
(1966) 09 AHC CK 0019
In the Allahabad High Court
Case No : Writ Petition No. 320 of 1964

S. Bhan Singh

APPELLANT

Vs

Regional Transport Authority and Others

RESPONDENT

Date of Decision : 02-09-1966

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 57(3), 57(4), 64
Uttar Pradesh Motor Vehicles Rules, 1940 — Rule 72

Citation : AIR 1967 All 336

Hon'ble Judges : G.D. Sahgal, J

Bench : Single Bench

Advocate : A.J. Fanthome, R.S. Lal Srivastava and N.P. Shastri, for the Appellant; Standing Counsel for Nos. 1, 2 and 4 and Mohd. Husain, for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Sahgal, J.—The petitioner is one of the 65 persons who hold a stage carriage permit on the route known as the Garhmukhteshwar-Hapur-Pilkhua-Ghaziabad-Delhi route or more shortly Garh-Delhi route described in Annex. 1 as the blue route (it will henceforward be described for the sake of brevity as the blue route). It is an interstatal route Respondent No. 3 also held a stage carriage permit for a route from Ghaziabad to Faridnagar via Pilkhua shown in annexure 1 in lilac. A portion of this route is common with the blue route between Ghaziabad and Pilkhua.

On the 1st of February, 1962 respondent No. 8 made an application for the variation of his route. He proposed that he be allowed the route from Ghaziabad to Faridnagar via Pilkhua-Hapur-Bhojpur shown in red in annexure 1. He also prayed that his permit be varied so as to allow him to ply his stage carriage from Ghaziabad to Hapur via Pilkhua, i.e., the route shown in green in annexure 1. Due publication was made of his application in the U. P. Gazette on the 30th of June, 1962 and fifteen days time was allowed for filing representations as

contemplated u/s 57(3) of the Motor Vehicles Act, 1939 (hereinafter described as the Act). No representation was submitted by the petitioner during this period.

The application, however, came up for disposal before the Regional Transport Authority, respondent No. 1, at a meeting held between the 6th to the 8th of August, 1962. The petitioner filed at that stage a written objection purporting to be one u/s 47 of the Act objecting to the variations over the route. His objections, however, were rejected being time-barred and respondent No. 3 was ordered to be given a permit on the red route, i.e. the Ghaziabad-Hapur-Bhojpur-Faridnagar route in variation of the Gaziabad-Pilkhua-Faridnagar route on condition that he was not to pick up or set down any passenger between Hapur and Bhojpur which, as it appears, was a part of a notified route of Hapur to Modinagar and also on condition that this order would be subject to the approval of the Transport Commissioner and the State Transport Authority, U. P., respondent no.4. This order is contained in annexure 3 under which the objection of the petitioner is also rejected.

On the 18th of August, 1962 respondent No. 3 was even given a permit on the varied route and though it is asserted that he had given an undertaking to surrender the permit as directed by respondent No. 4, this fact U denied by respondent No. 2. In any case, respondent No. 4 took a decision in the matter refusing the permit for the use of the notified route from Hapur to Bhojpur. This order is said to have been passed on the 4th of September, 1962 No mention seems to have been made as to the alternative prayer in which variation was sought, namely, Ghaziabad to Hapur, the green route, and it may be taken that so far as the application related to that variation is stood rejected.

After the objection of the petitioner was rejected on the ground that it was time-barred, he filed an appeal before the State Transport Appellate Tribunal, respondent No. 2 against that order which was registered as appeal no 312 of 1962. Respondent No. 3 also filed an appeal against the order dated the 17th of September, 1962 praying that the conditions attached to the permit of the variation of the route should be expunged (appeal No. 352 of 1962). While in the appeal filed by the petitioner he made respondent No. 3 a party to his appeal, respondent No. 3 in his appeal did not make the petitioner a party before respondent No. 2. As the petitioner was not sure as to whether an appeal lay at all, he filed an application in revision also u/s 64-A of the Motor Vehicles Act before respondent No. 4 which has not been disposed of inasmuch as an appeal had already been filed against that order.

