

(1974) 04 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 742 of 1972

Jadumani Pradhan

APPELLANT

Vs

Srinibash Sahu and Others

RESPONDENT

Date of Decision : 30-04-1974

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 47(3)

Citation : AIR 1974 Ori 202 : (1974) 40 CLT 1088

Hon'ble Judges : R.N. Misra, J; B.K. Ray, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; S.C. Parija and Standing Counsel (Transport), for the Respondent

Judgement

R.N. Misra. J.

1. This is an application for a writ of certiorari directed against the appellate order of the State Transport Appellate Tribunal (opposite party No. 2).
2. On the Sambalpur-Kuchinda road lying within the district of Sambal-pur under the jurisdiction of the Transport Authority (opposite party No. 3) a vacancy was caused on account of an old operator (Sri Purohit) ceasing to ply his vehicle. Steps were taken by the Transport Authority to fill up the vacancy and the petitioner was granted the permit.

The opposite party No. 1 who was a competing applicant appealed to the Appellate Authority (opposite party No. 2) against the rejection of his application. He mainly contended that the R. T. A. (opposite party No. 3) was bound to limit the number of stage carriages on the route before the permit could be granted. He also disputed the grounds provided by the Transport Authority for preferring the petitioner to him.

The Appellate Authority was of the view that determination by the R. T. A. u/s 47 (3) of the Motor Vehicles Act (Act IV of 1939) (hereafter referred to as the Act) of the limit was a condition precedent to grant of any permit and that having not

been done, the grant of permit was illegal. He concluded the decision on the point by saying :

"From the above discussion of law and admitted facts it is clear that the omission on the part of the R. T. A. in prescribing the limit of number of stage carriages resulted in a failure of justice to the prejudice of the appellant. The right to obtain a stage carriage permit is a right created by the M. V. Act which also prescribes the procedure regulating, the grant of such permits. The right must therefore be determined in accordance with the provisions contained in the Act and the Rules made under it. Since admittedly the M. V. Act it must be held that it had no jurisdiction to consider the applications and grant the impugned permit to respondent No. 2 (sic). It has to be therefore concluded that the impugned order granting the permit to respondent No. 2 was illegal and contrary to law....."

Next, coming to the question of preference, the Appellate Authority stated"--

"It has been contended by the learned counsel for respondent No. 2 that the appellant had no spare bus on which ground the permit was refused to him. In this connection the learned Counsel for the appellant has drawn my attention to AIR 1960 Mys 33, where it has been held that neither the Act nor the rules require that in order to be eligible to apply for a permit the applicant should possess a vehicle on the date of his application for a permit. This provides sufficient answer to the respondent's contention that the appellant had no spare bus. Further, roadworthiness is the criterion but not the latest model. In Malik Ram and Another Vs. Regional Transport Authority, Jaipur and Others, it has been pointed out that the R. T. A. shall have regard to the effect upon existing services of the applicants. Public interest must be the paramount consideration. One should not be carried away by the latest model of the vehicle. The long experience of the operator and his sector qualification and his acts of sincerity should be given due weight in considering the applications. It has been pointed out in AIR 1956 A P 217. that the reason in awarding a permit in favour of one operator that he is ,a resident of a place which is on the route is relevant.

Looking from any angle, the appellant has better sector qualifications than the respondent No. 2 and as such this point has to be decided in favour of the appellant and against the respondent."

It appears that the petitioner had been permitted to ply his vehicle during the pendency of the appeal and he had been depositing at the rate of Rs. 30/- per day with the Chairman of the Regional Transport Authority under orders of the Tribunal in order that the opposite party No. 1 in the event of his success in the appeal may be compensated. With a view to compensating the opposite party No. 1, the Tribunal directed :--

"It is, therefore, ordered that in the light of my above findings the appeal be allowed on contest and the impugned order be set aside with a direction to the Chairman, R. T. A., Sambalpur, to pay the amount to the appellant which was deposited by the respondent No. 2 at the rate of Rs. 30/- per day as per this

Tribunal"s order No. 6 dated 2-5-1972 in this appeal."

3. On the arguments advanced by the parties, three questions arise for consideration.

(1) Is the grant of permit to the petitioner vitiated on account of non-compliance with the requirements of Section 47 (3) of the Act ?

(2) Whether the Appellate Tribunal has gone wrong in determining the question of preference between the petitioner and opposite party No. 1?

(3) Is the direction for compensation appropriate in law ?

4. Section 47 (3) of the Act provides :--

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

The Supreme Court dealing with this provision in *Abdul Mateen v. Ram Kai-lash* AIR 1963 SC 64 stated :--

"It will be clear from this scheme of the Act that the main section for the grant of a stage carriage permit is Section 48 and in passing an order granting or refusing to grant a stage carriage permit, the Regional Transport Authority has to act subject to the provisions of Section 47. Section 57 is a procedural section and provides for the procedure in applying for and granting permits. The power of the Regional Transport Authority to grant stage carriage permits is to be found in Section 48 and that power is subject to the provisions of Section 47, Section 47 (I) lays down matters for which the Regional Transport Authority shall have regard when considering an application, for a stage carriage permit and Section 47 (3) gives power to the said authority having regard to the matters mentioned in Sub-section (1) to limit the number of stage carriages generally etc. It would be clear therefore that when the Regional Transport Authority proceeds in the manner provided in Section 57 to consider an application for a stage carriage permit and eventually decides either to grant it or not to grant it u/s 48 its order has to be subject to the provisions of Section 47, including Section 47 (3) by which the Regional Transport Authority is given the power to limit the number of stage carriages generally etc. Therefore, if the Regional Transport Authority has limited the number of stage carriages by exercising its power u/s 47 (3), the grant of permits by it u/s 48 has to be subject to the limit fixed u/s 47 (3). We cannot accept the contention on behalf of the appellant that when the Regional Transport Authority following the procedure provided in Section 57, comes to grant or refuse a permit it can ignore the limit fixed u/s 47 (3), because it is also the authority making the order u/s 48. Section 47 (3) is concerned with a general order limiting stage carriages generally etc., on a consideration of matters specified in Section 47 (1). That general order can be modified by the Regional Transport Authority, if it so decides, one way or the other. But the

