
(1960) 02 BOM CK 0010
In the Bombay High Court
Case No : Misc. No. 235 of 1959

Amarnath S. Nanda

APPELLANT

Vs

State Transport Authority and Another

RESPONDENT

Date of Decision : 02-02-1960

Acts Referred:

Motor Vehicles Act, 1939 — Section 43(2), 44(3), 44(3), 44(4), 45

Citation : AIR 1962 Bom 124 : (1961) 63 BOMLR 866

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : K.K. Sanghavi and Vimadalal, for the Appellant; B.J. Mistree, for the Respondent

Judgement

K.K. Desai, J.—This is a petition under Article 226 of the Constitution questioning the jurisdiction of the 1st respondent the State Transport Authority, Bombay to direct the Regional Transport Authority Bombay, that it should not implement its decision dated June 24, 1959 mentioned in the petition. The relevant facts are as follows:-

2. The petitioner is a taxi-driver holding a permit No. 425 to ply "contract carriage" i.e. public service vehicle. The petitioner is also the general secretary of the Great Bombay Taxi Drivers Association. Prior to May 1958 an application for increasing the maximum fare chargeable by taxi drivers appears to have been made and refused. A revision application from that refusal to the first respondent, the State Transport Authority, also appears to have been rejected.

3. In October, 1958 the petitioners addressed a letter in that connection to the Secretary to the Government of Bombay, House Department and by a reply dated October 30, 1958 it was stated that it was open to any taxi permit holder to apply to the Regional Transport Authority for variation of the condition of the permit relating to the fares.

4. By what may be convenience described as representation dated November 6,

1958 the petitioner for himself and on behalf of other members of the taxi drivers' association applied to the Regional Transport Authority, Bombay, for variation of the condition in the contract carriage permits fixing the fares to be charged by increase therein on the grounds mentioned in that representation. The grounds mentioned are general and as concerning all taxi-owners and drivers. At its meeting held on June 24th, 1959 the Regional Transport Authority after giving a hearing on the representation decided to increase the previous surcharge of one anna to two annas and decided that the revised rate of fare should come into force with effect from August 1, 1959. It also directed that necessary tariff cards should be kept ready and supplied to the taxi-driver's association for the purpose. The result of this decision was that in respect of small taxis of this decision was that in respect of small taxis it was decided to allow the fare to be charged at 8 annas per mile instead of 7 annas with effect from August 1, 1959. That decision necessarily required to be implemented by incorporating this specific change in the specific individual "contract carriage permit" issued to and held by each of the taxi driver in Bombay. The original permits contained a condition where under the fare of seven annas per mile only was chargeable by each of the taxi drivers.

5. The decision of the Regional Transport Authority came to be considered by the 1st respondent, the State Transport Authority, on July 18, 1959. The minutes of the decision then taken by the State Transport Authority run as follows:

"The State Transport Authority observed that the question of increase in the rate of taxi fare was decided by it at its meeting held on 24th May 1958, i. e. only about a year back and as such it desired to study the matter and to decide it after giving a hearing to the parties concerned. The S. T. A. therefore decided that implementation of the R. T. A.'s order increasing the rate of taxi fare for small taxis from As. 7/- to As. 8/- from the 1st August 1959 be suspended until the question is thoroughly looked into and decided by it after giving a hearing to the parties concerned".

In accordance with this decision the implementation of the above referred decision of Regional Transport Authority was directed to be suspended. That decision and direction of the State Transport Authority is challenged in this petition on the grounds which may be shortly summarised as follows:-

(1) Under the Motor Vehicles Act a State Transport Authority is not competent to vary conditions in permits already issued to the petitioner and other permit holders. There is accordingly no power or jurisdiction in The State Transport Authority, Bombay, to give any direction to the Regional Transport Authority, Bombay not to implement its aforesaid decision for variation of the condition as to fares as contained in permits of taxi owners and drivers.

(2) Under the scheme of Ss. 64 and 64A of the Act in all matters where an appeal lies to it a State Transport Authority has no jurisdiction to call for the records suo motu and/or thereupon to interfere with the order of a Regional

Transport Authority. According to the petitioner and decision of the Regional Transport Authority to vary the condition as to fares in the permits of the taxi drivers was appealable. The State Transport Authority accordingly was not entitled to interfere (*suo motu*) on its own and prevent implementation of the decision of the Regional Transport Authority as it has done.

