

(1964) 12 CAL CK 0005
In the Calcutta High Court
Case No : Civil Revision Case No. 439 of 1958

Siddheswar Sen

APPELLANT

Vs

Appellate Committee (Transport Department) and Others

RESPONDENT

Date of Decision : 08-12-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 69 CWN 194

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Anil Kumar Sinha and Deba Prosad Mukherjee, for the Appellant; Kamala Kanta Maitra for Respondent No. 42, Satindra Mohan Mukherjee for Respondent No. 43 and Amiyalal Chatterjee for Respondents 44 and 45, for the Respondent

Judgement

Banerjee, J.—By a notification dated January 15, 1955, the respondent Regional Transport Authority, Hooghly, invited applications for grant of two stage carriage permits in Route No. 12 (Sheoraphuli-Tarakeswar). Pursuant to the notification the petitioner applied for a permit. So did a number of other applicants. The Regional Transport Authority thereupon invited objections and representations, if any, to the candidature of the applicants and fixed October 7, 1955 for consideration. After consideration of objections, the Regional Transport Authority selected the petitioner and another candidate, by an order dated May 28, 1957, for grant of the permits, with direction to them to place on the road brand new buses of the specified capacity within two months. The order of the Regional Transport Authority was challenged in appeal before the Appellate Sub-Committee of the State Transport Authority by three sets of appellants. All the appeals were dismissed by the Appellate Sub-Committee on September 10, 1957. The said appellants preferred further three appeals before respondent No. 1, an Appellate Committee constituted by the State Government, which Committee remanded the matters to the Regional Transport Authority for consideration and report on certain specified points. Aggrieved by the order

passed by the Appellate Committee constituted by the State Government the petitioner moved this Court, under Article 226 of the Constitution, for a Writ of Certiorari for the quashing of the order of the Appellate Committee and for a mandate upon the respondent No. 1, Appellate Committee not to further proceed with the hearing of the appeals and obtained this Rule.

2. Mr. Anil Kumar Sinha, learned Advocate for the petitioner, contended that under the scheme of the Motor Vehicles Act, there was no second appeal provided against the order of the Appellate Committee of the State Transport authority and the Committee appointed by the State Government had no jurisdiction to hear the further appeal.

3. An appeal is a creature of the statute. Section 64 of the Motor Vehicles Act provides for an appeal respectively from a decision of the Regional Transport Authority or a State Transport Authority in the following language:

64. Any person-

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

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such counter-signature, or

(e) aggrieved by the refusal of renewal of a permit, or

(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, or

(g) aggrieved by the refusal to grant permission under sub-section (1) or sub-section (2) of section 59, or

(h) aggrieved by a reduction under sub-section (1A) of section 60 in the number of vehicles or routes or area covered by a permit, or

(i) aggrieved by any other order which may be prescribed, 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.

4. The word "prescribed" in the section means prescribed by the Rules made under the Motor Vehicles Act. I find in the Bengal Motor Vehicles Rules, Rules 83 and 84 prescribing the Appellate Authorities in the following language:

83. Appeals against orders of the State Transport Authority or a Sub-Committee thereof-

(a) The authority to decide an appeal against an order of the State Transport Authority or of a Sub-Committee thereof, in respect of any of the matters referred to in clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g) or clause (h) of section 64 of the Act, including an order passed, on a reference made or an appeal preferred to the State Transport Authority under sub-rule (k), or sub-rule (1), as the case may be, of rule 64, shall be a Committee to be appointed in this behalf by the State Government by a general or special order and any person intending to prefer an appeal against an order of the State Transport Authority or of a Sub-Committee thereof in respect of any such matter shall, within thirty days of the receipt of the order, do so in writing in the Form of memorandum in duplicate setting forth concisely the ground of objection to the order appealed against accompanied by a certified copy of that order to the Secretary to the Government of West Bengal in the Home (Transport) Department, who shall place it before the said Committee.

(b) Upon receipt of an appeal in accordance with sub-rule (a) the said Committee may appoint a time and place for hearing of the appeal giving the appellant not less than thirty days' notice.

(c) The number of the members of the said Committee whose presence shall constitute a quorum for the purpose of deciding an appeal referred to in sub-rule (a), shall be,

(i) in the case where the Committee consists of not more than four members, two or

(ii) in any other case, three.

