

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

205

CWP-1206-2015

Reserved on : 08.09.2016

Decided on : 15 .09.2016

*Santokh Singh**... Petitioner**Versus**State Transport Appellate Tribunal, Punjab and another**... Respondents***CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present : Mr.P.S.Bawa, Advocate
for the petitioner.
Ms.Lavanya Paul, AAG, Punjab.

G.S.Sandhawalia, J.

The petitioner challenges the order dated 21.03.2014 (Annexure P/2) passed by the *State Transport Appellate Tribunal, Punjab, Chandigarh*, whereby the appeal filed by Santokh Singh, permit holder, has been rejected on the ground that the long delay of five years for filing the appeal has not been explained. It was accordingly held that the bus was in the possession of the legal heirs of Santokh Singh-permit holder alongwith the permit so they had constructive knowledge that the permit had expired. The authorized representative of the deceased, Santokh Singh having appeared before respondent No.2-the *Secretary, Regional Transport Authority, Chandigarh* had attended the proceedings, therefore, they had constructive knowledge of their application having been dismissed.

Challenge has also been raised to the order dated

25.11.2008 (Annexure P/1) whereby the application for renewal of permit of the mini bus, for three return trips daily on Talwandi Sabo to Maujia via Nawan Pind-Jagga-Singho-Pairon-Raipur-Makha route without supporting documents for further period of five years, had been rejected by the Regional Transport Authority, Ferozepur.

Perusal of the paper-book would go on to show that Santokh Singh, permit holder had applied for renewal of permit of the mini bus on 26.12.2007 without the supporting documents as required under the *Motor Vehicles Act, 1988 and Punjab Motor Vehicles Rules, 1989*. The permit was to expire on 31.12.2007 and the application was delayed by 10 days. In the meantime, the said permit holder died on 10.03.2008.

Notice was issued on 11.06.2008 for 30.06.2008 to appear before respondent No.2 and complete the legal formalities and produce the required documents. Another notice had been issued on 11.08.2008 and the case, thereafter, was fixed for hearing on 27.08.2008. Hearing of the case was again postponed to 05.09.2008. Fresh notice was issued on 12.11.2008 for 25.11.2008 and due to non-appearance of the applicant or his representatives after noticing that a publication had been made regarding the same by the State Transport Appellate Authority, Chandigarh on account of which the application was rejected under Section 81(4) of the *Act*. The order was to be communicated to the permit holder, petitioner.

The appeal was thereafter, filed on 30.07.2013 which was

opposed on the ground that it was beyond the prescribed period of limitation of 30 days. As noticed, the objection has been upheld on the ground that no step had been taken by the legal heirs till the filing of the appeal and thus, there is no justification. It was further noticed that Tirath Ram, Manager had after the death of permit holder filed an application on 24.06.2008 for post-ponment of item No.90 of the meeting without bringing to the notice of the authority that the original permit holder-Santokh Singh had expired. Thereafter, no one had put in appearance. Resultantly, the application was dismissed.

Counsel for the petitioner has vehemently submitted that order had not been communicated. Since the original permit holder, Santokh Singh had expired, therefore, the appeal was not barred as such and there was sufficient cause to condone the delay, if any. The legal heirs were under the mental shock of the sudden demise of the permit holder and they could not peruse the matter. Therefore, the limitation should not stand in the way.

On the other hand, learned State counsel has justified the said order by arguing that the delay was not nominal and it could have not been overlooked by the appellate tribunal, and it has rightly been not condoned and the appeal has been dismissed.

The issue of limitation and actual constructive knowledge and making of the order was subject matter of Full Bench in Jagtar Singh vs. The State Transport Appellate Tribunal and others, 2009(2)

PLR 245. Accordingly, it was held that a party who knows about the

making of an order cannot ignore the same and allow grass to grow under its feet and do nothing except waiting for a formal communication of the order. Allowing a party to do so would amount to placing a premium on the lack of diligence of a party, who is remiss in seeking a remedy that was available to it. The relevant portion reads as under:-

“The question that adds an interesting dimension is whether a party, who knows about the order of rejection made by the State or Regional Transport Authority, can sit back and indefinitely wait for a formal communication of the order and file the appeal at his sweet will. Our answer to that question is in the negative. While it is true that communication of the reasons would imply communication of a copy of the written order itself, a party who knows about the making of an order cannot ignore the same and allow grass to grow under its feet and do nothing except waiting for a formal communication of the order or to choose a time of his convenience to file an appeal on a tenuous plea that even though he knew about the order, he was waiting for its formal communication to seek redress against the same in appeal. Any interpretation of the provisions of Section 80 and 89 of the Act and Rule 85 of the Rules that would give rise to such an absurdity shall have to be eschewed. Diligence or the lack of it in seeking redress is a crucial aspect in matters relating to law of limitation. One can understand that if a party does not know about the making of the order either actually or constructively it may claim that the period of limitation would start running from the date it acquires knowledge of the making of an order but one cannot understand how a party, who has acquired knowledge of the making an order either directly or constructively can ignore the same and belatedly seek redress just because the authority making the order had made a default in formally communicating the order to him. Allowing a party to do so would amount to placing a premium on the lack of diligence of a party, who is remiss in seeking a remedy that was available to it.”

It was further held that the actual constructive knowledge of the prescribed period of limitation had to be seen by the Tribunal in each case.

Perusal of the writ petition would go on to show that nothing has been pleaded to show as to when the legal heirs of permit holder, Santokh Singh, alleged to have a constructive knowledge or when the order came to their knowledge. The findings recorded by the Tribunal, are thus, justified as the bus was in their possession as well as the permit and they were also aware of the fact that permit holder had expired. Therefore, they could not turn around and say that they did not have knowledge about their pending application which has been dismissed.

It has also been recorded that Manager, Tirath Ram, authorized person had been appearing before the Regional Tribunal Authority, Ferozepur and even after the death of the permit holder. Thereafter, it does not lie in the mouth of the petitioners' to turn around that the order was not communicated to them.

It is a settled principle of law that a litigant has to be vigilant and having actual or constructive knowledge of an order passed adverse to him cannot, be allowed to sleep over the matter and wait indefinitely for a formal communication of the order before filing an appeal against the same. The finding thus recorded by the Tribunal, does not suffer from any illegality as such which would warrant interference under Article 226 of the Constitution.

Resultantly, present writ petition has no merit and the same is dismissed.

[G.S.Sandhawalia]
Judge

15.09.2016
sd

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No