

(1963) 02 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 132 of 1962

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

Date of Decision : 11-02-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 48(1)

Citation : AIR 1965 MP 286 : (1957) ILR (MP) 434 : (1964) JLJ 637 : (1965) 10 MPLJ 41 : (1964) MPLJ 29

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

Dixit, C.J.

In this application, under Articles 226 and 227 of the Constitution by the Madhya Pradesh State Road Transport Corporation, Bhopal, the prayer made is for the issuance of a writ of certiorari for quashing a decision of the State Transport Appellate Authority granting in appeal permit for Jabalpur--Maibhar route to the respondent No. 2. Laxminarayan.

The said respondent had applied to the Regional Transport Authority, Jabalpur, for the grant of a permit in respect of Jabalpur--Rewa route. That application was rejected by the Regional Transport Authority on the ground that it was not competent to entertain it as the major portion of the route lay in Rewa region.

Thereupon Laxminarayan appealed to the State Transport Appellate Authority contending that the, Regional Transport Authority should not have rejected his application outright but that it should have considered the question of the grant

of a permit to him for the curtailed route, namely, from Jabalpur to Maihar. The petitioner opposed the grant of a permit for the curtailed route saying that the respondent No. 2 had never applied for a permit for the route and that neither the Regional Transport Authority nor the Appellate Authority had any jurisdiction to grant a permit in respect of any route for which no application had ever been made. The Appellate Authority overruled this objection and taking the view that u/s 48 of the Motor Vehicles Act, 1939, the Regional Transport Authority had the power to grant permit "in a curtailed form" and that it had also the power under Rule 50(b) of the C. P. and Berar Motor Vehicles Rules to modify the terms of application for the grant of a permit, held that when the respondent No. 2 made a prayer for the grant of a permit for Jabalpur--Maihar route his application would be deemed to be one for that route and that as there was scope on the route the respondent was entitled to get a permit for that route.

Before us, Shri Dharmadhikari, learned counsel appearing for the petitioner-Corporation, urged that the grant of a permit to the respondent-Laxminarayan for Jabalpur Maihar route when he had only applied for grant of permit for Jabalpur--Rewa route was contrary to the express bar contained in the proviso to Section 48(1) of the Motor Vehicles Act; that u/s 48(1) or under Rule 50(b) neither the Regional Transport Authority nor the Appellate Authority could modify the application for the grant of a permit for Jabalpur--Rewa route so as to deem it as one for Jabalpur--Maihar route; and that as the Regional Transport Authority, Jabalpur. had no jurisdiction to entertain the said respondent's application for the grant of permit for Jabalpur--Rewa route it could not be amended by the Appellate Authority so as to confer jurisdiction on the Regional Transport Authority and thus on itself to entertain the application.

In our judgment, this contention must be given effect to. It is not disputed that Laxminarayan had only applied for the grant of a permit in respect of Jabalpur Rewa route. The respondent Laxminarayan did not also question before the appellate authority the correctness of the decision of the Regional Transport Authority holding that as the major portion of the route lay in Rewa region it was not competent to entertain the application for the grant of a permit for Jabalpur--Rewa route. Now, Section 48(1) expressly says that no permit shall be granted in respect of any route or area not specified in the application. That sub-section runs as follows-

"48.(1) Subject to the provisions of Section 47, a Regional Transport Authority may, on an application made to it u/s 46, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any route or area not specified in the application"

The proviso to Sub-section (1) thus in plain terms, prohibits the grant of a permit for a route for which no application has been made. It is true that under Sub-

section (1) of Section 18 and Rule 50(b), the Regional Transport Authority has the power to grant a permit "with such modifications as it deems fit" and to modify the terms of the application for the grant of a permit. But this power of modification cannot be used so as to circumvent the express prohibition contained in the proviso to Sub-section (1) of Section 48 and to treat an application made for the grant of a permit for a particular route as an application for grant of permit for a curtailed route or for routes spitted out of the route for which the application has been made So to do is to ignore the proviso to Sub-section (1) of Section 48 and the entire procedure contained in the Motor Vehicles Act with regard to the applications for. and grant of, permits

