

(1979) 08 AHC CK 0062

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1814 of 1977

Atharul Islam and Another

APPELLANT

Vs

The State Transport Authority and Others

RESPONDENT

Date of Decision : 30-08-1979

Acts Referred:

Constitution of India, 1950 — Article 14

Motor Vehicles Act, 1939 — Section 43A, 43A(1), 47, 50, 57

Citation : AIR 1980 All 120

Hon'ble Judges : K.N. Singh, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Singh, J.—The two petitioners made an application to the Regional Transport Authority for grant of a contract carriage permit in respect of mini bus. The Regional Transport Authority rejected the petitioners' application. The petitioners took up the matter in appeal u/s 64 of the Motor Vehicles Act, 1939, before the State Transport Appellate Tribunal which affirmed the order of the Regional Transport Authority and dismissed the petitioners' appeal by its order dated 3-10-1977. Aggrieved, the petitioners have by means of this petition under Article 226 of the Constitution challenged the order of the appellate Tribunal as well as that of Regional Transport Authority,

2. The Regional Transport Authority and the Appellate Tribunal rejected petitioners' application for grant of contract carriage permit in pursuance of the directions of the State Govt. as contained in its notification dated June 1, 1976 issued u/s 43-A of the Motor Vehicles Act, 1939. The State Government, under that notification, issued direction of a general character that no contract carriage permits shall be granted to private vehicles known as mini buses as it would not be in public interest to grant such permits. The expression "Mini Bus" as defined in the notification means an omnibus which is constructed or adopted to carry

not more than thirty-five persons excluding the driver. Since the petitioners had applied for contract carriage permits in respect of mini Buses having seating capacity of not more than thirty-five persons, the Regional Transport Authority as well as the State Transport Appellate Tribunal rejected the petitioners' application in view of the directions issued by the State Government.

3. Section 43 of the Motor Vehicles Act, 1939, hereinafter referred to as the Act, empowers the State Government to issue directions to the State Transport Authority from time to time by notification in the Official Gazette regarding fixing of fares and freight for stage carriages, contract carriages and public carriages as prescribed u/s 43 (1) of the Act. Section 43-A was added to the principal Act by the U. P. Act 25 of 1972. Section 43-A was further amended by the U. P. Act 15 of 1976 which came into force on 1-5-1975. After the amendment Section 43-A reads as under:--

"43-A. Power of State Government to issue Directions 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 S. T. A. or to any R.T.A. and such Regional Transport Authority shall give effect to all such directions.

(2) Without prejudice to the generality of the provisions of Sub-section (1) such directions may be given in respect of any of the following matters, namely --

(a) the number of stage carriage or contract carriage permits that may be granted in respect of any route or area;

(b) the preference or the order of preference to be given to or the quota to be fixed for specially deserving categories such as ex-army personnel, educated unemployed persons, such persons holding driving licences as are members of cooperative societies formed for passenger transport business, persons belonging to the Scheduled Castes and Scheduled Tribes;

(c) the procedure for grant of permits, and for selection from among the applicants, including selection by drawing of lots from among persons belonging to the same category.

(3) Any direction under Sub-section (1) may be issued with retrospective effect.

(4) Where any direction is issued under Sub-section (1) to any Transport Authority, then any appeal or revision pending before the State Transport Appellate Tribunal shall be decided in such manner as to give effect to such direction,

(5) Where any direction is issued under Sub-section (1) with retrospective effect then--

(a) any Transport Authority or the State Transport Appellate Tribunal may review any order passed earlier by it with a view to making it conform to such direction,

and may for that purpose cancel any permit already issued;

(b) any Transport Authority may apply to the High Court for review of any order passed by such Court earlier with a view to enabling such Authority to comply with such direction.

(6) The provisions of this section shall have effect notwithstanding any thing contained in Sections 47, 50 and 57."

Under the aforesaid provision the State Government is empowered to issue directions of a general character to the State or R. T. A. if it considers it necessary or expedient in the public interest to do so in respect of any matter relating to road transport. The directions so issued are binding on the Transport Authorities and they are duty bound to give effect to all such directions. These directions may relate to the matters set out in the amended section, which may relate to the State carriages or contract carriages permits. The directions may further regulate the preference or order of preference to fee given or quota to be fixed for specially deserving categories and may also regulate procedure for the grant of permits and for selection from amongst the applications including selection by the draw of lots. Sub-section (3) confers power on the State Government to issue directions with retrospective effect. Normally administrative directions are not issued with retrospective effect but in the instant case the Legislature has conferred power on the State Government to issue statutory directions which may have retrospective effect. Once such directions are issued with retrospective effect then the Transport Authority or any Tribunal which may have decided any case, may review its earlier decision with a view to comply with the directions issued by the State Govt. The provisions of Section 43-A have been given overriding effect by Sub-section (6) which lays down, that the provisions of section shall have effect notwithstanding anything contained in Sections 47, 50 and 57 of the Act. Section 43-A as amended by the State Legislature therefore, confers wide powers on the State Government to regulate the exercise of powers of the Transport Authorities in matter relating to grant of stage carriage and contract carriage permits. It may also be noted that the subject matter of Motor Vehicles falls within entry 35 of concurrent list, therefore, the State Legislature is competent to amend the Central Act. Since the amending U. P. Act No. 25 of 1972 and U. P. Act No. 15 of 1976 have received the Presidential assent, they shall prevail in the State of U. P. even if some of its provisions may be inconsistent with the Central Act,

