

(1969) 03 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 164 of 1968

Fatehgarh Sahib Bus Service (Pvt.) Ltd.

APPELLANT

Vs

State Transport Commissioner, Punjab and Others

RESPONDENT

Date of Decision : 20-03-1969

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 437(7)
Motor Vehicles Act, 1939 — Section 64

Citation : AIR 1970 P&H 18 : (1969) 2 ILR (P&H) 240

Hon'ble Judges : Mehar Singh, C.J.;Ranjit Singh Sarkaria, J;H.R. Sodhi, J

Bench : Full Bench

Advocate : J.S. Wasu, Inderjit Sayal and Baldev Kapoor, for the Appellant; H.L. Sibal, Advocate-General, D.S. Nehra, R.C. Seithia and M.L. Sharma, for the Respondent

Judgement

Mehar Singh, C.J.—The appellant-company, the Fatehgarh Bus Service (Private) Limited, Sirhind, in Patiala District, carries on the business of passenger transport, holding four permits for carriage of passengers, operating with twelve return trips on Ahmedgarh-Bassi route via Kara and Chawa. On December 8, 1967, respondent 1, the State Transport Commissioner, Punjab granted one temporary passenger carnage transport permit, with two daily return trips, to each of the two respondents, 2 and 3, respectively the Punjab Roadways, Chandigarh, and the Pepsu Road Transport. Corporation, Patiala, for the Ludhiana-Rararoute via Chawa. The route of the temporary permits of respondents 2 and 3 overlaps by about nine miles the route with the appellant-company.

2. On January 10, 1968, the appellant-company made a petition under Articles 226 and 227 of the Constitution to have the order, dated December 8, 1967, Annexure "A" to the petition, of respondent 1 granting temporary permits to respondents 2 and 3 quashed on various grounds including the ground that the temporary permits were granted to respondents 2 and 3 by respondent 1 without any notice or information in that respect to the appellant-company. The

respondents resisted the petition, and, while not denying that the route of the temporary permits to respondents 2 and 3 partly overlaps the route of the appellant-company, in the return on behalf of respondent 3 a preliminary objection was taken that the petition was not maintainable because the appellant-company had not recourse to alternative remedies of appeal and revision available under the provisions of the Motor Vehicles Act, 1939 (Act 4 of 1939), hereinafter to be referred as "the Act".

2-A. In Punjab the State Legislature-has added Section 44A in the Act and that section reads--

"44-A. The State Government may appoint a State Transport Commissioner and one or more Deputy State Transport Commissioners and notwithstanding anything contained in this Act, may, by notification, authorise such Commissioner and Deputy State Transport Commissioner or any officer subordinate to them, to exercise and discharge, in lieu of any other authority prescribed by or under this Act, such powers and functions as may be specified in the notification."

The Punjab State Government has by Notification No. S. O. 3/C. A. 4/39/S. 44A/66, of November 30, 1966, conferred powers and functions of the Regional Transport Authority on the State Transport Commissioner u/s 44-A of the Act "in relation to grant of stage carriage permits in the implementation of the 50: 50 scheme as approved by Government vide Notification No. 6438-6HT-59/12538, dated 1st July, 1959." In Section 64 of the Act has been made provision for appeals and the section reads --

"64. Any person--

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such counter-signature or

(e) aggrieved by the refusal of renewal of a permit, or

(f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or

(g) aggrieved by the refusal to grant permission under Sub-section (1) or Sub-section (2) of Section 59, or

(h) aggrieved by a reduction under Sub-section (1-A) of Section 60 in the number of vehicles or routes or area covered by a permit, or

(i) aggrieved by any other order which may be prescribed,

may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard."

Section 68 of the Act gives a State Government power to make rules and Sub-section (2), Clause (j), concerns the power to make rules in regard to "the authorities to whom, the time within which and the manner in which appeals may be made." In exercise of this power, the Punjab Motor Vehicles Rules, 1940, hereafter to be quoted as "the 1940 Rules", have been made in which Rule 4.37 deals with the subject of appeals as envisaged by Section 68(2)(j) of the Act. This rule was amended on August 26, 1967, by the State Government Notification No. G. S.R. 69/C. A. 4/39/S. 68/Amd. (32)/67. In this rule, as amended, Sub-rules (1), (7) and (8) are material for the present purpose, as the amendments of 1968 do not concern this case, and the same read --

"4.37. (1) Except as otherwise provided in Sub-rule (7) the authority to decide an appeal (hereinafter referred to as the appellate authority) under Clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of Section 64 shall be the Financial Commissioner, Revenue, Punjab.

