

(1963) 10 MAD CK 0059

In the Madras High Court

Case No : Writ Appeal No's. 181, 182, 183, 184, 185, 186, 187 and 188 of 1963

Regional Transport Authority

APPELLANT

Vs

Sri Mettupalayam Coonoor Service (P) Ltd.

RESPONDENT

Date of Decision : 04-10-1963

Acts Referred:

Motor Vehicles Act, 1939 — Section 47(1), 47(3), 57, 57(3), 57(5)

Citation : AIR 1964 Mad 454 : (1964) ILR (Mad) 641 : (1964) 77 LW 278

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Ramakrishnan, J

Bench : Division Bench

Advocate : Additional Govt. Pleader, for the Appellant; G. Ramaswami, for the Respondent

Final Decision : Allowed

Judgement

S. Ramachandra Iyer, C.J.—These appeals are filed under Cl. 15 of the Letters Patent against the judgment given by Veeraswami, J. in a number of applications filed under; Article 226 of the Constitution raising a common question under the Motor Vehicles Act. The subject-matter of the applications relates to proposals for the opening up of new routes, namely, Mettupalayam to Gudalur via Ootacamund, Ootacamund to Devaushola via Pykara and Vellore to Kilarasampatti and for putting up of additional stage carriages on the existing route, Coimbatore, Tudialur-Mettupalayam.

2. Certain existing operators over the routes or sectors thereof opposed the proposal. But the concerned Regional Transport authority in each of the cases passed an order limiting the number of buses over the particular route. The transport Commissioner confirmed such orders in their entirety in a few cases and in regard to a part with respect to the rest. The Regional Transport Authority thereupon proceeded to invite applications for the grant of stage carriage permits over the routes in question and to dispose of them in accordance with the provisions of Section 57 of the Act. The operators who objected to the opening up of new routes and for putting up of additional buses on the existing routes,

applied for the grant of copies of orders passed by the Regional Transport authority under Rule 148(b) of the rules framed under the Motor Vehicles Act, but their applications were rejected on the ground that the orders being administrative in character, no revision could be filed against them under the provisions of Section 64(2) of the Act and that, therefore, copies of the orders could not be granted..

3. Thereupon those operators feeling aggrieved by the refusal of the copies by the Regional Transport authority, filed applications under Article 226 of the Constitution for the issue of writs of mandamus directing the grant of copies of the order and for a writ of prohibition against the authority to restrain it from proceeding with the applications for the grant of permits pending filing of revision petitions against orders passed u/s 47(3).

4. Veeraswami, J. accepted those applications and directed the concerned Regional Transport authority to grant certified copies to the respondents herein and prohibited it from proceeding with the applications for the grant of permits for a period of thirty days after the grant of such copies of orders, so as to enable the aggrieved operators to file revision petitions to the State Transport Appellate Tribunal against the order fixing the number of stage carriages to be run on the route in question.

5. The correctness of the judgment of the learned Judge has been contested in these appeals.

6. The substantial question that falls for decision is whether the respondents would be entitled to obtain copies of the orders of the Regional Transport authority passed u/s 47(3) of the Act limiting the number of buses over the route, with a view to file revision petitions against such orders to the State Transport Appellate Tribunal under the provisions of Section 64(2) of the Act.

7. Rule 148(B) of the rules made under the Motor Vehicles Act, requires that an application to the State Transport Appellate Tribunal u/s 64(2) of the Act shall be accompanied by the original or certified copy of the order or proceedings against which the application is preferred. It is not the case of the respondents that they require copies of the orders passed u/s 47(3) for any purpose other than that of filing revision petitions u/s 64(2) of the Act. Therefore, it will become relevant, as indeed the learned judge has considered it relevant to decide whether a revision petition would lie against an order passed u/s 47(3) of the Act.

