

(1994) 03 SC CK 0007

In the Supreme Court Of India

Case No : Civil Appeal No. 1541 of 1994.

Mithlesh Rani and others

APPELLANT

Vs

Regional Transport Authority, Dehradun and others

RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : AIR 1994 SC 2229 : (1994) 1 BLJR 723 : (1994) 3 JT 34 : (1994) 1 SCALE 879 : (1994) 2 SCC 186 Supp : (1994) 2 SCR 316 : (1994) 1 UJ 762

Hon'ble Judges : M. M. Punchhi, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : P. Chidambaram, H.P. Dubey and Satish Vig, for the Appellant; G.L. Sanghi, Rani Chhabra, Gaurav Jain and Abha Jain, for the Respondent

Final Decision : Allowed

Judgement

B.P. Jeevan Reddy, J.—Leave granted. Heard counsel for the parties.

2. This appeal is directed against the judgment of the Allahabad High Court dated December 16, 1993 dismissing C.W.P.No. 4488 of 1992. The matter arises under the Motor Vehicles Act.

3. The appellants applied to the Regional Transport Authority, Dehradun for grant of stage carriage permits on the route Muzaffarnagar to Yamuna Bridge via Rampur Deoband-Sidki-Tapri-Saharanpur and Sarsawa (hereinafter referred to as the "said route"). While the said applications were pending before the Regional Transport Authority, some other persons challenged the constitutionality of certain provisions of the Motor Vehicles Act, 1988 by way of writ petitions under Article 32 of the Constitution of India in this Court . Writ Petition (C) No. 869 of 1990 was one of them. The petitioner in Writ Petition (C) Nos. 869 of 1990 was plying on the route Muzaffarnagar-Budhana-Khandola-Issopurteel. On February 2, 1991, this Court passed a common order in Writ Petition (C) Nos. 1110 of 1989, 869 of 1990, 740 of 1990 and 1100 of 1990 to the following effect:

These writ petitions have been listed for final hearing. In one of the writ petitions Rule has already been issued. But the others are still at the admission stage.

List the main matter for hearing alongwith the other writ petitions as third item in the regular list.

Pending hearing and disposal of these writ petitions, we direct that the State Transport Authority of the Regional Transport Authority will be entitled to consider any further applications for permits on various routes concerned in these WPs and no permit will be actually issued without obtaining the orders of this Court .

4. By its proceedings dated February 11, 1991, the Regional Transport Authority sanctioned the grant of permits to the appellants on the said route. On February 13, 1991, permits were actually issued and the appellants say they started playing.

5. Certain parties affected by this Court 's interim order dated February 7, 1991 applied for impleading themselves as respondents in Writ petition (C) No. 869 of 1990 and for modification of the said interim order. On that application, this Court passed the following order by way of clarification of the earlier order. The order reads as follows:

The applicants are allowed to be impleaded as parties in the writ petition. Cause title may be amended accordingly.

So far as the directions part of the applications are concerned we are informed that our order dated 7.2.91 is being construed as precluding the issue of permits even in cases where applications for permits have been filed and permits have been granted before 7.2.91. We wish to make it clear that our order dt.7.2.91. was only intended to preclude the grant of fresh permits on or after 7.2.91. Our order should not be construed as precluding grant of permits in respect of other matters. The main writ petition is listed for hearing on 2nd April, 1991.

6. On November 22, 1991, the four writ petitions including Writ Petition (C) No. 869 of 1990 were dismissed by this Court .

7. Meanwhile, Sri Abad Hussain S/o Mohd. Zafar, third respondent in this appeal, filed a writ petition in the Allahabad High Court questioning the grant of permits by the Regional Transport Authority by its proceedings dated February 11, 1991. The High Court entertained the writ petition and passed an interim order to the following effect on February 25, 1991: "Meanwhile the respondents shall not operate on the route in question in pursuance of the resolution dated February 11, 1991 until 25th March, 1991 unless recalled earlier". On March 26, 1991, the High Court made another order affirming the earlier order of February 25, 1991 and observing thus: "We are satisfied that the Regional Transport Authority Dehradun while issuing permits to the respondents 2 to 28 did not show due respect to the orders of the Supreme Court passed in Writ Petition (C) No. 740 of 1990 on 7th February, 1991. In these circumstances, we direct that the interim

order already passed by this Court shall continue to operate. However, we make it clear that the interim order passed by this Court shall cease to be operative in the event the order passed by the Supreme Court on 7th February, 1991 is either vacated or modified". (Respondents 2 to 28 referred to in the order are the appellants herein.)

