

(1975) 04 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 427 of 1975

Kandhari Babu

APPELLANT

Vs

State Transport Appellate Tribunal, Rajasthan, Jaipur and
Others

RESPONDENT

Date of Decision : 03-04-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 47

Citation : AIR 1975 Raj 203 : (1975) RLW 176 : (1975) WLN 305

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

Bench : Single Bench

Advocate : Raj Narayan Munshi, for the Appellant; Ram Raj Vyas, for the Respondent

Judgement

C.M. Lodha, J.—The dispute in this case is between two rival claimants for grant of permit to ply stage carriage on Chittorgarh-Banswara route via Shambhupura, Nimbahera, Chhotisadri, Dhamotra, Pratapgarh, People-rwoot, Khamera and Ghatol. This route was surveyed on the application of the petitioner Kandhari Babu. Originally scope of three Buses with one return service was fixed and the petitioner was granted a temporary permit to ply on this route. Later on, the Regional Transport Authority, Udaipur, revised the scope and fixed it as five Buses with two return services by its Resolution dated 18 April, 1973. By a Notification dated 10 May, 1973 published in Rajasthan Rajpatra dated 14 June, 1973, the Regional Transport Authority, Udaipur invited applications for grant of non-temporary stage carriage permits on this route and the petitioner submitted his application on 4 July, 1973. The non-petitioner No. 3 Rooplal, who is the contesting non-petitioner in the present writ petition, also applied for one permit on this route. In all, there were 29 applicants including the petitioner and the non-petitioner No. 3, Rooplal (who, for the sake of brevity, will, hereinafter, be referred to as "the non-petitioner"). The applications were considered by the Regional Transport Authority, Udaipur on 6, 7 and 8 February, 1973 and by its

Resolution No. 43 (Ex. 8 at page 59 of the Paper Book), the Regional Transport Authority granted five permits -- one each, to Nathuram, Gopikishan, Fakirchand, Jamnalal and the petitioner respectively.

2. Aggrieved by the aforesaid Resolution of the Regional Transport Authority, Udaipur, the non-petitioner filed appeal before the State Transport Appellate Tribunal, Rajasthan, Jaipur (to be referred to hereinafter as S. T. A. T.) impleading all the five persons to whom permits had been granted by the Regional Transport Authority as respondents. The S. T. A. T., by its order dated 5 February, 1975 (marked Exhibit 9) allowed the non-petitioner's appeal and while setting aside the permit granted to the petitioner, allowed one permit to the non-petitioner. The present writ petition has been directed against the aforesaid order of the S. T. A. T. marked Exhibit 9.

3. Learned counsel for the petitioner has urged that the S. T. A. T. has made wrongful presumptions and its findings against the petitioner are based on no evidence. It has been pressed upon me that the impugned order is arbitrary and capricious and has been passed in disregard of the well established principles in the matter of such grant and is, therefore, liable to be quashed by a writ of certiorari. On the other hand the writ petition has been strongly opposed by Mr. Ram Raj Vyas on behalf of the non-petitioner. It has been argued, in the first instance, that the S. T. A. T. had jurisdiction to grant permit to one party in preference to another, and the discretion exercised by the S. T. A. T. should not be interfered with by this Court in exercise of its extraordinary jurisdiction.

4. The law as to the powers of this Court in exercise of its writ jurisdiction in such matters is so well established that it hardly needs any citation or detailed discussion. Mere wrong exercise of discretion does not furnish a sufficient ground for exercise of writ jurisdiction by this Court. But if the Tribunal has based its findings on no evidence and its inferences are based on wrongful presumptions or unwarranted assumptions or there are errors apparent on the face of the record or if the Tribunal has recorded its findings in disregard of the mandatory provisions of law or in violation of the principles of natural justice, it cannot be denied, that this Court has jurisdiction to correct such palpable errors.

