
(1967) 03 AHC CK 0023
In the Allahabad High Court
Case No : Writ Petition No. 528 of 1965

Syed Liaquet Hussain

APPELLANT

Vs

Regional Transport Authority, Lucknow

RESPONDENT

Date of Decision : 21-03-1967

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(6)
Motor Vehicles Act, 1939 — Section 47, 47(3)

Citation : AIR 1968 All 148

Hon'ble Judges : G.D. Sahgal, J

Bench : Single Bench

Advocate : R.N. Trivedi, for the Appellant; J.B. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Sahgal, J.—This is a petition under Article 226 of the Constitution praying that the record of the proceedings of the meeting of the respondent the Regional Transport Authority, Lucknow Region, Lucknow dated the 7th of August, 1965 be summoned and be quashed by issuing a writ of certiorari, that a writ of mandamus be issued commanding the respondent not to give effect to their decision dated the 7th of August, 1965 and not to issue any permits in pursuance of their decision and not to permit the plying of additional buses in pursuance of the said decision. There is a prayer for costs also and also for any other suitable writ, order or direction which the Court may deem fit to issue.

2. In the Lucknow Region there is a route known as Hardoi-Shahjahanpur route which covers a distance of 41 miles. In the year 1952 the strength of the buses plying on this route was fixed at 2. The strength was gradually raised till on the 31st of July, 1961 it was fixed at 27th. On the 17th of August, and the 70th of September, 1964 two more operators were allowed to operate on this route. The total strength thus became 29 on this route. There is another route in the region known as Lucknow-Shahjahanpur route which overlaps the entire Hardoi-Shahjahanpur route. The strength of the buses plying on this route was 12 in

the year 1964. There is yet another route known as Lucknow-Shahabad route. It also overlaps the Hardoi-Shahjahanpur route to an extent of 22 miles and the strength of the buses plying on this route is 7. There is a route known as Hardoi-Parelia route via Shahabad which also overlaps this route from Hardoi to Shahabad. The strength of the buses plying on this route is 5. One Suresh Kumar Jaiswal was plying on the Hardoi-Shahjahanpur route. He failed to move an application for the renewal of his permit in time and when it was moved beyond time, it was rejected. A vacancy thus arose and applications were invited for that vacancy. Another operator failed to apply for renewal and a vacancy occurred as to his permit also and applications were invited for that vacancy as well. The question of the grant of two permanent permits for which applications had been invited came up for consideration before the respondent at its meeting on the 7th of August, 1965. The petitioner claims that he too being a permit-holder on the said route and interested in the matter attended the meeting.

The question of increasing the strength of the route by 5 more buses was not on the agenda. The respondent, however, expressed a desire that instead of filling the aforesaid two vacancies it would grant 7 permits. Objections were immediately filed by the petitioner and seven other operators against the increase in the strength. The basis of the objections was the undesirability of the increase in the strength inasmuch as the transport facilities on the route were already adequate, that several buses had to remain idle each day, that the buses were not plying full load and only 50% of the seating capacity was being utilised and the return to the operators was inadequate considering the capital investment made by them and that the increase in the strength was in no way called for and conferred no advantage to the public of the service provided to them or any benefit to the particular locality. They prayed for an opportunity being given to them to satisfy the respondent about these matters! The petitioner's case is that without affording any opportunity to the operators the respondent took a decision that instead of filling two vacancies seven permits would be granted by it. As the petitioner apprehended that the respondent would issue seven permits and the grantees of the permits would start plying their buses on the route which would result in great financial loss to the petitioner and other operators and would cause considerable hardship to them, he filed this writ petition.

3. The contention on behalf of the petitioner is that he had a right to be heard and the Regional Transport Authority wanted to increase the strength of the buses plying on the route and as he had not been given an opportunity to substantiate the objections that he had filed, the strength of the permits should not be allowed to be raised. Sub-section (3) of Section 47 of the Motor Vehicles Act, 1939 gives the Regional Transport Authority right to determine the number of the stage carriages generally or of any specified type for which stage carriage permit may be granted on any specified route. In determining the limit of the number of stage carriages the Regional Transport Authority has to take into consideration the matters mentioned in Sub-section (1) of Section 47. Sub-

section (3) of Section 47 provides:

"A Regional Transport Authority may, having regard to the "matters mentioned in Sub-section (1)," limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region."

4. In order to appreciate as to what are the "matters mentioned in Sub-section (1)" of Section 47, we may quote the said sub-section as follows:

"47 (1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely:

(a) the interests of the public generally:

(b) the advantages to the public of the service to be provided, including the saving of time likely to be affected thereby and any convenience arising from journeys not being broken;

(c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served;

(d) the benefit to any particular locality or localities likely to be afforded by the service.

(e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;

(f) the condition of the roads included in the proposed route or area; and shall also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies".

