

(2004) 03 AHC CK 0208
In the Allahabad High Court
Case No : C.M.W.P. No. 11759 of 2004

Private Bas Sanchalak Kalyan Samiti and Another	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 47(3), 68(3)(CA), 90
Motor Vehicles Act, 1988 — Section 47(3), 68(3)(CA), 90
Motor Vehicles Act, 1988 — Section 47(3), 68(3)(CA), 90

Citation : AIR 2004 All 314

Hon'ble Judges : D.P. Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Arvind Srivastava, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed challenging the resolution passed by the Regional Transport Authority, Varanasi (hereinafter called the R.T.A.) dated 28-2-2004 granting 40 Permanent Stage Carriage permits in favour of Uttar Pradesh State Road Transport Corporation (hereinafter called the U.P.S.R.T.C.) on the route of the petitioner, i.e. Varanasi-Ghazipur.

2. Facts and circumstances giving rise to this case are that petitioner is an Association of existing Permanent Stage Carriage Permit holders on the route Varanasi-Ghazipur-via-Saidpur. From time to time, permits have been granted on the aforesaid non-nationalised route. The U.P.S.R.T.C. also made an application for grant of 40 permits on the said route. Petitioners had not been served the copy of the said application. However when they came to know about it they approached this Court by filing the writ petition No. 6706 of 2004 which was disposed of by this Court vide order dated 20-4-2004, wherein the respondent No. 2 was directed to decide the objections filed by the petitioners before the grant of permits is made in favour of the U.P.S.R.T.C. Vide impugned resolution

dated 28-2-2004, permits have been granted in favour of U.P.S.R.T.C. Hence this petition.

3. Shri Arvind Srivastava, learned counsel appearing for the petitioners has submitted that permits have been granted in utter disregard and flagrant violation of the statutory provisions contained in Section 68(3)(CA) of the Motor Vehicles Act, 1988 (hereinafter called the Act 1988) which enables only the Central Government/State Government to create and abolish a route. Regional Transport Authority (hereinafter called the R.T.A.), Varanasi did not have competence to create a route on which the permits have been granted to the U.P.S.R.T.C. Moreso, while granting such permits, the order of this Court dated 20-2-2004 has not been complied with and no opportunity of hearing has been given to the petitioners. Thus, the resolution of the R.T.A. dated 28-2-2004 is liable to be quashed.

4. Shri C. K. Rai, learned Standing Counsel, appearing for the respondents has vehemently opposed the petition contending that the permits have been granted on Varanasi-Ghazipur route on which the petitioners are plying their vehicles for a long time. No new route has been created. Therefore, provisions of Section 68(3)(C-A) are not attracted. Petitioners had no right to be heard at the time of granting the permit to U.P.S.R.T.C. for the reason that under the Act 1988 there is no provision analogous to the proviso to Sub-section (3) of Section 47 of the Motor Vehicles Act, 1939 (hereinafter called the Act 1939) which was repealed by the Act, 1988. The judgment and order of this Court dated 20-2-2004 directing the respondent No. 2 to consider the objections of the petitioner was not placed before the respondent No. 2 as there is no pleading in the petition in this respect. Even otherwise, the said order was contrary to the statutory provisions of the Act, 1988. Therefore even if the petitioners have not been heard, no fault can be found with the impugned resolution. Petitioners have approached this Court without exhausting the statutory remedy of revision u/s 90 of the Act, 1988, and if the revision is maintainable, writ should not be entertained. Thus, the petition is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. Admittedly, the permits to the U.P.S.R.T.C. have been granted on the route on which the petitioners are plying their vehicles. No new route has been created. Therefore, the submission made by Mr. Srivastava that a new route has been created by R.T.A. is totally misconceived.

7. In *The Secretary, Regional Transport Authority, Guntur and another Vs. E. Rama Rao and Others*, the Full Bench of Andhra Pradesh High Court considered the effect of having no provision in the new Act corresponding to the Proviso to Section 47 (1) of the Act, 1939 and observed as under :--

"We are of the view that Parliament intended to negative any right to the existing operators either to submit their representations or to a right of hearing u/s 71(1)

of Section 80(2) of the new Act. It is, therefore, not open to the Court to imply principles of natural justice and add further restriction than what Parliament has considered sufficient, according to its new legislative policy."

