

(2009) 08 AHC CK 0141
In the Allahabad High Court

Hazzan Fatima Begum and Others

APPELLANT

Vs

State Transport Authority and Others

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Motor Vehicles Act, 1988 — Section 70, 71, 72, 90

Citation : (2009) 08 AHC CK 0141

Hon'ble Judges : S.P. Mehrotra, J;Anil Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The issues raised in the above writ petitions being inter-related, the writ petitions being heard together with the consent of learned Counsels for the parties and are being disposed of by the common judgement.

2. Civil Misc. Writ Petition No. 6582/09 is being treated as the leading writ petition. The other writ petitions ought to be decided on the basis of the decision in the leading writ petition.

3. We have heard Sri Ashish Saxena and Sri Alok Saxena, learned Counsel for the petitioners and Sri Vivek Shukla, learned Standing Counsel appearing for the respondents.

4. It is sufficient to refer the pleadings of the Writ Petition No. 6582 (M/B) of 2009. The leading writ petition having considered the issues raised in this bunch of writ petition.

5. The facts of leading writ petition is that the petitioner Hazzan Fatima Begum is the existing operator of the route Tikamgarh Jhansi via Kenara which is an inter-state route partly lying in the State of U.P. and in the State of Madhya Pradesh.

6. A reciprocal agreement dated 21.11. 2006 has been entered between the State of U.P. and State of Madhya Pradesh and in terms of the reciprocal

agreement, two categories of routes have been proposed one for the operation of the vehicles of State Transport undertakings and other by the private operator.

7. Further, the routes which are to be operated by the private operators are mentioned in Annexure A of the reciprocal agreement and the route of the petitioner is at Serial No. 82 in Annexure No. 1 of the reciprocal agreement and at Serial No. 141 there is another route Lalitpur- Mauranipur via Mahrauni-Tikamgarh-Jatara hereinafter referred as route in question.

8. As the route in question is an inter-state route, so the granting authority of the permit is State Transport Authority (hereinafter referred as S.T.A.).

9. Smt. Bano, Smt. Kaniz Fatima and Sri Mudassir Ahmad had submitted an application for grant of Regular Stage Carriage Permit on the route in question along with two others persons.

10. S.T.A. in its meeting dated 20.5.2009 had considered the application submitted before it for grant of Regular Stage Carriage Permit and vide order dated 20.5.2009 (Annexure 4 to the writ petition) had granted a Regular Stage Carriage Permit to Smt. Bano, Smt. Kaniz Fatima and Sri Mudassir Ahmad (hereinafter referred as new operator). The operative portion of the order of grant of permit by S.T.A. is as under:

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11. In view of the above facts, the petitioner has filed the Writ Petition with the following prayer:

(i) issue a writ, order or direction including a writ in the nature of mandamus commanding the opposite party No. 2 not to issue the time table proposed by the opposite party No. 3 against her permit for the route Lalitpur to Mauranipur.

(ii) issue a writ, order or direction including a writ in the nature of mandamus commanding the opposite party No. 2 to issue a undisputed time table to the opposite party No. 3 after considering the objection of the petitioner.

12. In view of the above said pleadings and prayer the petitioner has submitted that before issuing the permit to the opposite party No. 3 the respondent No. 2 shall hear and decide the application in view of the following points:

(a) under the provision of Section 71(2) of the Motor Vehicles Act the transport authority are bound to consider the relevant provisions relating to the speed at which vehicles may be operated while considering the application for grant of permit as area or route can not be permitted to be contravened into racing

ground for heavy vehicles in order to pick up more passengers enroute, thereby exposing both person and property of public and great danger.

(b) the petitioner have a right to object the grant of time table if the same is in clash to her time table. As the same will adversely affect the petitioners operations on the route in question.

(c) The State Transport Authority, U.P., Lucknow (respondent No. 1) has granted permit to the opposite party No. 3 on the proposed time table as furnished by her along with her application, which is contravention to approved time table of the petitioner.

(d) Because the opposite party No. 2 in clear disregard to the provisions of the Motor Vehicle Act relating to speed limit of vehicle and safety of passengers and public property is bent upon to issue the permit granted in favour of opposite party No. 3 on the basis of the proposed time table.

