
(2008) 07 MP CK 0060
In the Madhya Pradesh High Court

Ganesh Prasad Madan

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Constitution of India, 1950 — Article 19

Motor Vehicles Act, 1988 — Section 57, 70, 71, 72, 74

Citation : (2008) ILR (MP) 2601 : (2009) 1 MPHT 339 : (2008) 4 MPLJ 184

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Gangele, J.

Petitioner has filed this petition challenging the order Annexure P-I dated 24-4-2008 passed in Revision No. 581/2007,

The petitioner is a bus operator. He is owner of a vehicle bearing registration No. M-P-04/HB-9041 which is a passenger bus. The State Government vide gazette notification dated 11-2-1991 published a scheme No. 82 under Sub-section (3) of Section 68-B of the Motor Vehicles Act, 1939 (hereinafter referred to as "Act of 1939"). By the aforesaid scheme private operators have been permitted to ply their vehicles on certain routes including Bhopal & Obedullaganj.

The petitioner applied for grant of regular permit for feeder service in accordance with the aforesaid scheme from Obedullaganj to Jawahar Chowk, Bhopal. The application of the petitioner was rejected by the Regional Transport Authority vide order dated 2-1-2007. Thereafter, the petitioner filed an appeal against the aforesaid order which was registered as Appeal No. 51/2007. The Appellate Court allowed the appeal and remanded the case back to the authority for consideration of grant of permit. Thereafter, vide order dated 21-5-2007, the petitioner has been granted permit for the route mentioned above. The permit has been issued for the period 6-8-2007 upto 5-8-2012.

Against the aforesaid order of grant of permit, the respondent No. 3 filed a petition before this High Court which was registered as W.P. No. 136/2007 and the same was decided by this Court vide order dated 1-10-2007. The High Court directed the respondent No. 3 to file a revision before the State Transport Appellate Tribunal. Consequently, the respondent No. 3 filed a revision before the Tribunal and vide impugned order, the Tribunal allowed the revision of the respondent No. 3 and set aside grant of permit to the petitioner. Further, it has remanded the matter back to the authority. The main reason for setting aside the grant of permit by the Tribunal is that the authority who granted permit had neither given notice to the existing operators of that route nor the aforesaid notice had been published prior to grant of permit to the petitioner.

It is a fact that the respondent No. 3 did not file any objection before the authority at the time of grant of permit in favour of the petitioner. The reason mentioned by respondent No. 3 for the aforesaid is that she had no notice or information about grant of permit because no such notice had been published.

Learned Counsel for the petitioner submitted that the impugned order passed by the Tribunal is against the law and against the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as "Act of 1988"). Learned Counsel further contended that publication of the notice or prior notice to the existing operators of the aforesaid route is not necessary for grant of new permit as per the provisions of Act of 1988. In support of his contentions, learned Counsel relied on the judgment of Hon'ble the Supreme Court in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, .

Contrary to this, learned Counsel for the respondent No. 3 submitted that the petitioner was not entitled for grant of permit under the scheme because his vehicle was more than three years old. It has further been stated that the right of the respondent No. 3 has been affected badly because the petitioner has been given three minutes before timing to the respondent No. 3. Hence, as per rule of natural justice the respondent No. 3 is entitled notice and opportunity of hearing. In support of his contentions learned Counsel relied on the following judgments:-

- (a) *Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another*, .
- (b) *Smt. Munni Devi and others Vs. Regional Transport Authority and another*,
- (c) *Collector of Central Excise, Calcutta Vs. Alnoori Tobacco Products and Another*, .

From the facts of the case, it is clear that the question for determination before this Court in the present case is whether while granting new permit as per the provisions of Act of 1988 after receiving application prior publication of notice and further notice to the operators who have been plying their vehicles on the route is necessary or not ? It is fact that the respondent No. 3 did not submit any objection at the time of grant of permit to the petitioner. Respondent No. 3 stated before the Tribunal that she had no knowledge about grant of permit to

the petitioner. It is also a fact that respondent No. 3 has also been granted permit of the route and the petitioner has been granted permit before timing of the respondent No. 3. As per the provisions of the Act of 1988, there is no right in favour of the existing transport operators to file objections in case of grant of new permit. Although there was a provision to this effect in the earlier Act of 1939. The relevant provision in old Motor Vehicles Act, 1939 was in Section 57(2) (3) after amendment in the new Motor Vehicles Act, 1988 there is no such provision in Section 80 of the Act of 1988.

