
(2000) 11 AHC CK 0114
In the Allahabad High Court
Case No : C.M.W.P. No. 44012 of 2000

Ram Pal Singh

APPELLANT

Vs

State Transport Appellate Tribunal and another

RESPONDENT

Date of Decision : 22-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 72(2), 86, 89

Citation : (2001) 1 ACC 372 : (2001) 1 AWC 200

Hon'ble Judges : Mr. O.P. Garg, J

Bench : Single Bench

Advocate : Mr. H.P. Dube and Mr. Ravi Kant, for the Appellant; S.C., Mr. A.R. Dubey and R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

O. P. Garg, J.—The dispute relates to the route known as Sector-8 NOIDA, 8-10, 8-9, 5-6, 1-2, 2-15, 3-16, 3-19, 4-19, 9-20, 20-21, 25-26, 26-31, 26-30, 27-28 National Botanical Garden, Sector 38-44, 40-43, 41-42 NEPZ-Kulesra-Surajpur-Dadri and back Surajpur-Kasna-Bilaspur. Fourteen persons including the petitioner have been granted permits by respondent No. 2 to ply their City Buses on the route. It appears that certain complaints were made that the permit holders were not serving a part of the route, i.e., in between Surajpur-Dadri and back and Surajpur-Kasna-Bilaspur. The matter came up for consideration in the meeting of the R.T.A. held on 12.5.2000 and 31.5.2000 an order (Annexure-6) was passed by the R.T.A. curtailing 9 kms. route from Surajpur to Dadri by invoking the provisions of Section 72(2)(xxii) of the Motor Vehicles Act (hereinafter referred to "the Act"). The effect of this order has been that all the 14 permit holders who were operating their buses are not now entitled to ply their buses on a portion of route in between Surajpur and Dadri though they are entitled to operate their buses on the remaining portion of the City Bus route. This order of the R.T.A. was challenged by the present petitioner as well as one another operator Rajesh by filing two separate Appeal Nos. 52 and 57 of 2000 u/

s 89(1)(b) of the Act. Respondent No. 3 Sadhu Ram intervened and the Tribunal refusing to implead him as party to the appeals conceded in his favour a right of hearing. After hearing the parties concerned, the Tribunal respondent No. 1 dismissed both the appeals by impugned order dated 11.9.2000 (Annexure-10).

2. By means of this writ petition the petitioner has challenged the order dated 31.5.2000, Annexure-6 to the petition, passed by the Regional Transport Authority, Ghaziabad thereafter referred to "the R.T.A.") respondent No. 2 and the order dated 11.9.2000, Annexure-10 to the writ petition, passed by the State Transport Authority Tribunal, U. P., Lucknow-respondent No. 1 in Appeal No. 52 of 2000 whereby the portion of permitted route for City Bus Service has been curtailed. It is prayed that the aforesaid orders be quashed and a direction be issued to the respondents not to give effect to the order aforesaid.

3. One Sadhu Ram, who filed a caveat was directed to be impleaded as respondent No. 3. He has filed a counter-affidavit to which rejoinder affidavit has been filed. In view of the agreement between the parties, this writ petition was taken up for final disposal on merits at the admission stage on the basis of the material available.

4. Heard Sri Ravi Kant, learned senior advocate assisted by Sri H. P. Dubey for the petitioner, Sri R. N. Singh, senior advocate assisted by Sri A. R. Dubey for respondent No. 3 and the learned standing counsel for the remaining respondents.

5. Sri Ravi Kant, learned counsel for the petitioner, urged that the impugned orders have resulted in the abridgement of the right of the petitioner to operate his bus throughout the length of the specified and notified route thereby directly affecting his existing right under the permit which was granted to him ; impugned orders being in the teeth of Section 86 of the Act and in violation of the principle of natural justice are required to be quashed by invoking jurisdiction under Article 226 of the Constitution. In substance, the submission of the learned counsel for the petitioner is that the orders in question are vitiated by the failure to observe the principle of natural justice. A faint suggestion was also made that the R.T.A. had taken recourse to an inapplicable provision of Section 86 to issue the notices but the order was illegally passed u/s 72(2)(xxii) of the Act. All these submissions have been repelled by Sri R. N. Singh, learned counsel appearing on behalf of respondent No. 3 Sadhu Ram as well as learned standing counsel and it is maintained that a fair hearing as postulated for the decision-making process was given to the petitioner after due notice and that the decision was taken by the R.T.A. in the best interest of local population as the petitioner and the other permit holders were not serving the entire route for economic reasons.

