GURCHARAN SINGH BALDEV SINGH

v.

YASHWANT SINGH AND ORS.

NOVEMBER 15,1991

[M.H. KANIA AND R.M. SAHAI, JJ.]

Motor Vehicles Act,1939: Section 58(2)—Proviso.

Stage Carrier—Permit—Application for renewal of permit under 1939 Act—Enforcement of Motor Vehicles Act,1988 during pendency of application—Effect of—Held preference created in favour of a permit holder for consideration and grant of permit is a right enforceable in law—By virtue of Section 6(c) of the General Clauses Act, 1897 such a right is saved by section 217(4) of the 1988 Act—Absence of preference clause in section 81 of the 1988 Act does not destroy the claim for renewal set in motion under the 1939 Act.

General Clauses Act,1897: Section 6(c)
Statute—Repeal—Effect of—Object of section 6(c) explained.

The appellant, a Stage Carriage Operator, filed an application for renewal of his permit under section 58(2) of the Motor Vehicles Act, 1939 and his application was notified. However, before the renewal could be granted the Motor Vehicles Act, 1988 came into force. The respondent had also applied for a fresh permit on the same route on which the appellant was operating his carriage. The Regional Transport Authority allowed renewal of the appellant's permit and rejected the respondent's application. On respondent's appeal the State Transport Appellate Tribunal held that no appeal against renewal was maintainable. The respondent filed a writ petition and the High Court allowed it by holding that right to seek renewal of a permit was not a vested right but was merely an incohate right which ripened into a right only on being granted; with the coming into force of 1988 Act, the 1939 Act was repealed as a result of which the appellant's application for renewal ceased to exist and consequently the Regional Transport Authority was not empowered to grant a renewal of permit. Against the decision of the High Court an appeal was filed in this Court.

Allowing the appeal and setting aside the order of the High Court, this Court,

A **HELD: 1. The High Court committed a manifest error of law in rejecting the appellant's application of renewal on the ground that the new Act had come into force. [310-H]**

1.1 Although section 58(2) of the Motor Vehicles Act, 1939 uses the word 'may' but read with proviso it creates a preference in
B **favour of a permit holder to claim renewal if other conditions were equal. A holder of a permit thus stands on a better footing. The preference created by sub-section (2) of Section 58 for consideration of the permit and its grant cannot be said to be a mere incohate right, or a right which does not exist in law. It may not be a vested right or a fundamental right but it certainly is civil right which**
C **could be enforced in a court of law and any authority acting in contravention of it can be forced to act in accordance with it. [310 B-C]**

1.2 The right accrued to appellant as he had already applied for renewal and his application had been notified. The legal ma-
D **chinery was set in motion by him. He therefore had a right to get his application for renewal processed and considered in accordance with 1939 Act. It would be too technical to say that no right had accrued to him under 1939 Act. By virtue of Section 6(c) of the General Clauses Act the right of the appellant to get his application considered and decided in accordance with law was saved by sub-**
E **section (4) of Section 217 of Motor Vehicles Act, 1988. [310 D-E]**

The Brihan Maharashtra Sugar Syndicate Ltd. **v.** *Janardan Ramchandra Kulkarni & Ors,* **[1960] 3 S.C.R.85, followed.**

Cheran Transport Co. Ltd. **v.** *Kanan Lorry Service & Anr,* **[1977]**
F **2 S.C.R. 389;** *D.Nataraja Mudaliar* **v.** *State Transport Authority, Madras* **[1979] 1 S.C.R. 522, referred to.**

2. The objective of Section 6(c) of the General Clauses Act is to ensure protection of any right or privilage acquired under the repealed Act. The only exception to it is legislative intention to the
G **contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability. [309-E]**

3. The new Act is a legislation on the same subject and Section 81 of the said Act specifically provides for renewal of permits. The scheme of renewal having been continued even under new Act.
H **mere absence of preference clause in Section 81 of the new Act**

could not be construed as destroying the claim for renewal set in motion under the old Act. [311 B-C] A

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2568 of 1991.

From the Judgment and Order dated 10.5.1991 of the Madhya Pradesh High Court in M.P. No. 2727 of 1990. B

S.K.Mehta, R.D. Sharma, Dhruv Mehta, Arvind Verma and Aman Vachher for the Appellants.

Rameshwar Nath and Ravinder Nath (for Rajinder Narain & Co.) for the Respondents. C

The Judgment of the Court was delivered by

R.M. SAHAI, J. The only legal question that arises for consideration, in this appeal directed against judgment of the Madhya Pradesh High Court is, if an application filed by an operator for renewal of his permit under Section 58 of Motor Vehicles Act, 1939, became extinct and was rendered non-existent, in eye of law, after coming into force of Motor Vehicles Act, 1988 or it being a right within meaning of clause (c) of Section (6) of General Clauses Act survived and continued despite repeal of 1939 Act. D E

The appellant, holder of a permit, for operating stage carrier on route Eklera-Narsinghgarh in District Rajgarh, applied for its renewal, as required, on 18th October, 1988, 120 days before the date of its expiry on 18th February 1989 under Section 58(2) of the 1939 Act. The application was published on 23rd June, 1989, under Section 57(3) of the Act. But before renewal could be granted 1988 Act came into force on 1st July 1989. The respondent who, too, had applied on 30th December 1988 for a fresh permit on the same route and on the same time schedule, withdrew his application and filed a fresh application on 18th May, 1990. The Regional Transport Authority after considering both the applications, allowed renewal of the appellant's permit from 18th February, 1989 to 18th February, 1994. The application of respondent was rejected as that could be considered only if the appellant's existing permit was cancelled, but since the appellant was operating on the route regularly and paying taxes etc. there was no reason to refuse renewal. In an appeal to the State Transport Appellate Tribunal held that no appeal against renewal was maintainable against which the respondent filed writ petition which was F G H

A allowed and it was held that right to seek renewal of permit under a Motor Vehicle Act was not a vested right. It was merely an incohate right with ripens into a right only on being granted. But before this could happen the 1939 Act was repealed. Effect of it was that the application ceased to exist. Thus there was nothing pending which could empower the Regional Transport Authority to grant renewal.

