

(1975) 11 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil 2nd Appeal No. 584 of 1972

Vidhya Sagar through his Legal Representatives	APPELLANT
Vs	
The State Transport Appellate Tribunal and Others	RESPONDENT

Date of Decision : 21-11-1975

Acts Referred:

Motor Vehicles Act, 1988 — Section 48(3)(xxi), 57(8)

Citation : (1975) WLN 473

Hon'ble Judges : V.P. Tyagi, Acting C.J.; P.D. Kudal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.P. Tyagi, Ag. C.J.

1. This special appeal by Vidhya Sagar is directed against the judgment of the learned Judge of this Court dated 7th August, 1972. The appellant held non temporary stage carriage permit of a route known as "Nohar Bhadra" route. He applied to the Regional Transport Authority to extend his route upto Dabri. The other permit-holders of the route also made similar applications; but the Regional Transport Authority dismissed the applications of all the existing operators, including the appellant on the ground that it had no jurisdiction to extend the route to Dabri as the distance to be covered upto Dabri was more than 24 kilometers. An appeal was filed by the appellant before the State Transport Appellate Tribunal. The appeal was accepted and the route of the appellant was extended upto Dabri. One of the existing operators Bhag Chand, who had not filed any objection against the application made by Vidhya Sagar, directly came to this Court, and preferred a writ petition mainly on the ground that the Regional Transport Authority, and the State Transport Appellate Tribunal had no jurisdiction under Clause (xxi) of Section 48(3) of the Motor Vehicles Act to extend the permit for a distance which exceeded 24 kilometers, and therefore, the order passed by the State Transport Appellate Tribunal must be quashed, the learned Single Judge accepted the writ petition of Bhagchand, and quashed the

order of the State Transport Appellate Tribunal. It is against this judgement that Vidhya Sagar has preferred this appeal u/s 18 of the Rajasthan High Court Ordinance.

2. The main ground on the basis of which the impugned judgment of the learned Single Judge has been challenged is that the learned Judge has not correctly appreciated the import of Clause (xxi) of Section 48(3) of the Act. According to Mr. Vyas appearing in behalf of the appellant, the extension of the route was ordered by the State Transport Appellate Tribunal u/s 57(8) of the Act, and, therefore, the limitations imposed by Clause (xxi) of Section 48(3) on the powers of the Regional Transport Authority do not have any operation on the jurisdiction of the Regional Transport Authority, or the State Transport Appellate Tribunal. In this connection, reliance was placed by the learned Counsel on the authority of the Supreme Court, namely *Sri Ram Vilas Service Ltd., Kumbakonam Vs. Raman and Raman Private Ltd. and Another*, and *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, Madhya Pradesh, Gwalior and Others*,

3. In order to appreciate the contention raised by the appellant, it will be appropriate to reproduce the relevant portions of Section 48(3)(xxi), and Section 57(8) of the Act:

48(3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:

(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 (i) 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 as so varied or any part thereof. Section 57(8) An application to vary the conditions of any permit other than a temporary permit by the inclusion of a new route or routes or a new area or by the variation, extension or curtailment of the route or routes or area specified in the permit or in the case of a stage carriage permit by increasing the number of services above the specified maximum, or in the case of a contract carriage permit by increasing the number of vehicles covered by the permit shall be treated as an application for grant of a new permit.

4. Clause (xxi) of Section 48(3) was introduced in the Motor Vehicles Act by the Amending Act No. 56 of 1969. This clause limits the power of the Regional Transport Authority for the extension of the route of the existing permit. According to this clause the Regional Transport Authority can extend the route only upto 24 km. The question is, whether this limitation on the power of the Regional Transport Authority imposed by Clause (xxi) of Section 48(3) of the Act shall also be applicable when the application of the existing operator for the extension of his route, is being dealt with by the Regional Transport Authority u/s 57(8) of the Act.

5. The contention of Mr. Vyas, learned Counsel for the appellant, is that at the time when the permit was granted to his client, the Regional Transport Authority did not attach to his permit any such condition as is contained in Clause (xxi) of Section 48(3) of the Act. and therefore, unless such a condition was incorporated as one of the conditions of the permit, proviso to Clause (xxi) could not be attracted to curtail the powers of the Regional transport Authority to extend the route only upto 24 km.

