Rattan Lal Gupta & Ors. Etc. Etc vs Suraj Bhan & Ors. Etc. Etc on 29 November, 1973

Equivalent citations: 1974 AIR 391, 1974 SCR (2) 555, AIR 1974 SUPREME COURT 391, 1974 2 SCR 555 1974 (1) SCC 235, 1974 (1) SCC 235

Author: P.K. Goswami

Bench: P.K. Goswami, P. Jaganmohan Reddy, S.N. Dwivedi

PETITIONER:
RATTAN LAL GUPTA & ORS. ETC. ETC.

Vs.

RESPONDENT:
SURAJ BHAN & ORS. ETC. ETC.

DATE OF JUDGMENT29/11/1973

BENCH:
GOSWAMI, P.K.
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GOSWAMI, P.K.
REDDY, P. JAGANMOHAN
DWIVEDI, S.N.

CITATION:
1974 AIR 391 1974 SCR (2) 555
1974 SCC (1) 235

ACT:
Motor Vehicles Act, 1939-S.47(3)-If the Regional Transport Authority could grantpermits without first fixing the strength.

HEADNOTE:
There were two bus routes-the shorter and the longer routes-both being overlapping. On the shorter route, the strength of the stage carriage permit was fixed at 17 in 1950. In July 1958 the Regional Transport Authority decided to extend the shorter route by about six miles (which is called the longer route). In March, 1959 the strength of the shorter route was increased from 17 to 25. The State Transport Appellate Tribunal approved the extension of the shorter route. The R.T A. advertised for eight vacancies in the

shorter route and a number of application had been received. Certain objections were raised to the increase in the strength and to the wrong description of the route. In August 1961 the RTA decided that the only route that survived was the longer route. The existing permits for the shorter route were in the meantime converted into permits for the longer route When appellants in the third group had applied for permits on the shorter route, objections were raised that the shorter route had ceased to exist. Overruling the objections, the RTA granted eight permits to the appellants, which decision was upheld' by the State Transport Appellate Tribunal in August, 1967.

The High Court held (i) that without fixing the strength first on the longer route permits could not be granted for it(ii) that the RTA should have first decided whether there were two routes or one and then fixed the strength of the route or routes and that not having been done in accordance with law there was no proper disposal of the applications for permits; (iii) that the reduction of the strength of 25 to 9 on the shorter route as done by the RTA was illegal.

Dismissing the appeals of the appellants in the first and second groups and allowing the appeal of the third group.

HELD : As the RTA had not fixed the number of permits for the longer route the grant of permits for the longer route was invalid. [560-G]

in March, 1959 the RTA had fixed the number of permits for the shorter route at 25. As 17 permits had already been granted, the RTA invited applications for eight vacancies in June, 1959. So the strength was fixed long before the invitation of applications for permits. At one stage the RTA had taken the view that the shorter route had merged in the longer route but later it rectified the mistake and held that the shorter route and the longer route existed separately. The latter view of the RTA was correct in the then prevailing circumstances. [560-H]

A decision to extend the shorter route to a longer distance under the U.P. Motor Vehicles Taxation Act will not automatically merge the shorter route in the longer route. For that purpose it was necessary for the RTA to take an independent decision under the Motor Vehicles Act. But no such decision was taken. The RTA realised the mistake and rectified it in its meeting of May, 1965. The decision of the RTA dated May, 1965 that the shorter route still existed with a strength of 25 stage carriages and that the shorter route and the longer route were separate routes was correct. [561-C-D]

The RTA could not reduce the strength of the shorter route from 25 to 9. There were, therefore, eight vacancies on the shorter route and the RTA could validly grant eight permits to the appellants in the third group. The High Court was wrong in quashing the grant of permits to the appellants in the third group. [561-E-F]

R. Obilaswami Naidu v. Transport Appellate Tribunal,

Madras [1969] 1 S.C.R. 730, M/s Jaya Ram Motor Service v. S. Rajarathinan, C.A. No. 95 of 1965 decided on 27-10-1967, Mohd. Ibrahim etc. v. State Transport Appellate Tribunal, Madras.
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etc.. [1971] 1 S.C.R. 523, Abdul Mateen v. Ram Kailash Pandey, [1963] 3 S.C.R. 523 and Baluram v. State Transport Appellate, Authority, M.P., C. A. No. 527/65 decided on 22-3-1968, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 15921595 of 1971.

