

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1562 OF 2018

(arising out of SLP(C) No.35738 of 2017)

STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY & ANR.

... APPELLANTS

VERSUS

MAHENDRA GUPTA & ORS.

... RESPONDENTS

J U D G M E N T**ASHOK BHUSHAN, J.**

The State of Madhya Pradesh is in appeal against the judgment of Division Bench of the High Court of Madhya Pradesh, Bench at Gwalior dated 22.03.2017 by which judgment writ appeal filed by the State questioning the judgment of the learned Single Judge dated 17.03.2015 has been dismissed.

2. The parties shall be described as referred to in the writ petition. The facts giving rise to this appeal are:

The writ petitioners have permanent permit for two

routes, one Gwalior to Bhandar and second Gwalior to Datia. Respondent No.3 has also the permanent permit for the route Gwalior to Jhansi. Respondent No.3 preferred an application for modification of time schedule for movement of his vehicle. The application of Respondent No.3 came for hearing before the State Transport Authority on 16.10.2014. On the date of hearing both counsel for the applicant as well as counsel for the objectors were heard. The State Transport Authority allowed the modification and decided to change the time schedule as prayed by the applicant in the public interest. The order was issued by the State Transport Authority on 15.12.2014. Aggrieved by the order dated 15.12.2014, Writ Petition No.883 of 2015 was filed by the two petitioners who were objectors before the State Transport Authority. In the writ petition various grounds were taken questioning the application filed by the applicant-Pawan Arora. One of the grounds taken before the learned Single Judge was that although the State Transport Authority heard the matter on 16.10.2014 consisted of Chairperson and two members, however, the order was delivered with the signatures of Chairperson and only one member, since one member, Shri Sanjay Choudhary was transferred in the meanwhile, hence, the order dated 15.12.2014 is illegal. The learned Single Judge accepted the

contention of the writ petitioners and allowed the writ petition by setting aside the order dated 15.12.2014.

3. The State of Madhya Pradesh filed writ appeal challenging the judgment of the learned Single Judge. The State contended before the Division Bench of the High Court that there was no illegality in the order issued by the Chairperson and one member, although, it was heard by three members when the meeting took place on 16.10.2014. The Division Bench dismissed the appeal upholding the view of the learned Single Judge.

4. Learned counsel for the appellant in support of the appeal contends that under the Madhya Pradesh Motor Vehicles Rules, 1994 quorum of the meeting of the State Transport Authority is three - Chairman plus two members and quorum was complete when the meeting was held on 16.10.2014, the decision delivered by the majority of the members is in no manner illegal. It is submitted that after hearing, one member was transferred and was not available to be part of the order issued on 15.12.2014. It is submitted that even it is assumed that one member was not agreeing with the decision of two other members, although, there is no such pleading or material on the record, the decision taken by the majority of the

members was fully valid and there was no infirmity in the order dated 15.12.2014. It is submitted that the learned Single Judge as well as Division Bench committed error in taking the view that the order dated 15.12.2014 was an illegal order.

5. Learned counsel for the respondents supported the order of the High Court and contends that when one member who heard the matter on 16.10.2014 was not available, no decision could have been taken by the State Transport Authority. He submits that the matter was heard by three members, hence decision could have been issued only by three members and the views taken by the learned Single Judge and Division Bench are in accordance with law.

6. We have considered the submissions of the learned counsel for the parties and perused the records.

7. The Motor Vehicles Act, 1988 provides for constitution of a State Transport Authority to exercise and discharge the powers and functions as specified in sub-section (3) of Section 68. Section 68(1) and 68(3) are quoted below:

"68.Transport Authorities.-(1) *The State Government shall, by notification in the Official Gazette, constitute for the State a*

State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority; the powers and functions conferred by or under this Chapter on such Authorities:

Provided that in the Union territories, the Administrator may abstain from constituting any Regional Transport Authority.

(2)

(3) The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued under section 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge throughout the State the following powers and functions, namely :-

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State ;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities;

[(ca) Government to formulate routes for playing stage carriages;] and

(d) to discharge such other functions as may be prescribed."

