

(1964) 07 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3084 of 1963

Satya Prakash Agarwal

APPELLANT

Vs

The State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 10-07-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 57, 57(4)

Citation : AIR 1965 All 194

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Advocate : L.P. Naithani and S.N. Kacker, for the Appellant; B.N. Katju and S.C., for the Respondent

Final Decision : Dismissed

Judgement

H.C.P. Tripathi, J.—This writ petition is directed against an order dated 31-7-63 of the State Transport Appellate Tribunal Lucknow, setting aside a resolution of the Regional Transport Authority Bareilly granting permit for a stage carriage to the petitioner.

2. The undisputed facts which are relevant to the questions in controversy may be stated briefly:

3. The Regional Transport Authority Bareilly, after Inviting applications, granted permits for plying stage carriages on Bareilly Uswan route to five persons in its meeting held on 7/8th of December, 1959. one of these permits was granted jointly to the petitioner and one Smt. Shanti Devi, wife of Sri Ram Agarwal. In the meeting of the Regional Transport Authority the petitioner had appeared and stated that his mother Smt, Kalawatl Devi had Rs. 15,000/- in deposit and had produced her Bank Passbook.

4. Appeals were filed against the resolution dated 7/8th of December 1959 of the Regional Transport Authority which were allowed by the Appellate Tribunal on

22-6-1960 Inter alia on the ground that the granting of joint permit was illegal and further because the petitioner had wrongly stated that the passbook was owned by his mother whereas it was actually owned by his aunt. The Tribunal remanded back the case to the Regional Transport Authority for its reconsideration in the light of its observations.

5. The Regional Transport Authority considered the matter afresh In Its meeting of 26/27th of December, 1960 and granted fresh permits to the petitioner and six others. It, however, refused to grant permit to the respondent No. 3 who was also an applicant for the same. The respondent No. 3 and two others went up In appeal to the Tribunal against the resolution of the Regional Transport Authority and the Tribunal accepted the respondent's appeal, set aside the resolution of the Transport Authority rejecting his application for permit and granted him a permit for stage carriage. It also cancelled the permit which had been granted to the petitioner under the aforesaid resolution. The petitioner thereafter filed this petition on 14th, of August 1963 praying therein Inter alia for a writ in the nature of certiorari to quash the order, of the Tribunal.

6. S. N. Kakkar, learned counsel for the petitioner, has challenged the validity of the impugned order mainly on three grounds. Firstly, that as the Tribunal has relied upon an affidavit of respondent No. 3 which was filed before it without any notice to the petitioner and behind his back, In holding that the respondent No. 3 had no connection with Pakistan, without affording an opportunity to the petitioner to controvert the same the order has resulted In violation of the rules of natural justice. Secondly, that the order of the Tribunal is vitiated by extraneous consideration Inasmuch as it has described the respondent No. 3 as a displaced operator though the respondent himself had admitted that he was not a displaced operator. Thirdly, because the Tribunal had erred in assuming without any proof that the petitioner had misrepresented facts to the Keglona) Transport Authority in obtaining the permit and has thus committed an error of law apparent on the face of the record, I, bow-ever, find myself unable to agree with any one of these contentions.

7. In his counter-affidavit the respondent No. 3 has denied the petitioner's allegation that he asked for an opportunity from the State Tribunal to controvert the facts stated to his affidavit which was filed on the 28th of December, 1960 before the Regional Transport Authority and not before the Tribunal. Thus it has become a disputed question of fact as to whether the petitioner had ever asked for an opportunity to controvert the allegations made in the aforesaid affidavit and this Court cannot go into that question.

8. A perusal of the order of the Regional Transport Authority shows that the respondent No. 3 was refused a permit because it was alleged by the counsel of Mardan All Khan (who was also one of the applicants) that "Sri Abdul Latif has already migrated to Pakistan and has obtained permits there in lieu of permits held by him in India, and that he was still visiting Pakistan on temporary permits in order to manage his business there." This appears to nave been the only

reason for the refusal of the permit. The State Tribunal rightly expressed surprise that though there was no tangible evidence on the record in support of this allegation which was made orally by the counsel of Mardan Ali Khan, it was accepted by the Regional Transport Authority and made the sole basis for rejecting the respondent's application, in coming to a conclusion that the allegation against the respondent was wholly baseless, what heavily weighed with the Tribunal was the fact that It was an oral allegation unsupported by any evidence, which had been denied then and there by the respondent, and therefore, should not have been given credence by the Regional Transport Authority. No doubt the Tribunal also took Into consideration the fact that the respondent had denied these allegations in his counter affidavit but even if there was no counter-affidavit, the allegation was such which should have been rejected outright. I am therefore, satisfied that the Tribunal was fully Justified In arriving at its conclusion and the rules of natural justice have not been violated in any manner.

9. Learned counsel for the respondent No. 3 has urged that it was illegal on the part of the Regional Transport Authority to have accepted this oral allegation against his client which was blurted out by one of the counsel of the rival applicant, as Section 57, Sub-clause (4) of the Act made it incumbent on the authority to refuse to entertain any such representation unless It was In writing and has been given notice of to the person described. Learned counsel contends that the rules of natural justice were violated not by the Tribunal which set aside this Illegal finding but by the Transport Authority which accepted such a flimsy allegation without any evidence in its support, against the respondent. I find force in this contention. In any case, It is obvious that if the Regional Transport Authority had the discretion to rely on an oral allegation against the respondent No. 3 for refusing him the permit, the appellate Tribunal too enjoyed a discretion to reject that allegation for making it a basis for the refusal of the permit, and this cannot be a ground for interference under Article 226 of the Constitution.

10. The term "displaced operator" has not been defined either under the Act or in the rules. It is neither a term of art nor of law. The Regional Transport Authority in its resolution has observed that "Sri Abdul Latif was found to have owned Vehicles Nos. U. P. O-11 and U. P. O-83 which were registered as stage carriages. He thus made to establish his claim as an old operator." It was because of this observation of the Regional Transport Authority, that the State Tribunal, while dealing with the case of the respondent, has observed that it is admitted that he is a displaced operator as he was granted a permit on December 7/8, 1959, The Tribunal has described the respondent No. 3 as a displaced operator because he had held permits in the past for stage carriages. I do not find anything wrong in this description which may amount to an error of law or even of fact apparent on the face of the record.

11. Admittedly, at one stage of the proceedings before the Regional Transport Authority, the petitioner has claimed that his mother Smt. Kalawati Devi had Rs.

15,000/- in deposit and it was only when an objection was raised by Smt. Shanti Devi that the passbook shown by the petitioner was not of his mother, that the petitioner accepted that Kalawati Devi was his aunt and not his mother. It may be, that the petitioner's description of Katawati Devi as his mother though she was his aunt, was only an instance of loose expression, but in the particular setting of the case it was certainly improper, and if the Tribunal in the exercise of its discretion has thought that this improper action on the part of the petitioner had made him less suited for the grant of the permit in comparison to the other applicants none of whom had such a behaviour to their credit, it cannot be interfered with in these extraordinary proceedings.

12. In the result, the petition fails and is dismissed with costs. The stay order dated 14th August, 1963 is vacated.