

(1973) 02 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 396 of 1970

Bipatlal Jaiswal

APPELLANT

Vs

Regional Transport Authority, Jabalpur and Others

RESPONDENT

Date of Decision : 05-02-1973

Acts Referred:

Motor Vehicles Act, 1939 — Section 47(3), 57, 57(2), 57(3), 57(4)

Citation : AIR 1973 MP 209 : (1974) ILR (MP) 197 : (1973) JLJ 594 : (1973) 18 MPLJ 451

Hon'ble Judges : P.K. Tare, C.J;S.M.N. Raina, J;K.K. Dube, J

Bench : Full Bench

Advocate : B.K. Rawat, for the Appellant; S.Q. Hasan, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

Raina, J.

This a petition under Articles 226 and 227 of the Constitution

The petitioner is a passenger transport operator and had applied for a stage carriage permit for Mandla-Dindori route in lieu of permit No. 19/61 of National Transport Service Co-operative Society, Limited, Jabalpur. The permit was valid up to 19-4-1970. On 25-2-1970 the petitioner filed an application for grant of stage carriage permit for the Mandla-Dindori route in lieu of renewal of the permit. Three more applications were submitted by the following operators for grant of stage carriage permit for the said route.

Name of the applicants

Date of application

(i) Jabalpur Transport Development Co Jabalpur.

3-3-1970

(ii) Dalbir Singh s/o Tara Singh Jabalpur.

4-3-1970

(iii) Gourishanker Rawat

5-3-1970

The application of the petitioner along with the above 3 applications was published in the Madhya Pradesh Rajpatra dated 10-4-1970 in accordance with the provisions of Sub-section (3) of Section 57 of the Motor Vehicles Act (hereinafter referred to as "the Act"). After the objections were received and the applications were ripe for consideration the Regional Transport Authority decided to invite fresh applications vide order dated nil vide Annexure B. A notification was issued in the Madhya Pradesh Rajpatra dated 15-5-1970 and in pursuance thereof respondents 2 and 3 filed their applications for grant of permit for the said route. These applications were published in Madhya Pradesh Rajpatra dated 31-7-1970. The contention of the petitioner is that the order of the Regional Transport Authority inviting fresh applications vide Annexure B is contrary to law. He has, therefore, filed this petition praying that the said order may be quashed and the Regional Transport Authority be directed to hear and decide the application of the petitioner along with other 3 applications filed in lieu of renewal of permit No. 19/61.

When this case came up for hearing before a Division Bench of this Court it was referred to Full Bench vide order dated 3-8-1972 mainly for the purpose of consideration of the following question.

"Where an application for grant of stage carriage permit has been made In lieu of renewal could the Regional Transport Authority invite other applications in that case also and then consider all the applications together." It was pointed out in that order that in Mohanlal Rijumal Vs. State Transport Authority and Others, it was held that applications in lieu of renewal having been made and were pending, there was no occasion for inviting fresh applications. The point for consideration however, is whether the authority of this decision is affected by the subsequent decisions of the Supreme Court in Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc., ; Jeewan Nath Wahal and Others Vs. Sheik Mahfooz Jan and Others, and the full Bench decision of this Court in Anand Ram Vidha Ram Vs. Regional Transport Authority, Rewa, M.P. and Another, .

The procedure regulating the grant of permits is laid down in Section 57 of the Act. Sub-section (2) of Section 57 of the Act reads as under:

....

(1)

(2) "An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or if the Regional Transport Authority appoints dates for

the receipt of such applications, on such dates." The aforesaid sub-section requires that an application for a stage carriage permit or public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect. This necessarily implies that the application shall be duly considered and final orders shall be passed thereon in accordance with the procedure laid down in Section 57 of the Act within the aforesaid period of six weeks so that in case the application is granted the applicant may be able to obtain the permit on or before the desired date. Sub-section (3) of Section 57 lays down that on receipt of an application for stage carriage permit or public carrier's permit the Regional Transport Authority shall make the application available for inspection in the office and shall also publish the application or substance thereof together with a notice of the date before which representations in connection therewith may be submitted and the date not being less than thirty days from such publication, on which and the time and place at which, the application and any representations received will be considered. It has not been laid down in this sub-section as to how long after the presentation of an application it shall be published. But it is clear that it must be published as early as possible after the application has been received because a period of thirty days must elapse before the representation can be considered. It would be pertinent to mention that the use of the word "shall" in Sub-section (3) clearly indicates that the procedure laid down thereunder is mandatory and the Regional Transport Authority is bound to follow it in dealing with the application duly submitted in accordance with the provisions of Sub-section (2) of Section 57 of the Act.

