

Mohd-Ashfaq vs State Transport Appellate Tribunal ... on 10 September, 1976

Equivalent citations: 1976 AIR 2161, 1977 SCR (1) 563, AIR 1976 SUPREME COURT 2161, 1976 4 SCC 330, 1976 TAC 476, 1977 (1) SCR 563

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Syed Murtaza Fazalali

PETITIONER:

MOHD - ASHFAQ

Vs.

RESPONDENT:

STATE TRANSPORT APPELLATE TRIBUNAL U.P. AND ORS.

DATE OF JUDGMENT 10/09/1976

BENCH:

BHAGWATI, P.N.

BENCH:

BHAGWATI, P.N.

FAZALALI, SYED MURTAZA

CITATION:

1976 AIR 2161

1977 SCR (1) 563

1976 SCC (4) 330

ACT:

Motor Vehicles Act, 1939---S. 58(2) proviso--Delay in applying for renewal of existing permit--If could be condoned--Chapter IV A. -- If a delf contained code--Renewal application. u68E(1D)Whether s.57 applicable. Limitation Act, 1963--Ss. 5 and 29(2)--If applicable.

HEADNOTE:

Under the provis58(2) of the Motor Vehicles Act, 1939 an application for renewal of an existing permit shall be made not less than 120 days before the date of expiry of the permit. The procedure to be followed in this respect is the same as provided57infor the grant of a fresh permit.s.U58(2) a delay of not more than 15 days in making the renewal application can be condoned by the Regional Transport Authority.

The proviso to s. 68F(1D) provides for the renewal of an existing permit for a limited period when a Scheme is published under s. 68C. Since a Scheme was published under this section the appellant made an application under s. 68F(1D) for renewal of his permit. R was rejected by the RTA on the ground that there was delay of 18 days which was not capable of being condoned. The Transport Appellate Tribunal dismissed his appeal and the High Court summarily rejected his writ petition.

In appeal to this Court it was contended that Chapter IVA of the Act, s. 68 occurs, being a self-contained code the proviso to s. 68F(1D) was not applicable in the case of an application for renewal filed under the proviso to s. 68F(1D) or (ii) in the alternative the delay could be condoned by the RTA for sufficient cause. Under s. 29(2) Limitation Act, 1963.

Dismissing the appeal,

HELD: Section 68F(1D) imposes a prohibition on grant or renewal of permit during the intervening period between the publication of a scheme under s. 68C and the publication of the approved scheme and if the proviso were not enacted, renewal of an existing permit expiring after the publication of the scheme under s. 68C would have been barred. This, the legislature did not want and hence the proviso was introduced permitting renewal of an existing permit though for a limited period, despite the general prohibition enacted in sub-s. (1D). This renewal was not intended to be some special kind of renewal. There is no reason why the provision 570 and the proviso to s. 68F(2) should not apply in case of a renewal application under the proviso to s. 68F(1D). [569 A-B]

(b) chapter IVA is not a self-contained code and the other sections apply to an application under the proviso to s. 68F(1D) of the Act. [569D]

(i) The procedure 571 applies because there is no other procedure prescribed by the Act. [569C]

(ii) The time limit specified in the proviso 58(2) also applied as otherwise there would be no time limit for making an application for renewal. [569D]

Section 68F(3) also proceeds on the assumption that, but for its enactment, an order made by the RTA under sub-s. 3 (1) or s. 268B would have been appealable under s. 64 and it was to exclude the applicability of that 68F(3) was enacted. [569 E-F]

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(2) The word used in sub-s. 3 is 'may' and not 'shall' and the RTA is given a discretion to entertain an application for renewal of a permit even where it is beyond time, though not more than 15 days. It could never have been the intention of the legislature that even where there is no sufficient cause for delay in making an application for renewal, the Regional Transport Authority should still be bound to entertain the application for renewal merely on the

ground that the delay is of not more than 15 days. [570F. 571A-B]

Section 29(2) of the Limitation Act, 1963 makes s. 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. Sub-section (3) of s. 58 in so many terms says that the RTA may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. This clearly means that if the application for renewal is beyond time by more than 15 days, the RTA shall not be entitled to entertain it.

[571E-G]

(b) There is an express provision in sub-s. (3) that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of cases where an application for renewal is delayed by more than 15 days. [571G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 871 of 1974. (Appeal by Special Leave from the Judgment and Order dated 3-4-1973 of the Allahabad High Court in Civil Misc. Writ Petition No. 2128/73).

