

(1976) 01 AHC CK 0042
In the Allahabad High Court
Case No : Special Appeal No. 226 of 1973

Mithan Lal

APPELLANT

Vs

State Transport Appellate Tribunal, U.P., Lucknow and Others

RESPONDENT

Date of Decision : 05-01-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 47, 64

Citation : AIR 1976 All 286

Hon'ble Judges : K.N. Seth, J;G.C. Mathur, J

Bench : Division Bench

Advocate : L.P. Naithani, S.C. Khare and S.N. Kacker, for the Appellant; R.A. Sharma, for the Respondent

Final Decision : Allowed

Judgement

K.N. Seth, J.—In October, 1965, a number of routes in Meerut and Bareilly Regions were amalgamated and an inter-regional route Meerut-Mowana-Miranpur-Bijnor-Lawan-Phalauda - Khatauli was created. One Ganga Saran held a permanent stage carriage permit on the said route which was to expire on 11-10-1967. On 24-7-1967 he applied for renewal of his permit. On 19-8-1967 the appellant Mithan Lal made an application for grant of a permanent stage carriage permit on the aforesaid route. The renewal application of Ganga Saran and the application of Mithan Lal were published in the U. P. Gazette dated 23-9-1967 inviting objections. On 13-10-1967 Mithan Lal filed objections to the renewal application of Ganga Saran. Objections were filed by other persons also to the renewal application of Ganga Saran. The Regional Transport Authority considered the renewal application of Ganga Saran and by its order dated May 8/10, 1968, rejected the objections and renewed Ganga Saran's permit. Mithan Lal's application for grant of a permit in his favour was rejected, Mithan Lal preferred an appeal before the State Transport Appellate Tribunal, U. P. (hereinafter referred to as the Tribunal). During the pendency of the appeal Ganga Saran died. The permit was transferred in the name of his widow, Smt.

Sumitra Devi. The Tribunal, by its order dated 7-5-1973, allowed Mithan Lal's appeal and granted one regular stage carriage permit to him on the route in question. The Tribunal did not interfere with the order of the Regional Transport Authority renewing the Permit of Ganga Saran which had been subsequently transferred in the name of his widow Smt. Sumitra Devi. The order of the Tribunal was challenged in this Court by Rahimuddin, an existing operator on the route. The learned single Judge allowed the petition and quashed the order of the Tribunal granting a permit to the appellant. The learned single Judge held that the Tribunal exceeded its jurisdiction in granting one additional permit to Mithan Lal on the reasoning that the application of Mithan Lal was tied up to the vacancy likely to arise due to the expiry of the permit of Ganga Saran and it could not be treated as an independent application. The learned Judge did not consider it necessary to decide two other questions which were canvassed in support of the petition, namely, (1) that the legal representatives of Ganga Saran were not brought on record in the appeal before the Tribunal and consequently the appeal had abated and (2) that the period of validity of the permit, which had been renewed, expired in May 1971 and hence Mithan Lal's appeal was rendered infructuous.

2. On merits the controversy centres round the question whether the application of Mithan Lal for a permit in his favour was an independent application or it was tied up to his objections to the renewal application of Ganga Saran and formed a part and parcel of the objections. It was urged that the application was made on 19-8-1967, much before the objections were filed. It had been published in the U. p. Gazette inviting objections as required by law. When the application was taken up for consideration by the Regional Transport Authority, it could be considered with regard to any vacancy that existed on that date. The application should have been considered on the test of eligibility of the applicant but the Regional Transport Authority committed an error in treating the application as tied up to the renewal application of Ganga Saran and rejected it by wrongly applying the test of comparative merits of the claimants. The error committed by the Regional Transport Authority was rectified by the Tribunal which took note of the correct position of law that Section 47 (3) of the Motor Vehicles Act, 1939, (hereinafter referred to as the Act) was not applicable to an inter regional route, as also the change in law brought about by the Motor Vehicles (Uttar Pradesh Amendment) Act, 1972, (U. P. Act No. 25 of 1972). The conclusion arrived at by the Tribunal was legally correct and it was within the competence of the Tribunal to direct grant of a permit in favour of the appellant. It was further urged that the judgment of the learned single Judge was vitiated on account of a misconception that the application of Mithan Lal had not been published and objections invited according to the provisions of the Act and on that account it could not be treated as an independent application,

