

(1967) 12 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 470 of 1967

Guru Nanak Transport Co-operative Society Ltd., Ganganagar	APPELLANT
Vs	
Regional Transport Authority, Bikaner and Others	RESPONDENT

Date of Decision : 21-12-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 44(4), 48, 57, 64, 64A

Citation : AIR 1968 Raj 264 : (1968) RLW 379

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Advocate : C.L. Agrawal and J.G. Chahangani, J.P. Jain, for the Appellant; D.P. Gupta, for Respondents (Nos. 3 to 10), for the Respondent

Final Decision : Dismissed

Judgement

Kan Singh, J.—The petitioner, who is a cooperative society, is a bus operator and by this writ petition it seeks to question the validity of certain permits granted by the Regional Transport Authority, Bikaner, in favour of respondents Nos. 3 to 10. It went up in appeal to the Transport Appellate Tribunal against the resolution of the Regional Transport Authority, but was unsuccessful and consequently the order of the Transport Appellate Tribunal dated 16-8-67 is also challenged. The relevant facts, as presented in the writ petition are briefly these:

2. There is a route known as Ganga-nagar-Karanpur via Arayan which is about 80 kilometres in length. Before the impugned resolution of the Regional Transport Authority, there were 8 operators on this route who were having 11 return services. Out of the 11 return services, 10 were provided for the whole route and one was provided only between Ganpa-nagar and Arayan a distance of about 21 miles. By its resolution dated 26/ 27/28th November, 1962, the Regional Transport Authority fixed the limit of 8 permits for the route in question in accordance with Section 47 (3) of the Motor Vehicles Act. 1939, hereinafter to be referred as the "Act". On 11-7-63, one of the 8 operators one Randhir Singh,

applied for renewal of his permit. His application for renewal of the permit was published, but before it could be disposed of, fresh applications for grant of permits were made by respondents No. 3, Chamanlal, No. 4 Bahadur Singh, No. 5 Munshilal and No. 6 Geegraj Sharma respectively. These applications were also published. There were objections made by certain existing operators against the applications of these respondents. By its resolution dated 12/13th October, 1963, the Regional Transport Authority granted one permit to each of these respondents?

The objector Randhir Singh Kirpal Singh went up in appeal to the Transport Appellate Tribunal against the order granting permits to these respondents, but the appeal was dismissed by the Transport Appellate Tribunal and the resolution of the Regional Transport Authority was upheld. Randhir Singh Kirpal Singh then lodged a writ petition in this Court challenging the resolution of the Regional Transport Authority as upheld by the Transport Appellate Tribunal. The writ petition was eventually allowed and the resolution of the Regional Transport Authority granting permits to the aforementioned respondents was quashed on the ground that as a limit for 8 permits had already been fixed by the Regional Transport Authority, more permits could not have been granted. Thereafter, on 8-10-64 some 36 applications for grant of permits on the route were made before the Regional Transport Authority. Objections were filed against these applications by the existing operators on 16-10-64. Before these applications could be disposed of, 11 more applications were made for the grant of permits by certain other persons and they were published for inviting objections on 11-3-65. Against these applications also existing operators filed objections,

Thereafter, it appears that the Regional Transport Authority thought of revising the scope for permits over the route and it issued a notice for inviting objections in this behalf. Objections were received by the Regional Transport Authority regarding the scope on 2-6-64. (65?) On 30-10-65, the Regional Transport Authority considered the objections and revised the scope for permits from 8 to 16. Against this resolution of the Regional Transport Authority revising the scope the petitioner Guru Nanak Transport Co-operative Society Ltd., as also some other objectors filed a revision application before the State Transport Authority. The petitioner submits that that revision application is still pending before the State Transport Authority and has not been decided. It has been pointed out that the State Transport Authority is not functioning since January, 1967 after its Chairman Shri S. D. Ujjwal had been transferred¹ to another post.