8. The Rules have been framed by the State of Madhya Pradesh, namely, the Madhya Pradesh Motor Vehicles Rules, 1994. Chapter V of the Rules contains heading "**Control of Transport Vehicles**". Rule 63 provides for State Transport Authority. Rule 63(4) to (7) are quoted as below:

"63. State Transport Authority.-

(4) *The State Transport Authority shall meet at such time and at such place as the Chairman may appoint.*

(5) *Not less than three days' notice shall be given to a member of the meeting of the State Transport Authority.*

(6) *The quorum to constitute a meeting of the State Transport Authority shall be the Chairman or the nominated Chairman under the sub-rule (7) and two other members (whether official or non-official). If within half an hour from the time appointed for the meeting a quorum is not completed, the meeting shall be adjourned to such day and at such time and place as the Chairman or the acting Chairman nominated under sub-rule (7) may appoint and no quorum is necessary for holding the adjourned meeting.*

(7) *The Chairman, if unable to attend the meeting, shall nominate a member to act as Chairman at the meeting."*

9. Rule 64 provides for Regional Transport Authority and Rule 65 is for Conduct of Business of Transport Authorities. Rule 65(2) to 65(4) are as follows:

65. Conduct of Business of Transport Authorities. -

(2) *The State or Regional Transport Authority, as the case may be, may decide any matter of urgent nature without holding a meeting by the majority of votes of members by recorded in writing and send to the Secretary (hereinafter referred to as the procedure by circulation).*

(3) *In the event of procedure by circulation being followed, the Secretary shall send to each member of the Transport Authority such particulars of the matter as may be reasonably necessary in order to enable the member to arrive at a decision and shall specify the date by which the votes of members are to be received in the office of the Transport Authority. Upon receipt of the votes of members as aforesaid, the Secretary shall lay the papers before the Chairman, who shall record the decision by endorsement on the form of application or other document, as the case may be, according to the votes received and the vote or votes cast by the Chairman. The record of the votes cast shall not be available for inspection by any person save by a member of the Transport Authority at a regularly constituted meeting of the Transport Authority. No decision shall be made upon procedure by circulation, if before the date by which the votes of members are required to reach the office of the Transport Authority, not less than one-third of the members of the Transport Authority have given notice in writing to the Secretary demanding that the matter be referred to a meeting of the Transport Authority.*

(4) *The number of votes, excluding the Chairman's second or casting vote, necessary for a decision to be taken upon procedure by circulation shall not be less than the members necessary to constitute a quorum.*

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10. The facts of the case, as noted above, reveal that State Transport Authority convened the meeting of the Authority by issuing the Agenda for 16.10.2014. In addition to Chairperson, two members - Shri Sanjay Chaudhary, Transport Commissioner and Shri Rajiv Sharma, Chief Engineer, Public Works Department were present in the meeting. The applicant as well as the counsel for the objectors were heard on 16.10.2014. The decision of the Committee was issued on 15.12.2014 which was signed by the Chairperson and only one member, Shri Rajiv Sharma, since, after the date of the hearing and before the issuance of the order one member, Shri Sanjay Chaudhary was transferred. The copy of the order dated 15.12.2014 has been brought on record as Annexure P-1 which clearly mentions the date of hearing, i.e., 16.10.2014. It is useful to extract only the relevant parts of the order for the present case:

*"THE STATE TRANSPORT AUTHORITY,
MADHYA PRADESH MOTIMAHAL, GWALIOR*

*Agenda Serial No.71
Case No.2159/2014 Hearing on 16.10.2014*

Before:

1. *Pramod Agrawal* *Chairperson*
Principal Secretary,
Madhya Pradesh Government
Transport Department, Bhopal

2. Sanjay Chaudhary Member
Transport Commissioner
Madhya Pradesh, Gwalior

3. Rajiv Sharma Member
Chief Engineer
Public Works Department,
Gwalior

... ..
... ..

Listing the aforesaid application submitted by the applicant for hearing in the meeting of the State Transport Authority dated 16.10.2014 the same was included in the agenda and published on the Departmental Website and the notice board of the Office and all regional/ additional regional / District Transport Office. The objections of the aforesaid Drivers were obtained until the aforesaid fixed date.

