

Abdul Rehman And Ors vs State Transport Appellate Tribunal & ... on 8 March, 1978

Equivalent citations: 1978 AIR 949, 1978 SCR (2) 453, AIR 1978 SUPREME COURT 949, 1978 2 SCC 674, 1978 ALL. L. J. 418, 1978 4 ALL LR 334, 1978 U J (SC) 271, 1978 3 SCR 453

Author: Jaswant Singh

Bench: Jaswant Singh, V.R. Krishnaiyer

PETITIONER:

ABDUL REHMAN AND ORS.

Vs.

RESPONDENT:

STATE TRANSPORT APPELLATE TRIBUNAL & ORS.

DATE OF JUDGMENT 08/03/1978

BENCH:

SINGH, JASWANT

BENCH:

SINGH, JASWANT

KRISHNAIYER, V.R.

CITATION:

1978 AIR 949

1978 SCR (2) 453

1978 SCC (2) 674

ACT:

Constitution of India, 1950, Art. 226-Jurisdiction of the High Court interfere under Art. 226 with the orders of the transport authorities in the grant of stage carriage permits under the Motor Vehicles Act, 1939.

Motor vehicles Act, 1939, Section 47-Scope of.

HEADNOTE:

While considering the applications including those of the appellants for grant of additional stage carriage permit on-the Meerut-Mawana Miranpur route which was increased from 11 of 15 in 1959, the Regional Transport Authority, purporting to exercise its authority of grant of the permits under section 48 read with section 57 of the Motor Vehicles Act, 1939, modified the limit, of number of stage carriage

permits by increasing it to 20 against the settled law or the subject, and disallowed the applications of the appellants as well as the representations of Fakir Chand Gupta and others. Against this order Fakir Chand Gupta, and a few others including Harish Chandra Misra preferred an appeal to the State Transport Appellate Tribunal, which, following the decision of this Court in [1963] 3 SCR 523, by its order dated November 26, 1963 set aside the order of the Regional Transport Authority and remanded the matter to the latter for filling up the six vacancies. Then other appeals preferred by others, later, were dismissed as infructuous by the Tribunal vide its order dated October 17, 1966 in view of the order already passed by it on November 29, 1963 in the appeal of Fakir Chand Gupta and others. At its meetings held on August 28-29, 1964, the Regional Transport Authority considered the applications of 17 persons whose cases had been remanded and refused to consider the appellants' on the ground that they had not appealed against the order rejecting their applications in 1962. The appellants and Harish Chandra Misra, thereupon preferred four separate appeals under section 64A of the Motor vehicles Act to the State Transport Tribunal. During the pendency of the appeals, Meerut-Mawana-Miranpur route became an inter-regional (amalgamated) route by its extension upto Bijnor. Thereupon, all the four appellants applied to the Tribunal for amendments of their original applications and for grant of permits for the said amalgamated route. According to their prayer, the Tribunal allowed their appeals and directed the Regional Transport Authority that they be allotted one regular stage carriage permits each for the amalgamated route. Rahim-Ud-Din, an existing operator on the Meerut-Mawana-Miranpur route filed a petition before the High Court for issuance of a Writ quashing the order granting permits in favour of the appellants on the Harish Chandra Misra. The petition was partly allowed by a single Judge of High Court quashing the order granting the permits of the appellants on the ground that since they had omitted to, appeal against the order of the Regional Transport Authority rejecting their applications for the grant of permits in 1962 their case had come to an end and they could not be granted any permits. The Letters Patent Appeal preferred by the appellants failed.

Allowing the appeal by special leave, the Court

HELD : 1. The High Court under Art. 226 of the Constitution should be reluctant to interfere or disturb the decision of specially constituted authorities or tribunals under the Act especially when the legislature has entrusted the task of granting or renewing the stage carriage permits to the aforesaid authorities or tribunals which are expected to be fully conversant with the procedure and practice and the relevant matters which should engage their attention under the provisions contained in the Act. In dealing with applications for writs of certiorari under Article 226 of

the Constitution. in cases of the present

454

the High Court must not exercise the jurisdiction of an appellate court and the findings or conclusions on questions of fact could hardly be re-examined or disturbed by it unless the well recognised tests in that behalf were satisfied. [458 A-D]

Kailanchand Narsinhdas Bhatia v. State Transport Appellate Authority, and Ors., [1968] 3 SCR 695, reiterated.

Sri Rama Vilas Service (P) Ltd. v. C. Chandra Sekaran and Ors. [1964] 5 SCR 869.

