

## **R. Obliswami Naidu vs Addl. State Transport Appellate ... on 17 February, 1969**

**Equivalent citations: 1969 AIR 1130, 1969 SCR (3) 730, AIR 1969 SUPREME COURT 1130**

**Author: K.S. Hegde**

**Bench: K.S. Hegde, S.M. Sikri, R.S. Bachawat**

PETITIONER:

R. OBLISWAMI NAIDU

Vs.

RESPONDENT:

ADDL. STATE TRANSPORT APPELLATE TRIBUNAL, MADRAS & ORS.

DATE OF JUDGMENT:

17/02/1969

BENCH:

HEGDE, K.S.

BENCH:

HEGDE, K.S.

SIKRI, S.M.

BACHAWAT, R.S.

CITATION:

1969 AIR 1130

1969 SCR (3) 730

1969 SCC (1) 733

CITATOR INFO :

R 1970 SC1542 (3,15,62,63)

E 1970 SC1704 (6)

E&D 1974 SC 391 (3,6)

R 1975 SC 386 (2)

R 1978 SC 949 (2)

E 1984 SC 9 (4)

ACT:

Motor Vehicles Act (4 of 1939), ss. 47 and 57-Application for stage carriage permit on new route-Procedure to be followed.

HEADNOTE:

The appellant applied to the R.T.A. for a permit to ply a

stage carriage on a new route on which no stage carriage was plying before. The R.T.A. published the application under s. 57(3) of the Motor Vehicles Act, 1939. Some representations against the grant of the permit on the ground that there was no need were received. The R.T.A., after overruling the objections granted the permit to the appellant. The appeal by some of the objectors was allowed by the State Transport Appellate Tribunal on the ground that the procedure adopted by the R.T.A. was not in accordance with law inasmuch as it failed 'to determine the question of the need for a service in that 'route before entertaining the application. The appellate order was confirmed by the High Court.

In appeal to this Court,

HELD : (Dismissing the appeal) Having regard to the purpose behind ss. 47 and 57, that only public interest should be considered and any manipulation in favour of a particular applicant should be eliminated, there should be two independent steps before granting a stage carriage permit : (a) there should be a determination by the R.T.A., under s. 47(3), of the number of stage carriages for which permits may be granted on that route, and (b) applications for permits for such number of stage carriages should be entertained thereafter. Otherwise, the R.T.A. will 'have no opportunity to choose between competing operators. The 'representations' made under s. 57(3) cannot be considered as competing applications. Further, if 'representations' should be interpreted to include applications'. then s. 57(3) becomes unworkable as there will be unending applications and publications. [733 B-C, F, H]  
Jaya Ram Motor Service v. S. Rajarathinam, C.A. No. 95/65 dated 27-10-1967, followed.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1426 of 1968.

Appeal from the judgment and order dated April 16, 1968 of the Madras High Court in Writ Petition No. 908 of 1968. D. Narsaraju Subramaniam, Vineet Kumar, J. Ramamurthy, P. S. Khera and Shyamala Pappu, for the appellant. S.T. Desai, A. R. Ramanathan and R. Gopalakrishnan, for respondent No. 2.

The Judgment of the Court was delivered by Hegde, J. The scope of s. 47(3) of the Motor Vehicles Act, 1939 (to be hereinafter referred to as the Act) comes up for consideration in this appeal by certificate.

The facts of the case necessary for the purpose of deciding the point in issue are few, and they are as follows :-

On August 8, 1966, the appellant applied to the R.T.A. Coim- batore for a permit to ply a stage carriage on the route Bhavani to Vellithiruppur. That was entirely a new route. No stage carriage was plying on that route at that time. The R.T.A. published that application under s. 57(3) of the Act. Respondents Nos. 2-3 and others made representations against that application contending that there was no need to grant a stage carriage permit for that route. The R.T.A. overruled their objection and granted the permit asked for on October 9, 1967. As against the order of the R.T.A. some of the objectors went up in appeal to the State Transport Appellate Tribunal, Madras. The Additional State Transport Appellate Tribunal allowed the appeal by its order of February 22, 1968 holding that the procedure adopted by the R.T.A. was not in accordance with law inasmuch as it had failed to determine the question of the-need for a service in that route before entertaining the application for a stage carriage permit.' The Tribunal held that the procedure adopted by the R.T.A. contravened s. 47(3) of the Act. The appellant challenged that order before the High Court of Madras in Writ Petition No. 908 of 1968. The High Court dismissed that application. Hence this appeal. Section 47 of the Act prescribes the procedure to be adopted by the R.T.A. in considering applications for stage carriage permit. That section reads :

"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 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;

and shall also take into consideration any representations made by persons already providing passenger 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 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-

s. (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."

Sub-section (3) of s. 47 of the Act required the Regional Transport Authority to limit the number of stage carriage permits that may be granted in a route having regard to the matters mentioned in sub-s. (1) of that section. The question for determination is whether the determination as to the number of stage carriages required on a route should be done at a stage anterior to that of entertaining applications for stage carriage permits or that it could be done at the time it considers applications made by operators for stage carriage permits in that route. The R.T.A. has proceeded on the basis that question can be decided while considering the applications made to it for permits by operators whereas the Appellate Tribunal and the High Court have taken a contrary view.