6. Both the parties counsel have placed reliance on the plethora of the decisions of the Apex Court with regard to enunciation of the principles of natural justice. Without burdening this judgment with all the cited decisions, which I feel is not necessary, the position with regard to the applicability of principle of natural

justice may be succinctly culled out. By way of preface, it may be mentioned that the concept of the principle of natural justice is not a rule of thumb or straitjacket formula or an abstract proposition of law. The applicability of principle of natural justice depends upon the nature of proceedings and procedure adopted by the Court. Tribunal or Authority. This aspect of the matter has been dealt with by the Apex Court in *Managing Director ESIL Hyderabad v. B. Karunakaran*, JT 1993 (6) SC 1, by observing :

"..... The theory of reasonable opportunity and the principles of natural justice has been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all the sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case....."

No hard and fast rule or yard-stick can be provided for testing the question as to whether the principle of natural justice has been complied or not. Sri Ravi Kant laid much emphasis on the point that the conclusions arrived at by the respondent Nos. 1 and 2 have no nexus with the material available before them and that they failed to record the reasons which were necessary to test the correctness of the findings or conclusions. According to him, the impugned order stands vitiated on account of absence of reasons which impelled the R.T.A. or the appellate Tribunal to conclude that the operators are not serving a part of the route as it is not economically viable. To lend strength to his submission. Sri Ravi Kant placed reliance on the oft-quoted celebrated decision of the Apex Court in *Union of India (UOI) Vs. Mohan Lal Kapoor and Others*, , in which it was held that the reasons are the links between materials on which certain conclusions are based to the actual conclusions. They disclose how mind is applied to the subject-matter for a decision : whether it is purely administrative or quasi-judicial. They would reveal nexus between the facts considered and the conclusions reached. This view was reiterated in *Gurdial Singh Fijji v. State of Punjab* (1997) 2 SCC 368. In *Mohan Lal Kapoor's* case (supra), the Rules and Regulations required recording of reasons in support of the conclusions, as mandatory.

7. In an earlier case. *Som Datt Datta Vs. Union of India (UOI) and Others*, , the Apex Court was of the view that apart from any requirement imposed by statute or statutory Rule either expressly or by necessary implication, it cannot be said that there is any general principle or any rule of natural justice that a statutory body should always and in every case give reasons in support of its decision. Such orders cannot, therefore, it was observed, be held to be illegal for not giving any reasons for confirming the orders of the concerned authority. In view of the expanding horizon of the concept of principles of natural justice, the above wide and general statement came to be restricted and has been hedged with certain conditions. Now the present slant of the doctrine of applicability of principles of natural justice is that unless the rule expressly or by necessary implication excludes recording of reasons, it is implicit that the principles of

natural justice or fair play do require recording of reasons as a part of fair procedure. The order of the administrative authority may not be like a judgment of the Court. But some reasons, howsoever precise they may be, have to be there. In *S.N. Mukherjee Vs. Union of India*, , the Constitution Bench of the Apex Court surveyed the entire case law in this regard and held that except in cases where the requirement has been dispensed with, expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial function, is required to record reasons for its decision. In para 36 of the report, at pages 612 and 613, it was further held that the recording of reasons excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making. The said principle would apply equally to all decisions and its implications cannot be confined to the decisions, which are subject to appeal, revision or judicial review. The same view was reiterated in the case of *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, , in which it was observed in para 21 of the report as follows :

Thus, it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record....."

The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. In *M.J. Sivani and Others Vs. State of Karnataka and Others*, , it has been observed in para 32 of the report, as under :

"32. It is also settled law that the order need not contain detailed reasons like Court order. Administrative order itself may contain reasons or the file may disclose reasons to arrive at the decisions showing application of mind to the facts in issue. It would be discernible from the reasons stated in the order or the contemporaneous record contained. Reasons are the link between the order and the mind of its maker. When Rules direct to record reasons, it is a sine qua non and condition precedent for valid order. Appropriate brief reasons, though not like a judgment, are necessary concomitant for a valid order in support of the action or decision taken by the authority or its instrumentality of the State."

8. There is another thinking, which necessitates the recording of reasons to support the conclusions. It is well-settled law that every action of the State or instrumentality of the State must be informed by reason. Actions uninformed by reason may tantamount to arbitrariness. The State action must be just, fair and reasonable. Fair play and natural justice are part of public administration ; non-

arbitrariness and absence of discrimination are said to be hallmarks for good governance under the rule of law. One cannot, therefore, escape from the conclusion that it is imperative on the State Government to inform its order by recording reasons to reach a particular conclusion.

9. With this caution in mind, and in the perspective of the law, as mentioned above, the question is whether the impugned order withstands the test of scrutiny at the alter of the principles of natural justice or not and if it is found that the reasons are conspicuously missing to arrive at the conclusion, a further question would be whether omission to record reasons, vitiates the impugned order or is in violation of the principles of natural justice.

