

(1992) 05 AHC CK 0054

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19148 of 1989

Om Prakash Gupta

APPELLANT

Vs

The Regional Transport Authority, Meerut and others

RESPONDENT

Date of Decision : 18-05-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 64(1)
Motor Vehicles Act, 1988 — Section 2(38), 90

Citation : AIR 1992 All 291 : (1992) 3 AWC 1610

Hon'ble Judges : S.D. Agarwala, J; M. Katju, J

Bench : Division Bench

Advocate : L.P. Naithani, M.M. Ghildiyal and C.P. Ghildiyal, for the Appellant;
Standing Counsel, Ravi Kant and H.P. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition and the connected writ petitions are being disposed of finally by a common judgment as common questions of law and fact are involved.

2. The petitioner O. P. Gupta held a permanent stage carriage permit on the Meerut - Viderkuti - Bijnore route. Subsequently in 1965 five more routes were included in the permit of the petitioner, vide Annexures 2 and 3 of the rejoinder affidavit of S. C. Gupta. A map showing these routes has been filed as Annexure 1 to the writ petition and Annexure 1 to the rejoinder affidavit of S. C. Gupta, though the accuracy of these maps is disputed by the respondents who have filed their own map as Annexure 1 to the counter-affidavit of Wali Mohammed. A perusal of the maps filed by the petitioner gives an indication that while the petitioner's original routes which were granted to him subsequently in 1965 was Meerut-Bijnore via Ramraj.

3. Apart from the Meerut-Bijnore route there is also a Muzaffarnagar-Bijnore route. This latter route was notified under Section 68-D(3) on 20-10-62 but one

R. N. Sharma challenged it in a writ petition and by the judgment dated 9-9-65 the scheme was, quashed so far as Sharma was concerned.

4. The petitioner's case is that there are two routes from Meerut to Bijnore. The first route is via Viderkuti, and this was the original route which the petitioner had prior to 1965. Subsequently when the petitioner was granted 5 more allied routes (vide Annexure RA-2 to the rejoinder affidavit of S. C. Gupta) a new route for going from Meerut to Bijnore was created, and this was via Ramraj, Mirapur and Deval. The petitioner's case further is that after the notification of the Muzaffarnagar-Bijnore route the petitioner would not have been able to ply on this second route from Meerut to Bijnore (i.e. via Ramraj, Mirapur and Deval) because part of this route i.e. between Deval to Bijnore was a portion of the nationalised Muzaffar-nagar - Bijnore route. However, since the scheme u/s 68-D (Annexure-2 to the writ petition) had a saving clause in respect of existing operators, hence the petitioner could continue plying in view of the judgment of the Supreme Court in Ram Krishna Verma and Others Vs. State of U.P. and Others,

5. The Bijnore-Vedurkuti portion was a part of the Bijnore-Chandpur route, and this route was nationalised in 1982 to the total exclusion of existing operators (vide Annexure 3 to the writ petition). Hence now the only way to go directly from Meerut to Bijnore is via Ramraj and Mirapur.

6. The grievance of the petitioner is that permits have been granted to respondents 4 to 24 on the Meerut-Bijnore route, and the petitioner's allegation is that this is illegal as a portion of this route i.e. from Deval to Bijnore is a portion of the nationalised Muzaffarnagar-Bijnore route. Consequently, it is urged the grant of permit to the respondents was illegal vide Ram Krishna Verma and Others Vs. State of U.P. and Others, . The petitioner's counsel Sri L. P. Naithani has submitted that up to 1985 the Meerut-Ramraj-Mirapur-Bijnore route passed over a pantoon bridge over the Ganga river at Raolighat but in 1985 a pucca bridge was built at Deval, and since then the buses have been passing over this pucca bridge at Deval. Unfortunately Raolighat is not shown in the map filed by the petitioner as Annexure-1 to the writ petition, but it is shown in Annexure 1 to the counter-affidavit of Wali Mohammad.

