

Patiala Bus (Sirhind) Pvt. Ltd. vs State Transport Appellate Tribunal, ... on 26 March, 1974

Equivalent citations: AIR1974SC1174, (1974)2SCC245, AIR 1974 SUPREME COURT 1174, 1974 2 SCC 245, 1974 CURLJ 300, 1974 SCD 805, 1975 (1) SCJ 196

Bench: D.G. Palekar, P.N. Bhagwati, V.R. Krishna Iyer

JUDGMENT

Bhagwati. J,

1. This appeal, by special leave, is directed against an order dated 28th May, 1973 passed by the High Court of Punjab & Haryana summarily rejecting a writ petition tiled by the appellant for quashing and setting aside an order dated 19th May, 1973 passed by the State Transport Appellate Tribunal in appeal against an order dated 29th March, 1971 made by the State Transport Commissioner Punjab. The dispute in the appeal relates to Malerkotla Barnala Bhatinda route situate in the Pepsu territories of the State of Punjab. The appellant is a company engaged in the business of carrying passengers by motor vehicle for hire or reward and at all material times it held two stage carriage permits, by each for a return trip, on Malerkotla Barnala Bhatinda route. It was found that passenger traffic on Malerkotla Barnala Bhatinda route was very heavy and two return trips, for which two stage carriage permits had been issued to the appellant, were not adequate to meet the need of the passenger traffic. The State Transport Commissioner, Punjab, therefore, decided to increase the number of return trips from two to six, and invited applications for the grant of four stage carriage permits with return trip on Malerkotla-Barnala-Bhatinda route and in the meantime on 8th January, 1970 granted two temporary stage carriage permits, each with a return trip on this route in favour of the appellant. The appellant, accordingly, started operating from 8th January 1970 two additional return trips on Malerkotla-Barnala-Bhatinda route on the strength of the two temporary stage carriage permits issued to it. Pursuant to the notice issued by the State Transport Commissioner, Punjab; thirty-two applications were received for four stage carriage permits Malerkotla-Barnala-Bhatinda route and out of these applications one was by the appellant and another by the third respondent. The particulars of these applications were published in the issue of Daily Ranjit, Patiala dated 21st March, 1970 as required under Section 57(3) of the Motor Vehicles Act, 1939. The third respondent, inter alia, filed objections against the application of the appellant within thirty days of the publication of the particulars. Before these various applications and objections could be taken up for hearing by the State Transport Commissioner, a scheme under Section 68(C) was prepared and published by the Pepsu State Transport Corporation on 28th October, 1970 in terms of an agreement dated 20th August, 1970 arrived at between the State Government and the private operators of motor vehicles in the Pepsu territories. The scheme was modified was approved by the State Government by a notification dated 18th February, 1972 issued under Section 68D(2). The broad feature of the scheme was that the total mileage of routes was to be divided between the Pepsu Road Transport Corporation and the private operators in the

proportion of 60 : 40 & since as on 1st July, 1970, which was the appointed day under the scheme, the total mileage operated by private operators was much more than the proportion of 40%, Clause 4(a) of the scheme provided that all operators on new routes, on account of increase in the traffic on existing routes and on such operations of inter-regional routes as are situate in the Pepsu territories, shall, until 1st July, 1973 or until such other earlier date when the total mileage operated by the Pepsu Road Transport Corporation reaches its proportion of 60%, be undertaken exclusively by the Pepsu Road Transport Corporation. Now, on the appointed day, i.e., 1st July, 1970, two additional return trips on Malerkotla-Barnala-Bhatinda were being operated by the appellant under the two temporary stage carriage permits held by it and the State Transport Commissioner, therefore, included the mileage of these two additional returns trips as part of the total mileage operated by private operators as on that day for the purpose of applying the proportion of 60 : 40 and treated only the mileage of the two remaining return trips as falling within Clause 4(a) of the scheme. On this view the State Transport Commissioner, by an order dated 29th March, 1971 granted two stage carriage permits, each for a return trip to the Pepsu Road Transport Corporation, in accordance with Clause 4(a) of the scheme, which was of course then in draft stage, and so far as the other two stage carriage permits were concerned, the State Transport Commissioner granted them to the appellant as they belonged to the private sector under the scheme. The only consideration which the State Transport Commissioner took into account in preferring the appellant to other private operators for grant of two stage carriage permits was already being operated by the appellant under temporary stage carriage permits and that should not be disturbed.

2. Both Pepsu Road Transport Corporation and the third respondent were aggrieved by the order of the State Transport Commissioner and they, therefore, preferred appeals before the State Transport Appellate Tribunal. The Pepsu Road Transport Corporation claimed in appeal No. 80 of 1971 preferred by it that the grant of two stage carriage permits to the appellant was in contravention of Section 68F(1)(D) and that all the four stage carriage permits should have been granted to it. This claim was however, negated by the State Transport Appellate Tribunal on the ground that under the provisions of the scheme the mileage covered by the two stage carnage permits granted to the appellant belonged to the private sector as that was already being operated by the appellant under temporary stage carriage permits on the appointed day, namely, 1st July, 1970, and appeal No. 80 of 1971 was rejected by an order dated 19th May, 1973. We are not concerned in the present appeal with the decision of the State Transport Appellate Tribunal in appeal No. 80 of 1971 and we need not, therefore, say anything more about it. Appeal No. 113 of 1971 preferred by the third respondent was directed against the order of the State Transport Commissioner in so far as it granted two stage carriage permits to the appellant and denied even a single stage carriage permit to the third respondent and the State Transport Appellate Tribunal by its order dated 19th May, 1973 allowed the appeal and modified the order of the State Transport Commissioner by directing that one stage carriage permit with only one return trip shall remain with the appellant while the other stage carriage permit with a return trip shall be granted to the third respondent. The reasons which weighed with the State Transport Appellate Tribunal in reaching this decision may best be stated in its own words which we quote from its order dated 19th May, 1973.