(3) If it is found that the State Transport Authority acted in this matter under the provision of S. 64-A of the Act, the further contention of the petitioner is that the authority is not entitled to decide matters arising under that section without giving a proper hearing to the party who is prejudiced by such decision. The questioned direction was given without any hearing and is invalid.

(4) The petitioner also contends that in the matter of its decision the State Transport Authority acted contrary to principles of natural justice. According to the petitioner the Authority is a quasi-judicial Tribunal and cannot make any decision without giving due and proper hearing to the party who is prejudiced. Admittedly no hearing having been given to the petitioner the decision of the Authority is in violation of principles of natural justice.

As against these contentions of the petitioner the respondent's contention is that (1) in fact there is no power or jurisdiction in a Regional Transport Authority to fix fares that may be charged in respect of contract carriage and that in the matter of its decision dated June 24, 1959 the Regional Transport Authority acted altogether without jurisdiction.

(2) In any event the decision of the Regional Transport Authority was in respect of a policy matter and a matter involving public interest and that under the scheme of the Act in connection with such matters a State Transport Authority has supervisory and regulatory jurisdiction to control all acts of a Regional Transport Authority. The directions given by the State Transport Authority for preventing implementation of the decision of the Regional Transport Authority are therefore valid and binding.

6. Having regard to these contentions of the parties it is important to examine the scheme of the Motor Vehicles Act particularly in connection with "Control of Transport Vehicles". That scheme is to be found in Chapter IV of the Act which is titled "Control of Transport Vehicles". Section 42 provides for statutory necessity for permits in respect of all vehicles. Section 43 provides for control of road transport by the State Government. Admittedly under that section having regard to diverse matters of policy and public interest as mentioned in clauses (a), (b), (c) and (d) of sub-clause (1) of the section the State Government is empowered to give directions to a State Transport Authority of diverse kinds and *inter alia* to give directions "regarding the fixing of fares and freights for stage carriages, contract carriages and public carriers." It is important to bear in mind that the procedure prescribed for giving directions under that section is by notification in the official Gazette. It is also very important to note that sub-clauses (2) and (3) of that section provide for making of representations from time to time to the

State Government urging cancellation or variation of the directions notified by the State Government under sub-clause (1) of the section. Variation and cancellation of directions would necessarily include directions regarding the fixation of fares for contract carriages. If the State Government is satisfied with the representations made, it is also under sub-clause (3) empowered to cancel or vary the previous notification in existence. Having regard to the scheme of S. 43 it is obvious that as from the enactment of this section in 1956 wherever directions have been duly notified by the State Government regarding fixing of fares the same can only be cancelled, varied or altered in accordance with the procedure prescribed in sub-clauses (2) and (3) of this section. It is, however, fairly admitted on behalf of the State Government that hitherto no directions have been issued under S. 43 by the State Government regarding fixing of fares.

7. Under S. 44 provision is made as regards the functions and duties to be discharged by a State Transport Authority created under the provisions of the section. For each State the control of transport is to be managed and administered by two authorities created under and named in the section viz./, State Transport Authority and Regional Transport Authority. From the provisions in this section as also several other sections of the Act it is abundantly clear that State Transport Authority is the superior or higher authority which has control and regulation of Regional Transport Authorities both in the matter of administrative directions and functions of granting of applications. Under S. 64 from the decisions of a Regional Transport Authority on various matters mentioned in the section appeal lies to a State Transport Authority. Under S. 64A in cases where no appeal lies power is given to State Transport Authority even suo motu to call for records and interfere where in the opinion of State Transport Authority Regional Transport Authority has acted illegally or improperly. Under S. 44(3) which makes provision for and relates to the exercise and discharge of the functions and duties of State Transport Authority it is inter alia provided that the Authority shall give effect to "any directions issued under S. 43" (by the State Government) "and subject to such directions, shall exercise powers" inter alia "to co-ordinate and regulate the activities and policies of Regional Transport Authorities". Under sub-clause (4) of S. 44 for the purpose of enforcement of its powers, State Transport Authority is empowered to issue directions to Regional Transport Authority shall give effect to and be guided by such directions. The provisions in sub-section (3) and sub-section (4) of S. 44 make it abundantly clear that Regional Transport Authority is a subordinate authority which is bound by the directions given by State Transport Authority and further that State Transport Authority is empowered and entitled to regulate each Regional Transport Authority to act in the manner directed by State Transport Authority. Having regard to the clear purpose and language of sub-sections (3) (a) and (4) of this section, I have no doubt that a State Transport Authority has jurisdiction in matters of policy and matters relating to protection of public interest to regulate each and all acts and decisions of Regional Transport Authority. In my view the decision of the Regional Transport Authority to raise fares to be charged

