
(1976) 01 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1202 of 1974

Sumersingh

APPELLANT

Vs

The State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 14-01-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1976) WLN 91

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Gupta, J.—There was a bus route from Borawar to Pushkar (hereinafter referred to as "the route") about 90 Kilometers in length, which lay partly in Jodhpur region and party in the Jaipur region of the State of Rajasthan. The operators of the route appear to have submitted an application for the extension of the route from Pushkar to Ajmer, but the State Transport Authority, Jaipur (hereinafter referred to as the STA) rejected the aforesaid application by its resolution dated February 5, 1973 and did not grant the desired extension. The petitioner No. 1 is the Sarpanch of the Gram Panchayat Baser in Nagour district, while the petitioner No. 2 is the Sarpanch of Gram panchayat, Kadel in Ajmer district. The two petitioners, acting on behalf of the inhabitants of the area and the Panchayats of which they were Sarpanchs some time later submitted a representation to the STA that the route in question should be extended upto Amer so as to make available the inhabitants of the area a direct bus service for reaching Ajmer and thereby avoid unnecessary change of bus at Pushkar The STA then got a survey conducted in the matter and the survey report favoured the grant of an extension in the Interest of the traveling public. The STA thereupon gave notices to the existing operators of the route u/s 48(3)(xxi) of the Motor Vehicles Act (hereinafter referred to as "the Act") to show cause as to why the route of their permits be not varied by inclusion of the portion of the

route from Puskar to Ajmer, which is only about 10 kilometers in length Bachhraj Singh respondent No. 3, who is an existing operator of Makrana Ajmer route through a different vie objected to the grant of extension of the route upto Ajmer. It may be mentioned hue that Makrana Ajmer route over-laps the route from Makrana to Bhadasia and thereafter it takes a turn and passes over a different course via Harnor for reaching Ajmer. The STA did not agree with the contentions raised on behalf of the objector, Bachhraj Singh and held that the extension of the route upto Ajmer would serve public interest, as it would remove the hardship of the passengers going from different places on the route to Ajmer Thus in view of the persistent demand of the inhabitants of the area, the route was extended upto Ajmer by the resolution of the STA dated August 30, 1973. Bachhraj Singh filed an appeal before the State Transport Appellate Tribunal, Rajasthan Jaipur (hereinafter briefly referred to as the STAT) against the aforesaid resolution of the STA dated August 30, 1973. Initially the petitioners were not made parties to the appeal to fore the STAT, but on their application the STAT directed the appellant Bachhraj Singh by its order dated November 14, 1973 to add the petitioners as parties to the appeal, representing the Gram Panchayate Baser and Kadel. The petitioners were accordingly added as parties to the appeal and after hearing all this parties concerned, this STAT allowed the appeal by its order dated December 10, 1973 on the sole ground that the ex tension granted by the STA u/s 48(3)(xxi) of the Act was without jurisdiction, as a variation of the route of a permit by changing one of the termini thereof could he directed only u/s 57(8) of the Act and not u/s 48(3)(xxi) of the Act. According to the STAT, u/s 48(3)(xxi) of the Act only a deviation of the route between the two termini field for the original route could be permitted and an extension beyond any one of the two termini was outside the scope of the provisions of Section 48(3)(xxi) of the Act.

2. The two petitioners have challenged the aforesaid order of the STAT dated December 10, 1973 by means of the present writ petition and it is ogre by Mr. Chhangant on their behalf that the view regarding the relevant provisions of the Act keen by the STAT was apparently erroneous as there was no such limitation contained in Section 48(3)(xxi) of the Act that an extension beyond any one of the two terminal could not be ordered under the said provision.

