

(2002) 08 BOM CK 0027

In the Bombay High Court

Case No : Letters Patent Appeal No's. 140, 141, 142 and 211 of 2002 with Writ Petition No's. 5424, 5425 and 5465 of 1997 with L.P.A.St. No. 27582 of 2001

Uttam T. Dhumal and Others

APPELLANT

Vs

Regional Transport Authority and Others

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 67, 68(3)

Citation : (2002) 6 BomCR 531

Hon'ble Judges : Ranjana Desai, J;A.P. Shah, J

Bench : Division Bench

Advocate : G.E. Vahanvati and N.P. Deshpande, in L.P.A. Nos. 211, 140, 141, 142/ 2002, in W.P. Nos. 5465, 5424, 5425/1997 and in L.P.A.St. No. 27582/2001, R.G. Ketkar, in L.P.A. Nos. 211, 140, 141 and 142/2002 in W.P. Nos. 5465, 5424, 5425/1997 and in L.P.A. St. No. 27582/2001 and R.G. Ketkar, in L.P.A.St. No. 27582/2001, Ranjana Todankar, in L.P.A. No. 211/2002, K.S. Bapat, in L.P.A. Nos. 140, 141 and 142/2002, M.A. Patil, in W.P. No. 5465/1997 and P.B. Shaligram, in W.P. Nos. 5424, 5425/1997 and L.P.A.St. No. 27582/2001, for the Appellant;

Final Decision : Dismissed

Judgement

1. We have heard the learned Counsel for the appellants, learned Advocate General for State and the learned Counsel appearing for Pune Municipal Corporation. We have also perused the record of the case including the impugned order of the learned Single Judge.

2. The appellants are the owners of what are known as Six Seater Auto Rickshaws, who were earlier allowed to ply within the entire limits of Pune Municipal Corporation. They are all holders of individual contract carriage permits issued by the respondent No. 1 Regional Transport Authority (RTA). The appellants have impugned before the learned Single Judge the decision taken by the State Transport Authority (STA) on 9-6-1998 to restrict the plying of 6 + 1

Seater Auto Rickshaws outside all Municipal Corporation areas so that they do not ply within the city corporation limits. Certain other incidental directions were also given by the STA.

3. Pursuant to the communication by the STA, the RTA Pune in its meeting held on 5-2-1999 took a decision to allow Six Seater Autorickshaw permit holders to ply their vehicles outside the erstwhile limits of Pune and Pimpri Chinchwad Municipal Corporation in the rest of the Pune district. This decision of the STA and RTA was challenged before the State Transport Appellate Tribunal. By order dated 7-4-2000 the Tribunal upheld the notice and dismissed the appeals. The appellants then approached this Court by filing writ petitions which were heard by the learned Single Judge and were ultimately dismissed. (See also *Wipro Limited Vs. S.M. Tripathi and Others*,

4. Before the learned Single Judge the appellants raised mainly four contentions. First it was contended that the directions to ban the operation of Six Seater Auto rickshaws could have been given only in the manner prescribed u/s 67 of the Motor Vehicles Act, 1988, for short the "Act", by the State Government by issuing a notification. That has not been done. There is no other power in the STA. Consequently the decision by the STA/RTA purporting to act u/s 68 of the Act is without jurisdiction and liable to be set aside. Secondly it was contended that the decision of the STA amounts to abdication of the power conferred on it. The STA has acted at the behest of the State Government based on the statement made by the Minister for Transport in the Assembly. Thirdly, it was contended that the decision to ban Six Seater Autorickshaws disclosed total non application of mind in as much as material already considered and found not sufficient to justify the ban of operation of Six Seater Auto Rickshaws has again being considered for giving effect to the same purpose. Fourthly, it was contended that the condition of the permit could be varied only if it was a condition. In the instant case plying in a particularly area is not a condition of permit. This could have been done only by the State Government by issuing a notification u/s 115 of the Act.

5. The learned Judge after carefully considering the entire record and scrutinizing the relevant provisions answered all the points against the appellants. The learned Judge held that the STA has based its decision in exercise of its powers u/s 68(3). u/s 68(3) the power has been conferred upon the authority to co-ordinate and regulate the activities and policies of the RTA. The entire policy of section 68(3) is the need or desire to provide for a uniform policy for an area or areas in public interest. Thus section 68(3) has conferred specific power on STA for the purpose of regulating the activities and policies of RTA by issuing directions including directions to either allowing the movement of Six Seater Auto Rickshaws or not. The power of the State Government u/s 67 was held to be independent of the power conferred on the STA u/s 68(3). The learned Judge also considered the nature of the power of the STA u/s 68(3). It was held that section 68(3) contemplates a decision making process. The decision taken by the

