

Lakshmi Narain Agarwal vs State Transport Authority, U.P. & Anr on 26 September, 1967

Equivalent citations: 1968 AIR 410, 1968 SCR (1) 635, AIR 1968 SUPREME COURT 410, 1968 ALL. L. J. 332, 1968 2 SCJ 74, 1968 (1) SCR 635, 1968 (1) SCWR 843, 1968 SCD 764, 1968 BLJR 237

Author: S.M. Sikri

Bench: S.M. Sikri, J.C. Shah, J.M. Shelat

PETITIONER:
LAKSHMI NARAIN AGARWAL

Vs.

RESPONDENT:
STATE TRANSPORT AUTHORITY, U.P. & ANR.

DATE OF JUDGMENT:
26/09/1967

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SHAH, J.C.
SHELAT, J.M.

CITATION:
1968 AIR 410 1968 SCR (1) 635

ACT:
Motor Vehicles Act (4 of 1939), ss. 47(3) and 64A-Regional Transport Authority if should consider representations of existing operator before passing order under s. 47(3) -Order under s. 47(3) if revisable under s. 64A.
Constitution of India, 1950, Art, 136--Discretion under.

HEADNOTE:
The Regional Transport Authority, by an order under s. 47(3) of the Motor Vehicles Act, 1939, fixed the number of stage carriages, by increasing their number on a particular route. The appellant, an existing operator, filed a revision against that order to the State Transport Authority, under s. 64A, but the State Transport Authority held that a

revision did not lie. The appellant then filed a writ petition in the High Court and the High Court dismissed it, holding that: (1) at the stage of s. 47(3) existing operators were not entitled to be heard by the Regional Transport Authority, and (2) since the order of the Regional Transport Authority was good on merits, it was not necessary to decide whether a revision lay to the State Transport Authority.

In appeal to this Court,

HELD: (1) Unlike s. 47(1), s. 47(3) does not say expressly that representations could be made by existing operators and others. The expression in s. 47(3) that 'the Regional Transport Authority may, having regard to the matters mentioned in sub-s. (1)', only means that the Authority shall have regard to the matters mentioned in sub-cl. (a) to (f) of s. 47(1) and has nothing to do the right of making representations. [638F-H]

(2) But whether or not an existing operator has an implied right to be heard before an order under s. 47(3) is made he can be aggrieved by an order made under that section increasing or decreasing the number of stage carriages depending on the circumstances of the case, and has therefore a right of revision under s. 64A, the only condition for filing a revision being that it should be against an order made by the Regional Transport Authority against which no appeal lies. [639C-D, F-H]

Abdul Mateen v. Ram Kailash Pandey, [1963] 3 S.C.R. 523, referred to.

(3) Since a revision could be filed under s. 64A against the order under s. 47(3) the aggrieved operator need not approach the Regional Transport Authority first to review its order. [640B-C]

(4) The High Court should have directed the State Transport Authority to dispose of on merits the revision petition against the order under s. 47(3), and not gone into its merits itself, but, in view of the time that lapsed since the order was passed (five years, during which the demand for stage carriages must have increased), this Court would not interfere in the exercise of its jurisdiction under Art. 136. [640C-E]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 636 of 1967. Appeal by special leave from the judgment all order dated November 11. 1966 of the Allahabad High Court, Lucknow Bench in Writ Petition No. 226 of 1963.

S. T. Desai, J. P. Goyal, D. N. Jha and G. S. the appellant.

Sarjoo Prashad and O. P. Rana, for the respondents. Judgment of the Court was delivered by Sikri, J. This appeal by special leave is directed against the judgment, dated November 11, 1966, of the Division Bench of the Allahabad High Court dismissing the writ petition filed by the appellant seeking to quash the order of the State Transport Authority, dated March 20/21, 1963. The State Transport Authority had by this order rejected the appellant's revision petition against the decision of the Regional Transport Authority on the ground that a mere decision of the Regional Transport Authority limiting the number of stage carriages under S. 47(3) of the Motor Vehicles Act, 1939 (IV of 1939) hereinafter referred to as the Act could not form the subject matter of a revision application'. It was of the view that "when the Regional Transport Authority actually proceeds to fill up the vacancies, which it has decided to create, then the persons whose interests would be adversely affected, would have a right of representation before the Regional Transport Authority, and in the case of their representation being rejected by the Regional Transport Authority they will have a right of appeal before the State Transport Appellate Tribunal."

The High Court was of the view that an existing operator had no say in the matter of determination of the strength on a route under sub-s. (3) of s. 47, and, it was in the discretion of the Regional Transport Authority to determine the strength on a route, after considering various matters enumerated in cls. (a) to (f) of sub-s. (1) of S. 47. The High Court further observed that the order passed under S. 47(3), to revise which the appellant had filed a revision under s. 64-A, was a good order and did not call for any interference, it did not consider it necessary to decide whether a revision lay against such an order under s. 64-A of the Act.

The learned counsel for the appellant, Mr. S. T. Desai, contends that an order under S. 47(3) of the Act, whether it is quasi-judicial or administrative, does affect the existing operators on the route and their representations must be considered by the Regional Transport Authority before passing an order under s. 47(3). He further submits that a revision lay under S. 64-A of the Act and the same should not have been dismissed on the ground that no revision lay.