The case was presented in the meeting dated 16.10.2014 of the State Transport Authority. On the day of hearing, on behalf of the parties their appointed counsels appeared, who were heard.

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... ..

Note: Since one member Shri Sanjay Chaudhary of the Authority was transferred after hearing, the aforesaid order is being passed by the Chairperson and one member Chief Engineer of the Authority.

Sd/-
Member
State Transport Authority
Madhya Pradesh"

sd/-
Member
State Transport Authority

11. The only issue which needs to be considered in this

appeal is as to whether, when in the meeting dated 16.10.2014 the Chairperson and two members had heard the application for the change of the time schedule, the order could have been passed allowing the application by the two members (Chairperson and one member) alone, since the order was signed only by the Chairperson and one member, on 15.12.2014.

12. The statutory provisions of the Motor Vehicles Act, 1988 as well as the Madhya Pradesh Motor Vehicles Rules, 1994 indicate that the State Transport Authority is a multi-member body constituted by the State Government under Section 68(1). The State Transport Authority is a multi-member body which transacts business in meeting except in case of emergency. Meeting is to be convened at such time and at such place as the Chairman may appoint. Three days' notice is required to be given to the members and quorum of the meeting is the Chairman or the nominated Chairman and two other members, i.e., quorum is three. In the present case, there is no dispute that when the meeting was held on 16.10.2014 quorum was complete since Chairperson and two members were present which fact is clearly noticed in the order dated 15.12.2014 as extracted above. The three members who were present in the meeting heard the applicant and objectors. But the order could be issued only on 15.12.2014, by which one of the members had been transferred

and was not available to sign the order. One more important fact which is to be noticed is that learned Single Judge had categorically noted that the above issue was raised only during the hearing before the learned Single Judge and there was no pleading in the writ petition. In paragraph 16 of the judgment, learned Single Judge himself has noticed the following:

"16. The last question raised by the parties is about the competency of the STA in passing the impugned order. Although there is no pleading in this regard in this petition. However, learned senior counsel, Shri K.N. Gupta has not disputed the fact that the matter was heard by three members and order is passed by two members....."

13. The multi-member body transacts its business after debate, consultation and discussion. The view of multi-member body is expressed unanimously or by votes. For various kind of decisions by multi-member body special majorities are also provided for acceptance of the decision. Normally, all decisions of a multi-member body are expressed by opinion of majority of the members present except where the special majorities are provided in the statute itself.

14. **Shackleton** on the "Law and Practice of Meetings", Eleventh Edition while discussing the majority has stated

following in paragraph 7-30. Relevant parts of paragraphs 7-30 and 7-31 are quoted below:

" 4 MAJORITY

Definition

7-30 Majority is a term signifying the greater number. In legislative and deliberative assemblies, it is usual to decide questions by a majority of those present and voting. This is sometimes expressed as a "simple" majority, which means that a motion is carried by the mere fact that more votes are cast for than against, as distinct from a "special" majority where the size of the majority is critical.

The principle has long been established that the will of a corporation or body can only be expressed by the whole or a majority of its members, and the act of a majority is regarded as the act of the whole.

A majority vote binds the minority

7-31 Unless there is some provision to the contrary in the instrument by which a corporation is formed, the resolution of the majority, upon any question, is binding on the majority and the corporation, but the rules must be followed."

15. Although Rules, 1994 do not expressly provide that decision of the State Transport Authority shall be taken in accordance with the opinions of the majority but there being no special majority provided for decision to be taken in the meeting of the State Transport Authority, normal, rule that decision by majority of the members present has to be

followed. In the present case when three members were present and quorum was complete, the decision taken by majority, i.e., opinion of two members shall form the valid decision of the State Transport Authority.

16. Rule 65 sub-section (2) of the Rules dealing with the conduct of business of Transport Authorities provides:

"65(2) The State or Regional Transport Authority, as the case may be, may decide any matter of urgent nature without holding a meeting by the majority of votes of members by recorded in writing and send to the Secretary (hereinafter referred to as the procedure by circulation)."

