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Man Singh and anr. Vs. Union Territory of Delhi and ors.

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Court : Delhi

Decided On : Feb-25-1972

Reported in : AIR1972Delhi228

Judge : Dalip K. Kapur, J.

Acts : Constitution of India - Article 226; Motor Vehicles Act, 1939 - Sections 58 and 58(2); Motor Vehicles (Amendment) Act, 1969

Appeal No. : Civil Writ No. 951 of 1971

Appellant : Man Singh and anr.

Respondent : Union Territory of Delhi and ors.

Advocate for Def. : B.N. Kirpal, Adv.

Advocate for Pet/Ap. : M.S. Ratta, Adv

Judgement :
ORDER

1. This is an application for a writ under Article 226 of the Constitution brought by the two petitioners in relation to the two permits that they held for Auto Rickshaws which apparently they were plying for hire in Delhi. Petitioner No. 1 was holding permit No. Tsr - 3468 And petitioner No. 2 permit No. Tsr - 5776. These permits for contract carriage were due to expire in the case of petitioner No. 1 on 26th

November, 1970 and for petitioner No. 2 on 5th November, 1970.

2. The petitioner made separate applications for renewal of their permits, petitioner No.1 applied on 28th September, 1970 and petitioner No.2 on 29th September, 1970. Thus, petitioner No.1 made his application 58 days before the permit was due to expire and petitioner NO.2 made his application 37 days before it was due to expire. In accordance with the provisions of Section of the Motor Vehicle Act, 1939, as it originally stood before the amendment of 1969, these application were within time.

3. It appears that both the applications were considered by the State Transport Authority at a meeting held on 9th July, 1971, but, unfortunately, neither of the petitioners seems to have been served with notices to appear there. On that day both applications were rejected on the ground that they were barred of this writ Petition.

4. It is stated by the petitioners that they could not file an appeal within thirty days of the orders of the State Transport Authority as they had no idea that the order had been passed and only became aware of the same when the petitioner No. 2 was challenged on 17th August, 1971, by which time the period for filing an appeal had expired. The affidavit filed on behalf of the respondent shows that notices were issued by the State Transport Authority to the petitioners for the meeting to be held on 9th July, 1971, but the notice could not be served on the petitioners as they had left their previous abode without leaving any fresh address. Two points require examination in this Writ Petition. Firstly, whether the failure to exercise an alternative remedy bars the Writ Petition and, secondly, whether in fact the impugned order is wrong and capable of being set aside in these proceedings.

5. As far as the first question is concerned, there is no doubt that by reason of the non-service of the notice of the meeting, the petitioners were unable to appear before the State Transport Authoring and, thereforee, did not hear of the Authority's order till after the expiry of the period of limitation for filing the appeal. The Writ Petition was filed in this Court on 26th August, 1971 within 45 days of the passing of that order. I must accept the averment of the petitioners that the Writ Petition has been instituted because of the inability to file an appeal because of

their not having received the copy of the order passed by the State Transport Authority on 9th July, 1971. In any case, the point in controversy is a very narrow one and it is not in every case that the existence of an alternative remedy bars a Writ. A question of construction of the statute amounting to a question of jurisdiction has been raised on the second point which in my view entitles the petitioners to be heard in support of the Writ Petition.

6. As far as the question on merits is concerned the original wording of Section 58(2) of the Motor Vehicles Act, 1939, is as follows :-

'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 sixty days before the date of its expiry, and

(b) in any other case, not less than thirty days before the date of its expiry.

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

The noteworthy part of this provision as far as this case is concerned, is that first proviso. The relevant part of this proviso applicable to this case, is that the application for renewal of a permit has to be made not less than thirty has to be made not less than thirty days before its expiry. It is the case of the petitioners that they made the application, in the one case 58 days before, and in the other case, 37 days before the date of expiry of their permits. Thus the applications were made by the petitioners within the time prescribed by Section 58 of the Act as it originally stood. In 1969, the Parliament passed the Motor Vehicles Amendment Act, 1969 (Act No. 56 of 1969). By this Act, a change was introduced into Section. 58 of the Act and the periods which were previously 60 days and 30 days in clauses (a) and (b) of the said proviso became 120 and 60 days respectively. It was further provided in Section 1 (2) of the Act that the different provisions of the Act would come into force on different dates according to notifications which the