The relevant statutory provisions are s. 47 and s. 64-A, of the Act, and read thus;

"47. Procedure of Regional Transport Authority in considering application for stage carriage permit:-

(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 set-

vice 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;

and shall also take into consideration any representations made by persons already providing passengers 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:

Provided that other conditions being equal, an application for a stage carriage permit from a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, as far as may be, be given preference over applications from individual owners.

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

provided that before such refusal an opportunity shall be given to the applicant to amend the time table so as to conform to the said provisions.

(3) 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."

"64-A. Revision---The State Transport Authority may, either on its own motion or on an application made to it, call for the record of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit:

Provided that the State Transport Authority shall not entertain any application from a person aggrieved by an order of a Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Authority shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

It would be noticed that sub-s. (3) of s. 47 does not expressly say whether any representations can be made by persons already providing transport facilities or by associations representing persons interested in the provision of the transport facilities or by any local authority or police authority within whose jurisdiction the route or area lies. This is expressly mentioned in s. 47(1). The learned counsel contends that the expression "matters mentioned in sub-section (1)" occurring in sub-s. (3) refers back not only to matters mentioned in sub-cl.

(a) to (f) to sub-s. (1) in S. 47 but also the right of representation mentioned in sub-s. (1). We are unable to accept this line of reasoning as being sound. Even under s. 47(1), the Regional Transport Authority can only have regard to the matters mentioned in sub-cl. (a) to (f), and those matters may be brought to the notice of the Regional Transport Authority by representations. It could not have been the intention that representations would contain matters which the Regional Transport Authority could not take into consideration under s. 47(1). This is not to say that the matters mentioned in sub-cl. (a) to (f) are exhaustive, but this point does not arise and we need not say anything as to this. Therefore, this line of reasoning does not assist the appellant.

This Court in *Abdul Mateen v. Ram Kailash Pandey*(1) held that "where a limit has been fixed under s. 47(3) by the Regional Transport Authority, and thereafter the said authority proceeds to consider applications for permits under s. 48 read with s. 57, the Regional Transport Authority must confine the number of permits issued by it to those limits and on an appeal or revision by an aggrieved person, the Appellate Authority or the Revisional Authority must equally be confined to the issue of permits within the limits fixed under s. 47(3)". But this Court did not feel it necessary to decide whether under s. 64-A, inserted by Motor Vehicles (Amendment) Act No. 100 of 1956, it was open to the State Transport Authority to vary a general order passed under s. 47(3). If we look at the section, it would be noticed that s. 64-A is very wide in terms; the only condition necessary for filing a revision is that it should be against an order made by the Regional Transport Authority and against which no appeal lies. The word "order" is wide, and there is no doubt that an order made under s. 47(3) is an order within s. 64-A because, as held by this Court in *Abdul Mateen v. Ram Kailash Pandey* (1) it binds the Regional Transport Authority and the State Transport Authority in dealing with applications under s. 48. read with s. 57, of the Act.

Mr. Sarjoo Prasad, the learned counsel for the State, contends that no revision lies at the instance of an existing operator because he cannot be called an aggrieved person, and secondly, that even if a revision lies, the appellant is not entitled to any relief on the facts of this case, under Art. 136 of the Constitution, because the appellant never approached the Regional Transport Authority in the first instance. We are unable to say that no existing operator can be aggrieved by an order made under s. 47(3), increasing or decreasing the number of stage carriages; it would depend on the facts and circumstances of each case. In a particular case it may be to his advantage and he then would not file a revision against it, but if he files a revision when an order made under s. 47(3) is prejudicial to his interests, there is no ground for denying him the right to approach the revisional authority and

seeking its order. An order under s. 47(3) affects the future working on a route and we are of the view that such an order would have repercussion on the working of the existing operators, whether for their good or not. The High Court, as stated above, was of the view that at the stage of s. 47(3) existing operators would- not be entitled to be heard by the Regional (1) [1963] 3 S.C.R. 523.

Transport Authority. But assuming that it is so, this does not affect the right of revision conferred by s. 64-A. We need not in this case decide whether it is implied that existing operators would be entitled to be heard by the Regional Transport Authority before an order under s. 47(3) is made.

The learned counsel for the respondent further contends that a decision under s. 47(3) is a tentative decision and can be revised. But assuming that it can be revised by the Regional Transport Authority, till the order is in operation it is binding on everybody and if a revision can be filed against the order under s. 64-A, the aggrieved operator cannot be compelled to approach the Regional Transport Authority first to revise its order. 'This argument, in a way, concedes that an operator can be a person aggrieved by an order under s. 47(3).

The learned counsel for the appellant contends that if it is held that a revision lies under s. 64-A against an order passed under s. 47(3) of the Act, the State Transport Authority should be directed to hear the revision on merits. He says that the High Court had no right to go into the merits of the order itself. Ordinarily what Mr. Desai contends is correct, but here the facts are that the order under s. 47(3) was passed as long ago as November. 17. 1962. During the last five years demand for stage carriages on this route would have, in the ordinary course, increased by now. and further it has not been shown that the Regional Transport Authority has made any glaring mistake. For the aforesaid reasons. in exercising our discretion under Art. 136 of the Constitution we consider that we should not interfere with the order passed by the High Court. In the result the appeal fails and is dismissed. Under the circumstances there will be no order as to costs.

V.P.S.

Appeal dismissed.