

Apsrtc Vs. T. Saidaiah and ors.

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Court : Andhra Pradesh

Decided On : Jan-28-2002

Reported in : 2002(2)ALD669

Judge : S.R. Nayak and ;S.R.K. Prasad, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 90; [Constitution of India](#) - Articles 142 and 226

Appeal No. : WA No. 412 of 1998

Appellant : Apsrtc

Respondent : T. Saidaiah and ors.

Advocate for Def. : T. Venkatramana, Government Pleader for Transport

Advocate for Pet/Ap. : K. Harinath, SC

Disposition : Appeals dismissed

Judgement :

S.R. Nayak, J.

1. These writ appeals are directed against the common judgment of the learned single Judge dated 3-12-1996 made in WP Nos.1156, 1161, 1166 and 1170 of 1995. The appellant in all these appeals is the APSRTC and the 3rd respondent in

the writ petitions.

2. The necessary facts leading to the filing of the writ appeals be noted briefly as under: The contesting private respondent in each of these writ appeals filed applications before the Regional Transport Authority, Nalgonda (for short RTA), for grant of permits on town service routes in Kodada town. APSRTC, the appellant herein, also filed similar applications for grant of permits. The RTA clubbed all those applications, considered the same and granted permits to APSRTC as well as to the contesting private respondents by proceedings dated 30-3-1992. Aggrieved by the said order of the RTA, the appellant herein filed Revision Petition Nos. 102, 110, 111 and 112 of 1992 under Section 90 of the [Motor Vehicles Act, 1988](#) (for short 'the Act'), before the State Transport Appellate Tribunal (for short, 'the Tribunal'), assailing the validity of the orders of the RTA granting permits in favour of the private respondents by contending that permits were granted in violation of Section 104 of the Act, that there is overlapping of more than 5 Kms. in the route and, therefore, the permits granted in favour of the private respondents are liable to be cancelled. The Tribunal, by its common order dated 4-1-1995, allowed the revision Petitions and cancelled the permits granted in favour of the private respondents. The private respondents, being aggrieved by the said order of the Tribunal dated 4-1-1995, filed the writ petitions. Since the facts and the questions of law that arose for consideration were common, the learned single Judge clubbed all the writ petitions and heard them together.

3. Before the learned single Judge, on behalf of the petitioners, it was contended that the Tribunal, in entertaining the Revision Petitions filed by the APSRTC, acted without authority of law inasmuch as the Revision petitions filed by it are barred by limitation; the revision petitions thought to have been filed within 30 days from the date of the order whereas the revision petitions were admittedly filed on 20-11-1992, beyond the period of limitation. The order of the Tribunal was also assailed on merits.

4. On behalf of APSRTC, it was contended that though it did not file the applications seeking condonation of delay in filing the revision petitions under Section 90 of the Act, since there was delay on the part of the RTA in furnishing

copies of the order dated 30-3-1992, no exception can be taken to the action of the Tribunal in entertaining the revision petitions and on that count, this Court under Article 226 of the Constitution cannot step in and nullify the order made by the Tribunal which is otherwise valid and in accordance with law.

5. Since the question relating to the very maintainability of the revision petitions before the Tribunal was raised, the learned single Judge, after noticing the provisions of Section 90 of the Act and Rule 7 of the Rules framed thereunder, held that if a revision is presented beyond the time prescribed under the first proviso to Section 90 of the Act, filing of an application for condoning the delay is a must, and in the instant cases since the RTC did not admittedly make applications for condoning the delay, the revision petitions filed by the APSRTC are hit by law of limitation, and in that view of the matter, the order made by the Tribunal cannot be sustained in law. Accordingly, the learned single Judge allowed all the writ petitions. Hence these writ appeals by the APSRTC.

6. We have heard the learned Counsel for the parties. Sri Harinath, learned Standing Counsel for the appellant-Corporation, placing reliance on the Division Bench judgment of this Court in *Gorantla Ramachandra Rao v. Doppalapudi Seshiah*, (1957) II An.WR 106, a judgment of a learned single Judge of this Court in *Jamuna Bai v. M. Appa Rao*, : AIR 1981 AP186 , and also a judgment of the Supreme Court in *L. Naik Mahabir Singh v. Chief of Army Staff*, (1990) Supp. SCC 89, would attack the finding of the learned single Judge and contend that simply because the appellant did not make separate applications for condonation of delay in preferring the revision petitions under Section 90 of the Act, on that count, it cannot be said that the Tribunal lacked jurisdiction to entertain the revision petitions. In other words, what the learned Standing Counsel would maintain is that filing of separate applications for condonation of delay in preferring revision petitions is not a must. Secondly, the learned Standing Counsel would maintain that having regard to the provisions of the Act and the Rules made thereunder, it is imperative on the part of the RTA of furnish copies of the order dated 30-3-1992 to the Management of APSRTC free of cost and without request from it, and since the RTA did not furnish copies to the appellant, it had to make copy application on 4-9-1992 and since the copies were actually delivered to the appellant on 22-10-

