
(1979) 07 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 881 of 1979

Inder Singh

APPELLANT

Vs

S.T.A.T. and Others

RESPONDENT

Date of Decision : 27-07-1979

Acts Referred:

Motor Vehicles Act, 1939 — Section 64A

Citation : AIR 1980 Raj 131 : (1979) RLW 414

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Advocate : R.R. Vyas, for the Appellant; J.G. Chhangani, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a writ petition by one Indersingh, who carries on a transport business in Rajasthan. He has challenged the order of the State Transport Appellate Tribunal (for short "S.T.A.T." hereafter), dated June 5, 1979, cancelling the temporary permit on Bhadra-Rejri route granted to him by Regional Transport Authority (which will hereinafter, for the sake of brevity, be referred to as "R.T.A."), Bikaner in pursuance of the resolution dated May 2, 1979,

2. In order to appreciate the contentions raised, I may briefly refer to the facts giving rise to this petition,

3. Bhadra-Siwani is an inter-Statel route 35 miles in length and out of which 28 miles is in the State of Rajasthan and 7 miles of this route fall in the State of Haryana. The State of Rajasthan as well as the State of Haryana entered into an agreement to open the route Bhadra-Siwani. This route has been mentioned at item No. 29 in the agreement (Ann, P-6). The State of Rajasthan was allotted the share of two buses and one return service. In accordance with the agreement, the route Bhadra-Siwani was opened via Uttardawas-Amarapura etc. and for a small portion between these places, which according to the petitioner, is unmotorable, diversion was permitted by the R.T.A., Bikaner via Dabrimore,

Patwa, Jogiwala Amarpura etc. as shown in the rough sketch map marked Ann. P-1. While permitting this diversion, the R.T.A., Bikaner allowed a shuttle service of 9 k. m. from Bhadra to Uttardawas. Subsequently, the R.T.A. opened a new route Bhadra-Rejri, which is on the Rajasthan border which completely overlaps the above route. The route Bhadra-Rejri, which is nearly 28 kilometers in length, was opened by the R.T.A., Bikaner on April 16, 1979. The petitioner submitted an application on April 26, 1979 for the grant of a temporary permit, and in pursuance of the resolution (Ann. P-3) of the R.T.A. dated May 2, 1979, the petitioner was granted one temporary permit on Bhadra-Rejri route.

4. Feeling aggrieved by the aforesaid resolution, Smt Darshan Devi (non-petitioner No. 3) preferred a revision before the S.T.A.T., Jaipur (non-petitioner No, 1). The S.T.A.T., by its order (Ann. P-5), dated June 5, 1979 accepted the revision petition and quashed the impugned resolution (Ann. P3) granting one temporary permit to the petitioner on Bhadra Rejri route. The petitioner has, therefore, filed this writ petition under Articles 226 and 227 of the Constitution of India praying that the order of the S.T.A.T. dated June 5, 1979, cancelling the temporary permit granted to the petitioner on Bhadra-Rejri route, may be quashed,

5. Caveat was entered into on behalf of non-petitioner No. 3 Smt, Darshan Devi. A reply to the writ petition was filed on her behalf on June 25, 1979 contesting the writ petition on various grounds.

6. I have heard both the learned counsel for the parties at considerable length.

7. Before I deal with the arguments raised. It will be useful here to refer to the following extracts from the impugned order (Ann, P-5):

"The learned counsel for the non-petitioner No. 2 has contended that the route of the petitioner is an inter-Statal route, which has been varied by the R.T.A., Bikaner alone and thus the varied route is contrary to the terms of the inter-Statal agreement, suggesting that the permit of the petitioner has become invalid. The proceedings before me have been instituted to challenge the permit granted to the non-petitioner No. 2 and the validity of the permit of the petitioner cannot be questioned in this proceeding so as to throw her out of Court,"

8. Learned counsel for the petitioner, at the very outset, contended that the S.T.A.T. had no jurisdiction to entertain and decide the revision filed by Smt, Darshan Devi (non-petitioner No. 3), for, she had no locus standi to challenge the grant of temporary permit to the petitioner as she herself is not holding a valid permit for Bhadra-Siwani route, which was opened by both the States (State of Rajasthan and State of Haryana). According to the learned counsel, the diversion granted by the R.T.A., Bikaner in non-petitioner No. 3's permit is without jurisdiction, being contrary to the terms and agreement entered into between the State of Rajasthan and the State of Haryana. Learned counsel went on to argue that as non-petitioner No. 3 has no legal and valid right on the route for which

the permit (Ann. 4} was granted, she cannot be said to be an aggrieved person within the meaning of Section 64 of the Motor Vehicles Act (No. IV of 1939) (hereinafter referred to as "the Act") and as such could not file revision under Section 64-A of the Act. In other words, the stand taken by the learned counsel for the petitioner is that non-petitioner No. 3 Smt. Darshan Devi had no valid permit over Bhadra-Siwani inter-State route and hence she had no right to file the revision before the S.T.A.T. On the basis of these premises, Mr. Vyas strongly pressed for my consideration that the impugned order, by which temporary permit granted to the petitioner was held invalid and was, therefore, quashed, should be set aside,