by taxi drivers has a very distant reference to the rights of the petitioner as an individual permit holder. That decision is directly and substantially with reference to matters of policy affecting interest of public in a large way. The matter of regulation of fares to be charged by taxi drivers and increase thereof is not a matter relating to a particular permit holder but a matter of general interest and policy. I have no doubt that the provisions in sub-sections (3) and (4) of S. 44 give jurisdiction and power to State Transport Authority to interfere with the decisions of Regional Transport Authority in respect of such matters. Support can be gathered in this connection from somewhat loose provisions as regard the matter of fixing of fares in S. 43. Under S. 43 as I have already noted the State Government is empowered to give directions to State Transport Authority regarding fixation of fares. As regards the necessary power and authority in the State Government and State Transport Authority to give similar directions to the Regional Transport Authority nothing is mentioned in S. 43. All matters in which the State Government is empowered to give directions to State Transport Authority under S. 43 are matters of much importance and affecting public interest and therefore policy matters. Even so in connection with these important matters no reference is made in the section to Regional Transport Authority. The absence of reference to a Regional Transport Authority however does not make any difference to the purpose of law as it is provided in S. 44(4) that State Transport Authority has power and jurisdiction to issue directions to Regional Transport Authority in all matters and that the directions of that authority must be carried out by Regional Transport Authority. It is necessary to repeat that the State Government is the only prescribed authority which is empowered and must consider the question of variation of fares with reference to the interest of general public and as a policy matter. Under the directions given by the State Government the matter may further be considered by State Transport Authority as provided by S. 43.

8. Under S. 45 all applications for permits whether in relation to (I) stage carriages (ii) contract carriages (iii) private carriers or (iv) public carriers have to be made to Regional Transport Authority. In connection with such individual applications for permits jurisdiction is vested in Regional Transport Authority under several following sections to consider diverse matters which may arise including the interest of the public generally. In matters of stage carriages and contract carriages under provisions of Sections 47 and 50 Regional Transport Authority is authorised to hear representations of third parties which affect the issue of individual permit to applicants for permit. Under Ss. 48 and 61 Regional Transport Authority is authorised to attach conditions to permits granted. These conditions include a condition as to the rates of charge for (i) passengers' luggage and (ii) carrying passengers. These provisions necessarily show that it is obligatory on Regional Transport Authority in respect of an application for permit for stage carriage and or contract carriage to fix the fares to be charged. In the matter of mentioning the fares to be charged if directions are given under S. 43 by the State Government or by State Transport Authority under S. 44 Regional

Transport Authority would necessarily have to mention the fares so directed in each permit. In the absence of such directions it is obvious that unless Regional Authority fixes fares in the conditions of permit it would fall to discharge its duty in the matter of fixing of fares. Mr. Mistree for the respondents has fairly conceded that no directions have been issued by the State Government under S. 43. He has not been able to point out any directions having been issued by the State Transport Authority in connection with the fares fixed up to the date of the petition as permissible to be charged by the contract carriage permit holders. I am therefore unable to accept his contention that the Regional Transport Authority had no jurisdiction to fix the fares and/or vary the conditions relating to the fares to be charged by the petitioner as contract carriage permit holder. One of the conditions in the permits issued to contract carriage permit holders provides that the authority (Regional Transport Authority) "may after giving notice of not less than one month vary the condition of the permit or attach to the permit further conditions." This condition as included in the permit makes it clear that it is open to Regional Transport Authority to vary all the conditions mentioned in the permits including condition relating to the fixing of fares. If there was material before me showing that prior to the date of the petition the State Transport Authority had issued directions to the Regional Transport Authority as regards the fares to be charged by the contract carriage permit holders, I would have come to the conclusion that having regard to such directions it was not open to the Regional Transport Authority to consider the matter of variation of the condition relating to the fares to be charged. There is some evidence in the resolution of the State Transport Authority that the matters had been considered by the State Transport Authority at its meeting held on May 24, 1958. Even so I am not satisfied that any directions had been issued by the State Transport Authority in that connection to the Regional Transport Authority. I therefore negative the contention of Mr. Mistree that in this matter the Regional Transport Authority had no jurisdiction to consider the application of the petitioner as individual permit holder to vary the condition as to fares as mentioned in his permit.