5. Now, the principles governing grant of permits for plying stage carriages also seem to be well established. In *Ajantha Transports (P) Ltd., Coimbatore Vs. T.V.K. Transports, Pulampatti, Coimbatore District*, their Lordships were pleased to observe that "an exercise of the permit issuing power, u/s 47 of the Act (Motor Vehicles Act No. 4 of 1939) must rest on facts and circumstances relevant for decision on the question of public interest, which has to be always placed in the forefront in considering applications for grant of permits." It was held that considerations of matters which are not relevant to or are foreign to the scope of powers conferred by Section 47 will vitiate the grant of a permit u/s 47. In the words of their Lordships "it appears that Section 47 (1) (a) gives the dominant purpose and Section 47 (1) (b) to (f) are only its sub-categories or illustrations." Thus, the exercise of power to grant permit is to be judged on the touchstone of

the interest of the public generally.

6. In view of the aforesaid recent pronouncement of their Lordships of the Supreme Court on the point in issue, I do not think it necessary to refer to earlier case law either of the Supreme Court or of the High Courts and would content myself by stating that in such matters what the Court has to look into is to find out whether the Tribunal has taken into consideration at the time of grant of permits all the relevant factors which would serve best the interests of the public generally.

7. I propose to examine the merits of the impugned order by the S. T. A. T. from this standpoint. While dealing with the non-petitioner's claim for grant of permit, the S. T. A. T. has said that "he is a resident of Chittorgarh and holds driving licence since 1961 and holds no stage carriage permit" and consequently, according to the Tribunal, there appears no reason why a permit should not be granted to him. Coming to the petitioner's case, the Tribunal has said that "the permit granted to Shri Kandhari Babu deserves to be quashed because he had already a number of permits and admittedly he has sold them, which shows that either he could not manage the permits properly or he sold them for profit." The Tribunal therefore, came to the conclusion that it would not be in public interest to grant any more permit to him merely because he was interested in getting the route opened.

8. A word may be said, here regarding the opinion framed by the Regional Transport Authority while allowing the application of the petitioner and disallowing that of the non-petitioner. In case of the non-petitioner, it has been pointed out by the Regional Transport Authority that he is a resident of Chittorgarh which falls on the route in question and that he is a young man holding driving licence since 1961 but has no permit. As regards the petitioner, it has been observed by the Regional Transport Authority that he, too, is a resident of Chittorgarh and holds driving license since 1937. But the consideration which tilted the scales in his favour were that the route was surveyed on his application and that he had a lot of experience in transport business and had also plied on the route in question on a temporary permit.

9. It may be interesting to point out, here, that apprehending an onslaught by the non-petitioner against him at the hearing of the appeal, the petitioner filed an affidavit to fortify the view taken by the R. T. A. in his favour. The averments in the affidavit, unfortunately for the petitioner, furnished a handle to the non-petitioner for demotion of the petitioner's case for grant of permit. A copy of this affidavit has been placed on the record of this Court also by the petitioner himself and is marked Exhibit 10. In this affidavit, the petitioner stated that he came to India from Sukkar after division of the country and his joint family constituted by him and his brothers got stage carriage permits on Kota-Khanpur, Kota-Bensorgarh and Kota-Board routes, he has further stated that in 1957 he left Kota and migrated to Chittorgarh and purchased a permit along with the Bus from one Lakhimal on Vijaypur-Nimbahara route on which he plied from 1957 to

1968 and since it ceased to be profitable, he sold the Bus to Safi Mohammad and got the permit transferred in his name and, later on Safi Mohammad also sold the Bus to one Ram Kishan Rathi and got the permit transferred in the vendee's name. In this connection, he has also deposed that he did not charge any premium from Safi Mohammad. Similarly, he deposes that he purchased a vehicle from one Abdul Rehman and plied the same on Chittorgarh-Mandalgarh route and got the permit transferred in his name. After plying on this route for about 11 years, he transferred the bus as well as the permit on this route also to one Puroshottam Choudhary. There was yet a third instance in which he had to transfer the permit and the bus which he had purchased from one Harisingh of Begun on Chittorgarh-Begun route. From the aforesaid averments the learned S. T. A. T. has drawn an inference that the petitioner must have transferred the stage carriages and the permits held by him for either of the two reasons viz., that either he could not manage- the business properly or he may have sold them for profit. It may be pointed out that there was no material before the S. T. A. T. on this point except the affidavit of the petitioner (Exhibit 10) to which a detailed reference has been made above. The petitioner has deposed in unmistakable terms that he did not charge any premium at the time of transferring the permits. It is undisputed that the permits were transferred with the permission of the Regional Transport Authority. Therefore, the inference drawn by the S. T. A. T. that the petitioner may have sold the permits for profit is, arbitrary and based on no material but is against the clear averment in the affidavit.

