
(1974) 07 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1209 and 1217 of 1969

Godika Transport Co. and Another

APPELLANT

Vs

T.A.T., Jaipur and Others

RESPONDENT

Date of Decision : 26-07-1974

Acts Referred:

Motor Vehicles Act, 1939 — Section 63A(4)
Rajasthan Motor Vehicles Taxation Rules, 1951 — Rule 89

Citation : AIR 1975 Raj 174 : (1974) 7 WLN 701

Hon'ble Judges : M.L. Joshi, J

Bench : Single Bench

Advocate : M.D. Purohit, N.M. Kasliwal and S.K. Keshote, in C.W.P. No. 1217 of 1969 and M.M. Tewari, in C.W.P. No. 1209 of 1969, for the Appellant; R.R. Vyas and B.L. Maheshwari For State: M.D. Purohit, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.L. Joshi, J.—These are two writ petitions under Article 226 of the Constitution of India wherein it has been proved that the order of the T. A. T. dated 22-8-1969 be quashed and any other writ, direction or order which may be appropriate be Passed in the case.

2. Both the petitions involve common questions of law and fact and learned counsel for the parties agreed that a decision in one case will govern the other case also. As the arguments have been addressed in M/s. Godika Transport Co. v. T. A. T., Jaipur and other's case (S. B. Civil Writ Petn. No. 1217/69) I will give facts from that case only for appreciating the points involved in both the writ petitions. M/s. Godika Transport Co., is a registered partnership firm. The said firm submitted an application for grant of non-temporary public carrier permit on 11-3-1968 to the Regional Transport Authority Jaipur for All Rajasthan and Gujrat State. The said petition was published in the Rajasthan Rajpatra dt 25-4-1968 inviting objections in respect thereof within 30 days of the date of

such publication. Non-petitioners Nos. 3 and 4 viz. Bahari Goods Carrier Private Limited and Chit-tar Mal Yadav also submitted applications for grant of non-temporary public carriers" permit besides several other persons. All the aforesaid applications came up for consideration before the Regional Transport Authority, Jaipur hereinafter called the R. T. A. in its meeting dated 13th August 1968. The R. T. A. rejected the application of M/s. Bahari Goods Carrier Private Limited on the ground that they were not the resident of the State of Rajasthan. The application of non-petitioner Chittar Mal Yadav was also rejected by the R. T. A. But the R. T. A. granted permits to M/s. Godika Transport Company and Sarbjeet Singh in view of the two existing vacancies. M/s. Bahari Goods Carrier Private Limited and Shri Chittar Mal Yadav felt aggrieved by the order of the R. T. A. and, therefore, they moved the Transport Appellate Tribunal hereinafter called the T. A. T. by way of appeal. The T. A. T. set aside the order of the R. T. A. granting permits to both the petitioners and instead granted permits to M/s. Bahari Goods Carrier Private Limited and Shri Chittar Mal Yadav respectively. The reasons which persuaded the T. A. T. for accepting the appeal were mainly two. Firstly, the T. A. T. relied upon the Ministry of Transport, inter-State Transport Commission Order No. 9/ISTC(96)62 dated 3rd of October, 1968, wherein it was enjoined upon the Transport Authorities to observe the rule that the permits in regard to regular public carrier for inter-state routes exceeding 300 miles in length between two terminal points in different States shall henceforth be granted by the S. T. As./R. T. As subject to the essential condition that the owner shall own at least 5 public carriers and shall forfeit the permit if during the period for which the permit is granted he ceases to own five vehicles. It was observed by the T. A. T. that as the petitioner before me did not fulfil this essential requirement of the inter-State Transport Commission's Order they were not eligible to the permits asked for by them, as in the view of the learned T. A. T. it was an essential condition precedent for granting the permit to any of the applicants. Another reason which prevailed with the learned T. A. T. was that the applications of both the petitioners before me suffer from serious infirmity as they were not accompanied by the requisite permit fee as required under Rule 89 of the Rajasthan Motor Vehicles Rules, hereinafter called the Rules. On these two grounds the learned T. A. T. set aside the permits granted in favour of the petitioners and instead granted them to M/s. Bahari Goods Carrier Private Limited and Shri Chittar Mal Yadav. It is in these circumstances that the petitioners have come before me and challenged the order of the T. A. T. as being illegal and erroneous on the face of it.

