

(1957) 12 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2771 of 1957

Brijlal Misra and Another

APPELLANT

Vs

The Regional Transport Authority, Kanpur

RESPONDENT

Date of Decision : 23-12-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1939 — Section 47(1), 47(3)

Citation : AIR 1958 All 390 : (1958) 28 AWR 268

Hon'ble Judges : Jagdish Sahai, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—The petitioner No. 1 holds a Permit --being permit No. 408 for plying a stage carriage on Kalpi-Kotra route. This permit is valid upto October 1958. The petitioner No. 2 also holds a permit being permit No. 228 for plying a stage carriage on the same route. This permit is valid upto 1960. The petitioner's allegation is that this route was created in 1950 and originally the petitioner No. 2 alone was granted a Permit for running the stage carriage on this route. The petitioner No. 1 however began plying his stage carriage on the route from 1952 when the strength was increased by one more vehicle on this route. Certain representations were made for recognising certain routes and for increasing the strength of carriages on certain routes. Because of those representations the Secretary, Regional Transport Authority, Kanpur, by his letter No. 1388 RTA/80/Strength dated 7-10-1955, wrote to the District Magistrate of Jhansi for his views on the matter.

It is alleged that in none of those representations was there any suggestion that the strength on Kalpi Kotra route be increased, nor was the opinion of the District Magistrate invited for the increase of the strength on this route. Yet the Acting District Magistrate of Jalaun Sri S.P. Arren, it is alleged, sent a letter in reply to

the aforesaid letter of the Secretary, Regional Transport Authority, Kanpur, suggesting that the strength on Kalpi Kotra route be increased. The matter of the increase of strength of Kalpi Kotra route was put up for consideration before the Regional Transport Authority sometime in May 1957. The petitioners' case is that they did not receive any notice nor had they any opportunity to make representations against the increase in the strength on the route.

The petitioners on coming to know that the aforesaid agenda was fixed for consideration in the meeting of the Regional Transport Authority reached the Place where the meeting was being held and sent a slip that they wanted to make certain representations against the proposed increase in the strength on the Kalpi-Kotra route, but, the petitioners' allegation is that, they were neither called in the meeting nor were allowed any opportunity to make representations against the increase in the strength. The Regional Transport Authority passed a resolution) in this meeting that the strength on the Kalpi-Kotra route be increased by two more stage cardages and in pursuance of that resolution applications were invited from different persons for grant of permits for the two more stage carriages on the Kalpi-Kotra route. These applications have now been gazetted in the U. P. Gazette of 12th October 1957 for receiving objections.

The petitioners allege that they have sent a representation that the strength should not too increased and that 14th November 1957 was fixed for the consideration of the applications made for grant of permits on the two vacancies cheated by them. It is alleged that there was no demand of the public or any authority for increase of the strength on the Kalpi-Kotra route and there are not even sufficient passengers for the two stage carriages already plying and any increase would adversely affect the rights of the petitioners. It is alleged that Kotra is a small village with a population of about 2000 to 2500 persons and there is not much traffic on this route. The complaint of the petitioners is that the decision to increase the strength has been made arbitrarily and without considering the point of view of the persons who are already providing transport facilities on this route. On these facts the petitioners have moved this petition.

2. Mr. S. O. Khare, the learned counsel for the petitioners has made two submissions. His first submission is that before the strength of the route could be increased it was incumbent upon the Regional Transport Authority to have considered the representation of the petitioners and their failure to give the petitioners an opportunity of making any such representation makes the resolution increasing the strength illegal and without jurisdiction. In this connection it is also complained that the Petitioners reached the place where the meeting was held and wanted an Opportunity to be heard which was refused arbitrarily, and it is complained that the principles of natural justice have also been infringed inasmuch as the strength has been increased without hearing the petitioners.

The learned counsel for the petitioners contends that they were entitled to be heard before file resolution increasing the strength was passed for two reasons.