(7) The appellate authority against the orders of the State Transport Commissioner, Deputy State Transport Commissioner or any other officer subordinate to them, authorised by the State Government u/s 44-A to exercise and discharge in lieu of any other authority such power and functions as may have been specified, shall be --

(a) the Financial Commissioner, Revenue, Punjab, in cases where the Corporation as defined in Clause (b) of Section 2 of the Road Transport Corporation Act, 1950, is a party to the appeal; and

(b) Secretary to Government, Transport Department, Punjab, in cases other than those mentioned in Clause (a) above.

(8) A person desiring to prefer an appeal against an order of the State Transport Commissioner or Deputy State Transport Commissioner or any officer subordinate to them in respect of any order of the kind referred to in Sub-rule (1) shall within thirty days of the receipt of the order prefer a memorandum (in duplicate) one copy of which shall bear a court-fee stamp of five rupees to the appellate authority setting forth concisely the grounds of objection to the order of the State Transport Commissioner or Deputy State Transport Commissioner or any officer subordinate to them together with a certified copy of that order."

3. The learned Single Judge in his order of March 11, 1968, dismissing the petition of the appellant-company, was of the opinion that Rule 4.37(7) provides for an appeal against the order of the State Transport Commissioner having regard to Clause (i) of Section 64 of the Act and so the appellant-company had a right of appeal against the order of respondent 1 granting temporary permits to

respondents 2 and 3. It not having had recourse to the remedy available under the provisions of that Act, it was not entitled to the exercise of discretionary powers of this Court under Articles 226 and 227 of the Constitution. So the learned Judge dismissed the petition of the appellant-company, leaving the parties to their own costs, and this is an appeal by the appellant-company against the judgment and order of the learned Judge.

4. In the referring order of September 25, 1968, the question that has been raised is whether under Clause (f) of Section 64 of the Act a person who has the right to oppose the grant of a temporary permit, but has not had an opportunity to do so because of no notice of the proceedings for the grant of the same, can be said to be a person "having opposed the grant of a permit", and, therefore, he has a right of appeal. The reason why there is no reference to Clause (i) of Section 64 of the Act is that it was for all practical purposes not urged that the appellant-company had a right of appeal under that Clause. The learned Single Judge considered that it had a right of appeal under that Clause because Sub-rule (7) of Rule 4.37 of the 1940 Rules provides for appeals against the orders of the State Transport Commissioner to the State Government, but that can only be if the order granting temporary permits to respondents 2 and 3 could be considered an order to which Clause (i) of Section 64 of the Act refers. Now, Clauses (a) to (h) in that Section provide for specific orders against which appeals can be preferred and among those Clauses in Clause (f) which deals with a right of appeal in these circumstances --"being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto." So that in Clause (f) there is a specific provision for right of appeal against the grant of a permit by a person aggrieved by such grant and the condition of the right of appeal is of his "having opposed the grant of a permit". Clause (i) of this very section then provides for right of appeal to a person "aggrieved by any other order which may be prescribed". In Section 2(21) of the Act the word "prescribed" has been defined to mean "prescribed by rules made under this Act", and the learned Judge was of the opinion that Sub-rule (7) of Rule 4.37 is the rule which has prescribed an appeal against the order of the State Transport Commissioner to the State Government. But then Clause (i) of Section 64 comes into play in regard to "any other order which may be prescribed," thus making it clear that any other such order which may be prescribed will be an order other than the types of orders covered by Clauses (a) to (h) of Section 64 of the Act, and there would be no question of its being an order prescribed for the purposes of appeal under Clause (i) of this section. As the matter of grievance against the grant of a permit is subject of a right of appeal under Clause (f) of this section expressly, there can be no question of prescribing any such order for the purposes of appeal under Clause (i). Obviously Clause (i) of the section has no application to a case like the present and the appellant-company could not have filed an appeal to the State Government against the impugned order of respondent 1 under Sub-rule (7) of Rule 4.37 of

the 1940 Rules, read with Clause (i) of Section 64 of the Act. It was in this approach that the matter of Clause (i) of Section 64 was dropped in arguments when this appeal was heard by me sitting with Sodhi J., and that is why there is no reference to Clause (i) of that section in the referring order. It is apparent that the appellant-company had no right of appeal against the order of respondent 1 granting temporary permits to respondents 2 and 3 under Sub-rule (7) of Rule 4.37 of the 1940 Rules taking that under Clause (i) of Section 64 of the Act. So, that provision is out of consideration.