8. After the dismissal of Writ Petition (C) No. 869 of 1990 and others by this Court on November 22, 1991, the appellants approached the Regional Transport Authority to permit them to ply in pursuance of the permits already granted to them. They submitted that in view of the dismissal of the writ petitions by this Court, there was no reason not to allow them to ply. On the basis of the said applications, it appears, a note was put up by the office to the Chairman of the Regional Transport Authority (Transport Commissioner) who by his order dated December 19, 1991, cancelled the permits granted to the appellants. Against the order cancelling their permits, the appellants approached the High Court by way of C.W.P.No. 4488 of 1992 which has been dismissed by the Division Bench by its order dated December 16, 1993. This appeal is directed against the said order.

9. Sri P. Chidambaram, learned Counsel for the appellant submitted that the grant of permit to the appellants on the said route was in no way affected by the stay order made by this Court on February 7, 1991. None of the aforesaid four writ petitions filed in this Court concerned the said route. The nearest that came to the appellant's route is the one concerned in Writ Petition (C) No. 869 of 1990. But even that route only partly overlapped the route on which the appellants were granted permits. Counsel submitted further that the order of this Court dated February 7, 1991 prohibited only issue of permits but not the grant thereof. Indeed, the clarificatory order made by this Court on March 14, 1991 clearly says that grant of permits on other route, i.e., routes other than the one concerned in that writ petition (W.P.(C) No. 869/90) was not prohibited. In any event, the said writ petitions have been dismissed on November 22, 1991. If so, the cancellation of the petitioner's permit on the ground that it was violative of the orders of the stay granted by the Supreme Court is unsustainable in law. Sri Chidambaram further submitted that the order of cancellation dated December 19, 1991 was not passed by the Regional Transport Authority but by the Chairman acting alone. Not only the Chairman acting alone is not entitled to review or cancel the orders made by the Regional Transport Authority, the said, orders were passed without even a notice to the appellants. The appellants went to the Regional Transport Authority seeking permission to ply on the route; not only they were not granted such permission, the very permits granted to them earlier were cancelled. The procedure adopted is thus wholly unfair and contrary to the principles of natural justice, says the counsel.

10. Sri G.L. Sanghi, learned Counsel appearing for the contesting respondent justified and supported the order of the Supreme Court. Counsel submitted that the order of stay granted by this Court on February 7, 1991 prohibited the grant of permits as well as consideration of any further applications for permits "on

various routes concerned in these writ petitions". Writ Petition (C) No. 869 of 1990 pertained not only of to the route Muzaffarnagar-Budhana-Khandola-Issopurteel but also to "allied routes". The petitioner in the said writ petition described the route concerned in the said writ petition in the following words: "Muzaffarnagar-Budhana-Khandola-Issopurteel and allied route (hereinafter called the extended routes comprehending extension hereinafter referred to as the route)". The orders made by this Court should be understood in the light of the said description and if so understood, it does take in the route on which the appellants were granted permits. The grant of permits on February 11, 1991 was, therefore, clearly in the teeth of the order made by this Court . If there was any doubt on the part of the Regional Transport Authority, it should have sought for clarification from this Court instead of proceeding to grant the permits. Indeed, on March 14, 1991, this Court prohibited both the grant and the issue of new permits. The dismissal of the writ petitions on November 22, 1991 does not in any manner validate an invalid and illegal act. Counsel raised yet another contention, viz., that a portion of the said route (on which the appellants have been granted permits) is overlapped by a notified route. (He has filed a route-map according to which a portion of the said route Muzaffarnagar to Yamuna bridge overlaps the notified route). Counsel placed strong reliance upon the Constitution Bench decision of this Court in *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, to contend that such a grant is totally impermissible. Counsel pointed out that this was one of the grounds taken in the order dated December 19, 1991 by which the permits granted to the appellants were cancelled. The order dated December 19, 1991 was valid order, says the counsel, and no notice to the appellants was required inasmuch as it was an order passed on the application filed by the appellants themselves. The said order was passed by the Chairman after discussing the matter with the Secretary, Regional Transport Authority and must be treated as the order of the Regional Transport Authority.

