
(1958) 07 RAJ CK 0002
In the Rajasthan High Court
Case No : Writ Case No. 72 of 1958

Heeralal and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-07-1958

Acts Referred:

Motor Vehicles Act, 1939 — Section 48, 57, 57(5), 64

Citation : AIR 1959 Raj 41 : (1959) RLW 674

Hon'ble Judges : K.N. Wanchoo, C.J; I.N. Modi, J

Bench : Division Bench

Advocate : Magraj, for the Appellant; L.N. Chhagani, on behalf of State and Opposite Party Nos. 4 and 5 and Jaigopal, for Opposite Parties Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

I.N. Modi, J.—This is a writ application by Heeralal, Babula) and others under Articles 226 and 227 of the Constitution challenging the order of the appellate tribunal of the State Transport Authority dated 29-1-1958, by which the appeal of Babulal and others-against a resolution of the Regional Transport Authority Jodhpur dated the 27th and 28th May, 1957, was dismissed as incompetent.

2. The material facts are these. Petitioner No. 6 Babulal was a permit-holder for plying a stage carriage on the Sojat Road, Sojat City, Bilara route. There is also no dispute that petitioner No. 1 Heeralal obtained a transfer of the former's permit in March 1958. The other petitioners have also described themselves as bus operators on this route. It is, however, contended by the contesting respondents that these petitioners were not permit-holders at the relevant times and, therefore, have no "locus standi" to make the present application.

We consider it unnecessary to enter into any further detail as respects petitioners Nos. 2 to 5 in this connection because petitioner Babulal was certainly a permit-holder at all relevant times, that is, up to the stage the appeal was decided by

the appellate tribunal of the State Transport Authority, and Heeralal has since obtained a valid transfer of the permit from Babulal and is, therefore, *prima facie* authorised to file the present application in any case.

The opposite parties Nos. 4 and 5 are the permit-holders on the Ranawas, Sojat Road, Jetaran, Marwar Jn. route. On 18-4-1957, the last named persons applied to the Regional Transport Authority, Jodhpur, for variation of their route Marwar Junction. Jetaran so as to permit them to go from Devil to Bilara instead of from Devli to Jetaran. This variation involved an over-lapping of the route operated by Babulal for about ten miles from Atpara to Bilara.

The application in due course was published in the Rajasthan Gazette, and the Regional Transport Authority sanctioned the variation by resolution No. 42 dated 28-5-1957. The petitioner Babulal and some other persons consequently filed an appeal before the appellate tribunal of the State Transport Authority. They also applied for a stay order and obtained it. The contesting opposite parties applied to have the stay order vacated, but the stay order was confirmed.

The appeal came up for hearing before the appellate tribunal on 29-1-1958, and it was rejected on the ground that the appellants had failed to object before the Regional Transport Authority when the proposed diversion was published in the Rajasthan Gazette. It was further observed that the appellants had no right of appeal because u/s 64 of the Motor Vehicles Act (No. IV) of 1939 (hereinafter called the Act), it was pre-requisite that the appellants should have made an objection u/s 57 (5) of the Act.

Apparently the learned members of the appellate tribunal had Clause (f) of Section 64 of the Act in view when they said this, and on the view that the appeal was incompetent, the tribunal refused to go into the merits of the case and disposed of the appeal as incompetent. It is this order which is being challenged before us in this writ application.

3. The question for determination therefore is whether the order of the Regional Transport Authority varying the route in a case like the present was and is appealable to the appellate tribunal under any of the clauses of Section 64 of the Act. This point came up for consideration before a Full Bench of this Court in *Jairamdas Vs. Regional Transport and Others*, and it was held that a rival permit-holder had a right of appeal against an order varying the conditions of his permit (and the variation in the area of the permit was held to be one such condition) under Clause (b) of Section 64 of the Act, as such variation was likely to affect his interest and he would, therefore, be aggrieved by it.

It was indeed pointed out that ordinarily and in the vast majority of cases, it is only the permit-holder under Clause (b) who would be competent to file an appeal against an order varying the conditions of his permit. But where such variation was made and affected the position of a rival permit-holder in the same or neighbouring area, the applicability of Clause (b) could not be legitimately resisted.