On the 28th of January, 1963 the petitioner made an application before respondent No. 2 to be made a party to the appeal filed by respondent No. 3 before it. This application, however, was rejected on the 28th of April, 1963. On the 18th of February, 1964 both the appeals, namely. Appeal No. 312 of 1962 and Appeal No. 352 of 1962, were disposed of and while the appeal filed by the petitioner was rejected, namely. Appeal No 312 of 1962, in the appeal filed by respondent No. 3, namely, Appeal No. 352 of 1962 it was ordered that

respondent No. 3 had a right to ply his stage carriage on the non-notified route subject to the usual conditions and terms of the permit. The copies of the orders are to be found in annexures 13 and 14. The appeal of the petitioner was dismissed both on the merits and also on the ground that his objection was belated. The State Transport Appellate Tribunal pointed out in annexure 13 that it was impossible to treat the objection seriously considering the fact that Sri Fazal Ahmad (respondent No. 3) had the permit for years and was plying over a portion of the Delhi-Garh route over which he would continue to ply even now.

It is in these circumstances that the petitioner has come to this Court under Article 226 of the Constitution praying for a number of writs as follows:

(a) That the orders of the respondent No. 1 contained in annexure 3 dated the 6th of August, 1962 be quashed by writ of certiorari.

(b) That the orders of the respondent No. 2 contained in annexure 14 dated 18th of February, 1964 granting a stage carriage permit to the respondent No. 3 on Ghaziabad-Pilkhua Hapur route be quashed by a writ of certiorari and the stage carriage of respondent No. 3 be prevented from plying over the said route under the orders of either respondent No. 1 or 2.

(c) If need be the orders of respondent No. 2 contained in annexure 10 dated the 25th of April, 1963 refusing to implead the petitioner as respondent in Appeal No. 352 of 1962 be quashed by a writ of certiorari.

(d) That the orders of respondent No. 1 rejecting the objections of the petitioner made on the 6th of August, 1962 be quashed by a writ of certiorari.

(e) That the orders of respondent No. 2 rejecting the appeal of the petitioner in Appeal No. 312 of 1962 be quashed by a writ of certiorari.

2. There is then a general prayer as to the grant of such other writs, orders and directions as will secure for the petitioner the cancellation of the permit of respondent No. 3 to ply his stage carriage over the route of the petitioner and from Ghaziabad to Hapur via Pilkhua. There is a prayer for costs also.

3. We have now to see how far, if at all, which or any relief can be granted to the petitioner in the circumstances.

4. Starting from the beginning and coming to the stage when the objections of the petitioner were dismissed as time-barred, we have to see whether that was a correct order. This was a case in which an application was made for varying the conditions of a permit.

5. Sub-section (8) of Section 57 of the Act provides that an application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area shall be treated as an application for the grant of a new permit.

6. Under Sub-section (8) of Section 57 of the Act, on receipt of an application for

a stage carriage permit (which will Include under Sub-section (8) an application vary the conditions of any permit) the Regional Transport Authority shall make the application available for inspection at the office of she Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered.

7. Publication was made accordingly.

8. Sub-section (4) provides that no representation in connection with an application referred to in Sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnish- ed simultaneously to the applicant by the person making such representation.

9. It is the common case of the parties that no such representation was made in writing before the appointed date. The question of a copy thereof being furnished simultaneously to the applicant (respondent No. 3 in this case) does not arise.

10. Sub-section (5) provides that when any representation such as is referred to in Sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

11. The application came up for hearing at the meeting of respondent No. 1 on the 6th/ 8th of August, 1962. It was at that meeting that the petitioner appeared and submitted an objection in writing, but his objection was rejected. The contention on behalf of the petitioner is that though he might not have been entitled to a hearing, he was certainly entitled that his representation be considered and he relied on the provisions of Section 47 of the Act which provides that, among other things, a Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to certain matters mentioned therein and shall also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area. As the petitioner was providing passenger service along a portion of the route, his representation ought to have been taken into consideration. It may be that he did not file an objection within the time permitted under Sub-section (3) of Section 57 and if he had tried to file one beyond that time it was liable to dismissal under Sub-section (4) of Section 67; but his filing a representation in time would have given him only the right to a public hearing. But Section 47 does give a right to him to get his representation taken into consideration though he may not claim a right to be heard.