11. We are of the opinion that the order of stay granted by this Court on February 7, 1991 did not preclude the grant of permits on the said route, on which the appellants were granted permits. The said route was not the subject matter of any of the writ petitions filed in this Court . The attempt to bring in this route within the purview of the said stay order with reference to the expression "allied routes" occurring in Writ Petition (C) No. 869 of 1990 is, in our opinion, a vain one. We have perused a copy of the original writ petition. Paragraph (1) of the writ petition reads as follows:

That the Petitioner is a citizen of India and is residing in India. In the Meerut region of Meerut there is a route known as Muzaffarnagar Budhana-Khandola-Issopurteel and allied routes (hereinafter called the extended routes) comprehending extension (hereinafter referred to as the route) for plying of stage carriages within the jurisdiction of the Regional Transport Authority Meerut Region Meerut (hereinafter referred to as the RTA). The petitioner is holding a permanent stage carriage permit on the route and plying his stage carriage

vehicle in accordance with the conditions of the permit. The length of the route is 62 Kms. with 80 Kms. extensions and there are 84 buses covering the route in rotation. The strength was increased in 1983.

12. A perusal of the said paragraph would show that the expression "allied routes" referred to the extensions of the route concerned therein. The said expression cannot take in the concerned herein. No route-map was also filed in the said writ petition from which it can be said that the "allied routes" mentioned in the said writ petition included the route in question herein. Both the orders of this Court dated February 7, 1991 and March 14, 1991, therefore, did not pertain to the said route. In such a situation, there could not have been any objection to the grant of permits to the appellants on the said route. The High Court was in error in holding that the said grant was violative of the said order. Indeed, it does not say so express. All that it says is that the said grant was made without showing due respect to the orders of this Court. The more appropriate course for the High Court was to have ascertained whether the said grant was contrary to the orders of this Court or not. If it was not violative of this Court's order, the grant could not have been held to be bad. Be that as it may, we are of the opinion that the stay order made by this Court and later clarified, did in no way preclude the grant of permit to the appellants on the said route. It is also relevant to notice that the writ petitions were dismissed by this Court on November 22, 1991 and the cancellation was effected about a month thereafter.

13. In view of our opinion aforesaid, it is not necessary to go into other grounds raised by Sri Chidambaram.

14. Sri Sanghi, learned Counsel for the respondents placed strong reliance upon the decision of this Court in Adarsh Travels. Counsel submitted that inasmuch as a portion of the said route is overlapped by a notified route, no permits could have been granted on the said route. It may be noticed at the outset that this aspect has not been considered by the High Court in the order under appeal. No doubt, the Chairman of the Regional Transport Authority in his order dated December 19, 1991 does refer to this aspect but not fully. Copy of the approved scheme of draft scheme, if any, has not been placed before us. We do not know what are the terms of the scheme (s). We do not know whether the scheme excludes the private operators wholly or partly. Another and more important circumstance is that the State Transport Undertaking has not chosen to challenge the grant of permits to the appellants. It is only the Respondents 3 and 4 who are operating on a route which partially overlaps the route concerned herein that have chosen to come forward. We are not inclined to entertain the said objection at their instance, more particularly, when a copy of the scheme(s) even has not been filed. This aspect would become relevant if and when the State Transport Undertaking objects to the grant of permits to the appellants and the approved scheme or draft scheme, as the case may be, is placed before the court in support of the said objection. In the present state of facts, we decline to go into the said question.

15. For the above reasons, the appeal is allowed and the judgment and order of the Allahabad High Court impugned herein is set aside. The order of the Chairman, Regional Transport Authority dated December 19, 1991 cancelling the permits of the appellants is also set aside. There shall be no order as to costs.

16. This order does not preclude the State Transport Undertaking or the State of Uttar Pradesh from questioning the grant of permits to appellants in accordance with law, if they are so advised.