Sub-section (4) of Section 57 lays down 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. The language of this provision also clearly indicates that it is mandatory and it has an important bearing on the construction of the entire section in so far as it lays down the procedure for dealing with an application under Sub-section (2) thereof.

It is no doubt true that subsection (2) of Section 57 empowers the Regional Transport Authority to invite applications and to appoint a date for the receipt of such applications. But in our view this power cannot be exercised so as to affect the right of an applicant to have his application duly considered in accordance with the procedure laid down in the said section.

Section 57 does not make any distinction between an application for a stage carriage permit in lieu of renewal and one for a similar permit on a new route but so far as a new route is concerned or an additional permit on the same route is concerned, it is necessary to read this section along with Section 47 (3) of the Act. The aforesaid provision is reproduced below for facility of reference.

"47 (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."

Under Sub-section (3) of Section 47 of the Act. the Regional Transport Authority can limit the number of stage carriages for which permit may be granted in the region or in any specified area or on any specified route within the, region. The question of determination of the number of stage carriages for which stage carriage permits may be ganted arises mainly in the context of a new route. Their Lordships of the Supreme Court while dealing with a case of new route in *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, observed as under in paragraph 8

"Firstly there should "be a determination by the R. T A. u/s 47(3). of the number of stage carriages for which stage carriage permits may be granted on that route. Thereafter applications for stage carriage permits in that route should be entertained."

It was further held by their Lordships that determination as to the number of stage carriages required on a route should be done at a stage anterior to that of entertaining applications for stage carriage permits. This decision was followed by their Lordships in *Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc.*, and *Jeewan Nath Wahal and Others Vs. Sheik Mahfooz Jan and Others*, . But in neither of these cases their Lordships were required to consider the precise question which arises for consideration in this case.

In *Anand Ram Vidha Ram Vs. Regional Transport Authority, Rewa, M.P. and Another*, a Full Bench of this Court relying on the aforesaid decisions of the Supreme Court held that where an application for grant of a stage permit has been made for a new route it cannot be decided before first passing an order u/s 47 (3) of the Act. This decision is also of no help for the purposes of the present case because it dealt with the case of a new route. It may here be mentioned that so far as Section 57 is concerned it makes no distinction between an old route and a new route. It has, however, been laid down by their Lordships of the Supreme Court that before an application u/s 57 for a new route can be considered it is necessary for the Regional Transport Authority to determine the scope of the route. It is, however, a matter entirely within his discretion whether to deal with the applications already (?) for such route after determining the scope u/s 47 (3) of the Act or to invite fresh applications. We need not. however, pursue this matter any further here because we are concerned with a problem relating to existing route for which the scope has already been determined by the Regional Transport Authority u/s 47 (3) of the Act.

Even with regard to an existing route there can be no doubt that it is open to the Regional Transport Authority u/s 57 (2) of the Act to invite applications, but. as already pointed out above this power cannot be exercised so as to interfere with the right of the applicants who have submitted their applications u/s 57 (2) of

the Act to have them considered in accordance with the provisions of Section 57 of the Act.

In *Makhan Lal Vs. State of Uttar Pradesh and Others*, it was held in paragraph 31 that if any one had already presented an application which could be considered to comply with the requirements of the first alternative mentioned in Section 57 (2) of the Act, it was incumbent on the Regional Transport Authority to consider that application and it was not competent for it to ignore that application simply because it subsequently decided to fix a date for the presentation of applications under the second alternative. Similar view was expressed in *Madhab Chandra v. Secy., Regional Transport Authority Gauhati* AIR 1956 Gau 6. The aforesaid decisions were followed by this Court in *Bhojrai Chouksey v. Regional Transport Authority, Jabalpur*. Misc. Petn. No. 263 of 1961 decided on 26-10-1961 : 1962 MPLJ 35. It was held in that case as under:--

"A Regional Transport Authority may, if it thinks necessary invite in advance fresh applications for a route and may also consider such applications along with the applications already made for a permit for the route; but. on the date fixed for consideration of the applications already made after observing all the prescribed formalities it cannot defer consideration of such applications on the ground that other applications should be invited."

