

(1981) 06 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 226/81

Jaswant Singh, Sewaram and Pratap Singh	APPELLANT
Vs	
State Transport Appellate Tribunal and Others	RESPONDENT

Date of Decision : 29-06-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1981) WLN 217

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—Jaswant Singh, petitioner, a holder of a non temporary stage carriage permit on Churu to Dhirasar route, has filed this writ petition with the following prayer:

that the writ petition may kindly be accepted and a writ, in the nature of certiorari or other writ, order or direction which may be deemed just and expedient in the circumstances of the case be kindly issued and set aside the aforesaid order of the State Transport Appellate Tribunal, Jaipur dated 8-1-1981 and the impugned resolution of the Regional Transport Authority, Bikaner dated 6-11-1979 be kindly ordered to be restored. Any other relief which may be deemed just and expedient in the circumstances of the case be kindly granted. Cost of this writ petition may kindly be ordered to be awarded to the petitioner.

2. Petitioners' permit was valid upto 31st December, 1979. The petitioner submitted a renewal application for the said permit before 120 days of the expiry date, as required by Section 58(2) of the Motor Vehicles Act, 1939, (hereinafter as "that Act"). This application was published on July 5, 1979 in the Rajasthan Gazette for inviting objections which were to be submitted within 30 days. In the Rajasthan Gazette, dated the 27th September, 1979, it was notified that the said renewal application published on July 5, 1979 along with objections can be

considered by the Regional Transport Authority in its meeting, dated the 6th December, 1979 and it was considered on 6th December, 1979. The objector-non-petitioner No. 3 was absent. The Regional Transport Authority resolved to renew the permit in favour of the petitioner and rejected the objection vide Annexure 3. The non-petitioner No. 3 filed revision application before the State Transport Appellate Tribunal, Rajasthan, Jaipur, (hereinafter "the Tribunal"). The Tribunal accepted the revision petition and remanded the case to the Regional Transport Authority for hearing the renewal application and the objections and then deciding it afresh.

3. Mr. B.L. Maheshwari, the learned Counsel for the petitioner, while challenging the above desition of the tribunal submitted that since an appeal could have been filed u/s 64 of the Act, the revision petition should not have been entertained u/s 64 A of the Act. It was also argued that the non-petitioner No. 3 was not a person aggrieved. Shri Maheshwari pointed out that the non-appearance of the objector was voluntary and therefore, no grievance can be made later on in revision. It was also argued that the permit in favour of the non-petitioner No. 3 was on a preemptory condition and since it was not complied with, he had no right to file objection or revision petition.

4. Shri Maheshwari invited my attention to the judgment of the Supreme Court in D. Nataraja Mudaliar Vs. The State Transport Authority, Madras, wherein their Lordships of the Supreme Court observed that "a permit holder has an ordinary right of renewal unless it is shown that outweighing result. Permits are not bounty but right, restricted reasonably by the Motors Vehicles Act.". In any case, the Tribunal could have itself considered the objection instead of remanding the case, argued Mr. Maheshwari. It was then argued that the Tribunal, itself, held that the member of the Regional Transport Authority could decide, in what manner objections are to be dealt with, namely, to decide alongwith renewal application or separately. Mr. Maheshwari also pointed out that the objection, if any, is covered by Section 60(1)(c) of the Act for which it is discretionary for the Regional Transport Authority to make inquiry and decide after providing opportunity to the permit holder.

5. The above submissions of Shri Maheshwari were vehemently opposed by Shri R.R. Vyas, the learned Counsel for the answering respondent No. 3. Mr. Vyas has invited my attention to the following relevant portion of the order of the Tribunal:

Coming back to the merits of the case, I am of the opinion that the RTA has acted in an improper manner by ignoring the petitioner's objection altogether. It may be mentioned here that the complaints in this respect were made earlier also, but no action whatsoever was taken to inquire into the correctness of it. The matter certainly deserves to be looked into by the member RTA. It is for the Member RTA to decide in what manner, the objections are to be dealt with, namely, to decide alongwith the renewal application or separately but a decision should be given on it.

6. Mr. Vyas raised a number of preliminary objection also. According to him, copy of the permit (Annexure P1 at p. 17), would show that the permit holder is M/s Jaswant Singh Seva Ram Mistry and Pratap Singh, but the cause title of the writ petition is as under:

M/s Jaswant Singh Sewa Ram and Pratap Singh Prop. Pratap Singh S/o Shri Berisal Singh R/o Santu Teh. Taranagar Distt. Churu.