(e) Because the petitioner on 08.7.2009 has moved a detailed objection before the opposite party No. 2 for not issuing the time table proposed by the opposite party No. 3 and had requested the opposite party No. 2 to issue a undisputed time table to the opposite party No. 3 in order to prevent the route from converting into a racing ground putting both life and property of the public into great danger.

13. Sri Gulsher Ahmad, M/s Pancham Lal Janki Devi and Mohd. Saleem, who are existing operator of the route Lalitpur to Mauranipur via Mahrauni Tikamgarh Jatara on identical and similar facts and grounds had filed Writ Petitions No. 6583(M/B) of 2009, 6584(M/B) of 2009 and 6585(M/B) of 2009 praying therein that before issuing the Regular Stage Carriage Permit, which are granted in favour of the new operators vide order dated 20.5.2009 by S.T.A., their objections which they have submitted against the time table of the new operators be considered before arriving the same.

14. In the light of the above said factual background the learned Counsel for the petitioners had argued that as they are existing operators of the route in question namely Tikamgarh Jhansi via Kenara and as per the time table which are allotted to them on the basis of which they are operating in the event if the permits are issued on the proposed time table to the new operators on the basis of which they were granted Regular Stage Carriage Permit by the State Transport Authority vide order dated 20.5.2009. Their operations will be adversely affected as the time table of the petitioners will clash with the time table of the new operators because the major portion of the route of the petitioners and the route in question overlaps with each other.

15. Another submission made on behalf of the petitioners was to the effect that they have right to be heard and their objection which they had preferred before the opposite party No. 2 may be considered only then the permit is to be issued to the new operators on the route in question, as the existing operator still have

right to object the grant of time table to the new operator if the same are in clash with their time table because there is possibility of converting a route into a racing ground for heavy vehicle which is in clear disregard to the provisions of Motor Vehicles Act related to speed limit of vehicle and safety of passengers and public property putting both life and property of the public into great danger. In this regard the learned Counsel for the petitioners had relied on the following case:

(a) Binu Chacho Vs. R.T.A.,

(b) Surendra Rao Vs. Regional Transport Authority, Gorakhpur Region, Gorakhpur and others,

16. It was further contended by the learned Counsel for the petitioners that time table is not a condition of permit as such under the provisions of 71(2) of the Motor Vehicles Act the respondent No. 2 is bound to consider the objection of the petitioners, which they had made against the proposed time table submitted by the new operator along with their application on the basis of which the permit have been granted to them before the permit are issued by the opposite party No. 2 because business will be adversely affected if the permit are issued to the new operators and in support of the said submission learned Counsels for the petitioners had relied on the following case laws:

(a) M. Akbar Saheb, petitioner v. Presiding Officer, the Mysore State Transport Appellate Tribunal, Bangalore and Ors. respondents reported in AIR 1969 Mys 242 (V 56 C 52).

(b) Ninan Vs. Secretary, State Transport Authority, Trivandrum and Another,

(c) M. Kali Mudaliar appellant v. A Vedachala Mudaliar and Ors. respondent reported in AIR 1952 Mad 545.

17. During course of arguments learned Counsel for the petitioners submitted that they are not challenging the order dated 20.5.2009 passed by the State Transport Authority, U.P. Lucknow granted in favour of Smt. Bano, Smt. Kaniz Fatima and Sri Mudassir Ahmad (new operators) on the route in question but they are only challenging the proposed time table submitted by the new operator along with the applications on the basis of which the Regular Stage Carriage have been granted to them on the route in question.

18. On the other hand Sri Vivek Shukla, the learned Standing Counsel appearing on behalf of respondents No. 1 & 2 had submitted that the petitioners have no right to challenge the grant of Regular Stage Carriage Permit in favour of the new operators under the provisions of Motor Vehicles Act, 1988 thus they have no right to challenge the time table on the basis of which the State Transport Authority vide order dated 20.5.2009 had granted permit on the route in question, as the time table is one of the condition of grant of permit u/s 72 of the Motor Vehicles Act and further contended that as the permits has not been issued in favour of new operators by the opposite party No. 2 till date as such the

grievance as raised by the petitioners in this regard is premature.

19. Learned Standing Counsel further argued that in the event if the petitioners are aggrieved by the time table on the basis of which the permits have been granted to a new operators then in that event when the same are issued, they have remedy to file revision u/s 90 of the Motor Vehicle Act as such the present writ petition filed by the petitioners are misconceived and liable to be dismissed.

