

(1964) 01 MP CK 0015
In the Madhya Pradesh High Court
Case No : M.P. No 369 of 1963 (J)

Azad Hind Motor Trans. Coop. Society	APPELLANT
Vs	
R.T.A. Indore	RESPONDENT

Date of Decision : 14-01-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1964) JLJ 145

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : R.K. Tankha and P.C. Pathak, for the Appellant; A.P. Sen and A.H. Saifi, for the Respondent

Final Decision : Allowed

Judgement

K.L. Pandey, J.—This petition under articles 226 and 227 of the Constitution to call up and quash by certiorari an order of the State Transport Appellate Authority (respondent 2) dated 23 October 1963 whereby, in appeal, it set aside the grant of a stage carriage permit for the Burhanpur Dedtalai route in favour of the petitioner, which the Regional Transport Authority, Indore (respondent 1), had made on 29th March 1961, and instead granted the permit to New Star R.M.S. Burhanpur (respondent 3).

2. The facts giving rise to this petition may be briefly stated. The Regional Transport Authority, Indore, invited applications for a stage carriage permit for the Burhanpur Dedalai route. The petitioner, the respondent 3 and 17 other claimants applied for the permit. By the order dated 29th March 1961, the Regional Transport Authority preferred the petitioner, which is a co-operative society, though it was a new entrant and granted the permit to it. Believing that the permit had been granted to Bharat Trading Industrial Transport Company, Indore, the respondent 3 challenged that order on 7 April 1961 when it filed an appeal which was not accompanied by a certified copy of the order. On 3 May 1961, the Regional Transport Authority sent to the respondent 3 an intimation of

its decision. The respondent 3, which had applied earlier for a copy of the order, made a fresh application for the purpose on 24 May 1961, obtained a copy on the following day and filed it on 26 June 1961, when it was permitted to amend the memorandum of appeal by substituting as respondent the name of the petitioner for that of Bharat Trading Industrial Transport Company, Indore. As indicated earlier, the State Transport Appellate Authority, by its impugned order dated 23 October 1963, allowed the appeal.

3. One of the grounds on which the order dated 23 October 1963 is challenged before is that the Appellate Authority was in error in slurring over the adverse record of operation of the respondent 3 and in disregarding the principle accepted by the Regional Transport Authority that the creation of a monopoly is not in the interest of the traveling public. So far as the adverse record is concerned, the Appellate Authority duly took it into account and held that, despite that record, the claims of the respondent 3 were, on account of other relevant considerations, "vastly superior". The Appellate Authority also took pains to point out that there was no question of monopoly because there were several existing operators on the route. This is, therefore, a case where, upon considerations relevant to the matter, the respondent 3 was selected on merits at a suitable operator. The Appellate Authority was competent to consider and decide which of the rival claimants was, having regard to the interests of the public generally, better fitted for the grant of the permit and, if it did so upon considerations relevant to the matter, there can be no interference in these proceedings.

4. Another ground of attack is that the appeal WAS barred by time. So far as the present petitioner is concerned, the appeal has to be regarded as validly presented on 26 June 1961 when it was imp leaded as a respondent and a certified copy of the order appealed against was filed. The limitation for an appeal u/s 64 of the Motor Vehicles Act, 1939, commences to run from the date on which the reasons for the refusal of an application are communicated: Dhanrajmal and Co. Vs. State Transport Appellate Authority, 1962 J LJ 714. In the instant case, the intimation dated 3 May 1961 [Annexure B] communicated to the petitioner only the fact that its application was rejected. The reasons for such refusal should be regarded as having been communicated to it when it received the copy on 25 May 1961. If the reasons be regarded as so communicated on 25 May 1961, the appeal filed on 26 June 1961 is admittedly well within time. It is, however, urged that the respondent 3 had applied for copy on 1 February 1961 and a copy was issued to it on 15 May 1961. This fact, which is disputed, was not urged before the Appellate Authority and we must decline to accept, or act upon it.

5. The last ground urged before us relates to the validity of the application for a permit which the respondent 3 had made before the Regional Transport Authority, Indore. In regard to this, the Appellate Authority stated as follows:

Another objection raised by Shri Athavle was that the appellant's application was

not accompanied by the permit fee of Rs. 40 as is required by Rule 50-A (3) read with Rule 55 (a) of the C. P. & Berar Motor Vehicles Rules, 1940 (hereinafter called the Rules) and consequently is liable to rejection on that ground. Under Rule 50-A (3) read with Rule 55 (a), the appellant's application for permit was to be accompanied by the deposit of the permit fee of Rs. 40. The appellant did not make any such deposit when filing the application on 21-11-59. He, however, filed a certificate from the Sub-Treasury Officer, Burhanpur, dated 17-1-1959 to the effect that the appellant had credited an amount of Rs 40 under Head XII of the Motor Vehicles Act vide chalan No 449 of 13-6 59 As the notification of the R. T. A inviting applications for this route was published in the Gazette of 25-10 59, the deposit by the chalan No. 449 of 13-6-59" could hardly have been for this route. It was Shri Athavle's contention that the deposit under chalan No. 449 was made for another route for which the applicant had filed an application but was unsuccessful. Shri Agrawal, on the other hand, urged that the deposit under chalan No 449 was not made for any specific route and was not used for any application for permit period to the appellant's application in the instant case. An affidavit to this effect was also filed on behalf of the appellant. The appellant also on the date (19-10-63) on which this objection was raised by Shri Athavle remitted the amount of Rs 40 to the R. T. A. Indore by monthly order and filed the money-order receipt. As the permit fee has been paid by the appellant, his application for permit cannot now be rejected on the ground than when the application was filed, the permit fee was not paid.

It is plain that the Appellant Authority declined to go into the question because, during the pendency of the appeal, the respondent 3 made a deposit. In our view, that would not cure the initial defect, if any. The relevant Rule 50-A (3) reads:

The fee prescribed in rule 55 (a) and rule 55 (b) shall be the fee for an ordinary and temporary permit, respectively, and every application shall be accompanied with the appropriate fee.

We are of opinion that the language of the rule makes it mandatory that the requisite fee should accompany the application and that, Without the fee, any application nude would be in-complete, defective and invalid. That being so, if the respondent 3 had not made the necessary deposit in connation with its application, would neither be an applicant nor one competent to file an appeal in that capacity. since it is necessary that the contention of the respondent 3 that it had deposited the permit fee for its application should be investigated and considered and the Appellant Authority declined so to do, we would allow this petition and remand the case to the Appellate Authority.

6. In the view we have taken; of this case, the petition succeeds and is allowed. The order dated 23 October 1963 is set aside and the case is remitted to the Appellate Authority for disposal in accordance with law with advertence to the observations we have made in the last paragraph. In the circumstances of the case, we direct the parties to bear their own costs. The security amount shall be

refunded to the petitioner.