5. The only question that remains is whether the appellant-company could have filed an appeal under Clause (f) of Section 64 of the Act? If it had opposed the grant of the permit to respondents 2 and 3, it would have had a right of appeal against the order of respondent 1 granting the temporary permits to those two respondents in view of Clause (f) of Section 64 of the Act. The admitted fact is that the appellant-company did not oppose the grant of temporary permits to respondents 2 and 3. There is a reason for that, and that is that it could not oppose the grant of those temporary permits as it had no notice or information, and could not possibly have knowledge, that the grant of any such permits was to be under consideration of respondent 1. So factually the appellant-company did not, and indeed, in the circumstances of the case, could not, oppose the grant of those permits to the two respondents. So it has not and indeed could not have fulfilled one condition for a right of appeal in Clause (f) of Section 64 of the Act of "having opposed the grant of a permit". The question posed in the referring order, as already pointed out, refers to the appellant-company having had a right to oppose and having been denied the opportunity to oppose. No doubt it had been denied the opportunity to oppose the grant of temporary permits to respondents 2 and 3, but on the words of Clause (f) of Section 64 of the Act it is not that it was denied the opportunity of opposing the grant of the temporary permits to those respondents that gives it a right of appeal, but it is matter of "having opposed the grant of a permit" that does so, and here factually the appellant-company did not oppose the grant of the permits to those respondents because it could not do so for want of information or notice that the grant of such permits was going to be under the consideration of respondent 1. The only person who can appeal under Clause (f) of section 64 is the person who having opposed the grant of a permit is aggrieved by the order granting a permit, which, as stated, is not the situation of the appellant-company. So it had no right of appeal even under that Clause.

6. In Bhanwarlal Vs. The Appellate Tribunal of the State Transport Authority and Others, , an argument was urged that the party aggrieved by the grant of permit, though it had opposed its grant but has had no right to do so. had no right of appeal under Clause (f) of Section 64 of the Act, and the learned Judges pointed out that it is irrelevant to see in order to determine the application of that Clause whether the aggrieved person "had the right" to oppose the grant of permit, because the Clause itself does not say anything of the kind, and all it says is that he should have opposed the grant of a permit. I have already

pointed out in the referring order that no other case comes near to saying anything on this aspect of the matter, and the cases are cited in that order. During the hearing of this reference another case has been cited which is directly in point. It is Madhya Pradesh Transport Co. (Private) Ltd., Raipur v. Regional Transport Authority Raipur 1964 MPLJ 280. After reproducing the relevant part of Clause (f) of Section 64 of the Act, the learned Judges proceeded to observe--"Under this Clause it cannot be enough that a person provides transport facilities. It is further necessary that he should have opposed the grant of a permit in favour of the respondent. The expression "having opposed the grant of a permit" is a pre-requisite which must be fulfilled and in the absence of which there is no right of appeal. It is a condition precedent to filing an appeal u/s 64(f) of the Act that the appellant must have opposed the grant of a permit, and this must be established factually. In the present case the impugned order was passed behind the back of the petitioner and without any notice to him. He could not, therefore, file a representation or oppose the grant of the permit sought. He had no right of appeal, therefore." The learned Judges have exactly on same facts as in the present case taken the very view as above that even though the appellant-company in the present case could not have opposed the grant of the temporary permits to respondents 2 and 3 for want of notice or information that the grant of such permits was going to be under consideration of respondent 1. it still has not opposed the grant of those permits within the express words of Clause (f) of section 64 of the Act and, therefore, had no right of appeal against the order of respondent 1 granting those permits to respondents 2 and 3.

7. In this approach, the order of the learned Single Judge cannot be sustained and it is not necessary to go into the other questions raised in the petition because those will now be disposed of by a learned Single Judge hearing the petition of the appellant-company. So the order of the learned Single Judge is set aside, and the petition will now be placed before a learned Single Judge for final disposal. In the circumstances of this case, there is no order in regard to costs in this reference.

Kanjit Singh Sarkaria, J.

8. I agree.

H.R. Sodhi, J.

9. I agree.