
(1962) 05 CAL CK 0025
In the Calcutta High Court
Case No : Civil Revn. No. 1123 of 1960

Bengal Border Transport (Private) Ltd.	APPELLANT
Vs	
Chairman, Regional Transport Authority and Another	RESPONDENT

Date of Decision : 09-05-1962

Acts Referred:

Motor Vehicles Act, 1939 — Section 43, 46, 47

Citation : AIR 1963 Cal 592

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : Dwijendra Nath Das and Nirmal Kumar Ganguly, for the Appellant; N.C. Chakraborty, Hirendra Chunder Ghosh and Sushil Kumar Banerjee, for the Respondent

Judgement

B.N. Banerjee, J.—The petitioner Company is a permit-holder for four stage carriages on Route No. 16, District Nadia, extending from Plassey Railway Station to Betai, via the ferry over the Jalangi at Plasseypara Ghat. The petitioner claims that it was carrying passengers and postal mail to the satisfaction of everybody. Due to rising costs of spare parts, tyres and tubes and establishment charges, the running of the stage carriages began to prove unremunerative to the petitioner, on existing fares. It, therefore, made a representation to the Regional Transport Authority to amend the route permit by extending the same to Karimpur, so that larger passenger traffic might make up for the running costs.

2. Not only was the representation made by the petitioner left unattended but the Regional Transport Authority, it is alleged, took a step harmful to the petitioner by issuing a notification inviting applications for issue of an additional permit for one stage carriage on a new route, namely from Karimpur to Plassey Monument via Betai and Plasseypara, covering about thirty five miles, on the entire route used by the petitioner for its bus service. The notification is dated August 24, 1959 and is annexed to the petition marked with letter "A". The petitioner made an application before the Regional Transport Authority objecting

to the opening of the new route, therein indicating how the opening of the route will harm the petitioner. The aforesaid objection was filed on November 27, 1959. Before the objection was heard the Regional Transport Authority passed the following resolution, on March 21, 1959:

"Considered the proposal submitted by the Sub-divisional officer Sadar (North) for opening a new bus route between Karimpur and Plassey Monument via Betai and Plashipara. Resolved that the State Transport Authority, West Bengal be moved for sanctioning the above route for one bus for the present,"

3. The sanction of the State Transport Authority has also admittedly been obtained.

4. The petitioner says that it knew nothing about the resolution until February 27, 1960, when the objection of the petitioner was taken up for hearing. The hearing, however, was postponed to March 4, 1960. In the meantime the petitioner obtained copy of the resolution of the Regional Transport Authority and filed an application contending that the resolution was illegal and void inter alia on the following grounds:

"That your petitioner has every reason to believe that such a resolution was passed (which will ultimately lead to ruin of your petitioner's Bus service of the existing route) because of the influence and presence of the said members without any consideration of other factors,

In view of the above facts and the Ruling reported in Commissioner of Burdwan Division Vs. Mrinal Kanti Chatterjee and Another, your petitioner humbly submits that the Resolution No. 13(a) passed by the R.T.A., on 21-3-59 is void, illegal and inoperative in law, and the notice dated 24-10-59, issued by the R.T.A. in pursuance of the said Resolution is invalid, illegal and ultra vires and no action can be taken on that." The hearing of the objection was, thereafter, adjourned sine die on the prayer of the petitioner, because, it wanted to move higher authorities to nullify the resolution. It is in these circumstances that the petitioner moved this Court for a Writ in the nature of Certiorari quashing the resolution and also for a Writ in the nature of Mandamus restraining the defendants from, giving effect thereto.

5. In the affidavit-in-opposition filed on behalf of Chairman of the Regional Transport Authority and the Authority itself, it is stated as follows: * * * *

(a) "The facts leading to the opening of the new bus route are as follows:

The proposal of the Sub-divisional Officer (North) forwarded through his memo No. 1210-SN. dated 5/10 March, 1959 was considered by the Regional Transport Authority and it was resolved that a direct bus route between Karimpur and Plassey was necessary for the convenience of the travelling public and moved the State Transport Authority for sanctioning the advertisement of the said route. The Regional Transport Authority notified the new route for general information in the local papers, after such sanction was obtained from Notification State

Transport Authority and copies of the Notification were sent to all concerned including the Secretary of the Nadia District Bus Owners Association. The petitioner duly filed representation u/s 47 of the Motor Vehicles Act and the same was duly considered."

(b) ".....the sanction of a route is altogether different from its distribution. There is enough scope of the public as well as of the existing operators who may be affected by the introduction of a new route. The persons affected may file objections or representations u/s 47 and u/s 57 before the Regional Transport Authority for consideration. They may make further representation on appeal u/s 64 of the Motor Vehicles Act. The proposed route was advertised for information of the general public. When applications of permit came in re presentations or objections u/s 57 were invited. The provisions of the Motor Vehicles Act were strictly followed and no default was made as alleged."

6. Mr. Dwijendra Nath Das, learned Advocate for the petitioner, contended that the respondents had no power or authority under the Motor Vehicles Act to sanction a new Bus route of their own initiative, which could only be opened on the application of candidates, who may intend to ply buses on a new route. He invited my attention to Sections 43, 46 and 47 of the Motor Vehicles Act, 1939, in support of his contention.

