

(1968) 11 AHC CK 0010
In the Allahabad High Court
Case No : Civil Misc. Writ No. 3052 of 1963

Ram Swarup

APPELLANT

Vs

State Transport Appellate Tribunal, Uttar Pradesh and
Another

RESPONDENT

Date of Decision : 28-11-1968

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(8), 64

Citation : AIR 1970 All 182 : (1972) CriLJ 1119

Hon'ble Judges : B.N. Lokur, J;B. Dayal, J

Bench : Division Bench

Advocate : S.K. Dhavan, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Lokur, J.—This petition under Article 226 of the Constitution has been referred to a Division Bench by Hon''ble Asthana, J. The material undisputed facts may be stated thus: The petitioner. Ram Swarup, and six others were holding stage carriage permits on Meerut-Rohta-Bhnauli-Baraut route under the Motor Vehicles Act, 1939. On a proposal of these operators, the Regional Transport Authority decided, with the approval of the State Transport Authority, to take the route viz., Barnawa and the modified route was Meerut Rohta Barnasa Binauli Baraut. Thereupon the Regional Transport Authority invited applications for the modified route and the petitioner, Ram Swamp, and others made applications for variation in their permits in accordance with the modified route. Meerut Sardhana Passenger Transport Association objected to the variation in the permits of the petitioner and others, but the Regional Transport Authority held the objection as time-barred and granted variation in the permits of the petitioner and others.

Raghunandan Prasad, who is a member of the Meerut Sardhana Passenger Transport Association but who had not filed any objection in his personal capacity, filed an appeal to the State Transport Appellate Tribunal against the grant of variation in the permits of the petitioner and others. The petitioner

contended that no such appeal lay at the instance of Raghunandan Prasad since he had filed no objection before the Regional Transport Authority. The Appellate Tribunal, however, relying upon a decision of the Rajasthan High Court held that the appeal was competent u/s 64 (b) of the Motor Vehicles Act. The petitioner then presented this petition under Article 226 of the Constitution contending that the appeal filed by Raghundan Prasad is incompetent and praying that the order of the State Transport Appellate Tribunal be quashed. Asthana J. who heard the petition, felt that since under Sub-section (8) of Section 57 of the Motor Vehicles Act an application to vary the conditions of a permit has to be treated as an application for grant of a new permit, the variation in the permits of the petitioner and others could be appealable u/s 64 (f) of the Act, but a Division Bench of this High Court having taken the view, in Bhan Singh v. Regional Transport Authority, Meerut, AIR 1967 All 163, that an application to vary the conditions of a permit cannot be deemed to be an application for grant of a permit, his Lordship considered that the decision required reconsideration and referred the case to a larger Bench.

2. It was not argued before us on behalf of Raghunandan Prasad that the appeal under consideration was competent u/s 64 (f) on the ground that, in view of Sub-section (8) of Section 57, the applications of the petitioner and others for variation of the permits ought to be regarded as applications for new permits for the modified route. The only point pressed before us on his behalf was that the appeal is maintainable u/s 64 (b) of the Act. On behalf of the petitioner on the other hand it was urged that Section 64 (b) is not applicable in the circumstances of the case.

Section 64, omitting the unnecessary parts thereof, reads thus:--

"Any person--

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

.....

(f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or

(i) may appeal to the prescribed authority"

3. The true scope and meaning of Clause (b) of Section 64 have been discussed by several High Courts including this High Court.

4. In S. Bhan Singh Vs. Regional Transport Authority and Others, a Single Judge of this High Court held that the words "the permit" and the definite article "the" before the word "permit" in Clause (b) connote that reference is to the permit

mentioned in Clause (a) and, accordingly, "the permit" in Clause (b) does not mean any permit but the permit granted to the person who is aggrieved; on this interpretation, it was held that, under Clause (b), only the person the conditions of whose permit have been varied can file an appeal and not a third person. According to this decision, Raghunandan Prasad would have no right of appeal against the order varying the conditions of the permits of the petitioner and others.

