
(1964) 03 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5626 of 1963

Satya Pal Khetra Pal and Others

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 05-03-1964

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 47(1), 47(3), 48, 57

Citation : AIR 1965 All 242

Hon'ble Judges : Jagdish Sahai, J

Bench : Single Bench

Advocate : S.C. Khare and S.K. Dhaon, for the Appellant; S.N. Kacker, L.P. Naithani and H.N. Seth, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—The petition under Article 226 of the constitution of India has been filed by Sarvasri Satya Pal Khetra Pal, Hari Das and Chajju Mal against the State Transport Appellate Tribunal, U.P. (hereinafter referred to as the Tribunal), the Regional Transport Authority, Meerut Region (hereinafter referred to as the R.T.A.), Faqir Chand Gupta and the Meerut-Mowana-Miranpur Motor Operators Union, Meerut (hereinafter called as the Motor Operators) with a prayer that the order passed by the Tribunal on 26th November, 1963 be quashed and a suitable direction, order or writ, including that of mandamus, be issued commanding the R.T.A., the respondent No. 2, to forbear from giving effect to me order dated 20-11-1963 of the respondent No. 1, the Tribunal. There is also the usual prayer for the issue of any other writ, order or direction which this Court in the circumstances of the case may deem fit and proper to issue.

2. The dispute between the parties is in respect of permits over the Meerut-Mowana-Miranpur route (hereinafter referred to as the route). On 23rd March, 1959, the R.T.A. increased the strength of stage carriages on the route from 11 to 15 and invited applications for the same by means of a notification in the U. P. Gazette, dated 27th June, 1959. The petitioners as also some other applied. In

the continued meeting of 30th November, 1st and 2nd December 1959, the R.T.A. decided to grant three permits to some of the displaced operators. On 28th September, 1962, the main respondents, i.e., Faqir Chand Gupta and the Motor Operators filed objections to the grant of permits to the petitioners, inter alia, on the ground that the strength on the route should not be increased. On 16th October 1962 the R.T.A. increased the strength on the route from 15 to 20 stage carriages. The meeting of the R.T.A. continued on subsequent dates and on 24th October, 1962 permits were granted to the petitioners. The respondents Faqir Chand and the Motor Operators filed an appeal before the Tribunal, inter alia, on the ground that the strength could not have been increased from 15 to 20 at the stages of proceedings u/s 48 read with Section 57 of the Motor Vehicles Act (hereinafter referred to as the Act). The Tribunal allowed the appeal on 26th November, 1963 and directed the K.T.A. to reconsider the matter and grant only one permit on the basis that not 20 but 15 was the strength on the route. It is against that order of the Tribunal that the present writ petition has been filed in this Court.

3. I have heard Sarvasri S. C. Khare and S. K. Dhaon for the petitioners and Sarvasri S. N. Kacker and L. P. Naithani for the respondents Faqir Chand and the Motor Operators. Sri H. N. Seth, the Junior Standing Counsel also appeared before me and stated that he had received no instructions from the Government in the case.

4. Sri Dhaon, the learned counsel for the petitioners, has made the following submission; That the Tribunal committed an error apparent on the face of the record in remanding the case by taking an erroneous view of the decision of the Supreme Court in *Abdul Mateen v. Ram Kailash* AIR 1963 SC 64.

5. If the instant case is covered by AIR 1963 SC 64 then obviously this writ petition must fail and the order of the Tribunal must be upheld. It is, however, necessary to see what actually their Lordships decided in that case. The facts of that case were that a new route was advertised by the North Bihar Regional Transport Authority in July, 1957 and applications were invited for permanent stage carriage permits in respect of two vacancies on the route. A number of persons applied. The R.T.A. granted permits to Abdul Mateen and another person. The matter was taken up in appeal to the appellate authority but the appeal failed. Sudhakar Sharma, one of the respondents before the Supreme Court, moved the Patna High Court under Article 226 of the constitution of India. The High Court quashed the order of the appellate authority and sent the case back to it for rehearing. The appellate authority thereupon modified the order of the R.T.A. cancelled the permit granted to Abdul Mateen and granted it to Sudhakar Sharma; the permit granted to the other person was not interfered with. Thereupon Abdul Mateen made an application to the State Government u/s 64-A of the Motor Vehicles Act (hereinafter referred to as the Act) as amended by the Bihar Amendment Act 27 of 1950.

That application was heard by the Minister for transport. He upheld the order of

the appellate authority, cancelling the permit of Abdul Mateen and granting it to Sudhakar Sharma. However, holding that there was room for another permit, he issued an extra one to Abdul Mateen, thereby increasing the strength on the route by one. One Kailash Pandey who had also made an application u/s 64-A but was not granted the permit, moved the Patna High Court for quashing the order passed by the Minister for Transport inter alia on the ground that the state Government could not ignore the limit and, the increase of an extra permit and its grant to Abdul Mateen was Illegal. One of the questions raised before the High Court was that, while dealing with an application u/s 64 of the Act, the State Government had no jurisdiction to increase the number of permits from two, which was the limit to three. The High Court accepted the contention and set aside the order granting an extra permit to Abdul Mateen, whereupon Abdul Mateen moved the Supreme Court. Their Lordships held that the state Government had no jurisdiction to ignore the limit fixed u/s 47(3) of the Act and on that finding dismissed the appeal of Abdul Mateen.

