Commissioner of Income Tax, B. and O.,* [3]
In the Patna case, Fazl Ali, J. expressed the opinion that Section 29 Limitation Act should be liberally construed; that in view of the provision in that section, namely, that "for the purpose of determining any period of limitation prescribed for any suit, appeal and application by any special or local law," it would not be straining the law to hold that the main principle laid down in section 12 of the Limitation Act that the period for obtaining copies should be excluded in computing the period of limitation in certain cases had been made applicable by Section 29 Limitation Act in the case of a suit, appeal or application under the special law for which a period of limitation had been prescribed and this would cover an application under Section 66(2) and (3) Income-tax Act. The learned Judge, however, based his ultimate conclusion not on the terms of Section 12(2) of the Limitation Act but on the general principle of Section 12(2). It is difficult to accept the Patna view based on equitable construction of section 12 and on the general principle underlying Section 12(2) of the Limitation Act. It is well settled that in the construction of a statute of limitation equitable considerations are out of place and the strict grammatical meaning of the words is the only safe guide.

10. Realizing this difficulty, Sri Phadke, learned counsel for opponent No. 3, placed in the forefront of his argument the contention that a liberal construction should be applied to the term 'appeal' occurring in Section 12(2) of the Limitation Act and that the petition under Section 64-A Motor Vehicles Act should be treated as an appeal for the purpose of Section 12(2). Learned counsel placed reliance on Standard *Type Foundry v. Venkataramaniah,* [4] and *Chidambara v. Rama,* [5] In view of the decision of this Court in ILR (1955) Nag 515 : AIR 1955 Nagpur 113 we cannot accede to this contention. That decision in effect holds that the applicability of Section 12(2) of Limitation Act is confined to appeals, applications for leave to appeal and applications for review of judgment, as they are understood in the technical sense. The enumeration in Section 12 of different categories of legal proceedings in which time can be excluded is itself a pointer to the fact that the descriptive terms of legal proceedings have been used in that section in technical sense. In AIR 1941 Madras 589. Krishnaswamy Ayyangar, J. no doubt held that the term 'appeal' occurring in Section 12(2) Limitation Act should be given an extended meaning so as to include an

application under Section 73 of the Madras Village Courts Act, 1888. The learned Judge relied on a Full Bench decision of the Madras High Court In AIR 1937 Madras 385. We do not think that the decision in the case of AIR 1937 Madras 385 (supra) or the observations of the Privy Council, in *Nagendra Nath v. Suresh Chandra,* [6] as to the 'ordinary acceptation' of the term "appeal", which were followed in (AIR 1937 Madras 385) can be legitimately called in aid for giving an extended meaning to the word 'appeal' as used in Section 12(2) of the Limitation Act. In AIR 1937 Madras 385 (supra), applying the decision in AIR 1932 PC 165 it was held that article 182(2) Limitation Act applied to civil revision petitions as well and not only to appeals in the narrower sense of that term as used in the Civil Procedure Code. It must be remembered that it was while dealing with the question of the starting point of limitation under article 182(2) for the execution of a decree or an order where there has been an appeal that the Privy Council made the observation that :

> "There is no definition of appeal in the Civil Procedure Code, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and that it is no less an appeal because it is irregular or incompetent."

The reasoning which their Lordships of the Privy Council gave for reading the word 'appeal' as used in article 182 in a wider sense was :

> "It is at least an intelligible rule that so long as there is any question sub judice between any of the parties those affected shall not be compelled to-pursue the so often thorny path of execution which, if the final result is against them, may lead to no advantage."

This reasoning has clearly no applicability in the construction of Section 12(2) and there is no warrant for reading the observation of the Privy Council as laying down that the term 'appeal' must be understood in its ordinary acceptation wherever it has been used in the Limitation Act. After all, as pointed out by Lord Halsbury in *Quinn v. Leathem,* [7] "every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found."

11. Shri Phadke also referred us to *M.N. Sharma v. State,* [8] in which it has been held that Section 29(2) applies to Motor Vehicles Act, 1939, and Section 12 of the Limitation Act also applies to it. The decision is not of much assistance. The real question that was decided in that case was whether the time between the passing of an order and its communication could be deducted under Section 12(2) of the Limitation Act. The question whether Section 12(2) at all applies to a revision application under Section 64-A of the Motor Vehicles Act was not raised in that case.

12. If, as we think an application under Section 64-A Motor Vehicles Act is not an appeal or any application of the types referred to in Section 12(2), then the opponent No. 3 was not entitled to claim deduction on account of the time taken by him in obtaining the copy of the order of the Regional Transport Authority. It follows, therefore, that the revision petition preferred before the State Transport Authority, was barred by time and could not be entertained by the State Transport Authority under Section 64-A of the Motor Vehicles Act. The revision petition being barred by time, the State Transport Authority had no power to disturb the order of the Regional Transport Authority.

