

(1956) 02 MP CK 0020

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Case No. 7 of 1955

Kishanchand Narsingdas Bhatia

APPELLANT

Vs

Appellante Authority Madhya Bharat and Others

RESPONDENT

Date of Decision : 07-02-1956

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 78, 79, 80, 81, 82

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1939 — Section 42, 47, 54, 57, 57(3)

Citation : (1956) 02 MP CK 0020

Hon'ble Judges : Samvatsar, J;Newaskar, J

Bench : Division Bench

Advocate : Chafekar, for the Appellant; Chitale, General, for the Respondent

Final Decision : Allowed

Judgement

Samvatsar, J.—This is a petition under Article 226 of the Constitution for a writ of certiorari to be issued to quash the order of the Appellate Authority constituted under the Motor Vehicles Act as in force in Madhya Bharat.

2. The Petitioner Kishanchand is a refugee from. Sindh and a citizen of India. The Respondents Nos. 1 and 3 are respectively the Appellate Authority and the Regional Transport Authority, Southern Region, Indore. The Respondent No. 2 is one Balwantrao Gaikwad, one of the Appellants before the Appellate Authority and to whom that body has granted a permit to ply a passenger bus on Indore-Digthan route by cancelling the one issued to the Petitioner.

3. The facts of the case are set out in detail in the petition. Briefly stated they are:

4. On 24-10-1952, the Regional Transport Authority decided to open, for the convenience of the travelling public, a new route viz., the Indore-Digthan route and by notification dated 29-11-1952, invited applications from persons desiring to ply a stage carriage on the aforesaid route.

5. In response to this notification the Petitioner applied to the Regional Transport Authority in the prescribed form for grant of a permit to ply his stage carriage No. M.B.K. 1259 on the new route. The Respondent No. 2 and certain other persons also had made similar applications.

6. The names of the applicants and the substance of the applications received were published in the Government Gazette dated 22-1-1953 and representations were invited from persons objecting to the grant of permit to the various applicants. The Petitioner sent his representation pointing out that the Respondent No. 2 was plying on the said route on the basis of a temporary permit but there were numerous complaints against him and the travelling public was dissatisfied with the service rendered by him. It was also urged that he was not interested in transport business and was not a fit person to be granted a permanent permit.

7. The Regional Transport Authority considered all the applications at a public hearing in the meeting held on 24-3-1953, and granted the permit to the Petitioner. The applications of all other were consequently rejected.

8. The Respondent No. 2 preferred an appeal to the Appellate Authority, i.e., Respondent No. 1 against the order of the Regional Transport Authority rejecting his application for a permit. The appeal was allowed by that authority and the permit granted to the Petitioner was cancelled and in its place a permit was issued to Respondent No. 2.

The Petitioner filed an application for review of the order passed by the Appellate Authority contending therein that the said order was vitiated because of an error apparent on the face of the record. The Respondent No. 1, the Appellate Authority, refused to consider the application holding that it had no power to revise its previous order.

9. Aggrieved by the decision of the Appellate Authority, the Petitioner has therefore filed this petition under Article 226 of the Constitution for a writ of certiorari to quash the order of the Appellate Authority by which the permit given to him was cancelled.

10. The main grounds on which the validity of the order of the Appellate Authority is questioned is that the said authority had based its decision on assumption of certain facts for which there was neither any foundation nor support from the record. It is stated that the Respondent No. 1 held against the Petitioner because it was of the opinion that a temporary permit to ply on the said route was offered to the Petitioner and was refused by him.

It is alleged by the Petitioner that this is contrary to the facts on record. The Petitioner had applied for a temporary permit but his application was refused. The Petitioner's complaint therefore is that the decision of the Respondent is based on assumption for which not only there is no support, but which is also contrary to what is on record. The order of the Respondent No. 1 is therefore

vitiated by an error apparent on the face of the record.

11. It was also contended that the order of the Respondent No. 1 was vitiated because that authority had not considered the claims of the rival candidates bearing in mind the provisions of Section 47, Motor Vehicles Act. It was urged that under that section the transport authorities had to consider which of the candidates would serve the travelling public better, which was not done and the authority was influenced more by considerations which were personal to the case of Respondent No. 2.

12. The petition is opposed by all the Respondents. The Respondents 1 and 3 filed their return in the form of an affidavit of the Transport Commissioner, Madhya Bharat.