6. Mr. Kacker placed reliance upon the following passage in their Lordships' Judgment:

"Therefore, if the Regional Transport Authority has limited the number of stage carriages by exercising its power u/s 47(3), the grant of permits by it u/s 48 has to be subject to the limit fixed u/s 47(3). We cannot accept the contention on behalf of the appellant that when the Regional Transport Authority following the procedure provided in Section 57, comes to grant or refuse a permit it can ignore the limit fixed u/s 47(3), because it is also the authority making the order u/s 48. Section 47 (3) is concerned with a general order limiting stage carriages generally etc., on a consideration of matters specified in Section 47(1). That general order can be modified by the Regional Transport Authority, if it so decides, one way or the other. But the modification of that order is not a matter for consideration, when the Regional Transport Authority is dealing with the actual grant of permits u/s 48 read with Section 57, for at that stage what the Regional Transport Authority has to do is to choose between various applicants who may have made applications to it u/s 46 read with Section 57. That in our opinion is not the stage where the general order passed u/s 47(3) can be reconsidered, for the order u/s 48 is subject to the provisions of Section 47, which includes Section 47 (3) under which a general order limiting the number of stage carriages etc., may have been passed".

It is obvious that the remark of the Supreme Court quoted above has application to the facts before their Lordships. Actually their Lordships have said so in the following words:

"We are, therefore, of opinion that the High Court was right on the facts of the case in holding that the State Government had no power to increase the number of permits....."

I am unable to agree with Mr. Kacker that their Lordships have laid down as a

rule that once applications have been invited u/s 48 and proceedings under that section read with Section 57 of the Act started, the strength on the route cannot be increased whatever be the circumstances and whether or not separate proceedings for the increase on the route u/s 47(3) of the Act are taken. In my judgment, all that their Lordships laid down was that before strength on a route is increased, proceedings u/s 47(3) of the Act must be drawn up and that the strength cannot be increased while granting the permits in the summary manner in which it was done by the Minister for Transport in Abdul Mateen's case AIR 1963 SC 64.

There is no provision in the Act which prohibits proceedings u/s 47(3) being started after applications have been invited u/s 48 of the Act and there is nothing in the judgment of Abdul Mateen's case AIR 1963 SC 64 to that effect. No doubt the proceedings u/s 47(3) are different from those u/s 48 read with Section 57 of the Act and the law requires separateness, i.e., the separate identity of the two proceedings to be maintained. Learned counsel for the respondents has not been able to urge any valid ground on the basis of which it could be held that if during the continuance of proceedings u/s 48 read with Section 57 of the Act, the R.T.A. has before it material to suggest an increase in the strength, it is powerless to do anything until those proceedings are over, permits are granted and the matter in appeal decided and possibly a writ petition in this court disposed of. It would result into great public inconvenience, unnecessary duplication and waste of labour, and money if that was held to be the law. Section 47(3) of the Act enshrines a sound rule of public policy, the same being that consistent with the needs of the public and the convenience of the passengers, a limit with regard to the number of stage carriages should be fixed over a route. But by the very nature of things the limit cannot be inflexible and unchangeable for all time. A route may get more important, it may later on be connected with a bridge or another road or with a railway station and the traffic on it may increase.

Consequently, at some stage the R.T.A. would be faced with the situation of deciding whether to increase the strength on that route. It is only after the number with regard to a route has been fixed that the application for permits can be considered and permits granted. In other words fixation of the number of stage carriage must necessarily precede the disposal of the applications for the grant of permits. The applications cannot be disposed of properly and effectively unless it is first known as to what is the number of vacancies on the route to be filled up. It is in this sense that in my opinion their Lordships in Abdul Mateen's case AIR 1963 SC 64 made the observations extracted earlier. In fact, their Lordships have clearly said so in the following words in that case:

".....though, as we have said, it may be revised at any time by the Regional Transport Authority if it properly comes to the conclusion that revision is necessary in view of the factors specified in Section 47(1)".

7. In Abdul Mateen's case AIR 1963 SC 64 the emphasis is on two factors, firstly, the limit fixed should not be ignored and secondly, proper proceeding

must be initiated u/s 47(3) of the Act. There is nothing in law which prevents the question of revision of the limit of stage carriages on a route being taken up even after applications u/s 48 of the Act have been entertained and proceedings under that section read with Section 57 started. If the R.T.A. feels that there are grounds for increasing the strength, it can stay proceedings u/s 48 read with Section 57 of the Act and start proceedings u/s 47(3) of the Act. If satisfied that conditions provided for by Section 47(1) of the Act exist for the increase in the strength on the route, there is nothing in law which prevents it from increasing the strength. Thereafter, it can again revert to the proceedings u/s 47 read with Section 58 of the Act.

