

(1970) 12 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 516 of 1969

Bibhutibhusan Mukherjee

APPELLANT

Vs

Regional Transport Authority and Others

RESPONDENT

Date of Decision : 04-12-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1988 — Section 43A, 44(3), 44(4), 46, 47

Citation : (1971) 37 CLT 112

Hon'ble Judges : S.K. Ray, J; A. Misra, J

Bench : Division Bench

Advocate : R. Mohanty, S.C. Parija and M.M. Sahu, for the Appellant; Standing Counsel (Transport), for the Respondent

Final Decision : Allowed

Judgement

A. Misra, J.—This application under Articles 226 and 227 of the Constitution has been filed for issue of a writ of certiorari to quash the order passed by Opp. party No. 3 on 24-12-1962 and the orders passed by Opp. party Nos. 1 and 2 on 2-5-1968 and 27-9-1968 respectively.

2. Petitioner who is the owner of a motor vehicle bearing registration No. O.R.C. 1641 applied for grant of a permanent contract carriage permit for the said vehicle. At a meeting held on 24-12-1962, the State Transport Authority (Opp. party No. 3) by a resolution fixed the quota of permits to be issued for contract carriage of higher seating capacity for different regions. Such quota for the district of Puri which is co-extensive with the jurisdiction of opp. party No. 1 was fixed at 12. Petitioner's application for a permanent contract carriage permit was refused on 18-5-1966 on the ground that there was no vacancy in view of the quota fixed by Opp. party No. 3. He has, however, granted temporary permits from time to time. His appeal which was registered as M.V. Appeal No. 6 of 1966 was dismissed by opp. party No. 2 on the same ground that there was no vacancy within the quota already fixed by opp. party No. 3. Again on

30-10-1967, Petitioner applied for a permanent contract carriage permit for five years which was rejected by opp. party No. 1 on 2-5-1968 stating that the proposal for increase of the quota had not been approved by opp. party No. 3. Against this order, Petitioner preferred an appeal, registered as M.V. Appeal No. 13 of 1968 which was dismissed by opp. party No. 2 by his order dated 27-9-1968. Petitioner challenges the validity of the order dated 24-12-1962 fixing the quota of such contract carriage of higher seating capacity for Puri at 12 on the ground that opp. party No. 3 has no right to fetter the statutory powers and discretion of opp. party No. 1 and further challenges the orders passed by opp. party No. 1 on 2-5-1968 and in appeal by opp. party No. 2 on 2-7-9-1968 on the ground that the said orders are based on extraneous considerations and the authorities have failed to exercise the statutory jurisdiction vested in them.

3. Opp-Parties resist the application on the following grounds: (1) One application challenging the orders of different statutory authorities is not maintainable in law; (2) the decision of opp. party No. 3 dated 24-12-1962 fixing the quota of contract carriages of higher seating capacity for different regions being a policy decision is not open to question by the Petitioner; (3) the decision of opp. party No. 3 in fixing the limit of contract carriages with higher seating capacity for different regions being an administrative direction is binding on opp. party No. 1 u/s 414(3) of the Motor Vehicles Act and (4) the grant of contract carriage permits being purely an administrative act is not amenable to the jurisdiction of the High Court.

4. In this case, there being no controversy about the correctness of the facts alleged by the Petitioner, the merits of the points raised are to be considered in the light of the said facts. The first contention on behalf of opp. parties is that it is not open to the Petitioner to maintain one application for quashing the orders passed on 24-12-1962 by opp. party No. 3 as well as the orders passed by opp. party No. 1 on 2-5-1968 as they are different statutory authorities. In support of their contention, reliance is placed on a decision of the Madras High Court in Sri Shanmuga Rajeswara Sethupathi, Rajah of Ramnad Vs. State of Madras, . In that case, the Petitioner who was the marfatdar of various devasthanams filed an application under Article 226 of the Constitution challenging the validity of different notifications issued on different dates abolishing estates of the different deities. On those facts, it was held that such a petition was not maintainable as the Petitioner was not asserting his individual right, but in each case he was asserting a right of trustee of a different devasthanam. Those considerations, however, have no application to the facts of the present case. Here the Petitioner is asserting his individual right, in as much as, he has challenged the validity of the orders passed by opp. party Nos. 1 and 2 in refusing grant of a permit to him in pursuance of a direction issued by opp. party No. 3. This is not a case where the Petitioner is asserting a right on behalf of different persons as happened in the Madras Case.