5. A similar construction is placed upon Clause (b) by the High Courts of Madras, Kerala, Patna and Andhra Pradesh.

6. In the Madras case, *M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others*, the timetable of an operator was varied and another operator preferred an appeal, contending that such variation affected his business. A Single Judge, Subba Rao, J., held that the order was administrative and was not liable to be quashed by a writ of certiorari but observed that the appeal was otherwise competent u/s 64 (b). In the Letters Patent Appeal, a Division Bench was of the opinion that the time-table was not a condition of the permit and expressed considerable doubt as to the correctness of the conclusions of Subba Rao, J., so far as Clause (b) was concerned. Nevertheless, the learned Judges proceeded to state that even if the time-table could be said to be a condition attached to the permit, that clause did not confer a right on one person to appeal against an order varying the conditions of a permit granted to another person. They observed:

"The expression "the permit" in that clause must obviously refer to the permit mentioned in Clause (a). That permit is a permit granted to any person by the Transport Authority. We think the proper construction of that clause is to confine its application to persons aggrieved by the revocation or suspension of the permits granted to them or again aggrieved by any variation of the conditions of such permits granted to them."

7. A Full Bench of the Rajasthan High Court, however, took a different view in *Jairamdas Vs. Regional Transport and Others*, . The learned Judges pointed out that the variation of the conditions of the permit of a person might affect the rights of every person who has been providing transport facilities in that or connected area and every such person would certainly be aggrieved by the variation and a right of appeal u/s 64 (b) cannot be denied to him. They appreciated that the clause is not intended to permit an appeal by an indeterminate and undeterminable body of persons such as the public at large or the inhabitants generally of the area concerned. The correct position, according to their Lordships, is thus:--

"Ordinarily and in the vast majority of cases it is only the permit-holder under this clause who would be competent to file an appeal against an order varying the conditions of his permit, because such variation would by and large adversely affect his interests only. But a class of cases also arises where such variation

may or may not adversely affect the holder of the "permit", a condition whereof is under variation but adversely affects another permit-holder in the same area or a neighbouring area and, if so, the applicability of Clause (b) cannot be legitimately denied in a case of this type or in such other similar cases and where such situation arises this clause cannot but be held also to permit an appeal by the party so affected."

8. Referring to the Madras case (Supra), their Lordships observed that it merely cast doubt on the conclusion of the learned Single Judge so far as Clause (b) was concerned and all that it decided positively was that a variation as to the timings of a bus was not a variation of any of the conditions of the permit.

9. In V.G.K. Bus Service Ltd. Vs. Kerala State Transport Appellate Tribunal and Others, a Single Judge of the Kerala High Court followed the aforesaid decision of the Madras High Court, observing that the view expressed by the Appellate Judges that Clause (b) does not permit an appeal by a third party is unequivocal and in the nature of obiter dicta, The learned Judge was unable to agree with the view of the Full Bench of the Rajasthan High Court. His Lordship pointed out that Section 64 (f) gave a right of appeal to a person providing transport facilities on certain conditions in specified situations and observed that it was not for the Court to consider as to why the Legislature gave a right only to such person.

10. A Division Bench of the Patna High Court held in Nandlal Thana Ram Vs. Ghani Khan Monaf Khan and Others, that the language of Section 64 (b) must be read in the colour and context of the language of Clause (a) and if these clauses are read together, the expression "the permit" in Clause (b) must refer to the permit mentioned in Clause (a) and it follows that the proper construction of Section 64 (b) is to confine its application to the persons aggrieved by the revocation of such permits granted to them. Their Lordships were of the opinion that Section 64 (b) does not confer a right on a third party to appeal against the order varying the conditions of the permit granted to another person. Their Lordships followed the decision in the Madras case and were unable to accept the decision in the Rajasthan case as correct.

11. The Madhya Pradesh High Court, in Jasram and Another Vs. State Transport Authority and Others, also held that only the permit-holder who is aggrieved by the variation of the conditions of his permit can appeal u/s 64 (b) and other persons providing transport facilities are disentitled to appeal thereunder; in coming to this conclusion, their Lordships relied upon the Madras case and the Kerala case but did not agree with the Rajasthan case. Their Lordships, however, observed that the right of appeal by persons providing transport facilities and aggrieved by a variation has been specifically provided in Section 64 (f) and the provisions of that clause would be otiose if Clause (b) be regarded as conferring an unfettered right of appeal to those persons. Thus, their Lordships held that other persons providing transport facilities over a route, which is included by variation under Sub-section (8) of Section 57 in another permit, can appeal under Clause (f).