Section 47 of the Motor Vehicles Act emphasises the interest of the travelling public as the dominant consideration in the grant of permits and no order in exercises of powers under Art. 226 or Art. 136 of the Constitution will ordinarily be passed if the public is likely to suffer.

In the instant case : (a) the High Court should not have in exercise of its writ jurisdiction interfered in a case of this nature particularly when the cancellation of the appellants' permits was bound to cause inconvenience and hardship to the travelling public; (b) the route in question had assumed the character of an an amalgamated inter-regional route in regard where to the provisions of Section 47(3) of the Act which are confined in their operation to a region or a specified area or a specified route, within a region were not applicable and the need for increasing the number of permits in the interest of public was recognised by the Regional Transport Authority itself in its resolution No. 44(5) passed by it in its meetings held on July 7 to July 10, 1970, which is expressly alluded to in the order dated May 5, 1973 of the State Transport Appellate Tribunal as also the fact that the appellants have been operating on the route for quite sometime and do not appear to have indulged in any malpractice. [457 E-H]

Mohd. Ibrahim etc. v. State Transport Appellate Tribunal, Madras etc. [1971] 1 S.C.R. 474 followed.

[The court it.1 view of its decision in this appeal, dismissed the connected special leave petition (Civil) No. 1852/76].

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1276 of 1975.

Appeal by Special Leave from the Judgment and Order dated 27-8-1975 of the Allahabad High Court in Special Appeal No. 208/75.

WITH SPECIAL LEAVE PETITION (Civil) No. 1852 of 1976. From the Judgment and Order dated 3-9-1975 of the Allahabad High Court to Special Appeal No. 216/73.

S. C. Agarwala, for the appellants.

A. K. Sen (in CA No. 1276), J. P., Goyal and Ranhir Jain, for Respondents 3-5 and Petitioner in SLP.
L. N. Sinha, D. P. Singh and R. K. Jain, for Respondent No. 3 in SLP.

The Judgment of the Court was delivered by JASWANT SINGH, J-This appeal by 'special leave is directed against the judgment and order dated August 27, 1975 of a Division Bench of the High Court of Judicature at Allahabad in Special Appeal No. 208 of 1973 upholding the order dated August 28, 1973 of a Single Judge of that Court whereby he quashed the order dated May 5, 1973 of the State Transport Appellate Tribunal granting regul permits in favour of the appellants for amalgamated route known as Meerut-Mawana-Miranpur, Meerut-Bijnor via Mawana-Meerut Mawana Khurd-Phalauda, Meerut-Masuri-Lawar- Phalauda, Meerut-Masuri-Lawar and Khatauli-Phalauda-Mawana- Makdoompur route.

The dispute as stated in the judgment and order under appeal relates to. Meerut-Mawana-Miranpur route, the limit of the number of stage carriage permits whereof was raised from 11 to 15 in 1959. Out of the additional four permits which thus became available for grant, the Regional Transport Authority granted three to the displaced persons and invited applications to fill up the remaining one vacancy. In response to the invitation, the appellants also applied for grant of the stage carriage permits for the said route. While considering the applications and exercising its authority of grant of the permits under section 48 read with section 57 of the Motor Vehicles Act, 1939 (hereinafter called 'the Act'), the Regional Transport Authority modified the limit of number of the stage carriage permits and increase it from 15 to 20 which it could not do in view of the law settled by this Court in Abdul Mateen v. Ram Kailash Pandey (1) and Ors., M/s. Jay Rom Motor Service v. S. Rajarathnam and Ors.(2), Baluram v. The State Transport Appellate Authority, Madhya Pradesh & Ors.(3) and R. Obliswami Naidu v. The Adadl. State Transport Appellate Tribunal, Madras & Ors.(4) and granted the six permit to (1) Mohd. Matin Sheikh, (2) Satwati Devi, Sardar Singh Chidda Singh and Mahendra Singh, (3) Satyapal Khetre Pal, (4) Ramesh Mohan Sharma, (5) Chajju Mal and (6) Hari Dass, disallowing the applications of the appellants and some others including Harish Chandra Mishra and rejecting the representations made by Fakir Chan Gupta and others. Against this order of the Regional Transport Authority, Fakir Chand Gupta and a few others including Harish Chandra Mishra preferred an appeal to the State Transport Appellate Tribunal. The Tribunal by its order dated November 26, 1963 set aside the order of the Regional Transport Authority and remanded the matter to the latter for filling up the six vacancies after following the procedure referred to in the decision of this Court in Abdul Mateen v. Ram Kailash Pandey (supra). where it was held :-