8. A Division Bench of this Court in Surendra Rao Vs. Regional Transport Authority, Gorakhpur Region, Gorakhpur and others, , held that in view of the change of law it is not permissible for the R.T.A. to entertain the objection of the existing operators. However they have a right to maintain a revision u/s 90 of the Act, 1988. The Court held as under :---

"Section 90 of the Act empowers the appellate tribunal to call for, on an application made to it, the record of any case in which an order has been passed by the State Transport Authority or the Regional Transport Authority against which no appeal lies and if it appears to the Appellate Tribunal that the order made by the S.T.A. or R.T.A. is improper or illegal, it may pass such order in relation to the case as it deems fit. It is true that under the Act the existing operators cannot claim any legal right to file representation or right for hearing at the stage of the grant of permit on his route. Absence of legal right to file representation or to be heard may be relevant considerations for determining as to whether existing operator can be treated to be an aggrieved person for the purpose of filing revision u/s 90 of the Act against the order of the R.T.A. Granting permit. But this is not an exclusive test for determination of the locus standi of an operator to file a revision."

9. While deciding the said case, this Court placed reliance upon the judgment of Hon'ble Supreme Court in Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another, , wherein while considering the identical provisions of Section 64-A of the Act, 1939, it had been held that existing operators being aggrieved persons should be heard at the time of grant of permit as inquired under the provisions of Section 47(3) of the Act, 1939. The remedy for such operators is to file a revision u/s 90 of the Act, 1988.

10. Thus, in view of the above, if even the existing operators of a route do not have a locus standi to raise objection at the time of grant of permit, it is beyond imagination that existing operators would have any right to be heard at the stage of grant of permits.

11. The provisions contained in Section 47 of the Act, 1939 enabled the association representing persons interested in provisions of Road Transport Authorities or local authorities or police authorities to make representations at the time of grant of permit on the route. However, there is no provision analogous to the same in the Act. Therefore, where the legislature consciously has made a departure and deprived the local authorities and association complains to have any grievance at the time of grant of a permit, such a remedy cannot be conferred by judicial interpretation as it would amount to legislation, which is to permissible in law.

12. Thus in view of the above, it is evident that existing operators do not have a

right of being heard at the time of grant of permits on their route.

13. This Court while entertaining the writ petition of the present petitioners directing the respondent No. 2 to consider the objection of the petitioner was not in consonance with the statutory requirement. When the legislature in its wisdom has not inserted the provisions analogous to Section 47(3) of the Act, 1939, issuing such directions amounts to legislation which is not permissible in law.

14. It is also settled legal proposition that neither the Court can legislate nor it can issue direction to the State Government to legislate a law in a particular manner. At the most, if the Court comes to the conclusion that a particular provision is ultra vires or unconstitutional, it can simply struck down the same, or in a particular case, write down a particular law to meet a particular situation. But these cases do not fall in that category.

15. In Union of India and another Vs. Deoki Nandan Aggarwal, , the Hon''ble Supreme Court observed as under :--

"It is not the duty of the Court either to enlarge the scope of legislation or the intention of the legislature when the nature of the provision is plain and unambiguous. The Court cannot rewrite, re-cast or re-frame the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts."

16. More so, the Court does not have the power to issue a direction to the legislature to enact in a particular manner.

17. In Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others, , the Hon''ble Apex Court has held that Writ Court, in exercise of its power under Article 226, has no power even indirectly require the Executive to exercise its law-making power. The Court observed that it is neither legal nor proper for the High Court to issue direction or advisory sermons to the Executive in respect of the sphere which is exclusively within the domain of the Executive under the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. The Courts cannot usurp the functions assigned to the Executive under the Constitution and cannot even indirectly require the Executive to exercise its law-making power in any manner. The Courts cannot assume to itself a supervisory role over the rule-making power of the Executive under Article 309 of the Constitution.

18. While deciding the said case, the Hon''ble Court placed reliance on a large number of judgments, particularly, Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others, ; State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others, .

19. In Asif Hameed and others Vs. State of Jammu and Kashmir and Others, the Hon''ble Apex Court observed as under :--

"While doing so, the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a co-ordinate branch of the Government. While exercising power of judicial review of administrative action, the Court is not an Appellate Authority. The Constitution does not permit the Court to direct or advise the Executive in matter of policy or to sermonize qua any matter which under the Constitution lies within the sphere of Legislature or Executive."

20. A Constitution Bench of the Supreme Court in *Afzal Ullah Vs. The State of Uttar Pradesh*, , observed that validity of a subordinate legislation must be tested by reference to the question as to whether the authority had the power to provide for such a legislation. Thus, if the Authority has the power of fixing the eligibility criteria, no fault can be found with the entry in the Schedule.

