

(1971) 02 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule No's. 735, 736, 741 to 743 of 1970

Babu Singh and Others

APPELLANT

Vs

The Regional Transport Authority and Others

RESPONDENT

Date of Decision : 12-02-1971

Acts Referred:

Assam Motor Vehicles Rules, 1940 — Rule 88, 89, 90
Assam Panchayat Act, 1994 — Section 48
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 47, 47(1), 48, 57(2), 57(3)

Citation : AIR 1971 Guw 99

Hon'ble Judges : P.K. Goswami, C.J.; M.C. Pathak, J

Bench : Division Bench

Judgement

Goswami, C.J.—This application under Article 226 of the Constitution is directed against an order passed by the State Transport Appellate Authority setting aside a stage carriage permit which had been granted to the Petitioner by the Regional Transport Authority, Nowgong, on the Now-gong-Hojai-Lanka-Lumding route extended upto Howraghat. The Appellate Authority's order, so far as the Petitioner is concerned, may be set out below:

It is found that the Respondent Shri Babu Singh lives with his brother who has a permit for his vehicle No. ASN 793 for this region. Even though granting of permit to several members of the same family is not a legal bar, yet, when equally or more suitable candidates are available this Respondent should concede to the claims of other suitable Appellants. As such, the order granting permit to Shri Babu Singh is hereby set aside.

2. Before we deal with the contentions raised by the Petitioner, we may refer to the provisions of the Motor Vehicles Act so far as are material to the present controversy. Section 47 provides for the procedure of Regional Transport Authority in considering application for stage carriage permit. That section reads as follows:

(1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matter namely,-

(a) the interest 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 fen;

(c) the adequacy of other passenger "transport services operating or likely to operator the near future, whether by road or other 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 recognized in this behalf by the State Government, or by local authority or police authority within whose jurisdiction any part of the proposed route or area lies:

Provided that other conditions being equal, an 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." Section 57 (2) provides when an application for a stage carriage permit may be made. under Sub-section (3) of the said section, there is provision for inspection of the applications and for publication of the same in the prescribed manner together with a notice of the date before which representations in connection therewith may be sub-

mined and also the time and place at which the application and any representation received will be considered. Sub-section (4) provides that 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. under Sub-section (5) when any such representation 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. under Sub-section (7) when a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the

refusal. We need not refer to the other provisions in the section for our present purpose. Section 64 provides for appeals to the prescribed authority against the orders of refusal of permit by the Regional Transport Authority. u/s 64 any person aggrieved by the order may within the prescribed time and in the prescribed manner appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard. The "prescribed authority" under Rule 89 of the Assam Motor Vehicles Rules, 1940, is the Chairman and two Members of the State Transport Authority appointed by the Chairman. It may be appropriate to read both the Rules 89 and 90:

89. Appeals against the orders of the Regional Transport Authority:

(a) The authority to decide an appeal against the orders of the Regional Transport Authority under Clauses (a), (b), (c), (d), (e) and (f) of Section 61 of the Act shall be the Chairman and two members of the State Transport Authority appointed by the Chairman. Any person preferring an appeal against the order of the Regional Transport Authority in respect of such matters shall, within thirty days of the receipt of such order, do so in writing to the Secretary of the State Transport authority in the form of a memorandum in duplicate setting forth concisely the grounds of objection to the order of the Regional Transport Authority, accompanied by certified copy of that order which shall be granted free.

(b) Upon receipt of an appeal in accordance with Sub-rule (a), the appellate authority shall appoint a time and place for hearing of the appeal giving the Appellant not less than 30 days notice and shall in that case order the Appellant to deposit such fee, not exceeding Rs. 25/- as the appellate authority may specify.

(c) No further appeal shall lie against any order of the appellate authority constituted under Sub-rule (a)." "90. The appellate authority shall intimate to the Appellant the time and place of hearing an appeal under Rules 88 and 89. Within fourteen days of receipt of such intimation the Appellant shall forward to the Appellate Authority copies of such documents in duplicate upon which he proposes to rely, and upon the appointed date may appear either in person or through an agent or representative authorised by him in writing in this behalf.

3. Reading the above provisions, if appears, u/s 64 the Appellate Authority has to give only the Appellant and the Original Authority, in this case, the Regional Transport Authority, an opportunity of being heard. There is no express provision for giving notice to the persons in whose favour the Regional Transport Authority had granted the permit, although if the appellate order disturbs the original order, the rights of such persons are bound to be affected. Though this lacuna is seen in the Act, we are told that notice is invariably given to the permit-holders whose rights are affected and in this case it appears the affected persons were indeed notified and heard by the appellate authority. We are therefore not required to consider the reasons for the existence of this lacuna in the law, nor is it an appropriate case to consider what will be the legal effect if no notice has

been served on the persons affected by the order.