13. The Respondents 1 and 3 have contended in their return that:

(i) The Respondent No. 2 had in his memorandum of appeal to the Appellate Authority expressly alleged that the Petitioner was offered this route on a temporary permit but he declined to avail of the offer because a part of the road was Kachcha Road and further that the Respondent No. 2 bore the cost of repairing the said track for motor traffic; that during the arguments the Respondent No. 2 repeated this contention and it was not controverted on the Petitioner's side; that the finding of the Appellate Authority cannot therefore be challenged as erroneous assumption of fact and an error apparent on the face of the record;

(ii) the Appellate Authority decided in favour of Respondent No. 2 having regard to matters mentioned in Section 47, Motor Vehicles Act, and not in disregard of the provisions of that section; that Section 47 is not rigid and the Appellate Authority has discretion to grant permit to persons who, in the opinion of that Authority, have been diligently serving the needs of the travelling public on a given route;

(iii) the Petitioner had no preferential right what-so-ever within the meaning of Section 47, Motor Vehicles Act; that at the material time he did not hold a permit for any route along or near the proposed route;

(iv) the Petitioner has been given a permit to ply on the Betma-Hatod (via Depalpur) route and his vehicle was no longer lying spare or idle.

14. In para 9 of the return it is admitted that the Petitioner had applied for a temporary permit on 12-10-1952 but it was alleged that it was after a couple of months after the permit was granted to Respondent No. 2.

15. The Respondent No. 2 has filed a separate return in which he has alleged that the Petitioner was asked by Mr. Rane, Regional Transport Officer, whether he would accept a temporary permit for Indore-Digthan route; but the Petitioner refused to accept it as part of the road was a Kachcha Road.

16. At the stage of the arguments the learned Advocate-General raised a further

contention viz., that the Appellate Authority being primarily an administrative body was empowered to exercise larger powers untrammelled by considerations which are binding on the Regional Transport Authority.

17. On these contentions 3 points primarily arise for consideration:

(i) Whether the decision of the Appellate Authority is vitiated by an error of law or fact apparent on the face of the record.

(ii) Whether the Appellate Authority, being an administrative body, is not bound by the restrictions which govern the exercise of powers of the Regional Transport Authority in respect of granting or refusing permits.

(iii) Whether the decision of the Appellate Authority is founded on an utter disregard to the provisions of Section 47 of the Motor Vehicles Act.

18. Before proceeding to discuss the contentions raised by the parties, it is necessary to bear in mind that the Respondents 1 and 3, are statutory bodies and have, in considering the questions of granting permits, to act according to the provisions of the Motor Vehicles Act. This has been the view taken by a Division Bench of this Court in *Vallabhdas v. Regional Transport Authority Madh* BLR 1952 Civ 12 : (AIR 1952 MP 128) (A). It was held in that case that;

With the growing complexity of modern life and the general tendency to widen the sphere of Governmental action, authorities other than Courts are by law invested with extensive powers the exercise of which vitally affects the rights of private individuals. There are many statutes which confer such powers, the exercise of which cannot properly be called, doing a judicial act.

Yet the language and the form of the statute shows an intention on the part of the Legislature that whenever a decision is to be taken with regard to any matter by an officer or authority invested with powers under the statute, the approach to such matter should be judicial. In all such cases the High Court shall review the administrative and the executive acts if in exercise of its powers the official or authority concerned has disregarded the intention of the Legislature and such disregard has resulted in an injustice to private rights.

19. In *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, , the Supreme Court has also held that the Regional Transport Authority and the Appellate Authority are administrative bodies exercising quasi judicial functions in matters of granting permits.

20. It is again not disputed that if a judicial or quasi judicial tribunal acts on material which is not on record or acts on assumption contrary to the facts on record, its order is liable to be set aside by a writ of certiorari. This has been the view taken by the Court of Appeal in England in *R. v. Northumberland Compensation Appeal Tribunal*", ex parte Shaw 1952 (1) All ER 122 (C). It was held in that case that a writ of certiorari to quash the decision of a statutory tribunal lay not only where the tribunal had exceeded its jurisdiction but also

where an error of law appeared, on the face of the record.

21. The Supreme Court of India has also taken the same view in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, . That was also a case under the Motor Vehicles Act wherein the validity of the order passed by an authority appointed under the Act was challenged. It was held that such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it or in violation of the principles of natural justice or refuse to exercise jurisdiction vested in them, or there is an error apparent on the face of record and such act, omission, error, excess has resulted in manifest injustice. Thus there is no doubt that an error on the "face of the proceeding has been recognised as one of the grounds for the issue of writ of certiorari.