1992, the period of limitation should be reckoned with effect from 22-10-1992, and not from 30-3-1992 or from 1-4-1992 when it received a copy of the order dated 30-3-1992 from the RTA. Lastly, the learned Standing Counsel would contend that, be that as it may, even assuming that the revision petitions filed by the appellant before the Tribunal are not maintainable as barred by limitation, there is no justification for this Court to exercise the discretionary power under Article 226 of the Constitution and nullify apparently an illegal order made by the RTA, and if the Court were to do so, it would perpetuate an apparent illegality committed by the RTA.

7. Sri T. Venkatramana, learned Counsel appearing for the privaterespondents, countering the tenability of the contentions raised by the learned Standing Counsel for the appellant-Corporation, and placing reliance on the judgment of the Supreme Court in *Hukam Raj Khinvsara v. Union of India*, : (1997)IILLJ152SC , would maintain that if an appeal/review/revision is preferred beyond the period of limitation prescribed under the statute, such appeal/ review/revision should be accompanied by an application to condone the delay, and in the absence of such application, the appellate/ reviewing/revisional authority will have no power or jurisdiction to entertain such appeal/review/revision, as the case may be. In other words, the learned Counsel would maintain that an application to condone the delay in preferring a revision is a must and since the appellant, admittedly, did not make such applications, the revision petitions filed by it are not maintainable. Alternatively, the learned Counsel would contend that even if the Court holds that separate applications for condoning the delay are not necessary, even then, there should be satisfactory and convincing material placed before the Tribunal to condone the delay in preferring the revision petitions, and in the instant cases, no material is placed by the appellant before the Tribunal in any form to condone the delay and, therefore, the decisions relied upon by the learned Standing Counsel for the appellant in no way help the appellants case. The learned Counsel would contend that no case is made out to interfere with the order of the learned single Judge. It is also contended by the learned Counsel that it is not the case of the appellant that it was not aware of the order made by the RTA on 30-3-1992; admittedly the appellant received a copy of the order from the RTA on 1-4-1992 and it chose to prefer R.P No.45 of 1993 against that order with a delay of 109

days by filing a separate application seeking condonation of the delay before the Tribunal and, therefore, atleast on 1-4-1992, the appellant had the knowledge of the order dated 30-3-1992 and even if the period of limitation is reckoned from that date, there is absolutely no satisfactory explanation for the period from 1-4-1992 to 4-9-1992 when it made an application to the RTA for furnishing certified copies of the order dated 30-3-1992. Apart from these arguments, both the learned Counsel for the parties would argue that even on merit, their clients have excellent case to succeed. After necessary reflection and thought, we do not think it necessary to deal with the merits of the case and, therefore, there is no necessity for us to delve into the arguments, of the learned Counsel touching on the merits of the case.

Section 90 of the Act reads -

'90. Revision .--The State Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within 30 days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.'

8. As per the first proviso to Section 90 of the Act, the Revision is required to be preferred to the Tribunal within 30 days from the date of the order. But the Courts have held in larger number of binding precedents that limitation in such cases would begin to run from the date of knowledge or from the date of the order if the concerned person or his Counsel was present when the order was pronounced. It is not quite clear as to whether the appellant was aware of the order dated 30-3-1992 made by the RTA on that day itself or not. Sri Harinath, learned Standing Counsel for the appellant-Corporation would, however, tell us that the RTA did not pronounce the order in the presence of the parties on 30-3-1992. Even accepting this submission of the learned Counsel to be true, it cannot be gainsaid that at least as on 1-4-1992 when the appellant received a copy of the order from the RTA, it had come to know about the order made on 30-3-1992 granting permits to the contesting private respondents. Therefore, it should be held that the period of limitation began to run at least from 1-4-1992. Of course, this conclusion may not be relevant consideration for deciding the lis brought before the Court if we agree with Sri Harinath, learned Standing Counsel for the appellant-Corporation, that the RTA is under a legal obligation to furnish copies of the order made by it to the APSRTC free of cost and without copy application, because, in that event, the period of limitation would begin to run from the date on which the aggrieved party, like the RTC, was served with a copy of the order by the RTA. At the time of hearing, we pointedly asked the learned Standing Counsel for the appellant-Corporation to trace the obligation of the RTA to furnish copies of the order made by it free of cost and without copy application by the parties, the learned Standing Counsel was not in a position to trace the obligation of the RTA to furnish copies of the order made by it free of cost and without copy application by the parties with reference to any provisions of the Act or the rules made thereunder. However, the learned Standing Counsel would maintain that such an obligation is impliedly cast on the RTA. This submission of the learned Standing Counsel is not acceptable to us. Nowhere in Section 90 of the Act or in the Rules, the law maker or the rule maker has placed any obligation on the adjudicatory authorities, like the RTA, to furnish copies to the parties without copy application and free of cost. Unless the statute so mandates, it will be totally irrational to infer an obligation on the adjudicatory authority to furnish copy of the order made by it to the parties free of

