

**Dalu Singh Vs. Stat and ors.**

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**Court :** Rajasthan

**Decided On :** Oct-23-1980

**Reported in :** 1980WLN(UC)531

**Judge :** S.C. Agarwal, J.

**Appeal No. :** S.B. Civil Writ Petition No. 1609 of 1980

**Appellant :** Dalu Singh

**Respondent :** Stat and ors.

**Disposition :** Petition dismissed

**Judgement :**

**S.C. Agarwal, J.**

1. In this writ petition filed under Article 226 of the Constitution of India the petitioner Dalusingh has prayed that a writ of certiorari may be issued to set aside the order dated 23rd August, 1980, passed by the State Transport Appellate Tribunal Jaipur, (hereinafter referred to as the Tribunal).

2. Nokha-Kolayat route is a 'C' class route lying within the Bikaner region. In the year 1968, a scope of three permits with two return services daily was fixed for the said route. After taking into consideration the report of the Evaluation Committee of the Planning Department the Regional Transport Authority, Bikaner (hereinafter

referred to as the RTA), by its resolution dated 15th March, 1980, decided to increase the scope on the said route to six permits with four return services daily. As a result of the aforesaid increase in the scope three vacancies occurred and a temporary permit was issued by the RTA in favour of the petitioner on 8th May, 1980. The RTA also issued a notice inviting applications for grant of three non-temporary permits on the said route and in response to the said notice the petitioner has submitted an application for grant of a non-temporary permit. The said application of the petitioner has been published in the Gazette dated 31st July, 1980. In the meanwhile one Shri Bhagwanaram, respondent No. 3 herein, who is an existing operator on the said route, filed a revision petition under Section 64 A of the Motor Vehicles Act, (hereinafter referred to as the Act) before the Tribunal against the resolution of the RTA dated 15th March, 1980. In the said revision petition, the petitioner was also impleaded as a non-petitioner. The Tribunal by its order dated 23rd August, 1980, allowed the said revision petition on the view that there were no sufficient grounds for doubling the scope on the Nokha-Kolayat route and the increase in the scope could not be said to be justified. The Tribunal therefore cancelled the increase in the scope on the said route. Being aggrieved by the aforesaid order of the Tribunal the petitioner has filed this writ petition.

3. The writ petition is mainly based on the ground that the notice of the revision petition that was issued by the Tribunal was not personally served on the petitioner and that it was served on one Shri Modaram, who is neither an authorised agent nor representative of the petitioner, and that the Tribunal had allowed the revision petition without affording an opportunity to the petitioner to make his submissions in support of the resolution dated 15th March, 1980 passed by the RTA with regard to the increase in the scope on the route.

4. The writ petition has been opposed by Respondent No. 3 who has filed a reply wherein it is asserted that the petitioner is employed as a conductor with one Shri Baluram Suthar, well known bus operator, who has his garage and office on Gangasahar Road, Bikaner and that the temporary permit that was issued in favour of the petitioner had actually been obtained by the said Shri Baluram Suthar. Respondent No. 3 in his reply aforesaid, has further asserted that for the

past four months the petitioner has been working on the vehicles operating on the Lunkaransar Kumhana route and that Shri Modaram belongs to the same village as Shri Baluram Suthar and stays at Lunkaransar and that the notice which was sent by registered post in the name of the petitioner by the Tribunal was sent at the address of garage of Shri Baluram at Gangasahar Road, Bikaner from where it was redirected to Lunkaransar at the address of Shri Modaram and that, in accordance with the instructions given by the petitioner, the said registered letter containing the notice was delivered to Shri Modaram. The submission of respondent No. 3 is that notice was duly received by the petitioner. The respondent No. 3 has further submitted that the temporary permit issued in favour of the petitioner has expired and that the petitioner has now no interest in the subject matter and has, therefore, no locus standi to Seek the quashing of the order passed by the tribunal.