Yogeshwar Prasad and Miss Rani Arora for M/S Bagga for the Appellant.

G.N. Dikshit and O.P. Ran, for Respondents No. 1 and 2. The Judgment of the Court was delivered by BHAGWATI, J. This appeal by special leave is directed against an order passed by the High Court of Allahabad rejecting a writ petition filed by the appellant challenging the validity of an order of the State Transport Appellate Tribunal confirming an order of the Regional Transport Authority rejecting the application of the appellant for renewal of his stage carriage permit for the route Nagina- Jaspur.

The route Nagina-Jaspur lies within the jurisdiction of the Regional Transport Authority Bareilly. The appellant and his brother Mohd. Ashfaq held a stage carriage permit for this route for some years and it was due to expire on 1st July, 1971. Before the expiration of the period of permit, however, a scheme was prepared and published by the State Transport Undertaking under Section 68C of the Motor Vehicles Act 1939 (hereinafter referred to as 'the Act') and this scheme covered the route Nagina-Jaspur. The publication of this scheme did not affect the validity of the permit of the appellant and Mohd. Ashfaq and they continued to ply their motor vehicles on the route Nagina-Jaspur on the strength of the permit. During the currency of the permit, several amendments of a far-reaching character were made in the Act by Act 56 of 1969 and sub-sections (1A) to (1D) were introduced in Section 68F after sub-section (1). These sub-sections are material and they may be reproduced as follows:

"68F(1A) Where any scheme has been published by a State Transport Undertaking under section 68C, that Undertaking may apply for a temporary permit. in respect of any area or route or portion thereof specified in the said scheme, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme, and where such application is made, the State Transport Authority or the Regional Transport Authority, as the case may be, shall, if it is satisfied that it is necessary to increase, in the public interest, the number of vehicles operating in such area or route or portion thereof, issue the temporary permit prayed for by the State Transport Undertaking.

(1B) A temporary permit issued in pursuance of the provisions of sub-section (1A) shall be effective,--

(i) if the scheme is published under sub-section (3) of section 68D, until the grant of the permit to the State Transport Undertaking under sub-section (1), or

(ii) if the scheme is not published under sub-

section (3) of section 68D, until the expiration of the one week from the date on which the order under sub-section (2) of section 68D is made.

(1C) If no application for a temporary permit is made under sub-section (1A), the State Transport Authority or the Regional Transport Authority, as the case may be, may grant, subject to such conditions as it may think fit, temporary permit to any person in respect of the area or route or portion thereof specified in the scheme and the permit so granted shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route or portion thereof.

(1D) Save as otherwise provided in sub-

section (1A) of sub-section (1C), no permit shall be granted or renewed during the period intervening between the date of publication, under section 68C of any scheme and the date of publication of the approved or modified scheme, in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme:

Provided that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published under section 68C expires after such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under sub-section (3) of section 68D."

Since the permit of the appellant and Mohd. Ashfaq was going to expire on 1st July, 1971, the appellant made an application for renewal of the permit under the proviso to sub-section (1D) of Section 68F and submitted the application to the Regional

Transport Authority on 22nd March, 1971. When the application came up for hearing before the Regional Transport Authority, there was admittedly no objection against it, but the Regional Transport Authority took the view that under the proviso to sub-section (2) of Section 58 an application for renewal of a permit is required to be made not less than 120 days before the date of expiry of the permit and even if there is delay in making the application, it can be condoned under sub-section (3) of Section 58 but only if it is a delay of not more than 15 days and since in the present case the application for renewal of the permit was made by the appellant on 22nd March, 1971, it was late by 18 days and hence the delay was not capable of being condoned and in this view, the Regional Transport Authority by an order dated 28th March, 1973 rejected the application for renewal of the permit as time-barred.

The appellant preferred an appeal to the State Transport Appellate Tribunal and in the appeal the appellant challenged the correctness of the order of the Regional Transport Authority. The State Transport Appellate Tribunal, however, agreed with the view taken by the Regional Transport Authority and held that in view of the specific prohibition contained in sub-section (3) read with the proviso to subsection (2) of Section 58 it was not competent to the Regional Transport Authority to condone the delay in making of the application for renewal of the permit, since the delay was of more than 15 days. The State Transport Appellate Tribunal also observed that in any event the material produced before the Regional Transport Authority did not make out any sufficient cause for not making the application for renewal of the permit within time and hence even if there was no statutory bar against condonation of delay of more than 15 days, this was not a fit case in which the delay should be condoned. The State Transport Appellate Tribunal accordingly confirmed the order of the Regional Transport Authority.

