Jeewan Nath Wahal & Ors vs Sheikh Mahfooz Jan & Ors on 8 September, 1969

Equivalent citations: 1970 AIR 1704, 1970 SCR (2) 243, AIR 1970 SUPREME COURT 1704

Author: J.M. Shelat

Bench: J.M. Shelat, C.A. Vaidyialingam, I.D. Dua

PETITIONER:
JEEWAN NATH WAHAL & ORS.

Vs.

RESPONDENT:
SHEIKH MAHFOOZ JAN & ORS.

DATE OF JUDGMENT:
08/09/1969

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
VAIDYIALINGAM, C.A.
DUA, I.D.

CITATION:
1970 AIR 1704 1970 SCR (2) 243
1970 SCC (2) 833

ACT:
Motor Vehicles Act 4 of 1939, ss. 47 (3), 48, 57 and 64 (a)Application for permit for a new route--RTA deciding that new route not necessary--Whether order appealable to Appellate Tribunal under s. 64 (a)--Order is under s. 47(3) and not under section 48 and therefore not appealable.

HEADNOTE:
The appellants, among others applied to the Regional Transport Authority for permits to operate a direct bus service on. a route in Meerut District, U.P., which had no direct passenger bus service. After hearing the appellants and those who opposed them, the Regional Transport Authority was satisfied that there was no sufficient demand for such a

direct service, and therefore, there was no justification for opening the proposed new route. The. applications of "the appellants and other applicants were therefore rejected. The Appellate Tribunal reversed the order of the Regional Transport Authority and granted permits to the three appellants. The respondents therefore filed writ petitions in the High Court for quashing the order of the Tribunal contending that no appeal against the order of the Regional Transport Authority lay under s. 64(a) of the Motor Vehicles Act 1939 and that consequently, the Tribunal had no. jurisdiction to entertain such appeals, and grant permits to the appellants. A Single Bench dismissed the petitions but the Division Bench held that no appeal against the order of the Regional transport Authority lay under s. 64(a) and accordingly, allowed the writ petitions and quashed the Tribunal's order. On appeal to this Court,

HELD: The appeal must be dismissed.

The decisions of this Court clearly lay down that the R.T.A. has first to make "a general order" as stated in Abdul Mateen's case under s. 47 (3) as to the number of permits necessary for a new route and he cannot exceed that limit while he is at the next stage when he considers under s. 48 read with, s. 56(7) as to. who among the applicants should be granted the permit or permits. Such a 'general order' limiting the number of permits presupposes that he has come to a decision that the new route either proposed by him or by an applicant or applicants is necessary in the public interest. If the order 'as to the number of permits is a 'general order' passed under s. 47(3) with which the individual applications are not concerned and is anterior to the stage under s. 48 when applications of the individual operators are taken into, consideration, and therefore is not appealable under s. 64 (a) it must follow a fortiori that the decision as to whether the new route is necessary or not is equally 'a general order' arrived at either earlier or contemporaneously with the decision as to the number of permits. If the latter order is not appealable, it cannot be that the former i.e. the decision whether the new route is necessary or not, is not an equally 'general order' with which individual applications are not concerned and can appeal against it under s. 64 (a).

However, the powers of the R.T.A. in connection with the decision as to whether a proposed route should be opened or not are not un-

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limited and unbridled. The power is subject to the revisional power of the State Government under s. 64-A. [250 E--251 C]

Abdul Mateen v.R.K. Pandev [1963] 3 S.C.R. 523; M/s Java Ram Motor Service v.S. Rajarathinam C.A. 95 of 1965, dec. on October 27, 1967; R. Obliswami Naidu v. The Addl. State Transort Appellate Tribunal Madras C.A. 1426 of 19'68, dec. on Feb. 17, 1969, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1278 of 1969. Appeal from the judgment and order dated March 13, 1969 of the Allahabad High Court in Special Appeal No. 1060 of 1967.

C.K. Daphtary,, Yogeshwar Prasad, S.K. Davon and S. Bagga, for the appellants.

H.R. Gokhale, J.P. Goyal, Ilyas Hussain and V.C. Prashar, for respondents Nos. 1 and 2.

The Judgment of the Court was delivered by Shelat, J. The question arising in this appeal, by certificate, may be stated thus:

> When an applicant applies for a permit to run a passenger bus service on the ground that the route for which he applies, though one not yet opened, is necessary in public interest, but the Regional Transport Authority comes to. the conclusion that it does not, and thereupon rejects his application, whether his order is one under s. 48 of the Motor Vehicles Act, 4 of 1939 and is, therefore, appealable under s. 64(a) of that Act ?
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> The route involved in this case was the one between Meerut and Dankaur which had no direct passenger bus:
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> service. There were, however, two routes which were being operated, namely, one from Meerut to Bulandsharhar and the other from Siana to Dankaur, one crossing the other, so that if one wanted to go from Meerut to Dankaur there was no direct service, and therefore, he would have first to travel in the bus running from Meerut to Bulandshahar, get down at a place near Gulsothi and catch the bus running from Siana to Dankaur. This was the position when the appellants, amongst others, applied to the Regional Transport Authority for permits to operate. a direct service from Meerut to Dankaur. This was, therefore, not a case where the R.T.A. had already decided upon opening the new route, fixed the number of permits necessary for such a route and then invited applications from operators. Nevertheless, the R.T.A., follow-
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> ing the procedure laid down in s. 57 of the Act, published these applications, to which objections. were raised amongst others by those who were operating on the routes. earlier referred to.
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> These applications came up for consideration in the meeting held before the R.T.A. on July 28, 1965 when Item 3 of the Agenda for that meeting was:
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> "To pronounce decision regarding recognition and classification of M
> eerut to

Dankaur via Hapur Gulsothi Sikandarabad route. and grant of permits thereon."