What is urged is that the two provisions, namely, Section 47 and Section 57 are

distinct one from the other. Section 57 prescribes for a representation being made within a certain time and if it is so made, it gives a right to the person making the representation to be heard at a public hearing. But Section 47 gives a right to persons already providing passenger transport facilities by any means along or near the proposed route or area and also to some other persons mentioned therein the right to have their representations considered. This is a right, it is urged, different from the right contemplated u/s 67, for while u/s 67 a public hearing has to be given, u/s 47 the person making the representation is entitled to a consideration of his representation, though he may not be entitled to a public hearing. It is thus urged that even though the objection of the petitioner was filed beyond time, it should not have been summarily dismissed as being time-barred but should have been given consideration. Respondent No. 1, therefore, it is said, has erred in not giving consideration to the representation, though in all fairness it has been conceded that the petitioner had no right to being heard.

12. The point raised is not free from difficulty as it would appear from a consideration of the following authorities.

13. The first authority that was cited at the Bar is *Vijai Motor Transport Association v. Mahakoshal Transport Service* AIR 1953 Nag 150. In this authority the point actually raised before me has not been considered, but it has been pointed out that as there was no compliance with the provisions of Section 67 (3) the petitioner was not entitled to be heard in opposition to the application of the non-applicant to whom the permit was granted. This authority, therefore, does not help us in the matter.

14. The next case is *Anjaneya Motor Transport by partner, S. Srinivasan Vs. State of Madras*, . In this case also the matter did not come up in the form in which it comes up before me. It was pointed out therein that if an operator or a person interested does not take steps in time as provided in Section 57 (3), he has no right to be heard before orders are passed and that is the effect of Section 67 (4). It was then pointed out that merely because a person files a representation out of time, he does not become in any sense a party to the proceeding and is not entitled to a notice before an order u/s 67 is interfered with by the revisional authority. The question as to whether u/s 47 apart from Section 67, he was entitled to have his representation considered or not was not considered at all and no such right seems to have been claimed.

15. The matter was specifically considered in *N. - R. Revanna v. T. V. Mallappa* AIR 1965 Mys 258. Reading the provisions of Section 47 and Sub-section (6) of Section 57 together the learned Judges came to the conclusion that in view of these provisions, all representations shall have to be made in writing and that before the time prescribed under the notification. If any representation is made after the date notified, such representation cannot be taken into consideration. Further only persons who have made representations strictly in accordance with Sub-section (4) of Section 67 of the Act are entitled to a hearing before the

Regional Transport Authority, therefore, if any person who has not made a written representation as required by Sub-section (4) of Section 57, is given a hearing by the Regional Transport Authority, he cannot be considered as one who has opposed the grant for purposes of Section 84 (1) (f) of the Act.

16. Lastly, we have an unrepresented case of our own court, namely, *Bhagwat Swarup v. Regional Transport Authority, Meerut*, Civil Misc. Writ No. 802 of 1962, D/- 17-1-1962 (All) where a learned single Judge seems to be of opinion that the petitioner in that case being one of such persons as came u/s 47 could bring the facts to the notice of the respondent (in that case the Regional Transport Authority). Only he could not claim a right to be heard on public hearing as would have been the case if he had filed a representation u/s 57 meaning thereby that he had a right to have his representation considered.