B

Is this correct? Could the application for renewal be dismissed, only, because of enforcement of 1988 Act or the right of the appellant to get his application under the earlier Act decided in accordance with law subsisted and survived under the new Act as well. The answer shall depend on construction of Section 217, the repealing and saving provision, in 1988 C Act read with Section 6 of the General Clauses Act. Sub-Section (1) of Section 217 of 1988 Act repeals 1939 Act. But Sub-Section (2) saves certain notifications, rules, regulations, Acts etc. Clause (b) of sub-section (2) reads as under:-

> 217(1) Notwithstanding the repeal by sub-section (1) of the D repealed enactments, ---
>
> "(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been E passed;"

On strength of this it was urged on behalf of the respondents that the only saving was in respect of unexpired period of a permit. However what is relevant is sub-section (4) of Section 217 which provides as follows:-

> F "S.217(4) - The mention of particular matter in this Section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals."

How such a provision should be construed was explained by this Court in *The Brihan Maharashtra Sugar Syndicate Ltd.* v. *Janardan Ramchandra* G *Kulkarni & Others,* [1960] 3 SCR 85. It was held that such a provision was not by way of abundant caution and any proceedings pending under repealed Act could be continued in view of Section (6) of General Clauses Act. Section 658 of Companies Act 1956 which was a repealing and saving provision which was considered by the Court read as under:-

> H "The mention of particular matters in ss. 645 to 657 or in any other provision of this Act shall not prejudice the general ap-

plication of s(6) of the General Clauses Act, 1897 (X of 1897), with respect to the effect of repeals." A

It should be noticed that phraseology of Section 658 of the Companies Act and sub-section (4) of Section 217 of the Motor Vehicles Act 1988 is identical. Therefore the reasoning given in the decision squarely applies for construction of sub-section (4) of Section 217. Consequently it could not be, successfully, argued that sub-section (2) of Section 217 is exhaustive and sub-section (4) should be read by way of abundant caution and applied only to the field which is already covered by sub-section (2). Section (6) of the General Clauses Act may now be extracted: B

"S.6. - Effect of repeal - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:- C

(a) .....

(b) ..... D

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;

(d) .....

(e) ....." E

The objective of the provision is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability. The controversy thus narrows down to if the renewal of a permit under 1939 Act was a right. In other words whether F any right accrued to the appellant under the repealed Act which could be said to continue unaffected by the repeal of the Act. A permit could be renewed under Section 58(2) of 1939 Act which reads as under:-

"S.58(2). A permit may be renewed on an application made and disposed of as if it were an application for a permit: G

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 H

A (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."

B

Although the Section uses the word 'may' but read with proviso it creates a preference in favour of a permit holder to claim renewal if other conditions were equal. A holder of a permit thus stands on a better footing. The preference created by sub-section (2) of Section 58 for consideration of the permit and its grant cannot be said to be a mere incohate right, C or a right which does not exist in law. It may not be a vested right or a fundamental right but it certainly is civil right which could be enforced in a court of law and any authority acting in contravention of it can be forced to act in accordance with it. For instance, if a Regional Transport Authority under the old Act refused renewal even though the person applying for renewal was in all respects similar to other new applicants then it could be D corrected either by the tribunal or by way of writ petition under Article 226. Therefore, it is a right which is enforceable in law. This right accrued to appellant as he had already applied for renewal and his application had been notified. The legal machinery was set in motion by him. He therefore had a right to get his application for renewal processed and considered in accordance with 1939 Act. It would be too artificial to say that it E was not a right or it had not accrued under 1939 Act. Therefore, in our opinion, by virtue of Section 6(c) of the General Clauses Act the right of the appellant to get his application considered and decided in accordance with law was saved by sub-section (4) of Section 217 of Motor Vehicles Act.

F In *Cheran Transport Co. Ltd.* v. *Kanan Lorry Service & Anr,* [1977]2 SCR 389 at 390 it was held that the setting of a legal process in accordance with law for renewal of permit was itself a right. This principle was laid down by this Court even when a scheme under Section 68(f) had been published which debarred grant or renewal of any permit yet the court was of the opinion that since there was undue delay and the applicant had done G all that he could do in law he could not be deprived of his right of consideration of his application for renewal so long the scheme was not published. This was again approved in *D. Nataraja Mudaliar* v. *State Transport Authority, Madras,* [1979]1 SCR 552. The Court pointed out that a permit holder had an ordinary right of renewal. It is thus obvious that the High Court committed a manifest error of law in throwing out the H application of renewal as the new Act had come into force.

Does the new Act indicate any intention to the contrary? No express provision debarring renewal of permits, applied for, under old Act could be pointed out. Reliance was placed on absence of preferential provision under Section 81 of the Act which provides for renewal of permits. It was urged that there was a definite departure from the old Act therefore any right under the old Act, could not be continued to under the new Act. The submission does not appear to be sound. The new Act is a legislation on the same subject. Section 81 specifically provides for renewal. It cuts across the argument of intention to the contrary. Rather it is kept alive by Sub-section (4) of Section 217. The scheme of renewal having been continued even under new Act mere absence of preference clause in Section 81 of the new Act could not be construed as destroying the claim for renewal set in motion under the old Act.

In the result this appeal succeeds and is allowed. The order passed by the High Court is set aside. Parties shall bear their own costs.

T.N.A. Appeal allowed.