

(1955) 01 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ Petition No. 138 of 1954

Sardar Kulwant Singh and Others

APPELLANT

Vs

Appellate Authority of State Transport Authority and Others

RESPONDENT

Date of Decision : 27-01-1955

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 90
Constitution of India, 1950 — Article 19(1), 19(6)
Motor Vehicles Act, 1939 — Section 47, 48, 57, 57(7), 64

Citation : AIR 1957 Raj 237 : (1956) RLW 395

Hon'ble Judges : Ranawat, J;Bapna, J

Bench : Division Bench

Advocate : C.L. Agrawal, for the Appellant; C.B. Bhargava, Deputy Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bapna, J.—This is a petition under Article 226 of the Constitution of India.

2. The Regional Transport Authority, Jaipur Region, invited applications for certain routes by a notification published in the Rajasthan Gazette of 5-1-1952, and again on 14-3-1953. One of the routes, for which applications for stage carriage were invited, was the Jaipur-Gangapur route 96 persons applied for stage carriage permits on this route.

The Regional Transport Authority by its resolution dated 6-8-1953, granted 19 permits to 17 persons, and rejected the rest of the applications. Duli Chand, Anand Ram Kabra, Amiruddin, Maya Betwal, Mahadeo Ghanshyam, and Bansilal Govind Sahai filed six separate appeals to the Appellate Authority u/s 64, Clause (a), Motor Vehicles Act, urging that the refusal of permits to them by the Regional Transport Authority was erroneous, and that a permit for one stage carriage should be granted to each one of them.

By two judgments of 8-5-1954, all the six appeals were accepted, and each one

of the appellants was granted a permit for one stage carriage. Sardar Kulwant Singh, Rahim-ud-din, and Asan Dass, three of the 17 persons, who were granted permits by the Regional Transport Authority, have filed this petition under Arts. 226 and 227, Constitution of India, challenging the validity of the order of the Appellate Authority to grant permits to six persons aforesaid, who are respondents 3 to 8 in this petition.

3. It is contended that

1. The grant of permit was in disregard of the provisions of Sections 47 and 48, Motor Vehicles Act and Rule 90 of the Rules made under the Act, in as much as according to the time-table framed by the Regional Transport Authority 13 buses lie idle every day and it would be a national waste, if more permits were granted, which would involve purchase and maintenance of extra buses with no advantage to anybody;

2. the Appellate Authority did not apply its mind to the arguments advanced by either side, but if the order of the Appellate Authority meant whole sale acceptance of the arguments advanced by the non-petitioners, the order of the Appellate Authority was manifestly erroneous, inasmuch as, certain considerations, which would appear to have weighed-with the Appellate Authority should have been ruled; out.

4. According to the scheme of the Indian Motor Vehicles Act, Section 46 provides for an application to be made for a permit to use a Motor Vehicle as a stage carriage. The application is to contain the following particulars :

(a) the type and seating capacity of the vehicle in respect of which the application is made;

(b) the route or routes on which or the area within which it is intended to use the vehicle;

(c) the time table, if any, of the service to be provided; and

(d) such other matters as may be prescribed.

Section 47 indicates the matters to be considered by the Regional Transport Authority in deciding whether to grant or refuse a stage carriage permit, to wit :

(a) the interest of the public generally;

(b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the adequacy of existing road passenger transport services between the places to be served, the fares charged, By those services and the effect upon those services of the service proposed;

(d) the benefit to any particular locality or localities likely to be afforded by the

service;

(e) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services; and (f) the condition of the roads included in the proposed route or routes.

It is further provided that the Regional Transport Authority shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lie or by any association interested in the provision of road transport facilities.

By Sub-section (2) of Section 47, a Regional Transport Authority is authorised to refuse to grant a stage carriage permit if it appears from any time table furnished that the provisions of the Act relating to the speed at which vehicles may be driven are likely to be contravened, after giving an opportunity to the applicant to amend the time table so as to conform to the said provisions. u/s 48 the Regional Transport Authority is authorised, after taking into consideration the matters referred to in Sub-section (1) of Section 47, to

(a) limit the number of stage carriages or stage carriages of any special type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region;

(b) issue a stage carriage permit in respect of a particular stage carriage or a particular service of stage carriages;

(c) regulate timings of arrival or departure of stage carriages whether they belong to a single or more owners; or

(d) attach to a stage carriage permit any prescribed conditions specified in the section.