modification of that order is not a matter for consideration when the Regional Transport Authority is dealing with the actual grant of permits u/s 48 read with Section 57, for at that stage what the Regional Transport Authority has to do is to choose between various applicants who may have made applications to it u/s 46 read with Section 57. That in our opinion is not the stage where the general order passed u/s 47 (3) can be re-considered, for the order u/s 48 is subject to the provisions of Section 47, which includes Section 47 (3) under which a general order limiting the number of stage carriages etc., may have been passed

The same view has also been taken in a later case of the Supreme Court: *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, . In view of such authority it can be taken as concluded that if a limit has been set u/s 47 (3) of the Act, at the time of considering applications u/s 48 read with Section 57 of the Act, it would not be open to the Transport Authority to grant permits in excess of the limit set u/s 47 (3) of the Act. The legislative intention is clear from the scheme that before the Transport Authority takes steps to fill up vacancies under the Act, there must be a known limit so that existing vacancies would be known and steps may be taken to fill up such vacancies.

5. The facts of the case, however, are somewhat peculiar. For quite a long time before 1972, one Sri Purohit was operating on the route and he voluntarily withdrew from it. The Regional Transport Authority was taking steps to fill up that vacancy and it was not taking steps for grant of a new permit. To the facts of such a case, Section 47 (3) of the Act has no application and the grant of a permit is not open to challenge on such ground. The appellate authority without appreciating the facts of the case was swayed away by placing reliance on the decisions cited before him. We, therefore, conclude that the view taken by the appellate authority is not sustainable in law in the facts of this case and the Regional Transport Authority committed no illegality or irregularity in taking steps to fill up the vacancy in the manner it has done. No exception can, therefore, be taken on that count to the grant.

Question No. 2.

Under the Act and the Rules made thereunder ownership or possession of a stage carriage is not a condition precedent to making an application for the grant of a permit. The applicant is entitled to say that if granted a permit, he would procure a vehicle to use under it. The Mysore High Court in the decision relied upon by the appellate authority has re-stated that position of law. The Regional Transport Authority in this case never stated that the opposite party No. 1 was not entitled to a permit because he did not possess a vehicle. In preferring one applicant to the other, the Transport Authority had stated--

"..... The application of Sri Srinibash Sahu (Opp. Party No. 1) is rejected on the ground that he has no spare bus ready with him and the existing bus is of 1963 model only. Hence Sri Jadumani Pradhan of Bargarh (petitioner) was

granted permit on this route considering his experience and also he has a bus ready of 1971 model and a spare bus of 1965 model.. .."

It is open to a Transport Authority in preferring one applicant to the other to take into consideration the fact that the applicant preferred has a ready vehicle of an acceptable model as also a spare vehicle to work as a stand-by. It cannot be forgotten that the paramount consideration under the Act is the convenience of the travelling public and the business of the operator is only the means.

The appellate authority seems to have made a statement of the law while dealing with this point and has nowhere indicated as to why he came to the conclusion that the opposite party No. 1 had better sector qualification than the petitioner. Mr. Parija for the opposite party No. 1 contended that the conclusion of the appellate authority was one of fact and was, therefore, not available to be assailed before us in a proceeding for certiorari. We agree that ordinarily findings of fact are not allowed to be assailed in a certiorari proceeding, but as we find the appellate authority drew a conclusion on the discussion of the law and without a comparative assessment of the individual merits of the two applicants. Such a conclusion is not a finding of fact and is in fact assailable on the ground that it has been reached without the necessary ground for the finding having been disclosed. We, therefore, conclude that here also the Tribunal went wrong in reversing the conclusion of the Transport Authority.

Question No. 3.

7. In view of our conclusions in the other two grounds, it is not necessary to deal with this question independently. As a consequence of our conclusions on the other grounds, the direction of the, appellate authority would automatically stand vacated. But we are surprised that the appellate authority who is an experienced Civil Judge was prepared to dispose of the question of compensation in such a rough and ready process.

8. On the analysis indicated above, the appellate order has to be quashed. We allow the application, quash the appellate order and direct that the grant order by the Transport Authority shall stand restored.

9. During hearing of the application, Mr. Parija had produced the certified copy of an application to the Transport Authority made by the petitioner wherein he had indicated his desire not to run on the route. Mr. Mohanty had been given opportunity to find out the latest position. Both he and the learned Standing Counsel for the Transport Authority have made a statement that once upon a time the petitioner had made such a request to the Transport Authority but thereafter he has evinced interest to be on the route and as a fact was on the route. On 3-10-1972, this Court had stayed the operation of the appellate order. Therefore, the petitioner has been plying on the route throughout except for a brief period when he was anxious to retire from the route. No costs.

B.K. Ray, J.

10. I agree.