5. Shri B.L. Maheshwari, the learned Counsel for the petitioner, has submitted that the petitioner was a person who was likely to be effected by the order passed by the Tribunal in the revision petition in as much as a temporary permit had been issued in his favour and also for the reason that he had submitted an application for grant of a non-temporary permit and the said application was pending consideration and, therefore, the petitioner was a necessary party in the revision petition filed by respondent No. 8 Shri Maheshwari has further submitted that it was necessary to serve the notice of the revision petition personally on the petitioner and since the said notice was not personally served on the petitioner the order passed by the Tribunal in the revision petition cannot be upheld, In support of his aforesaid submission Shri Maheshwari has placed reliance on the decision of this court in *Narainsingh v. STAT* reported in .

6. Shri J. G. Chhangani, the learned Counsel for respondent No. 3 has, on the other hand, submitted that in view of the presumption of regulatory of official acts it must be presumed that the notice which was sent by registered post in the name of the petitioner by the Tribunal must have been received by the petitioner or his agent and in view of the said presumption the Tribunal was entitled to proceed *exparte* on the basis that the petitioner had been duly served with the notice. Shri Chhangani has further submitted that it was open to the petitioner to have moved

the Tribunal for setting aside the order passed by the Tribunal on the ground that the notice sent by the Tribunal had not been duly served on him and that the present writ petition is not maintainable. Shri Chhangani has also submitted that in view of the fact that the temporary permit issued in favour of the petitioner, has already expired, the petitioner is not entitled to maintain this writ petition for setting aside the order passed by the Tribunal.

7. It cannot be disputed that in view of the presumption of regularity of official acts the Tribunal was entitled to presume that the notice which was sent to the petitioner by registered post had been duly served on the petitioner or his agent. The aforesaid presumption is, however, a rebuttable presumption. Shri Maheshwari seeks to rebut the said presumption in this writ petition on the ground that he could not approach the Tribunal for setting aside its order because the Tribunal has no power to review its order. In my opinion, Shri Maheshwari is not right in his submission that the petitioner could not approach the Tribunal for setting aside its order dated 23rd August, 1980 In Shankarlal and Ors. v. The Appellate Tribunal of the State Transport Authority and Ors. D.B. Civil Writ Petition No. 116 of 1956 decided on 12-8-57 a Division Bench of this Court has pointed out that an order is reviewed only where a previous order is made in the presence of both the parties and one or the other party wants that order should be reconsidered. In the said case this Court has observed that where the previous order is not made in the presence of both the parties and is made *ex parte* against some, the party to whom no notice was given and against whom the hearing was *ex parte*, can come up and ask the tribunal to set aside the *ex parte* order which has been passed without notice to that party and hear him and then pass a proper order, and that this is different from review. In the said case this Court upheld the order that had been passed by the Appellate authority whereby it had set aside the *ex parte* order passed by it and had rejected the contention that the Appellate Authority is not competent to pass the said order because it had no power to review its own order. In view of the aforesaid decision of this Court in Shankarlal's case (*supra*) the Tribunal was competent to set aside its order dated 23rd August, 1980 if it was satisfied that the notice was of the revision petition that was issued by it had not been duly served on the petitioner or his agent. Thus an alternative and more efficacious remedy of approaching the Tribunal for setting aside its order

dated 23rd August, 1980 on the ground that the notice issued by the Tribunal in the revision petition had not been duly served on the petitioner or his agent, was available to the petitioner and the writ petition cannot be maintained.

8. As I am of the view that the writ petition is not maintainable for the reason that an alternative remedy is available to the petitioner, I do not consider it necessary to deal with the contention urged by Shri Chhangani with regard to the right of the petitioner to challenge the validity of the order dated 23rd August, 1980 passed by the Tribunal on the ground that the temporary permit issued in favour of the petitioner has already expired and he has no longer any subsisting interest in the matter. It would be open to Shri Chhangani to raise the said objection before the Tribunal in case the petitioner moves the Tribunal for setting aside the order dated 23rd August, 1980.

9. In the result, the writ petition is dismissed, but in the circumstances, there will be no order as to costs.

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