

# Ishwari Yatayat Cooperative Society vs State Transport Appellate Authority ... on 22 August, 1975

## Equivalent citations: AIRONLINE 1975 SC 1

PETITIONER:

ISHWARI YATAYAT COOPERATIVE SOCIETY

Vs.

RESPONDENT:

STATE TRANSPORT APPELLATE AUTHORITY AND OTHERS

DATE OF JUDGMENT 22/08/1975

BENCH:

ACT:

Motor Vehicles Act, 1939, s. 46-Application by unregistered Cooperative Society for grant of permit-Maintainability.

HEADNOTE:

Practice and Procedure-Contention not raised in High Court or in special leave petition-If can be entertained during arguments.

The Regional Transport Authority granted a permit to the appellant. The Appellate Authority allowed the appeal filed by a rival applicant and set aside the order after the matter was remanded to it by the High Court. The appellant filed a writ petition, but the High Court confirmed the order of the Appellate Authority.

Dismissing the appeal to this Court,

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HELD: The application of the appellant for permit was not maintainable as the appellant was not a registered cooperative society when the application was made, though it was registered at the time when the applications were considered and disposed of by the Regional Transport Authority. [409E]

Since the appellant was not a registered cooperative society at the date of the application there was no person in the eye of the law who could file a valid application under s.46 of the Motor Vehicle Act. When an application for permit is filed by a person it has to be published and objections invited but if such an application is filed on behalf of a non-existent person it is impossible for objectors to state the reasons for their objections. Though

the appellant had applied for registration there was no certainty that registration would be granted. [409GH]

Kali Kinkar Kundu v. Sadluan Chandra Dey, A.I.R. 1971 Calcutta 171 and Azad Motor Transport Cooperative Society Ltd v. State Transport Appellate Authority, Misc. Petition No. 489 of 1966 decided on 17-11-1966 by the High Court of Madhya Pradesh at Jabalpur (Unreported), referred to.

(2) Though the rival applicant did not challenge the grant of the permit in favour of the appellant on the ground that the appellant was not a registered society, such a plea was entertained and considered by the Appellate Authority without any objection from the appellant. Further, the appellant, in its writ petition did not contend that it was not open to the Appellate Authority to entertain and consider the plea as it was not raised by the rival applicant before Appellate Authority or the High Court at any previous stage of the proceedings. Even in the application for special leave the appellant had not taken such a ground. Therefore, the appellant could not be allowed to contend, at the stage of arguments, that the Appellate Authority and the High Court went wrong in entertaining the plea. [409C-E]

#### JUDGMENT:

CIVIL APPELLATE Jurisdiction: Civil Appeal] No. 758 of 1971.

Appeal by special leave from the Judgment and order dated 27th January 1971 of the Madhya Pradesh High Court of Judicature at Jabalpur in M.P. No. 85 of 1968.

M N. Phadke, Naunit Lal and Lalita Kohli, for the appellant.

F. S. Nariman, and P. C. Bhartari, for respondent 3(a) to 3(e).

The Judgment of the Court was delivered by MATHEW, J.-This is an appeal, by special leave, from the judgment of the high Court of Madhya Pradesh at Jabalpur holding that the appellant was not entitled to the permit in question for the reason that the application for grant of permit was not maintainable in law.

The Regional Transport Authority, Indore, by a notification dated 23-10-1959 invited applications for two single trip permits for running stage carriage on Nanda- Indore and Indore-Nagda routes via Hingoria, Gautampura and Depalpur. The appellant submitted an application for grant of permit on the Nagda-Indore route on 11-11-1959 and M/s. Jawahar Yatayat Cooperative Society submitted its application of 20-11-1959 for Indore-Nagda route. One Smt. Akhtari Begum, now represented by respondent No. 3, submitted two applications, one for grant of permit on the Nagda-Indore route and the other for a permit on the Indore- Nagda route. One Jaiswal Transport Cooperative society and a few others also applied for permits.

The Regional Transport Authority by its order dated 27-2-1961 granted two permits: one to the appellant and the other to M/s. Jawahar Yatayat Cooperative Society and rejected the other applications. Smt. Akhtari Begum, Jaiswal Transport Cooperative Society and two others filed separate appeals before the State Transport Appellate Authority (hereinafter called 'Appellate Authority'). The Appellate Authority by its order dated 25-9-1962 maintained the order of the Regional Transport Authority and dismissed the appeals.