3. Mr. Maheshwari, appearing for the respondent Bachhraj Singh, has raised a preliminary objection that the petitioners are Sarpanchs of the village Panchayats and they have no personal interest in the subject matter of the writ petition and (sic) much a petition under Article 226 of the Constitution is not maintainable on their behalf. Some decisions were cited by the learned Counsel in support of his contention that the existence of a legal right is the foundation for the exercise of jurisdiction under Article 226 of the Constitution and that ordinarily a petitioner must be able to show a subsisting personal right and its integument in order to maintain a petition under Article 226 of the Constitution. It is not necessary in the present case to go into the larger question as to whether he existence of a subsisting personal right or interest is necessary to maintaining a petition under

Article 226 of the Constitution. It is not denied that it was at the instance of the two petitioners that the STA issued notices u/s 48(3)(xxi) of the Act to the existing operators of the route for varying the conditions of their permits by inclusion of pushkar to Ajmer portion in the route of their permits. It is also on record that the STA allowed the aforesaid extension in view of the persistent demands of the inhabitants of the villages situated on the route and included in the Gram Panchayats represented by the petitioners. It is further on record that on the application of the petitioners, the STAT held that the petitioners had sufficient interest in the matter of variation of the route and directed the respondent Bachraj Singh to make the petitioners parties to the appeal before that Tribunal. The respondent No. 3 complied with this direction & the amended memorandum of appeal (Annexure P/15) shows that the petitioners were added as respondent No. 7 & 8 to the appeal filed by the respondent Bachhraj Singh before the STAT. Thus the petitioners were parties to the proceedings before the lower authorities, leading to the passing of the order of the STAT dated December 10, 1973. There is no doubt that existence of a subsisting legal right in the petitioner is the foundation for the exercise of jurisdiction of this Court under Article 226 of the Constitution and such legal right which could be thus enforced, should ordinarily be of the petitioner himself but in some cases this rule can be relaxed or modified, if agencies or the case so require. In the peculiar circumstances of the present case, I am inclined to entertain the writ petition filed by the two petitioners, although they have no personal or individual right to enforce.

4. On the merits Mr. Maheshwari supported the order passed by the STAT and placed reliance upon the decision of the Punjab and Haryana High Court in *The Akal Transport Co. P. Ltd. Vs. The District Judge, Ludhiana and Others*, which was the very basis of the decision of the STAT. On the other hand, Mr. Chhargani argued that the language employed in Section 48(3)(xxi) of the Act is wide enough to include any variation of the route of an existing permit by deviation or extension or curtailment and the only restriction imposed on the power of the RTA in this respect is that such variation should be limited to a distance of 24 kilometers only.

5. I have considered the rival contentions. Clause (xxi) of Sub-section (3) of Section 48 of the Act runs as under:

48(3)(xxi). that the Regional Transport Authority may after giving notice of not less than one month.

(a) vary the conditions of the permit;

(b) attach to the permit further conditions:

Provided that the conditions specified in pursuance of Clause (1) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometers, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the public

convenience and that it is not expedient to grant a separate permit in respect of the original route or on varied or any part thereof.