From the Judgment and Decree dated the 30th September, 1969, of the Allahabad High Court in Civil Miscellaneous Writ Nos. 5210, 5246, 5398 and 5410 of 1964.

CIVIL APPEALS No. 1628-1631 of 1971.

From the Judgment and Decree dated the 30th September, 1969 of the Allahabad High Court in Civil Miscellaneous Writ Nos. 3216 3217, 3218 of 1967 and 12 of 1968.

CIVIL APPEALS Nos. 1634-1639 OF 1971.

From the Judgment and Order dated the 30th September, 1969 of the Allahabad High Court in Civil Miscellaneous Writ. Nos. 3892, 3135, 3136 3137, 3138 and 3139 of 1967.

AND SPECIAL LEAVE PETITIONS (CIVIL) Nos. 3094-3095 OF 1971. From the Judgment and Order dated the 30th September, 1969 and 28th July, 1971 of the Allahabad High Court in Civil Miscellaneous Writ Nos. 3927 of 1967 and SCA No. 643-A of 1969 respectively.

Yogeshwar Prasad, S. K. Bagga, S. Bagga, Rani Arora and Indira Manchanda, for the appellants (in C. A. Nos. 1592- 1595/71) and Petitioner in (SLPs Nos. 3094 & 3095/71). H. K. Puri, for respondent No. 1 (in C.A. No. 1593) and respondent On C.A. nos. 1628, 1629 and 1630/7 1) R. K. Garg and S. C. Agrawala, for respondent Nos. 1 (in C.A. No. 1594 and Appellants (in C.A. No. 1628-31 and 1634-39/71) E. C. Aggravala and A. T. M. Sampath, for respondents Nos. 1 and 2 (in 1595) and respondent no. 3 (in C.A. No. 1634/71).

J. P. Goyal and V. C. Parashar, for intervener (in C.A. Nos. 1592- 95 and respondent no. 4 (in 1634-37) and respondent Nos. 4 and 5 (in C.A. Nos. 1638-39/71) The Judgment of the Court was delivered by GOSWAMI, J.-There are three groups of appeals with certificate directed against the judgment of the Allahabad High Court of 20th September, 1969. The first group (Civil Appeals Nos. 1592-1595 of 1971) is by Rattan Lal Gupta, Uma Sharan Sharma, Sewa Ram, Dharam Das Agarwal, Land Lines Pvt. Ltd., Smt. Kusum Lata and Tribhuvan Kumar; the last two being the widow and son

of Madan Mohan Lal, deceased. The second group (Civil Appeals Nos. 16281631 of 1971) is. by Suraj Bhan (in Civil Appeal No. 1628 of 1971) and others. The third group (Civil Appeals Nos. 1634-1639 of 1971) is by Harish Chandra, Mahendra Kumar Tayal, Shanti Swarup Jain, Mitranand Kaushaik, Baru Mal Agarwal, Gur Prasad, Richpal Singh and Bhagwan Singh Sambi. There are also two Special Leave Petitions Nos. 3094-3095 of 1971 which have not been admitted but by an order of this Court dated 7th February, 1972, the petitioners' were allowed to intervene in these appeals.

