

(1961) 08 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 285, 286, 336 and 346 of 1961

Abdul Gafoor and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-08-1961

Acts Referred:

Motor Vehicles Act, 1939 — Section 42, 43, 43(1), 57, 63

Citation : AIR 1962 Raj 174 : (1961) CriLJ 426

Hon'ble Judges : Sarjoo Prosad, C.J;P.N. Shinghal, J

Bench : Division Bench

Advocate : J.P. Jain, P.C. Bhandari and M.M. Vyas, for the Appellant; Kan Singh, Government Advocate and D.P. Gupta, for the Respondent

Judgement

Sarjoo Prosad, C.J.—These four writ petitions can be convenient-by disposed of together because of identical questions which arise for consideration in them. The petitioners in writ applications No. 285 and 336 of 1961 are operators of stage carriages under permits granted to them on the Jaipur-Sikar route, whereas the petitioners in writ petitions Nos. 286 and 346 of 1961 are operators of stage carriages on the Bikaner-Salasar route. The Jaipur-Sikar route covers a distance of 73 miles and the Bikaner-Salasar route covers a distance of 130 miles and it is not disputed that both these routes are over-lapped by the Juipur-B kaner route which covers a distance of 235 miles.

The complaint of these petitioners is that the non-petitioners had been plying their buses on the Al.war-Jaipur route, which route has since been nationalised by a scheme for nationalisation of road-ways prepared for the purpose; as a result of nationalisation the non-petitioners have been in the alternative inducted on the Jaipur-Bikaner route by the Regional Transport Authority in lieu of payment of compensation to them, without giving any opportunity to these petitioners, who had their proprietary interest, on the routes aforesaid, to be heard in the matter. As such, it is contended, the Regional Transport Authority has acted in violation of the provisions of the Motor Vehicles Act and the rules

framed thereunder and also ignored the principles of natural justice.

2. The case of the petitioners is that in August 1960 the Jaipur-Bikaner route was proposed to be opened by the Regional Transport Authority, Jaipur, and applications were invited for the grant of permits on this route. A good number of persons including the petitioners applied for permits on the said route in response to the aforesaid notification, but the Regional Transport Authority neither published the applications in question nor took any steps to decide about the fate of those applications.

Eventually the Jaipur-Alwar route was nationalised and a scheme for nationalisation was finalised in respect of that route. The Regional Transport Authority by its resolution dated 31st December, 1960, cancelled the permits of the operators on the Jaipur-Alwar route, who are respondents there (31 in number), though the term of their permits had not expired. Those operators were unsuccessful in having the orders of the Regional Transport Authority set aside. Later, it appears that the Secretary, Regional Transport Authority, Jaipur, on 27th May, 1961 made an endorsement on the cancelled permits of these respondents, operating on the erstwhile Jaipur-Alwar route, to the following effect;

"The alternative route of Jaipur-Bikaner is granted vide R. T. A. resolution No. 240 dated 19-4-1961. u/s 68G (2) read with Section 68F of the Motor Vehicles Act to compensate for cancellation of those existing permits".

In the said permits, the substituted route shown was as follows:

"Jaipur to Bikaner via Chomu-Sikar-Salasar Sujargarh-Nokha."

The effect of this endorsement was that the operators in question were diverted from the Jaipur-Alwar route to operate on the Jaipur-Bikaner route in accordance with the route indicated in item No. 7 substituted in the permits of those operators. It also appears that the Regional Transport Officer, Jaipur wrote to the Secretary, Regional Transport Authority, Bikaner requesting that authority to counter-sign the permits thus granted to these respondent-operators and the said Regional Transport Authority, Bikaner counter-signed the same after an expiry of nearly four months. Against the permits so granted to the respondent-operators, writ petitions Nos. 285 and 286 of 1961 were filed and an interim rule was issued by this Court restraining the respondents from operating on the route on the strength of the above permits.

3. When the matter came to be finally heard, the respondent-operators placed reliance upon a subsequent resolution of the Regional Transport Authority, Jaipur, passed on 19th June, 1961. The respondents contended on the basis of this resolution that whatever illegality may have been attached to the endorsement made earlier by the Secretary, Regional Transport Authority, that was cured by this formal resolution of the Regional Transport Authority itself and by virtue of the resolution it was open to the respondents to operate on the Jaipur-Bikaner

route. The petitioners, therefore, filed the other writ petitions later challenging the resolution dated 19th June, 1961. All these actions of the Regional Transport Authority, Jaipur, are assailed by the petitioners as being illegal and in violation of the principles, of natural justice.