20. In order to regulate the transport system in the country, the first enactment relating to motor vehicles in India was the Indian Motor Vehicles Act, 1914, which was subsequently replaced by the Motor Vehicles Act, 1939. The Act of 1939 had been amended several times. In spite of several amendments it was felt necessary to bring out a comprehensive legislation keeping in view the change in the transport technology, pattern of passenger and freight movements, development of the road network in the country and particularly the improved techniques in the motor vehicles management. Various Committees as well as the Law Commission had gone into different aspects of road transport. Several Members of Parliament had also urged for comprehensive review of the Motor Vehicles Act, 1939. Accordingly in order to consolidate and amend the law relating to Motor Vehicles, the Parliament enacted the Motor Vehicles Act, 1988 which came into force w.e.f. 1.7.1989.

21. Chapter V of the Motor Vehicles Act, 1988 (Act) deals with the control of transport vehicles and in the said chapter Section 70, 71 and 72 provides the procedure for application of Stage Carriage Permit, procedure for Regional Authority in considering the application for Stage Carriage Permit, grant of Stage Carriage Permit respectively.

22. Section 71 of the Act provides that an application for a permit in respect of a stage carriage or as a reserve stage carriage shall, as far as may be, contain the particulars as mentioned in Clause (a) to (f) therein.

23. Further clause Sub-section (C) of Section 70(1) of Act provides as under:

(c) the minimum and maximum number of daily trips proposed to be provided and the time-table of the normal trips.

24. Sub-section (2) of Section 70 of the Act provides that an application referred to in Sub-section (1) shall be accompanied by such documents as may be prescribed and further there is a form (known as form S.R.-20) as prescribed under the Uttar Pradesh Motor Vehicles Rules, 1995, which prescribed the formate for submitting an application for stage carriage permit to the S.T.A./ R.T.A. and Clause (7) of the said application provides as under

particulars of time-tables (s) proposed is/are appended....

25. In view of the above said fact a person who wants to get a regular stage carriage permit on a route has to submit an application in prescribed form (SR-20 under the Motor Vehicles Rules, 1988) and fulfilling other conditions as

mentioned in Section 70(1) of the Act.

26. The applications so submitted is to be, thereafter dealt by the S.T.A./R.T.A. as per the provisions of Section 71 of the Act.

27. Thereafter, Section 72 provided the the Regional Transport Authority, if it is decided to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and may, subject to any rule that may be made under this Act, attach to the permit any one or more of the conditions, mentioned therein.

28. For the purpose of the controversy involved in the present case the conditions which are provided under Sub-section (iii) and (iv) of Section 72, which are material to resolving the controversy are as under:

(iii) the minimum and maximum number of daily trips to be provided in relation to any route or area generally or on specified days and occasions;

(iv) that copies of the time-table of the stage carriage approved by the Regional Transport Authority shall be exhibited on the vehicles and at specified stands and halts on the route or within the area;

29. Statutory powers to issue permits with certain conditions for stage carriages are not meant for the benefit and protection of the permit holders, but that they are meant for the benefit of the general public. The dominant purpose of the Act in enacting these provisions is the benefit of the public and not of the permit holders.

30. In view of the facts stated above and in view of consistent approach of the Court, it is an accepted Rule of interpretation, that a statute must be read as a whole and one provision of the Act should be construed with reference to the other provision in same Act so as to make a consistent enactment of the whole statute, once on the basis of the proposed time table, which is submitted by a person in order to get a permit on a prescribed form after completing the formalities as required u/s 70(1) of the Act and thereafter the permits is granted by the S.T.A./R.T.A. on the said application under the provision of Section 72 of the Act the time table becomes one of the mandatory condition of permit.

31. Once the permit has been granted by the S.T.A./R.T.A. as per the provisions of Section 72 of the Motor Vehicles Act with the condition then the Secretary of S.T.A./R.T.A. has to perform only a consequential and ministerial act to issue the same to the person in whose favour the same is granted.

32. Under the Motor Vehicles Act, 1939 the Section 48 provides the procedure for grant of regular stage carriage permit by S.T.A./R.T.A. and Sub-section (ii) and (iii) of Section 48 provides the following conditions:

(ii) the minimum and maximum number of daily [trips to be provided] in relation to any route or area generally or on specified days and occasions;

(iii) that copies of the time-table of the service or of particular stage carriages approved by the Regional Transport Authority shall be exhibited on the vehicles and at specified stands and halts on the route or within the area;

33. While interpreting the said section of the Motor Vehicles Act, 1939 the various High Courts in the following cases has held that time table is a condition of permit and must be prescribed by the S.T.A./R.T.A.