The facts relating to the appeals have got to be narrated in some detail. On October 13, 1950, a route for stage carnage permit described as Muzaffarnagar-Budhana-Kandhla (hereinafter the shorter route),was classified as 'B' class route and the strength of the permit was fixed at 17. On July 18, 1958, the Regional Transport Authority (briefly RTA) Meerut decided to extend the route by about six miles upto Issupurteel (hereinafter the longer route). On March, 23, 1959, the RTA increased the strength or the shorter route from 17 to 25 under section 47(3) of the Motor Vehicles Act, 1939 (briefly the Act). As there were already 17 permits in operation, the RTA on June 13, 1969, advertised for 8 vacancies in the shorter route and fixed July 27, 1959, as the last date for receiving the applications and it appears 1117 applications were received. The State Transport Appellate Tribunal (briefly STA) approved the extension of the route to Issupurteel on August 8, 1959. The applications which were received in response to the advertisement were published in the U. P. Gazette of September 15, 1962. There were some other applications on June 16, 1963, including a second application of M. N. Kaushik. These were also published in the U. P. Gazette on June 16, 1963. Mohds. Ibrahim filed his objections to the applications published on September 15, 1962. He objected to the increase in the strength and to the route being wrongly described in the advertisement. On 2nd to 4th August, 1961, the RTA had decided that there was only one route upto Issupurteel and that applications presented either upto Kandhla or upto issupurteel should be considered as presented for the entire route viz., the longer route. The RTA also held that Muzaffarnagar Budhana-Kandhla route ceased to exist in 1958 by referring to its earlier resolution No. 71 of 18th July 1958 and that thereafter the only route that survived was the longer route upto Issupurteel. It appears most of the existing permits for the shorter route were in the meantime converted into the longer route under section 57 (8) of the Act. Suraj Bhan's application for a permit was published on November 2, 1963. Meanwhile 7 renewal applications from the existing permit holders were received between November 4, 1963 and May 18, 1964, in anticipation of expiry of their permits. The appellants in the first group objected to these renewals and prayed for grant of fresh permits to them for the longer route. On June 13, 1964, their objections to the renewals as well as those for fresh permits were published in the Gazette. On July 4, 1964 some more applications were published for the longer route. To give some more details, thirteen applications for the longer route were published on July 1, 1961; twenty seven on June 15, 1963 and two on November 2, 1963. Mohd. Ibrahim and his union of the existing operators objected to these applications. On 28th and 29th August, 1964, the RTA considered only II renewal applications and 12 fresh applications and other applications were not even put up before the RTA. The RTA ordered renewal of 11 permits and rejected the objection to the renewal of the appellants in

--M602Sup CI/74 the first group as well as their applications for fresh permits. The ground given was that none of the objectors and 12 applicants for fresh permits had turned up. The appellants in the first group to the STA impleading 8 out of the 11 renewal permit holders. The STA by its order

dated November 10, 1964, set aside the order of the RTA dated 28th /29th August, 1964. Four writ petitions were filed in 1964 against the order of STA dated November 10, 1964. The appellants in the third group had applied for permits on the shorter route. Certain persons-had objected to their applications on the ground that the shorter route had ceased to exist. On May 6-8, 1965, their objections were overruled, and the RTA granted 8 permits to the said appellants. This order was upheld by the 'STA on August 29, 1967. There were 19 other writ petitions of 1967 and 1968 be-' fore the High Court which were also heard together. Of these five petitions were directed against the order of the STA of August 29, 1967. Seven petitions were directed against the orders of both the RTA and of the STA made respectively on 6th to 8th May, 1965 [item 30 (a)] and on 29th August, 1967. Seven more petitions were directed against the orders of the RTA of 6th to 8th May, 1965 [item

(c)] and of the STA of 29th August, '1967.

With reference to the first group of writ petitions, the High Court held that the strength of 25 had not been fixed by the RTA for the longer route. It further held that the grant of six permits forthwith on the longer route was illegal that since the number of applicants for permits on this route were in excess of the number of permits which could be-granted, no grant could be made without first fixing the strength of the longer route. The High Court, therefore, set aside the order of the STA dated November 10, 1964. It also at the same time set aside that part of the order of the RTA of 28th/29th August, 1964, by which their applications for fresh permits had also been rejected. The High Court also quashed the orders of the RTA and STA dated May 6-8, 1965 and August 29, 1967 respectively. The High Court further observed that "until the shorter and the longer routes were held on legally relevant considerations to be separate for purposes of granting permits, all the pending applications whether for the extended or unextended route should have been taken up together". Since this was not done by the RTA nor by the STA, the orders of both were "vitiated by patent illegality as regards applications for fresh permits". The High Court also noted that it was admitted by all the parties that the strength of 25 had been fixed for the unextended route and that no strength of the extended route had been fixed at all. That being the position, following the decisions of this Court in R. Obilaswami Naidu v. Transport Appellate Tribunal, Madras(1) and ,Ills Jaya Ram Motor Service v. S. Rajarathinan (2), the High Court held that without fixing the strength first on the longer route permits could not be granted for it. On the question of routes, the High Court observed that the RTA should have first decided whether there were two routes or one route and then fixed the strength of the route or routes and that not having so done, in accordance right law, there was no proper disposal of the applications for permits. The High Court further pointed out that the reduction of the strength of 25 to (1) [1569] 1 S. C. R. 730.