6. This clause authorises the Regional Transport Authority concerned to vary the conditions of the existing permits, after giving notice of not less than one month to the permit holders concerned. The proviso to this clause has been newly added by Act No. 56 of 1969 and it has placed two restrictions on the power of the Regional Transport Authority in the matter of grant of variation of the conditions of the permit, relating to the route or area of the permit, as spewed under Clause (1) of Sub-section (3) of Section 48 of the Act. One of the restrictions, which have been placed by the aforesaid proviso is to the effect that the distance traversed by the altered route after such variation should not be 24 kilometers more or less than the distance covered by the original route. In other words, the Regional Transport Authority is authorised to alter the distance, covered by the original route to the extent of 24 k.m. only under the aforesaid proviso. The other condition impressed by the aforesaid proviso is that with granting a variation, under the above mentioned clause, the Regional Transport Authority must be satisfied that such variation would serve public convenience and further that it could not be expedient to grant a separate permit for the route as varied or any part thereof. In my view the word very employed in the aforesaid clause has a wide connotation and it embraces within its ambit not only variation from a defined path between two given termini but it also embodies a notification or alteration of the original route by extension or curtailment thereof at either or both the termini. Deviation or diversion is one of the modes by which an existing route can be altered or varied but there can be other modes by which variations could be brought about in an existing route. The meaning assigned to the word "vary" in Webster's Third New International Dictionary is to bring about difference i.e. to make a total or partial change is deviate, depart etc. In the proviso to Clause (xxi) of Sub-section (3) of Section 48 of the Act there is nothing to indicate that the edition with regard to areas or route would only be varied within the specified (sic) A. I have already observed above the only restriction in this respect is that the distance covered by the altered route should not be different from the distance covered by the original route by more than 24 kilometers. In this view of the matter, it could be difficult to uphold the decision of the S.T.A.T. that under the proviso to Section 43(3)(xxi), only a deviation of the original route between the two termini fixed for the original route could be allowed and not an extension beyond any one of the two termini of the route. There is no reason to import any such restriction in the aforesaid provisions apart from these which have been specifically provided therein. In my opinion, it would make no difference if the original route is extended beyond one terminus curtailed at either end or the road traversed by the original route is altered so as to bring about a deviation thereof, so long as change brought about by such variation in either manner does not exceed 24 k.m. which is the permissible limit under the proviso to Section 48(3)(xxi) of the Act, and the Regional Transport Authority concerned is satisfied that such variation would

serve public convenience.

7. The argument of Mr. Maheshwari was that a provision for variation of the route by extension thereof has been made under Sub-section (8) of Section 57 of the Act and that if the Regional Transport Authority was allowed to alter the existing route of a permit by inclusion of a new route under the provisions of Section 48(3)(xxi) then the two provisions would be overlapping. The reasons as to why the new proviso was inserted to Section 48(3)(xxi) are quite obvious. Under Sub-section (8) of Section 57 of the Act an application submitted for varying the route of an existing permit, by inclusion of a new route or area therein has to be treated as an application for the route of a new permit and in test case the lengthy procedure prescribed in Sub-sections (3) to (7) of Section 57 of the Act has to be followed, which requires considerable time to comply with. The other important consideration appears to be that an application under Sub-section (8) of Section 57 of the Act for an extension of the route of an existing permit could be submitted only by an existing permit-holder and the Regional Transport Authority could not bring about the desired alteration of its own even if public convenience necessitated the same. By making such a provision in Clause (xxi) of Sub-section (a) of Section 48 of the Act, authorizing the Regional Transport Authority to vary the condition of an existing permit by altering the route or area concerned by such permit, the Legislature clearly intended expeditious action by the Regional Transport Authority concerned in matters of variation, which may be brought about by deviation, curtailment or extension, of the route of the existing permit as long as it related to short distances only not exceeding 24 kilometers in any case and when the said Regional Transport Authority come to the conclusion that such variation would serve public convenience. It is absolutely clear that the intention in making the aforesaid provision was that were the Regional Transport Authority on the representation of the traveling public or on its own motion thought it expedient, in public interest to extend the route of an existing permit by a short distance of 5 or 10 kilometers or curtail the time by a like distance or change the course of the route slightly, then the entire lengthy procedure prescribed in Section 57 of the Act need not be resorted to. It was only to obviate the following of the lengthy procedure prescribed u/s 57 of the Act and consequent delay, that the Legislature introduced the proviso to Clause (xxi) of Sub-section (3) of Section 48 of the Act by the Amending Act No. 56 of 1999. The intention of the Legislature in this respect is abundantly clear from the language of the aforesaid proviso. The explanatory note added to the statement of objects and reasons of the Bill, which was introduced in the Amending Act No. 56 of 1989 also expressed the same view with respect to Clause 21 of the (sic) which introduced the proviso to Section 48 (3)(xxi) of the Act. It has been entailed in the explanatory note:

Unlike Section 51 and 56 which relate to the grant of contract carriage and public carrier's permits, Section 48 does not authorize the Regional Transport Authority to vary or extend or curtail the route or area of a stage carriage permit. Since it may not be possible or desirable in certain cases to open new routes, e.g. when

services are required to be presided over a small stretch beyond the terminal of an existing route, it is expedient to treat any such extension as variation of the existing permit. The proposed amendment will facilitate this procedure. Care has been taken to ensure that variation is granted only to serve the public convenience and only for short distances.

