

(1955) 10 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Case No. 37 of 1955

Sainiks Motors and Others

APPELLANT

Vs

State Transport Authority and Others

RESPONDENT

Date of Decision : 03-10-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 48, 64

Citation : AIR 1956 Raj 65 : (1956) RLW 182

Hon'ble Judges : Wanchoo, C.J.; Dave, J

Bench : Division Bench

Advocate : Ratanlal, for the Appellant; Murlimanohar Vyas, for Non-Petitioner (No. 3) and L.N. Chhangani, Government Advocate, for the Appearing Parties

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Sainiks Motors and two others under Article 226 of the Constitution of India and arises in the following circumstances:

2. The applicants are permit holders of certain buses plying on the Jodhpur, Pali, Sojat-Bar-Beswar route. It appears that there was some inconvenience to the public and the buses of the applicants, which originally terminated at Bar, were allowed to go up to Beawar. It also appears that the permits were countersigned by the Ajmer authorities.

There was also another bus service between Bilara and Bar and that was similarly extended for the same reason to Beawar and the permits in that case also were countersigned by the Ajmer authorities. In 1954, however, there was an application by these operators holding permits from Jodhpur to Beawar and Bilara to Beawar to the Regional Transport Authority, Jodhpur, by which they obtained an order that the extension granted up to Beawar would be subject to the condition that the Jodhpur-Beawar operators will make two daily return trips between Bar and Beawar and Bilara-Bar operators will make one daily return trip

between Bar and Beawar.

It seems that this caused inconvenience to certain persons who were travelling from Bilara to Beawar in January 1955. These persons then tried to find out from the office of the Regional Transport Authority, Jodhpur, why all the buses from Bilara to Beawar did not go the whole way. They then came to know of the order of 15th of March 1954 fixing the ratio of 2:1.

Thereupon they filed an appeal before the appellate authority against this order and the appellate authority passed what it calls a stay order in this connection.

3. The present application is to the effect that the persons, who have filed the appeal before the appellate authority, have no locus standi to do so and therefore, this Court should prohibit the appellate authority from hearing the appeal and from passing any order in that connection.

The reliefs claimed in the writ application are not appropriate but the real relief which the applicants desire is that we should prohibit the appellate authority from hearing this appeal and passing any order whatsoever on it.

4. The application is opposed by Mohanlal and others who have filed the appeal before the appellate authority and their case is that they have right to appeal u/s 64 (b) and (f) of the Motor Vehicles Act.

5. Appeals are creations of statute and unless a person can bring himself within the four corners of the statute law prescribing appeals, he cannot go before any appellate authority, in the Motor Vehicles Act. Section 64 provides for appeal and we are concerned in this case firstly with Clause (b) of that section which gives right of appeal to:

"64 (b) Any person aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof."

6. The argument on behalf of the applicants is that under this clause only a person, whose permit has been revoked or suspended or the conditions of whose permit have been in any way varied, can be an aggrieved person who has the right to appeal. On the other hand, learned counsel for the opposite party contends that any person, who feels himself aggrieved by any variation in the conditions of a permit, be he a permit holder or any member of the public, is entitled to appeal.

It is urged that if for example, by a change in the condition of a permit the number of daily services is reduced from two per day between Jodhpur-Beawar to one per day, any member of the public, who is inconvenienced by such a change, has a right to appeal against the change to the appellate authority. We are of opinion that Section 64 (b) is not capable of this wide interpretation.

It does not require any argument to come to the conclusion that so far as revocation or suspension of a permit is concerned, the person aggrieved is the person whose permit has been revoked or suspended and it is he alone who can

appeal. It will be going too far to say that even in the case of revocation or suspension of a permit, any member of the public, who feels aggrieved by the disappearance of the service has any right to appeal.

It could hardly have been the intention of the legislature to give such a wide right of appeal to an indeterminate and large body of persons. Nor could it have been intended that those indeterminate body of persons, who may feel aggrieved at different times, would be entitled to appeal within 30 days from the time they came to know of the revocation and began to feel the grievance.

If, therefore, a person aggrieved by revocation or suspension of the permit is the person who holds the permit and whose permit has been revoked or suspended it follows, in our opinion, that the person aggrieved by any variation in the conditions of a permit is also the person who holds the permit and not anybody else. Our attention was drawn in this connection to Clause (a) of Section 64 where the words used are "any person aggrieved by any condition attached to a permit granted to him."

It is urged that if Clause (b) was similarly confined to the persons to whom permit was granted, we should have found similar expression used in Clause (b) also. It is enough, however, to say that the words "granted to him" appearing in Clause (a) are, in our opinion superfluous and Clause (a) would have meant the same thing even if these words were not there.