cost and without copy application. We can take judicial notice of the fact that whenever the Legislature intended to make a provision for supply of free copies of the order to the parties, it has made such provision mandating the adjudicatory authorities to send copies of the order to the concerned parties without insisting for application for supply of the copies of the order. We do not find any such provision in the Act or in the rules framed thereunder. Such an interpretation is quite appropriate and would stand the test of reasonableness and common sense, because, it is not that each and every party who suffers an order at the hands of a statutory authority should, as a legal obligation, resort to legal remedies provided under the statute. It is for those aggrieved parties who wish to avail of legal remedies under the law to apply and obtain necessary copies for that purpose. It is quite curious to notice that though appellant-Corporation had received a copy of the order dated 30-3-1992 from the RTA on 1-4-1992 and preferred R.P No.45 of 1993 against that order with an application to condone delay of 109 days, it did not think it necessary to file similar applications for condoning delay in preferring the revision petitions when it chose to file revisions before the Tribunal after a long lapse of time, on 20-11-1992 after obtaining certified copies.

9. In *Hukam Raj Khinvsara's* case (supra), the Supreme Court held that when a legal action is instituted by way of appeal/review/revision beyond the period of limitation, an application seeking condonation of delay is a must. This is a decision rendered by a Bench of two Judges. Even the judgment cited by Sri Harinath in *Chief of Army Staff's* case (supra) is also rendered by a Bench of two Judges. In this case also, there was an oral application for condoning delay. Even if we hold that an oral application could be entertained, the question in the instant case is whether any oral applications were made before the Tribunal seeking condonation of delay. A Counsel, under no circumstance, can assume the role of a litigant as regards facts. Delay has to be explained by the party and not by the Counsel. The Counsel can make factual submissions on the basis of the pleading of the parties and show sufficient cause for the delay and not otherwise. A careful reading the judgment of the Tribunal would go to show that the learned Standing Counsel for the appellant, during the course of arguments, sought to explain the cause for the delay, to which the Tribunal has made reference in its order. The Tribunal has referred to the correspondence on record. According to the Tribunal, the

correspondence on record between the appellant and the RTA would reveal the fact that the appellant requested the RTA to furnish separate copies of the impugned order made by it on 30-3-1992. This observation of the RTA, if we may say so, is as vague as it could be. The Tribunal has not disclosed the source of information it has gathered. The Tribunal did not also state the date/dates on which the appellant made applications even in the form of letters to the RTA to furnish separate copies of the order etc. In the absence of these material particulars, and particularly without confronting these material particulars to the other side, placing reliance on these materials which were brought to its notice at the time of argument, in our considered opinion, is opposed to all norms of fair procedure and principles of natural justice. A party cannot be permitted to draw as advantage with reference to a fact or set of facts without disclosing such fact or facts to the other side.

10. Adverting to the last contention of the learned Standing Counsel for the appellant, suffice it to state that the authorities cited by him, in the context of the case, would not help the appellant. It is well settled that if an appeal/review/revision, as provided under a statute or otherwise, is not preferred within the period prescribed under the statute, the successful party would acquire a vested right in the subject-matter of the dispute and it cannot be gainsaid that such an acquired right is of no legal consequence, and it is open for the aggrieved party to assail the validity of such order and get it quashed or nullified at the hands of the appellate/reviewing/revisional authority or constitutional Courts at any point of time to the peril of the successful party. The learned Standing Counsel for the appellant is not able to show any binding precedents to support such hypothesis, a hypothesis circumscribed by no conditions. Be that as it may, this Court under Article 226 of the Constitution cannot assume the very same power, which is otherwise available to the apex Court under Article 142 of the Constitution to do complete justice. Although at certain stage it was thought that even the High Court has the power under Article 226 of the Constitution on par with the power available to the Apex Court under Article 142 to do complete justice, that position is now altered, and this Court cannot assume that power to do complete justice as suggested by the learned Standing Counsel for the appellant. Therefore, the last contention of the learned Standing Counsel is also not acceptable to us.

11. In the result and for the foregoing reasons, we do not find any substantive ground to interfere with the order of the learned single Judge. The writ appeals are accordingly dismissed. No costs.

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