Firstly, it is said that Section 47 (3) of the Motor Vehicles Act lays down that before the strength is increased the persons who are already plying their stage carriages on the route should be given an opportunity of being heard. Section 47(3) runs as follows:

"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".

It is contended that the words "having regard to matters mentioned in Sub-section (1)" include the taking into consideration of any representation made by persons already providing passenger transport facilities by any means along or near the proposed route or area. It would be noticed that in Section 47 (1) it is provided that "a Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters namely:

- (a) the interests of the public generally;
- (b) the advantages to the public of the service to be provided, including the saving of time likely to be affected 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".

It is contended that the words "having regard to matters mentioned in Sub-section (1)" mean having regard not only to the matters mentioned in clauses (a) to (f) but also any representation made by any person already providing

passenger transport facilities. It is therefore argued that inasmuch as Section 47 (3) of the Act contemplates the taking into consideration any representations made by persons already providing passenger transport facilities, by implication it has been enacted that the persons who are already providing passenger transport facilities shall be given a notice and shall be allowed an opportunity to make a representation before the Regional Transport Authority limits the number of stage carriages generally or of any specified type for which the stage carriage permits may be granted. The learned counsel for the petitioners has invited my attention to a decision of my learned Brother Nigam, J. in Civil Misc. Writ No. 1782 of 1957 (A), where a similar question arose for consideration. The learned Judge has observed as follows:

"The contention of the learned counsel is that Section 47 (3) of the Motor Vehicles Act, as amended by Act 100 of 1956, requires the Regional Transport Authority before increasing the number of stage carriages on any route to take into consideration any representation 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. The contention of the learned counsel is that as this representation had to be considered before a decision could be arrived at altering the number of stage carriages operating on that route, it was necessary and incumbent on the Regional Transport Authority to give information of the proposal under its consideration to the persons operating on or near the route. It is admitted by the learned counsel appearing for the State that the decision increasing the number of stage carriages was arrived at on 25-1-1957 and there is nothing on the record to show that this intention was communicated to the petitioner who is admittedly a person interested in providing passenger transport facilities on the route. The learned counsel urges that it was not necessary to give any such notice. Subsection (3) clearly requires that the Transport Authority has to pay regard to the matters mentioned in Sub-section (1) and these include consideration of representation to be made by persons interested in providing passenger transport facilities. Once this is conceded, it follows that some process of informing the persons so interested must be gone through otherwise it would always be open to the Regional Transport Authority to avoid receiving any representation by following a policy of hush hush". With the greatest respect I am unable to agree with the learned Judge. The words "having regard to the matters mentioned in Sub-section (1)", to my mind, do not include consideration of representation to be made by persons interested in providing passenger transport facilities. I am saying so because it will be seen that in Section 47 (1) of the Act the word "matters" has been used only in relation to what is mentioned in clauses (a) to (f). The opening words of Section 47 (1) are as follows:

"A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters namely;"

The use of the word "namely" after the word "matters" conclusively proves that the matters contemplated are those mentioned in Clauses (a) to (f) and nothing more. It cannot be said that the words, "matters" and "namely" also relate to the words "and shall also take into consideration any representation made by persons already providing passenger transport facilities". To my mind such a construction would be opposed to the rules of grammar because then the sentence would read as follows:

"A Regional Transport Authority shall in considering an application for a stage carriage Permit have regard to the following matters namely and shall take into consideration any representations made by persons already providing passenger transport facilities."

If the sentence were to read like that it would make no meaning. I am, therefore, unable to hold that the expression "having regard to the matters mentioned in Sub-section (1)" includes consideration of representations to be made by persons interested in providing passenger transport facilities. I, therefore, overrule this contention of the learned counsel for the petitioners.