7. Yet another objection raised by Mr. Vyas is that permit (Annexure P. 1) as well as vehicle covered by this permit, had been sold to Shri Barkat s/o Shri Bholu Khan of Churu and since more then 17 years it is he who is owning this permit and vehicle. Annexure Rule 1 & Rule 2 were relied upon by Mr. Vyas to substantiate these allegations. Annexure Rule 1 is an affidavit of Shri Barkat filed before the Distrist Transport Officer concerned and Annexure Rule 2 is the application of Shri Barkat dated 16th December, 1976 which proved the above objection. Even in this writ petition, an affidavit has been filed by Shri Barkat.

8. Mr. Vyas supported the judgment of the Tribunal on merits and pointed out that u/s 47(1) of the Act it is mandatory while deciding the application to take into consideration any representations made by persons already providing passenger transport facility by any means along or near the proposed route or area. My attention was also drawn to Section 57(3) of the Act which reads as under:

57. Procedure in applying for and granting permits-

(1) x x(2) x x x (3) On receipt of an application for a stage carriage permit or a public carrier"s permit, the Regional Transport Authority shall make the application available for inspection at the office of the authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representation in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered:

Provided that, if the grant of any permit in accordance with the application or with modifications would have the effect of increasing the number of vehicles operating in the region, or in any area or on any route within the region, under the class of permits to which the application relates, beyond the limit fixed in that behalf under Sub-section (3) of Section 47 or Sub-section (2) of Section 55, as the case may be, the Regional Transport Authority may summarily refuse the application without following the procedure laid down in this Sub-section.

9. To fortify his argument, Mr. Vyas relied upon the decision of the Supreme Court in The Maharashtra State Road Transport Corporation Vs. Babu Goverdhan Regular Motor Service and Others, wherein their Lord ships of the Supreme Court held that the applications moved u/s 46 of the Act cannot be dismissed in default. Relying upon Section 47(1), Section 57(3) of the Act and the above

dictum of law laid down by their Lordships of the Supreme Court, Mr. Vyas by analogy argued that the Tribunal was correct in holding that the Regional Transport Authority could not have rejected the objections on account of absence of party only and the objections should have been considered on merits irrespective of the presence or absence of the objector. Mr. Vyas also contested the submission of Mr. Maheshwari that the revision petition cannot be entertained and pointed out that this Court in *Balkishan Vs. State Transport Appellate Tribunal, Rajasthan, Jaipur and Others*, has observed as under:

If it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or the Regional Transport Authority is improper or illegal the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final.

10. I have given very careful consideration to the rival contentions of the learned Counsel for the parties, and the judgment of the Regional Transport Authority and the Tribunal. Before the Regional Transport Authority, the objection of the non-petitioner Sanwarmal Was that the permit of the petitioner had been sold to one Barkat without the approval of the proper authority about which earlier also, complaints were made. One Nasir Khan made complaint in the year 1967 but no inquiry was made. An affidavit of Shri Barkat and reply to a notice u/s 68 signed by Shri Barkat were produced before the Tribunal to show that it is he who is real owner of the permit and not the petitioner. This objection has been also taken here as preliminary objection of the maintainability of the writ petition. However, since it is the very objection for determination on which the case has been remanded to the Regional Transport Authority, I would not like to decide the preliminary objections on merits, because that would cover the same ground and when a case has been remanded to the proper authority i.e. the Regional Transport Authority, this Court under Article 226 of the Constitution should not embark upon an inquiry whether the vehicle and the permit have been sold to Shri Barkat, with a view to dismiss the writ petition on the basis of the preliminary objection.

11. However, I do feel that when the Tribunal has taken note of the serious objection which was also before the Regional Transport Authority, and remanded the case, no interference can be made against an order of the remand, by this Court. After all, the objection in writing was before the Regional Transport Authority and as is clear from the record it was not the first time, when it was asserted that the real owner of the vehicle and the permit is Shri Barkat. Whether it is a co-incident or an evidence proving truth in the objection, facts remain that even before this Court, the writ petition has been filed in the name of M/s Jaswant Singh Sewa Ram Prop. Pratap Singh, but none of them has come to file an affidavit in support of the writ petition. It is the same Barkat, against whom the allegation is that he is holding the permit without approval of the Regional Transport Authority, who has filed the affidavit before this Court also.