The presence of these words in Clause (a) does not, in our opinion, mean that Clause (b) has a much wider application than Clause (a). We are clearly, therefore, of the opinion that Clause (b) only authorises a person, whose permit has been revoked or suspended or the conditions of whose permit have been varied, to appeal and it does not authorise others to appeal, for, others cannot be said to be aggrieved by the revocation or suspension of the permit or variation in its conditions.

In an earlier case also -- "Malchand v. State Transport Authority", Civil Writ Case No. 260 of 1954 Raj (A), decided by a Bench of this Court to which one of us was a party, the view was expressed that Clause (b) does not give any right to all end sundry to come in appeal because of some variation in the conditions of the permit.

Our attention was drawn in this connection to -- A. Vedachala Mudaliar Vs. The State of Madras and Another, in which Subba Rao J., took the view that Clause (b) authorised any person who was affected by the variation in the conditions of the permit, to appeal. The learned Judge was himself very hesitant about the view he was taking and we must respectfully differ from him.

We find that in the same Court when that case went in appeal, the Bench expressed considerable doubt as to the correctness of this view. (See -- M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others, They did not, however, pursue the matter because the appeal was decided on another point.

We have, however, doubt that the "person" within the meaning of Clause (b) is only the person whose permit is revoked or suspended or conditions of whose permit have been varied. The opposite party, therefore could not file an appeal before the appellate authority under Clause (b) as aggrieved persons.

7. The other clause on which learned counsel for the opposite party relies, is Clause (f). That gives right to a local authority to appeal against the grant of a permit or any condition attached thereto if such local authority has opposed the grant of the permit. The first question in this case is whether the applicants are a local authority.

It is urged that two of them are members of the Panchayat and that there was a resolution by the Panchayat in this connection. Whether a Panchayat is a local authority or not is a matter which we do not think it necessary to decide in this case. We shall assume for present purposes that Panchayat may be a local authority envisaged in Clause (f).

The question still remains whether the conditions of Clause (f) have been fulfilled in this case. Those conditions are very restricted. In the first place, it is to be shown that the local authority had opposed the grant of a permit. If that is shown, then they can appeal against the grant of the permit or by any condition attached to such grant.

In this case, there is no proof before us that the Panchayat had opposed the grant of the permits at any stage. If anything, all that the Panchayat can be said to have done was to ask for the extension of the permit from beyond Bar to Beawar. In these circumstances, the Panchayat never having opposed the grant of the permits, cannot appeal under Clause (f) of Section 64, for, the conditions for appealing under that clause are not fulfilled.

8. These were the only two clauses under which the opposite parties claimed that an appeal could lie to the appellate authority. We have seen that their contention on both counts is incorrect. Therefore, the opposite parties had no right to appeal to the appellate authority and, therefore, that authority cannot hear the appeal.

Our attention was drawn in this connection to Rule 105 of the Rajasthan Motor Vehicles Rules, 1951. Clause (b) of that rule certainly provides that a person, who had made any representation in connection with the grant of a permit should be heard later by the Regional Transport Authority, if it subsequently wants to vary any condition of the permit.

It is urged that the Panchayat, on whose representation the permits were extended from Bar to Beawar, was not heard when that extension was restricted to a certain extent by the order of 15-3-1954. We express no opinion as to whether the Panchayat was entitled to hearing under Rule 105. But assuming that it was and was not heard, even that would not give a right to appeal unless the case is specifically covered by the terms of Section 64.

Further, even if the Regional Transport Authority makes an irregularity in making

a change in the conditions of a permit, that would not in our opinion, affect the order passed by the authority. That may give rise to a right of appeal to a person who can appeal under the terms of Section 64. It would not make the order itself void, nor would it give rise to an appeal by a person who is not authorised to appeal by any of the clauses of Section 64.

9. The next question is whether in these circumstances, we should" Issue a writ of prohibition. This is a case where the applicant could only have to come to us under Article 226 of the Constitution after the Appellate Authority had decided the appeal, in a writ of certiorari.

In these circumstances, as the order of the appellate authority could only be brought to this Court in a writ of certiorari and in no other manner, we think that we should exercise our power and issue a writ of prohibition now that the matter has been brought before us while the appeal is still pending before the appellate authority.

The effect of the order of prohibition would naturally be that all orders passed by the appellate authority in connection with the appeal will be of no force and effect.

10. We, therefore, allow the application and prohibit the appellate authority from hearing the appeal and taking any steps whatsoever in that connection. In view of the fact that the opposite parties" grievance is that they were not heard by the Regional Authority, Jodhpur before the order of 15-3-1954 was passed, we make no order as to costs.