3. In questioning the resolution of the Regional Transport Authority, Bikaner, granting the permits to respondents Nos, 3 to 10, the petitioner contends that the State Transport Authority had issued directions in exercise of its powers u/s 44 of the Act to the Regional Transport Authority to fix the scope over routes on the basis that a bus operator should get an average of 80 route miles instead of 40 miles per day and consequently the Regional Transport Authority was not entitled to grant the permits to the concerned respondents without first fixing the scope over the route in accordance with the directions of the State Transport

Authority. In other words, it is contended that the provisions of Section 44 were mandatory and the Regional Transport Authority was bound to give effect to the directions and be guided by the directions and any action taken in violation of these directions was, according to the petitioner, illegal. It is next contended by the petitioner that it was not given proper notice for the meeting of the Regional Transport Authority at which the scope for the route was revised from 8 to 16 permits. Then thirdly it was contended that when the applications of the respondents for grant of permits were taken up for consideration on 9-2-67, the agenda for the meeting did not include the matter about the applications of respondents Nos. 3 to 6, and further that the additional timings granted by the Regional Transport Authority to the concerning respondents was bad.

4. The writ petition has been opposed by respondents Nos. 3 to 10. It is denied by them that the impugned resolution of the Regional Transport Authority, Bikaner granting permits to the concerning respondents was vitiated on account of any of the grounds urged by the petitioner. It is submitted that the Regional Transport Authority could properly act on the previous resolution of the Regional Transport Authority by which the scope on the route was fixed at 16 and the directions of the State Transport Authority dated 8-9-66 according to the respondents, being only the administrative directions could not fetter the power of the Regional Transport Authority to deal with the applications for permits according to the considerations set out in Section 47 of the Act.

5. The main question that emerges from the rival contentions of the learned counsel is whether the impugned resolution of the Regional Transport Authority granting permits to respondents Nos. 3 to 10, without its first re-fixing the scope over the route in the light of the State Transport Authority's direction issued on 8-9-66 was bad. In considering this I have to examine the nature, scope and binding character of the directions issued by the State Transport Authority in exercise of its powers u/s 44 (4) of the Act when the Regional Transport Authority deals with applications made to it u/s 57 of the Act for the grant of permits. Shri Agarwal, who argued the case for the petitioner, contended that the plain language of sub-section (4) of Section 44 of the Act made it mandatory for the Regional Transport Authority to give effect to these directions in discharge of its functions under the Act and be guided by such directions. This, according to Shri Agarwal did not leave any choice to the Regional Transport Authority not to give effect to these directions. Therefore, Shri Agarwal maintains that before the Regional Transport Authority could have granted permits to the respondents concerned it had the bounden duty to first re-fix the scope over the route in the light of the directions of the State Transport Authority. Shri Agarwal placed reliance on a number of cases which I propose to discuss hereinafter and I need not enumerate the cases at this juncture.

6. Shri D. P. Gupta, on the other hand, contested the stand taken by Shri Agarwal and submitted that u/s 44 of the Act the State Transport Authority only exercises an administrative function and the directions issued by it thereunder

are also administrative in character and consequently the Regional Transport Authority while exercising its quasi judicial functions u/s 48 of the Act is not bound to give effect to such directions. Shri Gupta also invited my attention to three cases of the Supreme Court as also some other cases, which I propose to refer in the course of the discussion that follows:

7. Before I proceed to address myself to the several cases, I find it convenient to briefly extract the relevant provisions of the Act and then I propose to refer to some well settled propositions

8. Chapter IV, in which Section 44 occurs, deals with control of transport vehicles. Section 42 enjoins that no transport vehicle shall be used by its owner or permitted to be used in any public place, save in accordance with the conditions of a permit granted or countersigned by a competent transport authority. This is followed by Section 43 which lays down the powers of the State Government in the matter of control of road transport. It empowers the State Government to issue directions to the State Transport Authority by a notification in the official gazette from time to time regarding certain specified matters which it is not necessary to notice. Then Section 44 deals with transport authorities. The highest body in the hierarchy is the State Transport Authority and that functions for the entire State, A State is divided into several regions and for each region there is a Regional Transport Authority. It is not necessary to refer to the constitution of these authorities. It is sufficient to say that the apex authority is the State Transport Authority who is empowered to co-ordinate and regulate the activities and policies of the Regional Transport Authorities. It can settle all disputes and decide all matters on which there may be differences of opinion between one Regional Transport Authority and another. The State Transport Authority is also to perform the duties of a Regional Transport Authority where there is no such authority for any region. It is in this context that sub-section (4) which empowers the State Transport Authority to issue certain directions occurs and I may read that sub-section:--

