
(1981) 08 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ No's. 1002 and 1031 of 1974

Surendra Pratap

APPELLANT

Vs

S.T.A.T.
 Mohd. Sharif Vs State

RESPONDENT

Date of Decision : 14-08-1981

Acts Referred:

Motor Vehicles Act, 1988 — Section 47

Citation : (1981) WLN 248

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

Bench : Single Bench

Judgement

D.P. Gupta, Actg. C.J.

1. These three writ petitions are directed against the order passed by the State Transport Appellate Tribunal, (hereinafter referred to as the tribunal), dated April 3, 1974. The State Transport Appellate Tribunal, Rajasthan, by its resolution dated 4/5th December, 1970 granted nine fresh non-temporary stage carriage permits on Bhilwara Deoli via Banera Shahpura, Jahazpur route. The State Transport Appellate Tribunal (hereinafter called "The Tribunal") by its order dated April 3, 1974, allowed three appeals filed by the Rajasthan Transport Service, Prop. Sardar Mai Dasot Ram Swaroop and Nitya Nand and granted them one permit each in place of the petitioners Ratan Lai Tambi, Mohammed Sharif and Shriram Daruka.

2. In respect of Ratan Lai Tambi, the Tribunal gave two reasons for cancelling the permit granted to him by the State Transport Authority namely that :--(1) he had no experience of transport business (2) that he was a Pradhan and his main concern was politics and he was not expected to give full time for running an efficient service.

3. In respect of other two petitioners, namely Mohd. Sharif and Shriram Daruka, only one reason was given that they had no experience of transport business.

4. In all these writ petitions, the submission made by learned Counsel for the

petitioners is that respondent No. 11 Radhey Shyam was placed in the same position as the petitioners and he had no experience of running stage carriage vehicles and that the Tribunal has discriminated in upholding the grant made in favour of Radhey Shyam respondent No. 11, while setting aside the grant of permits made in favour of the petitioner by the State Transport Authority.

5. Radhey Shyam respondent No. 11 has filed his reply in writ petition No. 1031 of 1974 (Mohd. Shrif v. State Transport Appellate Tribunal and Ors.), which shows that he has been doing business of financing buses and had got a trolley and tractor and had also a driving licence. But it has not been stated by him that he had any experience of running stage carriage vehicles.

6. It has been held in several cases that previous experience of running buses is a relevant consideration under section 47 of the Motor Vehicles Act. If such a criterion was adopted by the Tribunal, it cannot be said that the Tribunal had applied any irrelevant or extraneous consideration. But the criterion which was applied by the Tribunal should have been uniformly applied to all persons applying for grant of permits on the route, who were similarly situated and the persons who had no experience should not have been granted permits for if more persons fell in that category then the comparative merits of persons who had no previous experience of running stage carriage vehicles should have been considered.

7. It appears from a perusal of the order of Tribunal that while cancelling the permits of the three petitioners, the Tribunal did not at all consider the case of respondent No. 11 Radhey Shyam, who in my view was similarly situated as the petitioners in as much as he had no previous experience of running passenger transport vehicles.

8. However, it appears that Shriram Daruka petitioner transferred his vehicle to Surendra Pratap Singh in the year 1977 along with the permit in respect thereof, with the permission of the concerned Transport Authority. But after the transfer of the vehicle on which the permit was granted, Shri Shriram Daruka has no interest left in the matter and he was substituted by Surendra Pratap as a petitioner in the writ petition. Surendra Pratap did not file any application for grant of a permit and as such, he cannot be considered as an applicant for grant of a permit, if the case is remanded back by this court to the Tribunal, for a fresh consideration.

9. So far as the petitioner Ratan Lal Tambi is concerned, two reasons were advanced by the Tribunal as mentioned above. One reason given was that he was a Pradhan and he could not devote himself fully to the transport business. The aforesaid reason has not been contested by the petitioner Ratan Lal Tambi. If the petitioner Ratan Lal Tambi was unable to devote his time and energy to the running of stage carriage vehicle on the route in question because of his pre-occupation with his other work or engagements, then the tribunal was right in holding that the petitioner Ratan Lal Tambi could not give his undivided attention

to ensure the running of efficient passenger transport service on Bhilwara Deoli route. The cancellation of the permit of Ratan Lai Tambi on this ground has not been contested and cannot, therefore, be interfered with. No such infirmity is attached to the third petitioner, Mohd. Sharif who has been ousted on the sole ground of absence of experience.

10. In the result, the writ petitions preferred by Ratan Lal Tambi and Shriram Daruka are dismissed for the reasons mentioned above. However, the writ petition preferred by Mohd. Sharif, i.e. S.B. Civil Writ Petition No. 1031 of 1974 is allowed in part and the order passed by the State Transport Appellate Tribunal on April 3, 1974 is set aside to the extent that the permit of petitioner Mohd Sharif has been cancelled and the grant of permit in favour of respondent No. 11 Radhey Shyam has been upheld. The case is remanded to the State Transport Appellate Tribunal, Rajasthan, Jaipur, with the direction that it should consider the merits of petitioner Mohd. Sharif as against respondent No. 11 Radhey Shyam and decide afresh as to which one of them is more suitable for the grant of a stage carriage permit on the Bhilwara Deoli route.

11. Learned Counsel drew my attention to the following observations of their lordships of Supreme court in Vishundas Hundumal and Ors. v. State of Madhya Pradesh and Ors. (1), and submitted that both parties may be allowed to ply their vehicles on the aforesaid route:

Conceding that this was discrimination unconsciously indulged into by inadvertance or oversight on the part of a governmental agency, by this order we only propose to rectify the same and not reject the whole scheme. Such an approach would be destructive of a wholesome effect towards nationalisation of bus transport which is generally under in public interest. When discrimination is glaring the State cannot take recourse to inadvertence in its action resulting in discrimination. The approach is, what is the impact of State action on the fundamental rights of Citizen. In this case denial of equal protection is complained of. And this denial of equal protection flows from State action and has a direct impact on the fundamental rights of the petitioners. We, therefore, propose to take a constructive approach by removing the discrimination by putting the present Petitioners in the same class as those who have enjoyed favourable treatment by inadvertance on the part of the Regional Transport Authority.

12. In view of the aforesaid observations made by their lordships of the Supreme Court, it shall be open to the Rajasthan state Transport Appellate Tribunal to consider as to whether it could accommodate both, petitioner Mohd. Sharif as well respondent No. 11 Radhey Shyam, in case other vacancies exist on the Bhilwara-Deoli route.

13. It has also been urged that until Transport appellate Tribunal decides the matter, both petitioner Mohd. Sharif and respondent No. 11 Radhey Shyam should be allowed to ply their vehicles on the Bhilwara Deoli route, as they have

been doing so far during the pendency of these writ petitions in this court. As both the parties were allowed to ply their vehicles during the pendency of these writ petitions in this court, I hereby direct that the petitioner Mohd. Sharif as well as respondent No. 11 Radhey Shyam shall be allowed to continue to ply their vehicles on the Bhilwara deoli route untill the matter is redecided by the Rajasthan State Transport Appellate Tribunal, in the light of the observations made above. However, petitioners Surendra Pratap and Ratan Lai Tambi will no longer be entitled to ply their vehicles on the aforesaid route on the basis of the stay order passed by this court, as their writ petitions have not been dismissed.

14. The parties are left to bear their own costs of these writ petitions.