13. In this case at the close of the hearing orders were reserved. When the order proposed to be passed was laid on the table of the Court for inspection of the counsel appearing in the case, learned counsel appearing for the opponent No. 3 sought leave to address some arguments on the applicability of the decision in ILR 1955 Nag 515 : AIR 1955 Nagpur 113 which was not cited at the bar. We permitted him to do so. On behalf of the said opponent Sri Phadke submitted that the decision in Govindji's case, ILR 1955 Nag 515 : AIR 1955 Nagpur 113 (supra) nowhere holds that Section 12(2) Limitation Act applies only to appeals, applications for leave to appeal and applications for review of judgments and not revisional applications. He laid emphasis on the words "for the purpose of determining any period of Limitation prescribed for any suit, appeal or application" occurring in Section 29(2) Limitation Act, and said that they made Section 12(2) Limitation Act applicable to an application in revision permissible under any special or local law for which limitation has been prescribed therein. Learned counsel repeated his argument that the word 'appeal' in Section 12(2) Limitation Act should be given a wide construction so as to include a revision petition. He referred us to *Province of Bengal v. Amulya Dhon,*[9] and *Municipal Board, Lucknow v. Bhagwan Das,* [10]

14. We are still not persuaded to accept the contention that Section 12(2) applies to a revision petition under Section 64-A of the Motor Vehicles Act. It is quite true that in ILR (1955) Nag 515 : AIR 1955 Nagpur 113 (supra) Section 12(2) Limitation Act was held inapplicable in computing the period of limitation for making a reference under Section 23(1) of the Central Provinces and Berar Sales Tax Act. But from the reasoning given in that case and the categories of proceedings mentioned to which according to the Division Bench in Govindji's case, ILR 1955 Nag 515 : AIR 1955 Nagpur 113 (supra) Section 12(2) Limitation Act, was applicable, there can be no escape from the conclusion that Section 12(2) applies only to appeals, applications for leave to appeals and applications for review of judgments. The argument that as Section 29(2) Limitation Act itself provides that "for the purpose of determining any period of limitation prescribed for any application for any special or local law" the provisions inter alia of Section 12 shall apply if not expressly excluded, therefore Section 12(2), Limitation Act would apply to an application in revision, ignores the fact that Section 29(2) does not deal with the applicability of Section 12 alone. It makes the provisions contained in several sections of the Limitation Act applicable for purposes of determining the period of limitation prescribed (or any suit, appeal or application. It may be that the provisions of any of these sections enumerated in clause (a) of Section 29(2) do not in terms apply to a suit, or to an appeal, or to an application. If they do not so apply, it would not be permissible to make them applicable merely by the use of the words "for any suit, appeal or application" occurring in Section 29(2) Limitation Act. To do so would be to rewrite Section 29(2) and the relevant sections of the Limitation Act. It is noteworthy that clause (a) of Section 29(2) says : "the provisions contained in section... shall apply'. This means that the formal legal statement contained in the relevant section shall apply and not the principle of it or the analogy. If Section 29(2) had been so worded as to say that the determination of any period of limitation prescribed for any suit, appeal or application by any special or local law shall be as in Section 12, the matter would have been different. But it says inter alia that the provisions contained in Section 3 shall apply. If Section 29(2) is applicable to any special or local law, then what that section in effect says is that the limitation prescribed by the special or local law shall be read as if incorporated in the first schedule, and on this fiction Section 3 and other provisions mentioned in clause (a) shall be applied. The result is that a suit, appeal or application must come within the terms of the provisions of any of the sections enumerated in clause (a) before that section can be applied to it. The decisions cited by the learned

counsel for the opponent do not in any way support his contention. The construction put in the Calcutta case, AIR 1950 Calcutta 356, (supra) on Section 29(2) is no different from that stated by us. In AIR 1959 Allahabad 500 all that was held was that Section 12(2) Limitation Act applies to an application for leave to appeal under Section 417(4) Cri. P.C. If the Code of Criminal Procedure is a special or local law within the meaning of Section 29(2), then it is obvious that Section 12(2) would in terms apply to an application for leave to appeal under Section 417(4) Cri. P.C. It may be pointed out that the decision in ILR 1955 Nag 515 : AIR 1955 Nagpur 113 has been followed by a Full Bench consisting of five Judges in *M.S. Gopaldas v. Commr. Sales Tax U.P.,* [11] and it has been held that Section 12(2) Limitation Act provides for the exclusion of time only in computing the period of limitation prescribed for an appeal, an application for leave to appeal, and an application for review. It has been further laid down in the Allahabad case that there is no justification for holding that Section 29(2) enlarges the scope of the provisions made applicable by it to computation of period of limitation prescribed under a special or local law beyond the scope plainly laid down in those provisions when they are applied for the purpose of computing the period of limitation under the Indian Limitation Act itself.

15. It is no doubt true that in its comprehensive sense an appeal would include any proceeding taken to rectify an erroneous decision of an inferior court by a higher court. But, as we have endeavored to show earlier, the term 'appeal' in Section 12(2) means appeals made eo nomine under a statute. If a statute makes a real distinction between an appeal and a revision, and between the exercise of appellate and revisional powers, then there can be no justification whatsoever for saying that an appeal under that Act would also include a revision petition.