"S. 44(4) :-- For the purpose of exercising and discharging the powers and functions specified in sub-section (3) a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall, in the discharge of its functions under this Act, give effect to and be guided by such directions."

9. Then the next section, to which I may refer, is Section 46. It lays down how applications for grant of stage carriage permits are to be made and sets out the particulars that an application has to contain. Section 47 sets forth the considerations that a Regional Transport Authority has to bear in mind in dealing with applications for stage carriage permit. Sub-section (1) provides that the Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters:--

(a) the interests of the public generally;

(b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served;

(d) the benefit to any particular locality or localities likely to be afforded by the service;

(e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;

(f) the condition of the roads included in the proposed route or area;

and shall also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the route or area lies:

Provided that other conditions being equal, an application for a stage carriage permit from a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, as far as may be, be given preference over applications from individual owners."

Then there is Sub-section (3) which empowers the Regional Transport Authority to limit the number of stage carriages generally for any route and it runs as follows:--

"Section 47(3) A Regional Transport Authority may, having regard to the matters mentioned in sub-section (1), limit the number of stage carriage generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region."

10. Section 48, under which the Regional Transport Authority acts for deciding an application made u/s 47, lays down that subject to the provisions of Section 47, a Regional Transport Authority may grant stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit. This section also empowers the Regional Transport Authority to impose certain conditions on the permits that the Regional Transport Authority may grant and I am not concerned with those conditions in the present case

11. Section 57 lays down the procedure for the making of application u/s 46 and how they are to be dealt with at the hands of the Regional Transport Authority thereafter. The applications are required to be published for inviting objections and then, if objections are received, the applications have to be disposed of at a meeting of the Regional Transport Authority and all the parties concerned have to

be heard. However, according to the rules made under the Act, if there are no objections against any application, it need not be decided at a meeting but can be dealt with by circulation of the proposal amongst the members of the Regional Transport Authority. What is to be noticed for the purposes of this case is that proviso to sub-section (3) to Section 57 lays down that if the grant of any permit in accordance with the application would have the effect of increasing the number of vehicles operating on the route beyond the limit fixed in that behalf under sub-section (3) of Section 47 then the Regional Transport Authority may summarily reject the application without following the procedure laid down in section 57.

The last section in this Chapter is Section 68 which empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV.

12. Now I may preface my discussion with certain well established propositions; which are on this date almost axiomatic: (1) the Regional Transport Authority when it deals with applications for grant of permits u/s 48 of the Act, acts quasi judicially; (2) that likewise the Transport Appellate Tribunal when it acts as an appellate authority u/s 64 of the Act, acts as a quasi judicial authority; (3) similarly the State Transport Authority when it exercises its revisional jurisdiction u/s 64-A of the Act, acts as a quasi judicial authority. The Transport authorities have certain administrative functions to perform under the Act. Sometimes the administrative action is purely administrative in character and at other times it partakes of the judicial character when it can be predicated that there is a lis before such Transport authority and it is required to act judicially. I am not unmindful of the position that at times one may be faced with a difficulty in drawing the line between the administrative sphere and the judicial sphere of the Transport authorities. For that one has primarily to look to the nature of the activity in which the Transport Authority may be engaged at the relevant time and then one has to apply the usual test whether it can be spelt out that the body for that particular business is required to act judicially. The test has been laid down by their Lordships of the Supreme Court in *Province of Bombay Vs. Kusaldas S. Advani and Others*, , for judging when an authority can be said to act quas: judicially. Following this (rase a Division Bench of this Court consisting of Wanchoo C. J., as he then was and Dave J., as he then was, laid down in *Kishore Singh Vs. State of Rajasthan and Another*, . as to what are the distinguishing features of an executive order from a judicial or a quasi judicial order. The learned Judges observed as follows:--