Smt. Akhtari Begum and Jaiswal Transport Cooperative Society challenged the validity of the order in writ petitions before the High Court. The High Court quashed the order of the Appellate Authority and remanded the case for fresh disposal by that authority. Thereafter the appeals filed by Smt. Akhtari Begum and Jaiswal Transport Cooperative Society were headed and the Appellate Authority by its order dated 7-8-1964 again dismissed the appeals and thus maintained the order passed by the Regional Transport Authority granting permits in favour of the appellant and M/s. Jawahar Yatayat Cooperative Society.

Smt. Akhtari Begum and M/s. Jaiswal Transport Cooperative Society again filed separate writ petitions before the High Court challenging the order of the Appellate Authority. The High Court allowed the writ petitions and remanded the cases to the Appellate Authority for deciding both the appeals afresh. The Appellate Authority, by its order dated 31-1-1968 allowed the appeal filed by Smt. Akhtari Begum and set aside the order of the Regional Transport Authority granting permits 'in favour of the appellant and M/s. Jawahar Yatayat Cooperative Society. Both the permits were ordered to be granted to M/s. Akhtari Begum.

The reasoning of the Appellate Authority was that the applications of the appellant and M/s. Jaiswal Transport Cooperative Society were invalid as they were not registered as cooperative societies on the date on which the application for permits were made to the Regional Transport Authority and so the applications were not maintainable in law. Two writ petitions were filed before the High Court by the appellant as well as by M/s. Jawahar Yatayat Cooperative Society challenging the order. The High Court agreed with the conclusion of the Appellate Authority that the applications for grant of permits filed by the writ petitioners were not maintainable and dismissed the writ petitions by a common order.

The only question which falls for consideration in this appeal is whether the view taken by the High Court that the application for permit was not maintainable as the appellant was not a registered cooperative society when the application was made, even though it was registered at the time when the applications were considered and disposed of by the Regional Transport authority was correct.

It is no doubt true that in both the writ petitions filed by Smt. Akhtari Begum, no challenge was made to the grant of the permit in favour of the appellant for the reason that the application for permit was filed before the society was registered. But the plea was entertained and considered by the Appellate Authority without any objection by the appellant. In other words, the appellant never objected to the plea raised and considered by the Appellate Authority. Nor did the appellant plead in the writ petition before the High Court that it was not open to the Appellate Authority to entertain or consider this plea as it was not raised by Smt. Akhtari Begum before the Appellate

Authority or the High Court at any previous stage of the proceeding. Even in the Special Leave Petition, the appellant has not taken a ground that the plea was not available to the third respondent before the Appellate Authority and in the High Court as it was not raised by Smt. Akhtari Begum in the appeal filed by her before the Appellate Authority or in the writ petitions filed before the High Court. Therefore, we cannot allow the appellant to contend at this stage that the Appellate Authority and the High Court went wrong in entertaining the plea.

When the application for grant of permit was made, there was no registered cooperative society in existence. The appellant submitted that an application for the registration of the Society was pending when the application for grant of permit was made. But that is a matter of no moment. Since no registered cooperative society was in existence on the date of the application for grant of permit, the application was not maintainable. The fact that the appellant was registered as a cooperative society before the date on which the Regional Transport Authority considered the applications for permits is also of no consequence as there was no valid application before the Regional Transport Authority. When an application for permits is filed by a person, it has to be published and objections invited. The objectors are free to file representations against the grant of permit to the applicant. Now, if an application for grant of permit is filed on behalf of a non-existent person, it is impossible for objectors to state the reasons for their objections. There was no certainty in this case that the application for registration would be granted and that the appellant would become a juristic person even when the objectors would have had to file the representations.

In *Kali Kinkar Kundu v. Sadhan Chandra Dev* (1) the High Court A of Calcutta had to consider the question whether an application for grant of a permit could be filed on behalf of a company before it was incorporated. The Court held that the application was incompetent.

In *Azad Hind Motor Transport Cooperative Society Ltd. v. State Transport Appellate Authority* (2) it was held by the High Court of Madhya Pradesh that until a cooperative society is registered, it has no juristic personality and so an application for grant of permit made by a person purporting to be on its behalf was not maintainable.

We think that, in principle, it stands to reason to hold that since the appellant was not a registered cooperative society on the date of the application for grant of the permit, there was no person in the eye of the law who could file a valid application under s.46 of the Motor Vehicles Act for grant of a permit. The High Court was right in its view that the application for grant of permit to the appellant was not maintainable and in dismissing the writ petition.

We dismiss the appeal but in the circumstances without any order as to costs.

Appeal dismissed.

V.P.S.