3. On behalf of the contesting respondents pointed Reference was made to the Gazette notification relating to the application of Mithan Lal wherein it was stated that "the applicant has desired that this application should be considered along

with the application for P. St. P. 1121." Reference was also made to the memorandum of appeal of Mithan Lal wherein it was asserted that the appellant had also applied for grant of a fresh permit in the vacancy to be caused by the expiry of the permit of Ganga Saran and that the application of the appellant was rejected as the permit had been improperly renewed. The prayer made was that "the appellant be granted a permit in preference to respondent No. 2 in vacancy caused by the discontinuance of permit No. 1121." It was urged that the learned single Judge rightly came to the conclusion that Mithan Lal did not make any application for the grant of an additional permit on the route in question and his application was confined to the vacancy which was likely to arise on the refusal to renew the permit of Ganga Saran and in this view of the matter the Tribunal had no jurisdiction to grant any permit to Mithan Lal.

4. We do not consider it necessary to enter into the controversy whether the application of Mithan Lal was an independent application for a permit or it was tied up to his objections to the renewal application of Ganga Saran for, in our opinion, this appeal must succeed on the objection to the maintainability of the writ petition at the instance of a person who has no locus standi in the matter. It was urged by Mr. Kacker that no legal right of the petitioner, who is an existing operator on the route in question, has been infringed by the impugned order of the Tribunal and as such he is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

5. Prior to the enforcement of U. P. Act No. 25 of 1972, Section 47 of the Act provided that in considering an application for stage carriage permit the Regional Transport Authority shall take into consideration any representations made by persons already providing passengers transport facilities by any means along or near the proposed route or area. This right of representation by an existing operator has been taken away by emending Section 47 of the Act which, in so far as this State is concerned, reads as follows:--

"(i) A Regional Transport Authority shall in considering an application for a stage carriage permit, have regard to the following matters, namely:--

(a) the interest of the public generally;

(b) the advantage to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the benefit to any particular locality or localities likely to be afforded by the services;

and shall also take into consideration any representations made by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies.

(ii)"

Clauses (c), (e) and (f) of Sub-section (1) of Section 47 have been deleted and so also Sub-section (3), which provided for limiting the number of stage carriages. As a consequence of the amendment made in Section 47 the right of representation by existing operators has ceased to exist and the limit on the number of stage carriages in the region or in any specified area or in any specified route within the region has also disappeared. It may be pointed out that even before the amendment of the section, Section 47 (3) was not applicable to an inter regional route. Another significant change introduced by U. P. Act No. 25 of 1972 is that the right of appeal enjoyed by an existing operator has been taken away by amending Clause (f) of Sub-section (1) of Section 64 of the Act. As a consequence of these changes an existing operator has neither a right of representation nor he is considered an aggrieved person competent to maintain an appeal against the grant of a permit. The legislature now does not recognise any right in the existing operator with regard to the grant of a permit. The rule relating to the number of permits admittedly does not apply to an inter regional route. If an existing permit holder has no right of representation before the Regional Transport Authority or a right of appeal before the Tribunal against the order of the Regional Transport Authority and has absolutely no say in the number of permits that may be granted on an inter-regional route, he cannot assume the character of an aggrieved person entitled to maintain a petition in this Court under Article 226 of the Constitution and challenge the legality of the order of the Regional Transport Authority or the Tribunal.

6. It is well settled that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party has been infringed. The existence of the right is the foundation of the exercise of jurisdiction of the Court as laid down in *The State of Orissa Vs. Madan Gopal Rungta*, . Article 226 in terms does not describe the classes of persons entitled to apply thereunder but it is implicit in the exercise of extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, the Supreme Court ruled that the legal rights that can be enforced under Article 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the Court for relief. The same principle would apply in the case of a petition under Article 226 of the Constitution except in the case of some of the writs like habeas corpus or quo-warranto where this rule may have to be relaxed or modified. These principles were emphasised by Subba Rao, J., in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, . No case has been brought to our notice in which the principle laid down in the above noted and several other cases has been departed from. In the present case the petitioner's right to ply his vehicle has not been interfered with, and that is the only right which the petitioner can seek to protect, he cannot be held to be aggrieved by the grant of a fresh permit. The Act under which the petitioner enjoys that right does not confer any other right on him. Having no other legal right, statutory or otherwise, he cannot be heard to say that the Tribunal committed an error in

granting a permit to the appellant on a wrong assumption that his application could not be treated as tied up to his objections to the renewal application of Ganga Saran.

7. Learned counsel for the respondents invited our attention to the decision of a Full Bench of this Court in Shiv Charan Das Sharma Vs. Regional Transport Authority and Others, . In that case the question referred to the Full Bench was:--

"Is a rival operator entitled to maintain a writ petition to challenge a temporary permit granted to another operator ?"

