

(1975) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 770 of 1973

M.M. Asati and Brothers

APPELLANT

Vs

State Transport Appellate Authority and Others

RESPONDENT

Date of Decision : 06-03-1975

Acts Referred:

Motor Vehicles Act, 1939 — Section 68F

Citation : AIR 1976 MP 18 : (1977) ILR (MP) 894 : (1975) JLJ 641 : (1975) 20 MPLJ 478

Hon'ble Judges : Raj Krishna Tankha, J; M.L. Malik, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; V.S. Dabir, for the Respondent

Final Decision : Allowed

Judgement

Tankha, J.

The petitioner by this writ petition under Articles 226 and 227 of the Constitution is seeking a prayer for the quashing of the order dated 6-6-1970 (Annexure-A) passed by the Regional Transport Authority, Jabalpur (respondent No. 2) and the order dated 21-5-1973 (Annexure-E) passed by the State Transport Appellate Authority, Gwalior (respondent No. 1).

Brief facts leading to the present petition are that the Regional Transport Authority, Jabalpur (respondent No. 2) after determination of the scope for the grant of one return trip permanent stage carriage permit for Balaghat Lanji via Rajegaon and Kirnapur route invited applications for the purpose u/s 57(2) of the Motor Vehicles Act (hereinafter referred to as "the Act"). It may be mentioned here that the said route is intra-regional lying wholly within the State of Madhya Pradesh. In pursuance of the notification, the petitioner and two others applied for the fresh grant and their applications were published in accordance with law u/s 57 (3) of the Act. The respondent No. 3, Madhya Pradesh State Road Transport Corporation did not furnish any objection to the grant of stage carriage

permit u/s 57 (4) of the Act. On 6-6-1970, when the applications came up for hearing before respondent No. 2, the respondent No. 3 raised a preliminary objection to the effect that the authority has no jurisdiction to grant permit to a private operator on the route as a Scheme No. 66 prepared by respondent No. 1 for inter-statal route Balaghat-Amgaon lying within the territories of the States of Madhya Pradesh and Maharashtra has been published as approved scheme u/s 68-D of the Act which was coming into operation with effect from 15-7-1970 and the route for which applications were being considered although lay exclusively within the State of Madhya Pradesh was a part of the said inter-statal route. The objection prevailed with the authority and all the applications for the fresh grant were rejected vide order dated 6-6-1970 (Annexure-A). Out of the three applicants, only the petitioner preferred appeal No. 333 of 1970 before respondent No. 1. The appellate authority dismissed the appeal on the ground that the order of respondent No. 2 would be deemed to be u/s 68-F (2) of the Act, and, therefore, no appeal lay against such an order in view of the provisions of Section 68-F (3) of the Act. The petitioner has now come up before this Court challenging both the orders passed by the transport authorities.

Learned counsel appearing for the petitioner contended that the Scheme No. 66 as approved and published relates to inter-statal route and operation by private operators on the route lying exclusively within the State of Madhya Pradesh has been saved. That is to say, in other words the scheme does not relate to intra-regional route like the present one-Balaghat-Lanji, which lies exclusively within the State of Madhya Pradesh. That being so, both the transport authorities committed an error in the exercise of their jurisdiction in refusing to consider the application of the petitioner on merit but rejecting the same on the basis that in view of the Scheme No. 66 having been approved and coming into operation with effect from 15-7-1970 no stage carriage permit can be granted for the route to a private operator. On the other hand learned counsel for the respondent No. 3 contended that the orders passed by the transport authorities are correct. According to him, although the Scheme No. 66 is with regard to inter-statal route, it excludes operation by private operators on the basis of a fresh grant by the respondent No. 2. The scheme has- allowed operation of the route by the existing private operators only.

Having heard learned counsel of the parties, we are of opinion that the present petition has substance and must be allowed. The first point that arises for consideration is the determination of the nature of the Scheme No. 66. All that we have to see is what the scheme says? Whom does it exclude? We are supported for taking this approach by a decision of the Supreme Court in D.M. Thippeswamy Vs. The Mysore Appellate Tribunal, Bangalore and Others, . In this connection, we will advert to the order dated 5-5-1967 (Annexure-D) passed by the Special Secretary (Home), Government of Madhya Pradesh, u/s 68-D (2) of the Act, who has approved the scheme. The relevant paragraphs of the said order read as under:--

"This scheme relates exclusively to seven inter-statal routes of Tabalpur Division, as given in clause 2 of the Scheme. The M. P. State Head Transport Corporation (hereinafter called Corporation) has not included any intra-statal route partially overlapping the aforesaid inter-statal routes. The neighbouring State territory involved is Maharashtra."