9. As regards the contention of the petitioner that the decision of the Regional Transport Authority is applicable Mr. Vimadalal has relied upon sub-clause (b) of Section 64 which runs as follows:

"Any person

(a) x x x x x x

(b) Aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof,

x x x x x

may within the prescribed time and in the prescribed manner, appeal to the prescribed authority

x x x x x

The question is whether by its decision the Regional Transport Authority varied any of the conditions in the permit of the petitioner. It is obvious that if the decision varied the conditions the decision would be appealable under sub-clause (b). The decision of the Regional Transport Authority referred to above provides for variation of condition as to fares in the permit of the petitioner as from August 1, 1959. In this case the petitioner was satisfied by that decision. The decision of the Regional Transport Authority however might have been contrary to the application of the petitioner and in that event I have no doubt that the petitioner would have had a right of appeal under sub-clause (b) of section 64 against such a decision.

10. In this connection a question that arise is as to whether a representative application for variation of conditions in carriage permits as it under the usual scheme of O. 1, r. 8 of the CPC is envisaged under the scheme of the Act and whether an individual in the office like the Secretary of the taxi drivers Association, Bombay, can make an application for revision of rates fixed in permits of all other taxi owners and drivers. As I have already pointed out there is provision in sub-sections (2) and (3) of Section 43 for making representations to the State Government for cancellation and variation of notifications relating inter alia to fares to be charged. It is also true that under statutory Rule 73 enacted under the Act each holder of a permit is authorised to apply in writing for variation of the conditions in his permit. In the scheme of the relevant sections 45 to 60 there is no provision authorising any person or association to make a representative application to a Regional Transport Authority for variation generally of conditions as mentioned in permits of permit holders. There is no doubt that the application of the petitioner dated November 6, 1958 to the Regional Transport Authority, Bombay, is an unusual application of a representative kind. Such an application to this Authority is not contemplated in the Act. The resulting decision therefore also is not of incorporating variation of a condition in any particular permit but a general and/or representative decision with reference to the fixation of fares in contract carriage permits. That general decision obviously is not contemplated for appeal u/s 64 of the Act. There is thus substance in the contention made on behalf of the respondents that having regard to the decision of the State Transport Authority refusing revision of rates referred to in the letter of the Secretary to the State Government to the petitioner dated 30th October 1958, the matter was not open for revision and decision by the Regional Transport Authority. On a true construction of the decision of the Regional Transport Authority the effect thereof must be held to be that as regards the application for raising of rates in his permit the petitioner succeeded before him. But the decision was not available for the benefit of and was not appealable by other permit-holders. The result of the provisions of sub-section (b) of Section 64 with reference to this decision is that to the extent that the decision sought to vary the condition as to fares in the permit of the petitioner himself the same was appealable. But the decision affecting others-

non-applicant taxi owner and drivers and permit holder- is without jurisdiction and not appealable.

11. The respondents are right in their contention that u/s 64-A a State Transport Authority by itself can call for records only in cases where there is no appeal and interfere with the decision in such cases if it is found that Regional Transport Authority had acted improperly or illegally. As I have already found that this order was appealable to the extent that it decided individual right of the petitioner in respect of his individual permit the same was appealable. The State Transport Authority was not entitled u/s 64-A to call for the record of the case and interfere with the decision of the Regional Transport Authority as directing variation in the permit of the petitioner. As regards however the general question which the Regional Transport Authority decided the decision was not appealable under the provisions of Section 64 and the State Transport Authority under its supervisory and regulatory jurisdiction as envisaged in sub-sections (3) and (4) of Section 44 was entitled to call for the record and interfere with the decision.