"The following four conditions are necessary before an order becomes a judicial order (i) there should be a body of persons, (ii) this body of persons should have legal authority, (iii) the legal authority should be to determine questions affecting rights of subjects or citizens, and (iv) this body of persons should have the duty to act judicially. Three of these conditions will be present in most orders of an executive or administrative nature. It is only the fourth condition which will not

be present in the case of executive orders, namely, there should be a duty to act judicially. It is the presence of this condition which differentiates an executive order from a judicial or quasi judicial order."

13. What are the conditions under which a quasi judicial authority namely, an administrative tribunal, can be said to be bound by a certain order or rule when it is to deal with a matter judicially or quasi judicially. The first postulate, in my view, is that if there is a superior tribunal acting in the same sphere in which the Regional Transport Authority is acting quasi judicially, then it will be taken to be bound by the order of the superior authority. Also, as all courts and tribunals have to exercise Their powers subject to laws, the administrative tribunal namely, the Regional Transport Authority or higher bodies will be bound, to obey all laws or rules having the force of law when any of them comes to discharge its function. The crucial question in this context is whether if a particular order cannot be postulated to be one passed by a superior authority in the judicial sphere or one which cannot be said to be a law or rule having the force of law would it still be binding on the authority in its judicial sphere. Here one comes to deal with the problem of the judicial independence of authorities who have to form their own judgment unguided by what other administrative authorities or functionaries may have to say on a certain matter. A review of cases, which I will be referring in a moment, shows that courts have always set their feet against any infraction of the judicial sphere of the transport authorities by the administrative authorities properly so-called or when they are functioning purely in their administrative capacity.

The earliest case to which my attention was invited was *Sri Rama Vilas Service, Limited Vs. The Road Traffic Board*, . In that case a Government order had been issued in Madras and that order purported to direct the transport authorities to issue temporary permits on applications before them, as the Government intended to nationalise motor transport Government instructions were challenged before the Madras High Court It was held by the High Court that since the Road Control Board had to act quasi judicially in dealing with applications for grant of permits in the light of the considerations contained in Section 47 of the Act, the Government instructions amounted to interference with the discharge of judicial functions of the Road Transport Board. The Government then wanted to overcome the difficulties and the law was got amended and a new Section 43A was inserted by way of a local amendment for what was then Madras Province. That new Section empowered the Provincial Government to issue "such orders and directions of a general character as it may consider necessary in respect of any matter relating to road transport to the State Transport Authority or the Regional Transport Authority and the Transport Authority was to give effect to all such orders and directions." Armed with these new powers the Government of Madras again issued directions which were this time thought to be statutory in character These directions were again challenged on the ground that they interfered with the discharge of judicial functions of the Road Transport Board u/s 48 of the Act. The Madras High Court again held in *C.S.S. Motor Service, Tenkasi*

and Others Vs. The State of Madras and Another, that the Regional Transport Authority was not bound to follow these directions in discharge of its judicial functions, as they were not law, but only administrative directions. Then again the validity of Section 43A itself was challenged and the case went up to the Supreme Court and is reported as Raman and Raman Ltd. Vs. The State of Madras and Others, . Their Lordships of the Supreme Court held that Section 43A could be given only a restricted meaning and the jurisdiction that it conferred on the State Government to issue orders and directions must be confined only to administrative functions and their Lordships clearly held that the Regional Transport Authority was not inhibited by these directions while discharging its quasi judicial functions u/s 48 of the Act.

