
(1970) 07 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 85 of 1068

Bus Owners Association

APPELLANT

Vs

The State Transport Authority and Others

RESPONDENT

Date of Decision : 23-07-1970

Acts Referred:

Motor Vehicles Act, 1988 — Section 47, 47(1), 47(3), 48, 57

Citation : (1970) 07 GAU CK 0003

Hon'ble Judges : M.C. Pathak, J;D.M. Sen, J

Bench : Division Bench

Advocate : B. Das, for the Appellant; A.M. Mazumdar, Jr. Govt. Advocate, J.P. Bhattacharjee and D.C. Goswami, for the Respondent

Judgement

Pathak, J.—By this writ petition the Petitioner has prayed for a mandamus directing the Respondents not to give effect to the order of the Regional Transport Authority, Dibrugarh passed in the meeting held on 29th March 1967 granting 3 permits to Respondents Nos. 3, 4 and 5, the order passed by the State Transport Authority, Assam, Shillong on 30th November 1967 and 1st December, 1967 rejecting the revision petition filed against the said order of the Regional Transport Authority, and the notice dated 18-3-68 issued by the Regional Transport Authority to Respondents 3, 4 and 5.

2. The Petitioner is the Dibrugarh city Bus Owners Association represented by its Secretary Shri Nagendra Nath Das. The Petitioner's case is that it is a recognised association of the 17 Stage Carriage Permit holders on the Dibrugarh City Bus routes extended up to Barbarua, Jokai Sessa, Mohonbari Airfield. That the periods of validity of different permits for stage carriages in the City Bus routes expire on different dates. The period of validity of two such periodic permits was to expire on 31-12-66 and the Regional Transport Authority invited applications for the renewal of the said existing periodic permits by notification dated 25th November, 1966. In pursuance of the said notification the holders of the two periodic permits submitted applications for renewal of their periodic permits. The

Regional Transport Authority in its meeting held, on 29th March, 1967 passed orders for renewal of the said two permits and it further observed that the existing 17 permits of City Buses at Dibrugarh could not give adequate service on all the routes of Dibrugarh and since there had been no increase in the number of vehicles for several years, though the number of population rose at an accelerated rate, the Regional Transport Authority decided to advertise for three more additional permits for Dibrugarh in addition to the existing 17 permits.

In order to meet the urgent need, the Regional Transport Authority also decided to grant 3 temporary permits, one each to Respondents, Nos. 3, 4 and 5 pending regularization in due course. Though in the order of the Regional Transport Authority it was mentioned that the Secretary of the Petitioner association was present during the discussion, he was not called to the above-mentioned meeting for the purpose of discussion regarding the increase of the number and therefore without consulting his association, he could not say anything when his opinion was asked about the increase of the number and he wanted some time for this purpose, which was not allowed.

3. The Petitioner filed a revision petition before the State Transport Authority against the order of the Regional Transport Authority's granting 3 additional temporary permits. The State Transport Authority in its meeting held on 30-11-67 and 1-12-67 heard the said revision petition and rejected the same. Thereafter the Regional Transport Authority issued a notice dated 18-3-68 to Respondents 3, 4 and 5 to produce registration certificates, fitness certificates and insurance certificates of their vehicles together with their clearance certificates of Income Tax and professional taxes within ten days from the date of issue of the order for the purpose of issuing them temporary permits.

4. This writ petition has been filed against the aforesaid order of the Regional Transport Authority granting 3 , additional temporary permits and the order of the State Transport Authority rejecting the revision petition and also the notice issued by the Regional Transport Authority to Respondents 3 to 5.

5. Mr. B. Das the learned Counsel appearing for the Petitioner submitted that the decision of the Regional Transport Authority to grant three temporary permits was in contravention of Section 62 of the Motor Vehicles Act, inasmuch as the temporary permits, in any case, could not be issued for a period exceeding four months. The learned Counsel then submitted that the order of the Regional Transport Authority increasing the number of permits in the routes in question was bad in law and without jurisdiction inasmuch as this was done without following the procedure laid down in Section 47 of the Motor Vehicles Act, or, in other words, without giving an opportunity to the Petitioner and other existing permit-holders to show cause against the increase of the number of the permits. It was further submitted that Respondents 3 to 5 were already permit-holders in respect of stage carriages in City Bus routes of Dibrugarh and therefore granting additional temporary permits to them was violative of the principles of natural justice, encouraging monopoly of transport business.

6. From the impugned order of Regional-Transport Authority dated 29-3-67 it appears that owing to the establishment of various educational and other institutions etc., in and outside Dibrugarh town, the population of the town has risen at an accelerated rate. Various public voices represented through the press from time to time pointed out the shortage and irregular running of buses to the utmost inconvenience of the public. In order to ameliorate the situation the Board unanimously decided to advertise 3 more additional permits for Dibrugarh town in addition to the existing 17 permits. Naturally it would take sometime to grant the 3 additional permits after following the procedure laid down in the Motor Vehicles Act. As the need was urgent, the Board observed that in order to meet the urgent need, in the meantime 3 temporary permits, one each to Respondents 3, 4 and 5 should be granted pending regularization in due course.