The petitioners submit that in order to authorise these respondent-operators to ply their buses on the Jaipur-Bikaner route, in lieu of compensation payable to them for cancellation of their permits before the expiry of their period, it was necessary that this should have formed part of the nationalisation scheme itself. In that case the petitioners, who were affected by the induction of these respondents on a route which overlapped the routes of these petitioners, would have been entitled to raise their objections and to be heard in the matter before the scheme could be finally passed. If after a hearing, the authorities were of opinion that the respondent-operators could be provided on the Jaipur-Bikaner route, the position would have been different. But it was not open to the Regional Transport Authority, Jaipur and much less to the Secretary of that Authority to make any endorsement on the cancelled permits of the respondent-operators, thereby giving them a right to ply on the Jaipur-Bikaner route, without hearing these petitioners, nor was it possible for the Regional Transport Authority to ratify the action of the Secretary by a subsequent resolution.

It is further contended that even assuming that the matter was not provided for in the scheme itself, the petitioners should have been, in any case, given notice of the intention of the Authority to provide for the respondent-operators on the Jaipur-Bikaner route, because it was in the nature of fresh permits being given to certain operators to ply on that route, to the detriment of these petitioners; under the law this could not be done unless and until the matter had been notified, applications entertained and objections invited from these petitioners who were likely to be affected by the grant of such permits.

It is also contended that a large part of the route lay beyond the territorial jurisdiction of the Regional Transport Authority, Jaipur, and, therefore, the competent authority to deal with the matter under the law was the Regional Transport Authority, Bikaner, who could have regularly granted these permits to the respondent-operators and got the permits counter-signed by the Regional Transport Authority, Jaipur, in order to validate them. Reliance is placed in this connection on Section 63 read with the proviso to Section 45 of the Motor Vehicles Act.

4. On behalf of the State and the respondent-operators, the applications have been vehemently opposed. Their contention is that u/s 68-G (2) of the Act the Regional Transport Authority has to perform merely an administrative function. Instead of making payment of compensation in money, all that the Authority was doing was to provide, in lieu thereof, an alternative route to the respondent-operators, whose Permits on the Jaipur-Alwar route had been cancelled on account of the scheme for nationalisation. It was a mere case of offer and acceptance between the Regional Transport Authority on the one hand and the

displaced bus-operators on the other, with which any third party had nothing to do, and therefore the action taken by the Regional Transport Authority, Jaipur, was justified. It is submitted that the provisions of Chapter IVA under which the scheme was put into effect and in pursuance whereof the compensation became payable to the respondent-operators have an overriding effect on the other provisions of the Act which are inconsistent therewith, and the petitioners cannot claim as a matter of right that they should have been heard in the matter before any decision could be taken for diverting these respondent-operators from the Jaipur-Alwar route to the Jaipur-Bikaner route. The case of grant of an alternative route, according to the learned Government Advocate, within the meaning of Section 68-G(2) of the Apt, stands on an entirely different footing from the grant, of fresh permits on any particular route, and therefore those formalities which may be required for the grant of fresh permits on a route cannot possibly be attracted to the grant of an alternative route within the section .

5. The question, therefore, which arises for our consideration, is whether the action taken by the Secretary, Regional Transport Authority, Jaipur, or the resolution passed by the said Authority is in accordance with law and did not violate the principles of natural justice. It is obvious that the petitioners have been affected by reason of the fact that these respondent-operators have been allowed to ply on the Jaipur-Bikaner route.

At one stage in the course of arguments, it was urged that no one has a vested right in plying buses on any particular route; and, therefore, the fact that these operators have been permitted on the route in question does not violate any rights of the petitioners and they are not entitled to move this Court against any such order. This line of argument was developed or sought to be developed by the learned counsel appearing on behalf of the respondent-operators, but this argument stands fully answered by the observations of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, It was observed there that u/s 68-C, where the State Transport Undertaking proposes a scheme, affecting the Proprietary rights of individual permit-holders doing transport business on a particular route or routes, it threatens the proprietary rights of those individuals who as such were entitled to file objections to the scheme within the prescribed time.