14. The same view was reiterated in yet another case from Madras reported as R. Abdulla Rowther v. S. T. A. Tribunal, Madras AIR 1959 SC 896 . The question came to be examined once again by their Lordships of the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, . Their Lordships reviewed the scheme of the Act and also considered the previous judgments. Their Lordships laid down that the scheme of the Act showed that the transport authorities created by the Act were clothed both with administrative and quasi judicial functions. Their Lordships pointed out that it was well settled that Sections 47, 48, 57, 60, 64 and 64A deal with quasi judicial powers and functions. According to their Lordships, when applications are made for permits under the relevant provisions of the Act and they are considered on merits particularly in the light of the evaluation of the claims of the respective parties, the transport authorities are exercising quasi judicial powers and are discharging those functions as tribunals and consequently whenever the validity of any direction or order has to be examined one should not lose sight of the fact if the impugned order in any way concerns matters which fall to be determined by the transport authorities in exercise of their quasi judicial powers. Then their Lordships pointed out that the Act conferred legislative judicial and administrative powers respectively on the State Government and then, after referring to the relevant Sections of the Act, their Lordships pointed out that the field covered by Section 43-A (Madras Amendment) was administrative and did not include the area which is the subject matter of the exercise of quasi judicial authority by the relevant tribunals. The following observations of their Lordships may be quoted with advantage:--

"Besides, the two preceding Sections, Section 42 and Section 43 and Section 44 which follows support the argument that the field covered by Section 43A like that covered by Sections 42, 43 and 44 is administrative and does not include the area which is the subject matter of the exercise of quasi-judicial authority by the relevant Tribunals."

Their Lordships further reinforced their conclusion by observing that the use of the words "orders and directions" occurring in Section 43A would not be appropriate in regard to matters which fall to be considered by authority

exercising quasi judicial power's. Then their Lordships pointed out that for making of statutory rules the legislature has provided Section 68 In this view of the matter their Lordships held that Section 43A only empowered the Government to make administrative directions which could not be held to be binding on a tribunal when it deal with matters entrusted to it quasi judicially. Their Lordships added that the tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment as it was of the essence of fair and objective administration of law that the decision of the Judge or the tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. The following observations of their Lordships are important in this behalf:--

"In reaching this conclusion, we have been influenced by certain other considerations which are both relevant and material. In interpreting Section 43A. we think, it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law. that in exercising their authority and in discharging their quasi-judicial function the Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State, If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the principles which have to be followed by the Tribunals in dealing with the said matters. The scope of the jurisdiction of the Tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the Constitution. But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders. This position is so well established that we are reluctant to hold that in enacting Section 43A the Madras Legislature intended to confer power on the State Government to invade the domain of the exercise of judicial power."

15. Shri Gupta submitted on the basis of the above observations in this case that what their Lordships had held in considering the directions or instructions issued u/s 43A (Madras Amendment") will apply with full force to the directions issued by the State Transport Authority u/s 44(4) of the Act. He, in particular, referred to the passage already quoted above that Section 44, like Section 43A (Madras Amendment) related to the administrative functions and did not include the area which was the subject matter of the exercise of quasi judicial authority by the

relevant tribunal

16. Shri Agarwal, on the other hand, endeavoured to distinguish this case. He urged that the language employed in the two Sections was not similar and further section 43A (Madras Amendment) has its own history in that before it there were serious inroads made by executive instructions of the Government from time to time in the judicial sphere of the transport authority Shri Agarwal, therefore, maintained that this decision should only be taken to be an authority for what it actually laid down and should not be extended to the directions of the State Transport Authority u/s 44(4) of the Act.

17. Having given my anxious consideration to the rival submissions I am of the opinion that though their Lordships were dealing with the scope of directions issued u/s 43A (Madras Amendment), their Lordships did lay down that Sections 42, 43 and 44 covered only an administrative field and did not include the area which was the subject matter of the exercise of quasi judicial authority namely, the Regional Transport Authority. Therefore, in looking at Section 44, one has to bear these observations of their Lordships in mind. Then the question is whether Section 44(4) empowers the State Transport Authority to make a law or any rule which may be of legislative character. The answer to this question has to be in the negative. As pointed out by their Lordships in *Rajaeopala's* case, for the exercise of the legislative powers by the State Government the legislature has enacted Section 68. Apart from this, whatever their Lordships had said about the directions issued u/s 43A (Madras Amendment) in applying the test of publication of the directions, applies equally to whatever directions the State Transport Authority may lay down u/s 44(4) of the Act. It is a basic attribute of a piece of legislation, be it an Act of legislature or a delegated or subsidiary legislation, that some mode of publication has to be provided. One does not find any such mode of publication provided for directions u/s 44(4) of the Act.