We are not concerned with the proviso that follows. The contention on behalf of the petitioner is that one of the "matters mentioned in Sub-section (1)" of Section 47 to which regard must be had in terms of Sub-section (3) of Section 47 is any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area". There are two reported authorities of this Court, however, that this is not one of the matters referred to in Section 47 (1). These authorities are *Brijlal Misra and Another Vs. The Regional Transport Authority, Kanpur*, and *Lakshmi Chand Vs. Regional Transport Authority, Agra and Another*, . The former is a single Judge case while, the latter is a Division Bench case. Both of them lay down that representations made by persons already providing transport facilities along or near the proposed route or routes or not "matters mentioned in Section 47(1)" and are not to be taken into consideration by the Regional Transport Authority in

determining the number of stage carriage permits on any specified route. This interpretation of the provisions of Sub-section (3) of Section 47 has been followed by another Division Bench case of this Court which is not reported, namely, *Lakshmi Narain Agarwala v. State Transport Authority, U.P. Lucknow*, Writ Petn No. 226 of 1963 decided by the Lucknow Bench of this Court on 11-11-1966; (reported in *Lakshmi Narain Agarwala Vs. State Transport Authority and Another*, In considering as to whether the matters mentioned in Sub-section (1) of Section 47 within the meaning of that term in Sub-section (3) included representations under by the permit-holders or not, it has been held in *Brijlal Misra's* case (*supra*) and also in the case of *Lakshmi Chand* (*supra*) that the representations of the permit-holders as to whether the existing route passenger service was already adequate and that it was not in the interest of the public that any further permits should be issued could be considered only at the stage when the permits are actually issued and not at the stage at which it is decided as to what should be the limit of such permits.

5. After the two decisions of this Court referred to above there has been a Supreme Court decision in the case of *Abdul Mateen v. Ram Kailash Pandey* AIR 1963 S.C. 64, which lays down that where a limit has been fixed u/s 47(3) by the Regional Transport Authority and thereafter the said authority proceeds to consider application for permits u/s 48 read with Section 57, the Regional Transport Authority must confine the number of permits issued by it within those limits. The result is that in view of what has been decided by the authorities of the Court as to the interpretation of Sub-section (3) of Section 47 and the Supreme Court authority referred to above, the permit-holders can raise a question that the existing route passenger service was adequate or that it was not in the interest of the public that any further permits should be issued neither at the stage when the limit is fixed by the Transport Authority nor at the stage when the permits are actually issued in accordance with the limit fixed. The learned counsel, therefore, urges that in view of this decision of the Supreme Court the decisions of this Court require reconsideration. This point has been considered in the unreported case of this Court, namely, *Writ Petn. No. 226 of 1963 D/- 11-11-1960* : (reported in *Lakshmi Narain Agarwala Vs. State Transport Authority and Another*, by the Division Bench. The Division Bench lays down that no doubt the view expressed in the two Allahabad cases that objections of the type can be raised at the time of the actual granting of the permits, it cannot be taken to be laying down good law. But it was pointed out therein that a person in the position of the petitioner could not claim as a matter of right to be heard by the Regional Transport Authority whenever it decides to undertake redetermination of the strength on a route under Sub-section (3). The Bench observes:

"... Obviously, if no such right has been conferred on him by the statute, he can have none unless it be possible to say that by such determination any of his rights is affected. It may be that if a larger number of operators is put on the route with the result that the profits so far earned by the existing operators

become divisible among a larger number of persons and, as such an increase in the strength of the route may, in ultimate analysis, mean some diminution in the income of existing operators. But that fact by itself does not furnish the existing operators with any cause of action in so far as by getting permits they get no monopoly and, as such, whatever be the ultimate effect of an increase in the strength of the route it does not entitle them to claim notice"

With these observations I respectfully agree. Under Article 19(1)(g) of the Constitution every citizen has got a right to practise any profession, or to carry on any occupation, trade or business. Every citizen has got a right to ply his bus on a public highway. That right, however, is subject to the restrictions contemplated under Clause (6) of Article 19. A law can restrict those rights in the interests of the general public. The regulations contemplated under the Motor Vehicles Act are meant to be in the interests of the general public. If under those regulations it happens that some persons get a right to ply their vehicles on a particular route, it cannot be said that they have got any monopoly to ply on those routes to the exclusion of others. It is only in the interests of general public that certain restrictions are placed, Those restrictions are not placed in the interests of those persons who get a right to ply their buses as a result of those restrictions. If those restrictions are removed to a certain extent, they cannot come and say that their rights have been affected. It may be that their interests are affected inasmuch as they had begun to make certain earnings by plying their buses on those routes and that income is likely to be affected by the coming in of other competitors. But it is not their right to say that other competitors should not be allowed to come, as the latter have as much right to ply their buses under Article 19(1)(g) of the Constitution as they have.

6. In the circumstances, there does not appear to be any necessity for the reconsideration of the views expressed in the two cases of this Court, referred to above, interpreting the provisions of Sub-section (3) of Section 47. It may be that certain observations were made in those cases which have proved to be incorrect in view of the Supreme Court decision, but in spite of all those observations, the interpretation of Sub-section (3) of Section 47 remains at its place.

7. The petition has, in these circumstances, no force and is dismissed with costs.