12. In *A. Janardhana Rao Vs. Deputy Transport Commissioner, Kakinada and Others*, a Single Judge of the Andhra Pradesh High Court was of the opinion that an operator was not competent either u/s 64 (b) or Section 64 (f) to prefer an appeal against the variation of the timings prescribed for another operator. The learned Judge expressed agreement with the decision of the Madras case and did not accept the decision of the Rajasthan case. His Lordship observed:--

"It does not appear reasonable to say that out of the three grounds for grievance mentioned in Clause (b), the first two will apply only to the permit-holder, but the third will apply not only to him but also to every outsider. Such a construction would permit fanciful and speculative appeals being preferred by rank strangers and officious busy bodies. But it is said that Section 64 (b) must be so construed as to confine its ambit within reasonable limits. This would be importing into the interpretation vague and uncertain factors and virtually attempting to legislate. And in the process, an otherwise simple position would be rendered needlessly complex."

13. It will thus be observed that it is only the Rajasthan High Court which has so far taken the view that a person other than a permit-holder can prefer an appeal against an order varying the conditions of the permit of another person. We, on our part, are unable to agree with the Rajasthan High Court. We respectfully consider that the view of the other High Courts discussed above is the correct view on a reasonable interpretation of Section 64 (b). Clause (b) confers a right of appeal in three situations: firstly, where the grievance is against the revocation of the permit, secondly, where the grievance is against the suspension of the permit, and thirdly, where the grievance is against any variation of the conditions of the permit. It cannot be disputed that in the first two situations, the person aggrieved is the permit-holder and none else: if the first two situations relate to the permit-holder, the third situation in the same clause must necessarily relate to the permit-holder; it does not stand to reason that the clause dealing with three situations refers to the permit-holder in two of them but to any one else in the third situation. We do not discountenance the possibility of a third party being aggrieved by the variation of the conditions of a permit, but it is not for us to consider why the Legislative policy has denied the right of appeal to such party.

It may be mentioned that Act, as originally enacted, provided for variation of the conditions of the permit of a permit-holder suo motu by the Regional Transport Authority (vide Section 48 (3) (xxi) (a), Section 51 (2) (viii) (a) and Section 56 (2) (viii) (a)). This power to vary the conditions of a permit was obviously conferred upon the Regional Transport Authority to be exercised in the public interest and no opportunity was contemplated for other operators of transport facilities to object to such variation. Where the Authority made a variation in the conditions of the permit in exercise of these powers, the permit-holder alone could prefer an appeal. It was perhaps therefore, that Section 64 (b) did not provide for an appeal by parties other than the permit-holder. It was only by the

amendment of 1956 that Clause (8) of Section 57 was introduced enabling a permit-holder to apply for variation of the conditions of his permit. Though this clause provides that the application to vary conditions of the permit shall be treated as an application for grant of a new permit, implying thereby that other persons providing passenger transport facilities could make representations against the variation applied for, no change, it is significant, was made in Section 64 (b) and the earlier position that the permit-holder alone could prefer an appeal was maintained. If a change was intended and persons other than the permit-holder were permitted to file appeals u/s 64 (b) against the variation of the conditions of the permit of a permit-holder, there should have been a provision as in Clause (f); otherwise the right of appeal would extend to all the sundry and this could not have been in contemplation of Section 64 (b). For these reasons, we adhere to the conclusion reached by a Single Judge of this High Court in S. Bhan Singh Vs. Regional Transport Authority and Others, .

14. We have stated earlier that the question whether an appeal is maintainable u/s 64 (f) has not been pressed before us. Nevertheless, we wish to state that we, with respect, agree with the decision of the Division Bench in Bhan Singh Vs. Regional Transport Authority and Others, , which provides that an application for varying the conditions of permit shall be treated as an application for the grant of a new permit, does not have the effect of converting an application to vary the conditions of permit into an application for grant of a new permit. The fiction of law extends merely to the procedure prescribed by Section 48 and not also to the right of appeal provided in Section 64 (f).

15. In the result, the appeal filed by Raghunandan Prasad to the State Transport Appellate Tribunal is incompetent and the order passed by the Appellate Tribunal, dated 30-4-1963, is quashed. The Appellate Tribunal is hereby directed to dismiss the appeal as not maintainable. In the circumstances of the case, the parties shall bear their own costs.