

(1988) 02 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No's. 1916, 1917 and 1918 of 1935

Shri Sushil Kumar Sharma

APPELLANT

Vs

State Transport Authority and Others

RESPONDENT

Date of Decision : 15-02-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 57(3)

Citation : (1988) 66 CLT 134

Hon'ble Judges : P.C. Misra, J; D.P. Mohapatra, J

Bench : Division Bench

Advocate : B. Pal and D.B. Das, for the Appellant; Standing Counsel (Transport), G.P. Mohanty and B.P. Tripathy, for the Respondent

Judgement

D.P. Mohapatra, J.—Those three cases raise common questions of facts and law. As such, they have been heard together by consent of counsel for the parties and they are being disposed of by this judgment.

2. The writ application have been filed by Sushil Kumar Sharma praying for issue of writ of certiorari quashing the order dated 14th. August, 1985 of the State Transport Appellate Tribunal, Orissa (for short "the Tribunal") as per Annexure-4 to the writ petition in O.J.C. No. 1916 of 1985 and Annexure-2 to O.J.C. Nos. 1917 and 1918 of 1985, By the said order the Tribunal allowed three appeals filed by G. P. Gupta, Janardan Prasad Viswakarma and Moinuddin Ahmed impleaded as Opp. party No. 2 in O.J.C. Nos. 1916 of 1985, 1917 of 1985 and 1918 of 1985 respectively and remitted the matter to the State Transport Authority, Orissa (opp. party No. 1) for fresh consideration and disposal in accordance with law and in the light of the observations made in the impugned orders of the Tribunal.

3. The gist of the facts giving rise to the proceedings may be stated thus:

On the basis of reciprocal agreement between the States of Orissa and Madhya Pradesh, it has been decided to operate stage carriage services on, the inter

State route Rourkela to Jasapurnagar. The total distance of the route is 290 Kms. out of which 204 Kms. lie within the State of Orissa and 66 Kms. in Madhya Pradesh. As per terms of the I agreement each State is to issue one permanent stage carriage permit for a single trip daily. G. P. Gupta, opp. party No. 2 in O.J.C. No. 1916 of 1985 is operating the service from Madhya Pradesh side on the basis of the permit granted by the Transport Authority of that State. In pursuance of the advertisement issued in the local dailies on 21-12-1984 by the State Transport Authority, Orissa, inviting applications for grant of permit, ten applicants including the Petitioner and the three opp. parties mentioned above submitted their applications. The said applications after being duly processed u/s 57 (3) of the Motor Vehicles Act (for short 'the Act') were taken up for consideration by the State Transport Authority in its meeting held on 18-6-1985. As it appears from the extract of the proceedings of the mid meeting, as per Annexure-I, five of the applicants submitted objections before the State Transport Authority in response to the notice u/s 57 (3) of the Act Sushil Kumar Sharma, G. P. Gupta, Sanjeev Kumar Kapoor and Purusottam Das Marothia were represented by counsel and Biswanath Agarwalla appeared in person and Moinuddin Ahmed, Jai Prakash Marothia, Janardan Prasad Viswakarma and the District Transport Manager, O. S. R. T. G, Rourkela were absent. On consideration of the claims of the applicants and submissions of the counsel appearing before it, the State Transport Authority decided to grant the permanent permit to" the Petitioner Sushil Kumar Sharma, and rejected the applications of the other applicants.

4. Against the aforesaid decision of the State Transport Authority three of the applicants, G. P. Gupta, Janardan Prasad Viswakarma and Moinuddin Ahmed filed M. V. Appeal Nos. 34/85, 38/85 and 39/85 respectively. While it was contended on behalf of G. P. Gupta that the decision of the State Transport Authority was vitiated due to non-application of mind to the comparative merit between himself and the grantee the main contention raised on behalf of the two Appellants was that they had no notice of the meeting of the State Transport Authority since the notice issued by post reached them after the meeting was held. The Tribunal on verification of the record accepted the plea of want of notice raised on behalf of Janardan Prasad Viswakarma and Moinuddin Ahmed. The Tribunal also found that no specific reason was given by the State Transport Authority for rejecting the applications of the applicants other than the grantee. It appears from the order of the Tribunal that it also considered the contention raised presumably on behalf of the grantee that the Tribunal should itself consider the comparative merits of the applicants and decide who is the most suitable amongst them for grant of permit. However, the Tribunal stating certain reasons declined to undertake the exercise. Accordingly it decided to remit the case to the State Transport Authority for fresh consideration and disposal. It is relevant to mention here that while directing remand of the case to the State Transport Authority the Tribunal observed that all the applicants shall be given opportunity to appear before the State Transport Authority and place their case for consideration by the Authority.

This direction has been very much objected to by the Petitioner.

5. Shri B. Pal, learned Counsel for the Petitioner, raised three main contentions in challenging the impugned order:

(a) The Tribunal had no jurisdiction to direct that all applicants, even those who had not filed any appeal against the decision of the State Transport Authority, are to be given fresh opportunity to place their case before the Authority.

(b) The Tribunal ought to have called for the records from the State Transport Authority considered the comparative merits of the Appellants and the grantee and given its decision about the most suitable applicant for grant of the permit instead of remanding the case to the State Transport Authority.

(c) Even if -the decision of the Tribunal to remand the case to the State Transport Authority is maintained. G. P. Gupta who had opportunity of placing his case before the State Transport Authority should not be given another opportunity for the same purpose.