22. It is plain that there is no suggestion in the return filed by the Respondents 1 and 3 that there was any offer made to the Petitioner for a temporary permit on the Indore-Digthan route and he refused to accept it. It is important to bear in mind that this fact was within the special knowledge of the Respondent No. 3 and not that of Respondent No. 2.

23. The record of the Regional Transport Authority does not further show that the Respondent No. 2 or for the matter of that any other applicant or other person or body had made any representation against permit being granted to the Petitioner. At any rate, no one had objected to the permit being granted to the Petitioner on the ground put forward by the Respondent No. 2 before the Appellate Authority.

There is also nothing on the record of the Regional Transport Authority to support the contention that the route was offered to the Petitioner before it was given to the Respondent No. 2 on a temporary permit. On the contrary, it appears that the Petitioner had applied for this route on temporary permit basis in December, 1952 but was refused by Mr. Rane, the Regional Transport Officer, not on the ground that the Petitioner had refused to accept it when previously offered but because the permit was already given to Anr. party.

24. The facts on record of the Regional Transport Authority thus do not support the allegations of Respondent No. 2. The Petitioner did not admit the correctness of these allegations and the Appellate Authority proceeded on the assumption that the facts on record support them. There is no liquidation for this assumption. Under the circumstances it must be held that in assuming these facts there was an error apparent on the face of the record.

25. This takes me to the other point which has been raised during the course of the argument by the learned Advocate-General, namely, whether the Appellate Authority being essentially an administrative body, is not necessarily bound by the provisions of Sections 47 and 57, Motor Vehicles Act.

26. The Motor Vehicles Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. u/s 42 of the Act the Regional Transport Authority and the Provincial Transport Authority are entrusted with powers to grant permits to ply buses on public route. The matters which are to be taken into account in granting or refusing a stage carriage permit are specified in Section 47, Motor Vehicles Act. This section also lays down the procedure of the Regional Transport Authority in considering applications for such carriage permit. It is as follows:

47. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely:

- (a) the interest of the public generally;
- (b) ...
- (c) ...
- (d) ...
- (e) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services; and
- (f) ...

and shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or route or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lie or by any association interested in the provision of road transport facilities....

27. Section 57 is the next material section which relates to procedure in applying for and granting permits. Sub-section (3) of this section provides that on receipt of applications for a stage carriage permit, the fictional Transport Authority shall make the applications available for inspection at the office of the Authority and shall publish the applications 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 on which and the time, and place at which the application and any representation received be considered.

Sub-section (4) further provides that no representation in connection with an application referred to in Sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed time and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(27-a) Sub-section (5) of Section 57 lays down that when any representation such as is referred to in Sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making representation shall be given an opportunity

of being heard either in person or by duly authorized representation. Sub-section (7) requires the Regional Transport Authority, when it refuses an application for permit of any kind, to give reasons for the refusal.

28. Section 54 provides for appeals. Under that section:

Any person-

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit or any condition attached to a permit granted to him, or

(b) ...

(c) ...

(f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or

(g) ...

may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard.

29. By Section 68 the State Governments have been invested with powers to make rules for the purposes of Chapter IV. In exercise of these powers the State Governments are also empowered to make rules with respect to the authority to whom, the time within which, and the manner in which appeals may be made.

30. In exercise of these powers the State Governments have framed rules. Rules 79 to 82 deal with appeals. Under Rule 79 the Government are empowered to appoint an Appellate Authority to hear appeals against the orders of the Regional Transport Authority u/s 64. This rule further prescribes the period during which an appeal should be filed and the manner of filing it. Rule 81 lays down the procedure for hearing the appeals and provides among other things that the Appellant shall, within 14 days of the receipt of intimation, forward to the Appellate Authority concerned, a list of documents upon which they propose to rely together with the copies of such documents in duplicate.

31. It appears from the Scheme of Chapter IV that the Regional Transport Authority is required, in granting or refusing permit, to apply its mind to the provisions of Section 47 and in particular the interest of the travelling public. In addition what is required to be considered under that section, that authority is also required by law to take into consideration any representation made by a person, already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lie or by any association interested in the provisions of road transport facilities.

