

(1968) 07 MAD CK 0038

In the Madras High Court

Case No : Writ Petition No"s. 1055 and 1794 of 1968 and W.A. No. 128 of 1968

Sri Raja Rajeswari Bus Service, Vridhachalam

APPELLANT

Vs

Regional Transport Authority South Arcot Cuddalore and
Another

RESPONDENT

Date of Decision : 23-07-1968

Acts Referred:

Motor Vehicles Act, 1939 — Section 47(1), 47(3), 57, 57(3), 57(4)

Citation : AIR 1969 Mad 458 : (1969) ILR (Mad) 669 : (1969) 1 MLJ 201

Hon'ble Judges : M. Anantanarayanan, C.J;Natesan, J

Bench : Division Bench

Advocate : K.K. Venugopal, for V.T. Gopalan, for the Appellant; Government Pleader, S. Mohan Kumaramangalam, for V. Subramanian and R.S. Ramanujan, for the Respondent

Final Decision : Dismissed

Judgement

Natesan, J.—The two writ petitions under Article 226 of the Constitution and the connected Writ Appeal directed against an interlocutory order in W.P. No. 1055 of 1968 vacating the interim stay granted before notice, relate to the grant of a stage carriage permit on the route Madampoondi to Ulundurpet (Via) La-Gudalur, Rishivandiam, etc. By a notification dated 16-12-1967, the Regional Transport Authority, South Arcot, u/s 57(2) of the Motor Vehicles Act, invited applications for the grant of a stage carriage permit on the route. There were three applicants, for the route in question, the 2nd respondent in the writ petitions being one. On 12-1-1968 the applications were duly notified" u/s 57(3) and 8-2-1968 was fixed as the date, on or before which representations in connection with the applications should be submitted furnishing copies thereof simultaneously to the applicants. The applications with representations were originally scheduled to be taken up for consideration on 29-2-1968, but were adjourned to 12-3-1968.

The petitioner is a fleet owner operating 12 buses on a sector of the route in

question. No representations or objections to the applications entertained by the Regional Transport Authority for permit on the route in question were submitted by the petitioner within the time prescribed. But, the petitioner sent a petition by registered post to the Regional Transport Authority which was acknowledged by the Regional Transport Authority, on 27-2-1968, praying that proceedings u/s 47(3) should be taken before consideration of the applications for permit on the merits. Again, when the applications were actually taken up for consideration by the Regional Transport Authority on 12-3-1968, the petitioner appeared through Counsel and submitted that consideration of the applications should be postponed, pending determination u/s 47(3). In the proceedings of the Regional Transport Authority dated 12-3-1968 the 2nd respondent in the writ petitions became grantee. From the proceedings it is seen that there was only one objector. Grant of the permit to the 2nd respondent was duly communicated to the applicants and the representator on 3-4-1968. The proceedings did not refer to the receipt of the petition filed by the petitioner and representation made on his behalf by his Counsel on 12-3-1968.

It is under these circumstances that the petitioner came to this Court first with W.P. No. 1055 of 1968 for the issue of a writ of prohibition. Later, after the 2nd respondent came on the scene and represented that the permit in question had been granted to him on 3-4-1968 itself, the petitioner applied for amendment of the relief of prohibition into one of certiorari. He also filed an independent application, W.P. No. 1794 of 1968 for the issue of a writ of certiorari to quash the order of the Regional Transport Authority dated 12-3-1968.

2. The substantial contention of the petitioner is that there has been no inquiry u/s 47(3) and the proceedings, taken u/s 57(3) without a prior determination of the number of permits to be granted on the route in question, are vitiated. It is submitted that, as the petitioner, an existing operator on the route, had specifically objected to the hearing of the applications for permit on the merits without prior determination u/s 47(3), the proceedings are void and without jurisdiction, and should be quashed. Reliance is placed on the decision of this Court in the batch of writ appeals and writ petitions. Gobald Motor Services (P.) Ltd., Mettupalayam Vs. Regional Transport Authority, Coimbatore, , Gobald Motor Services (P.) Ltd.; Mettupalayam v. Regional Transport Authority, Coimbatore and W P Nos. 67 and 72 of 1966 (Mad) and W.P. No. 406 of 1968 (Mad) following the decision of the Supreme Court in Jayaram Motor Service v, S. Rajarathinani, (1967) 2 SCWR 857 and Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another, .