(2) C. A. No. 95 of 1965 decided on 27-10-67.

9 in the shorter route in the manner done by the RTA was illegal. The High Court finally decided as follows "In our opinion, the applications of all the petitioners and the contesting opposite parties could be properly considered by the Transport Authorities only after deciding the following questions on relevant considerations contained in sections 47 (1) of the Act

(a) Whether it is necessary to nationally separate the whole route into two overlapping routes for the purposes of granting permits

(b) What should be the strength on the whole route, or, if it is decided to fix two routes, one within the other, the respective strengths of the two routes" ?

The High Court gave also other appropriate directions in the decision.

The learned counsel, Mr. Yogeshwar Prasad, at first made some submissions with regard to abatement of the writ applications before the High Court on account of non- substitution of the heirs and legal representatives of deceased, Madan Mohan Lal. But he finally did not press the same. The learned counsel, however, submitted that there was no defect or lack of jurisdiction in the order of the STA to merit interference by the High Court. He further submitted that the strength of the longer route was fixed and the longer route was in existence and the STA was perfectly justified in granting the permits by their order of November 10, 1964.

Mr. Garg, on the other hand, submitted that there was a shorter route and its strength was rightly reduced. to nine and the nine permits were validly granted. His further contention is that in the absence of the strength being fixed for the longer route and of consideration of all the applications for the longer route, grant of permits to Rattan Lal Gupta and others was bad. Mr. Goyal drew our attention to the fact that in the absence of special orders. of this Court his client was granted permits by the RTA on June 3, 1973, on the longer route. The learned counsel, therefore, supports the judgment of the High Court. The controversies in these appeals centre round grant of stage carriage permits appertaining, as claimed, to two routes, one shorter and the other longer, mentioned above and both being admittedly overlapping. At first we shall consider the appeals relating to the longer route. It has been held in Mohd. Ibrahim etc. v. State Transport Appellate Tribunal, Madras, etc.,(1) following the earlier decisions in Adbul Mateen v. Ram Kailash Pandey (2), M/s Jaya Ram Motor Service (3), Baluram v, State Transport Appellate Authority M.P.(4) and R. Obliaswami Naidu (5) as follows "The next question which falls for determination is the point of time when a Regional Transport Authority will (1) [1971] 1 S.C.R. 474.

(3) C.A. No. 9511965 decided on 27-10-1967. (5) [1969] 1 S.C.R. 730.

(2) [1963] 3 S.C.R. 523.

(4) C.A. 727/65 decided on 22-3-68.

under section 47(3) of the Act fix the limit of number of stage carriage permits. This Court in Abdul Mateen's case (4) said that the general order by the Regional Transport Authority under section 47 (3) of the Act in regard to the limit of number of stage carriage permits can be modified only by the Regional Transport authority when exercising the jurisdiction under section 47(3) of the Act. The Regional Transport Authority while acting under section 48 of the Act in regard to the grant of permits has no jurisdiction and authority to modify any order passed by the Regional Transport Authority under section 47 (3) of the Act. in other words, the limit fixed by the Regional Transport