"Section 47(3) gives power to the Regional Transport Authority having regard to the matters mentioned in subs.(1) to limit the number of stage carriages generally etc. It would be clear therefore that when the Regional Transport Authority proceeds in the manner provided in s. 57 to consider an application for a stage carriage permit and eventually decides either to grant it or not to grant it under s. 48 its order has to be subject to the provisions of S. 47, including s. 47(3) by which the Regional Transport Authority is given the power to limit the number of stages generally etc. (1) [1963] 3 S.C.R. 523 (2) C.A.95 of 1965 decided on 27-10-1967. (3) C.A. 727 of 1965 decided on

22-3-1968. (4) [1969] 3 S.C.R. 730.

Therefore, if the Regional Transport Authority has limited the number of stage carriages by exercising its power under s. 47(3), the grant of permits by it under S. 48 has to be subject to the limit fixed under S. 47(3). We cannot accept the contention on behalf of the appellant that when the Regional Transport Authority following the procedure provided in S. 57, comes to grant or refuse a permit it can ignore the limit fixed under S. 47(3), because it is also the authority making the order under s. 48. Section 47(3) is concerned with a general order limiting stage carriages generally etc. on a consideration of matters specified in S. 47(1). That general order can be modified by the Regional Transport Authority, if it so decides, one way or the other. But the modification of that order is not a matter for consideration when the Regional Transport Authority is dealing with the actual grant of permits under S. 48 read with S. 57, for at that stage what the Regional Transport Authority has to do is to choose between various applicants who may have made applications to it under s. 46 read with S.

57. That in our opinion is not the stage where the general order passed under S. 47(3) can be re-considered for the order under S. 48 is subject to the provisions of S. 47, which includes S. 47(3) under which a general order limiting the number of stage carriages etc. may have been passed."

Ten other persons whose applications for grant of permits were rejected also preferred appeals before the State Transport Appellate Tribunal but the same were dismissed as infructuous by the Tribunal vide its order dated October 17, 1966 in view of the order already passed by it on November 26, 1963 in the appeal of Fakir Chand Gupta and others. Thereafter, the Regional Transport Authority at its meetings held on August 28 and 29, 1964 considered the applications of 17 persons whose cases had been remanded to it but refused to consider the cases of the appellants on the ground that they had not appealed against the order rejecting their applications in @1962. The Regional Transport Authority also rejected the application of Harish Chandra Mishra though his matter had been remanded by the State Transport Appellate Tribunal. The appellants and Harish Chandra Mishra thereupon preferred four separate appeals under section 64 of the Act to the State Transport Appellate Tribunal. During the pendency of the appeals, Meerut-Mawana-Miranpur route became an inter regional (amalgamated) route by its extension upto Bijnor. Thereupon, the appellants and Harish Chandra Mishra applied to the Tribunal for amendment of their original applications and for grant of permits for the said amalgamated route. Acceding to their prayer, the Tribunal allowed the appeals and directed that the appellants and Harish Chandra Mishra be allotted one regular stage carriage permit each for the amalgamated route mentioned above. Aggrieved by this order, Rahimuddin, an existing operator on the Meerut-Mawana- Miranpur route filed a petition before the High Court for issuance of a writ quashing the order granting permits in favour of the appellants and Harish Chandra Mishra. The said petition was allowed by a Single Judge of the High Court in so far as the appellants were concerned on the ground that 'since the appellants had omitted to appeal against the order of the Regional Transport Authority rejecting their applications for grant of permits in 1962, their case had come to an end and they could not be granted any permit. Dissatisfied with this judgment and order, the appellants preferred a Letters Patent Appeal which was dismissed vide judgment and order dated August 28, 1973. It is against this judgment and order that the appellants have come up in appeal to this Court.

We have heard learned counsel for the parties at considerable length. It is true that the appellants did not appeal against the order of the Regional Transport Authority rejecting- their applications in 1962 but as they were informed of the rejection of their applications only in 1964 and the State Transport Appellate Tribunal had vide its order dated November 26, 1963 already set aside the order of the Regional Transport Authority which had been made in contravention of the settled law, there was in reality no subsisting order against which the appellants could have fruitfully appealed. And even if they had appealed, their appeals were bound to meet the same fate as the other ten appeals which, as already stated, were dismissed as infructuous. In this view of the matter, we find no force in the prefatory submissions made by Mr. Ashok Sen that the applications made by the appellants for grant of the permits to the Regional Transport Authority having become non est with their rejection in 1962, no rival claim made by the appellants which could merit determination was left to be considered either by the Regional Transport Authority or by the State Transport Appellate Tribunal.

