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Court : Rajasthan

Decided On : Jan-13-1992

Reported in : 1992(1)WLN13

Judge : B.R. Arora, J.

Appeal No. : S.B. Civil Writ Petition No. 5540 of 1991

Appellant : Manoj Kumar and anr.

Respondent : State Transport Appellate Tribunal and ors.

Judgement :

B.R. Arora, J.

1. The petitioners, by this writ petition, have challenged the order dated October 11, 1991, passed by the Member, State Transport Appellate Tribunal, Rajasthan, Jaipur, by which the operation of the order dated August, 1, 1991, passed by the Regional Transport Authority, Bikaner, granting non-temporary stage carriage permit in favour of the petitioners on Suratgrah- Mile 80 route was stayed.

2. The petitioners were granted non-temporary stage carriage permits on Suratgarh -Mile 80 via Piperan-236 R.D.-Bhopalpura etc. route by the Regional Transport Authority, Bikaner, by its order dated August 1, 1991. In pursuance to the order dated August 1, 1991 Annexure.4 on record), the petitioners obtained

the permit and started plying their vehicles. Against the order dated August 1, 1991, passed by the Regional Transport Authority, Bikaner, Ram Kumar (the respondent No. 3) preferred a revision petition before the State Transport Appellate Tribunal, Rajasthan, Jaipur. Alongwith the revision petition, an application for grant of stay was, also, moved by Mr. Ram Kumar and the learned Member, State Transport Appellate Tribunal, Rajasthan, Jaipur, by its order dated October 11, 1991, stayed the operation of the order dated August 1, 1991, till further orders.

3. Heard learned Counsel for the petitioners and the learned Counsel for the respondent No. 3-the caveator.

4. It is contended by the learned Counsel for the petitioners that the Member, State Transport Appellate Tribunal, Rajasthan, Jaipur, stayed the operation of the order only on the ground that two stay orders were passed by the High Court in two writ petitions. His contention is that so far as the stay order, passed by the High Court in D.B. Civil Writ Petition No. 5145 of 1990 (Om Prakash v. Regional Transport Authority, Bikaner, and Ors.) is concerned, by which the Regional Transport Authority was restrained from issuing any permit, it was never placed on record before the Regional Transport Authority and the Regional Transport Authority had no knowledge of that order and, therefore, passing of the stay order, which was not communicated to the authority concerned, will not deprive the Authority from passing any order. According to the learned Counsel for the petitioners, so far as the second stay order is concerned, by that order, the Division Bench of this Court allowed the State Transport Authority or the Regional Transport Authority to consider the applications of various applicants on the route but they were restrained only from issuing the permit and that order has, also, comes to an end as the writ petition, filed by the petitioner in that case has been dismissed. His contention, therefore, is that the order dated October 11, 1991, may be quashed and the petitioners may be allowed to ply their buses on the routes in question. The learned Counsel for the respondent No. 3, on the other hand, has supported the order, passed by the Member, State Transport Appellate Tribunal, Rajasthan, Jaipur, and a preliminary objection has, also, been taken by the learned Counsel for the respondent No. 3 that a joint writ petition is not

maintainable because the petitioners were granted non-temporary stage carriage permits on two separate applications and their cases depend upon different facts and the writ petition, therefore, deserves to be dismissed on the ground of mis-joinder of the parties.

5. I have considered the rival submissions made by the learned Counsel for the parties.

6. Before deciding the writ petition on merit, I would first like to consider the preliminary objection raised by the learned Counsel for the respondent No. 3. It is not in dispute that both the petitioners moved separate applications for the grant of non-temporary stage carriage permits on the routes in question and the Regional Transport Authority, by its order dated August 1, 1991, vide Annexure.4, granted two separate permits to the petitioner. Dissatisfied with the order dated August 1, 1991, granting permits to the petitioners, the respondent No. 3 preferred only one revision petition, challenging the grant of permits to the petitioners by the Regional Transport Authority and in that revision petition, he Member, State Transport Appellate Tribunal, Rajasthan, Jaipur, by one order dated October 11, 1991, restrained both the petitioners from plying their buses on the routes in question. As the petitioners were affected by a single order, passed by the learned Member of the State Transport Appellate Tribunal, Rajasthan, Jaipur, in one revision petition and, therefore, a joint writ petition, filed by the petitioners, is maintainable. The preliminary objection, raised by the learned Counsel for the respondent No. 3 is, therefore, not sustainable.