5. In substance, the prayer of the Petitioner is to quash the orders passed on his

application opp. party Nos. 1 and 2. The order dated 24.12.1962 which was only a direction by opp. party No. 3 to the R.T.As. is not one affecting his rights for obtaining a permit. In the matter of dealing with applications for permit, opp. party No. 1 is to exercise its power and jurisdiction in accordance with and on considerations laid down in the relevant provisions of the Motor Vehicles Act. Therefore, the question of quashing the order of opp. party No. 3 which was a direction to the R.T. As. does not arise, because if such a direction is not valid or is otherwise not binding, it was open to R.T. As. not to abide by it. Therefore, the only question that arises for determination in this case is whether the orders passed by opposite party No, 1 on 2-5-1968 and by opp. party No. 2 on 27-9-1968 in appeal are valid.

6. Opposite Party No. 1 by its order at Annexure-E has rejected the application of the Petitioner for a permanent contract carriage permit for his vehicle of higher seating capacity simply on the ground that opp. party No. 3 had fixed the quota of such permits at 12 and had not approved the proposal to increase the said quota to 18. On appeal, opp. party No. 2 has confirmed this order on the same ground. Learned Counsel for opp. parties urges that grant or refusal of contract carriage permits being purely an administrative act is not amendable to the jurisdiction of this Court under Article 226 of the Constitution. For the Petitioner, it is contended that disposal of applications for permits is a quasi judicial function of the statutory Tribunal, and as such, if the said authority has failed to perform its functions in accordance with law, it is liable to be quashed. In the decision reported in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, , after examining the scheme of the Act, their Lordships observed:

This scheme shows that the hierarchy of transport authorities contemplated by the relevant provisions of the Act is clothed both with administrative and quasi judicial functions and power. xx xx In other words, when applications are made for permits under the relevant provisions of the Act and they are considered on the merits, particularly in the light of evaluation of the claim of the respective parties the transport authorities are exercising quasi-judicial powers and are discharging those functions as quasi judicial tribunals which are subject to the jurisdiction of the High Court under Article 226.

Sections 46 to 48 deal with applications for stage carriage permits, while Sections 49 to 51 deal with applications for contract carriage permits. Section 57 lays down the procedure in the matter of applications for different kinds of permits under the Act. So far as applications for contract carriage permits are concerned, Section 50 contains factors for consideration by the R.T.A. in disposal of the applications. They are: (1) inadequacy of the existing service and (b) necessity for grant of additional permits in public interest. It also requires the authority to consider representations, if any, by certain category of persons or authorities. Under Sub-section (6) of Section 57 the R.T.A. is required to take steps as it considers appropriate for hearing the representations in the presence of any persons likely to be affected. A consideration of these provisions and the

requirements contained therein leave no scope for doubt that the function of the R.T.A. in the matter of disposal of applications for contract carriage permits is quasi judicial in nature and not purely administrative, as contended. Therefore, such orders are amenable to the jurisdiction of the High Court under Article 226 of the Constitution.

7. There is no dispute that in dealing with applications for contract carriage permits, the R.T.A is to be guided by the two essential factors contained in Section 50. Neither in the order at Annexure-F passed by opposite party No. 1 not in the order at Annexure-J passed by opp. party No. 2, the concerned authorities have purported to apply their mind and consider the two essential requirements mentioned in Section 50. Prima facie, therefore, they have failed to perform their quasi-judicial functions in accordance with the requirements of law.