That was a case praying for a writ of mandamus, order or direction in the nature of mandamus directing the respondent not to consider the applications for grant of a permit made in response to the notification dated the 13th of June, 1959 in the meeting of the 22nd or the 23rd of January, 1962 or in any other meeting. The writ petition was dismissed on two grounds. The first was that the application having been published it was the statutory liability of the Regional Transport Authority to consider the application u/s 57 and secondly u/s 47 the representation had to be taken into consideration. It appears that the case was covered by the provisions of Section 57 and in the circumstances the question of the matter being considered did not arise apart from a public hearing as the party who had made the representation had a right to a public hearing. The remarks of the learned single Judge, therefore: in that case appear to be obiter.

17. When a statute provides that a certain representation has to be considered by a certain authority and it also provides as to how those representations have to be made within a specific period, the representation can be made in that manner only and in no other manner. It may be that if a representation is made in that manner within the time allowed, the party has a right of public hearing, but public hearing is one of the modes as to how the matter will be considered. For the matter to be considered parties have been given a right to be heard, but that does not mean that if a party does not claim a right of public hearing, he may get over the difficulty of filing the representation in time and claim that the only disadvantage to which it can be put is that it may not claim a public hearing though it can claim a right to get the representation considered. I am, therefore, in respectful disagreement with the view of the learned single Judge expressed in the unreported case of this Court, namely, *Bhagwat Swamp v. Regional Transport Authority*, Civil Misc. Writ No. 302 of 1962, dated 17-1-1962 (All) (supra).

18. The first point, therefore, that the application of the petitioner should not have been rejected summarily has no force.

19. We now come to the next point, namely, that the petitioner had a right of appeal. It is the case of the version of the terms of a permit because variation in

route in terms of Section 57 (8) does amount to a variation of the conditions of the permit.

20. The provisions with respect to an appeal are contained in Section 64 of the Act. Section 64 in so far as it is relevant provides:

"64. 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..... may within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard."

21. The question is whether the petitioner is a person 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 so as to come under Clause (a) of Section 64. The order passed against him cannot be said to be a refusal to grant a permit to him nor can it be said that by that order any condition is attached to a permit granted to him. He does not come under Clause (b) also, because he cannot be said to be aggrieved by the revocation or suspension of "the permit or by any variation of the conditions thereof.

22. The word used is "the permit" and the definite article "the" before the word "permit" connotes that reference is to the permit mentioned in Clause (a). The permit does not thus mean any permit but ""the permit" granted to the person who is aggrieved. Thus under Clause (b) only the person the conditions of whose permit have been varied can file an appeal and not a third person. This view finds support from a Division Bench case of the Patna High Court, namely, Nandlal Thana Ram Vs. Ghani Khan Monaf Khan and Others, where after considering the provisions of Clause (b) of Section 64 the Bench was pleased to remark that the language of Section 64, Clause (b), of the Motor Vehicles Act, 1939 must be read in the colour and context of the language of Clause (a) and if these clauses are read together it is manifest that the expression "the permit" in Clause (b) must refer to the permit mentioned in Clause (a) and that permit is a permit granted to any person by the Regional Transport Authority. It follows, therefore, that the proper construction of Section 64, Clause (b), is to confine its application to the persons aggrieved by the revocation or suspension of the permits granted to them or to persons aggrieved by any variation in the conditions of such permits granted to them. Section 64, Clause (b), thus does not confer a right on a third party to appeal against an order varying the conditions of the permit granted to another person.

23. The same seems to be the view of Madhya Pradesh High Court in Jasram and Another Vs. State Transport Authority and Others, and also of the Andhra Pradesh High Court in Janardhana Rao v. Deputy Transport Commr. AIR 1965 AP

116. The view, however, is opposed to the view of the Rajasthan High Court in *Jairamdas v. Regional Transport Authority* AIR 1967 Raj 312 (FB) which is a Full Bench case and subsequently followed in a Division Bench case of the same High Court, namely, *Heeralal and Others Vs. The State of Rajasthan and Others*, . Earlier the view of the Rajasthan High Court also was in consonance with the authority of the Patna, Madhya Pradesh and Andhra Pradesh High Courts (vide *Sainiks Motors v. State Transport Authority* AIR 1956 Raj 66).