This led to the filing of a writ petition by the appellant in the High Court of Allahabad. The High Court summarily rejected the writ petition stating that no ground had been made out for exercise of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution. Hence the appellant brought the present appeal with special leave obtained from this Court.

Two contentions were urged on behalf of the appellant in support of the appeal. The first contention was that the time limit specified in the proviso to sub-section (2) of section 58 was not applicable in case of an application for renewal of a permit under the proviso to subsection (10) of section 68F and the Regional Transport Authority was not entitled to reject the application of the appellant for renewal of his permit as time-barred. It has also been contended in the alternative that even if the time limit set out in the proviso to sub-section (2) of section 58 was applicable, sub-section (3) extended such time limit by fifteen days and even if thereafter there was any delay beyond the extended time limit, it could be condoned by the Regional Transport Authority for sufficient cause by reason of section 5 read with section 29, subsection (2) of the Limitation Act, 1963. The second contention Which followed on the

acceptance of the last contention was that the appellant had sufficient cause for not preferring the application for renewal of his permit within the extended time limit and hence the Regional Transport Authority should have condoned the delay and entertained the application on merits. The validity of both these contentions was disputed on behalf of respondents 1 and 2 and it was urged that the time limit specified in the proviso to sub-section (2) of section 58 was applicable in the present case and the only delay which could be con-

doned was a delay of 15 days and not more and in any event, there was no sufficient cause made out by the appellant for not making the application for renewal within time and hence the application for renewal was rightly rejected as time-barred. We shall proceed to consider the merits of these rival contentions.

The first question which arises for consideration on these contentions is as to whether the time limit prescribed by the proviso to subsection (2) of section 58 applies in case of an application for renewal of a permit under the proviso to sub-section (10) of section 68F. The argument of the appellant was that Chapter IVA which contains, inter alia, section 68F, is a self-contained Chapter and nothing in the other provisions of the Act applies to proceedings under that Chapter and hence neither the procedure under section 57 nor the time limit specified in the proviso to sub-section (2) of section 58 has any application to an application for renewal of a permit under the proviso to sub-section (10) of section 68-F. This argument is, in our opinion, manifestly wrong. The scheme of Chapter IVA is clear and it does not exclude the applicability of the provisions contained in section 57 and the proviso to sub-section (2) of section 68. Chapter IVA contains a fasciculus of sections commencing from section 68A and ending with section 68-B. Section 68-A defines certain expressions used in Chapter IVA. Section 68-B gives overriding effect to the provisions contained in Chapter IVA by saying that these provisions shall have effect, notwithstanding anything inconsistent therewith contained in Chapter IV or in any other law for the time being in force. Section 68-C provides that where any State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport service in relation to any route should be run and operated by the State Transport Undertaking, a scheme may be prepared by the State Transport Undertaking giving particulars of the nature of the services proposed to be rendered, the route proposed to be covered and other prescribed particulars and such scheme shall be duly published. Certain categories of persons are empowered by section 68-D sub-section (1) to file objections against the scheme published under section 68-C and the State Government may then, after considering such objections and hearing the parties, approve or modify the scheme under sub-section (2) of section 68-D. Section 68-D sub-section (3) provides that the scheme as approved or modified under sub-section (2) shall be Published in the Official Gazette and it shall thereupon become final and shall be called the approved scheme and the routes to which it relates shall be called the notified routes. Section 68-E provides for cancellation or modification of the scheme. Then follows section 68-F which is material for our purpose. Sub-section (1) of that section provides for issue of a permit to the State Transport Undertaking in respect of a notified route after publication of an approved scheme. But what is to happen during the period between the publication of a scheme under section 68-C and the publication of the approved scheme under