Hon'ble the Supreme Court in *Mithilesh Garg, etc. etc. v. Union of India and Ors. etc. etc.* (supra), has considered in detail the aims and object of reviewing the Act of 1939 and summarized the history as under:

3. A Working Group was, therefore, constituted in January, 1984 to review all the provisions of the Motor Vehicles Act, 1939 and to submit draft proposal for a comprehensive legislation to replace the existing Act. This Working Group took into account the suggestion and recommendations earlier made by various bodies and institutions like Central Institute of Road Transport Automotive Research Association of India, and other transport organizations including the manufacturers and, the general public. Besides, obtaining comments of State Governments on the recommendations of the Working Group, these were discussed in a specially convened meeting of Transport Ministers of all States and Union Territories. Some of the more important modifications so suggested related for taking care of-

(a) & (b) *** ***(c) the greater flow of passenger and freight with the least impediments so that islands of isolation are not created leading to regional or local imbalances;

(e) simplification of procedure and policy liberalization for private sector operations in the road transport field; and

(f) *** ***(g) The proposed legislation has been prepared in the light of the above background. Some of the more important provisions of the Bill provide for the following matters, namely:

(a) to (f) *** ***(g) liberalized schemes for grant of stage carriage permits on non-nationalized routes, All India Tourist Permits and also national permits for good carriages.....

(h) to (I) *** ***(g)

Chapter V of the Act - substitute for Chapter IV of the old Act -consisting of Sections 66 to 96, provides for "control of transport vehicles". Sections 71, 72 and 80, to the relevant extent, are reproduced as under:

71. Procedure of Regional Transport Authority in considering application for stage carriage permit.- (1) A Regional Transport Authority shall, while considering an application for a stage carriage permit, have regard to the objects of this Act:

Provided that such permit for a route of fifty kilometers or less shall be granted only to an individual or a State transport undertaking.

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the time-table so as to conform to the said provisions.

(3) (a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.....

(4) A Regional Transport Authority shall not grant more than five stage carriage permits to any individual or more than ten stage carriage permits to any company (not being a State transport undertaking).

(5) In computing the number of permits to be granted under Sub-section (4), the permits held by an applicant in the name of any other persons and the permits held by any company of which such applicant is a director shall also be taken into account.

Grant of stage carriage permits.- (1) Subject to the provisions of Section 71, a Regional Transport Authority may, on an application made to it u/s 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit: Provided that no such permit shall be granted in respect of any route or area not specified in the application. 80. Procedure in applying for and granting permits.- (1) An application for a permit of any kind may be made at any time. (2) A Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act:

Provided that the Regional Transport Authority may summarily refuse the application if the grant of any permit in accordance with the application would have the effect of increasing the number of stage carriages as fixed and specified in a notification in the Official Gazette under clause (a) of Sub-section (3) of Section 71 or of contract carriages as fixed and specified in a notification in the Official Gazette under clause (a) of Sub-section (3) of Section 74: Provided further that where a Regional Transport Authority refuses an application for the grant of a permit of any kind under this Act it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter.

A comparative reading of the provisions of the Act and the old Act makes it clear

that the procedure for grant of permits under the Act has been liberalized to such an extent that an intended operator can get a permit for asking irrespective of the number of operators already in the field. u/s 57 read with Section 47(1) of the old Act an application for a stage carriage permit was to be published and kept for inspection in the office of the Regional Transport Authority so that the existing operators could file representations/objections against the said application. The application, along with objections, was required to be decided in a quasi-judicial manner. Section 47(3) of the old Act further permitted the imposition of limit on the grant of permits in any region, area or on a particular route. It is thus obvious that the main features of Chapter IV "Control of Transport Vehicles" under old Act were as under:-

(1) The applications for grant of permits were published and were made available in the office of the Regional Transport Authority so that the existing operators could file representations;

(2) The applications for grant of permits along with the representations were to be decided in quasi-judicial manner; and

(3) The Regional Transport Authority was to decide the applications for grant of permits keeping in view the criteria laid down in Section 47(1) and also keeping in view the limit fixed u/s 47(3) of the Act. An application for grant of permit beyond the limited number fixed u/s 47(3) was to be rejected summarily.