3. There is no dispute that, for the route in question, there has been no prior determination u/s 47(3). But the question is whether the proceedings are liable to be challenged under Article 226 and quashed at the instance of the petitioner, who had admittedly made no representation u/s 57(3) within the prescribed time. It is submitted for the 2nd respondent that, not having made any representation u/s 57(3), the petitioner has no locus standi to be heard at the

inquiry of the applications for permit on their merits, and that, therefore, he could not complain of the grant. It is submitted that it was open to the petitioner, by his representation u/s 57(3), to question the need for the grant of permit on the route. Objections to the proposed grant, which would necessitate an inquiry u/s 47(3) particularly under Sub-clauses (a) and (f) of Section 47(1) it is said could have been taken. Our attention was drawn to Section 57(4) which precludes consideration of any representation in connection with an application for permit, unless the representation had been made in writing before the appointed date, simultaneously furnishing a copy thereof to the applicant. In the circumstances, it was submitted that the Regional Transport Authority acted perfectly in accordance with law in not taking cognizance of the representation sent by post, just two days before the date fixed for inquiry, and the representation made by the petitioner's Counsel at the hearing on the adjourned date. The petitioner having no right of audience u/s 57 (4), representations, if any, made by him it is urged were non est.

4. There can be doubt--and it has been so held following the decisions of the Supreme Court--that Section 47 envisages two stages of inquiry, (i) fixation of number of permits u/s 47(3), and (ii) consideration thereafter of the applications for the grant of permit and representations, if any by persons mentioned in Section 57(3). In Gobald Motor Services (P.) Ltd., Mettupalayam Vs. Regional Transport Authority, Coimbatore, in fact we have remarked, with reference to the cases then under consideration, that the Regional Transport Authority had no jurisdiction to proceed to consider the applications for permit without a prior determination u/s 47(3). But we have to bear in mind the facts of the cases then considered. The Regional Transport Authority there had invited applications for the grant of additional permits on the route. The applicants for the route, besides filing applications for the grant of permit to themselves, had also made representations u/s 57(3) objecting to the addition of new buses on the route, on the ground that the route in question was more than adequately served by the existing service. When the objectors wanted the Regional Transport Authority to first fix the maximum number of permits to be granted on the route u/s 47(3), the Regional Transport Authority took the stand that orders u/s 47(3) would be passed at the time of consideration of the applications. It is in those circumstances that the petitioners came up to this Court praying for the issue of a writ of prohibition and we observed inter alia:

"That being so, from all aspects and angles it could be said that at any rate when the existing operators or applicants call upon the Regional Transport Authority to fix the number of buses on the route, before entertaining the applications for permit, it is bound to do so u/s 47(3)."

In that batch of cases the objectors in time made due representation and demanded that there must be a prior determination u/s 47(3). They had qualified themselves to be heard at the inquiry, The decision of ours in that batch of cases may be contrasted with our decision in W.P. No. 406 of 1968 and W.A. No. 92 of

1968 (Mad); K. Naniappan v. Regional Transport Authority North Arcot at Vellore. In the later case the petitioner was one of several applicants for the grant of permit on the route. On representations being called for u/s 57(3) to the applications received, the petitioner made no representation, on the applications of others, and raised no question about the need for a prior determination u/s 47(3). The principal contention in this Court for the Writ petitioner was, that a determination u/s 47(3) was an essential prerequisite and a matter which went into the jurisdiction of the authority, whether the petitioner had raised any objection before the Regional Transport Authority or not as to the need for additional bus and the adequacy or otherwise of the existing facilities. In dealing with the argument, we observed:--

"Though it is a question of jurisdiction in one sense, when parties, at any rate, tacitly proceed on the basis that there is no need for fixation of a limit u/s 47(3) or revision of the limit already fixed, it cannot be said that orders passed on such assumption are wholly void. If any of the objectors or any applicant at least in the alternative calls for a prior determination u/s 47(3), then the objection ought to prevail before the Regional Transport Authority, and its failure to proceed u/s 47(3) first would vitiate its order. In our view, in a matter of this kind, when an objection has not been taken by any one before the Regional Transport Authority, it cannot be said that the order is wholly void, and that objection could be raised at any stage, irrespective of other considerations and saving features,"

5. The contention of Mr. K.K. Venugopal, that the petitioner could not, in proceedings u/s 57(3) raise objection as to want of a prior determination u/s 47(3), is devoid of merits. In fact, in our judgment in W.P. No. 406 of 1968 (Mad) we remarked:

"It was open to him to raise that point before the Regional Transport Authority as an objector, being an operator on the route. He could have raised the point at least in the alternative."

In the batch Gobald Motor Services (P.) Ltd., Mettupalayam Vs. Regional Transport Authority, Coimbatore, we said:--

"Applications have been called for u/s 57(2) and have been filed. Objections have been preferred and affected parties have called for a determination u/s 47(3), We see nothing in law which prevents the question of revision of the limit of stage carriages on a route being taken up even after applications have been called for and received."

