

(1988) 12 GAU CK 0012

In the Gauhati High Court

Case No : Civil Rule Nos. 240, 420 of 1979

Hojai Contract Carriage Syndicate

APPELLANT

Vs

Presiding Officer, State Transport Appellate Tribunal

RESPONDENT

Date of Decision : 09-12-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 43A, 43A, 50, 50, 57, 57

Citation : (1989) 2 GLJ 142 : (1989) 2 GLR 357

Hon'ble Judges : B.L.Hansaria, J and Y.Ibotombi Singh, J

Bench : Division Bench

Advocate : B.K.Goswami, D.Goswami, H.N.Sharma, B.P.Bora, P.K.Kalita,
Advocates appearing for Parties

Judgement

B. L. Hansaria, J.—These petitions which were filed about a decade ago have lost their utility so far as the grievances relating to grant of certain contract carriage permits to some individuals are concerned. As the permits were granted about 10 years ago, Shri Borah, learned counsel for the petitioners has fairly not prayed to set aside the permits granted to the concerned respondents, but has submitted that this Court may make some general observations regarding the procedure to be followed while granting contract carriage permits by the Regional Transport Authority (RTA). We have, therefore, heard the learned counsel of the parties on the questions relating to procedure mentioned by Shri Borah and we shall confine our judgment to the general procedure to be followed in future by the RTA in granting such permits.

2. On the facts of the two cases", the following points arise for our determination : (1) Whether it is necessary to fix a limit for granting contract carriage permits before applications for such permits are entertained. (2) Whether hearing of the persons who make representations, as visualised by section 50 of the Motor Vehicles Act, 1939, hereinafter the Act, is necessary before finalising the names of the persons to whom permits are to be given. (3) Whether to enable the persons/ authorities to make suitable representations, the

names of the persons who had applied for contract carriage permits must be published in advance. (4) Whether the State Government can issue instructions to the concerned authorities to grant permit to a named person.

3. So far as the first question is concerned, Shri Borah has urged that a reading of section 50 of the Act would show that before considering applications for contract carriage permits, the RTA shall have regard to the extent to which additional contract carriage permits may be necessary or desirable in the public interest. This shows that the need for additional contract carriage permits must be felt before the applications for permits are entertained. No doubt, under section 57 of the Act an application for contract carriage permits may be made at any time, but before the applications are entertained the RTA must have made up its mind that there is any need of additional contract carriage permits for which applications are made. In this connection, we have been referred by Shri Bbrah to recent notifications issued by the Secretary of the RTA, Nagaon (it may be stated that in the cases at hand we are concerned with the permits issued by the RTA, Nagaon) station about the number of contract Carriage permits (new)" for which applications would be made. Two such notifications bearing No. RTAN/6626/85 dated 2685 and RTAN. 2015 dated 26th May, 1986 were published in the Assam Gazette September 18, 1985 and June 18 1986, respectively Keeping in view the scheme of the Act, we are satisfied that before entertaining applications for contract carriage permits some decisions must have been taken by the concerned authority about the need felt for additional contract carriage permit.

3A. So far as the hearing of the persons making representation is concerned, reference may be made to section 57 (6) of the Act which has stated that when any representation has been made by the persons or authorities referred to in Section 50, the RTA may take any such steps as it considers proper for the hearing of the representation in the presence of any persons likely to be affected thereby/In this connection, our attention has also been invited by the learned counsel to Civil Rule No. 458/71 (Hojai Track Syndicate & ors. vs. Regional Transport Authority, disposed of on 31273) in which it was held by a Division Bench of this Court that hearing is required to be given to the persons who make representaions as visualised by section 50 of the Act.

4. In so far as the publication of the names of the persons who have applied for contract carriage permits to enable the persons or the authorities to make their representations against granting of permits to them is concerned, Shri Borah has referred us to a decision of this Court in *Jadav Chandra vs. State Transport Appellate Tribunal*, 1980 TAG 80, in which it was held that the purpose of section 50 of the Act cannot be fully achieved unless concerned persons or authorities know that a contract carriage permit is likely to be considered by the authority in the near future or is presently under consideration. It was therefore held that some sort of reasonable notice must be given before application for contract carriage permit is taken up for consideration by the RTA. It is needless to say

that the RTA must publish its intention of increasing the number of contract carriage permits through Gazette notification. In this context Shri Borah has drawn our attention to Notification No. RTAN/22552/79 dated 14th May, 1979 which was published in the Assam Gazette of 13th May, 1979 wherein the names of the persons who had applied for contract carriage permits was published in advance. We approve of this procedure inasmuch as this enables the parties to file effective representation against grant of contract carriage permits to the persons who have come forward,

5. The last point is relating to the Government's power in issuing direction to the concerned authority to grant permit to a named person. In this connection; we have been referred to section 43A of the Act as amended by the Motor Vehicles (Assam Amendment) Act, 1983 (Assam Act No. IV of 1984) which has inserted the aforesaid section in the Act. This section reads as below :

"43 A. Special power of the State Government to issue orders and give directions(1) The State Government may issue orders and directions of general character, not in consistent with the provisions of the Act, as it may consider necessary, in respect of any matter relating to Road Transport to the State Transport Authority, pr to a Regional Transport Authority or the Regional Transport Authorities and such transport authorities shall give effect to all such orders and directions.

(2) Without prejudice to the generality of subsection (1) above the State Government in particular may direct the State Transport Authority or any Regional Transport Authority to open new route or to extend any existing route or to permit, additional stage or contract carriages to be put or increase or reduce the number of such carriages on any specified route or area".

6. A similar section was inserted in the Act by State of Madras which had come up for consideration in B.Rajagopala vs. S.T.A. Tribunal, AIR 1964 SC 1753. A perusal of this judgment shows that the granting of permits was regarded as quasijudicial function. (See para 12) It was then observed in para 19 that in discharging a quasijudicial function, the Tribunal constituted under the Act must be left absolutely free to deal with the matters according to its best judgment. In Madhavamani Transport vs. Vasavi Transport, AIR 1977 SC 416, it was held in para 4 that an order for the grant of permit under the constraining influence of the Government order would be improper. If section 43A of the Act, as inserted by the aforesaid Assam Amendment, is read along with these two pronouncements of the Apex Court, we are left in no doubt that the directions and orders which can be given by the State Government must be of general character and these cannot relate to the grant of permit to a named person. We, therefore, hold that in exercise of power under section 43A of the Act, the State Government cannot give any direction to the concerned authority to grant permit to a named person.

7. This is all we have to say at this length of time while disposing of the aforesaid

applications before this Court. Let a copy of this judgment be sent to the Secretary to the Government of Assam, Transport Department, for circulation to all concerned.

Y.I.Singh, J.I agree.