Again, it is now firmly established that a court or an authority not possessing jurisdiction initially cannot by an amendment of plaint or application create jurisdiction in itself. (see *Lalji v. Narottam* ILR 1953 Nag 792 : AIR 1953 Nag 273). As the Regional Transport Authority, Jabalpur, was not competent to entertain Laxminarayan's application for grant of a permit for Jabalpur Rewa route and as by amendment of that application the Regional Transport Authority could not acquire jurisdiction to grant a permit for Jabalpur Maihar route and as it had no power to grant permit contrary to the proviso to Section 48(1) of the Act, the Appellate Authority had also no such power. It is elementary that the functions and powers of the appellate or reviewing authority are only those which the authority passing the order sought to be appealed from or reviewed would have itself exorcised In our opinion, the grant of permit by the Appellate Authority to Laxminarayan for Jabalpur--Maihar route was utterly in contravention of Section 48(1) of the Act.

Shri Tankha, learned counsel appearing for the respondent-Laxminarayan, submitted that the decision of the Regional Transport Authority, Jabalpur, that it was not competent to entertain Laxminarayan's application for the grant of a permit for Jabalpur--Rewa route was erroneous and that the matter should be remitted to that Authority for the disposal of that application. The argument was that for the purpose of the first proviso to Section 46, distance should be measured not according to the length of the highway lying in one region or another but according to the distance of the route measured in a straight fine on a horizontal plane, as provided in Section 11 of the General Clauses Act, 1897. Learned counsel referred its to the exposition of the meaning of the word "route" given by the Privy Council in *Kelani Valley Motor Transit Co. Ltd. v. Colombo Ratnapur Omnibus Co.* AIR 1946 PC 137.

In our judgment, it is not open to the respondent Laxminarayan to raise this contention heir, when before the Appellate Authority he did not challenge the decision of the Regional Transport Authority holding that it had no jurisdiction to entertain his application for grant of a permit on Jabalpur--Rewa route. It is therefore, unnecessary for us to express am opinion on the argument of the learned counsel that for the purposes of Section 46 distance should be measured according to Section 11 of the General Clauses Act 1897.

This point, as well as the question whether applying the reasoning given by the Supreme Court in Nilkanth Prasad and Others Vs. State of Bihar, and Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation, the distinction between "route" as the notional line and "road" as the physical track can be said to disappear in the working of Section 45, may well arise for consideration in another case.

It was then urged by Shri Tankha that before the Regional Transport Authority and the Appellate Authority it was the Central Provinces Transport Services, Jabalpur, that opposed the grant of permit to the respondent Laxminarayan; that the C. P. Transport Service was no doubt now merged in the M. P. State Road Transport Corporation, but by this merger the petitioner-Corporation did not get any right to step into the shoes of the objector, namely, the C. P. Transport Service, and to file this petition challenging the decision of the Appellate Authority granting permit to Laxminarayan for Jabalpur--Mamar route.

This objection is unsubstantial. The petitioner-Corporation's fight to file this petition is not based on any transfer of the right of the Central Provinces Transport Service to prefer objections to the application made by Laxminarayan for grant of a permit on Jabalpur--Rewa route. But it is founded on the fact that when the appeal preferred by Laxminarayan before the Appellate Authority was decided the Corporation itself was operating services on routes covering Jabalpur--Maihar route, and as an operator on that route it has clearly a right to object to the grant of a permit on that route to any person in contravention of the provisions of the Motor Vehicles Act.

For all these reasons, this petition is allowed and the decision dated the 28th September 1982 of the State Transport Appellate Authority granting a permit to the respondent--Laxminarayan in respect of Jabalpur--Maihar route is quashed. It is needless to add that this decision cannot stand in the way of the competent Regional Transport Authority in disposing of in accordance with law any application that the respondent-Laxminarayan may make for the grant of a permit on Jabalpur--Maihar route or Jabalpur--Rewa route. The petitioner shall have costs of this application. Counsel's fee is fixed at Rs. 100/-. The outstanding amount of security deposit shall be refunded to the petitioner.