7. The learned Counsel for the Petitioner submitted that the issue of the temporary permits in the instant case was for a period of more than four months and therefore it was against the provisions of Section 62(c) of the Motor Vehicles Act. It may, however, be mentioned that due to the stay order passed by the State Transport Authority and the High Court, no temporary permits have yet been issued, as is found from the affidavit in opposition filed by the Respondents. The question of issuing temporary permits for more than 4 months, therefore, does not arise at this stage in the instant case. 8. Whether a temporary permit exceeding a period of four months cannot be issued under any circumstances is a relevant point to be considered here. This, question came up for consideration in the case of the The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur, Where in the Supreme Court observed as follows:-

It appears, from the order of the Regional Transport Authority that after the regular permit granted to Respondent No. 3 was cancelled there was a shortage of necessary number, of transport vehicles, on the route and the Regional; "Transport Authority thought it fit to provide for this temporary need until regular operations were introduced and regular permits were granted after following the procedure prescribed u/s 57 of the Motor Vehicles Act. Section 62(c) of the Motor Vehicles Act states that the Regional Transport Authority may grant a temporary permit "to meet a particular temporary need" and we see no reason why this clause should be given any special or restricted meaning. There is no antithesis between a particular temporary need and a permanent need and it is manifest that these two kinds of need may co-exist on a particular route. If, therefore, the Regional Transport Authority considered that, in the circumstances of the case, there was a particular temporary need, and granted a temporary permit to the Appellant, the action of the - Regional Transport Authority cannot be challenged as legally invalid. Reference may be made, in this connection, to "S. 62(d) which contemplates those temporary permits may be granted to authorize the use of a transport vehicle temporarily pending decision on an application for the renewal of a permit. This Sub-section, therefore, contemplates that there may exist a temporary need for transport facilities on a particular route even in case of

permanent need for such facilities. We are accordingly of opinion that the Regional Transport Authority was right as a matter of law in granting a temporary permit to the Appellant u/s 62 (c) of the Motor Vehicles Act in the circumstances of this; case and the view expressed by the High Court is not correct.

9. In the instant case the Regional Transport Authority decided that 3 more regular permits should be issued and until those permits were regularly issued following the procedure prescribed u/s 57 of the Motor Vehicles Act, in view of the urgent need it ordered for issue of the 3 temporary permits. This Regional Transport Authority could do u/s 62(c) of the Motor Vehicles Act and by doing so. the Regional Transport Authority did not commit any irregularity or illegality, as pointed out by the Supreme Court in *The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur*,

10. In the same case the Supreme Court further observed :

It was urged that the words "in any case" mean that under no circumstance a temporary permit can be granted on any route for more than a total period of 4 months. We are of opinion that the words "in any case" do not mean "in any circumstance". The section means that at any one time the Regional Transport Authority is not permitted to issue to any person a temporary permit for a period exceeding 4 months, but if the temporary need persists, as, for example, where the formalities u/s 57 are not completed within a period of 4 months, it would, in our opinion, be permissible for the Regional Transport Authority to grant a second temporary permit in order to meet the temporary need. We should, of course, make it clear that the Regional Transport Authority cannot abuse its power and go on granting temporary permits in quick succession and not take speedy action for completing the procedure u/s 57 of the Motor Vehicles Act. If upon the facts of any particular case it appears that the Regional Transport Authority is so abusing its powers its action is liable to be corrected by grant of a writ, but where such abuse of power is not alleged or shown the mere fact that the Regional Transport Authority has granted a temporary permit for a second time and the total duration of the two periods is more than 4 months, should not invalidate the second permit.

11. As pointed out earlier, though the Regional Transport Authority ordered for issuing the three temporary permits u/s 62(c) of the Motor Vehicles Act, in the instant case the order could not be given effect to due to stay orders passed by the State Transport Authority and the High Court. In the circumstances we hold that the Petitioner's submission that the Regional Transport Authority's order for issuing 3 temporary permits was in violation of Section 62(c) and other provisions of the Motor Vehicles Act has no substance.

12. Regarding the second submission of the learned Counsel, the point that arises for consideration is whether the Regional Transport Authority, while determining the number of permits in a route u/s 47(3) of the Motor Vehicles Act has to give a hearing to the persons interested in running stage carriages in the

routes concerned, for example, the Petitioner in the instant case. This point also came up for consideration before the Supreme Court in the case of Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another, In that case the Supreme Court observed as follows:

It would be noticed that Sub-section (3) of Section 47 does not expressly say whether any representations can be made by persons, already providing transport facilities or by associations representing persons interested in the provision of the transport facilities or by any local authority or police authority within whose jurisdiction the route or area lies. This is expressly mentioned in Section 47(1). The learned Counsel contended that the expression "matter mentioned in Sub-section (1) occurring in Sub-section (3) refers back not only to matters mentioned in Sub-clauses (a) to (f) to Sub-section (1) in Section 47 but also the right of representation mentioned in Sub-section (1). We are unable to accept this line of reasoning as being sound.

