
(1977) 03 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Misc Writ Petition No. 1274 of 1976

Mahboob Khan

APPELLANT

Vs

The State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 16-03-1977

Acts Referred:

Motor Vehicles Act, 1939 — Section 68FF

Citation : (1977) WLN 549

Hon'ble Judges : A.P. Sen, Acting C.J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sen, Actg. C.J.

1. These two writ petitions directed against the order of the State Transport Appellate Tribunal, Rajasthan Jaipur dated 5-7-1976, raise common questions and, therefore they are disposed of by this common order.

2. The Regional Transport Authority, Udaipur, by its resolution dated 1-10-1974, Ex. P/1, granted stage carriage permits to the applicants on route Kankrauli-Marwar Jn via Soniana and Madri. The respondents No. 5 to 24, who are existing operators over portions of the said route, in their joint representation u/s 57(3) of the Motor Vehicles Act, 1939, had objected to the grant. The route Udaipur Bhilwara via Madri is a notified route for exclusive operation by the Rajasthan State Road Transport Corporation, vide map, Ex. P/2.

3. In revision, the State Transport Appellate Tribunal, Rajasthan, Jaipur (hereinafter referred to as "the Tribunal") by its order dated 15-5-1975, Ex. P/3, held that the grant of permits to the applicants on the route was contrary to Section 68 FF of the Motor Vehicles Act, 1939. The Tribunal, after an inspection of the spot, found that there was no "Kutch" route in existence between Kankrauli and Madri via Soniana, nor could any such route be brought into existence without unavoidable expenditure. It, therefore, held that the grant of

permit on the route in question, would in fact overlap the notified route Udaipur Bhilwara via Kankrauli over 9 Kms. It observed:

At one stage of the proceedings, it was submitted on behalf of R.T.A. that the new route will overlap the notified route only 4 km. which falls within the Municipal limit of Kankroli and from thereafter there will be a diversion by kutcha route via Soniana-Shambupura upto Madri. As such it contended that the route in question will not overlap the notified route beyond the Municipal limit. At the request of the parties, I have personally inspected the site. After the inspection on the site, there remains no dispute whatsoever that there is no Kutcha route via Soniana-Shambhpura nor such route can be opened without unavoidable expenses and inconvenience. There remains thus no, doubt that the new route will overlap 9 km, between Kankrauli and Madu, which is even admitted by the R.T.A. in the impugned resolution.

After advertng to the provisions of Section 68 FF (1-D) and Section 68 FF, the Tribunal further observed:

I he provisions of both 68-F (1-D) and 68 FF obviously bars the grant of permits overlapping any portion of the draft scheme or the notified scheme except to the extent which is covered by the provisions to those sub-sections.

XXX XXX XXX XXX A bare perusal of the said provisions makes, it very clear that the R.T.A. cannot grant a permit covering a notified route or position thereof

It, however, rejected the revision preferred by the respondents Nos. 3 to 24 observing that a distinction had to be drawn between opening of the route and fixing of the scope thereon and granting of permits on a route a portion of which overlaps notified route.

4. In view of the finding of the Tribunal that no stage carriage permits can be granted on the route Kankroli Mai war Jn in as much "as" it overlaps the approved scheme on the route Udaipur-Bhilwara via Madri for 9 kms. Between Kankroli and Madri, having regard to the mandatory provisions of Chapter IV A of the Act, the Regional Transport Authority, by its resolution dated 1.7.1975, Ex. p/4, bifurcated the route Kankroli-Marwar Jn via Soni ana, Madri into two routes, viz, (i) route Kankroli-Madri, which overlaps the notified route and (ii) Madri-Marwar Jn.

5. Strangely enough, the Regional Transport Authortity by its subsequent resolution dated 30-1-1976, Ex. P/15, made a grant to the applicants of stage carriage permits over the route originally applied for, i.e on routi Kankrauli-Marwarjn. via Soniana, Madri, which, in fact, overlapped the notified route Udaipur to Bhilwai a. The grant was obviously a nullity and then fore, the Tribunal by its order dated 5.7.1976, Ex. P/20, set aside the grant.

6. The order of the Tribunal was assailed on the grounds viz. (1) the joint appeal preferred by the respondents No. 3 to 24 was not maintainable. It is said that the decision in SB. Civil Writ Petition No. 2146 of 1970 Ramjilal v. R.T.A. decided

on 6.10.1972, is clearly distinguishable; (2) the application for grant of a permit was made by the applicants in respect of route KankrauliMarwar Jn. via Soniana and Madri, which was a new Kutcha route and being an inter-regional route, no scope was required to be fixed u/s 47(3) for such an inter-regional route, and the Regional Transport Authority was competent to open the route in question; (3) the respondents were not; persons aggrieved by the grant, and therefore, they could not prefer an appeal u/s 64(I)(f), as held in Automobile Transport Rajputana Private Ltd, Ajmer v. State Transport Appellate Tribunal RLW 1966 409, & (4) the Tribunal should have modified the route by curtailing the permit to route Madri-Marwar Jn. Reliance is placed on General Motor Bus Service, Tonk and Anr. v. Regional Transport Authority Jaipur and Ors. AIR 1955 Raj. 14. There is, in my view, no merit in any of these contentions.

7. The impugned order of the Tribunal does not call for any interference. The provisions of Section 68-FF of the Act are mandatory. When the Tribunal had, by its order dated 19-5-1975, found, as a fact, that there was no Kutcha route in existence between Kankrauli and Marwar Jn. via Soniana and the grant of a permit on route Kankrauli to Mat war Jn would be against the provisions of Section 68 FF of the Act the Regional Transport Authority clearly acted illegally and without jurisdiction in making the grant in question The grant of permits to tie applicants has, then fore, been rightly set aside.

8. There is no infirmity in the order of the Tribunal. Nor is there any error of jurisdiction on its part in setting aside the grant of the permit it question.

9. The applicants in their application form P.S.P.A Ex. P/11, as clarified in the explanatory application, Ex. P/12, had themselves stated that route in question overlaps the notified route Udaipur-Bhilwara via Karkrauli over 7 miles and, therefore, the grant of a permit to them is contrary to Section 68-FF of the Motor Vehicles Act, 1939. The matter had earlier been dealt with by the State Transport Appellate Tribunal vide its order dated 15th May, 1975, Ex. P.3. It found, inter alia, that there was no kutcha route in existence between Kankrauli and Madri via Soniana and that no such route could be brought into existence without unavoidable expenses. Further more, the Regional Transport Authority by its subsequent order dated 80-1-1976, Ex. P/15, could riot have granted any stage carriage permits to the applicants over the route originally applied for i.e., on route (sic) to Marwar Jn via Soniana and Madri. This could not be done and, therefore the State Transport Appellate Tribunal by the order dated 5-7-1976, Ex. P/20 has rightly set aside the grant and it has by its order rightly directed the Regional Transport Authority to invite applications on route Madri to Mar war Jn., after following the procedure prescribed by Section 57.

10. In that view, order of the State Transport Appellate Tribunal, Rajasthan, Jaipur, must be upheld. There is, therefore, no need to go into the other points taken.

11. The writ petitions, therefore, fail and ate dismissed. There shall be no order

as to costs.