
(1971) 10 AHC CK 0008

In the Allahabad High Court

Case No : Writ Petition No's. 3485 and 3486 of 1969

Ajit Kumar Singh and Others

APPELLANT

Vs

The Regional Transport Authority, Kanpur and Others

RESPONDENT

Date of Decision : 26-10-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 47(3), 57(3)

Citation : AIR 1972 All 169 : (1971) 41 AWR 794

Hon'ble Judges : R.S. Pathak, J; H.N. Seth, J; A.K. Kirty, J

Bench : Full Bench

Advocate : S.N. Kackar and R.B. Mehrotra, for the Appellant; R.C. Srivastava and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Pathak, J.—By this petition under Article 226 of the Constitution the petitioners pray for a writ in the nature of certiorari against a resolution of the Regional Transport Authority, Kanpur granting permits to the respondents Nos. 2 to 11.

2. The petitioners ply their stage carriages on the Orai-Rampura via Baghra-Jalaun route on permits granted by the Regional Transport Authority, Kanpur under the Motor Vehicles Act. The strength sanctioned in respect of that route was 12 stage carriages at the relevant time. Dr. Anand, the second respondent, had been granted a permit in respect of this route, but subsequently, he surrendered the permit. Upon this, a vacancy arose and by a notification dated July 1, 1967, published in the U. P. Gazette of that date the Regional Transport Authority invited applications for the grant of the permit. The notification specifically mentioned that there was only one vacancy on the route. Fiftyone applications were filed and by a notification dated February 16, 1968, published in the U. P. Gazette dated March 2, 1968, the Regional Transport Authority announced the names of the applicants and invited objections to their applications. The meeting of the Regional Transport Authority at which the

applications and objections were proposed to be considered was scheduled for August 19, 20 and 21, 1969.

3. The applications and objections were however, taken up by the Regional Transport Authority in its meeting of September 13, 14 and 15, 1969. By its resolution passed on September 15, 1969 it sanctioned as many as ten permits to respondents Nos. 2 to 11. The petitioners challenge the validity of that resolution.

4. Shri L. P. Naithani, for the petitioners, states that what the Regional Transport Authority did during the meeting was to take up the applications for grant of permits, then raise the sanctioned strength of stage carriages in respect of the route and thereafter grant permits to the respondents. He contends that after the applications had been taken up for consideration it was not open to the Regional Transport Authority to increase the sanctioned strength and then grant permits on the basis of the increased strength. It appears to us, upon examination of a copy of the relevant proceedings of the Regional Transport Authority, that in fact while the Regional Transport Authority, had originally proposed to take up the applications for the grant of the permit, it subsequently decided to defer consideration until it decided upon whether to increase the sanctioned strength. The latter question was then considered by it and it decided to raise the strength fixed in respect of the route. Thereafter, it took up the applications again and proceeded to consider them on their merits. Shri Naithani says that even in that case the grant of the permits is without jurisdiction, because after raising the sanctioned strength the Regional Transport Authority should have followed the procedure set out in Section 57(3) of the Act, that is, published the fact of the increased strength, allowed time for filing representations again, fixed a date for considering the applications and representations, and then disposed them of on the date so fixed.

5. Shri R. C. Srivastava, for the respondents Nos. 2 to 11, points out that the Regional Transport Authority increased the sanctioned strength and granted the permits in two separate and distinct proceedings, that although both took place on the same day they could not be treated as one and the same proceeding.

6. A person intending to use a motor vehicle as a stage carriage must, by reason of Section 42 of the Motor Vehicles Act, apply to the Regional Transport Authority for a permit enabling him to do so. Section 47 (1) provides that the Regional Transport Authority when considering an application for a stage carriage permit must have regard to the following matters:

(a) the interests of the public generally;

(b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the adequacy of other passenger transport services operation or likely to

operate in the near future, whether by road or other means between the places to be served;

(d) the benefit to any particular locality or localities likely to be afforded by the service;

(e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;

(f) the condition of the roads included in the proposed route or area; and shall also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf of the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies:

Provided that other conditions being equal, all application for a stage carriage permit from a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, as far as may be, be given preference over applications from individual owners."

Then follows Section 47 (3) and it says:

"A Regional Transport Authority may, having regard to the matters mentioned in Sub-section (1), limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region."