It is true the State Transport Authority is the apex authority in the hierarchy of the Transport Authorities created u/s 44 of the Act. As I have already observed, for certain matters the State Transport Authority is an authority superior to a Regional Transport Authority in the judicial sphere (vide Section 64A), but when the State Transport Authority issues directions u/s 44(4) of the Act. it does not act in its judicial capacity. Apart from what their Lordships observed above in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, , even according to the principles that their Lordships had laid down in *Province of Bombay Vs. Kusaldas S. Advani and Others*, . and which were followed by a Division Bench case in *Kishore Singh Vs. State of Rajasthan and Another*, , by no stretch of imagination the act of issuing directions u/s 44(4) of the Act can be regarded as anything but a pure administrative act of the State Transport Authority which does not partake of a judicial character Therefore, if the directions cannot be regarded as law. nor as issued in the judicial capacity, then, I am unable to see how a Regional Transport Authority acting in the judicial sphere can be held bound by them To give effect to any such directions in the

judicial sphere will in the words of their Lordships of the Supreme Court "amount to the fettering of the powers of the judicial body by providing the extraneous guidance by the executive or administrative wing of the State." This is impermissible. I may also refer to some observations made in the Full Bench case of this Court in Jagdish Prasad Vs. The Transport Appellate Tribunal and Others, . In that case the validity of certain directions issued by the State Transport Authority u/s 44(4) of the Act for giving preference to displaced operators in the grant of permits came to be examined. Their Lordships held that these were administrative directions which interfered with the quasi judicial functions of the Regional Transport Authority and were, therefore, bad. Bhandari J., pointed out that if the directions were only to the effect that no fresh applications should be invited by the Regional Transport Authority, the directions would have been proper, but in that the directions went beyond this and prohibited the Regional Transport Authority from deciding any application pending before it for grant of permit on "A" class route in its region, such a direction was, according to the learned Judges, invalid as it interfered with the discharge of the judicial functions of the Regional Transport Authority.

18. A perusal of the above cases leads me to hold: (1) that Section 44(4) of the Act only relates to the administrative functions of the State Transport Authority; (2) that the scope of such directions is limited to such a sphere of subordinate authorities which can properly be held to be only administrative; (3) that, so far as the discharge of quasi judicial functions of the Regional Transport Authority is concerned these directions cannot have any efficacy and the Regional Transport Authority will still remain unfettered in discharging its functions in the matter of grant or refusal of permits on the applications before it.

19. Shri Aearwal invited my attention to Amarnath S. Nanda Vs. State Transport Authority and Another, , Ambala Bus Syndicate (Private) Ltd. v. State of Punjab AIR 1950 P&H142 Brijlal Misra and Another Vs. The Regional Transport Authority, Kanpur, , Lakshmi Chand Vs. Regional Transport Authority, Agra and Another, , Ram Prashad Vs. The Regional Transport Authority, Agra Region, Agra and Others, and Swami Motor Transport (Private) Ltd. Vs. Raman and Raman (Private) Ltd. and Others, . In view of what their Lordships of the Supreme Court had held in the cases referred to by me above, as also what this Court had held in the Full Bench case, it is unnecessary to deal with these cases.

20. I may now come to close quarters with the directions themselves. They are contained in resolution No. 2 of the State Transport Authority, Rajasthan dated 8-9-66 and have been placed on the record as Ex-5. The resolution recites that the case regarding revision of minimum operational mileage of 40 miles allowed for a bus per day was put up and considered Then the resolution refers to a letter of the Director of Transport and about the necessity of the increase in the route mileage and the State Transport Authority finally laid down as Follows:

"The matter was examined in the light of foregoing matter at length. It was felt that the overall rise in the cost of vehicles and their maintenance, the increase of

the operational mileage is imperatively necessary in the interest of industry, operators and the travelling public and be doubled at least.