8. For the reasons mentioned above, I am of the opinion that the case of AIR 1963 SC 64 does not lay down the proposition which Mr. Kacker has propounded that in no case after proceedings u/s 48 of the Act have been started, proceedings for revision of the strength can be initiated and completed.

9. There has been some controversy between the parties as to whether or not the limit on this route was fixed. It has been contended by Sarvasri Khare and S.K. Dhaon that as a question of law it is not necessary or incumbent that in respect of every route a limit must be fixed. In this connection learned counsel placed reliance upon the following passage in Abdul Mateen's case AIR 1963 SC 64:

"It is further contended on behalf of the appellant that there were no limits fixed by the Regional Transport Authority and therefore it was open to the State Government to increase the number of permits from two to three. Now the usual manner in which a Regional Transport Authority can fix a limit u/s 47(3) is by a resolution. Similarly it can vary those limits by another resolution, it is urged that there is no proof on the record that there was any such resolution u/s 47 (3) by the Regional Transport Authority in this case. It is true that there is nothing on the record to prove that there was any resolution as such by the Regional Transport Authority in this case limiting the number of stage carriages on this route to two. But the High Court has held that the number can be deemed to have been fixed in view of the advertisement issued by the Regional Transport Authority calling for applications for two vacancies".

10. Learned counsel contends that this passage is to the effect that it is not necessary or incumbent to fix a limit of stage carriages over every route. It is really not necessary to go into this question because on a perusal of Annexure A to the counter-affidavit, I am satisfied that in this particular case the limit has been fixed at 15 stage carriages with the result that on this ground, the decision in Abdul Mateen's case AIR 1963 SC 64 cannot be distinguished, though as said earlier it does not support the submission of Mr. Kacker.

11. Having given what I consider to be the ratio of Abdul Mateen's case AIR 1963 SC 64 I now proceed to see whether that ratio can be applied to the facts before us. In the present case what had happened was that the meeting of the

K.T.A. continued from 16th to 24th October, 1962. There is controversy between the parties as to on which date the strength on the route was increased from 15 to 20, but one thing is certain and there is no controversy on that point that the strength was so increased before the applications had been disposed of and the permits granted. The question, therefore, that requires consideration is whether in view of these facts, the present case is hit by the rule laid down by their Lordships in Abdul Mateen's case AIR 1963 SC 64. As I see it, even though the two proceedings that is the one u/s 47(3) of the Act and the other u/s 48 read with Section 57 of the Act, were held in the same meetings, almost simultaneously, notionally they were two different proceedings and it is clear from the proceedings of the R.T.A. itself that the decision arrived at u/s 47(3) of the Act increasing the strength on the route was taken earlier than the decision with regard to the grant of permits. I am, therefore, of opinion that the case of Abdul Mateen AIR 1963 SC 64 is clearly distinguishable. My view that the authority in exercise of its powers u/s 47(3) of the Act may first alter the limit of the number of stage carriages fixed for the route and then consider the applications for permits in respect of the increased strength finds support from a Division Bench decision of this Court in Mohammad Luqman Sharif Vs. State Transport Authority, Tribunal, Lucknow and Others, . Even though I have overruled the preliminary objection raised by Sarvasri Kacker and Naithani, i.e., that the case was covered by the rule laid down by their Lordships in Abdul Mateen's case AIR 1963 SC 64, I am of the opinion that the order of the Tribunal should not be quashed.

12. Mr. Khare contends that so far as the order relating to the increase in the strength is concerned, it is not appealable under the Act, that not being one of the grounds provided for by Section 64 of the Act. The Tribunal has in this connection observed as follows:

"In my view the R.T.A. should have issued one permit and issued further notification for increase of strength in terms of the Supreme Court ruling. Accordingly, the orders passed by them must be set aside and the appeal is allowed.

The case is remanded to the K.T.A., Meerut for filling up the outstanding vacancies according to the prescribed procedure."

13. Mr. Kacker the learned counsel for the respondents concedes that it was not the intention nor it is the effect of the order of the Tribunal, dated 26th November, 1963 to set aside the increase in the strength from 15 to 20 and that the Tribunal could not do so as no appeal in respect of increase in strength would lie. He stated that the order of the Tribunal does not put the 5 additional vacancies into jeopardy and that permits may now be issued by the R.T.A. for six vacancies, i.e., one out of the fifteen and five new ones. In view of the legal position that the order of the K.T.A., so far as it related to the increase in the strength was not appealable and because of the concession made by Mr. Kacker, it is not necessary to quash that part of the order of the Tribunal which reads :

"In my view the R.T.A. should have issued one permit and issued further notification for increase of strength in terms of the Supreme court ruling".

Actually, this is not the operative portion of the order. The operative portion only reads thus:

"The case is remanded to the R.T.A., Meerut for filling up the outstanding vacancies according to the prescribed procedure".

Inasmuch as the operative portion of the order is based upon the consent of the parties and on an admission made before the Tribunal by the learned counsel for the petitioners, it cannot and need not be quashed.

14. For the reasons mentioned above, the petition is dismissed but there is no order as to costs. The R.T.A. would now fill up the six vacancies as directed by the Tribunal in its order dated 26th November, 1963.

15. The stay order is discharged.