12. Even as regards the order in favour of the petitioner himself personally the question arises as to whether by reason of the restrictive provision in Section 64-A, the wider power of State Transport Authority u/s 44(3) and (4) to give directions to Regional Transport Authority is restricted and curtailed. The question is whether provision having been made for calling of record u/s 64-A only where no appeal lies, is it not permissible for State Transport Authority to interfere with the decision of Regional Transport Authority and direct it to act in a particular way under the power available under sub-sections (3) and (4) of Section 44. It appears to me that where questions of policy and general public benefit are involved in a decision in a matter of an individual permit holder there is no restriction envisaged on the powers vested in State Transport Authority under sub-sections (3) and (4) of Section 44 to give directions to Regional Transport Authority. Curious result must follow if that is not the true intent and purpose of sub-sections (3) and (4) of Section 44. It must be admitted that in all matters of policy and of public importance directions of State Transport Authority will have to be followed by Regional Transport Authority. If by reason of individual applications in such matters one or more applications got advantage over others it would be right and proper for State Transport Authority directly to interfere and deal with such cases and such decisions of Regional Transport Authority. The provision u/s 64-A appears to me as enabling provision and in addition to the powers as vested in the State Transport Authority under sub-secs. (3) and (4) of Section 44, I therefore do not accept the contention made on behalf of the petitioner that the State Transport Authority had no jurisdiction to take the decision that it took on July 18, 1959 as more particularly referred to above.

13. It is also relevant to point out that the authority only intended itself to look into the matter thoroughly and take a decision by itself on the matter after giving a hearing to the parties concerned. The authority never intended to act in a way

prejudicial to any party and might have possibly given a hearing to all the parties concerned much before the disposal of this petition. If the matter has been delayed it is the result of the petitioner's hasty action in approaching this court. Even at the hearing Mr. Mistree for the respondents made it abundantly clear that the State Transport Authority was willing to hear all the parties concerned and decide the matter after giving a fair hearing. That offer has not been accepted on behalf of the petitioner.

14. Mr. Vimadalal has contended that principles of natural justice have been violated in the matter of the decision taken by the State Transport Authority. The contention is that the decision could not be taken without giving a hearing to the petitioner. It is further contended that when the authority acts u/s 64-A, it is a quasi-judicial tribunal and is bound to observe principles of natural justice. The authority is bound to observe the Provisions in the second proviso to section 64-A which provides that the Authority shall not pass an order prejudicial to any person without giving him a reasonable opportunity of being heard. There is hardly any doubt that if the authority was acting in revision u/s 64-A the statutory provision ought to have been observed before even giving a preliminary direction for restricting implementation of the decision of the Regional Transport Authority. As I have already made a finding that the direction was given under the supervisory and regulatory jurisdiction as contained in sub-sections (3) and (4) of Section 44 it is irrelevant that the State Transport Authority made its decision without giving a hearing to the petitioner. The decision was interim and hearing was intended to be given and the petitioner's grievance is frivolous.

15. It must be pointed out that in sub-section (2) of Section 44 the words used are "to co-ordinate and regulate the activities and policies of the Regional Transport Authority". Relying on the plural character of the word "Authorities" it has been contended that the co-ordination and regulation as mentioned in the first part of this sub-section relates to different activities of more than one Regional Transport Authority. The purpose of the provisions in sub-sections (3) and (4) of Section 44 is to confer jurisdiction and power in State Transport Authority to control each and all Regional Transport Authorities. The purpose of this sub-section is not only to enable State Transport Authority to give directions when there is a conflict between the activities of more than one Regional Transport Authority. In the matter of regulation of conduct of Regional Transport Authority directions can in any event be given even when there is no conflict in activities of more than one authority. This enabling section does not justify any restriction as is contended for on behalf of the petitioner.

16. In the circumstances there is no substance in the petition. The petition is dismissed with costs.

17. Petition dismissed.