It can make no difference, even if it is case where there has been no prior inquiry at all u/s 47(3). While Section 57(3) provides for making applications for the grant of permit and inviting of representations on receipt of such applications, the proviso to that sub section authorises the Regional Transport Authority to reject even summarily the applications without following the procedure laid down in the sub-section, if the grant of permit in accordance with the applications would go beyond the limits fixed under Sub-section (3) of

Section 47. That is, if a limit has been fixed u/s 47(3) and that limit would be exceeded with the grant of permit, the Regional Transport Authority may in limine dismiss the applications for permit. If the Regional Transport Authority, without such summary rejection, proceeds to publish the applications and calls for representations, clearly it will be open to any person who would be affected to object to the grant, pointing out that the limit fixed would be exceeded. Equally it will be open to the objector to state, where no limit has been fixed, that the route is well served or the condition of the road is such that more buses cannot ply on the road etc. all germane and relevant considerations u/s 47(1). Such representations can quite properly find a place in the representations made, when called for, u/s 57. The rule that where an inquiry u/s 47(3) is necessary it must precede the disposal of applications for permit on their merits, does not preclude the raising of all germane objections and relevant representations within the time prescribed. Once the objections raised and representations made call for a determination u/s 47(3), under the rulings it is incumbent upon the Regional Transport Authority to take proceedings u/s 47(3) first before embarking upon the merits of the applications u/s 57.

6. We are not impressed with the contention of Mr. K.K. Venugopal that, as the legal position was not clear till the decision of this Court in Gobald Motor Services (P.) Ltd., Mettupalayam Vs. Regional Transport Authority, Coimbatore, following the decision of the Supreme Court in (1967) 2 SC WR 857, the petitioner could not take the objection earlier. As a matter of fact, the decision of this Court was given on 10-1-1968 and the last date for preferring objections, called for u/s 57(3), was 8-2-1968. Further all that we laid down, following the observations of the Supreme Court in (1967) 2 SC WR 857 is that, when a determination u/s 47(3) is required, an inquiry u/s 47(3) should not be telescoped with the inquiry u/s 57 of the applications for the grant of permit on the merits. An enquiry u/s 47(3) may be initiated by the authority itself or duly called for by parties interested. We pointed out that, once the number of vacancies is settled, the question canvassed and decided prior to the taking up of the applications for the grant of permit on the merits, it cannot become the subject of controversy at the further stage, when the actual merits of the applications are considered.

7. Here the petitioner has not notified his objections to the grant of permit on the route, and sub-sections (3) and (4) of Section 57 read together preclude the Regional Transport Authority from hearing the petitioner at the inquiry u/s 57(3). Section 57 (4) bars the authority from considering any representation in connection with an application referred to in Sub-section (3), unless the application is made in writing before the appointed date. It is manifest that the objections now raised is a representation in connection with an application for permit contemplated in Sub-section (3) of S. 57. The objections raised do relate to considerations provided u/s 47(1). We cannot agree with the contention that the representation should be confined to the qualifications of the applicant for permit. True at the inquiry u/s 57 (5) the authority is concerned only with the choice of the operator.

It is pertinent in the context to remember the practice that was previously prevalent in this State on the receipt of applications for permit, referred to in our judgment in *Gobald Motor Services (P.) Ltd., Mettupalayam Vs. Regional Transport Authority, Coimbatore*, batch. Suppose a limit has been fixed u/s 47(3) and, notwithstanding ignoring the proviso to Section 57(3). the authority, without summarily rejecting the applications, proceed further publishing the applications and calling for representations. To accede to the petitioner's contention, would come to this, that it will not be open to an operator, on the route in his representation to raise even the patent objection that the grant of permit would exceed the limits. If he does not raise his objection in his representation, we fail to see how he can raise it at a later stage. The Motor Vehicles Code does not provide for an audience before the Regional Transport Authority at the inquiry u/s 57(3) to persons who had made no representations. In *Purushotham Bhal Punambhai Patel v. State Transport Appellate Authority, Madhya Pradesh*, C.A. No. 762 of 1963 the Supreme Court held:

"We consider that the terms of Section 57(3) and (4) of the Act preclude any party who had not notified its objections in time to be heard at any stage of the proceedings original or appellate in relation to the grant of the permit on an application duly advertised u/s 57(3)."

The decisions in *A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd.*, ; *Taj Mahal Transports (P) Ltd., Melapalayam, Tirunelveli Vs. Secretary, Regional Transport Authority, Tirunelveli and Another*, and *Swami Motor Transport (Private) Ltd. Vs. Raman and Raman (Private) Ltd. and Others*, relied upon by the petitioner, are clearly distinguishable and have no bearing on the question now under consideration. In the present case it does not appear whether even the only representator demanded an inquiry u/s 47(3). The order of the Regional Transport Authority does not refer to any such objection from the representator. We do not think that the circumstances call for any interference by us in the matter under Article 226 of the Constitution. The writ petitions fail and are dismissed. As the writ appeal is from an interlocutory order in the writ petition, it fails with the writ petition and is dismissed. Rules Nisi in the writ petitions are discharged. No order as to costs.