
(1979) 11 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 104, 111 and 857 of 1979 and 10372, etc. of 1978

Mohammed Wasim Beg and Others

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 02-11-1979

Acts Referred:

Motor Vehicles Act, 1939 — Section 51(2), 59(2), 68
Uttar Pradesh Motor Vehicles Rules, 1940 — Rule 63

Citation : AIR 1980 All 112 : (1982) CriLJ 1640

Hon'ble Judges : K.N. Singh, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

B.D. Agarwal, J.—In this group of writ petitions, the petitioners, who are holders of contract carriage permits in respect of Mini Buses, have challenged the validity of the condition in the permits directing replacement of vehicle of a particular model and also the validity of the order dated Mar. 15, 1978 issued by the State Transport Authority and the notification dated July 7, 1978 published in U. P. Gazette dated July 15, 1978 notifying that no further replacement would be granted in respect of Mini Bus permits.

2. The petitioners were granted con-tract carriage permits in respect of mini buses in the year 1972-73. Condition No, 18 of the permit was that the vehicle covered by the permit shall not be more than four years old counted from the date of registration at any time during the validity of the permit. In 1975, this period of four years was increased to six years and since after September 20, 1978, it has been increased to seven years. The Transport Authorities have been permitting replacement of vehicles to those persons who wanted to replace their vehicles by better and high model vehicles.

3. On March 15, 1978, the State Transport Authority passed a resolution that in

view of a large number of cases of over-loading and unauthorised plying of mini buses, it would not be in public interest to grant replacement in respect of existing mini buses operating under the contract carriage permits in the State. In pursuance of that resolution, a notification dated July 7, 1978 was issued and published in the U. P. Gazette July 15, 1978 under the purported exercise of power under Rule 63(b) (i) of the U. P. Motor Vehicles Rules, 1940. By means of this notification a decision to reduce the number of mini buses plying on contract carriage permits was notified. It was also stated thereunder that this notice would be operative after the expiry of 30 days of the date of publication and that no replacement would be allowed in respect of mini buses plying under contract carriage permits.

4. Condition No. 18 of the Mini Buses Contract Carriage permits issued to the petitioners reads thus:

"That the vehicle covered by the permit shall be not more than four years old counted from the date of registration at any time during the validity of the permit".

The period of four years was subsequently increased to six years and ultimately to 7 years since after September 28, 1978, as already mentioned above. The case of the petitioners is that such a condition could not be imposed in law.

5. It was submitted by the learned Counsel on behalf of the petitioners that this condition is illegal. Reliance was placed upon a Division Bench decision of this Court in Ramesh Chandra Tiwari v. State Transport Authority, U. P. Civil Misc. Writ Petn. No. 7317 of 1975, decided on 17-5-1978.*

6. Section 49 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) provides for the making of an application for contract carriage permit. Section 50 provides for the procedure for considering such an application Section 51 deals with the grant of contract carriage permits. Sub-section (2) of this section lays down that the B. T. A. if it decides to grant contract carriage permits, may, subject to any rules that may be made under the Act, attach in the permit any one or more of the conditions enumerated in Clauses (i) to (x). Clause (x) refers to any other conditions which may be prescribed. The R. T. A. thus could grant contract carriage permit subject to any rules that may be made under the Act. In fact, Clauses (x) referred to above also empowers the authority to impose any other condition which may be prescribed. Clearly, therefore, Section 51 confers wide powers on the Regional Transport Authority to grant contract carriage permits and impose conditions. There is nothing in the rules which, to our mind, restricts the powers of the authority against the imposition of condition in the nature of condition No. 18. The entire object in imposing condition No. 18 was to ensure reliability, efficiency of the service and safety of the travelling public. If it be held that such a condition could not be imposed, it would mean that a person who has obtained a permit would be free to provide service by plying vehicles which are not in a position to provide efficient and reliable service to the

travelling public. Imposition of a condition ensuring better service conditions cannot but be said to be in public interest. Vehicles of later models obviously are expected to provide better service as compared to older models where chances of break down and inefficiency are comparatively much more.