32. The manner in which these representations should be made is provided in

Section 57 and it is laid down therein that no representation shall be considered unless it is made in writing within the time specified and its copy is supplied to the person against whom it is made.

33. Section 64 deals with right of appeal. The right of appeal under Clause (a) is conferred upon any person who had applied for grant of permit which is refused. Under Clause (f) an appeal can be filed by a person who had opposed the grant of permit to the person to whom it is granted by making the representation as required by Section 57 Rules 78 to 81 lay down the period during which the appeal is to be filed, the authority to whom it is to be filed and the manner in which it is to be filed.

34. This is an exhaustive code. The powers of the Regional Transport Authority are regulated by this code and in considering the grant of permit it is required to bear in mind the provisions of Section 47 and to consider further representations, if any made against the applicant or applicants. These provisions are mandatory and it is not permissible for the Regional Transport Authority to refuse to consider matters specified in Section 47 or to entertain objections not put forward in the form of representation u/s 57(4).

The Regional Transport Authority can consider only such objections against an applicant as are set out in a representation submitted in writing and on complying with the terms of Section 57. The Appellate Authority is in my opinion equally bound by these provisions.

35. Mr. Chitale, the learned Advocate-General, who appeared for all the Respondents, pressed us to hold that the Appellate Authority being an administrative body, could exercise larger powers untrammelled by considerations which are binding on the subordinate authority. In view of the authorities to which I shall presently refer, I find it difficult to concede this position.

36. In Raghunath Patnaik Vs. State Transport Authority and Another, , the Petitioner applied for permit to ply a passenger bus service to the Regional Transport Authority at Puri. One Somnath Patra (Sic) objected to the grant of permit to the Petitioner. He made representation to the Regional Transport Authority but it was filed after the period allowed by the law and was consequently not considered by that authority. The permit was eventually granted by the Regional transport Authority to the Petitioner.

Thereupon the objector Somanath(sic) appealed to the Appellate Authority which allowed file appeal. The Petitioner whose permit was cancelled by the Appellate Authority, then moved the High Court of Orissa under Article 226 of the Constitution for quashing the order of the Appellate Authority. The High Court held that the representation of Somanath Patro was made after the period allowed to him by law and he had therefore no right to go in appeal u/s 64, Motor Vehicles Act.

37. This aspect of the case Das also been discussed by the Madras High Court in "Nadar Transports, Tiruchirapalli v. The state of Madras AIR 1853 Mad 1 (E). In that case the Appellant Nadar Transports and the third Respondent shanmugham Pillai, were competitors for permits(sic) to run bases on two routes, route 1-A and route 8. The "Regional Transport Authority granted (sic) there permits to the Appellant for route 1-A and two for route 8.

The third Respondent shanmugham Pillai, had not made any representation against the grant of permit to the Appellant. He however filed an appeal against the order granting permit to the Appellant and the Appellate Authority modified the order by granting two permits for route 8 to the Respondent and restricting the Appellant's right to three permits in route 1-A. There was an application to revise this order to the State Government but the Appellant did not get any success. He therefore approached the High Court for a writ of certiorari to quash the proceedings.

38. Subba Rao J. dismissed the petition against which there was an appeal to the Division Bench. The learned Judges observed as follows:

The restriction in Section 57(4) that no representations should be considered by the Regional Transport Authority is confined in our opinion to the hearing before the Regional Transport Authority, and it does not extend to the Appellate Authority. We do not thereby mean that it is open to the Appellate Authority to consider grounds or objections not urged by anybody before the Regional Transport Authority, but even if one person urged objections to the grant of the permit, it would be open to Anr. person who had, not urged those objections to take advantage of them and urge them as grounds of appeal before the Appellate Authority, and the Appellate Authority would be free to consider not only the representations if any made (sic) by the Appellant but also by other parties who were parties to the proceedings before the Regional Transport Authority. In other words their discretion is unfettered in the sense that it is open to them to consider all the grounds which were on record when the matter received consideration before the Regional Transport Authority.

39. This view has also been taken in Kashi Ram v. Ram Saroop AIR 1953 MP 41 (F).

40. In Dholpur Co-operative Transport and Multi-Purpose Union Ltd. v. Appellate Authority, Rajasthan AIR 1955 Raj 19 (G), a Division Bench of the Rajasthan High Court held that:

Where an appeal has been made under Clause (a) against the refusal of a permit, the Appellate Authority Will, generally have the right to give relief to the Appellant by grant of a permit, out; will not have any jurisdiction to cancel the permit granted to Anr. person, unless a foundation has been laid before the Regional Transport Authority for an appeal provided by Clause (f) by an objection by somebody entitled to appeal under that clause.

