
(1970) 01 RAJ CK 0004
In the Rajasthan High Court
Case No : Spl. Appeal No. 113 of 1969

Smt. Shakuntala Devi	Vs	APPELLANT
Transport Appellate Tribunal, Jaipur and Others		RESPONDENT

Date of Decision : 28-01-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 47(3), 64
Rajasthan Motor Vehicles Taxation Rules, 1951 — Rule 86

Citation : AIR 1971 Raj 226 : (1970) RLW 515 : (1970) RLW 275 : (1970) 3 WLN 45

Hon'ble Judges : Jagat Narayan, C.J.; L.N. Chhangani, J

Bench : Division Bench

Advocate : R.K. Rastogi, J.S. Rastogi and H.C. Rastogi, for the Appellant; R.R. Vyas, for the Respondent

Final Decision : Allowed

Judgement

Jagat Naeayan, C.J.—This is a special appeal against the judgment of a learned single Judge allowing a writ petition filed by Shyam. Sunder Azad respondent and cancelling the permit granted to Smt. Shakuntla Devi appellant by the Regional Transport Authority in its meeting dated 6-3-1969.

2. On 22-2-1967 the appellant applied for a permit on Bharatpur-Govindgarh direct route, which was a new route, the scope of which had not been fixed u/s 47 (3) of the Motor Vehicles Act, 1939 (hereinafter to be referred to as the Act). The application was published in the Gazette dated 6-4-1967 and objections were invited within 30 days. It was published again on 13-7-1967 by mistake and objections were again invited. Shyam Sunder alleges that he filed an objection when the application was published for the second time in the Gazette dated 13-7-1967. He has filed an uncertified copy of that objection as it is not to be found on the record of the Regional Transport Authority. Shyam Sunder's name did not appear in the list of objectors published by the Regional Transport

Authority.

3. On 6-3-1969 one permit was granted by the Regional Transport Authority to Smt. Shakuntala Devi on an experimental basis pending fixing of the limit u/s 47 (3) of the Act. The Regional Transport Authority decided to fix this limit after six months when the traffic potentiality would be ascertain-able more definitely. Shyam Sunder has alleged that he was present when this order was passed by the Regional Transport Authority but he did not prefer an appeal u/s 64 (1) of the Act to the Transport Appellate Tribunal against the grant of permit to Smt. Shakuntala Devi.

4. In its order granting the permit the Regional Transport Authority asked Smt. Shakuntala Devi to put in a vehicle of the prescribed model within 30 days. At the same time, it made a peremptory order that if this was not done the grant of permit shall stand cancelled.

5. On 2-4-1969 Smt. Shakuntala Devi appellant filed an application for extension of time before the Regional Transport Authority and, on 3-4-1969, she filed an appeal to the Transport Appellate Tribunal on the ground that the time given to her for putting in a vehicle was much too short.

6. This appeal was allowed by the Transport Appellate Tribunal on 28-6-1969 and time was extended. The appellant put in a vehicle on 26-7-1969 within this extended period and got a permit issued. On 5-8-1969 she began to ply her vehicle on the route.

7. On 5-9-1969 Shyam Sunder filed the present writ petition

8. The learned single Judge has held that as a permit was granted to Smt. Shakuntala Devi by the Regional Transport Authority without fixing the limit of the number of permits to be granted on the route as contemplated by Section 47 (3), the grant of the permit was wholly without jurisdiction, that is, null and void, and could be challenged by Shyam Sunder by filing a writ petition without having recourse to the alternative remedy of filing an appeal to the Transport Appellate Tribunal against the grant of permit. He relied on the decision of their Lordships of the Supreme Court in *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, and some of his own decisions.

9. So far as *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, is concerned it was held in it that firstly, there should be a determination by the Regional Transport Authority u/s 47 (3) of the number of stage carriages for which stage carriage permits may be granted on that route, and thereafter applications should be entertained and that the Regional Transport Authority is not competent to grant stage carriage permits for more stage carriages than, fixed u/s 47 (3). It was not held in that case that the grant of permit without fixing the limit u/s 47 (3) was null and void. The learned single Judge has, however, held in some cases which have been referred to in his judgment that if a permit is granted by the Regional Transport Authority before

fixing the limit u/s 47 (3) then the permit so granted is a nullity. It is this view that is seriously challenged before us on behalf of the appellant.

