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**(1985) 09 AHC CK 0032**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 9467 of 1982

Sardar Hasan Siddiqui and Others

APPELLANT

Vs

State Transport Appellate Tribunal, U.P., Lucknow and Others

RESPONDENT

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**Date of Decision :** 05-09-1985

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 44(1)

**Citation :** AIR 1986 All 132

**Hon'ble Judges :** S.K. Dhaon, J

**Bench :** Single Bench

**Advocate :** L.P. Naithani, for the Appellant; Standing Counsel, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.K. Dhaon, J.—The petitioners have invoked Article 226 of the Constitution and have challenged the legality of an order dated 18th May 1982, passed by the State Transport Appellate Tribunal, U. P., Lucknow (hereinafter referred to as the Appellate Tribunal) setting aside a resolution dated 16th October, 1981, passed by the Regional Transport Authority, Moradabad (hereinafter referred to as the Transport Authority) including a portion of an independent route in their existing permits for stage carriages and remanding the matter for reconsideration by a duly constituted authority,

2. The petitioners were existing permit-holders of one of the three routes which were Nagina-Kalagarh-via-Afzalgarh (hereinafter referred to as route No. 1); Nagina-Jaspur-via-Afzalgarh (hereinafter referred to as route No. 2); and Kashipur-Kalagarh-via-Jaspur (hereinafter referred to as route No. 3). Petitioners Nos. 1 to 8 (hereinafter referred to as the petitioners Ist set) the existing permit-holders of route No. 1 made applications u/s 57(8) of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) for the inclusion of routes Nos, 2 and 3 in their existing permits. The petitioners Nos. 9 to 20 (hereinafter referred to as the petitioners IIInd set) the existing permit-holders of route No. 3 made similar applications for the inclusion of routes Nos. 1 and 2 in their existing permits; and

the existing permit-holders of route No. 2 made similar application for the inclusion of routes Nos. 1 and 3 in their respective permits. In addition, all of them desired inclusion of an independent route from Bhootipuri to Kashipur via Swawala and Jaspur. These applications were rejected by the Transport Authority by its resolution dated 29th August, 1978, the unsuccessful applicants preferred separate revision applications and these were disposed of by the Appellate Tribunal in two sets by orders dated 28th March, 1979 and 20th July, 1979. The Appellate Tribunal maintained the resolution of the Transport Authority except with regard to the inclusion of the new route aforementioned. However, even with respect to the new route, as claimed by the petitioners, the Appellate Tribunal gave a direction that the applications of the petitioners should be considered only for the portion between Bhootpuri to Jaspur. With this direction the matter was remanded to the Transport Authority. In the remanded proceedings the Transport Authority accepted the applications of the petitioners and included the portion between Bhootpuri and Jaspur in their respective permits by its resolution dated 16th October, 1981 referred to above. This resolution was challenged by the respondents Nos. 5 and 6, the existing operators of a route which overlapped a portion between Bhootpuri and Jaspur by means of three separate revision applications. The Appellate Tribunal disposed of the three revision "applications by the impugned order. It is to be noted that the existing permit-holders of route No. 2 have not come up to this Court and it appears that they have acquiesced into the impugned order of the Appellate Tribunal.

3. Three reasons have been assigned by the Appellate Tribunal for interfering with the resolution of the Transport Authority. They are : (1) The proceedings of 16th October, 1981, of the Transport Authority were not valid as one Sri Janardan Prasad, the Secretary Regional Transport Authority, Bareilly, one of the 4 members of the Transport Authority, participated in the same without any authority of law; (2) The Transport Authority acted without jurisdiction in including a portion of the route between Bhootpuri and Jaspur in the permits of the petitioners and others without their making any application for the modification of the, route, as originally prayed for, namely, Bhootpuri to Kashipur-via-Jaspur, and (3) The publication of the applications of the petitioners IInd set for the inclusion of the new route was defective in so far as the notification did not permit the filing of any objection as against the said applications. These applications were published by means of a corrigendum and the corrigendum itself was published long after the period of 15 days from the date of the publication of the first notification. The publications of the applications of the petitioners Nos. 1 and 2 were defective on similar grounds. In view of its finding on the first point, the Appellate Tribunal has given a direction that the petitioners may make formal applications for the amendment of the route and also the applications of petitioners Nos. 1 and 2 and the petitioners IInd set may be republished.

