

(1976) 02 CAL CK 0004
In the Calcutta High Court
Case No : Matter No. 615 of 1973

Sri Durga Transport Service

APPELLANT

Vs

Appellate Sub-committee of The State Transport Authority
and Others

RESPONDENT

Date of Decision : 03-02-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 81 CWN 625

Hon'ble Judges : Sabyasachi Mukherji, J

Bench : Single Bench

Advocate : Soven Tagore and Amal Mitra, for the Appellant; R.L. Sinha, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this application under Article 226. of the Constitution the petitioner Messrs. Sri Durga Transport Service, a proprietary concern of one Jagabandhu Ghatak, is challenging the orders dated 28th July, 1967 and 21st July, 1973 passed by the Appellate Sub-Committee of the State Transport Authority, West Bengal. In order to appreciate the question involved in this application it will be necessary to refer to certain facts. On the 17th April, 1964 permanent stage carriage permit on route Durgapur-- Ajayghat via Shibpore was sanctioned by the Regional Transport Authority, Burdwan. The 17th April, 1965 was fixed as the date for receiving objections and no objection was received. 13 valid applications, however, were received. On the 7th February, 1966 out of the 13 applicants only six appeared on the date fixed for verification and the absentees were left out of consideration and six applicants present were heard. On the 7th February, 1966 details of applicants and Sri Durga Transport were found out on verification by the Regional Transport Authorities and it was found that the petitioner was financially solvent and had sufficient experience in transport and operating passenger service and owned a ready available bus which was produced for verification. So far as respondent No. 4 Messrs. Mukherjee Brothers Transport Service was concerned it was found that the said

firm was not financially solvent and did not have a ready bus. In consideration of the relevant merits, the Regional Transport Authority came to the unanimous decision that in view of experience in passenger service, financial solvency and availability of ready bus the petitioner was most suitable candidate and was granted the permit on route Durgapur-Ajayghat via Shibpore for five years, inter-alia, on terms and conditions mentioned in the permit. Messrs. Mukherjee Brothers Transport Service preferred an appeal to the State Transport Authority against the order dated 7th February, 1966 granting the permit to the petitioner. The appeal was marked as Appeal No. B-31 of 1966. On 3rd October, 1966 when the State Transport Authority took up the said appeal it was found that the petitioner was absent. Again on the 28th July, 1967 that appeal was taken for the second time, it was found that the petitioner was absent. In the premises, on 28th July, 1967 the appeal was allowed by the Appellate Sub-Committee ex parte. No reasons, however, were indicated in the said order. On the 5th October 1967 the petitioner wrote to the State Transport Authority informing them that it had not received any notice for hearing of the appeal and prayed that it might be given a hearing. On the 26th October, 1967 by an order of the same date the Appellate Sub-Committee of the State Transport Authority recalled the order dated 28th July, 1967 and thereafter issued a registered notice fixing 27th May, 1968 being the date of hearing of the appeal. On that date the appeal preferred by Messrs. Mukherjee Brothers Transport Service was heard and dismissed and it was held that the decision of the Regional Transport Authority was correct as public interest could be served by giving the permit to one who had a ready vehicle. Thereafter, sometime in 1969 the said Messrs. Mukherjee Brothers Transport Service being the respondent No. 4 herein moved this High Court under Article 226 of the Constitution and obtained the Civil Rule No. 189 (W) of 1969 challenging the aforesaid order dated 27th May 1968 passed by the State Transport Authority. On 3rd May, 1973 the learned judge made the said rule absolute and set aside the order dated 27th May, 1968 as the same was passed without notice to Messrs. Mukherjee Brothers Transport Service and as such, was violative of natural justice. The learned Judge directed that the State Transport Authority should decide whether it could revise the order dated 28th July, 1967, Leave was also given to decide the question whether the State Transport Authorities had jurisdiction to revise its previous order. On the 21st July, 1973 the Appellate Sub-Committee heard the appeal and resolved that it had no power to revise or review the earlier order and as such it had no power to go into the merits. They further held that the petitioner had notice of the hearing prior to 28th July, 1967 and the said order did not violate the principles of natural justice. Being aggrieved by the aforesaid order, the petitioner has moved this court challenging the two orders dated 28th July, 1967 and the order dated 21st July, 1973. In the last impugned order dated the 21st July, 1973 the Appellate Sub-Committee first considered whether the petitioner had notice of the hearing on the 28th July 1967. The Appellate Sub-Committee found that the petitioner had notice and the order on that date was not passed without notice to it. It appears that the State Transport Authority has recorded that the petitioner had received