4. Chap. IV of the Act contains provisions for the control of transport vehicles. Section 42 provides that no owner of a transport vehicle is entitled to use or permit the use of the vehicle on hire, unless he obtains a permit from the authorities constituted under the Act. Section 45 lays down that every application for a permit shall be made to the Regional Transport Authority or the S. T. A. constituted u/s 44 of the Act within whose jurisdiction the vehicle is proposed to be used. Section 46 sets out particulars which are necessary to be specified in an application made for the grant of stage carriage permit. Section 47 regulates

procedure of the R. T. A. in considering applications for stage carriage permits and it further provides that the authority shall, while considering the application for stage carriage permits have regard to the matters specified therein, which include the interest of the public generally, the advantages to the public to be provided by the service, the adequacy of passenger transport services operating or likely to operate on the route, or area in question and the condition of the road etc. Section 48 provides that the Regional Transport Authority shall grant stage carriage permits subject to the provisions of Section 47 of the Act, Therefore, the R. T. A, while considering an application for grant of stage carriage permits is bound to take into consideration the matters specified in Section 47 of the Act. Section 49 lays down that an application for contract carriage permit shall contain the particulars specified therein. Section 50 provides that the R. T. A. shall, in considering an application for contract carriage permit, have regard to the extent to which additional carriage may be necessary or desirable in the public interest; and it shall also take into consideration any representation which may be made or which may previously have been made by persons already holding contract carriage permits or any representation made by local authority or police authority. Section 51 confers power on the R. T. A. to grant contract carriage permits subject to the provisions of Section 50 of the Act. Section 57 lays down detailed procedure which must be followed by the R. T. A. or the S. T. A. in granting stage carriage and contract carriage permits,

5. u/s 51 of the Principal Act the Legislature conferred power on the Regional Transport Authority and the S. T. A. to grant contract carriage permits, it made the exercise of that power subject to the provisions of Section 50. The phrase means that Section 51 must yield to the provisions of Section 50, therefore, exercise of power u/s 51 is controlled by the provisions of Section 50. As noted earlier, Section 50 lays down matters which are taken into account in considering an application for the grant of contract carriage permits. The principal Act" as amended by Section 43-A contemplates that the directions issued by the State Government in the matters relating to road transport shall have overriding effect. The phrase "notwithstanding anything contained in Section 47, 50 and 57" as occurring in Section 43-A (6), is intended to give Section 43-A an overriding effect over the provisions of the principal Act in so far as they relate to Sections 47, 50 and 57 of the Act. The non obstinate clause means to say that in spite of the provisions of Sections 47, 50 and 57 of the principal Act, Section 43-A shall prevail and any direction issued under Sub-section (1) of Section 43-A will prevail over the provisions of Sections 47, 50 and 57. As noted earlier, Section 47 sets out the procedure of the R. T. A. in considering applications for stage carriage permits and prescribes the matters which may be taken into account by that authority in granting or rejecting the application for stage carriage permits. Section 48 provides that subject to provisions of Section 47, the R. T. A. may, on an application made to it, grant stage carriage permits in accordance with the application or with such modifications as it deems fit. Section 50 also provides procedure of the R.T.A. in considering applications for contract carriage permits

and prescribes matters which may be taken into account by that authority in granting or rejecting the applications for contract carriage permits. Section 51 provides that the R. T. A. may grant contract carriage permit subject to the provisions of Section 50. The effect of the directions contained in the impugned notification 19 that a R. T. A. while considering an application for grant of stage carriage permits and contract carriage permits must take into account the directions even though it may not have been provided in Sections 47 and 50 of the Act,