These observations clearly indicate that persons lawfully plying on a route acquire some sort of a proprietary right in the transport business on that particular route and when that right is affected, it is only fair and in consonance with well established principles of natural justice that they should be given an opportunity of being heard in the matter. At another place their Lordships even used the expression that the scheme proposed may affect the proprietary rights of the existing operators on the route or routes. The language used is emphatic. By virtue of grant of permits to certain operators to ply their buses upon certain routes they acquire a kind of proprietary right in the transport business on the

route or routes in question; and when their right is encroached upon because other operators are Inducted on the route, it stands to reason that the persons affected must be given an opportunity of being heard in the matter. One has, therefore, to keep in mind these considerations in construing the provisions of Section 68G(2) of the Act itself.

6. It must be conceded, as contended by the learned Government Advocate, that the provisions of Chapter IVA and the rules and orders made thereunder have an over-riding effect, notwithstanding anything that may be inconsistent therewith, contained in Chapter IV of "the same Act or in any other law for the time being in force. Section 68B provides for it. Therefore it certain provisions of the Act are inconsistent with the provisions of Chapter IV-A or, in other words, : "With the provisions of Section 68-G, then Section. 68-G must prevail. Let us, therefore, examine what actually is the scope of Section 68-G and whether the provision is inconsistent" with "the other relevant provisions of the Act to which we shall presently refer. Section 68-G (2) is as under :

"Notwithstanding anything contained in subSection (1), no compensation shall be payable on account of the cancellation of any existing permit or any modification of the terms thereof," where a permit foe an alternative route Or area in lieu thereof has been offered by the Regional Transport Authority and accepted by the holder of the permit.

Sub-Section (1) of Section. 68-G says that where at permit has been cancelled, compensation will be payable to the permit-holder. Sub-section (2) contemplates another remedy also, namely, that if the permit-holder whose permit is cancelled Or modified accepts an alternative route or area in lieu of the cancelled or modified permit, then he would not be entitled to any compensation lor it. The Section does not lay clown anywhere as to how this alternative route is to be offered. It is merely an enabling provision, under which instead of the monetary compensation an alternative route may be offered. In case it is decided to offer an alternative route, the point is how is that to be done. Is it permissible under the law to grant an alternative route without hearing the parties affected thereby, who are already operating on the alternative route? Section 68G nowhere lays down that it can be done without hearing the parties affected. It nowhere authorises the Regional Transport Authority to issue a permit forthwith without hearing other parties who are not before it and whose rights are bound to be affected thereby. Therefore, it cannot be argued that the procedure of giving notice to the parties affected and hearing their objections, if any, before granting permits on an alternative route is in any manner inconsistent with the provisions of Section 68G (2) of the Statute. Since the grant of an alternative route affects the interest of persons already plying their buses on the route, we are not prepared to assume that the grant is merely an administrative act.

If it were a matter only between the Regional Transport Authority on the one hand and the operators whose permits have been cancelled on the other, the position would be quite different. That may be the position where payment of

money compensation is concerned. But where third parties are affected by the order in question, obviously, a lis comes into play; and the Regional Transport Authority has then to decide between the rights of those who are already operating on the route under valid permits granted to them and those who are to be inducted on that route in lieu of payment of compensation and as an alternative to routes which they had earlier. They cannot be so inducted on the alternative route to the prejudice of the rights of persons already operating on that route; apart from public interest in regulating transport on a route, it also affects private rights of individuals already operating on it. Consequently, it must be held that where third parties are affected, both on principles of natural justice as also under the provisions of law, their objections have to be heard before any alternative route can be granted to others.

I need not refer to some of the English cases which have been cited on the point. They relate to merely administrative actions. Even those cases do not lay down that where the rights of a third party are affected by a certain order, the order can be made in his absence and to his prejudice without giving him an opportunity of being heard in the matter.

7. We are faced with the question what procedure the Regional Transport Authority has to follow in a case of this nature. The learned counsel for the petitioners has referred us to a decision in *Kashi Prasad Gupta Vs. Regional Transport Authority, Gorakhpur and Others*, where the learned Judge sitting singly, held that the proposed assignment of an alternative route should be included in the scheme of nationalisation itself. This he held because he felt that otherwise the existing operators on the line would not have an opportunity of being heard before the displaced operators come to be assigned on the line on account of the operation of the nationalised scheme. If it is included in the scheme itself, obviously an opportunity is provided to the existing operators to object to the assignment of those alternative routes to the displaced operators. That of course is one definite procedure which could be adopted by the Regional Transport Authority in consultation with the framers of the scheme. But, in our opinion, that is not the only solution. It has to be borne in mind that it may not be possible in all cases to provide for an alternative route in the scheme itself. An attempt to provide an alternative route to displaced operators is, strictly speaking, not an intrinsic part of the scheme itself. The question arises incidentally in connection with the payment of compensation to displaced operators for the period for which their existing permits stand cancelled or modified by reason of the scheme. They may be given compensation or they may be provided with an alternative route. This consideration can, therefore, arise even at a subsequent stage after the scheme has been finalised and put through. The money compensation is payable within a month from the date from which the cancellation or modification of the permits takes place (vide Section 68H of the Act); and if it is not so paid, then the compensation is likely to carry interest at 3 1/2 per cent per annum from the date of the compensation order.

