

(1963) 07 MP CK 0013
In the Madhya Pradesh High Court
Case No : M.P. No. 117 of 1963

Gajadhar Singh Kushwah

APPELLANT

Vs

State Transport Appellate Authority

RESPONDENT

Date of Decision : 09-07-1963

Acts Referred:

Motor Vehicles Act, 1939 — Section 64(b)

Citation : (1966) JLJ 785

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : R.K. Tankha, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

K.L. Pandey, J.—This petition under Articles 226 and 227 of the Constitution is directed against the following two orders:

(i) An order of the Regional Transport Authority, Gwalior, dated 3 May 1962 by which the timings given to the Petitioner and the Respondent 3 for the inter-State Bhind-Orai route were interchanged; and

(ii) An order of the State Transport Appellate Authority dated 29 March 1963 by which the Petitioner's appeal against the earlier order was dismissed.

2. The facts giving rise to this petition may be briefly stated. The Respondent 3 was an existing operator on the route and he was operating thereon on the following "Provisional" timings given to him on 14 April 1960:

A fresh permit was given to the Petitioner on 2 March 1962 and he was given the following timings:

This permit was duly countersigned by the Regional Transport Authority, Kanpur. Being aggrieved, the Respondent 3 moved the Regional Transport Authority, Gwalior, to secure for himself the earlier timings given to the Petitioner. That

Authority, after hearing the parties, accepted the application made by the Respondent 3 and passed the impugned order dated 3 May 1962 mainly on the ground that he had obtained his permit earlier and was, therefore, entitled to the earlier timings. The Petitioner's appeal against that order was dismissed on 29 March 1963 inter alia on the ground that it was not legally competent.

3. Having heard the counsel we have formed the opinion that this petition must be allowed. The timings given to the two operators by the impugned order dated 3 May 1962 were provisional only in the sense that they had not been countersigned by the Regional Transport Authority, Kanpur. The timings constitute a condition attached to the permit: *New Jabalpur Transport (Private) Ltd. Vs. State Transport Appellate Authority and Others*, . That being so, the Petitioner, who was aggrieved by the variation of a condition attached to his permit, was entitled to appeal against it, as provided by Clause (b) of Section 64 of the Motor Vehicles Act, 1939.

4. The two impugned orders further suffer from an error which is apparent on the face of the record in that they proceed on the assumption that an existing operator is entitled to earlier timings because he would otherwise suffer loss. In considering applications for a permit and attaching conditions to the permit granted, the main consideration is the public interest. Timings should be given to facilitate travellers and not for favouring one operator at the expense of another. If the second service is likely to be unremunerative, a fresh permit need not have been granted at all. Since the question of timings was considered only from the point of view of individual operators and the interest of the public were not duly taken into account, the two impugned orders cannot be sustained.

5. The petition succeeds and is allowed. The orders dated 3 May 1962 and 29 March 1963 are quashed. The Regional Transport Authority, Gwalior, shall, after hearing the parties refix the timings for the two operators with due regard to the interest of the public generally. In the circum-stances of the case, the parties are directed to bear their own costs. The security amount shall be refunded.