7. Section 43 deals with powers of the State Government to control road transport and is set out below:

"Section 43:

(1) A State Government having regard to--

(a) the advantages offered to the public, trade and industry by the development of motor transport, and

(b) the desirability of coordinating road and rail transport, and

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among motor vehicles, may, from time to time, by notification in the Official Gazette, issue directions to the State Transport Authority:

(i) regarding the fixing of fares and freights for stage carriages, contract carriages and public carriers;

(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods, by private or public carriers;

(iii) regarding the grant of permits for alternative routes or areas, to persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercise of the powers conferred by Clause (b) or Clause (c) of Sub-section (2) of Section 68-F.;

(iv) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its co-ordination with other means of transport and the conveying of long distance goods traffic :

Provided that no such notification shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard.

(2) The State Government shall permit, at such intervals of time as it may fix, the interests affected by any notification issued under Sub-section (1) to make representations urging the cancellation or variation of the notification on the following grounds, namely:

(a) that the railways are not giving reasonable facilities or are taking unfair advantage of the action of the State Government under this section; or

(b) that conditions have changed since the publication of the notification; or

(c) that the special needs of a particular industry or locality require to be considered afresh.

(3) If the State Government, after considering any representation made to it under Sub-section (2) and having heard the representatives of the interests affected and the State Transport Authority, is satisfied that any notification issued under Sub-section (1) ought to be cancelled or varied, it may cancel the notification or vary it in such manner as it thinks fit.

8. Section 46 deals with the application for stage carriage permit and its contents and reads as follows:

"Section 46 -- Application for Stage Carriage permit:

An application for a permit in respect of a service of stage carriages or to use a particular motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall, as far as may be, contain the following particulars, namely:

(a) the route or routes or the area or areas to which the application relates;

(b) the number of vehicles it is proposed to operate in relation to each route or area and the type and seating capacity of each such vehicle:

(c) the minimum and maximum number of daily services proposed to be provided in relation to each route or area and the time-table of the normal services;

(d) the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions;

(e) the arrangements intended to be made for the housing and repair of the vehicles, for the comfort and convenience of passengers and for the storage and safe custody of luggage;

(f) such other matters as may be prescribed."

9. Section 47 prescribes the procedure before the Regional Transport Authority in considering application for stage carriage permit and is set out below:--

"Section 47--

Procedure of Regional Transport Authority in considering application for stage carriage permit.

(1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters 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 broken;

(c) 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;

(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 recognised in this behalf by the State Government, or by any 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.

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to

the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the time-table so as to conform to the said provisions.

(3) A Regional Transport Authority may, having regard to the matters mentioned in Sub-section (1), limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region.

10. It is true that in none of the three sections, quoted above, there is any express power invested in the State Government, the State Transport Authority or the Regional Transport Authority, on its own initiative, to open any new route or to extend any existing route. The State of Madras felt the lacuna in the Act and by a local amendment introduced Section 43A(2) in the Act taking up express power to open a new route or to extend an existing route. The Madras Amendment to the Motor Vehicles Act 1939 is set out below:

"43A (2) -- The State Government may, on a consideration of the matters set forth in Sub-section (1) of Section 47, direct any Regional Transport Authority or the State Transport Authority to open any new route or to extend an existing route or to permit additional stage carriages, to be put, or to reduce the number of stage carriages, on any specified route."

11. Relying on the Madras amendment Mr. Das contended that the Motor Vehicles Act, in so far applicable to West Bengal, did not contain any provision similar to the local amendment of Madras and in the absence of such a provision the Regional Transport Authority or the State Transport Authority must not be allowed to open a new route or to extend a route either on its own initiative or on the recommendation of the Sub-divisional Officer as was done in the instant case. This argument is not very well conceived. When a Statute invests an authority with power to do certain things and does not expressly prohibit certain acts being done by it, it may be taken that the authority may do all things necessary or ancillary to the satisfactory discharge of the functions with which it is invested. Regard being had to the Scheme of the Motor Vehicles Act 1939, I am of the opinion that power to open a new route or extend a route is implied in the Transport Authorities and they may do so either on their own initiative or on the recommendation of the local administrative authorities, as was done in the instant case. Otherwise the consequence may be that even necessary carriage routes may not be opened until somebody applies for carriage permit in such a route. The rule of construction of statute, that I apply in this case, is also the rule of construction applied by Sinha, J. in the case of Kamal Singh Rampuria and Others Vs. Corporation of Calcutta and Others, , although in connection with a different statute, namely, the Calcutta Municipal Act.

12. Madras Legislature may have done well in introducing the local amendment to the Motor Vehicles Act 1939, namely, Section 43A (2), and in making a power express what was implied but I hold that even in the absence of such provision

such a power is implied in the authorities.

13. If the opening of the new route affects the petitioner's bus route, it may bring its inconveniences to the notice of the Regional Transport Authority and I believe that Authority will consider the same u/s 47 of the Act.

14. The only argument advanced in support of the Rule fails and this Rule is discharged. I, however, do not make any order as to costs.