It such objection has been made then it does not matter whether that particular person appeals or not. In such a case, on an appeal u/s 64(a), the Appellate Authority may consider the objection, of the nature specified in Clause (f)(sic) before the Regional Transport Authority and give its own decision in the matter.

41. These authorities seem to lay down that there are limitations on the powers of the Appellate Authority and in an appeal u/s (64)(a) if cannot take into account matters or objections for which no foundation was laid by making representations against the Petitioner's application.

As Wanchoo C.J. observed in the Rajasthan case referred above, Courts cannot go further than what has been decided by the Madras case in *Nadar Transports v. The State of Madras (E)* and in case no one made any objection to the grant of permit to the Petitioner before the Regional Transport Authority, no foundation can be said to have been laid for receiving it before the Appellate Authority. In view of tills, it is not possible to accept the contention of the learned Advocate-General that the Appellate Authority is riot bound by limitations which govern the grant of permit by the Regional Transport Authority and that it is free to deal with appeal and act on any material which was not there when the permit was granted to the Petitioner by the Regional Transport Authority.

Rule 81 of the Motor Vehicles Rules also to my mind points in the same direction. Under that rule it is necessary for the Appellant, to forward to the Appellate Authority a list of documents upon which they propose to rely, together with copies of such documents in duplicate. The word "document" in this rule means document on record and it does not mean any new material which the Appellant seeks to put forward for his grounds.

I am unable to hold that the powers of the Appellate Authority u/s 64, Motor Vehicles Act, are in any manner wider or unlimited. I am of the opinion that the Appellate Authority, though it is an administrative body, is, in matters of granting or refusing to grant permits, bound to pay due regard to the provisions of the Motor Vehicles Act.

42. In the present case there was no representation made against granting permit to the Petitioner either by Respondent No. 2 or by any one else. There was therefore no foundation laid for challenging the order by which permit was granted by the Regional Transport Authority to the Petitioner.

The discretion of the Appellate Authority is unfettered only in file sense that it is open to it to consider the grounds which were on record when the applicant's case was considered by the Regional Transport Authority. It was not open to it to consider objections for which no foundation was laid before the subordinate authority. The Appellate Authority has acted on materiel which it could not receive at that stage and for receiving Which no foundation was laid before the Regional Transport Authority, its order cannot therefore be held to be valid.

43. The last contention that remains to be examined, is, that the Appellate

Authority has acted in utter disregard to the provisions of Section 47, Motor Vehicles Act.

44. The Appellate Authority, like the Regional Transport Authority is a quasi judicial body and has to consider the applications for permits on merits bearing in mind the relevant provisions of the Motor Vehicles Act. Any reasons which are not valid reasons under that Act cannot be taken into account by that body.

45. The most important thing that the transport authorities are required to take into account by reason of Section 47, Motor Vehicles Act, is the interest of the travelling public. What candidate should be preferred from the point of view of the public interest will be a question of facts in each case. All the more it cannot be seriously disputed that the most material thing to be considered would be, whether the applicant for a permit could be depended upon to manage his transport business efficiently and with particular attention to the convenience of the travelling public.

I find it difficult to understand how a person, against whose driver and conductor there are several complaints of malpractices in dealing with the passengers, irrespective of his liability to be punished for the acts done by them he trusted to attend to the proper needs of the travelling public. It is no unnecessary to pursue this matter any further as I am of opinion that the Petitioner must succeed on the other points raised by him.

46. I am of opinion that the order of the Appellate Authority is vitiated, (i) because it is based on assumption to which there is no support from the facts on record, and (ii) because it cancelled the permit of the Petitioner on entertaining objections not put forward in a representation u/s 57 of the Motor Vehicles Act. The order therefore cannot be maintained.

47. The result is that I allow this petition and quasi the order passed by the Appellate Authority. A writ of certiorari is issued quashing the order of the Appellate Authority.

48. In the circumstances of this case I order that the Respondent No. 2 will pay the costs of this petition to the Petitioner. Pleaders fee will be taxed at Rs. 100.

Newaskar, J.

49. I agree.