

(1992) 07 AHC CK 0006

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1263 of 1992

Rajesh Kumar and Others

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 13-07-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 64

Motor Vehicles Act, 1988 — Section 68(2), 71, 71(2), 72, 90

Citation : (1992) 3 AWC 1852

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : Ravi Kant, for the Appellant; L.P. Naithani and V.S. Shukla, for the Respondent

Final Decision : Allowed

Judgement

R.B. Mehrotra, J.—Regional Transport Authority, Meerut, vide its order, dated 8th of November, 1989 granted 272 permits on Meerut Quilla-Pariksbitgarh-Aqfabad-Lalyana and allied routes. Aggrieved by the said order, some of the existing operators filed a writ petition directly in the Hon'ble Supreme Court wherein the liberalisation policy under the new Act was challenged. The said writ petition has been dismissed by the Hon'ble Supreme Court Mithilesh Garg, Vs. Union of India and others etc. etc., While upholding the liberalisation policy contemplated by the new Motor vehicles Act, it was observed by the Hon'ble Supreme Court in paragraph 15 of the said decision that the cordites of roads, social status of the applicants, possibility of small operators being eliminated by big operators, condition of hilly routes, fuel availability and pollution control are some of the important factors which the Regional Transport Authority is bound to take into consideration while taking a decision on an application for grant of permit. These are the matters which are supposed to be within the comprehension of the transport authorities. The Regional Transport Authority has the power under the Act to refuse an application for grant of permit by giving reasons. The authorities had So take into consideration all the relevant factors at the time of quasi judicial

consideration of the applications for grant of permits The statutory authorities under the Act are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalised policy.

2. One of the existing operators, namely, Sri Jitendra Bir Sharma, however, aggrieved by the aforesaid order of the Regional Transport authority filed a revision u/s 90 of the Motor Vehicles Act before the State transport Appellate Tribunal, U.P. Lucknow (hereinafter described as the appellate Tribunal).

3. The Appellate Tribunal vide its judgment, dated 31-3-1992 allowed the revision, set aside the impugned order of the Regional Transport Authority, dated 8-11-1989 and remanded back the matter to the Regional Transport Authority with a direction to scrutinise the various applications afresh In the light of the provisions of Section 71 and 72 of the new Motor Vehicles Act, 1988. It was further directed that reasonable opportunity of hearing should be afforded to various applicants if it is so required.

4. Aggrieved by the aforesaid order of the appellate Tribunal, four persons, who were granted permits have filed the present writ petition challenging the said order of the Appellate Tribunal

5. The appellate Tribunal has allowed the revision mainly on two grounds Firstly, that the matter for grant of permits came up for consideration on 8th of November, 1989 the Regional Transport Authority, Meerut which consisted of Sri Deshraj Singh, Commissioner, Meerut Division, Meerut, as Chairman and Sri V.K. Singh, the then Deputy Transport Commissioner, Meerut zone, Meerut as Member but when the meeting took place only the Chairman signed the proceedings the member namely, Sri V.K. Singh did not sign the proceedings on the said date but later on signed the proceedings on 27-11-89 after a lapse of about 19 days, as such It is clear that no collective decision was taken in the meeting for granting the permits and the grant of permits was, therefore, patently incompetent in law. Secondly, the Tribunal held that it was a case of complete non application of mind by the Regional Transport Authority as the Regional Transport Authority did not care to examine the various applications whether one person has applied for more than five permits or whether the applications were duly supported by affidavits, whether the applications were signed by the applicants. The Regional Transport Authority mechanically granted 272 permits to all the applicants. Even the names and addresses of 272 applicants to whom the permits were granted have not been mentioned in the order On the basis of the aforesaid two grounds, the Appellate Tribunal held that it was a case of complete non application of mind by the Regional Transport Authority and on the aforesaid basis remanded the matter back to the Regional Transport Authority for re-consideration and granting the permits in accordance with Sections 71 and 72 of the New Motor Vehicles Act.

6. Sri Ravi Kant, learned Counsel appearing for the Petitioners, has contended that the Tribunal was not justified in remanding the matter on the basis that the proceedings of the Minutes were not signed by Sri V.K. Singh and also on the

basis that certain defects were found out in the applications and the affidavits filed in support of these applications. The entire record was before the Appellate Tribunal and the appellate tribunal should have itself examined the matter and should have granted permits to the persons whose applications and affidavits were in order and should have refused the applications of the persons whose applications were not in order and suffered from some defect or since the appellate Tribunal was exercising the coextensive jurisdiction with that of the Regional Transport Authority, the Appellate Tribunal should have corrected the mistakes committed by the Regional Transport Authority and should have granted necessary permits in accordance with the provisions of the Act There was no necessity to remand the case.