6. Before considering the contentions raised by the learned Counsel. I would like to mention here that on being informed at the Bar that some other appeals arising from the decision of the State Transport Authority relating to the route in question were pending before the Tribunal, we called for the records in M. V. Appeal Nos. 45 and 46 of 1985 and gave notice of hearing to Shri B. P. Tripathy, learned Counsel appearing for the Appellants therein so that he could make his submissions regarding the matter. The contention of Shri Tripathy was that the Tribunal ought to have taken the decision itself instead of remanding the case to the Transport Authority.

7. The first contention raised by Shri Pal need not detain us for long. In view of the decision of the Supreme Court in the case of Cumbum Roadways (P) Ltd. Vs. Somu Transport (P) Ltd. and Others, and the decisions of this Court in the case of Lokanath Prasad Das v. Bijoya Kumar Bhuyan and Ors. 49 (1980) C.L.T. 150 and Narayan Panda v. Tilak Raj Kapoor and Ors. 63 (1987) C. L. T 329, the position has to be taken as settled that an applicant who does not challenge the decision of the Transport Authority rejecting his application for grant of permit by filing appeal before the Tribunal is not entitled to be heard in case the matter is remanded for fresh consideration to the Transport Authority. Therefore, in the present case the Tribunal clearly erred in giving the direction that all the applicants will be heard by the State Transport Authority when it considers the matter afresh for grant of permit. The Tribunal ought to have confined the fresh consideration to the three Appellants before it and the grantee Sushil Kumar Sharma and Purusottam Das Marothia who was to take permit in case Sushil Kumar Sharma failed to take the permit within fifteen days.

8. Coming to the next submission Shri Pal, that is the remand of the case to the State Transport Authority was not proper, it has to be stated at the outset that there is little scope for controversy regarding the position that the powers of the

Tribunal are co-extensive with those of the State Transport Authority in the matter of grant of stage carriage permit. Therefore, the, Tribunal had ample jurisdiction to take its own decision regarding the suitable applicant for grant of permit. In the present case, as the impugned order reveals, the Tribunal has given its reasons for not undertaking the exercise for selection of the applicant for the grant of the permit. It has been stated therein that all the records were not available before the Tribunal and the State Transport Authority had not placed all the relevant records before it and there was difficulty on the part of the Tribunal to get necessary informations, which would be readily available with the State Transport Authority. On consideration we are not persuaded to hold that the decision of the Tribunal In the present case was based on irrelevant or improper considerations. In our view, the reasons given by the Tribunal for remanding the case to the State Transport Authority are cogent and proper.

9. The third contention raised by Shri Pal is concerning the applicant G. P. Gupta. According to the learned Counsel, since G. P. Gupta had opportunity to place his case before the State Transport Authority no further opportunity should be given to him. This contention, in our view, is not acceptable in the facts and circumstances of the case. As noticed earlier, Janardan Prasad Viswakarma and Moinudin Ahmed did not receive notice of the meeting and therefore had no opportunity to appear before the State Transport Authority and place materials in support of their claims. Shri Pal does not dispute that these two applicants are entitled to have opportunity to place their case. When these applicants appear before the State Transport Authority and place their cases G. P. Gupta as an applicant and also an objector, is entitled to have his say regarding the claims of these two applicants. Further the question for consideration before the State Transport Authority would be comparative merit of the applicants who are being given opportunity to appear before it. Therefore there can be no proper consideration of the matter without giving opportunity to G. P. Gupta to place his case.

Some of the decisions cited by Shri Pal in this connection may be noticed: Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, M.P., Gwalior and Others, and Mahendra Singh and Others Vs. The State Transport Appellate Tribunal, U.P., Lucknow and Others, . On the principles laid down in these decisions, the position that emerges is that in the matter of grant of permit the power of the Tribunal is co-extensive with that of the State Transport Authority; ordinarily the Tribunal is to decide on the basis of the materials on record but in appropriate case it may remand the case to the Transport Authority, such a power being inherent in the appellate authority. The Tribunal can remand a case if it finds that the materials on record before it are insufficient and that further enquiry which is necessary is such that it cannot be conveniently undertaken by the appellate authority. On the facts and circumstances discussed earlier, we are satisfied that the tests laid down in the cases cited are satisfied in the present case.

10. The learned Counsel raised the further contention that even if the order of remand is maintained, it should be clarified that the observations regarding maintainability of the application of G. P. Gupta admittedly operating on this route on the basis of the permit granted by the Madhya Pradesh Transport Authority and the monopoly likely to be created in his favour if permit is issued to him, should be taken to be final and will be given due weightage of the Authority at the time of fresh consideration. We are not inclined to accept this contention. Since the matter is being remanded for further enquiry and two of the applicants who had no opportunity of placing their case will have such opportunity after remand, it is appropriate that the remand should be an open one and parties are given opportunity to raise any contention available under law.

11. On the analysis in the foregoing paragraphs and the discussions made therein the writ applications are disposed of with the direction that the order passed by the State Transport Appellate Tribunal in M.V. Appeal Nos. 34, 38 and 39 of 1985 as per Annexure-4 to O.J.C. No. 1916 of 1985 and Annexure-2 to O.J.C. Nos. 1917 and 1918 of 1985 shall stand modified to the extent that after remand the applications of G. P. Gupta, Janardan Prasad Viswakarma and Moinuddin Ahmed and the two grantees Sushil Kumar Sharma and Purusottam Das Marothia shall be considered by the State Transport Authority. As noticed earlier, we had called for the records in M. V. Appeal Nos. 45 and 46 of 1985 arising from the same order of the State Transport Authority. The Tribunal is directed to dispose of these appeal in accordance with the directions in this judgment within a fortnight from the date of receipt of the records. Parties will bear their respective costs of these proceedings.

The records be sent back forthwith.

P.C. Misra, J.

12. I agree.