STA is a policy decision. The learned Judge relying upon the decisions in *Bates v. Lord Hailsham of St. Mary Lebone and others*, 1972 (1) W.I.R. 1373 and *Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.*, held that the power u/s 68(3) is in the nature of policy making power and is purely an exercise in subordinate legislation. The learned Judge therefore held that it was not necessary for the STA to afford hearing to the affected parties. The learned Judge also examined the issue as to whether the decision of the STA can be said to be arbitrary or unreasonable. It was noted that the ban was imposed mainly on account of pollution created by the emission from the diesel engines. It was noted that Six Seater Autorickshaws stop frequently. It also causes air pollution. It was further noted that the STA considered the reports by various inspectors indicating that Six Seater Autorickshaws stop frequently to take passengers, resulting into affecting the movement of vehicles. Noise pollution occasioned by the engine and constant stopping and starting and also the adverse financial effect on the two State Transport Corporation in running the buses were also taken into consideration. It was held that the appellants have failed to show that classification is in any way unreasonable or has no reasonable nexus with the objective sought to be achieved. As regards the argument that the power to vary the condition of the permit could only be exercised considering section 115, the learned Judge held that the permit itself provides the area in which the vehicle has to be run. Once the permit itself so provided, that would be a condition of the permit. Once that being a condition of the permit, it was within the power of the RTA pursuant to the directions issued to it by the STA u/s 68(4) to alter the conditions of the permit. Finally the learned Judge rejected the argument based on legitimate expectation and promissory estoppel.

6. We are in complete agreement with the view taken by the learned Judge and it is unnecessary for us to deal with these submissions again since they have been considered by the learned Judge in depth and a finding has been recorded that the action of the STA/RTA is not invalid.

7. The learned Counsel appearing for the appellants however, submitted that the power u/s 68(3) is purely administrative power and the STA has no jurisdiction to issue directions so as to interfere with the quasi judicial decision of the RTA. Reliance is placed on the decisions in *Inter State Transport Commission, New Delhi Vs. P. Manjunath Kamath and Others*, and *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, .

8. In *P. Manjunath Kamath's* case the question before the Supreme Court was about the power of the Inter State Transport Commission to issue directions u/s 63(2)(c) of the Motor Vehicles Act, 1939. The Court held that the power of the Commission u/s 63(2)(c) to issue directions is referable only to directions of executive and administrative nature. The commission has no power to entrench upon the quasi judicial functions of the Transport Authorities in the matter of grant of permits. The directions by the commission to the Transport Authorities indicating the order of preference in the grant of permits are an encroachment

upon the judicial discretion of the Transport Authorities in the matter of grant of permits and are outside the powers of the commission.

9. In B. Rajgopala Naidu's case the Supreme Court was dealing with section 43-A of the Motor Vehicles Act, 1939 (as amended by Madras Act 20 of 1948). The said section conferred power on Government to issue only administrative orders. The Court held that the G.O. No. 1298 dated 28-4-1956 is outside purview of section 43-A inasmuch as it purports to give directions to tribunals in matters which have to be dealt with in quasi judicial manner and is invalid and the order solely based on basis of such order has to be quashed.

10. In the instant case the STA has exercised powers u/s 68(3) of the M.V. Act 1988. We are in agreement with the learned Single Judge that this power is decision making power and the decision taken by the STA was a policy decision. Therefore, it is not correct to say that by issuing directions for banning Six Seater Autorickshaws in the corporation areas, the authority has in any way interfered with the quasi judicial powers of the RTA. u/s 68(3) the STA has power to issue directions for the purpose of formulating and regulating the activities and policies of the RTA. The power conferred on the authority is to coordinate and regulate the activities and policies of the RTA. It is therefore legitimate for the STA to lay down policy decision in respect of the plying of Six Seats Autorickshaws in the State which does not amount to interference with the quasi judicial powers or functions of the RTA.

11. It was next contended that the permit was granted in favour of the appellants for the entire area of Pune district and the area cannot be changed without issuing any notification. In support of this contention reliance is placed on the decision of the Supreme Court in C.P. Sikh Regular Motor Service and Others Vs. The State of Maharashtra and Others, . In that case the argument of the appellants was that the area in relation of which scheme has been framed should have been specified by notification in Official Gazette by the State Government. This argument was rejected by the Supreme Court. We fail to appreciate as to how this decision is of any relevance or help in the facts and circumstances of the present case.

12. It was also contended that the decision of the STA suffers from arbitrariness and unreasonableness. We do not see any merit in this submission. The STA has based its decision on the relevant factors. It is not possible for us to interfere with the said decision in exercise of powers under Article 226 of the Constitution.

13. In view of the above discussion, Letters Patent Appeals are dismissed.