(emphasis given)

8. In *The Akal Transport Co. P. Ltd. Vs. The District Judge, Ludhiana and Others*, the, learned Judges of the Punjab and Haryana High Court after quoting the definition of route"" given in Sub-section (28A) of Section 2 of the Act observed:

From this definition it, is clear that if one of the two termini of the route is to be changed it can be done u/s 57(8) of the Act and not under Clause (xxi) of Section 48(3). Clause (xxi) applies to the variation of the distance covered by the original route that is, the termini prescreened for the original route should remain the same or in other words this clause applies only to a diversion of a route between two termini fixed for the original route and not for the extension thereof beyond one of the two termini. If a route has to be extended beyond or e of the two termini the application has to be made u/s 57(8) and not under Clause (xxi) of Section 48(3) of the Act.

9. The definition of "route" as specified in Sub-section (28-A) of Section 2 of the Act may also be reproduced here:

2 (28 A) "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus another.

10. With great respect to he learned Judges, who decided the *The Akal Transport Co. P. Ltd. Vs. The District Judge, Ludhiana and Others*, I am unable to infer as to how the aforesaid definition of "route" leads to the conclusion that if one of the two, termini of the route is to be changed, then the. same could be done only u/s 57(8) of the Act sod the same result could not be achieved, within prescribed limitations u/s 48(3)(xxi) of the Act. As I have endeavored to point out above, although the provisions of Section 57(8) and Clause (xxi) of Sub-section (3) of Section 48 of the Act may be over-lapping to a certain exerted the proviso to Clause (xxi) of Section 45(3) has been clearly inserted by the Leg Slater for expeditious action where the Regional Transport Authority, is required to act in the interest of public convenience & only for about distances to the extent of 24 kilometers. The obvious, intention appears is be that for such variations for short distances the lengthy procedure prescribed in Section 57 may be dispensed with if the Regional Transport Authority concerned was satisfied in the matter. The word "vary" occurs both in Clause (xxi) or Section 48(3) as well as in Sub-section (8) of Section 57 and it is difficult to, construe the same word-employed in the aforesaid two provisions to imply two different meanings Sub-section (8) of Section 57 provides not only for varying the Conditions of a permit by inclusion of a new route or routes, or a new area, but it also provides the procedure for altering the route covered by the existing permit in the ease of

stage carriage permits with which we are concerned. Thus variation in the aforesaid" provision comprises of not only the inclusion of a new route or area but also of alteration of an existing route which may be brought about by curtailment, there of or by deviation.

11. For the reasons, which I have indicated above, with great respect, I am unable to agree with the view taken by their Lordships of the Punjab and Haryana High Court in the *The Akal Transport Co. P. Ltd. Vs. The District Judge, Ludhiana and Others*, regarding the scope of the Proviso to Section 48(3)(xxi) of the Act. The provisions of Clause (xxi) of Section 48(3) as well as Sub-section (8) of Section 57 of the Act should be harmoniously construed and it cannot be inferred from the language employed therein that Sub-section (8) of Section 57 excludes the operation of Clause (xxi) of Section 48(3) of the Act in respect of variation even by inclusion of a short distance upto the extent of 24 kilometers, when public convenience demands expeditious action on the part of the concerned Regional Transport Authority.

12. In view of the aforesaid discussion, I hold that the decision of the STAT is apparently erroneous. In my opinion the STAT, was duly empowered under Clause (xxi) of Section 48(3) of the Act to vary the route by inclusion of the portion from Pushkar to Ajmer, which is a distance of about ten kilometers.

13. In the result the writ petition is allowed. The order passed by the State Transport Appellate Tribunal Rajasthan, Jaipur dated, December 10, 1973 is set aside. In the circumstances, of the case the parties are left to bear their own costs.