It was also laid down that the exercise of this right by persons other than the permit-holder called for caution, and that the word "aggrieved" in Clause (b) must be given a positive and tangible meaning and that there could be no real aggrieve-ment where merely a member of the public was affected as much as any other member of that indeterminate body, and such a person could scarcely be held to be a person aggrieved within the meaning of this clause.

This case was of course decided on the law as it stood before the Motor Vehicles Amendment Act (No 100) of 1956 was brought into force though by the Amendment Act Sections 48 and 57 of the Act had already been amended when this case came on for decision before this Court. But, as stated in the judgment, the amended section could not be given a retrospective effect.

On the view taken in (S) AIR 1957 Raj 313 therefore, a case like the present would squarely fall within the walls of Clause (b) of Section 64, and the appeal of the petitioner Heeralal and his co-appellants could not be thrown out as incompetent. It is to be regretted that this decision was not brought to the notice of the learned members of the appellate tribunal though the decision reported as Kashi Ram v. Ram Saroop taking a contrary view on this very point was brought to the notice of the AIR 1953 Vin 41 Tribunal and was followed by it.

4. It was, however, contended for the opposite parties that the position of law is not the same after the Amendment Act of 1956 came into force, and that the present case was decided by the Regional Transport Authority after the coming into force of the Amendment Act. There can be no doubt, therefore, that the present case must primarily be governed by the provisions contained in the Act as amended. In other words, the question is whether the provisions of the Amendment Act have brought about a change in the position of law from that laid down in *Jairamdas Vs. Regional Transport and Others*, The relevant sections are Sections 48 and 57.

Our attention was principally invited to that portion of Section 57 as amended by which it has been laid down that an application to vary the conditions of a permit shall be treated as an application for the grant of a new permit. In other words, the effect is that such an application has to be published like an application for a new permit and objections must be invited. Sub-section (4) may also be noticed in this connection, which provides unless a representation or objection is made in writing before the date appointed under Sub-section (3) and unless a copy thereof is furnished by the objector to the application for the permit, no representation shall be considered by the Regional Transport Authority.

Our attention was also drawn to the amended Sub-section (2) of Section 48 which provides that every stage carriage permit shall be expressed to be valid only For a specified route or routes or for a specified area and then to Sub-section (3) which deals with the conditions to be attached to the permit to be granted by the Regional Transport Authority.

5. It was argued on the basis of the above provisions that a person who wants to

appeal against any variation affecting the area of his permit must have raised an objection to it before the Regional Transport Authority on its having published the application for variation under Sub-section (3) of Section 57, and if such a person does not raise any objection to such variation before the Regional Transport Authority under Sub-section (5) of the aforesaid section, there is an end of the matter, and he cannot be allowed to appeal under Sub-section (b) of Section 64.

We have carefully examined this contention and have arrived at the conclusion that it cannot be accepted. It is correct that where a person seeks to complain against a variation affecting his permit brought about on an application made by some other person, which has been published, and has not made any representation objecting to such variation within the time permitted by law, as laid down in Sub-section (5) read with Sub-section (3) of Section 57, he is debarred from making any representation before the Regional Transport Authority in that connection under Sub-section (4) of the same section.

But we are unable to hold on this account that his right to file an appeal before the appellate tribunal against such variation is also thereby taken away. What Sub-section (4) of Section 57 prohibits is the consideration by the Regional Transport Authority of a representation made to oppose an application filed under Sub-section (3) where such representation does not fulfil the conditions laid down therein, but we cannot read it so as to override the right of appeal where it arises on the plain language of Clause (b) of Section 64, or for that matter any other clause thereof.

A person such as a rival permit-holder who is adversely affected by the variation of a condition of his permit may well be aggrieved by such variation, and if he is so aggrieved, his case is bound to fall under Clause (b) of Section 64, provided the variation is as to the condition of the permit, among other matters mentioned in the clause with which we are not concerned in the present case.

The question, therefore, is whether it can be said that the variation in a case like the present where the area of the permit objected to is altered is a variation of one of its conditions. It was not argued before us that a variation of this kind is not a variation of one of the conditions of the permit but as such a contention might well be advanced in view of the altered arrangement adopted by the Legislature in enacting Section 48, we have ourselves considered that question. Any doubts that we might have had in this connection are however, resolved by the wording of Sub-section (8) of Section 57 itself. This reads as follows:

"An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of services above the specific maximum, or in the case of a contract carriage permit or a public carrier's permit; by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service so provided, without any increase in the number of vehicles."

