

(1976) 03 AHC CK 0040

In the Allahabad High Court

Case No : Special Appeal No's. 63 and 64 of 1976

Abdul Rashid and Others

APPELLANT

Vs

The Regional Transport Authority and Others

RESPONDENT

Date of Decision : 31-03-1976

Acts Referred:

Motor Vehicles Act, 1939 — Section 43A

Uttar Pradesh General Clauses Act, 1904 — Section 21

Citation : AIR 1977 All 206

Hon'ble Judges : N.D. Ojha, J;G.C. Mathur, J

Bench : Division Bench

Advocate : S.S. Bhatnagar and K.K. Dhavan, for the Appellant; L.P. Naithani and V.N. Khare, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—These two special appeals have been filed against the judgment of a learned single Judge dated February 12, 1976, dismissing the writ petition jointly filed by the appellants in these two special appeals.

2. The appellants along with certain other persons applied for the grant of stage carriage permits on Meerut-Rohta-Binauli-Baraut route. It appears that there were eight vacancies on the route for which permits were to be granted. By its order dated October 27/ 28/29, 1971, the Regional Transport Authority, Meerut, granted eight permits to persons other than the appellants. This order was challenged by the appellants in appeal. During the pendency of the appeals before the State Transport Appellate Tribunal, U. P. Motor Vehicles (Amendment) Act, 1972 (U. P. Act No. 25 of 1975) was passed whereby a new section being Section 43-A was inserted. In the Motor Vehicles Act (hereinafter referred to as the Act). The relevant portion of the said Section 43-A reads:--

"43-A. Power of State Government to issue direction to Transport Authorities--
(1) The State Government may issue such directions of a general character as it may consider necessary or expedient in the public interest in respect of any

matter relating to road transport to the State Transport Authority or to any Regional Transport Authority, and such Transport Authority shall give effect to all such directions.

(2) Without prejudice to the generality of the foregoing power, where the State Government is of opinion that it is in the public interest to grant stage carriage permits (Except in respect of routes of areas for which schemes have been published u/s 68-C) or contract carriage permits or public carrier permits to all eligible applicants, it may by notification in the Gazette issue a direction accordingly, and thereupon all transport authorities as well as the State Transport Appellate Tribunal constituted u/s 64 shall proceed to consider and decide all applications, appeals and revisions in that behalf (including any pending applications, appeals and revisions) as if--

(a) in Section 47,--

(i)

(ii) Sub-section (3) were omitted:

.....

....."

The State Government thereafter issued a notification on March 30, 1972, in exercise of its powers conferred by Section 43-A.

3. As a result of the amending Act and the notification referred to above stage carriage permits could be granted on non-nationalised routes to all eligible applicants on the footing that Sub-section (3) of Section 47 stood omitted. The amending Act as well as the notification were challenged but their validity was upheld by the Supreme Court in *Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others*, . In view of the amending Act and the notification the State Transport Appellate Tribunal allowed the appeals filed by the appellants along with those filed by some other persons on February 19, 1975. In Paragraph 8 of its order the Tribunal held

"It would, therefore, appear to be reasonable that these appellants may also be granted one permit each on this route, if they can produce a fit vehicle within the given time and they can satisfy the Regional Transport Authority as to their antecedents, by means of an affidavit."

The time given for the purpose was up to 31st March, 1975. According to the appellants even though they produced the fitness certificate as also filed the necessary affidavit before 31st March, 1975 permits were not issued to them. The case of the appellants further was that permits were not issued to them in view of the stay orders passed by this court in other writ petitions and of the fact that another notification was issued u/s 43-A of the Act on September 24, 1975, and subsequently an Ordinance being U. P. Ordinance No. 35 of 1975 was promulgated on November 12, 1975. Aggrieved by the non-issuance of the

permits to them the appellants filed the writ petition giving rise to the present appeals for the issue of a writ of mandamus commanding the Regional Transport Authority, Meerut, and the Secretary, Regional Transport Authority. Meerut, to forbear from giving effect to the notification dated September 24, 1975, and U. P. Ordinance No. 35 of 1975 in the matter of issuance of permits to the appellants and for a further mandamus directing them to issue permits to the appellants in pursuance of the order of the State Transport Appellate Tribunal dated February 19, 1975. It was also prayed in the writ petition that if necessary the notification dated September 24, 1975, may be quashed. The writ petition as already pointed out above was dismissed on February 12, 1976.

