

(1971) 11 AHC CK 0048

In the Allahabad High Court

Case No : Sp. A. No's. 181, 214, 217, 218, 238, 239, 247, 248, 258, 284, 297 and 346 of 1963

Lal Chand and Another

APPELLANT

Vs

The Assessing Authority and Another

RESPONDENT

Date of Decision : 26-11-1971

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Uttar Pradesh Motor Vehicles Taxation Act, 1935 — Section 4(2)

Citation : (1972) 42 AWR 86

Hon'ble Judges : T.S. Misra, J; Satish Chandra, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant;

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This group of special appeals raises common questions. They arise out of orders passed by the State Transport Authority, approving the re-classification of certain routes by the respective Regional Transport Authorities. As a result of the re-classification, the tax payable by the Appellants under the U.P. Motor Vehicles Taxation Act, 1935, was increased. Feeling aggrieved, they challenged the action on a variety of grounds. A learned Single Judge of this Court did not accept any of the grounds. Hence, these appeals.

2. Mr. Naithani, appearing for the Appellants, urged that the power vested in the Regional Transport Authority, of re-classifying routes was quasi-judicial in nature. It was incumbent upon the authority to comply with the principles of natural justice and afford an opportunity of hearing to the persons operating vehicles on the concerned routes, before re-classifying them. Mr. Sharma, appearing in Sp. A. No. 284 of 1963 (Kishan Lal's appeal), raised an additional point that Rule 6 of the Rules framed under the Act was ultra vires the rule-making powers.

3. Section 4 of the Act provides for imposition of tax on the motor vehicles using public places, in accordance with the appropriate rate specified in the 1st

Schedule to the Act. A reference to the Schedule shows that various rates are prescribed, depending upon the classification of the routes, as special or ordinary. The ordinary routes have to be classified further as an A class route, or a B class route, or a C class route. The special class routes bear the highest rate of tax, while the C class routes have a lower rate of tax. Sub-section (2) of Section 4 provides that the Prescribed Authority shall classify the routes. Section 21 confers upon the State Govt. rule-making power. Rule 5 of the Rules so framed provides:

5. Classification of routes--The State Transport Authority and every Regional Transport Authority shall with the approval of the State Transport Authority in the case of a Regional Transport Authority classify all routes within the jurisdiction of each Authority as Special Routes or as A class, B class or C class routes.

Thus, it is primarily the State Transport Authority, which is a highest authority constituted by the Motor Vehicles Act and which has jurisdiction over the entire state, that has been prescribed as the authority to do the classification. Every Regional Transport Authority also can make the classification, but then it has to seek the approval of the State Transport Authority before its decision becomes effective. Rule 6 lays down the matters to be considered in classifying routes. It says:

6. Considerations to be applied when classifying routes:

When so classifying routes, every controlling authority shall be guided by the following considerations in the order in which they appear in this rule, that is to say--

(a) the potential income, which in regard to all the circumstances of the route, it may be expected, will accrue from the employment of a public service vehicle on that route.

(b) the cost of maintenance of the road or roads or the portion or portions of any road or roads comprised within the said route.

(c) The necessity for the development of the proposed route in the public interest.

Section 5 of the Act provides for payment of tax. Section 15 confers a right of appeal to any person aggrieved by an order relating to the assessment, imposition or recovery of tax. There is no provision for inviting objections or representations from the operators, while classifying routes. But, when it comes to the actual assessment or recovery of tax, the operators have been given a right to prefer an appeal, if they feel aggrieved. While classifying routes, the Prescribed Authority does not deal with any dispute between the operators. It has to arrive at its own decision objectively, having regard to matters mentioned in Rule 6, independently of any representation by the operators. The decision of the Prescribed Authority is in regard to its administrative policy. There is no dispute before it, the decision of which may affect one more adversely than the other operator. In this context, it can hardly be said that while classifying

routes, the Prescribed Authority exercises judicial functions.

4. However, it is well settled that the principles of natural justice apply to administrative proceedings as well. In the State of Orissa v. Dr. (Miss) Beinapani Dei 1967 SC 1269, it was held that an administrative order, which involves evil consequences on the vested right of persons, must be made consistently with the rules of natural justice. Similarly, in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , it was observed that the dividing line between the administrative power and quasi judicial power is quite thin and is being gradually obliterated.

5. The vital point to be seen is whether the operators have a right in the classification of routes. The provisions clearly indicate that the operators have no place in the scheme of things on the question of the classification of routes, because that is a matter which does not affect one operator against the other. Consequently, when the legislature did not provide any right of representation or hearing, obviously the principles of natural justice are not attracted and the operators are not entitled to any opportunity of hearing or of making representations. In this connection, the decision of the Supreme Court in Mohd. Ibrahim v. State Transport Authority 1970 SC 1542 is material. There, the question was whether the Regional Transport Authority is obliged to hear operators while exercising jurisdiction u/s 47(3) for fixing the limit of number of stage carriage permits. It was held that the total absence in Section 47(3) of any reference to representations indicates that the Regional Transport Authority is not required to take into consideration. Further, it was emphasised that the deliberation as well as the decision of the Regional Transport Authority u/s 47(3) of the Act is confined to its own administrative policy and orders. The court was of the opinion that the operators are not entitled to any opportunity of hearing, while the matter of fixation of the limit of number of stage carriages is being considered by the Regional Transport Authority. It is clear that the fixation of the number of permits does indirectly affect the rights of existing operators (sic) of persons decisions to obtain a permit. But, that was not held to be sufficiently direct a consequence of the fixation of the limit. That is why this circumstance was not held material. Similarly, in the present case, though the classification of route may have an indirect impact upon the individual operators, in as much as the rate of tax that may be applied, may vary, yet, that is a remote consequence and cannot be taken into consideration. In our opinion, the Prescribed Authority did not commit any illegality in classifying the route without affording an opportunity of hearing to the Appellants.

6. The next point relates to the validity of Rule 6. Under Clause (a) thereof, the Prescribed Authority is to take into consideration the potential income which, in regard to all the circumstances of the route, it may be expected will accrue from the employment of a public service on the route. It was submitted that this factor was entirely irrelevant to the classification of routes, because the potential income of the operators would be relevant only in determining the tax payable on

the income. We are not impressed by this submission. The potential income which a route may be expected to give will provide an estimate of the quantum of traffic that the route may carry. That will have a material bearing upon the classification of the route into an appropriate category. Moreover, Sub-rule (a) provides a protection to the operators inasmuch as it obliges the Prescribed Authority to take into consideration the potential income. A particular route may yield a low income to the operators for a variety of reasons, for instance, due to the refusal of the authorities to give necessary timings to operators for full exploitation of the route. In such a case, the potential income of the operators would be a relevant circumstance in regard to the extent of the user of the route. In our opinion, it cannot be said that Rule 6 lays down an irrelevant matter for consideration.

7. Before the learned Single Judge, it was urged that Section 4(2) of the Act violated Articles 14 and 19 of the Constitution. This submission was rightly repelled by the learned Single Judge. It stands concluded by the decision of the Supreme Court in the *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, , where a similar provision of the Rajasthan Motor Vehicles Taxation Act, 1951 was upheld as valid.

8. No other point was pressed. The appeals fail and are accordingly dismissed with costs.