12. The documents taken note of by the Tribunal namely, affidavit of Barkat and

a reply to notice u/s 68 of the Act signed by Barkat also support the genuineness of the objection though it would be for the Regional Transport Authority to decide whether finally it can be accepted or not. In para 21(a) of the reply, the non-petitioner No. 3 has extracted some portion of the application of Shri Barkat. In this application he has mentioned Bus No. RJI 272, permit on Churu Dhirasar route had been renewed on 12th October, 1976 in the meeting of the Regional Transport Authority; that he wants to file documents for renewal but his assessment of bus R.P.G.T. is yet to be done and therefore, he should be allowed time for extension of time upto 31st December, 1976. In the affidavits (Annexure Rule 1 & Rule 2) filed in the office of the District Transport Officer Churu, Shri Barkat mentioned on them that he is the owner of the bus RJI 272, although in the permit name of Pratap Singh has been mentioned. Non-Petitioner No. 3 has then given description of the bus and the trip performed. Again in his application, dated the 12th October, 1976, he has mentioned that since he has to obtain permit of RJI 272, he may be given clearance certificate for the R.P.G.T. It would thus be seen that all documents produced by the non-petitioner go to show that the objection which was raised before the Regional Transport Authority and which was reiterated again in appeal before the Tribunal and in this Court also, is an objection of bonafide and substantial character. That being so, the tribunal was within its jurisdiction to have directed the Regional Transport Authority to consider this objection on merits and decide it before granting renewal. How can it be said that in doing so, the Tribunal has committed any error of jurisdiction or error apparent on the face of the record.

13. In *Satyanarain v. S.T.A.T. and Ors.* 1980 WLN 571 I have held as under;

Undoubtedly, the Appellate Authority had jurisdiction and this Court can interfere only if it finds that either it has acted in excess of jurisdiction or in absence of jurisdiction or there is any error apparent on the face of the record. Even if two views are possible to be taken, this Court would not interfere under Article 226 of the Constitution, simply because the other view which should have been taken would have been better or more proper, that would be reducing the jurisdiction of this Court by converting it into an appellate forum which the legislature never intended.

14. In view of the above finding, the jurisdiction of the Tribunal is wide and co-extensive with that of the Regional Transport Authority, the Tribunal is competent to entertain suo moto revision in a proper case.

15. It is not necessary for me to decide whether the Regional Transport Authority was competent to ignore the objection in the absence of a party because I am of the opinion that even on that assumption, the competence of the Tribunal to direct the consideration of an important objection already on the record by remanding, cannot be a question.

16. Irrespective of the controversy, about the effect of the nonappearance, I have got no hesitation in saying that the order of the remand for considering

such an important objection is justified both on facts and in law.

17. u/s 47(1) of the Act, it is obligatory to consider any representation made by persons already providing passengers transport facilities, at the time of deciding application according to Mr. Vyas, the word, "representation", has been used which means and includes objections, but this interpretation is wrong as per submission of Mr. Maheshwari.

18. In *M.S.R.T.C. v. Babu Goverdhan* (supra) their lordships of the Supreme Court held that the application moved u/s 46 of the Act cannot be dismissed in default. In view of the above discussion, I am not inclined to decide whether the dismissal of an objection in default is illegal. All that I can say, is that the Regional Transport Authority was, in the facts and circumstances of the case, required to consider the objections, in view of the previous history of the objection and strong prima facie case, as discussed above. More so, the Tribunal was fully justified in remanding the case for decision of such an objection by the Regional Transport Authority.

19. There is yet another aspect of the case on account of which the writ petition deserves to be dismissed. In the facts and circumstances as discussed above, the order of remand is more or less of innocuous character. No prejudice has been caused and no failure of justice has been occasioned because all that is required is that the objection should be considered and decided and the question of renewal may be decided. As per the observations made above in *Satya Narain's* case (supra) this view of the Tribunal can neither be termed as illegal nor the order can be termed being without jurisdiction, non the tribunal's order can be treated as suffering from infirmity or the error apparent on the face of the record. In view of this, even if two views are possible to be taken by the Tribunal, as per the dictum of law laid down in *Satya Narain's* case (supra), this Court would not justify in interfering writ jurisdiction.

20. All said and done, the controversy about the permit and bus being plied "Benami" by Shri Barkat in the name of the petitioner without an approval of the Regional Transport Authority is an old one and it is in the interest of all concerned that it must be decided one way or the other. I am, therefore, inclined to hold that substantial justice has been done by the order of remand, which calls for no interference now.

21. I am not impressed by the objection of Mr. Maheshwari that revision petition could not be entertained in this case by the Tribunal nor I am inclined to accept the objection of Mr. Maheshwari that such an objection as raised before the Regional Transport Authority about the permit having not been transferred to Barkat, can be entertained u/s 60 of the Act, and therefore, it should not be entertained as an objection to the renewal of permit. In my view, at the time of the grant of permit or renewal of permit, all objections which go to show that the prayer for permit or its renewal deserve to be rejected on account of the permit & bus having been sold or having been transferred to others or the default of the

bus operator in plying the bus or the lack of genuineness of the prayer can, always be entertained and decided. Even if, the scope of inquiry u/s 60 of the Act, may overlap, yet an objector cannot be pushed away or thrown out to take resort to Section 60 only and thereby get his objection rejected, so far as the renewal is concerned, without consideration on merits. Such a procedure is not warranted by law.

22. The net result of the above discussion is that this writ petition has got no force and deserves to be dismissed and it is hereby dismissed with out any order as to costs.