The Parliament in its wisdom has completely effaced the above features. The scheme envisaged under Sections 47 and 57 of the old Act has been completely done away with by the Act. The right of existing operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of bringing, in the Act was to liberalize the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalization, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision u/s 71(3)(a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs.

It is clear from the aforesaid provisions as quoted by Hon"ble the Supreme Court that in amended Motor Vehicles Act of 1988, the Parliament in its wisdom has completely done away the right of the existing operators to file objections. The Hon"ble Supreme Court further held in the above judgment that by the aforesaid amendment the right of the existing transport operators to carry out profession under Article 19(1)(f) and (g) has not been affected.

A Full Bench of Andhra Pradesh High Court in *The Secretary, Regional Transport Authority, Guntur and another Vs. E. Rama Rao and Others*, has considered the point of prior publication and giving notice to the existing operators in the event of grant of new permit as per the provisions of Act of 1988 and held as under:

The provisions of Section 71 and Section 80 in the new Act as compared with Sections 47 and 57 of the old Act clearly define the limits of the restrictions to be imposed in public interest under Article 19(6) and therefore, the RTA while exercising powers under the new Act has necessarily to bear in mind those restrictions and cannot impose any other restrictions in the context of Article 19(6), that were statutorily imposed earlier by Sections 47 and 57 of the old Act. The Statement of Objects and Reasons of the New Act clearly states that the Act proposes to liberalize the grant of permits. In such a situation, it is, not open to the High Court to imply and read into the new Act, the same provisions which have been deliberately and expressly omitted. The new applicants for grant of stage carriage permits are obviously exercising their fundamental right under Article 19(1)(g) to carry on their occupation, trade or business. Such a fundamental right can, no doubt be restricted by an existing law or a new law, by the imposition of reasonable restrictions in the interest of the general public under Article 19(6). It is for Parliament from time to time to define the limits upto which the said fundamental right under Article 19(1)(g) can be reasonably restricted. Under the old Motor Vehicles Act, 1939 the restrictions included one which enabled an existing operator to represent and also to be heard in opposition. That restriction has now been deliberately removed and thereby the fundamental right of the applicant is not now as restricted as, it was before the new Act. Further an existing operator cannot be said to suffer any legal injury if a new rival operator is proposed to be introduced. These being the factors governing the situation the Parliament intended to negative any right to the existing operators either to submit their representations or to a right to a hearing u/s 71(1) or Section 80(2) of the new Act. It is, therefore, not open to the Court to imply principles of natural justice and add further restrictions than what Parliament considered sufficient, according to its new Legislative policy.

It is clear from the aforesaid principle of law laid down by the Hon^{ble} Supreme Court and Full Bench of Andhra Pradesh High Court that as per the provisions of Motor Vehicles Act, 1988 prior publication of notice and giving opportunity of hearing to the existing operators at the time of grant of new permit is not necessary. It is a fact that the application filed by the petitioner was affixed on the notice board of the Regional Transport Authority. In such circumstances, the direction issued by the Tribunal vide impugned order for publication and giving notice to the existing transport operators in the event of grant of new permit is contrary to law. It is also contrary to the intention and object of the Parliament because similar provision which was in Act of 1939 has been deleted in the new Act of 1988. It is a well settled principle of law that Court by way of direction cannot introduce a new clause which has been deleted by the Legislature. It would mean enacting new law which is beyond the powers of the Court. No other

point has been considered by the Tribunal in remanding the case back to the authority, hence, the points raised by the learned Counsel for the respondent No. 3 with regard to age of the vehicle and timings cannot be considered in this writ petition. The respondent No. 3 is at liberty to file appropriate proceedings with regard to aforesaid objection in accordance with law.

Consequently, petition of the petitioner is allowed. The impugned order (Annexure P-1), dated 24-4-2008 is hereby quashed.

No order as to cost.