
(1970) 01 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 114 to 132 of 1969

Roop Chand Basu Deo and Others

APPELLANT

Vs

Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 27-01-1970

Acts Referred:

Motor Vehicles Act, 1939 — Section 47(3), 64

Citation : AIR 1971 Raj 119 : (1971) RLW 227 : (1970) 3 WLN 62

Hon'ble Judges : Jagat Narayan, C.J.; L.N. Chhangani, J

Bench : Division Bench

Advocate : R.K. Rastogi, M.M. Vyas and R.R. Vyas, for the Appellant; J.P. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Jagat Narayan, C.J.—These are 19 connected special appeals arising out of judgment of a learned Single Judge of this Court dismissing their petitions under Article 226 of the Constitution against an order of the Transport Appellate Tribunal summarily.

2. The facts relevant for the disposal of these appeals are that applications for grant of permits on a new direct route from Jaipur to Khetri Copper Mines (Singhana Copper Project route) were made and the existing operators of the Jaipur-Sikar amalgamated route also applied for extension of their route by including the direct route Jaipur-Khetri Copper Mines in their permits. These applications were considered by the Regional Transport Authority simultaneously at its meeting held on 22nd/23rd December, 1967. The applications of the existing operators of the Jaipur-Sikar amalgamated route for extension of their route were rejected and 18 fresh permits were granted to 18 applicants on Jaipur-Khetri Copper Mines direct route which was opened.

3. Nineteen operators of the Jaipur-Sikar amalgamated route and 9 other applicants whose applications, for extension in one case and for grant of fresh

permits in the other, were refused appealed against the decision of the Regional Transport Authority to the Transport Appellate Tribunal. The Transport Appellate Tribunal heard all these 28 appeals together and allowed them by its order dated 6th October, 1969. It quashed all the 18 permits on the ground that before granting them an order fixing the limit u/s 47 (3) of the Motor Vehicles Act on the newly opened route had not been passed. It also set aside the orders of rejection of the applications for grant of fresh permits and for extension which were made by these 28 appellants before the Regional Transport Authority.

It directed a fresh consideration of the applications for the 28 appellants and 18 respondents along with such other applications for grant of permits on the Jaipur-Khetri Copper Mines route, which might have become ripe for consideration. It may be mentioned here that before the decision of these appeals by the Transport Appellate Tribunal the Regional Transport Authority had taken a decision on 27-11-68 for opening a direct route between Jaipur and Khetri Copper Mines and fixed the limit of stage carriages u/s 47 (3).

4. Twenty-eight applications under Article 226 of the Constitution were filed against the decision of the Transport Appellate Tribunal before the learned Single Judge by the 16 fresh grantees. Nine of these were filed against the 9 applicants for fresh permits whose applications had been rejected by the Regional Transport Authority, but whose rejection was set aside by the Transport Appellate Tribunal. These were admitted by the learned Single Judge and are pending. Nineteen of these applications were filed against the 19 operators of the Jaipur-Sikar amalgamated route whose applications for extension were rejected by the Regional Transport Authority and whose rejection was set aside by the Transport Appellate Tribunal on appeal. These 19 applications were dismissed summarily by the learned Single Judge. Against that dismissal the present special appeals have been filed.

5. The first contention on behalf of the appellants is that the existing operators of the Jaipur-Sikar amalgamated route did not file a representation against the grant of fresh permits to them and did not deliver a copy of the same as required by Section 57 (3) and therefore they had no right of filing an appeal against the grant of permit u/s 64 (f).

6. We have examined the judgment of the Transport Appellate Tribunal and are satisfied that this objection was not taken before it.

7. Our attention has been drawn to the observations made by the Tribunal to the effect that very lengthy arguments were addressed by the learned counsel for the various appellants and respondents on question of law as well as questions of fact but it need not deal with all those arguments. From this we are unable to infer that the appellants contended before the Tribunal that the appeals before it were not maintainable. If that contention had been raised the Tribunal would not have proceeded to hear the appeals without deciding that preliminary objection, which would have gone to the very root of the matter.

8. The next contention on behalf of the appellants is that as the Regional Transport Authority had fixed the scope of the route u/s 47 (3) before the Tribunal gave its decision and as the number of permits granted did not exceed the scope fixed u/s 47 (3) the Tribunal should have confirmed the order granting these permits. We are unable to accept this contention. In *R. O. Naidu v. Addl. S. T. A. T. Madras* AIR 1969 SC 1139, their Lordships of the Supreme Court observed as follows :--

"Sub-section (3) of Section 47 of the Act if read by itself does not throw any light on the controversy before us but if Sections 47 and 57 of the Act are read together it appears to us to be clear that the view taken by the Appellate Tribunal and the High Court is the correct view. If contrary view is taken it will throw open the door for manipulations and nepotism. There may be possibility of the personality of the applicant influencing the decision of the R. T. A. on the question of need for a stage carriage permit in the route and thereby public interest which should be the main consideration while taking a decision u/s 47 (3) may suffer. If we accept the view taken by the R.T.A. as correct, an operator who happens to apply for the route first will be in a commanding position. The R. T. A. will have no opportunity to choose between competing operators and hence public interest might suffer."

9. If the Tribunal had confirmed the order granting permits which had been passed before the scope was fixed u/s 47 (3) and before the competitive claims of all persons desiring to have permits issued on the route were considered then the mischief which Section 47 (3) seeks to prevent would have been legalised by the order of the Tribunal.

10. Another contention put forward on behalf of the appellants is that the order of the Regional Transport Authority refusing to extend the permits of the existing operators of the Jaipur-Sikar amalgamated route amounted to a general order within the meaning of the decision of their Lordships of the Supreme Court in *Jeewan Nath Wahal and Others Vs. Sheik Mahfooz Jan and Others*, and no appeal lay against it. We have carefully examined the decision. What their Lordships said was that an order of the Regional Transport Authority deciding to open a new route was a general order against which no appeal lay. An order refusing to grant extension to the existing operators of the Jaipur-Sikar amalgamated route who had applied for such an extension cannot be regarded as a general order against which no appeal lies. It is an order refusing to grant a permit which is appealable u/s 64 (a). It cannot become a non-appealable order merely because the same order is passed on the applications of several persons whose cases are similar.

11. The decision of the Transport Appellate Tribunal is fully covered by the decision of their Lordships of the Supreme Court in *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*,

12. Another contention is that the Transport Appellate Tribunal had no jurisdiction

to direct the Regional Transport Authority to consider all pending ripe applications along with the applications of the parties to the appeals before the Tribunal. This contention also has no force as Section 47 (3) contemplates that after the scope is fixed an opportunity will be given to all those desirous of plying buses on the new route to apply for .grant of permits and it is only proper that all these applications should be considered together.

13. In the result, the special appeals are dismissed. We leave the parties to bear their own costs.