"The exclusion of M. P. operators who run only within the M. P. territory but overlap the aforesaid inter-statal routes is discriminatory. For instance, the route from Balaghat to Lanji lies wholly within the interstatal route Balaghat-Amgaon and yet the operator concerned will continue to ply while the inter-statal operator will have to go."

The scheme was published in the M. P. Raj-patra dated 21-2-1970 as the approved scheme u/s 68-D (3) of the Act (Annexure-D). The relevant paragraphs and 5 read as under:

"The nature and extent of the State Road Transport Service to be provided on the routes mentioned in Clause (2) above, are specified in the schedule annexed hereto, The provision of the Transport Services otherwise than under the scheme is prohibited except that (i) the vehicles of Maharashtra State Nominees plying under the terms of Reciprocal Transport Agreement between the States of Madhya Pradesh and Maharashtra covering the routes or portions of the routes mentioned in Clause (2) above, (ii) the vehicles of Maharashtra State operators plying on the routes in Maharashtra State only covering portions of the routes mentioned in Clause (2) above, and (iii) the vehicles of Madhya Pradesh State operators plying on the routes in Madhya Pradesh only, not included in the scheme, shall be allowed to ply as before,"

"All Road Transport Services will subject to the provisions made in the subsequent clauses, be provided by the Madhya Pradesh State Road Transport Corporation "State Transport Undertaking" exclusively on these inter-statal routes except as provided in Clause (3) above."

A bare perusal of the paragraphs of the order and the published scheme make it quite clear that the scheme does not relate to intra-regional route lying within the State of Madhya Pradesh and the route Balaghat-Lanji was accordingly excluded from its operation. It would also be incorrect to say that the route Balaghat-Lanji has been saved to the extent of the existing permit holders only as contended on behalf of the respondent No. 3. We are unable to see any distinction between the existing private operators or those who may be granted fresh permits on the increase of the scope on the route. Even in the case of renewal of permits of an existing private operators, free applicants can compete and can secure fresh grant in place of the one seeking renewal of his permit u/s 58 of the Act. Therefore, if the route is not of exclusive operation by the respondent No. 3 and is excluded from being taken over under the operation of the scheme, then there is no restriction on the powers of the Regional Transport Authority (respondent No. 2 to grant a fresh stage carriage permit to a new

private permit holder. We are supported in our view point by a decision of the Supreme Court in *Samrathmal Keshrimal Agarwal, Bus Operator Vs. Regional Transport Authority, Indore and Another*, which has been relied upon by a Division Bench of this Court in the *M. P. State Road Transport Corporation v. The R. T. A. Raipur*, Misc. Petn. No. 157 of 1970, D/- 16-7-1971 (Madh Pra).

Since we have held above that the scheme has no application to Balaghat-Lanji route, we are constrained to say that both the transport authorities completely misdirected themselves in appreciating the purport of the scheme which resulted in the wrong conclusion that the scheme is applicable for the route Balaghat-Lanji and, therefore, no fresh permit could be granted for the said route to any private operator and on that ground the appellate authority declined to entertain the appeal preferred by the petitioner. It is no doubt true that if the Regional Transport Authority passes an order or takes any action u/s 68-F (2) of the Act, no appeal shall lie against such an order or action in view of the provisions of Section 68-F (3). In the present case, the order passed by the Regional Transport Authority was *prima facie* illegal and exhibited an error in the exercise of its jurisdiction. Ordinarily we would have remanded the case to the appellate authority for consideration of the appeal on merits but we deem it proper to remit the application of the petitioner to the Regional Transport Authority (respondent No. 2) for consideration afresh as his application has not been considered at all on merit by both the authorities.

For the reasons stated above, the petition is allowed with costs and we issue a rule nisi directing the Regional Transport Authority, Jabalpur (respondent No. 2) to hear the petitioner's application alone on merit together with objectors to his application in accordance with law and then decide his claim for the grant. Counsel's fee Rs. 150/- shall be borne by respondent No. 3, if certified as also the costs. The outstanding amount of security shall be re-funded to the petitioner.