4. Section 44(1) of the Act provides for Transport Authorities. It states :--

"44. Transport Authorities. -- (1)The State Government shall, by notification in the official Gazette, constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in subsection (3); and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas in this Chapter referred to as regional as may be specified in the notification, in respect of each Regional Transport Authority, the powers and functions conferred by or under this Chapter on such Authorities."

The two provisos thereto are not relevant.

5. This provision empowers the State Government to constitute Regional Transport Authorities for different regions. For its region the Authority is to exercise and discharge the powers and functions conferred by or under Chapter IV.

6. A notification was issued on 29th July, 1981. By it, in supersession of a notification dated 5th December, 1980, the Governor constituted with immediate effect the Regional Transport Authorities in Uttar Pradesh. The Transport Authority constituted therein was mentioned at SI. No. 14. It was to consist of the Commissioner, Moradabad Division, Moradabad (Chairman), the Deputy Transport Commissioner, Garhwal Zone, Pauri (Member), the Superintending Engineer, Public Works Department, Moradabad (Member) and the Regional Transport Officer, Bareilly (Member). This was followed by a notification dated 14th October, 1981, which was published in the Gazette Extraordinary. This notification was issued in supersession of the notification dated 29th July, 1981, and was to take immediate effect. By it the Regional Transport Authorities mentioned therein for Uttar Pradesh were constituted. At SI. No. 14 the Transport Authority was mentioned. It provided that the Transport Authority shall consist of the three Officers mentioned in the notification dated 29th July, 1981 and the Regional Transport Officer, Moradabad, as one of the members. The effect was that the Regional Transport Officer, Bareilly, ceased to be a member and in his place the Regional Transport Officer, Moradabad, became a member.

7. We have to examine the legal effect of the constitution of the Transport Authority by the notification dated 14th October, 1981, along with the provisions of Section 44(1) of the Act indicates that a new constitution of the Transport Authority came into existence and it was not a reconstitution. The Transport Authority which was constituted by the notification dated 14th October, 1981, was distinct and different from the Transport Authority constituted on 29th July, 1981. It was immaterial that three of the members were common in the notifications dated 29th July, 1981 and 14th October, 1981, constituting the Transport Authority. The Regional Transport Officer, Bareilly, ceased to be a member of the Transport Authority on 14th October, 1981. The Regional Transport Authorities as constituted u/s 44 are to be conceived as entirely different from its members. It is well known that a distinction exists between the Court and the Judges who preside over them. In Section 44 that distinction is maintained.

8. Section 44(1) does not merely contemplate the creation of Regional Transport Authorities for different regions. It also confers powers upon them to be exercised and discharge the functions conferred upon the Regional Transport Authorities by Chapter IV. On the plain term of Section 44, when a Regional Transport Authority is created in respect of a particular region, only the said authority can exercise powers and functions in relation to that region. See *Ratan Lal Gupta v. Mohd. Ramjani*, 1973 ALJ 139. From this it follows that the matters which were pending before the Transport Authority as constituted by the notification dated 29th July, 1981, stood automatically and instantaneously transferred to the Transport Authority as constituted by the notification dated 14th October, 1981, immediately on the publication of the later notification. Section 44(1) does not contemplate a vacuum in relation to any particular Regional Transport Authority. Upon the constitution of a new Transport Authority with effect from a certain date two consequences happen simultaneously. The old Authority loses its jurisdiction and the new Authority acquires it at the same moment. Notionally and in the eye of law there is no time lag. There is no gap or interregnum in the exercise of the powers and functions conferred by Chapter IV.

9. There is another aspect of the matter. A Tribunal of limited jurisdiction cannot derive jurisdiction apart from the statute. No approval or consent can confer jurisdiction upon such a tribunal. No amount of acquiescence waiver or the like can confer jurisdiction of a Tribunal is lacking, the doctrine of nullity will come into operation and any decision taken or given by such a Tribunal will be a nullity. The fact that the notification dated 14th October, 1981 reached the office of the Transport Authority on a date subsequent to 16th October, 1981, is immaterial and any decision taken by the Transport Authority as constituted by the notification dated 29th July, 1981 on or after 14th October, 1981, or at any rate, on or after 15th October, will be void. The delay in the communication of the notification dated 14th October, 1981, could not enable the Transport Authority constituted under the notification dated 29th July, 1981, to exercise the powers and functions under Chapter IV, as it became defunct upon the issuance of the notification dated 14th October, 1981.