Authority under section 47(3) of the Act cannot be altered by the Regional Transport Authority at the time of grant of permits. It is, therefore, established that the determination of limit of number of permits is to be made before the grant of permits. That is why section 48 of the Act is prefaced with the words "subject to the provisions of section 47 of the Act" meaning thereby that the jurisdic- tion of the Regional Transport Authority to grant permits is subject to the determination of the limit of number of permits under section 47 (3) of the Act. This Court stated the legal position in M/s Jaya Ram Motor Service's case(2) and said 'It is therefore clear that the authority has first to fix the limit and after having done so consider the application or the representations in connection therewith in accordance with the procedure laid down in section 57 of the Act'. Again in the case of R. Obilaswami Naidu (1) this Court considered the submission in that case as to whether the Regional Transport Authority could decide the number of permits while considering applications for permits. This Court did not accept the submission be- cause such a view could allow an operator who happened to apply first to be in a commanding position with the result that the Regional Transport Authority would have no opportunity to choose between competing operators and public interest might suffer. In the same case it is again said that the determination of the number of stage carriages for which stage carriage permits may be granted for the route is to be done first and thereafter applications for permits are to be entertained".

As the R. A. had not fixed the number of permits for the longer route, we agree with the High Court that the grant of permits for the longer route is invalid. But the legal position in regard to the grant of permits on the shorter route is different. Admittedly, on March 23, 1959, the RTA had fixed the number of permits for this route at 25. As 17 permits had already been granted, the RTA invited application for eight vacancies on June 13, 1959. So the strength was fixed long before the invitation of applications for permits. it is true that at one stage the RTA had taken the view that the shorter route had merged in the longer route; but later it rectified the mistake and held that the shorter route and the longer route existed separately. We think that the second view of the RTA was correct in the then prevailing circumstances. On July 18, 1958, the RTA resolved that "Muzaffarnagar-Budhana-Kandhla route be extended to Gangeru-Issupurteel". The extension was made under the U.P. Motor Vehicles taxation Act. At no time the RTA has taken a decision for abolishing the shorter route. In its meeting on August 2-4, 1961, the RTA upheld the objection that the shorter route had ceased to exist. The RTA said, "Originally Muzaffarnagar-Budhana-Kandhla was the name of the route. Subsequently about six miles of kachcha route was considered motorable and then the RTA on 18-7-1958 declared that Muzaffarnagar-Budhana-Kandhla route be extended upto Issupurteel. After this decision the Muzaffarnagar-Budhana-Kandhla route could not 'have separate existence but was merged in the longer route". As already pointed out, a decision to extend the shorter route to a longer distance under the Motor Vehicles Taxation Act will not automatically merge the shorter route in the longer route. For that purpose it was necessary for the RTA to take an independent decision under the Motor Vehicles Act. But no such decision was taken. The RTA realised the mistake and rectified it in its meeting on May 6-8, 1965. The RTA then decided: "We have considered the entire matter carefully and have perused all earlier resolutions of the RTA. We are of the opinion that Muzaffarnagar-Budhana- Kandhla (the shorter route) still exists with a strength of 25 stage carriages and that the shorter route and the longer route are separate routes. Even after the approval of the longer route by the STA, the RTA had offered permits to displaced operators on the shorter route". We think that this resolution states the correct position. It may be

mentioned at this place that in the August meeting the RTA reduced the strength of shorter route from 25 to 9. That could not be done. In the result, there would remain eight vacancies on the shorter route for which the RTA bad already invited applications. So the RTA could validly grant eight permits to the appellants in the third group. The STA rightly affirmed this decision of the RTA. The High Court, in our view, was not right in quashing the grant of permits to the appellants in the third group. in the result, the appeals in the first and second groups are dismissed. The appeals in the third group are allowed and the judgment of the High Court qua these appeals is set aside. The permits granted to the appellants in the third group of appeals, if already cancelled in pursuance of the order of the High Court, will be restored to them. Shri Garg, counsel for the appellants, has given an undertaking that the appellants will surrender permits granted to them for the longer route. The Special Leave Petitions Nos. 3094 and 3095 of 1971 are admitted, and the appeals arising out of them are dismissed. Parties will bear their own costs.

P.B.R. Appeals dismissed.