9. In these circumstances, the first question that arises for my consideration is whether non-petitioner No. 3 could file revision against the resolution (Ann. P-3) of the K.T.A. dated May 2, 1979 by which temporary permit was granted to the petitioner on Bhadra-Rejri route. In other words, whether she can be said to be an aggrieved person so as to be entitled to file revision u/s 64-A of the Act, Section 64-A of the Act lays down that S.T.A.T. may, either on its own motion or on an application made to it, call for record of any case in which an order has been made by a State Transport Authority or R.T.A., in which no appeal lies thereto and if it appears to it that the order made by the State Transport Authority or R.T.A. is improper or illegal, it may pass such order in relation to the case as it deems fit, and every such order shall be final. The contention of the learned counsel for the petitioner is that it is only the aggrieved person who can file the revision petition u/s 64-A of the Act. It is not in dispute that no appeal lay against the order of the resolution of the R.T.A. granting temporary permit to the petitioner. It is, therefore, submitted on the basis of the provisions of Section 64 relating to appeals, that only an aggrieved person can file revision. This contention is based on the ground that non-petitioner No. 3 is not holding a valid permit on Bhadra-Siwani route as it was opened by both the States (State of Rajasthan and State of Haryana), for, diversion permitted by the R.T.A. Bikaner in the permit of non-petitioner No. 3 is without jurisdiction being contrary to the terms of the agreement, entered into by the State of Rajasthan as well as State of Haryana. Reference in this connection was also made to S. 43 (1) (iv) read with Section 63 (3-A) (3-B) of the Act. It is, therefore, to be seen as to whether the invalidity of the permit, as urged by the petitioner, could operate as a bar for respondent No. 3 disentitling her to file revision u/s 64-A of the Act.

10. A Division Bench of this Court consisting of K. N. Wanchoo, C. J., and Sharma, J., as they then were, in *Hazarimal v. R.T.A.*, Jaipur ILR (1956) Raj 44, observed:

"But we have no doubt that where a transport authority grants a permit without following the procedure provided by Section 57, that permit will be valid unless set aside by a higher authority on appeal by someone entitled to appeal under Section 64. The reason for this is that the transport authority concerned has the power to grant a permit and if it has not followed the procedure which should be followed in granting the permit. That may give rise to a right of appeal

in persons interested, but will not make the permit void, though it may be liable to be set aside by the appellate authority. We, therefore, reject the submission on behalf of the Regional Transport Authority, Jaipur, that though they made the counter-signature it was void permit because they had not carried out the provisions of Section 57 of the Act." I may here refer to a decision of a Division Bench consisting of Ranawat and Dave, JJ., as they then were, in *Kotah Transport Ltd. Vs. Regional Transport Authority and Others*, of the report it was observed:

"It is also contended on behalf of some of the opposite parties that some of the routes for which temporary permits have been granted are not exactly the same routes which are covered by the permits of the petitioner and as such it is argued that the petitioner has no case for coming to the Court. It may be pointed out that the routes for which temporary permits have been issued by the Regional Transport Authority in these cases are the routes which are either covered by the permits of the petitioner or for some distance they coincide, with the routes of the petitioner's permits. The temporary permits, therefore, in the present case have a bearing on the permits of the petitioner and the petitioner is certainly interested in seeing that nobody is allowed to ply his stage carriages on the routes covered by his permits without a valid permit."

In *Abdul Gafoor and Others Vs. State of Rajasthan and Others*, it was held:

"By virtue of grant of permits to certain operators to ply their buses upon certain routes they acquire a kind of proprietary right in the transport business on the route or routes in question; and when their right is encroached upon because other operators are inducted on the route, it stands to reason that the persons affected must be given an opportunity of being heard in the matter. One has, therefore, to keep in mind these considerations in construing the provisions of Section 68-G (2) of the Act itself." (Underlining is mine).