Section 57 lays down the time for making an application, the publication thereof, the mode of receiving representations and their disposal, and by sub-s. (7) it is provided that

"When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal."

Section 64 provides for appeals against the refusal to grant or the grant of permits, and the relevant provisions are that any person--

(a) aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

X X X X (f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit is aggrieved by the grant thereof or by any condition attached thereto,

x x x x x

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.

5. There is no specific provision as to the powers of the Appellate authority, but it is implied in the provisions for appeal that the Appellate Authority, has power to set aside the order of the Regional Transport Authority, and to grant the relief claimed.

6. In the present case, the order of the Regional Transport Authority dated 6-8-1953, is as follows :

"Resolved that the following applicants be granted each one stage carriage permit valid for 3 years on this route:

Further resolved that the remaining applications published in the Gazette dated 26-7-52 and 20-6-53 may be rejected as it would not be in the public interest to grant them permits on this route."

The operative portion of the order of the Appellate Authority in the appeal of Duli Chand is as follows :

""We have heard both the parties at length. There is enough force in what has been stated on behalf of the appellant. The appeal is, therefore, hereby accepted and the appellant is allowed to ply one bus on the above route."

The operative portion in the case for other five appeals, which were disposed of by a single Judgment, is as follows :

"We have heard the arguments of the parties concerned at length. There is enough force in what has been represented on behalf of the appellants. Their appeals are therefore hereby accepted and each of them is allowed to ply one bus on the above route."

7. Learned Counsel for the petitioners drew our attention to the slipshod manner in which the matter was dealt with both by the Regional Transport Authority and the Appellate Authority.

8. It is now settled law that the Regional Transport Authority and the Appellate Authority are quasi-judicial bodies when dealing with the grant or refusal to grant permits. If any authority was needed, an elaborate discussion is found in A. Vedachala Mudaliar Vs. The State of Madras and Another, and Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others,

It may only be stated that though superficially it may appear that the powers of the Regional Transport Authority are confined only to issuing permits for plying buses, they really affect substantially the rights of the parties. An illegal refusal of a permit or permits to a person who is running buses on a particular route may completely ruin his business, or the grant of a new permit may completely

change his financial status.

This is why elaborate provisions are made in the Act for hearing representations and for appeal against the decision of the Regional Transport Authority. Sub-section (7) of Section 57 provides for reasons for refusal being given to the applicant in writing. This is necessary so that the Appellate Authority may be in a position to judge the propriety of the orders passed by the Regional Transport Authority.

It must be emphasised that the order of a Tribunal like the Regional Transport Authority, which exercises judicial functions, should ex facie show reasons in a succinct form for making that order, and so also the order of the Appellate Authority when it proceeds to set aside the order of the lower Tribunal.

The reasons which have induced a judicial or quasi judicial authority to pass a particular order, if recorded, provides a safeguard against the exercise of the powers in an arbitrary or partial manner, but if such tribunals could pass or set aside orders without showing any reasons therefor, the way would be open for corruption, manipulation and jobbery in the hands of unscrupulous persons.

We do not say that there are any such people in the Tribunal with which we are now concerned, but we are only showing how important it is to give reasons both for the Regional Tribunal in coming to a particular decision and for the Appellate Tribunal, which proceeds to confirm or set aside the order of the lower Tribunal. It is not sufficient to write down only stock-phrases, as for example which was done in this case by the Regional Transport Authority that "it would not be in the public interest to grant them (the remaining 79 applicants) permits on this route."

The order should have shown why it was considered to be in the public interest in the case of only 17 persons, two of whom were fortunate in being granted not only one but two permits each, but it was not in the public interest to grant permits to the others. It should have been shown how much passenger traffic was expected, how the 17 persons were better capacitated both by the possession of vehicles or by experience or by character than the others whose applications had been rejected.