Central Government might issue in the Official Gazette. It appears that the new Section 58 was brought into operation originally on 2nd March, 197o. Later on a notification No. S. O. 2025 was issued on 25th May, 1970 in the Official Gazette which is Annexure 'H' to this Writ Petition. By this notification, the original notification bringing the new Section 58 into effect from 2nd March, 1970 was cancelled and instead 1st November, 1970 was fixed as the date on which Section 25 of the new Act (which contained this amendment) was to come into force. For the purpose of convenience, this notification is reproduced here and reads as hereunder :-

'MINISTRY Of Shipping And Transport (TRANSPORT WING)

New Delhi, the 25th May, 1970. S. O. 2025.- In partial modification of this Ministry's Notification No. 39-RAG (1) / 70 dated the 27th February, 1970 published in the Extraordinary Gazette of India Part Ii, Section 3, sub-section (ii) under S. O. No. 829, the Central Government hereby cancels the enforcement of Section 25 of the Motor Vehicles (Amendment) Act 1969 (56 of 1969) with effect from the 2nd March, 1970.

2. In exercise of the powers conferred by sub-section (2) of Section 1 of the said Act, the Central Government, hereby appoints 1st day of November, 1970 as the date on which the provision of Section 25 of the said Act shall come into force. No 39-TAG (13) / 70.'

Now the clear effect of this notification is that Section 25 of the new Act is to become applicable from 1st November, 1970, which means that the amended Section 58 is to come into force from 1st November, 1970. After 1st November, 1970, the relevant proviso will read - 'No renewal of a permit in a case like the present can be made less than 60 days before the date of its expiry'. If the action of the petitioners is judged after 1st November, 1970, it can be said that the application for renewal was not made before 60 days of the expiry of the permit and was, thereforee, time barred. If, on the other hand, the action of the petitioner is judged in accordance with the law on the date on which the applications were made, then the application are within time. In other words if the validity of the petitioner's applications are tested in accordance with the law in force on the date

of the applications, they are valid and if considered in accordance with the law in force on the date when the old permits expired, then the applications are barred by time. The rival contentions of the parties before me are, that the petitioners say that the validity of their action has to be tested on the date on which the application were made and, the learned counsel for the respondent contends that the validity has to be tested on the date on which the old permits expire.

7. On an examination of this question, it clearly appears to me that the validity of an action to be ascertained on the date on which the action was taken. Thus if an application was validity made on the date on which it was made, a subsequent change in law, cannot render it as being made beyond time. To take the case of petitioner No. 1, his permit was to expire on 26th November, 1970. If there had been no new law, he could make an application for renewal up to 27th October, 1970. He could have waited till 27th October, 1970 before applying and his application would be within time. If the application was within time on 27th October, 1970, it could not be treated as being belated because of a change in law introduced on November 1st, 1970, when Section 58 as amended was substituted. An application once valid, has to be considered to be valid in accordance with the law prevailing at the time it is made. To put it in other words, the proviso to Section 58 (2) is intended to fix a time limit or terminus for making an application for renewal. The question whether an application is with in time has to be judged by looking at the Section as it was on the date on which the application was made and not on the date on which the permit was to expire. The purpose of the proviso was to compel an application for renewal being made before the permit expired and the only change made in the amended Section was regarding the period. By the amended Section the renewal had to be made much earlier than the date of the expiry of the permit compared to the previous Section. The new provision could not have any legal existence before it came into operation. Any other interpretation of the Section, would mean that one would have to read Section 58 (2) as amended, as being in force even before, 1st November, 1970, which would be contrary to the recognised rules of statutory construction. I thus hold that in the present case, the applications were not barred by time and were made in accordance with the law which was in force at the time when these applications were made. Any subsequent change in the law could not invalidate them. Thus,

this application for a writ has to succeed and the order of the State Transport Authority has to be quashed and a direction given to it to decide the applications for renewal in accordance with law.

8. The counsel for the petitioners has made a submission about the petitioners being Challenged on account of the non-holding of a permit and submits that those challans should also be quashed in these proceedings. It is also submitted by him that the petitioners should be allowed to ply their vehicles pending the disposal of the applications for renewal by the State Transport Authority. I think it would be incorrect for this Court to express any view concerning this matter, be cause the applications will have to be decided by the State Transport Authority. If the Authority grants the renewal of the permits, I am sure that all the defaults committed by the petitioners will be condoned. The Authority should decide this matter very expeditiously as the petitioners appear to be unable to carry on their trade of running Auto Rickshaws as a result of the non-grant of renewals of their permits. There will, however, be no order as to costs.

9. Ordered accordingly.

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