In my opinion Malwa Transport Co. (P) Ltd. Barnala had as such claim for grant of one permit with one return trip on regular basis on the route in question as the Partials Bus Service (P) Ltd. Sirhind

had, when the claim of each of these two transport companies was almost equally balanced, the State Transport Commissioner, Punjab Chandigarh should have granted one permit with one return trip on the said two transport companies. Accordingly it cannot be said that the State Transport Commissioner, was justified in granting two permits with two return trips on regular basis on the route in question only to the Patiala Bus Service (P) Ltd. Sirhind. Rather it would have been most fair if he had granted one permit with one return trip each to the Patiala Bus Service (P) Ltd. Sirhind the Malwa Transport Co. (P) Ltd. Barnala. Accordingly the impugned order is liable to be modified to that extent.

The appellant thereupon preferred a writ petition in the High Court of Punjab and Haryana challenging the validity of the order of the State Transport Appellate Tribunal in so far as it reversed the order of the State Transport Commissioner granting two stage carriage permits to the appellant and directed the one stage carriage permit should be granted to the third respondent. The writ petition was, however, summarily rejected by a division Bench of the High Court and an application for leave to appeal to this Court preferred before the High Court met with the same fate. The appellant, thereupon, obtained special leave from this Court and hence the present appeal by special leave.

3. The main ground on which the appellant assailed the order of the State Transport Appellate Tribunal taking away one stage carriage permit and granting it to the third respondent was that the State Transport Appellate Tribunal failed to take into account various relevant considerations which must necessarily weigh with the authority in determining which out of several applicants should be granted stage carriage permit. These considerations, contended the appellant, are set out in Section 47 and the authority entrusted with the task of selecting an applicant for stage carriage permit must have regard to these considerations in performing its task. The State Transport Appellate Tribunal, however, ignored these considerations and gave one stage carriage permit each to the appellant and the third respondent as if it were a bounty to be divided equally between the two claimants. This was clearly in breach of Section 47 and it vitiated the order of the State Transport Appellate Tribunal. We think there is great force in this contention of the appellant. Section 47 lays down that a Regional Transport Authority shall, in considering an applicant for 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 effected 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.

The main considerations required to be taken into account are the interest of the public in general and the advantages to the public of the service to be provided, and these would include inter alia consideration of factors such as the experience of the rival claimants, their past performance, the availability of stand-by vehicles with them, their financial resources, the facility of well equipped workshop possessed by them etc. The State Transport Appellate Tribunal, however, failed to take into account any of these considerations and proceeded as if the stage carriage permits were a largesse to be divided fairly and equitably amongst the rival claimants. We do not find in the order of the State Transport Appellate Tribunal any discussion of the question as to what the interest of the public in general requires and who from amongst the rival claimants would be able to provide the most efficient and satisfactory service to the public. None of the relevant factors is considered, or even adverted to, by the State Transport Appellate Tribunal. The State Transport Appellate Tribunal merely seems to have considered what would be fair as between the appellant and the third respondent and thought that it would be most fair if one stage carriage permit with a return trip were granted to the appellant and one stage carriage permit with a return trip were granted to the third respondent. That is a wholly erroneous approach. The question that has to be considered is not as to what would be fair as between the appellant and the third respondent, but what does the interest of the public, which is to be provided with an efficient and satisfactory service, demand. The order of the State Transport Appellate Tribunal, therefore, suffered from an infirmity, in that it failed to take into account relevant considerations and proceeded on the basis of an irrelevant consideration. We must, in the circumstances, quash and set aside the order of the State Transport Appellate Tribunal in so far as it directed that one stage carriage permit with a return trip should be granted to each of the appellant and the third respondent. But while doing so, we cannot allow the order of the State Transport Commissioner granting two stage carriage permits to the appellant to remain outstanding. The order of the State Transport Commissioner also suffers from the same infirmity as the order of the State Transport Appellate Tribunal. It does not take into account any of the relevant considerations which we have discussed above, but merely proceeds on the basis that two stage carriage permits should be granted to the appellant as the appellant has already been operating that mileage under two temporary stage carriage permits held by it. Now, it is undoubtedly true that the fact that an applicant has already been operating on a route is a relevant consideration to be taken into account, but that cannot be the sole determining consideration. The order of the State Transport Commissioner granting two stage carriage permits to the appellant must also, therefore, be quashed and set aside and the matter should be remanded to the State Transport Commissioner for determining, having regard to the relevant considerations, as to how the two stage carriage permits should be granted : whether both should be granted to the appellant or both should be granted to the third respondent, or one should be granted to the appellant and the other to the third respondent.

4. We, therefore, allow the appeal and quash and set aside the order of the State Transport Commissioner in so far as it granted two stage carriage permits to the appellant and the order of the

State Transport Appellate Tribunal in so far as it provides that only one stage carriage permit should remain with the appellant and the other should be granted to the third respondent, and direct that the matter should go back to the State Transport Commissioner for determining, having regard to the relevant considerations, who, as between the appellant and the third respondent, should be granted the two stage carriage permits allocable to the private sector. The State Transport Commissioner will decide whether both the stage carriage permits should be granted to the appellant or to the third respondent or whether one stage carriage permit should be granted to the appellant and one to the third respondent. If either the appellant or the third respondent is dissatisfied with the decision of the State Transport Commissioner, it would, of-course, be entitled to a right of appeal under Section 64 to the State Transport Appellate Tribunal. There will be no order as to costs all throughout until the matter is finally disposed of, the status quo as of to-day would be maintained.