3. AS a second string to his bow Mr. Khare has submitted that even if his arguments with respects to Section 47 (3) of the Act be not accepted the principles of natural justice require that a party should be given an opportunity of showing cause against a decision which is likely to affect his right. Mere increase of the strength on the route on paper would not affect the right of the persons who are already plying their stage carriages from before. Their rights would be affected only if and when permits for the additional or the increased number of vehicles are given. Section 47 (1) of the Act requires that before such permits are given the Regional Transport Authority shall take into consideration any representations made by persons already providing passenger transport facilities. In fact according to the allegations of the petitioners themselves the applications for additional permits have been gazetted in U. P. Gazette of 12-10-1957 and objections have been invited from all persons whose rights are being affected including the petitioners. The petitioners can and in fact have objected to the issue of the permits. Their objections that there are not sufficient passengers even for the two stage carriages already plying and therefore a further increase is not desirable can be and shall be considered by the Regional Transport Authority at the time when they will be considering whether or not to issue the additional permits to the applicants for the same. Section 47 (1) (c) provides that a Regional Transport Authority shall in considering an application for a stage carriage permit have regard to 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. The contention of the learned counsel for the petitioner is that inasmuch as the Regional Transport Authority has already decided that the strength should be increased by two, the only thing that they will now consider is as to whom the permits for the same be issued. I do not agree with this contention. The language of Section 47(1) (c) is very

clear and even at the time when the Regional Transport Authority is considering the applications which are gazetted, on merits they are also required to consider the adequacy of other passenger transport services operating or likely to Operate in near future. The Regional Transport Authority has to consider all the matters mentioned in clauses (a) to (f) of Section 47 (1) of the Act. They will also consider the petitioners' objection that there was no scope for the increase of permits on the Kalpi-Kotra route, along with other matters mentioned in Section 47 (1) from (a) to (f). It will be for the Regional Transport Authority to decide as to what weight should be given to this objection. It was held in the case of C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another, that with reference to Section 47 (1) (c) adequacy of extension of service can be taken into account only in so far as it is in the interests of the public.

The factor to be considered is not whether the existing operators will suffer by competition but whether extension of service will be in the interests of the public. It was held in the case of Dholpur Co-operative Transport and Multipurpose Union Ltd, v. Appellate Authority, Rajasthan AIR 1955 Raj. 19 (C) that Section 47 lays down the general conditions regard will be paid to which in granting or refusing a stage carriage permit. These conditions are not necessarily exhaustive in details. That being so even if it be conceded for a moment, though I have held to the contrary that Section 47 (1) (c) does not cover such objections as the petitioners have the Regional Transport Authority can consider the petitioners' objection on the ground that the matters mentioned in clauses (a) to (f) of Section 47 (1) are not exhaustive, as was held by the Rajasthan High Court.

All that the petitioners are entitled to is that their objections should be considered, but as was held in the Madras case cited above the most important consideration would be the interest of public generally and if the Regional Transport Authority comes to the conclusion that in the interest of public generally the permits Nos. 3 and 4 should be granted then there would be nothing illegal in the order of the Regional Transport Authority, even though the interests of the petitioners may to a certain extent be affected. The objections of the petitioners were before the Regional Transport Authority and would have already been considered by it, if permits Nos. 3 and 4 have already been granted. If they have not been granted then the objections of the petitioners will be considered by them at the time when the matter comes up before them. Therefore I find no justification in the petitioners' complaint that they had no opportunity of making a representation on the ground that their rights would be affected by the increase in the number of permits.

They cannot also legitimately complaint that they were not heard when the meeting of the Regional Transport Authority was going on in connection with the proposal for the increase of the strength on this route. I have already held that it is not the intention of Section 47 (1) (e) that the petitioners should have an opportunity of making a representation at the time when the Regional Transport Authority is considering whether or not to increase the strength of the route.

Even the principles of natural justice do not require that a party should have an opportunity of a hearing at every stage in proceeding. It was held in the case of F.N. Roy Vs. Collector of Customs, Calcutta, that there is no rule of natural justice that at every stage a person is entitled to a personal hearing.

4. I, therefore, see no force in this petition and dismiss it with costs.