6. Learned counsel then urged that the directions contained in the impugned notification dated 1-6-1976 interfere with the quasi-judicial function of the S. T. A. which is outside the purview of the administrative directions as the powers of quasi-judicial authority cannot be curtailed by administrative orders. He placed reliance on the decisions of the Supreme Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, and *Ravi Roadways Vs. Asia Bi and Others*, and also of a decision of this court in *Prabodh Kumar and Others Vs. The State Transport Authority*, . The impugned directions do not directly interfere with the exercise of quasi-judicial powers by the S. T. A. As discussed earlier the directions provide that while considering an application for the grant of contract carriage permit the S. T. A. shall take into consideration that grant of permit in respect of mini bus having seating capacity of thirty five persons or less would not be in public interest. The directions do not take away the power of the S. T. A. to grant contract carriage permit, instead the directions regulate the grant of permit. The directions are in the nature of matters set forth by Sections 47 and 50 of the Act. Since Section 43-A has overriding effect over Sections 47, 50 & 57 of the Act, the directions would also prevail over the aforesaid provisions and the S. T. A. is required to exercise its powers in accordance with the directions. No doubt the directions regulate the exercise of quasi judicial power but the directions by themselves do not interfere with Authority. A quasi-judicial Authority is also bound by law and if the Legislature provides manner for the exercise of quasi-Judicial powers then the power must be exercised in accordance with that manner. But even assuming that the directions interfere with the powers and functions of the quasi-judicial authorities no exception can be taken as the legislature has itself empowered the State Government to issue directions which would prevail over Sections 47, 50 and 57 of the Act. In *B. Rajagopala Naidu (supra)* the validity of a Government order issued u/s 43-A of the Act as amended by the State Legislature of Madras laying down criteria for selection of suitable persons for the grant of stage carriage permits was considered. The order was administrative and it could not include the area which was the subject matter of quasi-judicial function of the R. T. A. and the S. T. A. Section 43-A authorised the State Government to issue orders and directions only in respect of administrative matter, which were binding on the S. T. A. and the R.T.A. while acting in their administrative capacity. The Supreme Court further held that the administrative directions laying down principles for selection of suitable persons for the grant of permit was not binding on the Transport

Authorities constituted under the Act while exercising their quasi-judicial powers. In *Ravi Roadways* (supra) the Supreme Court held that an administrative order issued by the Government of Madras u/s 43-A of the Act directing the R. T. A. to submit its proposal for transfer of stage carriage permits for confirmation to the Transport Commissioner was illegal as it interfered with the quasi-judicial function of the R. T. A. In *Prabodh Kumar and Others Vs. The State Transport Authority*, a learned single Judge of this Court, held that the S. T. A. had no jurisdiction to direct the R. T. A. not to grant taxicab permits in respect of station wagons as it was clearly outside the ambit of Section 44 (4) of the Act. The learned Judge relied upon the Supreme Court's decision in *Rajagopala Naidu's* case in holding that the S. T. A. had no jurisdiction to issue a blanket order prohibiting grant of permits altogether. These authorities are not applicable to the instant case as the effect and, scope of Section 43-A (6) or provision similar to it was not up for consideration in any of the aforesaid decisions. The Madras Legislature had not enacted any provisions like clause (6) of Section 43-A of the Act, therefore administrative directions issued by the State Government were held illegal as interfering with quasi-judicial power of the Transport Authorities. No such situation prevails in the instant case.

7. The impugned directions do not contain any blanket orders prohibiting the grant of contract carriage permits. Instead the directions merely regulate the exercise of power and the S. T. A. is free to grant contract carriage permits in respect of buses which do not fall within the expression of mini bus. As defined in the impugned notification dated 1-6-1976 the directions merely provide that no contract carriage permit shall be granted in respect of mini bus as it is not in public interest to do so. This direction was issued by the State Government as it was satisfied that the plying of mini buses under contract carriage permits was hazardous to the public safety as these mini buses are more prone to accident than other type of buses. In *Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others*, the validity of Section 43-A as amended by the U. P. Ad 25 of 1972 and Government notification dated 30-3-1972 was challenged. The State Govt. in exercise of its power under Sub-section (1) of Section 43-A had issued notification dated 30th March, 1972 to the effect that the stage carriage permits and contract carriage permits shall be granted to all eligible applicants. The Supreme Court upheld the validity of Section 43-A and also of the directions issued under the notification dated 30th March, 1972. In that case also directions were binding on the Transport Authorities considering applications for the grant of stage carriage and contract carriage permits. The view which we are taking finds support from *Hans Raj's* case.

8. Learned counsel then challenged validity of Section 43-A on the ground that it violates Articles 14 and 16 of the Constitution. We find no merit in this contention. The petitioner's right to carry on business of Motor Transport is not restricted by Section 43-A, instead, it merely seeks to regulate the grant of permits in respect of particular type of vehicles. The restriction has been made in public interest which is reasonable. Similarly the plea relating to violation of

Article 14 is without any foundation, The petitioners have failed to make out any case of discrimination.

9. For the reasons stated above, we hold that Section 43-A as amended by the State Legislature of the Uttar Pradesh is valid and the directions issued by the State Government under its notification dated June 1, 1976 are valid and binding on the Transport Authorities. The directions have overriding effect on the provisions of Sections 47, 50 and 57 of the principal Act. The Regional Authority rightly rejected the petitioner's application made for the purpose of granting contract carriage permit in respect of Mini Bus, as specified in the impugned notification. The petitioners, are therefore, not entitled to any relief.

10. In the result, the petition fails, and is accordingly dismissed but there will be no order as to costs.