8. Learned Standing Counsel for opp. parties, however, contended that even assuming that disposal of an application for a contract carriage permit is a quasi-judicial function of opp. party No. 1 and the latter in passing the order of rejection on Petitioner's application failed to take into consideration the requirements laid down in Section 50, still the order will not be illegal as the direction issued by opp. party No. 3 is restricting the quota of permit for higher seater contract carriage is a policy decision to regulate the activities and policies of the R.T.As. According to him, under Sub-section (3) of Section 44, the State Transport Authority is entitled to exercise powers and functions to co-ordinate and regulate the activities and policies of the R.T.As. and under Sub-section (4), for exercising and discharging the said powers and functions, it is entitled to issue directions which the R.T.As. are bound to give effect to. It is true that Sub-section (3) of Section 44 vests jurisdiction in the State Transport Authority to exercise powers and functions to co-ordinate and regulate the activities and policies of the R.T.A.; a subordinate authority and under Sub-section (4), for the aforesaid purpose, it is empowered to issue directions which will be binding on the R.T.As. to give effect to and be guided. The point is whether these directions which the State Transport Authority is empowered to issue are to be confined to purely administrative matters or they can extend and encroached upon the quasi-judicial powers of the R.T.As. This question was canvassed at length at the Bar, but in our opinion, it will be sufficient to refer to the three following decisions which clearly enunciate the principle of law. In the decision reported in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, , a question arose whether a certain G.O. issued by the Madras Government in pursuance of powers conferred on the State Government under the amended Section 43-A was valid. The G.O. provided a system of assigning marks to several claimants, while considering their applications for stage carriage permits on different routes. Their Lord, ships observed:

In interpreting Section 43-A, we think, it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law, that on exercising their authority and in discharging their quasi-judicial

function, the Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing, of the State. If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may be specific provisions lay down the principles which have to be followed by the tribunals in dealing with the said matters. The scope of the jurisdiction of the tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject, of course, to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the Constitution. But what law and the provisions of law may legitimately do, cannot be permitted to be done by administrative or executive orders.

In another decision of the Rajasthan High Court reported in Jagdish Prasad Vs. The Transport Appellate Tribunal and Others, , the question arose whether the State Transport Authority in pursuance of powers u/s 44(3) of the Motor Vehicles Act can issue directions to the R.T. As. to desist from granting fresh stage carriage permits on certain classes of routes in order to offer alternative routes to displaced as when as to would be displaced operators. The contention of the State Government such directions are in the nature of executive or administrative function was repelled and it was held that as the functions of the It. T.A. in the matter of grant of permits are quasi-judicial in nature, the directions constituted interference with the exercise of the same, and as such invalid. In the decision reported in Sher Singh Vs. State Transport Authority, Gwalior and Others, , it was held that the words "activities and policiest" are mere appropriate to describe administrative functions rather than judicial or quasi-judicial. The duty to dispose of applications for stage carriage permits being a quasi-judicial function cannot be co-ordinated or regulated by directions issued by the State Transport Authority. No doubt, these three decisions relate to applications for grant of stage carriage permits, but the principles are equally applicable to consideration and disposal of applications for contract carriage permits as well, in as much as, the power and function of the R.T.A. in the nature of dealing with and disposal of application for permits under the Motor Vehicles Act are quasi-judicial in nature. Thus, the position of law is well settled that the powers of the State Transport Authority u/s 44(3) are purely administrative and necessarily, the directions to be issued u/s 44(3) which will be binding on the R.I.A must be confined to such administrative functions and cannot encroach upon or fetter the quasi-judicial powers of the tribunals constituted under the Act. This being the well settled position of law, the question is whether in this

case, opposite party No. 1 in rejecting the Petitioner's application by its order at Annexure-F and opposite party No. 2 in confirming the same by its order at Annexure-J have discharged their quasi-judicial functions in accordance with law, unfettered under administrative directions. Neither of the authorities has taken into consideration the two essential requirements laid down in Section 50, while considering the application of the Petitioner. On the other hand, they have rejected the application on extraneous consideration that as opposite party No. 3 had issued a direction fixing the quota of such permits for that region, the application cannot be considered and a permit granted. This is clearly in derogation of powers and duties vested in the tribunal u/s 50 of the Motor Vehicles Act, and as such, the orders are liable to be quashed.

9. Accordingly, we allow the writ application direct issue of a writ of certiorari quashing the orders passed by opposite party Nos. 1 and 2 on 2-5-1968 and 27-9 1968 respectively and order that the Petitioner's application be dealt with and disposed of according to law. In the circumstances of the case, there will be no order as to costs.

S.K. Ray, J.

10. I agree with the order proposed.