

(1981) 11 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 1126, 1148, 1539 and 1772 to 1774 of 1977

Anil Kumar Agarwal and Others

APPELLANT

Vs

The State Transport Appellate Tribunal, U.P. and Others

RESPONDENT

Date of Decision : 10-11-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 48(1), 64

Citation : AIR 1982 All 114

Hon'ble Judges : S.D. Agarwal, J

Bench : Single Bench

Advocate : L.P. Naithani, for the Appellant; Standing Counsel and V.N. Khare, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwal, J.—These are six connected writ petitions arising out of the same order. Since common questions of fact and law arise in all these petitions and they relate to the same route, the same are being decided by a common Judgment.

2. The route in question is Manglaur Asafnagar-Jhabrera Ramnagar Deoband Bargaon Nanauta-Gangoh-Lakhnauti (hereinafter referred to as the route), By a notification dated 7-5-74 the Regional Transport Authority, Dehradun, invited applications for the grant of regular stage carriage permits on this route, The length of the route is about 83 kilometers. The Regional Transport Authority fixed the strength of the permits to be issued at 22. The result was that there were nine vacancies and only nine permits were to be granted, In all 279 applications were made for the grant of the permit including the present petitioners. The Regional Transport Authority, Dehradun, considered all the applications in the meeting held on 9th to 12th Oct., 1974. The order was however, finally delivered on 2-11-1974 granting one regular stage carriage permit to each of the respondents Nos. 3 to 11.

3. Twenty four applicants only filed appeals against the order of the Regional Transport Authority, All these appeals were disposed of by the State Transport Appellate Tribunal U. P. Lucknow by judgment dated 17th June, 1977. The judgment dated 17-6-1977 has now been impugned in all the above mentioned petitions.

4. I have heard the learned counsel for the parties. Learned counsel for the petitioners has contended that the appellate tribunal has acted illegally and with material irregularity in the exercise of its jurisdiction in refusing to consider the applications moved by the petitioners in their appeals seeking modification of their applications and confining them to the non-notified route on the ground that the appellate tribunal had no jurisdiction to grant the said applications.

5. Learned counsel for the respondents has contended that non-notified route is not a recognised route and as such even if the appellate tribunal granted the modification applications, no useful purpose would be served as ultimately the petitioners can get no permit for the non-notified route. He has further urged that in view of the provisions of the U. P. Motor Vehicles Act, 1976 (U. P. Act 27 of 1976) the permits even if they were invalid which had been issued in favour of respondents Nos. 3 to 11 having been validated by this special Act, the petitioners cannot be granted permit for non-notified route and as such also the applications moved by the petitioners for the grant of permit had become infructuous and, therefore, the petitioners were not entitled to any relief from this Court.

6. At the outset it may be stated that I am not going into the merits of the subject matter raised by the learned counsel for the respondents as in my opinion that will be matter for consideration by the appellate tribunal when it properly exercises its appellate jurisdiction after the matter is remanded to it. as I am of the opinion that the contention raised by the learned counsel for the petitioner is well founded.

7. Admittedly Mangalaur Asaf Nag route is a portion of a notified route (Dehradun Delhi). The length of this portion is only 3 Kilometers. In Mysore State Road Transport Corporation Vs. Mysore State Transport Appellate Tribunal, it has been finally laid down that no permit can be granted to a private operator even if a portion of the route in question is a notified route. It is further admitted that the scheme framed in respect of Dehradun, Delhi route prohibits transport operators to operate on notified area or route or any portion thereof. In the circumstances it was not possible at all to consider the applications of the petitioners for the grant of permits in respect of the route in question as Mangalaur-Asaf Nagar portion of the route was a pan of Deharadun-Delhi notified route.

8. From the impugned order ill is apparent that before the appellate tribunal the petitioners urged that the permits may be granted to them for the non-notified portion of the route treating their applications for the non-notified route, The

applications were also made by the petitioners before the appellate tribunal for modification of their applications. The appellate Tribunal took the view that in view of the proviso to Section 48 (1) of the Motor Vehicles Act, 1939 these applications cannot be considered as the Appellate Tribunal had no power to do so.

9. The application for the grant of stage carriage permits has to be made u/s 46 of the Act and it has to contain such particulars as are mentioned in the said section, Section 47 lays down the criteria which has to be considered by the Regional Transport Authority while disposing of the applications for the grant of stage carriage permit, Sub-clause (1) to Section 48 lays down that the Regional Transport Authority may grant a stage carriage permit in accordance with the application or with such modification as it deems fit. The proviso to this Sub-clause lays down that no such permit shall be granted in respect of any route for area not specified in the application, Section 64 of the Act gives right of appeal to the aggrieved persons where the application for the grant of a permit has been refused by the Regional Transport Authority,

10. Section 48 (1) is quoted below subject to the provisions of Section 47 a Regional Transport Authority may, on an application made to it u/s 46, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit.

Provided that no such permit shall be granted in respect of the route or area not specified in the application,"

11. From a perusal of Section 48 (1) it is clear that the Regional Transport Authority has been empowered to grant the application for stage carriage permit in accordance with the prayer made in the application or with such modifications as it deems fit. Sub-section (1) does not by itself empower the Regional Transport Authority to modify the application but from the wording of this Sub-section it is implicit that the Regional Transport Authority has the inherent power to modify the application. The proviso only says that permit will be granted in respect of the route specified in the application. In case the application is modified then by virtue of the proviso the Regional Transport Authority will be empowered to grant permit as mentioned in the modified application. The proviso cannot be interpreted to mean that it creates a bar on the power of the Regional Transport Authority to modify the application.

12. Section 64 does not in any manner restrict the power of the Appellate Tribunal. Once an appeal is filed the Appellate Tribunal has all the powers which could be exercised by the Regional Transport Authority. The powers of the State Transport Appellate Tribunal are, therefore, co-extensive with those of the Regional Transport Authority.

13. In Special Appeal No. 216 of 1973 decided on 3-9-1975 the Division Bench of this Court has taken the view that Section 48 of the Act is not concerned with the amendment of an application for a permit and that it does not bar the

amendment of such an application in respect of the route mentioned therein. It has further affirmed the view taken by the learned single Judge that the appellate authority has also the power to modify the application.

14. In view of the above, I am of the opinion that the appellate tribunal had power to grant modification of the applications moved by the petitioners. The view to the contrary taken by the appellate Tribunal is, therefore, manifestly erroneous. The petitions are, therefore, liable to succeed.

15. In the result the petitions are allowed; the order of the State Transport Authority Tribunal U. P. Lucknow dated 17-6-1977 so far as the petitioners are concerned is quashed and a mandamus is issued to the State Transport Appellate Tribunal U. P. Lucknow directing him to consider the applications moved by the petitioners for modification of their applications for grant of a stage carriage permit in accordance with law and thereafter consider the appeals on merits, It will be open to the respondents to raise such objections as are open in law at the time of consideration of the applications for modification. Parties are, however, directed to bear their own costs.