7. The power to grant a stage carriage permit is conferred on the Regional Transport Authority u/s 48, and Section 57 prescribes the procedure to be followed in granting permits, Sub-sections (2) to (5) of Section 57 are relevant. They provide:

"Section 57. Procedure in applying for and granting permits-- (1)

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered:

Provided that, if the grant of any permit in accordance with the application or with modifications would have the effect of increasing the number of vehicles operating in the region, or in any area or on any route within the region, under the class of permits to which the application relates, beyond the limit fixed in that behalf under Sub-section (3) of Section 47 or Sub-section (2) of Section 55, as the case may be, the Regional Transport Authority may summarily refuse the application without following the procedure laid down in this section.

(4) No representation in connection with an application referred to in Sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless" a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representation such as is referred to in Sub-section (3) is made the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative."

8. The statutory scheme set out in Chapter IV of the Motor Vehicles Act contemplates two distinct matters in respect of stage carriages plying under the Act. One is the determination of the number of stage carriages for which stage carriage permits may be granted in respect of a route, and the other is the grant of stage carriage permits to those applying for the same. The first is governed by Section 47 (3). The Regional Transport Authority is empowered to limit the number of stage carriages for which permits may be granted on the route. In its context, the subsection envisages the determination of the maximum number of stage carriages which, at the relevant time, it is considered should ply on that route. In determining that number, Regional Transport Authority must have regard to the several considerations set out in Section 47 (1). After Clauses (a) to (f) of the sub-section, there is a proviso requiring the Regional Transport Authority to take into consideration representations made by persons already providing passenger transport facilities along or near the proposed route or by an association representing persons interested in the provision of road transport facilities or by a local authority or by a police authority within whose jurisdiction any part of the route lies.

That is not one of the matters to which regard must be paid, by the Regional Transport Authority when acting u/s 47 (3). As long ago as, *Dominion of India Vs. Modi Sugar Mills Ltd. and Another*, this Court pointed out that the representations referred to in Sub-section (1) are not included in the phrase "matters set forth in Sub-section (1)" contained in Section 47 (3). Since then the Supreme Court has held to the same effect in *Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another*, and thereafter in *Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc.*, The nature of the proceeding u/s 47 (3) is administrative, and it is not obligatory upon the Regional Transport Authority to hear any particular party, including operators already

plying on the route, at the time it limits the strength. That was made clear by the Supreme Court in Mohd. Ibrahim (supra) when it observed:

"The Regional Transport Authority is required to arrive at its decision u/s 47 (3) of the Act having regard to matters mentioned in Section 47 (1) of the Act independent of any Representation by operators or any hearing. The deliberation as well as the decision of the Regional Transport Authority u/s 47 (3) of the Act is confined to its own administrative policy and order."

As we shall now show, the nature of the jurisdiction vested in the Regional Transport Authority in the matter of the actual grant of permits is entirely different. It is different in so many respects, in its nature, the statutory limits within which it operates and the procedure prescribed by the statute. An application for a stage carriage permit may be made suo motu or it may be made upon invitation by the Regional Transport Authority. When made suo motu, it must be made not less than six weeks before the date on which it is desired that the permit should take effect. Where the Regional Transport Authority invites applications, the applications made upon such invitation must be made by the date appointed for the purpose. Where applications are made suo motu, and no strength has been fixed u/s 47 (3) in respect of the route, the Regional Transport Authority must proceed to fix the strength and then publish the applications for disposal in accordance with Section 57 (3). Where the Regional Transport Authority invites applications for the grant of permits, it will generally do so after it has already fixed the strength u/s 47 (3), and may indicate the strength so fixed specifying the number of permits to be granted.

The sanctioned strength determines the entire limit within which permits can be granted and is a consideration controlling all that is done u/s 57 (3). In the matter of granting stage carriage permits. Section 47 (1) requires the Regional Transport Authority to take into consideration representations made by persons already providing passenger transport facilities along or near the route. Those representations, as the Supreme Court pointed out in Mohd. Ibrahim (supra), are the representations contemplated by Section 57 (3) subsequent to the application for grant of permit. Section 57 (3) requires the Regional Transport Authority to notify a date before which such representation may be submitted and the date, time and place at which the application for permit and the representations received will be considered. The procedure will be pursued in those cases where the limit fixed u/s 47 (3) has not been filled up. There may be a case where an application for permit is made suo motu, and the Regional Transport Authority finds that granting a permit would have the effect of transgressing the limit fixed.