Sub-s. (3) of s. 47 of the Act if read by itself does not throw any light on the controversy before us but if ss. 47 and 57 of the Act are read together it appears to us to be clear that the view taken by the Appellate Tribunal and the High Court is the correct view. If contrary view is taken it will throw open the door for manipulations and nepotism. There may be possibility of the personality of the applicant influencing the decision of the R.T.A. on the question of need for a stage carriage permit in the route and thereby public interest which should be the main consideration while taking a decision under s. 47(3) may suffer. If we accept the view taken by the R.T.A. as correct, an operator who happens to apply for the route first will be in a commanding position. The R.T.A. will have no opportunity to choose between competing operators and hence public interest might suffer. Mr. Narsaraju, learned Counsel for the appellant tried to meet the difficulty by suggesting that sub-s. (3) of s. 57 of the Act is wide enough to allow the competing operators to apply for the route in question when the first applicant's application is published and representations called for.' Section 57(3) reads "On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than 30 days from such publication, on which, and the time and place at which, the application and any representation received will be considered." (Proviso is

not relevant for our present purpose).

We are unable to accept this contention. That sub-section merely permits representations to be made in respect of the application published. Such representations cannot take the form of competing applications. It is difficult to accept the contention that the word "representations" in s. 57(3) includes applications for the route. That apart if we accept Mr. Narsaraju's contention then the whole thing will become unworkable. If at the time of making his representation an operator can also make an application for a stage carriage permit for that route, that application again will have to be published under s. 57(3) and objections called for. Extending the logic of Mr. Narsaraju's argument as we ought to, at the time of making representations to those applications, further applications can be made. This may turn out to be an unending chain. On an examination of the relevant provisions of the Act and the purpose behind ss. 47, and 57, we are convinced that before granting a stage carriage permit two independent steps have to be taken. Firstly there should a determination by the R.T.A. under Sup./69-12 s.47(3) of the number of stage carriages for which stage carriage permits may be granted in that route. Thereafter applications for stage carriage permits in that route should be entertained. The R.T.A. is not competent to grant stage carriage permits for more carriages than fixed under s.47(3). Our above conclusion accords with the view expressed by this Court in Civil Appeal No. 95 of 1965. (M/s. Jaya Ram Motor Service v. S. Rajarathinam and ors.) (1). Therein the Court observed :

"The scheme of sec. 47 is that when a person makes an application under sections 45 and 46 the Authority first considers it under sec. 47 ( 1 ) in the light of the matters set out therein and also the representations, if any, made by the persons mentioned therein. The Authority then fixed under sec. 47 (2), having regard to the matters mentioned in s. 47(1), the number of stage carriages for which permits may be granted in the region or on any specified route within such region. Having fixed the limit the Authority publishes under s. 57(3) the application with a notice of the date before which representations in connection therewith may be submitted and the date on which such application and representations would be considered. The proviso to s.57(3) lays down that if the grant of a permit has the effect of increasing the number of vehicles operating in that region or in any specified area thereof or on the route within such region beyond the limit fixed under s. 47 (3), the Authority may dismiss the application summarily. If it does not exceed such limit and the Authority decides to grant a permit it has to consider the application and the representations submitted to it in conformity with the procedure laid down in sec. 57. Therefore sec. 47 envisages two stages of the inquiry; (i) the fixing of the number of permit under s. 47(3) and (ii) the consideration thereafter of the application for grant of a permit and the representations if any by the persons mentioned in s. 47(1). It would therefore seem that once the Authority has fixed the number of vehicles to be operated in the region or the area or the particular route and the number of permits to be granted therefore, the stage of inquiry under s. 47 (3) is over. The next thing that the Authority has to consider is whether grant of a permit would be within such limit or not. If it does not exceed the limit the Authority has to consider the application and the representation if any, in connection therewith and to grant or refuse to grant the

permit under sec. 48(1).. Therefore, once the C.A. No. 95/65 decided on 27-10-1967.

limit is fixed,, if the grant of an application does not have the effect of exceeding that limit, the only question before the Authority would be whether the applicant is a person fit to be granted the permit or not in the light of the matters set out in sub-sec. (1) of sec. 47. The question of the number of permits to be granted, having been already canvassed and decided, cannot become the subject at that stage of any further controversy. This is clear from the fact that sec. 48(1) which empowers the Authority to grant or refuse to grant the permit starts with the words 'subject to the provisions of s. 47'. It is therefore clear that the Authority has first to fix the limit and after having done so, consider the application or representations in connection therewith in accordance with the procedure laid down in sec. 57. As held in *Abdul Mateen v. Ram Kailash Pandey*(1) the Authority may modify the limit fixed by it under sec. 47 (3) but once such a limit is fixed, it cannot ignore it while considering the applications before it under sec. 48. Sec. 47(3), as observed there, '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.... That, in our opinion, is not the stage, when the general order passed under section 47(3) can be reconsidered 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.' That being so, if an application is refused such refusal is under sec. 48 (1) and the appellant who is denied the permit has a right of appeal under sec. 64(1) (a)."

In the result this appeal fails and the same is dismissed with cost V.P.S. Appeal dismissed.

(1) [1963] 3 S.C.R. 523, 529.