7a. The learned Advocate General appearing for the. Regional Transport authority has contended that the order u/s 47(3) limiting the number of buses over a route whether such a route is an existing or a new one, will only be a provisional one it being open to the aggrieved person to reagitate the question at the stage when the grant of permit is taken up for consideration under the provisions of Sections 57(3) and 57(5), and that therefore no revision could lie against an order which is thus a tentative one.

8. Before dealing with the contention, and indeed for a proper appreciation of the same, it is necessary to set out first the existing practice in this State in the matter of granting of stage carriage permits and then refer to the relevant provisions of the statute. The procedure followed has been the same whether it be for the grant of permits for running of additional buses over existing routes, or for grant of a permit in respect of a new route.

9. Whenever, an application is received by the Regional Transport authority" under the provisions of Section 45, that authority publishes a proposal for the opening up of a new route for the provision of additional buses on the existing routes, as the case may be. Representations are then called for in respect of the various matters specified in Section 47(1). At that stage there is no publication of notice of the application made u/s 45. u/s 47(1) it will be open to the persons already providing passenger transport facilities along or near the proposed route, or area, to make representations as to the adequacy of the existing passenger transport services or those likely to operate in future. Where such objections are received, the" Regional Transport authority after considering the representations, fixes the number of stage carriages for the route acting under the provisions of Section 47(3).

If, in so limiting it is found that there is no scope for the grant of any additional or new permit, the authority formally notifies the application for permit and dismisses it, u/s 57(5). If, however, it decides to grant one or more permits it proceeds to call for applications u/s 57(2) and disposes of the matter in accordance with the provisions of that section. The practice has been that those persons who are entitled to object u/s 47(1) are again given an opportunity to make representations as to the adequacy of the existing passenger service or as to the necessity of opening up of new routes by means of representations u/s 57(3). The Regional Transport authority considers that question once again and if need arises proceeds to dispose of the applications for permit on their merits. The learned Judge has held that the practice of affording a second opportunity to the objectors to question the propriety of opening up of new routes or putting up of additional stage carriages on the existing route, is not in conformity with the provisions of the statute. We find ourselves in complete agreement with that view and we shall briefly state our reasons therefore.

10. Sections 45 and 46 respectively specify the authority to whom applications for grant of stage carriage permits will have to be made and the particulars, such applications should contain. Section 47(1) lays down the relevant matters which the Regional Transport authority should consider, while dealing with applications for stage carriage permits. Sub-section (3) to that provision vests the Regional Transport authority with power to limit the number of stage carriages in respect of which permits may be granted. Section 57 prescribes the procedure to be followed in disposing of application for the grant of stage carriage permits. Section 57(3) which is an important provision says that the Regional Transport authority shall make the applications for a stage carriage permit available for

inspection at the office of the authority and shall publish, the applications or the substance thereof in the prescribed manner together with a notice of the date when the applications and the representations in relation thereto would be considered. Sub-section (5) provides for the disposal of applications at a public hearing by the Regional Transport authority at which the applicants and the persons making representations shall have an opportunity of being heard. Section 48 confers authority on the Regional Transport authority either to grant or refuse the permit applied for.

11. It will be seen from the scheme of the Act that the question as to the limiting of the number of stage carriage permits Over a particular route has to be decided only u/s 47(3), that is, before calling for applications under the provisions of Section 57. The latter part of sub-clause (3) to that section entitles persons specified in Section 47(1) to make representations in connection therewith, which, implies that the representations can only be with reference to the applications made for the grant of stage carriage permit. That cannot therefore include any right to challenge the propriety of the order passed u/s 47(3). That this is the proper view to take will be plain if we refer to the history of Sections 47 and 48. In its original form prior to its amendment by Act 100 of 1956, Section 47 did not contain sub-clause (3), but the power to limit the number of stage carriages for any specified route was conferred on the Regional Transport authority u/s 48(a). That section also contained a power to grant, impose conditions or refuse the permit.