10. Having heard the learned counsel for the parties we are of the opinion that this view is not correct.

The grant of permit in such a case would no doubt be illegal as being against the provisions of the Motor Vehicles Act but it would not be null and void. The Regional Transport Authority has jurisdiction, to grant a permit. It is expected that it will grant it in accordance with the provisions of the Motor Vehicles Act. But, if it grants it in defiance of the provisions of the Act, it acts with material irregularity in the exercise of its jurisdiction but not without jurisdiction. The permit so granted is not void but only voidable. It is not a nullity and has to be challenged by filing an appeal against the grant to the Transport Appellate Tribunal, This Court will not entertain a writ petition against the grant of the permit unless an appeal has been filed before the Transport Appellate Tribunal and has failed.

11. We accordingly hold that the grant of permit to the appellant by the Regional Transport Authority was not null and void. It follows that the writ petitioner not having challenged the grant of permit to the appellant by filing an appeal against the order of the Regional Transport Authority to the Transport Appellate Tribunal cannot be allowed to challenge the grant of permit by filing a writ petition.

12. The learned single Judge has also held that the appellant was not entitled to maintain an appeal against the order of the Regional Transport Authority requiring her to put in a vehicle of the prescribed model within 30 days of the date of grant of permit. The learned single Judge held in a subsequent decision also in *Javaram v. T. A. T.* Jaipur (Civil Writ Petition No, 1769 decided on 1-12-69), that an order passed under Rule 86 fixing the time within which the person to whom a permit has been granted is required to produce the certificate of registration of the vehicle before the Regional Transport Authority cannot be challenged by filing an appeal u/s 64. We are of the view that if the time granted is such that it imposes an onerous burden on the person to whom such a permit has been granted it would amount to a refusal to grant a permit and an appeal would lie against it u/s 64 (a). If a person to whom a permit is granted considers that the term thereby imposed is onerous he can file an appeal u/s 64 (a) against the term and if the Transport Appellate Tribunal thinks otherwise then it shall reject the appeal. If, however, the Tribunal agrees that the term is onerous then it will allow the appeal and pass appropriate order extending the time.

13. Our attention was drawn to the decision of a Division Bench of this Court in *Jai Hindu Co-operative Transport Society Limited, Jaipur V. Appellate Authority, Rajasthan, Jaipur*. ILR (1958) 8 Raj 27. The facts in that case were quite different. The person to whom a permit had been granted did not put in a bus of the prescribed model within the time granted to it for doing so. It was held that there was no automatic revocation of the grant on the expiry of the time allowed

under Rule 86. If an extension of time is applied for and is refused then, in our opinion, it would amount to an implied revocation of the permit and an appeal would lie against the order u/s 64 (b).

14. In the present case, the Regional Transport Authority granted only 30 days time. Under Rule 86, the Regional Transport Authority is bound to grant at least one month's time. The permit was granted in the month of March. The appellant was entitled to 31 days' time under Rule 86 and the order passed by the Regional Transport Authority was, therefore, illegal. Further, a peremptory order was passed that on the expiry of the time allowed the permit would stand cancelled if the vehicle was; not put in. On 2-4-1969 the appellant applied to the Regional Transport Authority; for extension of time and an extension was granted. This order was illegal as the Regional Transport Authority had become functus officio after it had passed the peremptory order. It could not extend the time beyond that which it had granted under that order.

15. On 3-4-1969, the appellant filed an appeal against the order of the Regional Transport Authority granting 30 days time on the ground that the term was onerous. That appeal, as "we have held above, was competent and, therefore, the Transport Appellate Tribunal, was competent to extend the time after allowing the appeal. The order passed by the Regional Transport Authority on 3-4-1969 granting further time upto 20-4-1969 could not deprive the Transport Appellate Tribunal of its jurisdiction to entertain the appeal, to allow it and to grant further extension of time to the appellant.

16. We, accordingly allow the special appeal and set aside the order of the learned single Judge cancelling the permit of the appellant. In the circumstances of the case, we leave the parties to bear their own costs of this appeal.