10. Then the Tribunal has opined in the alternative that the petitioner sold back the permits and vehicles presumably because he could not manage the permits properly. Now, it may be observed that the petitioner had plied on the Vijaypur-Nimbahera route for a period of 11 years, so also on the Chittorgarh-Mandalgarh route he had plied for about 11 years. The non-petitioner could not controvert this position. As regards Chittorgarh-Begun route, the petitioner's case is that he was able to ply on this route only for 4 years as this transaction did not prove profitable to him. The finding of the Tribunal does not show as to what were the acts of mismanagement by the petitioner. It was open to the Tribunal to further probe into the matter, if it was not satisfied with the averments made in the affidavit. But it was, in my opinion, not just and proper to raise an inference against the petitioner that he was not able to manage the- transport business. By no stretch of imagination can it be said that the act of the petitioner in transferring the permits on some of the routes mentioned above is explicable only on the two hypotheses mentioned by the Tribunal. On the other hand, the explanation given by the petitioner in his affidavit in absence of anything to the contrary is quite plausible. Thus, the allegation made by the non-petitioner that the petitioner was trafficking in the matter of transport permits and the finding of the learned Tribunal in accepting this allegation, though in a milder tone that the petitioner may have transferred the permits and the vehicles as aforesaid either for profit or on account of his own acts of mismanagement, are, in my opinion,

based on wrongful presumptions and unwarranted assumptions. The non-petitioner did not put any material whatsoever before the Tribunal to demolish the petitioner's case and the findings given by the Regional Transport Authority, Consequently, unless there is anything in the affidavit clearly leading to an adverse inference, against its deponent or unless there were any clear circumstances pointing to the contrary, the Tribunal was not justified in condemning the petitioner. I may state, here, that on account of the said finding by the Tribunal against the petitioner, all other factors in favour of the petitioner received no consideration at the hands of the Tribunal. In view of the order, I propose to make I do not wish to comment on the merits of the claim of either party, but I wish to point out that while considering the merits and demerits of the claims of the parties, the past experience in the matter of transport business and the knowledge about the sector could have very well been taken into consideration.

11. It has been pointed out that the cases of Kailash Chandra and Roshanlal which stand on equal footing with that of the non-petitioner, have been rejected by the Tribunal, whereas the case of the non-petitioner has received weightage at the hands of the Tribunal for no other consideration except that he holds a driving licence since 1961 and has no permit. It is sufficient to point out that Kailash Chandra and Roshanlal have not made any grievance against the impugned order of the Tribunal and it is, therefore, not necessary for me to examine the comparative merits of the claims put forth by Kailash Chandra and Roshanlal vis-a-vis the non-petitioner. However, it would not be out of place to point out that the fact that a person already holds one or more permits is not necessarily a disqualification or a factor against him. As I have already stated above, the paramount consideration in such matters is the interest of travelling public and while judging the merits of each applicant from this view point if the Tribunal bases its findings on evidence direct or circumstantial and thereafter exercises its discretion either way, it need hardly be pointed out, that this Court would be chary to entertain an application against the Tribunal's order in exercise of its writ jurisdiction. But since I have come to the conclusion that in the present case the findings arrived at by the Tribunal particularly qua the petitioner are based on unwarranted assumptions, I have no alternative but to set aside the order of the S. T. A. T. so far as it relates to the grant of permit to the non-petitioner in place of the petitioner. The only proper course to adopt in the circumstances of such a case would be to quash the impugned order of the S. T. A. T. with a direction to it to reconsider the matter in the light of the observations made above.

12. In the result, I partially allow this writ application, set aside the order of the S. T. A. T. dated 5 February, 1975 and direct it to decide the appeal No. 63 of 1974 filed by the non-petitioner afresh in accordance with law. No order as to costs.

13. The S. T. A. T. is further directed to dispose of the matter expeditiously.