But in AIR 1967 Raj 312 (FB) (supra) and *Heeralal and Others Vs. The State of Rajasthan and Others*, Raj 41 (supra) the Rajasthan High Court, with respect, did not seem to take into consideration the use of article "the before "permit" in Clause (b) of Section 64. These authorities of the Rajasthan High Court have been considered by the Patna, Madhya Pradesh and Andhra Pradesh High Courts, but they have not been followed and I respectfully agree with the view taken by the Patna, Madhya Pradesh and Andhra Pradesh High Courts. It was the right of respondent No. 3 and respondent No. 3 alone to file an appeal to respondent No. 2 as it was he the terms of whose permit had been varied. The terms of the permit of the petitioner had not been varied and he could not, therefore, be said to be a person aggrieved by the variation of the conditions of "the" permit. He had no right of appeal and if his appeal has been rejected, he is not entitled to any relief for the quashing of that order.

24. The next question to be considered is whether the appeal filed by respondent No. 3 was incompetent inasmuch as he failed to make the petitioner a party to that appeal. Connected with it is the question as to whether respondent No. 2 committed an error of law apparent on the face of the record by rejecting the application of the petitioner to be made a party to the appeal filed by respondent No. 3. In this connection reference is made to Rule 72 of the U. P. Motor Vehicles Rules, 1940, as amended up-to-date, which provides with respect to the orders against the Regional Transport Authority that the appellant shall also join in appeal as respondents all such persons as are likely to be affected in any way by the relief sought for in the appeal.

The question is whether it can be said that the petitioner was a person affected by the relief sought for in his appeal by respondent No. 3. If we recall the facts stated earlier, respondent No. 3 was granted by the order contained in annexure 3 by respondent No. 1 a variation in the conditions of his permit to ply his stage carriage from Ghaziabad to Faridnagar via Hapur instead of plying it via Pilkhwa. This order was conditional inasmuch as he was not "to pick or set down any passengers, between Hapur and Bhojpur as to which the approval of the Transport Commissioner, U. P., respondent No. 4 was necessary. The route from Ghaziabad to Faridnagar via Hapur is common with the blue route on which the stage carriage belonging to the petitioner runs to the extent that it covers a portion of route between Ghaziabad and Hapur. By the order contained in annexure 3, therefore, respondent No. 3 was granted permission to ply his stage carriage on that portion of the route in any case which was part of the route from

Ghaziabad to Faridnagar via Hapur. It was only with respect to the portion between Hapur and Bhojpur that a condition was attached he was not to pick or set down any passenger. When respondent No. 3 filed an appeal, he wanted that that condition be removed, namely, that he was not to pick or set down any passenger between Hapur and Bhojpur and that it was to be subject to the approval of the State Transport Authority, respondent No. 4. He had been granted to ply his stage carriage on a part of the route between Ghaziabad and Hapur, unconditionally. In the appeal" that he had filed, only a condition under which he was granted a variation which did not affect his plying between Ghaziabad and Hapur, was sought to be removed. It cannot, therefore, be said that if the appeal had been allowed, the petitioner was at all to be affected by it. He had already been affected by the order contained in annexure 3 inasmuch as a variation had been allowed to respondent No. 3 to ply his stage carriage from Ghaziabad to Faridnagar via Hapur and Bhojpur. As I have already pointed out, against that order of variation the petitioner had no right of appeal. Respondent No. 8 also had not filed any appeal against that portion of the order. By the result of the appeal filed by respondent No. 8 he was not affected as he had already been affected to the extent he could have been affected by the order passed by respondent No. 1 against which to the extent it covered the distance between Ghaziabad and Hapur there was no appeal. There has thus been no violation of the provisions of R. 72 by the petitioner being not made a party to the appeal filed by respondent No. 3 to respondent No. 2. That will dispose of the connected question as to whether respondent No. 2 has committed an error in not allowing the petitioner to be made a party to the appeal filed by respondent No. 8 to respondent No. 2.

25. Altogether, therefore, the petition has no force and should be dismissed. It is accordingly dismissed with costs.