sub-section (3) of section 68-D ? That is taken care of by sub-sections (1A) to (1-D) of section 68F. Sub-section (1-A) provides that for this intervening period, the State Transport Undertaking may apply for a temporary permit in respect of a route specified in the scheme and where such application is made, the Regional Transport Authority shall, if it is satisfied that it is necessary to increase, in the public interest, the number of vehicles operating on such route, issue the temporary permit prayed for by the State Transport Undertaking. What shall be the duration of such temporary permit is laid down in sub-section (1-B). Sub-section (1-C) deals with the situation where no application for a temporary permit is made by the State Transport Undertaking and it says that in such a case, the Regional Transport Authority may grant temporary permit to any person in respect of a route specified in the scheme. Sub-section (1-D) imposes a prohibition that "save as otherwise provided in sub-section (1-A) and sub-section (1-C), no permit shall be granted or renewed during the period intervening between the date of publication under section 68-C of any scheme and the date of publication of the approved or modified scheme, in favour of any person" in relation to a route covered by such scheme, but this is subject to a proviso that where the period of operation of a permit in relation to any route "specified in a scheme published under section 68-C expires after such publication, such permit may be renewed for a limited period". It will, therefore, be seen that where a scheme is published under section 68-C, no permit in respect of a route specified in the scheme can be granted or renewed during the intervening period between the publication of the scheme under section 68-C and the publication of the approved scheme, except a temporary permit to the State Transport Undertaking under sub-section (1-A) or failing that, a temporary permit to any other person under sub-section (1-C), with this qualification that an existing permit can be renewed for a limited period. The holder of an existing permit would obviously exnecessitas have to make an application, if he wants renewal of his permit and the application for renewal would be considered by the Regional Transport Authority. The question is: can this application for renewal be made at any time and when it is made, what procedure would govern it. Section 57 lays down the procedure to be followed in dealing with an application got grant of a permit and by reason of section 58 sub-section (2), that procedure is applicable also in relation to an application for renewal of a permit. There is also a time limit laid down in the proviso to sub-section (2) of section 58 which says, in so far as relevant, that an application for renewal of a permit shall be made not less than 120 days before the date of expiry of the permit. These provisions in section 57 and the proviso to sub-section (2) of section 58 on their plain language apply to every application for renewal of a permit and it is indeed difficult to see what difference there is between an application for renewal of a permit under the proviso to sub-section (1-D) of section 68-F and any other application for renewal of a permit. An application for renewal of a permit under the proviso to sub-section (1-D) of section 68-F is as much an application for renewal as any other. It had to be specially provided for in the proviso to sub-section (1-D) of section 68-F, because sub-section (1-D) imposes a prohibition on grant or renewal of permit during the intervening period between the publication of a scheme under section 68-C and the publication of the approved scheme and, if the proviso were not enacted, renewal of an existing permit expiring after the publication of the scheme under section 68-C would have been barred. This, the Legislature did not want and hence the proviso was introduced permitting renewal of an existing permit though for a limited period, despite the general prohibition enacted in sub-section (1-D). This renewal was not intended to be some special kind of renewal different from any other ordinary renewal of a permit. There is, therefore, no reason in principle why the provisions enacted in section

57 and the proviso to sub-section (2) of section 58 should not apply in case of an application for renewal of a permit under the proviso to sub-section (1-D) of section 68-F. If the procedure set out in section 57 does not apply in such a case, there is no other procedure prescribed by the Act which can possibly be invoked and the result would be that there would be no procedure for dealing with such an application for renewal and in that event, how would the objections be invited against the application for renewal and within what time and who would be entitled to be heard and when? And equally if the time limit specified in the proviso to sub-section (2) of section 58 does not apply, there would be no time limit for making such an application for renewal and it would be possible to make it any time, even after the expiry of the period of the permit and the Regional Transport Authority would be bound to consider it. That surely could never have been the intention of the Legislature. Moreover, it is implicit in the enactment of section 68-B that Chapter IV-A is not a self-contained Chapter to which the other provisions of the Act are inapplicable. If Chapter IV-A were a self-contained Code by itself, there would have been no need to give overriding effect to the provisions in that Chapter as against the other provisions of the Act. Section 68-F, sub-section (3) also proceeds on the assumption that, but for its enactment, an order made by the Regional Transport Authority under sub-section (1) or sub-section (2) of section 68-F would have been appealable under section 64 and it was to exclude the applicability of section 64 that sub-section (3) of section 68-F was enacted. These two circumstances clearly point to the conclusion that the other provisions of the Act, to the extent to which their language warrants, apply in relation to proceedings under Chapter IV-A, save in so far as they may be, expressly or by reason of repugnance or inconsistency, overridden. We must, therefore, reject the first contention of the appellant which seeks to exclude the applicability of the proviso to sub-section (2) of section 58 to an application for renewal of a permit under the proviso to subsection (1-D) of section 68-F. That takes us to the next question as to the applicability of section 5 of the Limitation Act, 1963 to an application for renewal of a permit. It would be convenient at this state to refer to the provisions of subsections (2) and (3) of section 58, which, so far as material, read as follows:

"(2) 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 one hundred and twenty days before the date of its expiry; and

(b) in any other case, not less than sixty 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. (3) Notwithstanding anything contained in the first proviso to sub-section (2), the Regional Transport Authority may entertain an application for the renewal of a permit after the last date specified in the said proviso for the making of such an application, if the application is made not more than fifteen days after the said last date and is accompanied by the prescribed fee."