7. The difference between the map filed by the petitioner and the one filed by the respondents is striking. The former map by totally omitting Raolighat gave the impression that Deval and Raolighat are at one and the same place, or are separated by only a short distance. The latter map, on the other hand, gives a totally different picture, and makes it appear that Raolighat and Deval are two altogether different places separated by almost 10 kms. vide para 10 of the counter-affidavit of Ram Kumar.

8. The route which was nationalised by the notification u/s 68-D in 1962 was the Muzaffarnagar-Bijnore route. Since admittedly this route passed through Raolighat up to 1985 we must regard it as the Muzaffarnagar - Raolighat -

Bijnore route since a route is a road connecting two termini vide S. 2(38) of Motor. Vehicles Act, 1988. This nationalised route never passed through Deval. The argument of Shri Naithani, however, is that in view of the Division Bench decision of this court in *Jata Motor Transport v. R.T.A.*, Special Appeal No. 883 of 1967 decided on 17-9-1968 the change of the route by making the buses pass through Deval instead of Raolighat is not a substantial change and the route continues to remain as before. On the other hand, the submission of Shri Sudhir Chandra, learned counsel for the respondents, who has relied on the map annexed to the counter-affidavit of Wali Mohammad, is that the Meerut-Bijnore route never passed through Raolighat. Shri Sudhir Chandra has urged that the petitioner has presented a totally distorted picture of the whole situation. According to him the correct position is depicted by the map annexed to the counter-affidavit of Wali Mohammad.

9. Shri Sudhir Chandra has submitted that the Muzaffarnagar-Bijnore route became nationalised in 1962 and the entire scheme was not struck down by this Court but only in respect of one operator Sharma. Hence he has submitted that even the petitioner was not an existing operator in 1962 in respect of the Meerut-Bijnore route passing through Ram-raj, and hence the petitioner too will be excluded if his argument is accepted.

10. In paras 7 and 10 of the counter-affidavit filed by Ram Kumar on behalf of the R. T. O., Meerut it is alleged that Muzaffarnagar-Bijnore route does not pass through Deval, but through Raolighat, which is about 10 kms. from Deval. This position has been further clarified in para 12 of the said counter-affidavit.

11. In para 4 of the supplementary counter-affidavit of S. K. Jain it is stated that the scheme u/s 68-D of the Act was in, respect of the Muzaffarnagar-Bijnore route via Bhopa, Morna and Raolighat. When a pucca bridge was built at Deval in 1985 existing operators sought variation in their permits by inclusion of a fresh patch passing through Morna, Bhera-Sadat and the Barrage (Deval), and this variation was granted. It is alleged in para 5 that this new patch viz. Morna-Bhera-Sadat-Barrage-Bijnore is not subject to any scheme under S. 68D- it is stated that the scheme of 1962 was not modified to cover this patch, and it was a case of diversion and not realignment of the route.

12. In another supplementary counter-affidavit of S. K. Jain it has been alleged in para 4 that the R.T.A., Meerut has been issuing notices to the petitioner to stop plying via Deval. Annexure-1 to this affidavit is copy of a notice of the R.T.A. dated 12-11-90 in which it is stated that the route through Deval is a new route and the petitioner has no permit over this route.

13. In a third supplementary counter-affidavit filed by S. K. Jain it has been alleged in para 5 that prior to 1985 there was no route from Meerut to Bijnore which included the portion Mirapur to Bijnore. In para 9 of the affidavit it is alleged that the 1962 scheme was quashed only in respect of R. N. Sharma.

14. In the rejoinder affidavit of S. C. Gupta it has been alleged in para 4 that

even prior to the building of the barrage in 1985 the route Meerut - Ramraj - Bijnore passed through Deval. This allegation is reiterated in paras 15 and 16 of the said affidavit. A map has been annexed as Annexure-1 to the affidavit and this map shows that the route from Meerut to Bijnore via Ramraj and Meerapur passed through Deval. Annexure-3 to this affidavit is the amended permit of the petitioner showing inclusion of the alleged routes.