7. Sri V.K. Singh has himself filed an affidavit before the Appellate Tribunal. In the aforesaid affidavit, Sri V.K. Singh has categorically stated that he was present in the meeting of the Regional Transport Authority held on 8th November, 1989 at Meerut and remained throughout present in the said meeting The decisions in the meeting were taken on the basis of agreement between himself and the Chairman of the Regional Transport Authority namely, Sri Deshraj Singh, the Commissioner, Meerut Division Meerut. Sri Ravi Kant has contended that there is no provision of law requiring that both the Members should sign the proceedings. The signing of the Minutes of the meeting by the Chairman was sufficient and in view of the affidavit filed by Sri V.K. Singh, it could not have been disputed the collective decision was taken in the meeting and the Appellate Tribunal was not justified in remanding the matter on the basis that the Minutes of the meeting were not signed by its member Sri V.K. Singh on the date of the meeting though the minutes were later on signed by Sri V.K. Singh Sri Ravi Kant has contended that Section 68(2) of the Motor Vehicles Act, 1988, second proviso permits making of rules regarding transaction of business in the meeting of the Regional Transport Authority. Under the aforesaid provision, U.P. Motor Vehicles (Supplementary) Rules, 1989 have been framed and notified. Under the aforesaid rules, there is no provision that minutes of the meeting should be signed by all the members of the Regional Transport Authority. The general law is that the minutes of the meetings are signed by the Chairman of the Committee and in the present case also the minutes were signed on 8th of November, 1989 by the Chairman of the Committee, as such there was no illegality in the recording of the proceedings of the meeting of the Regional Transport Authority on 8th of November, 1989 and particularly Sri V.K. Singh himself having filed an affidavit saying that all the decisions were taken in the meeting with the joint consent of both the members, there was no occasion for the Appellate Tribunal to have disbelieved the said affidavit and to have taken a view that since the minutes of the meeting dated 8-11-1989 were not signed by Sri V.K. Singh, it must be presumed that the decision was taken unilaterally by the Chairman and Sri V.K. Singh did not agree with the aforesaid decision This view of the Appellate Tribunal is patently perverse and contrary to the record.

8. In reply to the aforesaid contention, Sri 1 P. Nainithani, learned Senior

Advocate appearing for the Respondents, has contended that the Regional Transport Authority is a quasi judicial body and to demonstrate the fact that a collective decision has been taken by a body itself, the decision should be signed by all the members of the committee. Sri Naithani has relied upon a decision in *Papavinasom Subrahmoniam Vs. Daivani Nagaramma and Others*, , in support of his contention

9. In the aforesaid case, the meeting of the Regional Transport Authority was attended admittedly by the Chairman by the two nonofficial members and by the two official members. After hearing in appears, that there had been a difference of opinion between the official and nonofficial members. The non-official members wanted postponement of the decision. This decision was apparently not agreed to by the official members including the Chairman Non-official members thereafter, it appears, left after leaving a note with the chairman that they did not participate in the decision. The decision was taken by the Chairman and the two official members The Kerala High Court took the view that since the intention of the legislature appears to be that the body must consist of official and non official opinions and approaches which are likely to be divergent, the membership must consist of member with judicial experience These aspects are not only necessary but essential. The Regional Transport Authority acts as one body and its responsibility is also joint and thereafter held that there was no proper decision taken in the meeting as two members did not participate at all in the meeting. The decision of remaining three was not valid one. The aforesaid case is distinguishable on its own facts and had no bearing in the present matter where Sri V.K. Singh has filed his affidavit saying that all the decisions were taken collectively by the Chairman and Sri V.K. Singh himself, as such there is no question in the present case that the decision was not collectively taken by the Regional Transport Authority. The Appellate Tribunal has committed a patent error of law in taking a view that the affidavit filed by Sri V.K. Singh is an after thought. There was no basis for the Appellate Tribunal for reaching the aforesaid conclusion. I am clearly of the opinion that in the present case, the non-signing of the proceedings by Sri V.K. Singh on 8-11-1989 was a technical error. Sri V.K. Singh having himself filed an affidavit saying that all the decisions were collectively taken in the meeting, there was no occasion for the Appellate Tribunal to take contrary view and disbelieve the affidavit of Sri V.K. Singh. In any case, there is no requirement of law that the minutes of the meeting of the Regional Transport Authority should be signed by all the members of the committee. The signing of the proceedings of the meeting by the Chairman of the Committee should be taken as an endorsement of the decision taken in the meeting collectively and merely on the ground that the member failed to sign the proceedings on the said date, it cannot be assumed that the member was not in agreement with the decision taken in the meeting.