7. In the case of Ramesh Chandra Tiwari (supra) the Court was considering the question as to whether denial of certificate of fitness u/s 38 of the Act, only because vehicles were older than four years, was good ground. In the instant case, the question for consideration is a different one. The ratio of that decision does not apply to the present case. In Masi Ullah Vs. State Tribunal Appellate and Another, upon which reliance was also placed in the case of Ramesh Chandra Tiwari (supra), the question for consideration was as to whether the expression "specified description" occurring in Section 48 (3) of the Act includes the case of mere description that the vehicle may be of a particular year's manufacture. It was held that the expression "specified description" would not include such a case and hence such a condition could not be prescribed u/s 48 (3) of the Act. This, not being the question involved for consideration in the present case, the decision in the case of Masi Ullah (supra) has no application.

8. We are, therefore, unable to accept the submission made on behalf of the petitioners that condition No. 18 is invalid.

9. Learned counsel for the petitioners, then submitted that Rule 63 (b) (i) is ultra vires of the Act, consequently the resolution of the S. T. A. and also the notification dated March 7, 1978, Issued under the purported exercise of powers under the said rule are without authority of law. We have considered this submission and we find merit in the same. Sub-section (1) of Section 58 of the Act lays down that contract carriage permits shall be effective without renewal for such period not less than 3 years and not more than 5 years, as the R. T. A. may specify in the permit. In D. Nataraja Mudaliar Vs. The State Transport Authority, Madras, the Supreme Court observed that a permit holder has right of renewal unless it is shown that out-weighting reasons of public interest lead to a contrary result, It was further observed, "permits are not bounty but right restricted reasonably by Motor Vehicles Act. Sub-section (2) of Section 59 of the Act enables a holder of a permit, with the permission of the authority by which permit was granted, to replace any vehicle covered by the permit by any other vehicle of the same nature. This provision, therefore, entitles the holder of a permit to replace one vehicle covered by the permit by any other vehicle so long as that vehicle is of the same nature. In Clause (i) to Sub-rule (b) of Rule 63 reads thus:--

"(b) Upon receipt of an application under Sub-rule (a) Regional Transport Authority may in its discretion reject the application, (i) if it has previous to the application given reasonable notice of its intention to reduce the number of transport vehicles of that case generally or in respect of the route or area to which the permit applies, or....."

This clause empowers the R. T. A. to reject an application for replacement, if prior to the application R. T. A. has given reasonable notice of its Intention to reduce the number of transport vehicles of that class generally. By this rule, therefore, another ground for rejection, not provided for in the Act is contemplated. Though, according to the provisions of the Act referred to above permit is to continue for the period it is granted but under the rule, period can be curtailed by a decision taken to reduce the number of transport vehicles of a particular nature. The rule permits ground of rejection of the application for replacement, though not contemplated or provided by the Act. Section 68 of the Act empowers the State Government to make rules for purposes of carrying into effect the provisions of Chap. IV of the Act. Rule 63 (b) (i) cannot be said to be a rule made for the purposes of carrying into effect the provisions of Section 59 (2) of the Act which deals with replacement. This rule travels beyond the Act. It is well settled that rule making authority has no plenary power, it has to act within the limits of the powers granted to it. Since the rule falls outside the purview of rule making power, it is ultra vires of the Act.

10. Since Rule 63 (b) (i) is ultra vires of the Act, the resolution dated Mar. 15, 1978 and also the notification dated July 7, 1978 of the S. T. A. issued in purported exercise of powers under the rule, also fall. The question as to whether notice as required by the rule was given prior to the making of application for replacement, need not be gone into since rule itself has been held to be invalid,

11. We, therefore, hold that condition No. 18 of the conditions to the contract carriage permits in respect of the Mini buses is a valid condition. We further hold that Rule 63 (b) (i) of U. P. Motor Vehicles Rules, 1940 is ultra vires of the Act and the order dated Mar. 15, 1978 and the notification dated July 7, 1978 (published in U. P. Gazette dated July 15, 1978) of the State Transport Authority are without jurisdiction.

12. We allow the writ petitions in part. Condition No. 18 of the Conditions to the contract Carriage Permit in respect of the Mini Buses is held valid, but the order dated March 15, 1978 issued by the State Transport Authority and the notification dated July 7, 1978, published in U. P. Gazette dated July 15, 1978, are quashed. The parties shall bear their own costs.