11. From the aforesaid three decisions of this Court, it is abundantly clear that the person whose interest is affected can agitate the grant of a temporary permit in revision u/s 64-A of the Act provided the conditions laid down therein are satisfied. u/s 64-A the S.T.A.T. has been empowered to revise the order of State Transport Authority or R.T.A. suo motu or on an application made to it. The person whose interest is affected can, in my opinion, make an application for revision of an order of State Transport Authority or R.T.A. on the ground that it is improper or illegal. Non-petitioner No. 3 Smt. Darshan Devi was affected by the grant of temporary permit to the petitioner and, therefore, she could file revision u/s 64-A of the Act.

12. It was next submitted by the learned counsel for the petitioner that the S.T.A.T. has committed a serious illegality when it declined to decide the question of validity of the permit in the revision filed by non-petitioner No. 3 before it. According to the learned counsel the route of the non-petitioner is an inter-State route, which was varied by the R.T.A., Bikaner alone and, thus, the varied route is contrary to the terms of the inter-State agreement and so the permit of non-

petitioner No. 3 has become invalid. In the revision of non-petitioner No. 3 u/s 64-A of the Act, the question for determination was whether the permit granted to the petitioner was valid or not. In Smt. Shakuntala Devi Vs. Transport Appellate Tribunal, Jaipur and Others, , this Court has observed as under

"The grant of permit in such a case would no doubt be illegal as being against the provisions of the Motor Vehicles Act but it would not be null and void. The Regional Transport Authority has jurisdiction to grant a permit. It is expected that it will grant it in accordance with the provisions of the Motor Vehicles Act. But, if it grants it in defiance of the provisions of the Act, it acts with material irregularity in the exercise of its jurisdiction but not without jurisdiction. The permit so granted is not void but only voidable." Shakuntaladevi's case was distinguished in Ram Singh v. Regional Transport Authority, Jodhpur (Civil Writ petition No. 497 of 1970 decided on May 20, 1970) (Raj) and it was observed therein:

"However, where the Regional Transport Authority is found to have acted wholly without jurisdiction then I should think it is open to this court to entertain a writ petition against the Regional Transport Authority's order even if the petitioner has not approached the appellate authority provided under the Act."

In Sarajudeen v, S.T.A.T, (Civil Writ Petn. No. 2002 of 1976, decided on January 28, 1976) (Raj) a contention was raised that the permit which was granted without jurisdiction, was void and non est in law, and, therefore, it is not necessary to get it set aside. It may be pertinent to excerpt the relevant portion:

"It was, however, canvassed by Mr. R.R. Vyas before me that the order of the Regional Transport Authority being wholly without jurisdiction is void and non est in law and therefore such order should not be allowed to come in the way of the petitioner. The argument though apparently plausible, if scrutinised, has no real merit in it. It is one thing that the order may be void but it is another thing whether the S.T.A.T. or the Tribunal could ignore it without getting it declared void by a judicial pronouncement. The order may be void but it has to be declared void by a competent authority i.e., by a judicial Court, Until it is done neither the party nor the S.T.A.T. could ignore it. I, therefore, do not find force in this contention also."

The permit granted to non-petitioner No. 3 even if it be against the provisions of the Act, will hold good until it is set aside by a competent authority.

13. In the revision, against the grant of temporary permit to the petitioner, the question of validity of the permit granted to the non-petitioner No. 3 could not have been gone into.

14. Learned counsel for the non-petitioner No. 3 argued that the permit granted to non-petitioner No. 3 is valid as diversion was rightly permitted. It is not necessary to go into this question in this writ petition. Suffice it to say that the question of validity of the permit granted to non-petitioner No. 3 could not be

decided in the revision preferred by her against the resolution of the R.T.A. (Ann. P-3), by which a temporary permit was granted to the petitioner. There is neither any illegality nor any error apparent on the face of record, so far as the order (Ann. P-5) of the S.T.A.T. is concerned.

15. Learned counsel for the non-petitioner No. 3 contended that provisions of Article 226 of the Constitution should not be invoked in this case, for, there is no allegation of the substantial failure of justice. It may be stated that in para 17 of the writ petition, the petitioner has stated that the order of the S.T.A.T. has adversely affected the legal as well as proprietary rights of the petitioner. I have already held that the impugned order (Ann. P-5) of the S.T.A.T. does not suffer from any error apparent on the record and that there is no illegality in it. It is, therefore, not necessary for me to examine this argument.

16. No other point was argued by any of the counsel for the parties.

17. The result is that the writ petition fails and it is, accordingly, dismissed.