It is therefore resolved that minimum mileage for a bus from 40 miles per day should be and is hereby enhanced to 80 miles per day and all Regional Transport Authorities should keep this in view while determining scope on any route."

The wording of this resolution is very suggestive by itself. One who is familiar with the making of law or any rule which can be said to be legislative in character could at once say that this is not the language in which a law or rule is framed. It says that the "State Transport Authority felt that the overall rise in the cost of vehicles and their maintenance, the increase of the operational mileage is imperatively necessary in the interest of industry, operators and the travelling public and be doubled at least". Then the operative part of the resolution says "that the minimum mileage for a bus from 40 miles per day should be and is hereby enhanced to 80 miles per day." This is undoubtedly the language of an administrative decision and the same cannot be placed on the pedestal on which a law made by the Legislature or a delegated authority is placed. Such an administrative decision could, if at all, only be binding on a Regional Transport Authority when it acts in its purely administrative sphere and not when it exercises its powers u/s 48 of the Act

Under Section 48 of the Act it is required to deal with applications before it only in the light of the considerations set forth in Section 47 of the Act and not otherwise. Here I may also refer to another case of their Lordships of the Supreme Court reported as Abdul Mateen v. Ram Kailash, AIR 1963 SC 64 which specifically deals with the exercise of functions by the Regional Transport Authority u/s 48 of the Act. Their Lordships pointed out in this case that the Regional Transport Authority has to act subject to the provisions of Section 47. Their Lordships also pointed out that where a limit has been fixed u/s 47 (3) by the Regional Transport Authority and thereafter the said authority proceeds to consider the applications for permit u/s 48 read with Section 57 the Regional Transport Authority must confine the number of permits issued by it within those limits prescribed u/s 47(3)

The question immediately arises as to on the date of the impugned resolution of the Regional Transport Authority which was the order that held the field u/s 47(3) of the Act? It appears that to start with there was the limit of 8 permits fixed for the route in question. Then there was some attempt on the part of the Regional Transport Authority to grant some additional permits but eventually that attempt proved abortive as a result of the verdict of this Court. The Regional Transport Authority then took up the question of refixation of limit u/s 47(3) of the Act. It issued a notice in that behalf. Certain objections were made against the revision of the scope. The objection is also brought on the record as Ex/2. Then it appears that finally by its resolution No 93 dated 30-10-65 (Ex.-3), the Regional Transport Authority revised the limit from 8 to 16 buses on this route and then the impugned resolution Ex-6, came to be passed namely on 9-2-67. In

these circumstances I am unable to hold that the Regional Transport Authority had violated any provision of law even if it did not proceed to first re-fix the scope in the light of the State Transport Authority's directions as contained in Ex-5

21. I may next turn to the other contentions of learned counsel for the petitioner. The second contention in a way challenges the validity of the resolution of the Regional Transport Authority dated 30-10-65 (Ex-3V). It has been admitted by the learned counsel for the petitioner that this resolution is the subject matter of a revision application before the State Transport Authority which is still pending. Learned counsel submitted that as the State Transport Authority is not functioning since January, 1967 after the then Chairman Shri S. D. Ujjwal was transferred, the petitioner is not able to pursue his statutory remedy. I cannot help observing that it is a very serious failing on the part of the State Government not to provide a Chairman for the State Transport Authority and that its composition is consequently incomplete and it is not yet able to function though already 10 or 11 months have gone by. When the Legislature has created certain authorities and the Regional Transport Authorities are still functioning, it is a matter of great hardship to everybody concerned in the transport business if there is no State Transport Authority functioning at the moment. However, the contention inter alia raises a question of fact whether notice of the meeting was not given to the objectors concerned and whether, in fact, any such objections were received against the proposal to revise the scope or not and, therefore, it will not be convenient for this Court to deal with this matter in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. This is pre-eminently a matter which is to be dealt with by the revisional authority constituted under the Act. As the revision application is still pending, I do not consider it appropriate to make any observation regarding the merits of this contention.