This distinction has been recognized by section 64 of the Motor Vehicles Act which deals with appeals, and by Section 64-A which is concerned with a revision petition in a case in which no appeal lies. The fact that a revision petition is competent only in a case where no appeal lies is itself significative of the distinction that the statute makes between a revision and an appeal. It is well known that the right of appeal is a substantive right created by a statute and that the appellate court when it interferes with a decision of a lower court does so not because there has been a gross injustice or hardship to a party but because it disagrees with the conclusions arrived at by the lower court whether on fact or on law. Even when an appeal is dismissed, the appellate court exercises jurisdiction. But in the case of exercise of revisional jurisdiction as in

Section 64-A, it is entirely discretionary for the revising authority whether to exercise the jurisdiction or not. If the authority acting in revision interferes under Section 64-A of the Motor Vehicles Act with the decision of an inferior tribunal or court, it does so on the ground that the decision is improper or illegal or not according to justice. When the authority dismisses a revision petition it abstains from exercising the revisional jurisdiction and allows the inferior tribunal or court's order to stand. Thus a revision petition under Section 64-A Motor Vehicles Act stands on a different footing. It is a matter between the State Transport Authority and the Regional Transport Authority. It must be noted that under Section 64-A revisional powers can by exercised without an application of any of the parties concerned, and when that section speaks of a revision petition being filed by a person aggrieved by an order of the Regional Transport Authority within thirty days of the order, it only provides a procedure for invoking the revisional jurisdiction of the State Transport Authority. It is, therefore, erroneous to say that for the purposes of the Motor Vehicles Act there is no distinction between an appeal and a revision and, therefore, a revision application would fall within the term 'appeal' as used in Section 12(2) Limitation Act.

16. Sri Phadke, learned counsel for opponent No. 3, further said that even if the revision petition filed by the opponent No. 3 before the State Transport Authority was barred by time, the order of the State Transport Authority should be affirmed as that body could suo motu set aside the order of the Regional Transport Authority on finding it improper or illegal. The short answer to this submission is that here while setting aside the order of the Regional Transport Authority the State Transport Authority did not purport to act on its own motion under Section 64-A. That being so, it is not necessary to consider whether under Section 64-A the State Transport Authority is competent to act on its own motion when an application filed by a person aggrieved by an order of the Regional Transport Authority is barred by time.

17. In this view of the matter, it is not necessary to consider the further contention of the learned counsel for the petitioner that the State Transport Authority set aside order of the Regional Transport Authority on altogether untenable grounds. But we must add for the guidance of the Regional Transport Authorities that the provision in Section 59(1) of the Motor Vehicles Act that a permit shall not be transferred except with the permission of the transport authority is not a mere formality. The expression "with the permission of the transport authority" is not a mere figure of speech. In considering the question whether transfer of a permit should or should not be sanctioned, the

transport authority is required to consider the genuineness of the transaction as well as its propriety and legality. This is evident from R. 68 of the Motor Vehicles Rules as in force in that part of Madhya Pradesh which was formerly Vindhya Pradesh. Sub-rule (b) of R. 68 says that after the receipt of a joint application for transfer under sub-rule (a) the Regional Transport Authority may require the holder of the permit and the intended transferee to state in writing whether any premium, payment or other consideration has been paid or received. The Regional Transport Authority has been given the power to summon both the parties to the application if it thinks necessary. It is also open to the authority to deal with the application for transfer as if it were an application for a permit. It is only when the Regional Transport Authority is satisfied that the transfer of a permit may properly be made that he can under sub-rule (e) take further steps for making the transfer effective. If, therefore, the Regional Transport Authority sanctions the transfer merely as a matter of course without addressing itself to the genuineness, legality and propriety of the transfer and sanctions the transfer by just writing the word 'permitted', the State Transport Authority would be perfectly justified in setting aside the transfer and directing the Regional Transport Authority to hold an enquiry into the genuineness of the transaction and the legality and propriety of the transfer and then pass a proper order with regard to the recognition or refusal of the transfer.

18. For these reasons, we allow this petition and issue a writ of certiorari quashing the decision dated the 26th November 1959 of the State Transport Authority. The petitioner shall get costs of this petition. Counsel's fee is fixed at Rs. 100/-. The amount of security deposit be refunded to the petitioner.

Petition allowed.

Cases Referred.

1. AIR 1953 Bom 35
2. ILR (1955) Nag 515: AIR 1955 Nag 113
3. AIR 1930 Pat 14
4. AIR 1941 Mad 589
5. AIR 1937 Mad 385 (FB)
6. AIR 1932 PC 165
7. 1901 AC 495

8. AIR 1960 Pat 212
9. AIR 1950 Cal 356
10. AIR 1959 All 500
11. AIR 1956 All 305