(a) H.C. Channiah Prop. H.P.C. Motor Service, petitioner v. Regional Transport Authority Chickmagalur and Anr. respondents reported in AIR 1963 Mys 253 (V 50 C 60)

(b) Kalusingh and Others Vs. Transport Appellate Tribunal and Others,

(c) Capital Bus Service Private Ltd. Vs. State Transport Authority, Delhi and Another,

(d) New Jabalpur Transport (Private) Ltd. Vs. State Transport Appellate Authority and Others,

34. As such the submissions made by the learned Counsel for the petitioner that time table is not a condition of permit is rejected having no force.

35. Once time table is one of the condition which is to be fixed by the S.T.A./R.T.A. while granting permit then by giving the permission to the existing operator to challenge the time table, which is granted to a new operator at the time of grant of permit is nothing but amounts to give them the right to challenge the grant of permit itself which is not permissible under the Act because the existing operator are excluded from the participation/raising any objection in the proceedings at the time of grant of the permit by S.T.A./R.T.A to new operator.

36. Existing operator can neither opposed the grant of permit on the ground that his rights under Article 14 & 19 of the Constitution of India will be affected, for this do not confer any right of monopoly on him, nor can he challenge the order of authorities granting permits on the ground that his income will be adversely affected by induction of more operators on his route.

37. As such the arguments raised by the learned Counsel for the petitioners that their objections may be considered by the opposite party No. 2 and they may be heard before issuing the permit to the new operators, which are granted to them by the S.T.A. vide order dated 20.5.2009 (Annexure 4 to the writ petition) on the ground that they have right to object the grant of time table as the same are in clash with their time table and they will be adversely affected due to the operations of the vehicles by the new operators route in question has got as no force and the same is rejected.

38. Further reliance placed by the petitioners in this regard on the case of Surendra Rao Vs. Regional Transport Authority, Gorakhpur Region, Gorakhpur and others, and Binu Chacho Vs. R.T.A., is misconceived and according to our opinion

the petitioners can not derive any benefit from the above said case laws because the existing operators has got no right to challenge the time table which is one of the condition of permit under the Act on the ground that they will be adversely affected by the operations of the vehicles of the new operators on the route in question on the basis of the time table on which the permit has been granted to them by S.T.A. vide order dated 20.5.2009.

39. However, we observed that after the permit has been issued to the new operator on the basis of the time table, which was initially proposed by them along with their application and subsequently on the basis of the same they started their operation on the route in question then in the event if the time table of the new operators overlaps with the time table of the existing operators and thus their operation adversely affect and financial loss is cost to them. In that circumstances, the existing operator will come within the ambit and scope of definition of "person aggrieved" and then in that circumstances they have right to challenge the grant of permit by way of revision u/s 90 of the Motor Vehicles Act before the State Transport Appellate Tribunal. The said finding is supported by the judgement of this Court given in the case of Surendra Rao Vs. Regional Trasport Authority, Gorakhpur Region, Gorakhpur and others,

40. The full Bench of Kerala High Court in the case of Binu Chacho Vs. R.T.A., held "that an existing operator will be a person aggrieved as far as settlement of timings is concerned. However, it may not be proper or expedient to restrict the scope of the words "person aggrieved" to settlement of timings only, though under the scheme of the Act, existing operators may have in the normal course, legal grievance against settlement of timings only. We, therefore, do not rule out any other grievance of a similar nature which would tilt the balance in favour of one operator and against another as a consequence of orders issued by R.T.A. or S.T.A. The applicant is required not only to establish that the order impugned suffers from illegality or impropriety of a substantial nature but also has to discharge the burden to satisfy the Tribunal that he has a legal grievance against that order, and therefore, is a person aggrieved. This exercise the STAT has to do by applying its mind to the facts and circumstances of each case and this implies that the Tribunal may not throw a revision petition overboard at the threshold."

41. As such the petitioners have no locus standi to file present writ petitions under Article 226 of the Constitution of India. Even otherwise having regard to the facts and circumstances of the case, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India.

42. In view of the above, the writ petitions are liable to be dismissed and the same are accordingly dismissed, however there is no order as to cost.