10. The second question which calls for consideration in the present matter is that if the Appellate Tribunal was satisfied that the Regional Transport Authority has not applied its mind to the relevant considerations in granting the permits

was it obligatory on the Appellate Tribunal to have decided the matter itself or it should have remanded back the matter to the Regional Transport Authority. From the judgment of the Appellate Tribunal itself it is clear that the entire record was before the Appellate Tribunal. Section 90 of the Motor Vehicles Act, 1988 under which the Appellate Tribunal has decided the matter is as under:

90. Revision - The State 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 a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the 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.

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good cause and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

11. This section clearly confers a wide power on the Appellate Tribunal to pass such orders in relation to the case as it deems fit. The power is clearly co-extensive with the powers of the Regional Transport Authority.

The Appellate Tribunal can itself grant or refuse the permits in accordance with law. In the cases of *Sri Mahendra Singh v. The State Transport Appellate Tribunal U.P. Lucknow 1976 TAG 103* and *Sri Kanhaiya Lal v. The State Transport Appellate Tribunal U.P. Lucknow 1976 TAC 172* this Court has clearly taken the view that the power of the State Transport Appellate Tribunal being co-extensive with those of the Regional Transport Authority, the Appellate Tribunal should have gone into the merits of case on each and individual Appellant and decided the same instead of remanding the same to the Regional Transport Authority. In the present case also though u/s 90 of the New Motor Vehicles Act the powers conferred on the State Appellate Tribunal are revisional power but the language of the section is part materia with Section 64 of the old Motor Vehicles Act where the appeal was provided before the Appellate Tribunal and the ratio of the aforesaid decision is fully applicable in the present case. The Appellate Tribunal enjoy the same powers which the Regional Transport Authority enjoyed. In these circumstances, it was obligatory on the Appellate Tribunal to have decided the questions raised by the revisionist regarding illegal grant of permits by the

Regional Transport: Authority and the Appellate Tribunal should have decided the points raised by the revisionist regarding illegal grant of permits by the Regional Transport Authority and the Appellate Tribunal should have decided the points raised by the revisionists on merits instead of remanding back the matter to the Regional Transport Authority. It has been held by a Division Bench of this Court in Civil Misc. Writ Petition No. 440 of 1992, Surendra Rao v. Regional Transport Authority, Gorakhpur and Ors. connected with Petitioner decided on 10-2-1992.

But while granting permits the transport authorities have to take into consideration relevant factors, some of which have been highlighted by the Supreme Court in paragraph 14 of its judgment in the aforesaid case of Mithilesh Garg. In view of the provisions of Section 71(2) of the Act authorities have also to keep in mind while granting permits that the provisions of the Act relating to the speed at which the vehicles may be driven are not contravened. The area or route cannot be permitted to be converted into a racing ground for heavy vehicles in order to pick up more passengers enrooted and thereby exposing both the person and property of the public to great danger. Transport Authorities while granting permits exercise quasi judicial powers and have to apply their minds to each applicant before granting him permit. They are not to exercise their statutory powers of granting permits in a mechanical manner.

12. The permits are to be granted within the limits pointed out in the above judgment. The Appellate Tribunal will keep in mind the observations made by this Court in the aforesaid judgment while deciding the revision of the Respondent-applicants and will grant permits in accordance with law. The Appellate Tribunal will itself-examine the records and if the Appellate Tribunal is of the opinion that any permits are to be reduced, the appellate Tribunal will record reasons for the same and if the Appellate Tribunal is of the opinion that in view of the provisions of Section 71(2) of the Act, the Time Table is to be adjusted or number of permits is to be reduced, keeping in mind the aforesaid provisions, the State Tribunal will do the same itself. This will certainly save the time of the contesting parties and the matter may be decided once for all instead of having round of litigation if the matter is again decided by the Regional Transport Authority.

13. For the reasons disclosed above. I am of the opinion that the order of the Appellate Tribunal impugned in the present writ petition deserves to be set aside and is accordingly set aside. The matter is remanded back to the State Transport Appellate Tribunal, U.P., Lucknow with a direction to decide the revision within three months from the date of the receipt of the certified copy of this order. If the record of the Regional Transport Authority has been sent back the same may be immediately summoned by the State Transport Appellate Tribunal and other formalities should be completed expeditiously. The writ petition is accordingly allowed. Parties will bear their own costs.