intimation about the first date of hearing of the appeal on the 30th October, 1966 sent to it by registered post and received by it on 27.9.66. Subsequent intimation of the order of adjournment on 3rd October, 1966 was received by the petitioner on the 8th May, 1967. These were verified as correct from the information received from the Post Master General, West Bengali. It is true that the actual notice of further hearing on 28th July, 1971 had not been sent by registered post but it was sent by express delivery post. It further appears that the petitioner was absent in spite of notice being given to it by registered post on 3rd October, 1966. In the above background the State Transport Authorities came to the conclusion that the petitioner was duly served and the order dated 28th July, 1967 was passed upon notice to the petitioner. In my opinion, it cannot be said that the said finding of the State Transport Authorities was perverse or based on no evidence at all. Whether in a particular case notice, had been given to a party concerned or whether a particular order is in violation of the principles of natural justice is mainly and essentially a question of fact dependent upon the facts and circumstances of each particular case. On the facts enumerated in this case, it cannot be said that the State Transport Authority has acted perversely or without material. Section 64 of the Motor Vehicles Act, 1939, does not as such enjoin that notice should be served by registered post but the hearing before the authorities must be in consonance with the principles of natural justice. Reliance was placed by counsel for the petitioner on the observations of Rajasthan High Court in the case of Messrs. Motilal Ram Kalyan & Ors. Vs. Appellate Authority, Rajasthan, AIR 1960 Rajasthan 201 in aid of the proposition that the party affected by the decision must be given notice. There is no dispute about that proposition. But here in the instant case it is the finding of the appropriate authority on proper materials that the party affected had been given notice. In the case of Narain Singh Kohli Vs. Transport Appellate Tribunal, Jaipur AIR 1968 Rajasthan 213 more or less a similar view was reiterated. Therefore, in so far as the State Transport Authority held that by the order dated 21st July, 1973 that the petitioner had notice prior to the passing of the order dated 28th July, 1967, in my opinion, it cannot be said that the petitioner has any cause for grievance.

2. The next contention is whether the State Transport Authority was right in its finding that the State Transport Authority had no power to revise the order passed by the Appellate Sub-Committee on the 28th July, 1967. Quasi-judicial authority must be deemed to have such incidental or ancillary power which are necessary for the proper exercise of the jurisdiction vested in them. This proposition is well settled. Reliance may be placed on the observations in the case of Pulin Behari Das and 34 others Vs. King-Emperor . Murlidhar Surda Vs. Income Tax Appellate Tribunal and Others, and in the case of Income Tax Officer "F" Ward, District IV(2) and Others Vs. Murlidhar Sarda and Another, . But the question is, whether the power to re-view or revise an order previously passed by it is such a power which an authority should possess by virtue of incidental or ancillary power. In my opinion, there is no warrant to come to the conclusion that

the power to revise a previous order not on the ground of clerical mistake, not on the ground that the previous order was passed without notice but on the ground that the previous order was passed erroneously, can be attributed to an authority unless specific provision is made in the statute for that purpose. Otherwise, the authority would be sitting on appeal over its previous decision. Such power the quasi judicial authorities do not possess, in the absence of statutory provision to that effect. If it was intended by the legislature to vest the State Transport Authority with such re-visional power then specific provision had to be made for the same. Therefore, in my opinion it cannot be said that the State Transport Authority, in so far as it held that it had no power to revise the previous order passed on the 28th July, 1967, acted erroneously.

3. There is, however, another aspect of the matter, namely, the order dated the 28th July 1967, though it was passed upon a notice to the petitioner, did not indicate the grounds upon which the said order was passed. It merely stated that the appeal was allowed. It was challenged that the order in question was laconic and not a speaking order. It is well settled that the quasi judicial authorities which were vested with authority to decide the questions affecting, the rights of the parties must pass speaking orders. This proposition is well settled. Reliance may be placed on the observations of the Supreme Court in the case of *Bharat Raja Vs. The Union of India (UOI) and Others*, ; in the case of, *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, and in the case of *Travancore Rayon Ltd. Vs. Union of India (UOI)*, . In this case the order did not indicate any reason at all. Counsel for the respondent contended that even in a case where the order itself did not indicate any reason but it was possible to spell out such reason from other documents then on the ground that merely the reasons had not been stated in the order itself, the court should not interfere with such order. Reliance was placed on the observations of mine in the case of *Hari Prasad Singh vs. Commissioner of income tax, West Bengal & Ors.* AIR 1972 Calcutta 27 at page 34. It is true that in an appropriate case where from other document it was possible to spell out the reasons or basis which induced an authority to pass an order in the manner it had done the fact that the reasons had not been formally set out in the order itself would not make the order vulnerable. But in the instant case it is, not possible to find out the reasons which had induced the State Transport Authority to pass the impugned order on the 28th July, 1967. It would be only speculative and hazarding a guess if one sought to find out the reasons by looking at the grounds of appeal as was suggested by counsel for the respondent. Long time has passed since the order dated the 28th July, 1967, but this delay was caused not by the conduct of the petitioner and, therefore, in my opinion the petitioner should not be deprived of the opportunity of challenging this order. In the aforesaid facts and circumstances of the case in my opinion the appropriate order would be to set aside the order dated the 28th July, 1967, as also the order dated the 21st July, 1973, though the last order by itself does not suffer from any infirmity and to direct the State Transport Authority to consider the appeal of Messrs. Mookerjee

Brothers Transport Service upon giving proper notice to all the parties concerned including the petitioner and Messrs. Mookerjee Brothers Transport Service and pass an order in accordance with law indicating the reasons for such an order. As the matter has been long delayed, I direct that the State Transport Authority should proceed as quickly as possible and dispose of the matter within a period of four months from this date.

With the aforesaid direction the Rule is made absolute. There will be no order as to costs.