22. Now I may come to the other contentions which refer to the proceedings of the Regional Transport Authority. At this stage when I was dictating the judgment, learned counsel for the petitioner submitted that he does not press these contentions as advanced and only confines the argument to saying that the Regional Transport Authority had not considered the question of adequacy of the services which it was required to do even according to Section 47 of the Act. My attention was drawn to the following observations in the impugned resolution of the Regional Transport Authority:--

"The existing operators of the route who have filed objections were heard through their counsel Shri J. G. Chhanganj. Their objection is mainly that the decision taken by the R. T. A. to revise the scope from 8 permits to 16 permits is not supported on facts and figures and as such no notice is to be given to that resolution. Since no appeal has been filed against the impugned resolution of the Regional Transport Authority and the decision of Regional Transport Authority still stands, we are unable to go beyond it and hence the objection is overruled."

The observations of the Transport Appellate Tribunal in its judgment Ex-7 are as follows:--

"The S. T. A. is competent to go into the question of scope of traffic on a route. It is not open to this Tribunal in this appeal to re-examine the propriety of the resolution of the R. T. A. regarding determining the scope of traffic on the route in question. Mr. Sharma's contention in this behalf cannot be entertained in this appeal. He has mentioned that he has taken up the matter with the S. T. A. and he may press his case for relief in this behalf in that revision before that authority. Even though names of other applicants may not have been mentioned in the agenda which was published in the Gazette yet the appellant did avail of an opportunity to plead his points against all the applicants and he is again being allowed a second opportunity to do so in this appeal. The only point that has been pressed by the learned counsel against all the respondents is one and the same that there is no more scope for grant of more permits on the route."

I have carefully considered these observations which do not disclose that the objection about the adequacy of the existing services was put forth before the transport authorities in the form it is done before me. A perusal of the above observations shows that the point that was argued was that the decision taken by the Regional Transport Authority to revise the scope from 8 permits to 16 permits was not supported on facts and figures and as such no notice is to be given in that resolution

From what appears to have been argued before the Regional Transport Authority I am led to think that the petitioner was agitating only against the revision of scope by the earlier resolution of the Regional Transport Authority. In my view, when the Regional Transport Authority seized of certain applications made before it u/s 57 of the Act, and, is deciding them, it is none of its business to go into the question of the revision of the scope over the route which has to be done as a separate matter and has not to be mixed up with the question of granting permits. It is true, the adequacy of the existing services has to be considered even while disposing of applications u/s 57 of the Act, but in this regard the Regional Transport Authority's resolution is not a speaking one and the Transport Appellate Tribunal seems to have inferred from what had happened in the case that the Regional Transport Authority had determined the scope over the route with full knowledge of the existing capacity of the buses. The relevant observations of the Transport Appellate Tribunal in this behalf are as follows:--

"As regards the contention about fixing the number of buses having regard to the mileage expected of each bus by the S. T. A. in their new resolution it may be noted that the existing operators are already getting about 88 miles per bus on an average as conceded by the learned counsel for the appellants. The re-determination of the existing scope appears to have been undertaken by the R. T. A. with full knowledge of the existing capacity of the buses and there is, therefore, no substance in the point pressed by the learned counsel. Both the appeals fail and are dismissed."

Consequently I am unable to hold that the records of the Transport Authorities disclose any error of law as is apparent on the face of the record so as to warrant interference,

23. As regards fixing the time table the perusal of the order of the Transport Appellate Tribunal shows that the Regional Transport authority has been asked to fix a proper time table so that the existine services are not adversely affected by the running of the new services by the new permit holders,

24. It is a sorry state of affairs as already observed above, that no State Transport Authority is functioning at present and it is expected that the State Governmpnt shall respect the mandate of law. As the State Government is not a party to the present proceedings, I am unable to give any relief to the petitioner in this behalf.

25. In these circumstances the writ petition fails and is hereby dismissed. There will be no order as to costs.