4. It was urged by the learned counsel for the appellants that the order for the grant of permits having been passed in their favour by the State Transport Appellate Tribunal on February 19, 1975 and the appellants having produced certificate of fitness and the affidavit in pursuance of the said order long before the coming into force of the ordinance and the notification referred to above the Regional Transport Authority was bound to issue the permits to the appellants in pursuance of the order of the State Transport Appellate Tribunal dated February 19, 1975. According to the learned counsel neither the ordinance nor the notification had any bearing in this regard.

5. Having heard learned counsel for the parties we are, however, unable to agree with this submission. The validity of the notification dated March 30, 1972, containing the direction that the stage carriage permits on non-nationalised routes were to be granted to all eligible applicants has not been challenged by the appellants. Indeed it was in pursuance of this notification that the appeals filed by the appellants had been allowed by the State Transport Appellate Tribunal. A bare reading of Section 43-A as inserted in the Act by Amending Act No. 25 of 1972 makes it clear that the said notification had statutory force having been issued in pursuance of the power conferred on the State Government by the said section. It cannot be denied that by virtue of Section 21 of the U. P. General Clauses Act it was within the power of the State Government to issue another notification. So as "to add, amend, vary or rescind" the earlier notification. Section 6 of the General Clauses Act provides for the effect of repeal. The consequences enumerated in the said section are to follow "unless a different intention appears". The notification dated September 24, 1975, reads:--"Whereas in exercise of the powers conferred by Section 43-A of the Motor Vehicles Act. 1939 the State Government was by Notification No. 1198-T/XXX-4, dated March 30, 1972, pleased to direct that stage carriage permits (except in respect of routes or areas aforesaid), contract carriage permits and public carrier permits shall be granted according to the provisions of the said Act to all eligible applicants;

And Whereas on further consideration the State Government is of opinion that the policy of granting such permits to all eligible applicants requires review with a view to:--

- (a) Preventing unproductive expenditure and under-utilization of capital and fuel.
- (b) Preventing elimination of small operators due to unfair competition resulting from the issue of more permits than required for a route.
- (c) Facilitating long term planning of passenger road transport services;

And whereas, such review is likely to take some time and in the meantime it is necessary to stay the disposal of all pending applications for permits or entertainment of fresh applications;

Now therefore, in exercise of the powers conferred by the said Section 43-A of the Motor Vehicles Act, 1939 read with Section 21 of the U. P. General Clauses Act 1904, the Governor is pleased to direct that:

- (1) The notification No. 1198-T/XXX-4, dated 30th March, 1972, be and is hereby rescinded with immediate effect;
- (2) The consideration of applications for stage carriage permits pending with any Transport Authority shall stand postponed until further directions are issued in this behalf by the State Government;
- (3) No fresh applications for such permits shall be entertained until further directions are issued in this behalf by the State Government."

As seen above by Clause (1) of the notification dated September 24, 1975, the earlier notification dated March 30, 1972, was rescinded with immediate effect. Clause (2) provided that the consideration of applications for stage carriage permits pending with any transport authority shall stand postponed until further directions are issued in this behalf by the State Government. Clause (3) was to the effect that no fresh applications for such permits shall be entertained until further directions are issued in this behalf by the State Government. It is really the effect of Clause (2) of the notification which falls for consideration in these appeals. It cannot be doubted that this clause falls within the words "unless a different intention appears" used in Section 6 of the General Clauses Act. What was, however, urged by the learned counsel for the appellants was that the applications which had been made by the appellants for the grant of stage carriage permits stood finally disposed of by the State Transport Appellate Tribunal on February 19, 1975, and as such nothing remained pending, consideration of which could stand postponed until further directions were issued in this behalf by the State Government. On a plain reading of the order passed by the State Transport Appellate Tribunal, however, we find ourselves unable to agree with this submission. The extract of the said order quoted above clearly indicates that the permits were to be issued to the appellants by the Regional Transport Authority only if they were able to, produce fit vehicles within the given time, which was 31st March, 1975, and were further able to satisfy the said authority as to their antecedents by means of an affidavit. In view of the notification issued u/s 43-A inserted by U. P. Act No. 25 of 1972 every applicant for the grant of a permit became entitled to a permit subject of course to his

