
(1971) 04 AHC CK 0017
In the Allahabad High Court
Case No : Special Appeal No. 155 of 1970

Jeewan Nath Wahal

APPELLANT

Vs

State Transport Authority, U.P., Lucknow and Others

RESPONDENT

Date of Decision : 28-04-1971

Acts Referred:

Motor Vehicles Act, 1939 — Section 47(3), 57

Citation : AIR 1971 All 553

Hon'ble Judges : K.C. Puri, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : A.J. Fanthome, for the Appellant; R.N. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—This special appeal is directed against the judgment of our brother Trivedi dated 4-11-1970 by which he dismissed writ petition No. 1037 of 1970 filed by the appellant Jeewan Nath Wahal.

2. On 20-2-1964 the appellant made an application to the Regional Transport Authority, Meerut Region, respondent No. 1, (hereinafter referred to as R. T. A.), for the grant of a regular stage carriage permit on Meerut-Dankaur route was not an existing one and the applications contained the prayer that it may be opened. The R. T. A. published the applications. Later on it refused to open the route and for that reason rejected the applications. The petitioner filed an appeal u/s 64 (a) of the Motor Vehicles Act (hereinafter referred to as the Act) before the State Transport (Appellate) Tribunal, U. P. Lucknow, (hereinafter referred to as the Tribunal). That appeal was allowed and a permit was granted to the petitioner. The respondents Nos. 3 and 4 filed a writ petition at Allahabad which was dismissed by a learned Single Judge. The special appeal filed by them before the Appellate Bench, however, succeeded on the ground that the matter relating to the opening of a route was not the subject matter of the jurisdiction of the Tribunal. The petitioner then made an application under Article 136 of the Constitution of India to the Supreme Court but without success.

3. Thereafter he filed a revision application before the State Transport Authority (hereinafter referred to as the Authority). In the meantime the R. T. A. opened the route and invited applications and fixed the strength at four. The Authority dismissed the revision application on the ground that the route having been opened and fresh applications having been invited, public interest would be served better by the course adopted by the R. T. A. rather than the suggestion made by the petitioner that he should be granted a permit straightway by the Authority. Against that order of title Authority the writ petition giving rise to this special appeal has been filed in this Court.

4. The main question that was canvassed before the learned Single Judge was whether the revising Authority had jurisdiction to grant the permit straightway, once the applications had already been published or that fresh applications had to be invited and permits granted only after considering the respective merits of the fresh application. The learned Single Judge was of the opinion that there is a watertight compartment between the revisional and the appellate Jurisdiction in the scheme of the Act and that the grant of permits is the exclusive jurisdiction of the Tribunal. The learned Single Judge laid emphasis on the fact that Section 64-A of the Act, which provides for revisions, imposes a restriction that only in cases in which no appeal lay a revision would be entertainable and held that inasmuch as u/s 64 the Appellate Authority can grant a permit, by implication it may be held that the revising authority had no such jurisdiction. The same question has been canvassed before us. No other point has been raised. It came on the Statute Book by means of an amendment made in 1956.

5. The provision reads:

"The State Transport Authority may, either on its own motion or on an application made to it, call for the record of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit."

It may be noticed that this provision is much more widely worded than Section 115 of the Civil Procedure Code. The jurisdiction of the revising Authority extends even to correcting orders on the ground of propriety or illegality and is not confined to the examination of question of jurisdiction or material irregularity in the exercise thereof. The power of the revising Authority are worded in the terms of the widest amplitude. It can pass any order that it deems fit to pass in the circumstances of the case. The question, however, is as to what extent the words "in which no appeal lies" govern the exercise of jurisdiction by the revising Authority in cases which admittedly are revisable. In the instant case there can be no manner of doubt that the revising Authority was rightly seized of the matter because the revision application was filed against an order refusing to create a new route which is not appealable. What we have to consider however, is whether once a revision application has been entertained, it is open to the

revising Authority to pass any order including that of the grant of a permit or all that it can do is to create a new route and remand the case back to the R. T. A. for inviting applications and granting permits. Section 57 is a self-contained provision dealing with the procedure relating to applications for granting permits. Sub-sections (1), (2) and (3) of that provision are important and for that reason are reproduced below:

"57. (1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such application, on such dates.

(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 representations 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."