(d) A meeting of the said Committee shall be presided over by the member appointed as the Chairman of the Committee by the State Government, or, in his absence, by one of the members present at the meeting chosen, by such members in such manner as they think fit, to act as the Chairman at the meeting. The Chairman or, as the case may be, the member acting as the Chairman shall have a second or casting vote in all cases of equality of votes.

(e) The decision of the majority of the members present shall be final and binding in all cases.

84. (a) The authority to decide an appeal against the orders of a Regional Transport Authority in respect of any of the matters referred to in clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g) or clause (h) of section 64 of the Act, including an order passed under sub-rule (h) of rule 64 and based on a resolution of the joint conference recorded under sub-rule (g) of the said rule in respect of any of the matters referred to in clause (a), clause (d) or clause (f) of the said section, shall be a Sub-Committee of the State Transport Authority consisting of-

- (1) the Chairman of the State Transport Authority as Chairman,
- (2) the Secretary of the State Transport Authority as Member Secretary,
- (3) one non-official member of State Transport Authority nominated by the State Government,
- (4) The Commissioner of the Division having jurisdiction over the regions to which the appeal relates or, where the appeal relates to inter-regional routes falling both within the Presidency Division, and the Burdwan Division, the Commissioners of both the Divisions.

(b) * * * * *

5. In the instant case, the order which was taken in appeal before the Appellate Committee constituted by the State Government was an appellate order passed by a Sub-Committee of the State Transport Authority. Rule 83 certainly makes the Appellate Committee constituted by the State Government the Appellate Authority over certain types of decisions made by the State Transport Authority or its Sub-Committee. The question for my consideration, however, is whether the appellate orders made by the State Transport Authority or its Sub-Committee may also be made subject to a second appeal before the Appellate Committee constituted by the State Government. There are important indications in the Motor Vehicles Act that no second appeal was contemplated. Section 44 of the Act provides for Transport Authorities in the following language:

44. (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 sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) 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:

Provided that * * * in the Union territories the State Government may abstain from constituting any Regional Transport Authority:

Provided further that the area specified as the region of a Regional Transport Authority shall in no case be less than an entire district, or the whole area of a Presidency town.

(2) * * * * *

(3) A State Transport Authority shall give effect to any directions issued u/s 43, and subject to such directions and save as otherwise provided by or under this Act shall exercise and discharge throughout the State the following powers and functions, namely:-

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and

(d) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3) a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall in the discharge of its functions, under this Act, give effect to and be guided by such directions.

(5) * * * * *

6. Therefore, under sub-section (1), first proviso, and sub-section (3)(b) of section 44 of the Act, the State Transport Authority itself may perform the duties of the Regional Transport Authority, firstly, in Union territories, and secondly, where no Regional Transport Authority has been set up. Where the State Transport Authority performs the duty of the Regional Transport Authority as the original authority and passes an original order in respect of matters referred to in section 64, the appellate authority over it is the Appellate Committee constituted by the State Government under Rule 83. But where the State Transport Authority or its Sub-Committee functions as the appellate authority under Rule 84, no further appeal is contemplated against the order passed either by the State Transport Authority or its Sub-committee. There is enough indication of this position in section 64 which contemplates that the appellate body gives a hearing to the appellant and to the original authority only when deciding an appeal and not to any appellate authority.

7. In my opinion section 64 of the Motor Vehicles Act provides for one appeal only and not successive appeals. Therefore, any indication to the contrary in the Rules (which, of course, I do not see) cannot override the specific provision in the statute.

8. That no second appeal lies under the provisions of section 64 of the Act is also the view expressed by the Nag-pug High Court in (1) *Vijai Motor Transport Association v. Mahakoshal Transport Service*, (A.I.R. 1953 Nag 150 per Sinha, C.J., and Mudholkar, J.) and also by the Mysore High Court in (2) *D.P. Raghunath v. The State of Coorg* (A.I.R. 1957 Mys 8, per Venkataramaiya, C.J. and Padmanabiah, J.) and I respectfully agree with the views expressed there.

9. That being the position, no second appeal did lie before the Appellate Committee set up by the State Government and the order made by that Committee must be quashed. I order accordingly.

10. Let a Writ of Certiorari issue quashing the impugned order. There will be no order as to costs.