10. Admittedly, before taking a decision for curtailment of the route, in question, a notice was issued to the petitioner and the remaining permit holders. This notice purported to be u/s 86 of the Act, which deals with the cancellation and suspension of the permits under the circumstances specified in clauses (a) to (f) of sub-section (1). Sri Ravi Kant, learned counsel for the petitioner urged that the provisions of Section 86 of the Act were not attracted to the facts of the present case and consequently, the petitioner was misled in submitting the proper reply. This aspect of the matter has been suitably dealt with by the appellate Tribunal-respondent No. 1. Mention of a wrong section in the notice would hardly be of any consequence. Even if no provision of law was mentioned in the notice, the fact remains that the various details given in the notice clearly indicated that the permit holders were not serving the entire route and, therefore, appropriate action under the law was contemplated against them. Moreover, cancellation and suspension of permit is an extreme step while the Regional Transport Authority has merely passed an order of curtailment of a portion of the route running about 9 kms. Section 72 of the Act which deal with grant of stage carriage permits envisages variation in the conditions of permit. In clause (xxii) of sub-section (2) of Section 72, it is provided that the 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 :

Provided that the conditions specified in pursuance of clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometres, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof.

11. Undoubtedly, Regional Transport Authority has the authority to vary the conditions of permit subject to the requirement that a notice of not less than one month is given to the permit holder. As is admitted in the present case by the parties, one month's notice was given before passing of the impugned order by the Regional Transport Authority. It was immaterial as to what label was given to

the notice. The petitioner had well understood the contents of the notice and had entered a proper defence in reply thereto. There was hardly any occasion for confusion or misgiving on the point.

12. Sri Ravi Kant further pointed out that the order of the Regional Transport Authority is based on extraneous considerations and insufficient material, inasmuch as, there was no tangible evidence to indicate that the petitioner and other permit holders were not serving the portion of the route in between the points-Surajpur and Dadri. It was maintained that, as a matter of fact, the requisite number of buses were being piled on the aforesaid portion of the route and the local public as such has not reflected any grievance. This submission again is wide off the mark. Conscious of the fact that this Court cannot enter into factual aspect of the controversy, suffice it to say that there was enough material before the Regional Transport Authority for recording the finding of fact that the permit holders including the present petitioner, were not serving Surajpur-Dadri route covering a distance of about 9 kilometres for the obvious economic reasons. An enquiry into the matter was made and on the letter of the competent authority. Regional Transport Authority came to the conclusion that the disputed portion of the route was not being served at all by the permit holders and they left this portion of the route totally unserved. Local commuters of this route obviously suffered serious inconvenience. The passengers had to drop at Surajpur and from there they had to make their own arrangements to go to Dadri and conversely passengers from Dadri had to travel by themselves upto Surajpur. In the matter of grant of permit, the convenience of the public is the supreme consideration. The petitioner as well as other permit holders did not deliberately serve the entire route and left the local residents in a state of lurch, uncertainty and inconvenience on the portion of the route between Surajpur and Dadri. This, by itself, was a sufficient ground to curtail or vary the specified route for which permit was granted to the petitioner as well as other 13 operators. Except for two persons, who filed appeals u/s 89(1)(b) of the Act, no other operator challenged the impugned order of the Regional Transport Authority. The finding of fact recorded by the Regional Transport Authority that the portion of the route was not being served by the petitioner and other operators as confirmed in appeal is now final and cannot be made a subject-matter of scrutiny in writ jurisdiction. The said finding is based on tangible and believable evidence. It cannot be termed as perverse or conjectural.

13. The order of the appellate Tribunal is hedged with appropriate reasons which provide links to the conclusions arrived at by it. The impugned order, as said above, has been passed after serving due notice on the petitioner and other operators. The bogey of violation of the principles of natural justice in the present case has been unnecessarily raised. The Regional Transport Authority as well as the appellate Tribunal have taken due precaution to ensure that the principle of natural justice are complied with in all aspects. The Regional Transport Authority has rightly passed the order of curtailment of a portion of the route by about 9 kilometres as it remained totally unserved by the permit

holders, including the petitioner. The curtailment of the route is also one of the kinds of variation of the conditions of permit. Such an order could legally and legitimately be passed by invoking the provisions of Section 72(2)(xxii) of the Act.

14. In the conspectus of the above facts. I am of the view that it is not a case fit enough in which interference by this Court by invoking extraordinary jurisdiction under Article 226 of the Constitution of India is warranted.

15. The writ petition is dismissed without any order as to costs.