
(1996) 07 RAJ CK 0049
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1940 of 1996

Dharam Chand

APPELLANT

Vs

S.T.A.T. and Others

RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 68, 70, 71, 72, 90

Citation : (1996) 3 WLC 451 : (1996) 1 WLN 460

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—Petitioner by filling the instant writ petition questions the impugned order dated 23.4.96 (Annx.3) passed by the State Transport Appellate Authority, Rajasthan, Jaipur in exercise of its powers u/s 90 of the Motor Vehicles Act, 1988.

2. Brief facts leading upto the stage of filing the instant writ petition are that the Regional Transport Authority, Ajmer vide its order dated 12.12.95 (Annx.I) resolved to open a new route from Mohanpura to Kalbelia via Mandalgarh. The petitioner applied for grant of permit which was granted to her by the Regional Transport Authority, Ajmer on the same day i.e. 12.12.1995.

3. It is alleged that respondent No. 3 was a permit-holder on Mohanpura to Baneda via Mandalgarh route submitted a revision petition u/s 90 of the Motor Vehicles Act, 1988 before respondent No. 1-State Transport Appellate Tribunal, Rajasthan, Jaipur on the ground inter alia that since her route over-lapped by the Impugned opening of a new route from Mohanpura to Mandalgarh, hence, she was an aggrieved person and secondly, under Clause (ca) of Sub-section (3) of

Section 68, the Regional Transport Authority has no jurisdiction to open the new route in question.

4. Respondent No. 1, after hearing both the parties quashed the opening of new route in question by the R.T.A. as well as permit granted to him in favour of the petitioner vide its order dated 23.4.96 (Annx.3) to the writ petition.

5. It is vehemently argued by the learned counsel for the petitioner Mr. B.L. Maheshwari that since respondent No. 3 was not an aggrieved person, therefore, she was not entitled to file revision u/s 90 of the aforesaid Act.

6. It is next contended by learned counsel for the petitioner that it is apparent from the impugned order that respondent No.3 had questioned only granting of permit by the R.T.A. on 12.12.95 but she did not make any grievance against opening of a new route by the R.T.A.

7. Lastly, it is contended by the learned counsel for the petitioner that Clause (ca) of Sub-section (3) of Section 68 does not take away the inherent power of opening a new route by the R.T.A. as contemplated under Secs.70, 71 and 72 of the Motor Vehicles Act, 1988.

8. I have given my thoughtful consideration to the aforesaid arguments advanced before me by the learned counsel for the petitioner. In my considered opinion, mere illegality is no ground to interfere in writ jurisdiction under Article 226 of the Constitution of India, if this Court is satisfied by the impugned order to the effect that substantial justice has been done between the parties. In the present case, I am fully satisfied that by impugned order, no injustice has been done to the petitioner, therefore, I decline to interfere with the impugned order on mere technicalities. I am also of the view that where the technicalities are pitted against the substantial justice, this Court cannot afford to allow substantial justice either to escape or a slide.

9. Indisputably, clause (ca) of Sub-section (3) of Section 68 of the Motor Vehicles Act, 1988 has been inserted by Motor Vehicles (Amendment) Act No. 54 of 1994 which is made enforceable with effect from 14.11.94. According to newly inserted Clause (ca) of Sub-section (3) of Section 68 of the said Act which is admittedly applicable in the present case, now only Government of Rajasthan can formulate the routes for plying the stage carriages and the Regional Transport Authority has not been given powers to open a new route, therefore, in the present case, resolution passed by the R.T.A. on 12.12.95. Annx. 1 to the writ petition opening a new route in question is per se illegal and without jurisdiction.

10. I am also of the opinion, that since in the present case opening of new route by the R.T.A. on 12.12.95 vide Annex 1 to the writ petition was per se illegal and without jurisdiction, therefore, the consequential order passed by him granting permit to the petitioner on the route in question would become nullity and void ab initio.

In my considered opinion opening of new route by the R.T.A. in the case on hand tantamount naked usurpation of power of the State Government by him, which is

impermissible within the meaning of newly inserted clause (ca) of Sub-section(3) of Section 68 of the Motor Vehicles Act, 1988.

11. Learned counsel for the petitioner strenuously urged before me that under Sections 70, 71 and 72, the R.T.A. has inherent power to open a new route, therefore, the aforesaid amendment inserted under Clause (ca) of Sub-section (3) of Section 68 will not take away his powers to open a new route. In my opinion, it must be taken to be a settled principles of law that inherent powers are always subject to express previsions of an enactment. If there are express provisions authorising the State Government to formulate the new routes for plying stage carriages under the aforesaid Section than under the garb of inherent power under Sections 70, 71 and 72 of the said Act, R.T.A. has no authority to open a new route.

12. For the reasons stated above, the instant writ petition lacks merit, so, it is hereby dismissed in limine.