Sub-section (3) of this section requires that on receipt of the applications publication must follow. It is contended by Mr. A. J. Fanthome that once an application is made it has to be published. He lays emphasis on the words "shall make the application available and shall publish the application or the substance thereof occurring in Section 57 (3) of the Act. The submission is that the language in which this Sub-section is couched clearly shows that it was the intention of the legislature that the stage for publication of the application shall be immediately after the receipt of the applications and that the matter need not be deferred until it comes up for consideration for grant of permit u/s 48 of the Act. It is contended that as its marginal note shows section 47 of the Act deals with the "procedure of Regional Transport Authority in considering application for stage carriage permit." Mr. A. J. Fanthome contends that the application is not received under the provisions of Section 47 but under those of Section 57 of the Act and that inasmuch as Section 57 requires that no sooner the application is received it shall be published, the stage for considering the application can only

be after publication.

6. Sub-section (3) of Section 47 reads:

"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 area or on any specified route within the region."

The submission of the learned counsel is that this provision only gives the power to the Regional Transport Authority to limit the strength on a route and that it is not obligatory on it to fix the strength on every route. Reliance is placed upon the proviso to Section 57 and it is contended that it clearly provides if the grant of an application results in the increase of the strength fixed u/s 47 (3) it shall be dismissed. Learned counsel's argument is that two conclusions follow from this provision; one that fixation of limit u/s 47 (3) is not imperative; and two that application has to be considered and dismissed if grant of a permit would entail increase in the strength fixed. Learned counsel submits that all this would show that it is not necessary that the consideration of the application should await fixation of strength on the route u/s 47 of the Act. In our opinion, however, the question is no longer *res Integra* and is fully covered by the decision of the Supreme Court in *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, , where the learned Judges of the Supreme Court observed as follows :--

"Sub-section (3) of Section 47 of the Act if read by itself does not throw any light on the controversy before us but if Sections 47 and 57 of the Act are read together it appears to us to be clear that the view taken by the Appellate tribunal and the High Court is the correct view. If contrary view is taken it will throw open the door for manipulations and nepotism. There may be possibility of the personality of the applicant influencing the decision of the R. T. A. on the question of need for a stage carriage permit in the route and thereby public interest which should be the main consideration while taking a decision u/s 47 (3) may suffer. If we accept the view taken by the R. T. A. as correct, an operator who happens to apply for the route first will be in a commanding position. The R. T. A. will have no opportunity to choose between competing operators and hence public interest might suffer."

Their Lordships quoted the observations made in *Jaya Ram Motor Service v. S. Rajarathinam* in Civil Appeal No. 95 of 1965 (SC), which are to the following effect:

"The scheme of Section 47 is that when a person makes an application under Sections 45 and 46 the Authority first considers it u/s 47 (1) in the light of the matters set out therein and also the representations if any, made by the persons mentioned therein. The Authority then fixes u/s 47 (2) having regard to the matters mentioned in Section 47 (1), the number of stage carriages for which permits may be granted in the region or on any specified route within such

region. Having fixed the limit the Authority publishes u/s 57 (3), the application with a notice of the date before which representations in connection therewith may be submitted and the date on which such application and representations would be considered. The proviso to Section 57 (3) lays down that if the grant of a permit has tile effect of increasing the number of vehicles operating in that region or in any specified area thereof or on the route within such region beyond the limit fixed u/s 47 (3), the Authority may dismiss the application summarily."

In view of this decision of the Supreme Court it must be held that the publication of the application u/s 57 must follow the fixation of the number of the permits under Sub-section (3) of Section 47 of the Act. Mr. A. J. Fanthome"s contention, however, is that even though that may be so, in the instant case inasmuch as the applications have already been published the purpose of the Act has been achieved and it is no longer necessary to have another publication of applications. He also contends that inasmuch as the applications had already been published by the R. T. A., the petitioner and those who made applications have a vested right that the permit should be granted only to four of them and other competitors should be kept out. It is not necessary to record any finding on this argument because in the instant case the position is that the route was created long after the petitioner made his application. The revising Authority had a discretion in the matter. Its view that the public interest would be better served by asking the R. T. A., to invite fresh applications and to consider the same after they have been duly published cannot be said to be illegal. No error has been committed by the revising Authority requiring correction by this Court by the issue of a Writ of Certiorari.

7. In our opinion, therefore, this appeal is without merits. It is accordingly dismissed.