3. Before I come to grips with the crucial questions involved in this case I think it appropriate to give some facts on which the argument under Rule 89 has been addressed before me by the learned counsel on behalf of the non-petitioners. The petitioners M/s. Godika Transport Co. applied for permit on 11-3-1968. It is not disputed that the permit fee was deposited by the said company on 9-8-1968. Shri Sarbjeet Singh applied on 16-2-1968 and the record evidencing the deposit is dated 14-8-1968. A controversy has been joined in regard to

deposit of the permit fee by Sarbjeet Singh. Dr. M. M. Tiwari asserted that the initial deposit of Rs. 10/- was made on 2-4-1968 but the receipt was not traceable in the R T. A's. Office. The deposit was, therefore, made once again on 17-7-1968 which was accepted by the Authority and permit was granted. This according to the learned counsel was sufficient compliance of the rule. I need not go into the actual dates of deposit of the permit fees as I will show later on that the decision on that point is not necessary in the view which I am taking in the case.

4. The first question which crops up for consideration is whether the R. T. A. was bound by the directions given by inter-statal Transport Commission. The question stands answered by a decision of the Supreme Court in *Inter State Transport Commission, New Delhi Vs. P. Manjunath Kamath and Others*, . In that case the binding nature of the directions issued by inter-statal transport Commission u/s 63-A (2) (c) of the Motor Vehicles Act, hereinafter called the Act, came UP for consideration before their Lordships of the Supreme Court. While dealing with the question their Lordships observed that u/s 63-A (4) of the Act. the Commission in the exercise and discharge of its power and functions u/s 63-A (2) (c) of the Act may issue directions to the State or the Regional Transport Authority and those authorities shall give effect to and will be guided by such directions. The Supreme Court however, said that such directions are of administrative nature and have no force of statutory rules and in the absence of statutory sanction behind them it is not appropriate for the S. T. As. or R. T. As. to follow the directions in the exercise of their Quasi-judicial functions. Relying upon *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, the Supreme Court observed thus--

"This Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, held that the Transport Authorities in dealing with applications for permits and assessing the respective or rival claims of the parties discharge quasi-judicial functions and their orders are quasi-judicial orders. It is, therefore, essential to fundamentals of fair play in the administration of law that the decision of these transport authorities should not be clogged by directions indicating the order of preference as happened in the present case."

In that case the inter-statal transport Commission had given directions in the matter on grant of permits. Those directions were held to be not binding on the R. T. As or S. T. As. as they discharge quasi-judicial functions. From the ratio of that judgment it is obvious that directions issued by the inter-statal transport Commission in the matter of giving preference in the grant of permits cannot clog the discretion of the S. T. As. or R. T. As. Unfortunately in this case the directions of the inter-statal transport Commission has not only heavily influenced the decision of the T. A. T. but has clogged its judicial discretion and, therefore, the decision is apparently erroneous on the face of it. The R. T. As, and S. T. As. have to independently exercise their mind and adopt judicial approach in the discharge of their duties and decide the matter objectively

having regard to all the relevant considerations prescribed under the Act and the Rules framed thereunder and cannot commit themselves solely to the administrative instructions or directions given by the inter-statal transport Commission while discharging their quasi-judicial functions.

5. Another point which arises for consideration is whether the T. A. T. was justified in dismissing the applications of the petitioners on the ground that they were defective being not accompanied by the requisite permit fees as required by Rule 89 (d) of the Rules. I may extract the relevant portion of Rule 89 as under:--

"89 (a) the fees for every application of a permit granted or renewal of a permit other than a temporary permit shall be C (3) for a public carrier permit as in 8th schedule.

(d) all fees payable under this Rule shall be paid at the time of presenting the application for the grant of the renewal of permit, or for a counter-signature of a permit or for renewal thereof."