Therefore even at a later stage the Regional Transport Authority may decide, if it is considered convenient, to offer an alternative route. In that event, it would be going too far to suggest that the offer of an alternative route should always be provided for in the scheme itself. In case an alternative route is offered at a later stage, it appears to us that two courses are open to the Regional Transport Authority. One is the normal course u/s 57, under which fresh permits can be granted on any particular route. In that case mutatis mutandis the procedure laid down u/s 57 of the Act will have to be followed. That being so, on the publication of the applications of the displaced operators, parties operating on the routes get an opportunity of presenting their objections and their objections have to be decided in accordance with law, before any fresh permits can be granted on those routes. It is possible that after hearing the parties concerned the application of the displaced operator may be reflected, in which event he may either seek another route or rest satisfied with monetary compensation.

The term "offered" as used in Section 68G (2) has no other significance except this; that if the Regional Transport Authority decides to make an offer of an alternative route and that offer is not to the prejudice of the rights of the other existing operators on that route and if the displaced operator accepts it, he will not be entitled to any monetary compensation. If after hearing objections of the existing operators, the Regional Transport Authority comes to the conclusion that some of the displaced operators could be conveniently provided for on the route, it will be justified in accepting their applications for the alternative route and offering them permits on that route.

There appears to be, however, a more suitable method provided under the law which can be conveniently followed. This is provided for by Section 43(I)(iii) of the Act. These provisions appear to have been added and substituted by Act No. 100 of 1956 in order to give effect to Chapter IVA of the Act. The provision is that the State Government, having regard to the various circumstances mentioned in Section 43 may, from time to time, by notification in the official gazette, issue directions to the State Transport Authority under Clause (iii):

""regarding the grant of permits for alternative routes or areas, to persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercise of the powers conferred by Clause (b) or Clause (c) of Sub-section (2) of Section 68-F."

The proviso to this clause is very important. It says that,

"no such notification shall be issued unless a draft of the proposed direction is published in the official gazette specifying therein a date being not less than one month after such publication on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving; the representatives of the interests affected an opportunity of being heard".

This proviso is a clear answer to the contention that in a case of this nature

where existing permits are cancelled or modified and in lieu thereof permits for alternative routes or areas are given to persons concerned, such grants are merely in the nature of executive or administrative acts. The grants have to be made after giving the representatives of "the interests affected thereby an opportunity of being heard." The proviso therefore strengthens the conclusion, at which we have arrived, namely that no order to the prejudice of the petitioners could be passed without hearing their objections. Inasmuch as the grant of an alternative route has been made to the respondent operators without giving any such Opportunity to the petitioners, we are bound to hold that the grants are in violation of the law as also in violation of the principles of natural justice. The better procedure, in our view, was to follow the procedure laid down in Section 43 of the Act, to which we have just referred, and if after following this procedure grants of alternative routes were made, there would have been no complaint by the operators affected.

8. There is no doubt force in the contention of the learned counsel for the petitioners that if it were a case of grant of fresh permits, the Regional Transport Authority, Bikaner, under whose territorial jurisdiction the larger part of the route lies, was competent to deal with the matter and then the permits could be counter-signed by the other Regional Transport Authority of Jaipur; but where the procedure laid down in Section 43 is adopted; these considerations do not arise, because there the State Government issues the notification in question and receives the objections or representations and decides about them in consultation with the State Transport Authority.

We must also point out that it is not for the Secretary, Regional Transport Authority, to make any such endorsement permitting the respondent operators to ply on the routes in question. It was a matter for the Regional Transport Authority and the Regional Transport Authority could do it after deciding in a quasi-judicial manner the objections raised by the existing operators. In our opinion therefore the whole procedure followed in these cases has been in contravention of law and we have no alternative but to quash the order granting permits by the Regional Transport Authority to the respondent-operators.

9. Parties are ordered to bear their own costs. The rules are accordingly made absolute in each case.