Any other reason which may have induced the Regional Transport Authority to decide in favour of the 17 persons and against the remaining 79 persons should have been recorded. Similarly the stock phrases used by the Appellate Authority that ""there is enough force in what has been stated (or represented) on behalf of the appellant" is entirely insufficient. The order of the Appellate Authority purports to record the arguments advanced by the appellant, the reply given by the respondent bus operators as also the Regional Transport Authority.

The appellate judgment should show which of the contentions are acceptable and for what reasons, which of the replies were not acceptable and for what reasons, and in what manner the contentions of the Regional Transport Authority were acceptable or not acceptable. We would have no hesitation in quashing the entire

proceedings if any of the persons who have been refused permits had come to this Court.

As it happens, out of the 19 persons, whose applications have been rejected, only six filed appeals, and the Appellate Authority decided to grant a stage permit to every one of them. The present application is not based on a complaint that any permit was refused, but the contention is that permit should not have been granted to the six respondents 3 to 8, and we, therefore, do not propose to disturb the proceedings taken in this case by the Regional Transport Authority, for we uphold the grant of permits to the six non-petitioners, and dismiss the present petition by Kulwant Singh on other grounds, which are mentioned hereafter.

9. Their Lordships of the Supreme Court in a recent judgment in *Saghir Ahmad Vs. The State of U.P. and Others*, approved the observations of Ayyar J., in *C. Section C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another*, that

"The true position, then is, that, that all public streets and roads vest in the State, but that the State holds them as trustees on behalf of the public. The members of public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally; but subject to such limitations the right of a citizen to carry on business in transport vehicles on public pathways cannot be denied to him on the ground that the State owns the highways."

Mukherjea J. as he then was), who delivered the judgment of their Lordships of the Supreme Court further observed that

"Within the limits imposed by State regulations any members of the public can ply motor vehicle on a public road. To that extent he can also carry on the business of transporting passengers with the aid of the vehicles. It is to this carrying on of the trade or business that the guarantee in Article 19(1)(g) is attracted and a citizen can legitimately complain if any legislation takes away or curtails that right any more than is permissible under Clause (6) of that article."

10. Considerable arguments were advanced by learned counsel for the parties as to whether the Transport Authorities could or could not limit the number of stage carriages on any specified route, as provided by Section 48 (a) of the Motor Vehicles Act. The non-petitioners in one of their contentions before the Appellate Authority argued that the Regional Transport Authority had no power to limit the number of stage carriages on any route for it was a fundamental right of a citizen to ply buses on any public street or highway. The cryptic order of the Appellate Authority that there was enough force in the contentions of the appellant before the Appellate Authority led Mr. Agarwal on behalf of the petitioners in this case to

argue that the order of the Appellate Authority showed that that contention had been accepted, and, he therefore, had it right to challenge that view of the law.

It was argued that while it may be accepted that the right to ply buses was one of the fundamental rights guaranteed under Article 19(1)(g) of the Constitution. Clause (6) of that article provided for the imposition of reasonable restrictions in the interest of general public, and that the limitation of the number of stage carriages on any one route could be justified in the interest of the public for "it would prevent lawlessness on the road."

Learned counsel for the non-petitioners conceded that while some sort of limitation of the number of Stage carriages on any route could be done in the interest of the public, the grant of permit on any route could not be refused on the ground that there were enough buses on the road to carry the expected passenger traffic, and that any further addition to the number of operators would reduce the profits of the existing operators.

Any competition, in this respect, it was contended, was a healthy one, and would be in the interest of the public. The point is not free from difficulty, but it may be said at once that some sort of restriction, if it is made in the interest of the public, and is reasonable, would be protected under Clause (6) of Article 19 of the Constitution.

The power given to limit the number of stage carriages by Clause (a) of Section 48 is preceded by the clause that the Regional Transport Authority may do so after consideration of the matters set forth in Sub-section (1) of Section 47, and Sub-section (1) of Section 47 places in the forefront the interest of the public generally and the advantages to the public of the service to be provided, the adequacy of existing road passenger transport services between the places to be served, the benefit to any particular locality, and the conditions of the roads, and if all these conditions are kept in view, the limitation of the number of vehicles on any particular route may not be found fault with or, at any rate, the limitation imposed could be judged in the light of the reasonableness and the interests of the public generally.