7. Coming to the merits of the case, in the order dated August 1, 1991, passed by the Regional Transport Authority, Bikaner, there is no mention regarding to stay order passed by this Court in S.B. Civil Writ Petition No. 5145 of 1990 Om Prakash v. Regional Transport Authority, Bikaner, by which the Regional Transport Authority was restrained from granting/issuing any permit either temporary or non-temporary on the route Suratgarh to Chhattargarh via 236 R.D. existing route or any other portion thereof. It appears that the order was not produced before the Regional Transport Authority on or before August 1, 1991, when the order Annexure.4 was passed by the Regional Transport Authority, Bikaner, granting

non-temporary stage carriage permits in favour of the petitioners. In the case of injunction, restraining a particular Authority from acting in a particular way, the knowledge of prohibitory order by the Authority, which is prohibited, is essential before the Authority is deprived of its power. Where by way of an injunction an Authority is forbidden from doing certain act, it is essential that it must have knowledge of the injunction order, passed by the higher Authority and if the Authority has no knowledge then the proceedings cannot be said to be a nullity or illegal because the Authority had power to pass the order. In the present case, the Regional Transport Authority had powers under the Motor Vehicle Act to grant permits on the routes in question to the petitioners, after considering their case. It is only by the injunction order that the power of the Authority have been taken-away, but if that order is not communicated to the Authority then the order, passed by the Authority cannot be said to be illegal. It is only if the order has been communicated and the Authority had the knowledge restraining him from granting or issuing the order that the orders can be said to be nullity or illegal in the eye of law. As the record does not show that the stay order, passed in the case of Om Prakash v. Regional Transport Authority was ever communicated to the Regional Transport Authority and, therefore, the Regional Transport Authority was free to grant permits in favour of the petitioners and the permits granted in favour of the petitioners are perfectly legal.

8. So far as the stay order dated July 30,1991, passed by the High Court in D.B. Civil Writ Petition No. 3565 of 1991 (Madan Lal v. Union of India and Ors.) is concerned, that was communicated to the Regional Transport Authority, which was placed on record, as that order finds mention in the order Annexure.4 itself. By this order, the Regional Transport Authority was allowed to consider the applications for the grant of permits, but was restrained from issuing the permits only and, therefore, if the Regional Transport Authority considered the applications of the petitioner and took a decision for the grant of permits in their favour, then no illegality has been committed by the Regional Transport Authority so far as that aspect is concerned. But as the Regional Transport Authority was restrained from issuing the permit and, therefore, the permits could not have been issued by the Regional Transport Authority to the petitioners and the petitioners should not have been allowed to ply their vehicles and as such if the Member, State Transport

Appellate Tribunal, Rajasthan, Jaipur, restrained the petitioners from plying their buses on Suratgarh-Mile 80 route, then that order cannot be said to be illegal in any way. But since after passing of the order dated October 11, 1991, D.B. Civil Writ Petition No. 3565 of 1991 [Madan Lal v. Union of India and Ors.] was dismissed by this Court on December 10, 1991, and, therefore, the stay order dated July 30, 1991, also, comes to an end and the respondent Regional Transport Authority can, now, issue the permit to the petitioners to ply the buses on the said route.

9. So far as D.B. Civil Writ Petition No. 5145 of 1990 (Om Prakash v. Regional Transport Authority, Bikaner) is concerned, that has been dismissed by me today and, therefore, that order, also, will not come in the way of the petitioners and the respondents can issue permit to the petitioners.

10. With these observations, the writ petition, filed by the petitioners is disposed of. The petitioner may appear before the State Transport Appellate Tribunal, Rajasthan, Jaipur, and get the revision petition decided, which was filed by the respondent No. 3 against the order dated August 1, 1991.