10. In *Narendra Kumar Varshney v. State Transport Authority, U. P. Lucknow* (Civil Misc. Writ Petn. No. 254 of 1978, decided on 18th November, 1981) the State Transport Authority, U. P. Lucknow, as constituted by a notification dated 8th March, 1977 issued u/s 44(1) of the Act took a decision in its meeting held on 25th, 26th and 27th April, 1977. Another notification dated 25th April, 1977, which was published on the same date in the U. P. Extraordinary Gazette was issued by the State Government reconstituting the State Transport Authority. By it new members of the State Transport Authority were appointed. A Division Bench of this Court took the view that the notification having been published in the Gazette of the 25th April, 1977, the new members appointed as members of the State Transport Authority became members of that Authority with effect from 25th April, 1977, and, therefore, the decision taken by the State Transport Authority as constituted by the State Transport Authority as constituted by the

notification dated 8th March, 1977, in its meeting held on 25th, 26 and 27 April, 1977 was inoperative and invalid.

11. We have seen in Section 44 that a Regional Transport Authority is constituted the moment the State Government issues a notification in that behalf. We have also referred to the contents of the notification dated 14th October, 1981, wherein it is recited that the Governor constituted the Regional Transport Authorities with immediate effect. When did the notification of 14th October, 1981 become effective? Did its operation remain suspended merely because it could not reach the office of the Transport Authority till 16th October, 1981? This question, in my opinion, stands answered by a decision of a Full Bench consisting of five Honble Judges of this Court in *Avdhesh Singh and Another Vs. Bikarma Ahir and Others*, , where their Lordships held : --

".....Publication in the Official Gazette in this country has always been considered in the eye of law as effective publication."

Their Lordships relied upon a decision in *State of Maharashtra Vs. Hans George*, . In that case the question arose whether the respondents therein could be convicted for importing gold in India contrary to the provisions of Foreign Exchange Regulation Act, 1977 in disregard of a notification issued by the Reserve Bank of India in the Official Gazette. On 25th August, 1948, the Reserve Bank of India issued a notification of the same date. Subsequently, on 8th November, 1962 in supersession of the said notification the Reserve Bank of India issued another notification published in the Official Gazette dated 24th November, 1962. The respondent's act in importing gold in this country was in accord with the notification of the Reserve Bank of India dated 25th August, 1948 but was in breach of the notification published on 24th November, 1962. The respondent had left Zurich on 27th November, 1962, and it was urged that he could not have had the knowledge of the notification of the Reserve Bank of India which was published in the Gazette of 24th November, 1962, in India. In spite of the fact that Section 8 of the Foreign Exchange Regulation Act, 1947 did not provide for the manner in which the Reserve Bank could provide for general or special permission, by reason of the Gazette notification, it has held that he must be attributed with the knowledge of the contents thereof in the eye of law. In this case their Lordships took the view in any view of the matter the notification dated 24th November, 1962, became fully effective on 25th November, 1962.

12. Reliance has been placed by the learned counsel for the petitioners upon a decision of a Division Bench of this Court in the case of *U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another*, . In this case proceedings were initiated by the Income Tax Department u/s 269C of the Income Tax Act. Section 269D provided for a preliminary notice. Sub-section (1) said : --

(1) The competent authority shall initiate proceedings for the acquisition, under

this Chapter, of any immovable property referred to in Section 269C by notice to that effect published in the Official Gazette;

Provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act 1908 (16 of 1908)".