The effect of the amendment by Act 100 of 1956 was to realign the section by transposing sub-clause (a) to Section 48 as sub-clause (3) to Section 47. Section 48, as amended, expressly states that the authority to grant permit conferred by it, will be subject to the provisions of Section 47. It would follow from this that the Regional Transport authority in proceeding to grant the permit cannot go behind the order limiting the number of stage carriages, passed u/s 47(3). It would be clear from the above, that whereas according to the sections as they stood prior to their amendment, the question of adequacy of existing passenger services or the need for the opening up of new routes, had to be considered at the time of the grant of the permit, under the amended provision that matter has to be dealt with prior even to; taking up the applications for consideration u/s 57.

The significance of this change is that the "matter relating to the fixation of the number of stage carriage for any particular route cannot form the subject-matter of consideration at the stage of disposing of the applications for the grant of permit. It will follow that representations contemplated u/s 57(3) cannot include any ground about the propriety of the order u/s 47(3) fixing the number of stage carriages. To hold otherwise would lead to a duplication of the work;. Further the question as to how many buses can be permitted to put on a particular route is a matter of general importance, affecting the interests of. the public and once that matter has been, decided one way or the other, it will really be against principles of sound procedure to reconsider the matter in the light of representations by

individuals who had already an opportunity to put forward their views. Section 47(3) empowers the authority acting under that provision to consider the matters specified in sub-section (1) thereto. In W. P. No. 450 of 1957 (Mad) (an unreported decision of this Court by Balakrishna Aiyar, J.) it has been held that the sanction of the route or refusal to sanction it, is purely an administrative matter. It has also been pointed out that in deciding matters, of general interest and policy the Regional Transport authority need not hear any party or furnish copies of the order, it passes.

This view has been accepted and followed by the Andhra High Court in Chittoor Conveyance Corporation v. Regionals Transport Authority, Chittoor, 1960-2 Andh WR 447. Recently we came across an instance in W. A. Nos. 1 to 3 of 1962 (Mad), where the recognition of a power to consider the matter of limiting the number of stage carriages on a particular route afresh at the stage of Sections 57(3) and (5) had really led to abuses of the power. It was not necessary in that case to consider whether the Regional Transport authority had no jurisdiction to reconsider at the stage of Section 57(5) a resolution passed by it earlier u/s 47(3), as we were able to dispose of the matter on other grounds. The question, however, has now been resolved beyond doubt by reason of the decision of the Supreme Court reported in Abdul Mateen v. Ramkailash, AIR 1963 SC 64, where it was observed:

"Therefore if the Regional Transport authority has limited the number of stage carriages by exercising its power u/s 47 (3) the grant of permits by it u/s 48 has to be subject to the limit fixed u/s 47(3). We cannot accept the contention on behalf of the appellant that when the Regional Transport authority following the procedure provided u/s 57 comes to grant or refuse the permit it can ignore the limit fixed in Section 47(3) because it is also the authority making the order u/s 48. Section 47(3) is concerned with a general order limiting stage carriages generally etc., on a consideration of matters specified in Section 47(1). That general order can be modified by the Regional Transport authority if it so decides one way or the other. But the modification of that order is not a matter for consideration when the Regional Transport authority is dealing with the actual grant of permits under Section 48 read with Section 57 for at that stage what the Regional Transport authority has to do is to choose between the various applicants who may have made applications to it u/s 46 read with Section 57. That in our opinion, is not the stage where the general order passed u/s 47(3) can be reconsidered for the order u/s 48 subject to the provisions of Section 47 which includes those contained in Section 47(3) under which a general order limiting the number of stage carriages etc., may have been passed."