15. With the supplementary rejoinder affidavit of Vineet Kumar an order of the State Transport Appellate Tribunal dated 19-1-1991 is annexed as Annexure-1. In this order it is stated that in para 7 that after 1985 all the buses pass over the pucca bridge at barrage, and no traffic now passes over the old bridges at Raolighat and Tarapur. In para 8 of this affidavit it is slated that it is for the R.T.A. to consider whether new permits or extension of existing permits should be granted.

16. A counter-affidavit has also been filed on behalf of U. P. State Road Transport Corporation on the direction of this Court dated 27-1-1992 in which the route on which the Corporation buses are said to be plying have been mentioned. There is a controversy on this point too as the respondents have filed a time table showing a different route of the Corporation buses. A map has been annexed with the affidavit and this gives the impression that the Morna-Bijnore stretch of the notified Muzaffarnagar-Bijnore route has been abandoned, and now the buses turn downwards from Morna towards Bhera Sadat and Deval and then cross the barrage on the way to Bijnore. The stretch Morna-Bhera Sadat-Deval-Bijnore was allegedly never part of notified route, and prima facie it seems that there is no ban to permit being granted over this stretch.

17. The above discussion shows that this case involves highly disputed questions of fact on several important points, and it is not possible for this court to decide the correctness of these factual controversies in writ jurisdiction. Whether was on the notified Muzaffarnagar-Bijnore route prior to 1985, whether there was a mere realignment or a substantial diversion on the construction of the pucca bridge, which of the maps filed before us (if any) is correct, whether the 1962 scheme was quashed entirely or only in respect of R. N. Sharma, what is the actual route taken by the UPSRTC buses, whether prior to 1985 the only route from Meerut to Bijnore was via Viderkuti, etc. are all questions which really need to be decided by the S.T.A.T. In revision under S. 90. The effect of liberalization of the permit policy under the new Motor Vehicles Act also needs to be considered.

18. The respondents have already been granted permits on the Meerut-Bijnpre route in 1989 and are admittedly plying for two and half years.

19. In the circumstances we are of the opinion that this petition deserves to be dismissed on the ground of alternative remedy under S. 90 of the Act. If the petitioner is so advised he can challenge the grant of permits to the respondents before the Tribunal in revision u/s 90 where illegal and factual controversies can

be decided. If such a revision is filed the Tribunal it shall decide the case on merits expeditiously and shall not dismiss it on the ground of limitation.

20. Under the Motor Vehicles Act, 1939 an appeal against an order granting permits lay u/s 64(1)(f) of the Act. The said section reads as follows :--

"(1) Any person. -- (f) being a local authority..... or a person providing transport facilities who having opposed the grant of a permit is aggrieved by the grant thereof..... may within the prescribed manner appeal to the State Transport Appellate Tribunal."

21. In the corresponding provision for appeal in the Motor Vehicles Act, 1988 there is no provision similar to S. 64(1)(f) of the 1939 Act. However a revision will lie both on questions of fact as well as law under S. 90 of the 1988 Act which reads as follows :--

"90. Revision. -- The State Road Transport Appellate Tribunal may on an application made to it call for the record of any case in which an order has been made by the State Transport Authority, or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that one order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final."

22. A perusal of S. 90 of the Act shows that a revision will lie to the State Transport Appellate Tribunal where no appeal lies if the order of the State Transport Authority or Regional Transport Authority is improper or illegal. Use of the word "improper" in S. 90 of the Act implies that a revision will lie even on questions of facts and it is not limited to questions of law alone. Hence all questions which the petitioner wishes to agitate, both legal and factual, can be raised before the S.T.A.T. under S. 90 of the Act.

23. Accordingly, we dismiss Writ Petition No. 19148 of 1989, O. P. Gupta v. R.T.A., Meerut and others on the ground of alternative remedy under S. 90 of the Motor Vehicles Act. The interim order, if any, stands vacated.