Coming now to the merits, we are of opinion that having regard to the facts that with its extension, upto Bijnor, the route in question had assumed the character of an amalgamated inter-regional route in regard whereto the provisions of section 47 (3) of the. Act which, as succinctly held by this Court in Mohd, Ibrahim etc. v. State Transport Appellate Tribunal, Madras etc. (1) are confined in their operation to a region or a specified area or a specified route within a region were not applicable and the need for increasing the number of permits in the interest of public was recognised by the Regional Transport Authority itself in its resolution No. 44(5) passed at its meetings held on July 7 to July 10, 1970 which is expressly alluded to in the aforesaid order dated May 5, 1973 of the State Appellate Tribunal as also the fact that the appellants have been operating on the route for quite sometime and do not appear to have indulged in any malpractice, we think the High Court should not have in exercise of its writ jurisdiction interfered in a case of this nature particularly when the cancellation of the appellants' permits was bound to cause inconvenience and hardship to the travelling public. After all section 47 of the Act emphasises the interest of the 'travelling public as the dominant consideration in the grant of permits and no order in exercise of powers under Article 226 or Article 136 of the Constitution will ordinarily be passed if the public is likely to suffer. And, surely, (1) [1971] 1 S.C.R.474.

in this case, after all these years when all these buses having been plying, it will be. ritualistic to direct second consideration of the need to increase the number of permits for the route which is now admittedly an inter-regional route. It is hardly necessary in this connection to reiterate the observations made by this Court in Kishanchand Narsingh Das Bhatia v. State Transport Appellate Authority & Ors.(1) that the High Court under Article 226 of the Constitution should be reluctant to interfere with or disturb the decision of specially constituted authorities or tribunals under the Act especially when the Legislature has entrusted the task of granting or renewing the stage carriage permits to the aforesaid authorities or tribunals which are expected to be fully conversant with the procedure and practice and the relevant matters which should engage their attention under the provisions contained in the Act. In dealing with applications, for writs of certiorari under Article 226 of the Constitution in cases of the present kind, it is necessary to bear in mind that the High Court does not exercise the jurisdiction of an Appellate Court and the findings or conclusions on questions of fact could hardly be re-examined or disturbed by it under Article 226 of the Constitution unless

the well recognised tests in that behalf were satisfied vide : Sri Rama Vilas Service (P) Ltd. v. C. Chandrasekaran & Ors.(2).

Accordingly, we allow the appeal, set aside the impugned judgments and orders of the High Court and restore the order dated May 5, 1973 of the State Transport Appellate Tribunal in so far as the appellants are concerned. In the circumstances of the case, we leave the parties to bear their own costs.

ORDER JASWANT SINGH, J.-This is a petition under Article 136 of the Constitution seeking special leave to appeal against the judgment and order dated September 3, 1975 of the High Court of Judicature at Allahabad in Special Appeal No. 216 of 1973 upholding the judgment and order dated August-28, 1973 of K. N. Singh, J. in writ petition No. 3310 of 1973 whereby while dismissing the writ petition in part, he maintained the order dated May 5, 1973 of the State Transport Appellate Tribunal in so far as it allowed. the appeal No. 237 of 1969 preferred by Harish Chandra Mishra against the order of the Regional Transport Authority, Meerut passed in its meeting held on August 28 and 29, 1964 and directed that a regular stage carriage permit for the amalgamated route known as Meerut-Mawana-Hastinapur-Bijnor and allied routes, be allowed to him.

The facts giving rise to this petition are set out in our judgment of even dated in Civil Appeal No. 1276 of 1975 and need not be re-iterated. In view of the settled position of law that this Court would be reluctant to interfere with or disturb the decision of specially constituted authorities or tribunals under the Motor Vehicles Act, 1939 especially when the Legislature has entrusted the task of granting or renewing the stage (1) [1968] 3 S.C.R. 605.

(2) [1964] 5 S.C.R. 869.

carriage permits to the aforesaid authorities or tribunals which are expected to be fully conversant with the procedure and practice and the relevant matters which should engage their attention under the provisions contained in the Act and nothing basically wrong with the order sought to be appealed against so far as Harish Chandra Mishra is concerned has been found by the High Court, as also the observations made by this Court in Mohd. Ibrahim etc. v. State Transport Appellate Tribunal, Madras etc.(") we do not find any merit in petition which is dismissed but without any order as to costs.

S.R. Appeal allowed & Petition dismissed (1) [1971] 1 S.C.R. 474,481-484.