4. Section 47 specifies certain matters mentioned therein which the Regional Transport Authority has to consider in disposing of an application for a stage carriage permit. Some of these matters may not have a direct bearing on the individual suitability of a particular candidate. For example, Section 47 (1) (c) which mentions about the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served" may not have much relevance to the particular suitability of a person to hold a stage carriage permit. Section 47, therefore, is not exhaustive of all the matters which require to be considered in selecting certain persons out of a large number of applicants for a permit. The manner of selection of a particular permit-holder cannot, therefore, be put in the strait-jacket of a certain set formula. There must be enough discretion with the settling authorities in making the selection. But, while doing so, the authority must have due regard to the matters specified in Section 47 so far as applicable to particular case before it.

5. It is understandable that the Regional Transport Authority has. to examine the cases of a large number of applicants and compare the merits of the candidates inter se before it is in a position to finally select a few out of them for the limited permits that are available. u/s 57 (7) a Regional Transport Authority, refusing an application for permit, has to give to the applicant in writing its reasons for refusal. In this particular case, the Regional Transport Authority, having considered all the applicants, unanimously came to the conclusion in favour of the five persons including the Petitioner and the other applications were rejected. Strictly speaking, this may not be considered as compliance with Section 57 (7) of the Motor Vehicles Act. In appeal before the Appellate Authority, the cases of a fewer persons for the same permits are involved since a large number of disappointed applicants generally step out from the race at the primary stage itself. The Appellate Authority has to consider the merits and demerits of the applicants and its power is co-extensive with that of the primary authority. While it has to examine the reasons urged against the order of the Regional Transport Authority, it has also to consider for itself which of the parties is best entitled to the permit in their impartial consideration. The Appellate Authority, however, in this case has not set aside the order of the Regional Transport Authority on the ground that there was no strict compliance with Section 57 (7) of the Motor Vehicles Act perhaps, it considered even the cryptic order of the Regional Transport Authority as sufficient in the circumstances of the case. We are, therefore, not called upon to finally pass upon the question about the legal effect of omission to give reasons or to give elaborate reasons for refusal of the application.

6. The learned Advocate-General, Meghalaya, in support of the Petitioner has urged that the Appellate Authority has set aside the order of the primary authority on extraneous grounds and also without complying with the principles

of natural justice. He submits that the only ground given against the Petitioner is that he lives with his brother who has a permit for his Vehicle No. ASN 793 for this region. In support of his submission, he draws our attention to an affidavit filed by the father of the Petitioner stating that the Petitioner stays at. Nowgong separately from Trim and his other sons and is living on his own earnings. It is contended that in absence of any counter-affidavit from the Respondents the Appellate Authority could not, in law, act on the allegations in the memorandum of appeal. We are however not required to pursue this matter, since the Appellate Authority itself has not taken the fact of possession of a permit by the Petitioner's brother as a legal bar. On the other hand, the order clearly shows that the candidates preferred by the Appellate Authority are more suitable than the Petitioner. We do not therefore see that any extraneous ground has influenced the decision of the Appellate Authority. The further submission that the Appellate Authority has violated the principles of natural justice is also not well-founded since the decision does not rest upon the allegation of the Petitioner's brother having a permit in the region. We are, therefore, unable to find that the Appellate Authority took into consideration any facts against the Petitioner without giving him a reasonable opportunity. The application is therefore without . merit and is dismissed. We however make no order as to costs.

Civil Rule No. 736 of 1970 7.

7. In this Civil Rule, the Petitioner got a stage carriage permit from the Regional Transport Authority and lost the same in appeal before the Appellate Authority. The relevant order of the Appellate Authority with regard to this Petitioner is as follows:

Respondent Shri Topodhan Bharali is a businessmim with businesses in almost all the districts of the State and it has been brought to our notice that his brother Shri Bilash Chandra Bharali, a member of the joint family is the owner of Bus No. ASZ 2153. Nothing has been said to substantiate his claims to hold a permit in preference to better claims of other Appellants. The decision of the R. T. A. in granting him a permit in preference to the better claims of other superior applicants appears to be improper and unjustified and as such the permit granted to him is hereby cancelled.