A notification purporting to be u/s 269D was printed in the Gazette on 28th September, 1974. The question arose, on what date will the notification be deemed to be published within the meaning of Section 269D? The Court accepted the evidence led by the petitioner therein that the earliest date on which a Gazette could be said to be available to the public was 14th October, 1974. Relying upon an earlier decision of a Full Bench in the case of Hira Lal v. District Magistrate, Etah (Civil Misc. Writ No. 5935 of 1974, D/- 19-3-1975) the Court took the view that the publication of a notification was complete only when the Gazette containing the notification became available to the public. On the facts of the case, the Court held that as the Official Gazette containing the notification u/s 269D was not available to the public before 14th October, 1974, the competent authority will not acquire the jurisdiction to continue the proceedings as the proceedings had not been commenced within the statutory period. This case is distinguishable on facts. Before the Appellate Tribunal the petitioners did not set up the case that the Gazette Extraordinary published on 14th October, 1981, was not available to the public at all till 16th October, 1981. Even in this court no such averment has been made. The only averment made is that the notification dated 14th October, 1981 had not been received in the office of the Transport Authority till 16th October, 1981. The attention of this Court, it appears, was not drawn either to the judgment of the Supreme Court in *State of Maharashtra v. Mayer Hans George* (supra) or to the decision of the Full Bench of this Court in *Avdhesh Singh v. Bikarma Ahir* (supra). There is no material before this Court to arrive at the finding that the notification dated 14th October, 1981, was not effective on 16th October, 1981.

13. The petitioners have pressed into service the "de facto doctrine" to sustain the resolution dated 16th October, 1981 of the Transport Authority. While considering this doctrine a distinction has to be maintained between an office and the person holding the office. The doctrine cannot be invoked to ward off an attack on the legal existence of an office. It cannot afford any protection when the validity of the creation of an office is questioned. For its application a validly created office is a sine qua non or a condition precedent. It applies only when the title of the holder of an office, validly created, is for the time being found defective. Notwithstanding the flaw in the title of such an officer the acts done by him while holding the office should be treated as valid on the footing that he was holding the office de jure, i.e., lawfully or without any defect in his title.

14. To put it differently, this doctrine will not save the actions of any Court, Tribunal or Authority whose initial jurisdiction is lacking. Very recently in

Gokaraju Rangaraju Vs. State of Andhra Pradesh, the doctrine came up for consideration. From a combined reading of Paragraphs 1, 4, 15 and 17 it appears that for the application of this doctrine a valid creation of an office is a must.

15. I have already taken the view that the Transport Authority as constituted by the notification dated 29th July, 1981 lost its legal existence and stood obliterated as soon as the notification dated 14th October, 1981, became effective. Therefore, the members of the Transport Authority as appointed by the notification dated 29th July, 1981, and particularly the Regional Transport Officer, Bareilly, ceased to hold any office under the said notification. If they exercised any power or function under that notification, they were acting as mere intruders or usurpers. This aspect is emphasised in Paragraph 17 where their Lordships observed :

".....We are concerned with the office that the Judges purported to hold. We are not concerned with the particular incumbents of the office. So long as an office was validly created it matters not that the incumbent was not validly appointed..... It would be a different matter if the constitution of the Court itself is under challenge. We are not concerned with such a situation in the instant case."

16. The conclusion, therefore, is irresistible that the doctrine cannot salvage the decision taken by the Transport Authority on 16th October, 1981 even for the time being.

17. The Appellate Tribunal had, on 28th March 1979, and 20th July, 1979, while passing the order of remand, given a direction to the Transport Authority to consider the applications of the petitioners and others for the inclusion of the portion of the new route between Bhootpuri to Jaspur in their respective permits. This order became final. The Transport Authority was bound by this order and so were the parties. In view of this direction, the question of the petitioners making a formal application for the modification of the route mentioned in their applications u/s 57(8) of the Act had no relevance. Therefore, the Appellate Tribunal patently erred in giving a direction that in the remanded proceedings the petitioners and others should make an application to that effect.

18. No exception can be taken to the view of the Appellate Tribunal that the publication of the applications made by some of the petitioners was defective. Two notifications were issued. In the first notification the Transport Authority had fixed a time limit of 15 days for filing of objections. The second notification, which was issued in the nature of a corrigendum and which filled in the lacuna in the earlier notification, was admittedly issued long after the expiry of period of 15 days. This notification did not call upon any one to file objections. Under the circumstances, the Appellate Tribunal was perfectly justified in taking the view that the intending objectors were deprived of a statutory right to prefer objections.

19. This petition, in substance, fails and the order of remand passed by the

Appellate Tribunal is maintained except with the modification indicated above. It is, accordingly, dismissed. However, there shall be no order as to costs.