This sub-section clearly contemplates that the conditions of a permit may be varied by the inclusion of a new route or routes or a new area. Having regard to this language it is impossible, in our opinion, to hold that a provision as to a specific route or area in the permit is not one of its conditions, because if it was not Sub-section (8) need not have referred to the inclusion of a new route or routes or a new area as something amounting to or falling within the scope of the variation of the conditions of the permit.

In this view of the matter, the inclusion of a new area in a permit cannot but be held to be a condition of the permit u/s 48 even as amended; and once that conclusion is reached, it seems to us clear that where a person is adversely affected by such variation and complains against it, it must be held that he satisfies Clause (b) of Section 64, and will have a right to appeal from such variation.

This result is not in any way affected by the inhibition contained in Sub-section (4) of Section 57, because at the worst such a person will be debarred from raising the matter before the Regional Transport Authority; but his right of appeal under Clause (b) of Section 64 could not be affected thereby. We need scarcely add in this connection that a right of appeal is a vested right, and we should be extremely loath to deprive a litigant of such a right where it arises on the plain language of the relevant provision of law.

It is no doubt true that where such a person has opposed the grant of a permit before the Regional Transport Authority, he will also have a right of appeal under Clause (f) of Section 64. But even where he has not so opposed the permit or the attachment of any condition thereto, he may still have a right of appeal, provided his case falls under Clause (b) of Section 64.

6. In this view of the matter, we are of opinion that in cases involving the variation of a permit such as by the inclusion of a new route or area, the correct position even under the Act as it stands after the amendments of 1956 is that a person adversely affected and aggrieved by such variation has a right of appeal under Clause (b) of Section 64 though for some reason or another for which he may or may not be blameworthy at all he has not been able to raise an objection before the Regional Transport Authority, and such a right will be available to him under Clause (b) of Section 64; and where he has raised the objection, he will have a right of appeal also under Clause (f) of the said section. We hold accordingly.

7. A few other subsidiary points were raised before us, and we now propose to dispose of them. The first point that was raised in this connection was that all the petitioners except Babulal have no right to come before us inasmuch as they do

not hold any permit from the Regional Transport Authority for this route, and even Babulal cannot do so having transferred his permit to Heeralal though with the permission of the Regional Transport Authority.

We have no doubt, however, that Heeralal cannot be deprived of his right to come before us in a proper case, being the assignee of Babulal's rights in accordance with law. Moreover, we cannot accept the argument of learned counsel for the opposite parties, which, if accepted, would mean that neither Heeralal nor Babulal would have the locus standi to apply to us, -- Heeralal because he was not a permit-holder at the time the appeal was decided by the appellate tribunal; and Babulal, because he had transferred his rights to Heeralal with the permission of the Regional Transport Authority and has no present interest in the matter.

Heeralal as the lawful assignee of Babulal's rights is within his rights to challenge the order of the appellate tribunal. That being so, we consider it unnecessary to go into the question as to whether the other petitioners have a right to come before us. Whether they are entitled to any relief or not, is a matter which we leave to the appellate tribunal to decide.

8. It was also urged that the present application by Heeralal was made with undue delay. It is sufficient in this connection to say that the order of the appellate tribunal was passed on 29-1-1958, and the present writ application before this Court was made on 17-4-1958, by Heeralal along with others, Heeralal having obtained a transfer of Babulal's permit on 19-3-1958.

In these circumstances, we are clearly of opinion that the application cannot be said to have been made with any undue delay,

8a. Having regard to the view of law, which we have felt persuaded to accept, for the reasons mentioned above, we are of opinion that the appeal before the appellate tribunal filed by Babulal and others was not incompetent and that it squarely falls within the four corners of Clause (b) of Section 64 of the Act as amended.

9. Consequently, we allow this application and quash the order of the appellate tribunal dated 29-1-1958 as illegal. We further direct that the said Tribunal shall now proceed to dispose of the appeal on the merits. The stay order passed by this Court in favour of the petitioners cannot be allowed to continue indefinitely or until the decision of the appeal on the merits and we leave the appellate tribunal free to pass suitable orders in this regard, such as it may deem fit, the present order to continue until such time as the tribunal passes its own considered order in this connection. Having regard to all the circumstances of the case, we would leave the parties to bear their own costs in this Court.