17. Thus, the concept of taking decision by majority of votes of the members is very much present in the scheme of the Rules. Although, where a decision is to be taken by the circulation by votes a special majority is provided in Rule 65(4) but present being not a case of decision by circulation, simple majority by members present was sufficient for making a binding decision by the State Transport Authority.

18. In paragraph 18.1 of the judgment, the Division Bench observed that:

"18.1. In the instant case there is nothing on record to indicate that the

STA with complete quorum heard the matter and before one of the members Shri Sanjay Chaudhry was transferred out any draft order was got approved from the said transferred member."

19. The above observation was made by the Division Bench of the High Court while distinguishing the judgment of this Court in **Ramaswamy Nadar v. The State of Madras, AIR 1958 SC 56**. Before we refer to the decision of this Court in **Ramaswamy Nadar**, it is clear that observation of the Division Bench of the High Court that there is nothing on record to indicate that the quorum of State Transport Authority was complete, is factually wrong. The order of the State Transport Authority dated 15.12.2014 has been brought on record as Annexure P-1 and the relevant portion of the order has been extracted above by us which clearly mentions that the hearing took place on 16.10.2014 where the Chairperson and two members were present the quorum being three as per Rule 68(1) was complete. The hearing took place by three members which is noted in the order itself, as extracted above. Thus, observation of the Division Bench of the High Court that quorum was not complete and matter was not heard by three members is not correct.

20. Now, we come to the judgment of this Court in **Ramaswamy Nadar (supra)**. In the above case the matter was heard by a

Bench of three Judges of this Court who after hearing had announced the decision of acquittal. Draft judgment was also approved by one of the Judges who had, however, died before judgment could be delivered. Note appended in the judgment was to the following effect:

" **NOTE**

SINHA, J.

When hearing of this appeal was finished last week by a Bench consisting of three of us, B.P. Sinha, P. Govinda Menon and J.L. Kapur, JJ., we announced that we had come to the conclusion that the appellant should be acquitted. We also indicated that the judgment will be delivered the week following. The draft of the judgment was sent to late Mr. Justice Menon last week and he had approved of it. What we are now delivering are the reasons of the Judges who constituted the Bench; but it will be signed by two only of us on account of the unexpected death of Mr. Justice. Menon.

K.S.B.

Appeal allowed."

21. In the above case judgment was pronounced with the concurrence of the three judges. When the hearing took place opinion of all the three Judges was expressed but judgment could be signed by two Judges since one of the Judges died. Although, the facts of the above case was little different i.e. there was material to indicate that the third Judge who could not sign had also concurred with the opinion, but in the

present case there is no pleading of third member whether agreeing or not agreeing with the decision. For the present case, we proceed on the premise that the third member did not agree with the decision. For the decisions of this Court, Article 145 sub-clause (5) of the Constitution of India provides that judge of this Court can deliver a judgment with the concurrence of a majority of the Judges present at the hearing of the case.

22. The present is a case where decision by a multi-member body is to be taken in the meeting of the Committee as per the statutory Rules. There being no such majority provided for taking a decision, the decision by majority has to be accepted as the opinion of the State Transport Authority.

23. Two more cases, which were relied by the appellant and noticed by the High Court need to be noted. The Privy Council judgment in **Gokal Chand- Jagan Nath Vs. Nand Ram Das- Atma Ram, AIR (1938) P.C. 292**, is relevant for the present case. In the appeal before the Privy Council, judgment of the High Court was assailed on the ground that the two Hon'ble Judges of the High Court heard the matter, although, both judges concurred with the judgment, but one Judge went on leave

before signing the judgment, which was signed by only one Judge. The Privy Council repelled the contention and held that signing by one of the Judges at best was only irregularity, not affecting the merits of the case. Following was laid down in Paragraphs 6, 7 and 8:-

"6. A further point was raised by the appellants. They urged that the judgment of the High Court appealed from was not a valid judgment because it failed to comply with Order XLI, Rule 31, of the Code of Civil Procedure. The relevant facts on this issue are that the hearing in the High Court was before two Judges, Harrison and Agha Haider JJ., and was actually delivered by the former Judge, the latter agreeing. The judgment was delivered on February 22, 1933. But Harrison J. went on leave before signing the judgment, which was signed by Agha Haider J., the Deputy Registrar appending a note that Harrison J. had gone on leave before signing the judgment he delivered.