21. The Court cannot examine the wisdom, merit or efficacy of the policy of the legislature to see whether it effectuates the purpose of the Act. (vide *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*,).

22. In *V.K. Sood Vs. Secretary, Civil Aviation and others*, , the Hon"ble Supreme Court observed as under (para 6) :--

"Thus, it would be clear that, in exercise of the rule-making power, the president or authorised person is entitled to prescribe method of recruitment, qualifications, both educational as well as technical, for appointment or conditions of service to an office or a post under the State. The Rules, thus, having been made in exercise of the powers under proviso (2) to Article 309 of the Constitution, being statutory, cannot be impeached on the ground that authorities have prescribed tailor-made qualifications to suit the stated individual. Suffice to state that it is settled law that no motives can be attributed to the legislature in making law. The Rules prescribe qualifications for eligibility and the suitability of appellant would be tested by the Union Public Service Commission.....

Moreover, it is for the rule-making authority or for the legislature to regulate the method of recruitment, prescribe qualifications etc. It is open to the President or the authorised person to undertake such exercise and that necessary test should be conducted by the U.P.S.C. before giving certificates to them. It is not the province of the Court to trench into and prescribe qualifications in particular when matters are of technical nature."

23. In *District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another*, the Hon"ble Supreme Court held that function of the Court is only to expound the law and not to legislate.

24. Similarly in *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, the Hon"ble Supreme Court held that court cannot direct the legislature to enact a particular law for the reason that under the constitutional scheme the Parliament exercises sovereign

power to enact law and no outside power or authority can issue a particular piece of legislation.

25. Similar view has been reiterated in *State of Jammu and Kashmir Vs. A.R. Zakki and others*, ; and *A.K. Roy and Others Vs. Union of India (UOI) and Others*, .

26. In *Union of India (UOI) Vs. Prakash P. Hinduja and Another*, the Hon"ble Supreme Court held that if the Court issues a direction which amounts to legislation and is not complied with by the State, it cannot be held that the State has committed the Contempt of Court for the reason that the order passed by the Court was without jurisdiction and it has no competence to issue a direction amounting to legislation.

27. If the Court cannot legislate, the question does arise as to whether this Court has power to issue direction to the R.T.A. to grant the opportunity of hearing to the present petitioner before the grant of the permit in favour of the Corporation.

28. The Court also has no competence to issue a direction contrary to law. (vide *Union of India and Another Vs. Kirloskar Pneumatic Company Limited*, ; *State of U. P. and others Vs. Harish Chandra and others*, and *Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others*, .

29. In *State of Punjab and others Vs. Renuka Singla and others*, dealing with a similar situation, the Hon"ble Apex Court observed as under ;--

"We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations."

30. Similarly, in *Karnataka Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others*, the Hon"ble Apex Court has held as under (para 26) :

"The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law."

31. Thus in view of the above, directions could not have been issued by this Court to the R.T.A. to grant opportunity of hearing to the petitioner.

32. Thus, in view of the above, as the petitioners did not have a right of being heard and even if they have not been heard in pursuance of the order of this Court it does not improve the case of the petitioner for the reason that it has nowhere been stated by the petitioners that copy of the order of this Court dated 20-2-2004 has been placed before the respondent No. 2. For want of proper pleadings no notice can be taken of this grievance of the petitioners.

33. Petitioners have approached this Court without exhausting the statutory remedy of revision provided in a statute.

34. A Constitution Bench of the Hon"ble Supreme Court in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, the Hon"ble Apex Court has observed as under :--

"Thus we have before us a complete and precise scheme for regulating the issue of permits, providing what, matters are to be taken into consideration as relevant and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had. As observed already, the issue or refusal of permits is solely within the discretion of the transport authorities and it is not a matter of right."

35. Thus in view of the above, this writ petition should not be entertained as petitioner has approached this Court without exhausting the statutory remedies.

36. In Sheela Devi Vs. Jaspal Singh, the Hon"ble Supreme Court set aside the judgment of the High Court without considering its merit only , in 3-lines order on the ground that the High Court had entertained the writ petition though the aggrieved party ought to have availed the remedy of revision provided in the Act.

37. Thus, in view of the above, we are not inclined to interfere with the matter. The petition is dismissed with liberty to the petitioners to agitate the issue before the State Transport Appellate Tribunal by filing revision. As the revision is to be filed within 30 days from the date of order and by the time petitioners file the revision, limitation may expire. Thus, we request the learned Tribunal that in case revision is filed within a period of two weeks from today, it may be entertained on merit and disposed of in accordance with law.