12. But the learned Advocate General would limit the above observations to a case where at the subsequent stage the Regional Transport authority tried to exceed the limit prescribed u/s 47(3). He argues that as a question of policy and of practice, it should always be open to the Regional Transport authority to reconsider whether the number of stage carriage permits fixed u/s 47(3) would

be necessary at the time of hearing representations u/s 57. We are of opinion that there is no sound policy in giving a power to reconsider a question arising u/s 47(3) at the stage of an enquiry u/s 57(5). Nor do we agree with the distinction sought to be made out on behalf of the appellants that Section 47(3) only fixes a limit to the number of stage carriages and not regarding the fixation of the number within such a limit; to accept that contention would be to introduce words like "maximum or upper" to qualify the word "limit" occurring in that provision. We are also of opinion that the practice followed by the authorities in this stage, viz., of considering the question of the number of buses to be put on a route for a second time at the stage of disposing of the applications for the grant of stage carriage permits u/s 57, is not warranted by the terms of the statute. This view of the matter will not entail any hardship upon any person if he be a person entitled to object u/s 47(1), he can, if the permit were granted u/s 48, appeal against the order granting the permit under the provisions of Section 64(i)(f). If however no permit has been granted, such a person would have nothing to complain of.

13. It was argued before the learned Judge, that as the order passed u/s 47(3) was administrative in character, no revision could be filed against such an order. The learned Judge has rejected this contention, and in our opinion, rightly, on the ground that Section 64(2) which confers a power of revision in the State Transport appellate Tribunal against non-appealable orders of the Regional Transport authority, is wide enough to include even administrative orders. A right of appeal or revision can exist only under a statute. It under a statute, a person aggrieved by a particular order, is given a right to file a revision against that order, to another authority, such a right would exist irrespective of the fact merely of the order being either judicial or administrative.

14. But the more important question in the present case is whether a revision could lie at the instance of the respondents, who are the existing, operators over the proposed routes or sectors thereof. Section 64(2) vests only a discretionary power in the authority specified therein either of its own motion or an application made to it, to revise the order of the Regional Transport authority. The existence of such a discretionary power in the authority specified, would indicate that an application for revision could be made only by a person aggrieved, for no discretionary power to set aside an order of an inferior statutory authority could be exercised except when the person seeking the exercise of that power is aggrieved thereby.

15. We have therefore to see whether the respondents in these appeals could be regarded as persons aggrieved. The learned Judge has in a different context observed "It may be that an existing-, operator in exercise of his right to make representations offers objections to an additional carriage being put on the route. If his objections are not; accepted, "it cannot be said that he is personally aggrieved" by the order which is impersonal and general in character", (*Italics* (here in " ") ours). That an order u/s 47(3) is general in character has now been

recognised in the recent decision., of the Supreme Court to which we have made reference earlier. No existing operator can obviously be affected by a mere decision on the part of the Regional Transport authority to put additional; stage carriages on a particular route or to open up a new route. His grievance can arise only if actually additional buses are put on the route; that is when a permit is granted. It may happen that even after a decision is reached u/s 47(3) the Regional Transport authority is not able to find any suitable applicant to be granted the permit or he may then decide not to grant the permit to any one at all. It cannot be said that in such a case the existing operator would be affected by an order u/s 47(3).

If, however a permit is granted to a person, the person aggrieved can always file an appeal, u/s 64 (i)(f). In such an appeal it will be open to him, to question the preliminary order of the Regional Transport authority limiting the number of buses. Indeed this will follow from our decision in W. A. Nos. 1 to 3 of 1962 (Mad) where, in a converse case, that is, where an applicant's permit was rejected by reducing the number of stage carriages once fixed u/s 47(3), as we held that it would be open to the appellant to challenge the propriety of the order fixing the number of stage carriages over a route in the appeal. In other words, in limiting the number of stage carriages u/s 47(3), no right of any person stands interfered with and no existing operator can have any legitimate grievance till a permit is actually granted. In the later case, the operator would have a right of appeal in all the other cases he cannot possibly have any grievance. Therefore an existing operator cannot have any right to challenge the order of the Regional Transport authority made u/s 47(3). No revisions petition can therefore lie at his instance against such an order. In this view we are unable to sustain the writs issued by the learned Judge. The appeals are accordingly allowed with costs.