7. Order XLI, Rule 31 requires that the judgment of the appellate Court shall be in writing and shall state various matters, and "shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

8. The Rule does not say that if its requirements are not complied with the judgment shall be a nullity. So startling a result would need clear and precise words. Indeed the Rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what is reasonable. The Rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the

judgment was. It is a rule which Judges are required to comply with for that object. No doubt in practice Judges do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect. The case of a Judge who has gone on leave before signing the judgment may call for more comment, but even so the convenience of the Court and the interest of litigants must prevail. The defect is merely an irregularity. But in truth the difficulty is disposed of by Sections 99 and 108 of the Civil Procedure Code. Section 99 provides that no decree shall be reversed or substantially varied nor shall any case be remanded, in appeal on account of any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court. That Section conies in the part dealing with appeals from original decrees. But Section 108 applies the same provision to appeals from appellate decrees and it is always in the discretion of the Board to apply the principle on appeal to His Majesty in Council. In their Lordships' judgment, the defect here was an irregularity not affecting the merits of the case or the jurisdiction of the Court, and is no ground for setting aside the decree. "

24. Another judgment, which was cited by the appellant was **A. Shanta Rao Vs. State Transport Appellate Tribunal, Hyderabad & Ors., AIR 1985 A.P. 256.** In the above case, State Transport Appellate Tribunal consisting of Chairman and two members heard the matter. However, the order was issued only with the signature of Chairman. The order was attacked on the ground

that the other two members having not signed the order, the order is illegal. Repelling the contention following was stated in Paragraph 9:-

"9. On the first question, I am of the view that once the minutes of the State Transport Authority are found to be signed by all the members including the Chairman, the mere fact that the final order is communicated under the signature of the Chairman alone does not amount to any illegality. The Court has to see the substance of the matter and not the mere form, and if it is clear that all the members of the Tribunal have applied their mind to the facts of the case and arrived at a conclusion, it does not matter if the communication is made under the signature of the Chairman. "

25. Although, in above two cases, there was concurrence of all the members of Court/Tribunal but all had not signed the order. The present is a case where Chairperson and two members heard the application in meeting dated 16.10.2014 but order was subsequently pronounced on 15.12.2014 and signed by only Chairperson and one member. The third member having been transferred in the meanwhile. As noticed above, there is no pleading in the writ petition as to whether the third member, who was transferred had agreed with the proposed order or did not agree with the decision, which was to be delivered by the State Transport Authority. Had third member agreed, there cannot be any debate in this matter, the issues being covered

by judgment of this Court in *Ramaswamy Nadar (supra)* and judgment of the Privy Council in *Gokal Chand -Jagan Nath (supra)*. But there being neither any pleading nor any material to come to the conclusion that the third member has agreed with the opinion, we have proceeded to examine the present case as if, the third member did not agree with the order proposed. We have already noticed the reason for coming to the conclusion that the order issued by the State Transport Authority, signed by the Chairperson and one member is a valid order having been issued with the majority opinion of two out of three, who heard the application on 16.10.2014. Thus, in any view of the matter, no illegality can be attached with the order dated 15.12.2014, which was signed by the Chairperson and one member.

26. In view of the foregoing discussion, we are of the opinion that decision dated 15.12.2014 issued with the signatures of Chairperson and one member was a valid decision in spite of the fact that one of the members who was present in the hearing when the meeting took place on 16.10.2014 and had been transferred in the meanwhile did not sign the order. The decision of the State Transport Authority dated 15.12.2014 was fully in accordance with the statutory scheme of the Rules, 1994 and both the learned Single Judge and Division

Bench erred in holding the decision as invalid. We, thus, are of the view that judgments of learned Single Judge and Division Bench do not express the correct view of the law.

27. In the result, the appeal is allowed and judgments of the High Court are set aside.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

**NEW DELHI,
FEBRUARY 08, 2018.**