As a matter of abstract proposition, therefore, it can be said that there may be circumstances in which the number of stage carriages to be plied on any route may be limited by the Regional Transport Authority in the interests of the general public. Clause (e) of Section 47 (1) has been left out of account in the above discussion for that would come to be applied only in the case of grant of permit to individual applicants.

But the above discussion is really not relevant to the matter in issue for it was admitted by counsel for the parties and the Deputy Government Advocate that the number of stage carriages on the Jaipur Gangapur route was not limited in the present case. The question whether the Regional Transport Authority could or could not limit the number of stage carriages on any particular route is, therefore, only academic.

If the number was not limited, there was no reason why the grant of permit should be refused to any applicant who complied with all other requirements as to the condition and model of the stage carriage and all other conditions which were necessary for the purpose of granting a stage carriage permit for any vehicle. It is not stated that the non-petitioners 3 to 8 suffered from any defect on this score, and, therefore, the Appellate Authority only purported to act in the manner in which it was bound to act in directing the issue of permit to non-petitioners Nos. 3 to 8.

11. It was contended for the petitioners that the Appellate Authority disregarded Clause (c) of Section 47 (1) of Motor Vehicles Act, for that provision made it incumbent on the Regional Transport Authority to have regard to the adequacy of the existing road passenger transport services between the places to be served in deciding whether to grant or refuse a stage carriage permit,

It would appear that sub-s. (c) would come into play only when a fresh application is presented in respect of a route where other transport services are already in operation. Section 57 (2) takes into account two kinds of applications :

- (1) where an applicant does so of his own accord;
- (2) when he makes an application on appointment of a date by the Regional Transport Authority.

In the present case, the non-petitioners were applicants simultaneously with the other persons who were granted permits, and it was not shown what was the extent of the pre-existing road passenger transport service on this route. This Clause (c) would only come into play when after limitation of the number of vehicles on any public road certain permits are granted, and a fresh applicant comes on the scene for the purpose of applying for a new permit.

Moreover, this was a question of fact. The order by which 17 persons were granted permits for 19 buses is totally silent as to the extent of the passenger traffic, and there is no data by which it can be said that only 19 buses would represent the adequacy of passenger transport service on this route, and that the limit would be exceeded in case any more were added on this route.

There is, therefore, no data before this Court by which it may be held that the addition of six passenger buses on this route would make a formidable addition to the existing passenger transport service, and would amount to a national waste. It may be that the addition of a few buses on the route would result in distributing the passenger traffic more widely and thereby reduce the earnings of the present buses, but any restriction on this score cannot be said to be in the interest of the public generally.

12. It was contended that the Transport Authority had in fixing the time table permitted only three buses to run on this route per day on its outward journey, and 8 buses for inward journey, and this fixation of time table" should be taken to show that the passenger traffic only required three buses which can perform

both the journeys, or utmost six, if different sites, and, therefore, only six buses, at any rate, would be adequate.

Our attention was invited to lime 90 of the Rules under the Motor Vehicles Act, which required every stage carriage to perform a regular daily service in the manner required by the Transport Authority. Apparently the fixation of turns is not contemplated by the rule, and it is a matter for serious consideration of the Regional Transport Authority to comply with the provisions of Rule 90, and so arrange the lime table that every bus gets an opportunity to be on the road for its regular daily service.

It was stated on behalf of the Regional Transport Authority that the timings were only provisional and could be changed, and it was pointed out by learned Deputy Government Advocate that the operation of Rule 90 in the manner indicated by the rule would prove harsh to the operators, and that a move had been made for amendment of the rule. Be that as it may, the fixation of the time table is not a correct indication of the passenger traffic, and it is in the power of the Regional Transport Authority to amend the time table, and perhaps a motion could also be made by the operators if they so choose for the amendment of the time table. .

13. As a result, this petition has no force, and is dismissed. The petitioners will pay costs to the contesting respondents Nos. 4, 5 and 8. We do not allow any costs to the Appellate Authority or to the Regional Transport Authority in view of the slip shod manner in which they have dealt with the matter before them. The counsel's fee will be taxed at Rs. 80/- per day for two days.