A somewhat similar view was expressed in *New Jabalpur Transport (P.) Ltd. v. Regional Transport Authority*. Misc. Petn. No. 403 of 1962 decided on 28-2-1963 :1963 MPLJ 147. In the Full Bench decision of this Court in *Anand Ram Vidha Ram Vs. Regional Transport Authority, Rewa, M.P. and Another*, the principle laid down in the aforesaid decisions was held to be not good law in so far as it related to a new route vide paragraphs 5 to 7 of the order in the said case. But the aforesaid principle, in our view, would be applicable to an application for an old route.

In the case of an old route the Regional Transport Authority is fully aware of the existing permits and the dates on which they are to expire. He can, therefore, very well take action in advance by inviting fresh applications u/s 57 (2) of the Act in order to facilitate the grant of a permit in favour of the best operator. But if he does not take any such action in advance, it is not open to him to invite fresh applications after the applications duly made u/s 57 (2) have become ripe for consideration. We have already pointed out above that the provisions of sub-sections (3) and (4) of Section 57 are mandatory. Therefore once an application is published by the Regional Transport Authority under Sub-section (3). it has got to be considered and finally decided in accordance with the provisions of Sub-section (3) and Sub-section (4). Sub-section (4) of Section 57 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. The Regional Transport Authority cannot circumvent this provision by calling for applications at a late stage in exercise of its powers under Sub-section (2) of Section 57. Thus, the question whether fresh

applications are to be invited or not has to be considered by the Regional Transport Authority in advance or, in any case, before an application duly made under Sub-section (2) of Section 57 is published under Sub-section (3) of Section 57 of the Act. Once an application is published, the Regional Transport Authority must proceed to deal with it and cannot keep it pending for the purpose of inviting fresh applications.

The learned counsel for the petitioner relied on the decision of this Court in *Suganchand Ramnarain Vs. State Transport Appellate Authority and Others*, . But in that case the decision rested mainly on the consideration that after the Appellate Authority had remanded an application for consideration by the Regional Transport Authority, it was not open to the Regional Transport Authority to invite fresh applications at that stage. In *Mohanlal Rijumal Vs. State Transport Authority and Others*, the action of the Regional Transport Authority in inviting fresh applications was held to be not justified as certain applications were pending for consideration in the vacancy resulting from the rejection of the application for renewal from the original operator. The position in that case was similar to the one in the present case and we agree with the view expressed therein. But we would like to add that if the Regional Transport Authority wanted to invite fresh applications, it was open to it to do so before the publication of the applications already filed and not after that. We may point out that a similar view has been expressed by a Division Bench of this Court recently in *M/s. Pratapsingh Pushpendrasingh v. The Regional Transport Authority Jabalpur Misc. Petn. No. 254 of 1971. D/- 6-12-1972 (Madh. Pra.)*. It was pointed out in that case that the consideration of the pending applications, which have become ripe, could not be postponed by the Regional Transport Authority by inviting fresh applications. We fully endorse this view.

To sum up, our answer to the question for consideration is that it is open to the Regional Transport Authority to invite applications u/s 57 (2) of the Act even where an application for grant of a stage carriage permit has been made in lieu of renewal; but this power must be exercised before the publication of the application. Once the application is published, the Regional Transport Authority must proceed to consider it and cannot invite fresh applications to be considered along with such application.

Since the action of the Regional Transport Authority in inviting fresh applications in this case was not according to law, we hereby quash the order of the Regional Transport Authority dated 10-4-1970 (Annexure "B") and direct the said authority to consider the pending applications of the petitioner and other applicants which have already become ripe for consideration. We, however make no order as to costs in the circumstances of this case. The outstanding security amount shall be refunded to the petitioner.