8. It is submitted by Mr. K. M. Lahiri that the allegations which were made were never substantiated before the Appellate Authority and they remained as allegations unsupported by any affidavit. The order of the Appellate Authority, therefore, based as it is on these allegations without proof is perverse. This point has been specifically taken by the Petitioner in paragraph 5 of his application before this Court. There is no clear and specific denial of the averments in this paragraph in the sole affidavit of the Respondent No. 8. That being the position, we are constrained to set aside the order of the Appellate Authority with regard to this Petitioner, as the order of the Regional Transport Authority was set aside by taking into consideration facts which were not established before the

Appellate Authority. It is not permissible for the Appellate Authority to set aside the order of the primary authority merely on allegations without proof. The order of the Appellate Authority, so far as this Petitioner is concerned, can be characterized as perverse and the same is therefore set aside.

9. The application is allowed, but there will be no order as to costs.

Civil Rule No. 741 of 1970 10.

10. The Petitioner in this Civil Rule is another permit holder who has been granted permit by the Regional Transport Authority, which was set aside by the Appellate Authority. The Appellate Authority has set aside the order of the Regional Transport Authority with the following observations:

As regards the Respondent Shri Tara Nath Bora, no grounds have been adduced to support his superior claims and as such the permit granted to him is also cancelled." The Regional Transport Authority having considered this Petitioner as a suitable candidate, if the finding has got to be set aside on appeal, reasons for differing from the view of the primary authority have ordinarily to be given. However, before the Appellate Authority, the Regional Transport Authority is also given an opportunity of being heard (Section 64). It may therefore be assumed that that body had the opportunity to support the order in favour of the Petitioner before the Appellate Authority. When, therefore, the Appellate Authority, after taking into consideration all facts, states that no grounds have been adduced about the Petitioner's superior claims, no valid objection can be taken, although perhaps it would have been better if the Appellate Authority also gave reasons for preferring someone else in place of the Petitioner. Since however the Regional Transport Authority itself had not given any clear reasons for refusal of the permit to the Respondent, there was not much for the Appellate Authority to dilate with regard to the infirmities of the order of the Regional Transport Authority. We are therefore not inclined to interfere with the impugned order with regard to this Petitioner. The petition is therefore rejected and there will be no order as to costs.

Civil Rule No. 742 of 1970

11. The Petitioner, Digen Chandra Laskar, in this Rule was granted a stage carriage permit by the Regional Transport Authority which he lost in appeal before the State Transport Appellate Authority. That Authority has given the following reasons;

Respondent Shri Digen Chandra Laskar is engaged in other businesses. He has a fair price shop and is also the lessee of the Doboka Bazar which keeps him otherwise busy. Nothing has been said in support of his claim. Hence we hold him to be unsuitable and as a result, the permit granted to him is set aside.

12. The Petitioner contends that he had knowledge of the allegations made against him and as such had no reasonable opportunity of meeting the allegations before the Appellate Authority. Respondent No. 1, however, denies

this fact and stated that although the hearing of the appeal was concluded, on 12th September, 1970, the Appellants' including the Petitioner's appeal were heard in part on an earlier occasion, on which date the Petitioner had all the opportunity of inspecting the records including the memos of appeal. The Petitioner made no grievance before the Appellate Authority, nor is it a case where he was refused any adjournment to controvert the allegations. There are similar statements in the affidavits of the other Respondents also in this Court.

We are, therefore satisfied that there was no failure of principles of natural justice in disposing of the appeal against the Petitioner. The application is dismissed. There will be no order as to costs.

Civil Rule No. 743 of 1970 13.

13. The permit of the Petitioner Syed Abdul Matin was also similarly cancelled by the State Transport Appellate Authority and the reasons given are as follows:

It is contended that Respondent Syed Abdul Matin is a member of a Gaon Panchayat and as such a public servant as defined u/s 48 of the Assam Panchayat Act. But in our opinion he is not a public servant for the purpose of the Motor Vehicles Act. However, we find that nothing could be brought out to establish his superior claim over the other Appellants whose merits have already been discussed above. His permit is therefore cancelled.

14. The order of the Appellate Authority is challenged on the ground that the Petitioner had no reasonable opportunity to show cause against the allegations made against him in the appeal before the Appellate Authority. The reasons which we have given in the case of the Petitioner Digen Chandra Laskar are also applicable to the case of the Petitioner in this Rule. We are not satisfied that there is any violation of the principles of natural justice in disposing of his appeal by the Appellate Authority. The application is dismissed and we make no order as to costs.

15. In the result, the applications in Civil Rule Nos. 735, 741, 742 and 743 of 1970 are dismissed. The stay order in Civil Rule No. 735 of 1970 stands vacated. The application in Civil Rule No. 736 of 1970 is allowed and that part of the order of the State Transport Appellate Authority relating to the Petitioner is quashed and the permit granted to him by the Regional Transport Authority is restored. We will, however, make no order as to costs.

M.C. Pathak, J.

16. I agree