24. As regards Writ Petition No. 21846 of 1991, Naresh Kumar Gupta v. The Secretary, R.T.A., Writ Petition No. 21844 of 1991, Madan Lal Jain and others v. The Secretary, R.T.A. and Writ Petition No. 21845 of 1991, Wali Mohammad and others v. The Regional Transport Authority, all these petitions have challenged the order dated 28-6-1991 (Annexure-10 to the writ petition of Naresh Kumar Gupta). A perusal of this order dated 28-6-1991 shows that it is based on the opinion of the Chief Standing Counsel which in turn is based on the interim order of this Court dated 21-10-1989 in Writ Petition No. 19148 of 1989. Since we have dismissed Writ Petition No. 19148 of 1989, the said interim order dated 21-10-1989 also stands vacated, and hence the impugned order dated 28-6-1991 cannot survive. Accordingly we allow Writ Petition No. 21846 of 1991,

Writ Petition No. 21844 of 1991 and Writ Petition No. 21845 of 1991 and quash the impugned order dated 28-6-1991.

25. As regards Writ Petition No. 18 of 1991, Mahendra Kumar Jain and others v. S.T.A.T., this has challenged the order of the S.T.A.T. dated 28-12-90 (Annexure-4 to the writ petition). In this petition an interim order had been passed on 11-1-1991 staying the operation of the impugned order since in the connected Petition No. 19148 of 1989 we have directed the parties that they may approach the S.T.A.T. for a complete adjudication of merits, and since the controversies involved in Writ Petition No. 18 of 1991 are similar to those in the connected petitions, we also quash the impugned order of the S.T.A.T. dated 28-12-1990 and direct that the petitioner in the present petition shall also be impleaded if any revision is filed under S. 90 of the Act before the S.T.A.T. by O. P. Gupta and/or others original permit holders.

26. As regards Writ Petition No. 3676 of 1991, Nanak Singh v. The Regional Transport Authority and others, this petition appears to be a counter blast to the petition of O. P. Gupta and others (Writ Petition No. 19148 of 1989). In Writ Petition No. 3676 of 1991 the allegation is that O. P. Gupta original operators are illegally plying on the Meerut - Morna - Meerapur - Deval - Barrage-Bijnore route as they have no permit on the said route. Since we have relegated O. P. Gupta and others to the alternative remedy u/s 90 of the Act before the S.T.A.T., we dismiss this petition also at this stage, but leave it open to the petitioners to agitate the points raised in this petition before the S.T.A.T. which shall adjudicate on the points raised by the petitioner in this petition,

27. As regards Writ Petition No. 2488 of 1990, Smt. Nirmala Gupta v. The State Transport Authority and other, the prayer in this petition is that the respondents be restrained from considering further grant of permit on the Meerut-Bijnore route. Since permits have already been granted on this route on 4-5-1989, and since we have dismissed the petition challenging the said grant, we are not inclined to interfere in this petition also at this stage. As already observed above, the S.T.A.T. will go into all questions including the questions raised in the writ petition of Smt. Nirmala Gupta and shall decide the matter on merits. Hence the petition of Smt. Nirmala Gupta is also dismissed.

28. As regards Writ Petition No. 32959 of 1990, Mohammad Tahir v. U. P. State Road Transport Corporation and another, the prayer in this petition is that the respondent may not grant permit on the Meerut-Bijnore route. This question can also be urged before the S.T.A.T. when the matter goes before it. Hence, this petition is also dismissed at this stage.

29. As already stated above, we are of the opinion, that all the matters in these connected petitions involve highly disputed questions of fact, and therefore, it is appropriate that the matter should be decided by the S.T.A.T. at an early date if a revision under S. 90 of the Act is filed before it. We may, however mention that the S.T.A.T. should take into consideration the judgment of the Hon''ble Supreme

Court in the case of Mithilesh Garg, Vs. Union of India and others etc. etc., where the policy of liberal grant of permit has been upheld. We are consequently, of the opinion that the S.T.A.T. should pass its order after hearing the parties in consonance with the aforesaid policy. The parties are directed to bear their own costs.

30. Order accordingly.