
(1961) 02 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 201 of 1960

New Jabalpur Transport (Private) Ltd.

APPELLANT

Vs

State Transport Appellate Authority and Others

RESPONDENT

Date of Decision : 16-02-1961

Acts Referred:

Motor Vehicles Act, 1939 — Section 48(3), 59(3), 59A, 64

Citation : AIR 1961 MP 367 : (1961) JLJ 713 : (1961) 6 MPLJ 672

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : N.M. Sapre and R.K. Tankha, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

Pandey, J.

This petition under Articles 226 and 227 of the Constitution is directed against several orders passed by the Transport Authorities constituted under the Motor Vehicles Act, 1939, which, for brevity, would hereinafter be called the Act.

By an order dated 25 March 1953 (Annexure III), the Regional Transport Authority, Raipur (respondent 2), rejected the petitioner's objections and granted to the Raipur Transport Co. (Private) Ltd. (respondent 4) a stage carriage permit for service between Raipur and Mandla with a direction that the timings would be regulated by the Secretary-Member separately. This grant was made on the respondent 4 undertaking to surrender its alternate day stage carriage permit for service on a part of the route, namely, Kawardha to Mandla.

It appears that the alternate day permit was subsequently surrendered. By an order dated 28 March 1958, the Regional Transport Authority, Jabalpur (respondent 3) granted to the petitioner a stage carriage permit for service between Madia and Kawardha, in regard to which that authority subsequently fixed the timings as under:

Mandla-Kawardha 7-30 A. M. to 12-30 P. M. Kawardha-Mandla 8-30 A. M. to 1-30 P.M.

By an order dated 21 June 1958 (Annexure III-A),. the respondent 2, without hearing the petitioner, fixed the timings for the Raipur-Mandla service asunder :

Raipur-Mandla 6 A. M. -- 3 P. M. Mandla-Raipur 7 A. M. -- 4 P. M.

When the permit for the Raipur-Mandla route came up, as required by Section 63 of the Act, for counter-signature of the respondent 3, it was objected to on the ground that the timings which were fixed without giving to the petitioner any hearing, clashed with the timings fixed for the Mandla-Kawardha route. However, on 27 September 1958, the petitioner was persuaded to withdraw that objection subject to the condition that the Regional Transport Authority, Raipur should be asked to hear other operators on the route before finalising timings.

It transpired that the respondent 2 declined to reconsider the matter with the result that, on being moved again, the respondent 3 found itself helpless in the matter and observed on 17 December 1958 that, if, the petitioner felt aggrieved by the order, it could appeal against it. It may be mentioned here that respondent 3 had actually counter-signed the permit for the Raipur-Mandla route on 27 September 1958 (Annexure VIII). In the meanwhile the petitioner had already filed an appeal against the grant of the permit for the Raipur Mandla route and urged, among other grounds, that the timings were fixed without giving a hearing to the petitioner and caused to it great prejudice.

By an order dated 11 January 1960 (Annexure XI), the State Transport Appellate Authority (respondent 1) dismissed the appeal inter alia on the ground that "an appeal against timings is not tenable." The petitioner has moved this Court for issuance of writs of certiorari to quash the orders of the Transport Authorities exhibited as Annexures III, III-A VIII and XI.

The main grievance of the petitioner is that it was not heard before the respondent 2 fixed the timings for the Raipur-Mahdla route. According to the learned counsel for the petitioner, the time table fixed at the time of grant of a stage carriage permit constitutes a condition attached to it and any person, who has opposed the grant and who is aggrieved by the condition, is entitled to appeal against it u/s 64 (f) of the Act. Shri Y. S. Dharmadhikari for respondent 4 has contested the correctness of this proposition and relied upon *M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others*, , *Anandram v. Damodardas* AIR 1956 VP 44, *Jairamdas Vs. Regional Transport and Others*, , *P.C. Oommen (Molly Motors) Vs. Road Traffic Board, Kottayam and Another*, , *N. Gopalan Vs. Central Road Traffic Board, Trivandrum*, and *Sukhdeo Kumar Vs. State of Bihar and Others*, . In regard to these authorities, it is sufficient to say that, except the Kerala and Patna decisions, they dealt with cases arising u/s 48 of the Act as it stood before the amendment introduced by Act 100 of 1956. The learned Judge, who decided the Kerala cases, subsequently took the contrary view. The Patna High Court has, however, held that there is no material difference on this point between the

language of the amended and the unamended section. With respect, we are unable to share that opinion.

Sub-section (S) of Section 59 of the Act lays down what shall be the general conditions of every permit. Sub-section (3) of Section 48 provides for the conditions any one or more of which may be attached to the permit. The conditions which have a material bearing on the question before us are as under :

"(iii) that copies of the time table of the service or of particular stage carriage approved by the Regional Transport Authority shall be exhibited on the vehicles and at specified stands and halts on the route or within the area:"

..... "(iv) that the service shall be operated within such margins of deviation from the approved time table as the Regional Transport Authority may from time to time specify;"

..... "(xx) that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority;"

"(xxi) that 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;"

In the first place, the conditions enumerated in Sub-section (3) of Section 59 are not exhaustive and other conditions in pari materia may be attached. Secondly, if a time table is attached to a permit and it is further provided therein that it must be adhered to without any deviation, the running of the stage carriage according to the time table would be a condition of the permit. Any other view would enable the operators to disregard the time table without attracting Section 42 or Section 60 of the Act. Finally, one has to look to Part A of the permit itself to ascertain the conditions attached thereto because, as required by the newly added Section 59-A of the Act, all those conditions must be incorporated in it.

Even under the unamended Section 48 of the Act, a Division Bench of this Court indicated in AIR 1944 89 (Nagpur) that the time table formed one of the conditions of the permit. Further the view we have taken about the relevant provision in the amended Section 48 finds support from *In Re: Govind Rao, and K.M. Thomas Vs. State Transport Authority, Kerala and Others*, .

In the view we have taken of this matter, the respondent 1 was in error in holding, without considering the conditions incorporated in Part A of the permit, that an appeal against timings was untenable. The impugned order dated 11 January 1960 must, therefore, be quashed. However, it will be open to the respondent 1 to consider and decide the appeal afresh in the light of what we have said in the foregoing paragraphs.

The petition succeeds and is allowed to this extent that the order of the State

Transport Appellate Authority dated 11 January 1960 is quashed. In the circumstances of this case, the parties are directed to bear their own costs. The security amount shall be refunded.