The learned T. A. T. was of the view that this Rule is of a mandatory character and requires strict compliance in order to make the application a valid one, This finding of the T. A. T. is being challenged before me. The question which calls for consideration is whether Rule 89 is directory or a mandatory one. In order to determine whether a particular provision is mandatory or directory, it is not possible to lay down any universal rule. But the duty of the Court is to try to get at the real intention of the legislation by keeping due regard to the scope, context, subject-matter and object of the statutory provision in question. It is well to extract an oft-quoted passage from Crawford's Statutory Construction, at P. 516, approved in *State of U.P. Vs. Manbodhan Lal Srivastava*, and *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, as under :--

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other. Another principle for determining the nature of the enactment is that if the object of enactment will be defeated by holding the same directory it will be construed mandatory. Where as if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment the same will be construed as directory. Yet another principle employed to judge whether a provision is directory or mandatory is whether penal consequences have been provided for non-compliance thereof."

These are settled principles which furnish guidelines to find out as to whether the particular provision of a statute is mandatory or directory. Applying the above principles I may state that the Motor Vehicles Act is designed to regulate the motor transport services for public interest in general. Section 54 of the Act

provides for certain particulars to be included in an application for grant of permit in respect of a public carrier, namely, (i) an area or route or routes to which application relates; (ii) the number of vehicle it is proposed to operate in relation to each area or route and its type and capacity; (iii) the nature of goods it, is proposed to carry; and (iv) the manner in which it is claimed that a Public need will be fulfilled, besides other particulars which may be specified in the section. These are vital particulars to be mentioned in the application for grant of public carriers permit though Rule 89 (d) of the Rules provides that the application has to be accompanied by the permit fee as specified in the schedule but no penal consequences have been provided for its non-compliance. Now nnce the application for permit is filed even if it is in a defective form can it be dismissed summarily ? There is no provision for summary dismissal of such applications on the ground of not submitting the permit fee along with the application. As stated earlier no penal consequences are also provided in the rule for its non-compliance. The application after complying with certain formalities as required by Section 57 comes up for consideration on merits before the Transport Authority. In the absence of deposit of permit fee with the application, the R. T. A. may refuse the application for permit after giving reasons. But at the same time the R. T. A. would be acting within its jurisdiction if he calls upon the applicant to remedy the defect. Looking to the object sought to be achieved by the Motor Vehicles Act and also looking to the omission of penal consequences for non-compliance of this provision the provision appears to be directory only. The underlying object of the Motor Vehicles Act is to fulfil the public need and avoid unhealthy competition and also to grant permit in favour of the persons who are capable of meeting the public needs. This is the vital factor which has to be taken into consideration. The remaining being formal and subsidiary are of ancillary nature and non-compliance of which cannot vitiate the validity of the application. The stage for disposal and dismissal is only after the applications are published u/s 57 and listed for consideration. Even at that time it is open to the R. T. A. to ignore this formal defect. In the present case the R. T. A. has accepted the deposit of permit fee before the issue of the permit which in my opinion he had jurisdiction to do looking to the object and intendment of the Act. The provision of Rule 89 (d) in my opinion is, therefore, directory in nature.

6. Mr. R. R. Vyas has however invited my attention to the Single Bench decision rendered in Mahesh Transport Company v. R. T. A., Jodhpur, C. W. 1950 of 1967 decided on 25-4-1967 (Raj) and contended that Rule 89 (d) is mandatory. I have perused this judgment. The contention of the learned counsel cannot be accepted. All that has been said in that judgment is that it is open to the R. T. A. to reject the application if the application is not accompanied by requisite permit fee at appropriate stage. That is not the case before me. In this case here the R. T. A. has accepted the permit fee. The case is distinguishable. The T. A. T. was, therefore not justified to reverse the order of the R. T. A.

7. In the result the petitions are accepted; the impugned order of the T. A. T. is hereby quashed. It may, however, be noticed that M/s. Bahari Goods Carrier

Private Limited and Shri Chittarmal Yadav are plying under a permit granted to them in consequence of setting aside the permits of both the petitioners who in their turn are plying by virtue of the stay order of this Court. The result is that all the parties are plying since 1969. Learned counsel for the parties state that some more vacancies have since occurred which are still in existence. In view of the above special circumstances relying on the observations of the Supreme Court in P. Palaniswami Vs. Shri Ram Popular Service (P) Ltd. and Another, I direct that this order shall not preclude the plying of the vehicles by the non-petitioners M/s. Bahari Goods Carrier (Pr.) Limited and Shri Chittarmal Yadav till the Tribunal finally decides about the grant of permits keeping due regard to the fact of existence of vacancies if any. The matter will therefore go before the S. T. A. T. who will decide it as early as possible.