The answer returned by the Full Bench was in the affirmative. The law as it then stood gave a right of representation to the existing operator on the route and also a right of appeal to the Tribunal in case the decision of the Regional Transport Authority was against him. The law also provided for fixation of the number of permits on the route and Section 47 was not excluded in respect of grant of temporary permits. It was in these circumstances that this Court observed that an existing operator would be an aggrieved person entitled to maintain a petition challenging the grant of temporary permits in violation of the provisions of the Act. The principle laid down in the aforesaid case cannot be applied now due to drastic changes made in the relevant provisions of the Act.

8. Certain unreported decisions of this Court were also brought to our notice but as they all relate to the Act as it stood prior to its amendment, they are of no assistance on the question of the locus standi of an existing operator in the present legal set up and need not be considered in detail.

9. Reliance was also placed on the following observation in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, .

"A personal right need not be in respect of a proprietary interest: it can also relate to an interest of a trustee. That apart in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof."

In that case the petitioner was the President of the Panchayat Samithi. The Samithi collected contributions from the villagers for setting up a Primary Health Centre and deposited the amount with the Block Development Officer. The petitioner was found authorised to act on behalf of the Committee which was in Law the trustee of the amounts collected for a public purpose. It was on these findings that the Supreme Court held that he was entitled to maintain the petition. In the present case neither the personal nor any other nature of right of the petitioner or other existing operators can be said to have been infringed or prejudicially affected by the order of the Tribunal so as to entitle the petitioner to invoke the extraordinary jurisdiction of this Court.q2

10. The decision in Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another, is also of no assistance to the petitioner. In Lakshmi Narain

Agarwal's case an existing operator was recognised as an aggrieved person in certain circumstances in respect of an order made u/s 47 (3) increasing or decreasing the number of stage carriages. The ratio of that case in our opinion is not applicable to a case where the law does not contemplate the fixation of number of vehicles and the Authorities are free to grant as many permits as they consider necessary in the interest of the public generally and the statute under which the existing operator claims his right itself denies him any say in the matter at any stage.

11. As a result of the amendments made in the Act the existing operators have ceased to enjoy the rights and privileges which they earlier had. They cannot make a grievance that due to the grant of additional permits on the route their profits would be reduced because with no limit placed on the number of permits that may be granted there cannot be even an implied assurance or guarantee of a minimum profit by operating on such a route. Their interest, if any, in the grant of a new permit is too remote and illusory. When such a person invokes the jurisdiction of the Court it is necessary first to make a scrutiny of his locus standi in order "to keep off meddlesome interlopers and professional litigants invoking the jurisdiction of the Court in matters that do not in the least concern them." The petitioner in the present case appears to be a person bearing such a character.

12. Learned counsel for the respondents urged that in view of the Government Notification No. 4251-T/XXX-4-9-P-72, dated September 24, 1975, issued by the Governor in exercise of the powers conferred by Section 43-A of the Motor Vehicles Act, 1939, read with Section 21 of the U. P. General Clauses Act, 1904, rescinding the notification dated 30th March, 1972, the right of the existing operators to object to the grant of fresh permits has revived and the petition filed by Rahim Uddin could not be thrown out on the ground that it was not maintainable. It was contended that due to the cancellation of notification dated 30th March, 1972, U. P. Act No. 25 of 1972 has ceased to be operative and the position as it existed prior to the amendment of the Act by U. P. Act No. 25 of 1972 has been restored. The notification dated 24th September, 1975, is not retrospective in its operation. Paragraph 2 of the notification provides that the consideration of applications for Stage Carriage permits pending with any Transport Authority shall stand postponed until further directions are issued in this behalf by the State Government and Paragraph 3 provides that no fresh applications for such permits shall be entertained until further directions are issued in this behalf by the State Government. It is obvious that the notification has bearing on applications which are pending before any Transport Authority or which may be made in future. It has no bearing on the applications which have been disposed of and where the permits have already been granted under the amended provisions of the Motor Vehicles Act. The permit in favour of the appellant was granted in pursuance of the order of the State Transport Appellate Tribunal dated May 7, 1973, which was competent to grant the permit in view of Sub-section (2) of Section 43-A of the Act.

13. In the result the appeal is allowed, the judgment of the learned Single Judge quashing the order of the Tribunal dated May 7, 1973, is set aside and the petition is dismissed. The parties shall bear their own costs.