

(1991) 08 AHC CK 0039

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2582 of 1990

Mohammad Javed

APPELLANT

Vs

The State Transport Appellate Tribunal, U.P., Lucknow and others

RESPONDENT

Date of Decision : 24-08-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 43(3), 48, 48(3), 72(2)

Citation : AIR 1992 All 38 : (1992) 1 AWC 71

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : V.S. Shukla, for the Appellant;

Final Decision : Dismissed

Judgement

1. Learned counsel for the petitioners in these writ petitions have stated that these cases involve the same points and can be disposed of by one common judgment. With the consent of the learned counsel for the parties Writ Petition No. 2582 of 1990, Mohammad Javed v. State Transport Appellate Tribunal, U.P., Lucknow and others has been made the leading case and only the facts of the leading case are given in this judgment.

2. Petitioner is a state carriage operator. The Regional Transport Authority, Moradabad (hereinafter referred to as the RTA) vide its order dated 11-2-1988 imposed a model condition of ten years in the stage carriage permits with the result that the vehicle under stage carriage permit cannot be more than ten years old. The RTA for that purpose granted six months" time to the stage carriage operators for replacing the vehicle, if it is more than ten years old from the date of registration. Against this order an appeal was filed before the State Transport Appellate Tribunal) (hereinafter referred to as the Appellate Tribunal), which has been dismissed by order dated 30-9-1988. Against these two orders of the RTA and the Appellate Tribunal petitioner has filed this writ petition.

3. Learned counsel for the petitioners has made two submissions, namely, (i) RTA has imposed the condition without giving thirty days notice to the petitioners, and (ii) life of stage carriage is much more than a mini bus and ten years model condition is not justified.

4. Section 72(2) of the Motor Vehicles Act, 1988 gives powers to the RTA to grant stage carriage permits of specified description. This provision is analogous to S. 48(3) of the old Motor Vehicles Act. A Division Bench of this Court in the case of Krishna Gopal v. R.T.A. 1990 AWC 1054, has held that power to grant stage carriage permits of "specified description" gives the authority to the R.T. A. to fix a model condition for stage carriage. While so holding, reliance was placed by this Court on the case of Subhash Chandra and Others Vs. State of U.P. and Others, The position that the transport authorities have power to impose model condition in stage carriage permits having been settled, the same has not been challenged before me.

5. u/s 48 of the old Act transport authorities have power to impose all or any of the conditions mentioned therein in the stage carriage permit. One of the conditions prescribed by Section 48(3)(xxi) of the old Act, so far as it is relevant, is as follows :--

"48(3) :

(xxi) that the Regional Transport Authority may after giving notice of not less than one month :--

(a) vary the conditions of the permit :

(b) attach to the permit further conditions".

It is on the aforesaid clause of Section 48(3) that the learned counsel for the petitioners has placed reliance in support of his first submission. It is true that before modifying or changing the conditions of permit, the RTA is required to give at least one month notice to the operators. In the instant case by the impugned order the RTA has passed a general order for imposing ten years model condition in the stage carriage permits of its region and by the same order has given six months" time to the stage carriage operators to replace their vehicles if they are more than ten years old. Notices in pursuance of the aforesaid order were issued to the petitioners also giving them six months" time to replace their vehicles. They were thus granted six months" time and during this period it was open to the petitioners to file objections before the R.T.A. against the imposition of the aforesaid condition with a request not to impose that condition in their permits. In their objections the petitioners could have placed material before the R.T.A. against the enforcement of the said condition against the operator of a particular route for various reasons. Although, the order of the RTA or its notice have not required the operators to file objection against model condition but such a right to file objection against the general order is inherent in the operators as they are going to be affected thereby. If such an objection is filed, the RTA is bound to

decide the same on merits in accordance with law. Even if any condition has been validly imposed in the permits, it is always open to an operator to move the Transport Authority to delete or modify that condition or to add any new condition due to the change of the circumstances on account of which the old condition might have become redundant or out of date. If such an application made, the Transport Authority has got to decide it on merits in accordance with law.

6. There is nothing on the record to show that the petitioners approached the RTA to withdraw or modify its order on merit. They were given more than one month time and the provisions of Section 48(3)(xxi) stand complied with. A Division Bench of this court in the case of Mohammad Saleem v. R.T.A. 1986 ALJ 1316, has repelled the similar submission on the ground that as operators have been granted six months" time to replace their vehicles, they had ample opportunity to approach the R.T.A. for withdrawal of this condition. Relevant extract from the said judgment is reproduced below :--

"In the first place we find that the petitioners in each of these cases were granted six months" time to replace their vehicles which were more than ten years old. If the petitioners had some objection to the imposition of this condition they had ample time to approach the Regional Transport Authority for the withdrawal of this condition. The submission hence lacks any real substance and seems to be formalistic and hyper-technical in the facts of the present case. Secondly we have heard learned counsel for the petitioners on merits as regards the validity of the impugned condition. This Court having rejected the petitioners" argument on merits, there hardly remains any substance in the objection that the petitioners were denied the opportunity contemplated under Clause (xxi) of Section 43(3) of the Act."

The first submission of the learned counsel cannot be accepted.

7. It is true that even if the RTA had jurisdiction to impose model condition, its order has to be fair and reasonable and not arbitrary and discriminatory. In this connection, learned counsel for the petitioners have invited my attention to certain paragraphs of the writ petition. Wherein it has been stated that stage carriage has more life than a mini bus and its cost is also more than a mini bus. These allegations are vague as no facts and figures have been given by the petitioners. It is true that a bus may cost more than a mini bus but no presumption can be drawn about the life of these vehicles. On the basis of the aforesaid allegations, the impugned orders cannot be declared to be bad. There is no material on record to show that the order of the R.T.A. is arbitrary, unfair, unreasonable or illegal. In this connection it may also be mentioned that seven years" model condition of a mini bus was upheld by the Supreme Court in the case of Subhash Chandra (supra).

8. The writ petitions are accordingly dismissed. There shall be no order as to costs.

9. Petitions dismissed.