

(1965) 12 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 258 of 1965

Madhya Pradesh State Road Transport Corporation	APPELLANT
Vs	
State Transport Appellate Authority and Others	RESPONDENT

Date of Decision : 13-12-1965

Acts Referred:

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

Citation : AIR 1967 MP 138 : (1964) ILR (MP) 687

Hon'ble Judges : P.V. Dixit, C.J;R.J. Bhawe, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; R.K. Tankha, for the Respondent

Final Decision : Dismissed

Judgement

Bhawe, J.—Jainarain (respondent No. 3) held a stage carriage permit on the route Indore to Alot via Ujjain Originally the permit was granted in the year 1956 and was renewed in 1961. He again, applied for renewal. The petitioner. Madhya Pradesh State Road Transport Corporation, applied for grant of a permit on the said route in lieu of renewal The Regional Transport Authority, Indore, by order, dated 23rd November 1964, rejected the application for renewal and granted the permit to the petitioner in the vacancy caused. On appeal, the State Transport Appellate Authority set aside the order of the Regional Transport Authority and granted renewal to the respondent No. 3 by order, dated 29th May 1965. The present petition is directed against the appellate order.

2. The petitioner challenges the order of the State Transport Appellate Authority on the following grounds:

- (1) That the respondent No. 3 owns only three buses and has no properly equipped workshop.
- (2) That the respondent's record is not free from blemish inasmuch as he diverts

his buses on a part of the route during the rainy seasons and is thus guilty of non-maintenance of the route.

(3) That the State Transport Appellate Authority was in error in brushing aside the admitted superiority of the petitioner in the matter of equipment and resources.

(4) That the offer of air-cooled bus by the respondent could not be taken as a factor in favour of the respondent inasmuch as the petitioner also could have been directed by the State Transport Appellate Authority to put in an air-cooled bus as a condition of the permit

3. The Appellate Authority has recorded a finding of fact that during the rains a part of the route is rendered unserviceable and by force of necessity the respondent No. 3 is required to divert his buses; the diversion is not because of any laches or other fault of the respondent and it cannot be said that the diversion could be treated as an adverse record against the respondent. We do not find any fault with this reasoning. Under the circumstances, it cannot be said that the respondent No. 3 is guilty of non-maintenance of the route. On the question of superiority of the petitioner in the matter of the equipment and resources, the Appellate Authority has found that the respondent No. 3 has maintained the services on the route, without any blemish and is expected to carry on the services with the same efficiency. With the help of the large resources at its disposal, the petitioner is not expected to do any better. No fault can be found with this reasoning also. The superiority of an operator in the matter of equipment and resources is taken into consideration to find out if he would be in a position to provide better services; but if a small operator is operating the routes granted to him with the same efficiency as a big operator would do, it cannot be said that his larger resources would put the big operator in any superior position. In any case, that is a matter for the authorities appointed under the Motor Vehicles Act to decide.

So long as no extraneous matter is taken into consideration by the said authorities, this Court will not interfere in exercise of its special jurisdiction under Article 226 of the Constitution. The respondent No. 3 had offered a latest model air-cooled bus. No such offer was made by the petitioner. In *Samrathmal Keshrimal v. State Transport Appellate Authority Gwalior*, Civil Appeal No. 503 of 1965. D/- 25-8-1965 (SC) their Lordships of the Supreme Court have held that an offer of an operator to provide an air-cooled bus is a relevant matter which can be taken into consideration while deciding upon the merits of the rival claimants for a permit. Their Lordships have also held that when the Tribunal's order is based upon an assessment of the relevant factors, the High Court could not, in exercise of its writ jurisdiction, set aside that order. The fact that the State Transport Appellate Authority could have imposed a condition on the petitioner as well to put in an air-cooled bus cannot be made a ground for finding fault with the order of the Appellate Authority when, in fact, one party had made an offer and another had not.

4. Some criticism was advanced regarding misstatements in the order of the Appellate Authority. In paragraph 5 of the order it is stated that the respondent No. 3 owned 5 buses, while, in fact, three buses were owned by him. It is also stated in that paragraph that the respondent No. 3 had a sort of a workshop and a garage. We are satisfied that the mention of five buses is an accidental slip. Similarly, when the Appellate Authority says that the respondent No. 3 had a sort of a workshop and a garage, what it means is that the respondent has a workshop and a garage sufficiently equipped for his purposes. No fault can be found with this reasoning.

5. It is next urged that the provisions of Sections 29 and 30 of the Road Transport Corporation Act, 1950, make it obligatory for the Corporation to create a reserve fund for depreciation and other allied matters and that certain percentage of the profits is required to be utilized for providing amenities to the passengers and for road development. Thus the profits earned by the Corporation are ploughed back for the benefit of the general public. It is, therefore, urged that this is a relevant consideration u/s 47 of the Motor Vehicles Act. The contention is not correct. What is required to be considered u/s 47 of the Act is the present capacity of the rival claimants to provide adequate services on the route with all the necessary amenities, and in this context the interest of the public generally is to be considered. That the Corporation at a future date would be in a position to offer better amenities or that its profits would be utilized for public benefits and for road development in future is not a matter relevant u/s 47 of the Act. The Appellate Authority was right in rejecting this contention.

6. The Appellate Authority has acted within jurisdiction. No extraneous matter has been taken into consideration. The merits of the parties have been considered. Under the circumstances, no interference with the order of the Appellate Authority is warranted. The petition fails and is dismissed with costs. Hearing fee Rs. 100. The outstanding amount of security deposit, after deduction of costs, shall be refunded to the petitioner.