In that event, as the proviso to Section 57 (3) declares, the Regional Transport Authority may summarily refuse the application without following the procedure laid down in Section 57. The limit fixed u/s 47 (3), as we have already said, sets the compass within which the Regional Transport Authority is obliged to move when acting u/s 57 (3). If it transgresses the limit, it will act outside the bounds

of its jurisdiction. It must be remembered that the representations filed by existing operators on the route to the grant of permits may proceed not only on the basis of objections personal to the applicant for a permit, but also with reference to operating economic factors, related to the volume of traffic on the route. That, as will be apparent from Section 47 (1) (c), is one of the matters considered by the Regional Transport Authority when fixing the limits u/s 47 (3). The representations made by existing operators against the grant of permits may assume a different content and weightier emphasis if it were known that the limit fixed u/s 47 (3) had been increased. It is therefore apparent, we think, that from the initial stage of notifying the applications to the final stage of disposing them of the entire proceeding is controlled by the limit already fixed u/s 47 (3). That limit must be fixed first before the proceeding u/s 57 (3) is initiated. They are two distinct matters, limiting the number of stage carriages for which permits may be granted, and the actual grant of the permits. The limit fixed is the maximum limit, and it is not necessary that when granting the permits the limit should be exhausted. While applications may be invited for granting permits up to the limit, the Regional Transport Authority may not find sufficient applicants suitable for the grant of all the permits. Therefore, although the maximum is fixed u/s 47 (3) up to which permits may be granted, how many permits will be actually granted will depend upon the outcome of the proceedings u/s 57 (3).

9. There is another point of distinction. We have already indicated that the proceeding u/s 47 (3) is administrative in nature. In contrast, the proceeding u/s 57 (3) bears a quasi judicial character. The representations, as the Supreme Court says in *Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc.*, are representations by and between the competitors and contenders for grant of a permit and thus individual representations raise rival contentions between the operators. Besides the procedure set out in Section 57 for considering applications and representations leaves no doubt that the jurisdiction exercised is quasi judicial. Sub-section (3) requires the Regional Transport Authority to fix a date, time and place at which the applications and representations will be considered and Sub-section (5) contemplates a public hearing at which the applicant and the person making the representation will have an opportunity of being heard either in person or by a duly authorised representative.

10. The question whether the limit fixed u/s 47 (3) can be increased when the Regional Transport Authority considers applications for the grant of a permit has been the subject of a progressive development of the law. In *Abdul Mateen v. Ram Kailash Pandey* AIR 1963 SC 64 the Supreme Court laid down that when the Regional Transport Authority proceeds u/s 57 to consider an application for a stage carriage permit and eventually decides either to grant it or not to grant it its order has to be subject to the provisions of Section 47 (3). If the Regional Transport Authority has limited the number of stage carriages by exercising its powers u/s 47 (3) the grant of permits by it u/s 48 has to be subject to the limit fixed u/s 47 (3) and, therefore, when the Regional Transport Authority comes to

grant or refuses to grant a permit it cannot ignore that limit. The Supreme Court also observed that the modification of the order u/s 47 (3) was not a matter for consideration when the Regional Transport Authority dealt with the actual grant of permits u/s 48 read with Section 57.

11. It observed:

"The power to revise the limits u/s 47 (3) in the Regional Transport Authority must not be confused with the powers which it has when it is dealing with the grant or refusal of permits u/s 48. Therefore, though it is true that the Regional Transport Authority can revise the general order passed by it u/s 47 (3) that revision is a separate power and authority and not a power arising when it is dealing with individual permits."

12. A fuller analysis of the statutory scheme was made by the Supreme Court in *Java Ram Motor Service v. Rajarathinam*, Civil Appeal No. 95 of 1965, D/-27-10-1967 (SC), where this view was affirmed. It was re-affirmed in *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, where the Supreme Court pointed out that if the determination as to the number of stage carriages required on the route was not completed at a stage anterior to that of entertaining applications for stage carriage permits, it would throw open the door to manipulation and nepotism. Then followed the recent case of *Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc.*, One of the questions considered in that case was whether an order u/s 47 (3) had to be made before applications were made for the grant of permit or whether it could be valid if it were made before grant of a permit. The Supreme Court held that in a case where the Regional Transport Authority appoints a date for receipt of applications as contemplated in Section 57 (2), it would be justifiable to hold "that the Regional Transport Authority before publishing the dates for the receipt of such applications for grant of stage carriage permit will decide the number of stage carriage permits to be granted." Then after referring to *M/s, Java Ram Motor Service (supra)* and *R. Obliswami Naidu (supra)* it said:

"It is in the scheme of the Act that limit should be fixed before the grant of permit and proper effect can be given to these provisions by deciding upon the limit of number of permits before applications for grant of permits are invited u/s 57 (2) of the Act and in other cases before applications for grant of permits are published u/s 57 (3) of the Act to enable persons to make representations. The central idea is that the applicants and those who will make representations should all know the limit of the number of permits to be granted in order to ensure free and fair competition."

13. So far as the law in this Court is concerned, it was held by Jagdish Sahai, J. in *Satya Pal Khetra Pal and Others Vs. State Transport Appellate Tribunal and Others*, that the Regional Transport Authority was competent to increase the limit u/s 47 (3) after taking up applications for grant of permit. He expressed the view

that the Regional Transport Authority after taking up the applications u/s 48 for disposal u/s 57 could stay those proceedings and start proceedings u/s 47 (3) and after increasing the strength again revert to the proceedings u/s 57. And in Shiv Singh and Others Vs. The State Transport Appellate Tribunal and Others, Division Bench held that the Regional Transport Authority was within its powers if on the date fixed for consideration of the applications for permit and representations against them it first decided to raise the number of permits and then consider the applications and representation, and that no fault with the proceedings could be found so long as the increase in the number of vacancies was kept separate and distinct from the grant of permits. The view taken in Shiv Singh (supra) was followed in Shri Ram Swarup v. State Transport Appellate Tribunal, Writ Petn. No. 18 of 1969 decided by W. Broome, J. on 23-10-1969 (All) and Mathura Prasad v. State Transport Appellate Tribunal, Writ Petn. No. 4330 of 1964 decided by R. L. Gulati, J. on 14-11-1969 (All). We are of the view that these decisions cannot be regarded as good law to the extent that they conflict with the observations of the Supreme Court in M/s. Jaya Ram Motor Service, Civil Appeal No. 95 of 1965. D/- 27-10-1967 (SC) (supra), R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others, and Mohd. Ibrahim AIR 1970 SC 1542 (supra).

14. It was urged on behalf of the respondents that as the petitioners had filed no representation to the applications for permit, they were not entitled to maintain the Writ Petition. The objection, in our opinion, cannot be sustained. When the representations were invited, they were invited on the footing that there was only one vacancy on the route and the applications made would be considered in respect of that vacancy alone. There was nothing to suggest at that stage that the Regional Transport Authority would increase the limit fixed u/s 47 (3) in respect of that route. We are not satisfied, having regard to the material on the record, that the petitioners had any opportunity to represent against the grant of permits on the footing of the increased strength. It must be remembered that the petitioners had to file the representations by the date appointed by the Regional Transport Authority in the notification issued by it, and that Section 57 (4) directs that no representation shall be considered unless it is made before the appointed date. Even if it be assumed that the petitioners came to know of the proposal of the Regional Transport Authority to increase the limit u/s 47 (3) on the date when the applications were taken up for consideration, it was too late for them to avail of their right to file their representations. There was no question of the petitioners being entitled to participate in the proceedings relating to the grant of the permits.

15. In our opinion, the Regional Transport Authority had no jurisdiction to grant permits on the basis of the increased limit determined u/s 47 (3) and therefore, its resolution dated September 15, 1969 granting permits to respondents Nos. 2 to 11 is without the authority of law.

16. In the connected Writ Petition (No. 3486 of 1969) the limit u/s 47 (3) was

increased on September 2, 1969 and the impugned permits were granted on September 15, 1969, Admittedly, no fresh proceeding was taken u/s 57 (3) by the Regional Transport Authority. For the reasons which have prevailed with us in the aforesaid Writ Petition, the petitioners in this case also are entitled to relief.

17. The Writ Petitions are allowed. The resolution of the Regional Transport Authority, Kanpur passed on September 15, 1969 granting permits to the respondents Nos. 2 to 11 (in Writ Petition No. 3485 of 1969) and that granting permits to the respondents Nos. 2 to 4 (in Writ Petition No. 3486 of 1969) are quashed. The petitioners in each case are entitled to their costs.