The proviso to sub-section (2) requires that an application for renewal of a permit should be made not less than 120 days before the date of expiry of the permit. But, notwithstanding this provision, the Regional Transport Authority may, under sub-section (3), entertain an application for renewal of a permit after the last date specified in sub-section (2), "if the application is made not more than 15 days after the said last date and is accompanied by the prescribed fee." Sub-section (3) thus vests a discretion in the Regional Transport Authority to entertain an application for renewal of a permit even if it is beyond time, but in that case the delay should not be of more than fifteen days. The word used in sub-section (3) is "may" and not "shall" and the Regional Transport Authority is given a discretion to entertain an application for renewal of a permit even where it is beyond time, though not more than 15 days. It may condone the delay or it may not, depending on the circumstances of each case. The discretion is to be exercised not on any arbitrary or fanciful grounds or whim or caprice of the Regional Transport Authority, but it is to be a judicial discretion. It is true that the criterion which is to guide the Regional Transport Authority in the exercise of its discretion is not articulated in sub-section (3), but it is implicit in every conferment of discretion on a judicial or quasi-judicial authority that the discretion is to be exercised in a judicial manner on well settled legal principles. It would not be right to attribute to the Legislature an intention to confer unguided and unfettered discretion on the Regional Transport Authority which is quasi-judicial authority. The discretion is obviously to be exercised where sufficient cause for not making the application for renewal within time is made out by the applicant. This criterion can legitimately be imported from section 5 of the Limitation Act, 1963 which contains an allied provision for condonation of delay where an application is made beyond time. It could never have been the intention of the Legislature that even where there is no sufficient cause for delay in making an application for renewal, the Regional Transport Authority should still be bound to entertain the application for renewal merely, on the ground that the delay is of not more than 15 days. Sub-section (3) enacts a provision for condonation of delay in making an application for renewal and not provision extending the time limit specified in the proviso to sub-section (2) in all cases as a matter of course. If the intention of the Legislature were that in every case delay of not more than 15 days in making an application for renewal should be condoned as of course, there was no need for a separate provision in sub-section (3), but the Legislature could have very specifically "one hundred and five days" instead of "one hundred and twenty days" in the proviso to sub-section (2). It is, therefore, dear that sub-section (3) of section 58 confers a discretion on the Regional Transport Authority to entertain an application for renewal when it is made beyond the time limit specified in the proviso to sub-section (2), but not more than 15 days late and the discretion is to be exercised in favour of entertaining the application for renewal when it is shown that there was sufficient cause for not making it in time. Now the question which arises is: does section 5 of the Limitation Act, 1963 apply so as to empower the Regional Transport Authority, for sufficient cause, to entertain an application for renewal even where it is delayed by more than 15 days? Section 29, sub-section (2) of the Limitation Act, 1963 makes section 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. The only provision of the Act sought to be pressed into service for this purpose was sub-section (3). Does sub-section (3) expressly exclude further extension of time under section 5? If it does, then section 5 cannot be availed of by the appellant for condonation of the delay. Sub-section (3) in so many terms says that the Regional Transport Authority may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. This clearly means that if the application

for renewal is beyond time by more than 15 days, the Regional Transport Authority shall not be entitled to entertain it or in other words, it shall have no power to condone the delay. There is thus an express provision in sub-section (3) that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of section 5 in cases where an application for renewal is delayed by more than 15 days. This provision may seem harsh, but it has been deliberately and advisedly made because the question of renewal of a permit must obviously be decided before the expiration of the period of the permit and in view of the elaborate procedure set out in section 57 for dealing with an application for renewal, a certain minimum period before the expira-

tion of the period of the permit must be provided within which this procedure can be completed so that the, renewal can, if at all, be granted well in time before the permit expires. If an application for renewal could be entertained even if made at any stage, it would dislocate the procedural machinery set out in section 57 and that is why the Legislature prescribed in sub-section (3) of section 58 that the delay in making an application for renewal may be condoned by the Regional Transport Authority only if it is of not more than 15 days. Here, the application made by the appellant for renewal of his permit was admittedly late by more than 15 days and hence the delay was not condonable and the Regional Transport Authority was right in rejecting the application for renewal as time barred.

We must, in the circumstances, dismiss the appeal, but in view of the peculiar facts of the case we make no order as to costs.

P.B.R.

Appeal dismissed.