The Supreme Court further observed:

An order u/s 47(3) affects the future working on a route and we are of the view that such an order would have repercussion on the working of the existing operators, whether for their good or not. The High Court, as stated above, was of the view that at the stage of Section 47(3) existing operators would not be entitled to be heard by the Regional Transport Authority. But assuming that it is so this does not affect the right of revision conferred by Section 64A. We need not in this case decide whether it is implied that existing operators would be entitled to be heard by the Regional Transport Authority before an order u/s 47(3) is made.

In Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another, the point was practically left undecided.

13. In a recent decision of the Supreme Court in the case of Mohd. Ibrahim v. The State Transport Appellate Tribunal, Madras, Civil Appeals Nos. 2322-2324, 2326-2328 etc. of 1969 and 248 and 8 of 1970 D/- 30-4-1970. (reported in Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc., the interpretation of Section 47(3) of the Motor Vehicles Act 1939 came up for consideration. In that case the following question interlaid was considered: by the Supreme Court Whether the Regional Transport Authority in limiting the number of stage carriages for which stage carriage permits may be granted in the region or in any specified area or on any specified: route In the region required to hear interested persons or the said Authority can limit the number of stage carriages for which permits may be granted by an administrative order u/s 47(3) of the Motor Vehicles Act. After discussing the relevant provisions of Motor Vehicles Act the Supreme Court laid down as follows:

Section 47(3) of the Act is the only provision which is applicable to the jurisdiction, power and procedure of the Regional Transport Authority while limiting the number of stage carriages for which permits may be granted.

Section 47(3) of the Act, on the other hand, speaks only of the matters mentioned in Sub-section (1) which a Regional, Transport Authority may have regard to while limiting the number of stage carriages. The total absence in Section 47(3) of the Act of any reference to representations mentioned in Section 47(1) of the Act indicates that a Regional Transport Authority u/s 47(3) of the Act is not required to take into consideration any representation of the nature mentioned in Section 47(1) of the Act. In view of the provisions of the Act and, in particular, Section 48 of the Act which enacts that a Regional Transport Authority subject to the provisions of Section 47 may grant a stage carriage permit, it is manifest that representations contemplated in Sections 47(1) and 57(3) of the Act are representations subsequent to the application for grant of permit, and, therefore, these representations do not at all enter the field of determination of number of stage carriages u/s 47(3) of the Act. Representations mentioned in Section 47(1) of the Act relate to representations by and between the competitors and contenders for grant of a permit these individual representations raise rival contentions between operators. When the Regional Transport Authority act u/s 47(3) of the Act it does not deal with any dispute between operators. The Regional Transport Authority is required to arrive at its decision u/s 47(3) of the Act having regard to matters mentioned in Section 47(1) of the Act independent of any representation by operators or any hearing. The deliberation as well as the decision of the Regional Transport Authority u/s 47(3) of the Act is confined to its own administrative policy and order. The Regional Transport Authority in limiting the number of stage carriage permits u/s 47(3) of the Act may address itself to the matters enumerated in Sub-section (1) of Section 47 of the Act and the said Authority is not required to hear operators at the time of the consideration of the matter of determining the limit of number of permits.

The Regional Transport Authority on the other hand while acting u/s 47(3) of the Act is the master of its own procedure because it does not deal with individual or competing rights of operators but is required to arrive objectively at its own conclusion independent of any application or representation by operators.

We are of opinion that the Regional Transport Authority if not obliged to hear operators while-exercising jurisdiction u/s 47(3) of the Act in fixing the limit of number of stage carriage permits.

14. On a perusal of the above observations made by the Supreme Court it is quite clear that while exercising jurisdiction; u/s 47(3) of the Act in fixing the limit of number of stage carriage permits, the Regional Transport Authority is not required to hear operators at the time, of the consideration of the matter. The second submission of the learned Counsel, therefore, fails.

15. Regarding the third submission of the learned Counsel, we find that in view of the urgent need as factually found by the Regional Transport Authority for increasing the number of city buses by adding 3 more permits, the Regional Transport Authority ordered for issuing 3 temporary permits to meet the urgent

temporary need; this was only a stop-gap arrangement! till applications were called for the 3 additional permits and those are granted after following the procedure laid down in the Motor Vehicles Act In, the circumstances, though Respondents 3, 4 and 5 might have already held permits for some city buses, that would not, in bur opinion in any way make the impugned order of the Regional Transport Authority illegal nor would it create monopoly in the business. These aspects of the matter were considered by the State Transport Authority also in the revision petition and it held that there was no reason to interfere with the decision of the Regional Transport Authority on a; consideration of the facts and circumstances of the case we hold that there is no substance in the last submission of the learned Counsel also.

16. In the result this petition fails and is rejected. The rule is discharged and the stay order is vacated. In the facts and circumstances of the case we make no order as to costs.

D.M. Sen, J.

17. I agree.