6. Before the Amending Act of 1969 came into force, a similar provision was introduced in the Motor Vehicle Act in the State of Madras in 1964 by the Madras Amending Ac. No. 3 of 1964. The provision of that Act came up for the consideration of the Supreme Court in *Sri Ram Vilas Service Ltd., Kumbakonam Vs. Raman and Raman Private Ltd. and Another*, and it was held in that case that the limitation imposed by Clause (xxi) of Section 48(3), as amended in Madras, could curtail the power of the Regional Transport Authority only when such a condition was in the permit itself, and it was observed by their Lordships that in the absence of such a condition as envisaged by Clause (xxi) the permit could be varied by the Regional Transport Authority by a route or an area beyond the limit imposed upon the newly added clause. The judgment of the Supreme Court made it clear that the newly added limitation on the powers of the Regional Transport Authority as incorporated in the Motor Vehicles Act by Madras Amendment Act of 1964 cannot be treated differently from other provisions of the Amending Act and therefore the condition under Clause (xxi) as amended is not attached to permit, the Regional Transport Authority cannot take recourse to the provision of Section 48(3)(xxi) of the Act to curtail its power to extend the route or area beyond the limit prescribed by the proviso to Clause (xxi) of Section 48(3) of the Act. It was also observed by the learned Judges that after the commencement of the Amendment Act a condition under Clause (xxi) of Section 48(3) of the Act cannot automatically be deemed to have been attached to the permit. This judgment of the Supreme Court clarifies the position and it is that where the permit does not contain any such condition similar to the conditions contained in Clause (xxi) of Section 48(3) then limitation could be placed on the powers of the Regional Transport Authority on the powers of the Regional Transport Authority in respect of the grant of applications for variation of the route.

7. Similar question arose before the Bench of the Madhya Pradesh High Court in Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, Madhya Pradesh, Gwalior and Others, The learned Judge while construing the proviso to Clause (xxi) of Section 48(3) observed as under:

The word "vary" may have different meanings in different contexts but in its ordinary use as well as in legal phraseology it is quite comprehensive and is not restricted to minor changes.

Section 57(8) does not contain any limitation as to the extent of variation by the inclusion of a new route or new area and it will not be proper to restrict the variation to merely minor changes. The test of a little change which was accepted in the earlier cases, a part from being shown to be erroneous by the amendment introduced in 1969, was somewhat unsatisfactory for it is not possible to draw the line at which a change ceases to be a little change and becomes a major change not covered by variation. Section 57(8) expressly contemplates variation of the conditions of any permit "by the inclusion of a new route or routes or a new area." The Section does not put any limit upon the new route that may be included within a permit by varying its conditions & it is not possible to put a limit by construing the word "vary" in a narrow sense....

8. It has also been contended by the learned counsel for the petitioner that even u/s 57(8), extension of more than 24 kilometers should not be permitted after the Amending Act of 1969. The limit of extension of 24 kilometers has been engrafted in Section 48(3)(xxi) by the proviso added by the Amending Act of 1969 which we have earlier quoted. This proviso shows that the word "vary" cannot be construed to mean merely a little change of the permit. In our opinion, this limitation of 24 kilometers put by the proviso to Clause (xxi) of Section 48(3) cannot be bodily by field and engrafted in Section 57(8). That limit applies only when there is a condition in the permit in terms of Clause (xxi) of Section 48(3). It is not disputed that there is no such condition in the permit of the Company; therefore, the limit imposed by the proviso was not applicable in the present case.

9. In the case, it is admitted by the learned Counsel for both the parties that the permit did not contain any such condition as is contained in the proviso to Clause (xxi) of Section 48(3). Unless such condition was put in the permit, no limitation can be imposed on the power of the Regional Transport Authority of the district to vary the conditions of the permit by adding area or route limiting there by 24 kilometers when this application is disposed of u/s 57(8) of the Act. In view of the Supreme Court pronouncement, it is difficult to sustain the finding of the learned Single Judge. Since there was no condition of the nature contained in Clause (xxi) of Section 48(3) of the Act, limitation cannot be imposed on the Jurisdiction of the Regional Transport Authority to extend the route only upto 24 kilometers especially when the matter was obviously dealt with u/s 57(3) of the Act.

10. In this view of the matter, the appeal is allowed, the judgment of the learned Single Judge is set aside, and the permit granted to the appellant by the State Transport Appellate Tribunal is revived. No order as to costs of this appeal.