satisfying the two conditions referred to in paragraph 8 of the order of the State Transport Appellate Tribunal. In other words these two conditions were in the nature of conditions precedent to the grant of a permit. Unless the Regional Transport Authority felt satisfied about these conditions precedent no permit could be granted. The State Transport Appellate Tribunal did not record its own satisfaction in regard to these two conditions precedent. On the other hand it directed the Regional Transport Authority to satisfy itself in respect of them and to issue permits only thereafter. In essence the order dated February 19, 1975, passed by the State Transport Appellate Tribunal was an order of remand even though it did not specifically say so. The only argument which was advanced in this behalf by the learned counsel for the appellants was that the function which the Regional Transport Authority was to perform in pursuance of the order dated February 19, 1975, was of a ministerial nature and was as such of no consequence. This argument cannot be accepted for obvious reasons. Initially it is the Regional Transport Authority which is conferred with the power of granting the permits. Had the notification dated March 30, 1972, come into force before the applications made by the appellants had been decided by the Regional Transport Authority no permits could have been issued, even then to the appellants unless they were able to satisfy the Regional Transport Authority in respect of the two conditions referred to above. When the State Transport Appellate Tribunal by its order dated February 19, 1975, required the Regional Transport Authority to issue permits to the appellants on its being satisfied about these two conditions it can by no stretch of imagination be said that what the Regional Transport Authority was to do was to just perform a ministerial act.

6. The mere fact that the appellants had produced a fitness certificate and had also filed an affidavit within the time given, viz., March 31, 1975, was not enough to entitle them to the grant of a permit. It was the satisfaction of the Regional Transport Authority in regard to the correctness or otherwise of the facts stated in the affidavit as also about the roadworthiness of the vehicle which was the determining factor. For one reason or the other, specification of which in our opinion is not material, this satisfaction could not be recorded and had not been recorded before the notification dated September 24, 1976, was issued. The applications which the appellants had made for the grant of permits, therefore, had not been finally decided when the notification was issued and these applications were apparently pending on the date when the said notification was issued. In view of Clause (2) of the said notification it was not open to the Regional Transport Authority to consider these applications any more and to grant permits to the appellants notwithstanding the order dated February 19, 1975, passed by the State Transport Appellate Tribunal.

7. In view of what has been stated above we are also not impressed by the argument of the learned counsel for the appellants that some sort of a right accrued in favour of the appellants on the order dated February 19, 1975, being passed which had to be given effect to and respected notwithstanding the issue of the notification dated September 24, 1975.

8. It was then urged by the learned counsel for the appellants that the notification dated September 24, 1975, was ultra vires the powers of the State Government inasmuch as it had the effect of interfering with the judicial power of the Regional Transport Authority. Reliance in this behalf was placed on the decision of the Supreme Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, . In that case a G. O. issued u/s 43-A of the Motor Vehicles Act by the State of Tamil Nadu fell for consideration before their Lordships of the Supreme Court. A bare perusal of Section 43-A as introduced by the State of Tamil Nadu makes it clear that it was entirely different from Section 43-A which was inserted by U. P. Act No. 25 of 1972. The Tamil Nadu amendment did not have any such provision as was contained in Sub-section (2) of Section 43-A of the U. P. Act. The said sub-section had the effect of empowering the State Government of issuing directions even in regard to the consideration of the applications for permits by the relevant transport authorities. In fact it was in virtue of this direction that the State Transport Appellate Tribunal had to consider all the applications. In view of Section 21 of the General Clauses Act it would not be right to argue that even though the State Government could issue a notification requiring the transport authorities to consider pending applications but the State Government would have no jurisdiction to issue any subsequent notification requiring those authorities to postpone the consideration of those applications. Once the authority to issue a notification in the nature of the notification dated September 24, 1975, is conceded in favour of the State Government it follows that the State Government did have power also to provide for the consequences of the earlier notification dated March 30, 1972, being rescinded. The power to provide for consequences of repeal is in the very nature of things by necessary implication included in the power of repeal. We, therefore, find nothing objectionable in the notification dated September 24, 1975 and it is not possible to quash it or to issue any direction to the Regional Transport Authority or its Secretary to ignore the said notification.

9. In the result the special appeals are dismissed with costs.