It is apparent that Item 3 involved two questions for determination of the R.T.A.; (a) whether the route proposed by the appellants and others should be opened, and (b) if so, to whom, amongst the applicants, should permit or permits, depending upon the number of permits he. should decide upon, should be granted. After hearing the applicants and those who opposed them, the R.T.A. was satisfied that there was no sufficient demand for such a direct service, and therefore, there was no justification for opening the proposed new route. Having arrived at that' conclusion the question of granting or not granting permits to individual applicants did not arise and he rejected the applications of the' appellants and other applicants. Appeals having been filed before the Appellate Tribunal, the Tribunal reversed the order of the R.T.A. and granted permits to the three appellants. The respondents thereupon filed writ petitions in the High Court for quashing the order of the Tribunal contending that no appeal against the order of the. R.T.A. lay under s. 64(a), and that con sequently, the Tribunal had no jurisdiction to entertain such appeals and grant permits to the appellants. The learned Single Judge of the High Court, who. heard the writ petitions in the first instance, dismissed them, but on appeal against his order the Division Bench of the High Court came to the conclusion that no appeal against the said order of the R.T.A. lay under s. 64(a), and accordingly, allowed the writ petitions and quashed the Tribunal's. order. This appeal is directed against this order. Counsel for the appellants urged that there was. no provision in the Act separately providing for the R.T.A. to decide first as to whether particular route proposed by an applicant should be opened or not. It was argued that the provisions of Ch., IV, and in particular ss. 47 and 57, show that once an application for a permit is made and is published and objections thereto are invited and the R.T.A. applies his mind to it and rejects it, no matter what his reasons for such rejection are, his order amounts to. a refusal under s. 48 and is appealable under s. 64(a). The rival contention, on the other hand, was that s. 47(3), which .

Sup. C1/70---4 contains the power of the R.T.A. to first determine the number of permits necessary for a particular route, [which decision, as held by this Court, is not appealable under s. 64(a)], contains also the power to decide whether a proposed route should be opened or not, and that it is only after these two points are first ,decided, that the question, who amongst the applicants should be granted permits, arises. It is at this latter stage that the question of granting or refusing to grant a permit arises under s. 48, and it is against an order under that section that an appeal under 64(a) is provided. The. argument was based on the principle that a right of appeal is not something which is inherent, but is that which and to the extent it is provided for by the statute. The provisions of the Act relevant to the questions raised in this appeal as also their scheme have been more than once examined by this Court. There is therefore, no necessity to analyse them once more. In Abdul Mateen v.R. K. Pandey(1) the ,question was whether the Bihar Government acting under s. 64-A, as amended by the Bihar Amendment Act, 1950, had the power to increase the number

> of permits for which applications had been invited by the R.T.A. In negativing the claim that the State Government had such power, this Court inter alia held that s. 47 (3) was concerned with a "general order" limiting .stage carriages on a consideration of matters specified in s. 47, and that such an order can be modified by the R.T.A. if it so decides one way or the other. But such a modification is not a matter of consideration when it is dealing with the actual grant of permit under s. 48 read with s. 57, for, at that stage what the R.T.A. has to do is to choose between various applicants who may have applied under s. 46. The Court held that that is not the stage when the "general order" passed under s. 47(3) can be reconsidered, for, the order under s. 48 is subject to s. 47 including the provisions of s. 47 (3) under which the "general order" limiting the number of permits is passed. At page 531 of the Report, the Court further held that the appeal contemplated under s. 64 is by a person who is aggrieved by the order specified therein and does not contemplate any appeal against "the general order" passed under s. 47 (3). On this view of s. 47, it was lastly held that when an appeal is taken from an order under s. 48 and a revision is' applied for under s. 64-A of the Bihar Amendment Act, the power of the Appellate Authority, as also of the State Government as the revisional authority, is as much subject to s. 47(3) as the power of the R.T.A. under s. 48, i.e., it cannot grant a permit beyond the limit. already .decided upon under s. 47(3). In M/s. Java Ram Motar Service (1) [1963] 3 S.C.R. 523.

v.S. Rajarathinam,.(1) the R.T.A. had already introduced the new bus route and then had invited applications for permits. 34 applicants applied for permits. The R.T.A, however, rejected them all on the ground that there was after all no need for the new route. On these facts the question was, whether a person, whose application is rejected by the R.T.A. on the ground that there was no need for a new route, in spite of his decision previously arrived at that such a route was necessary, could appeal under s. 64(a) against such rejection. Following the decision in Abdul Mateen's case(2) we held that:

> "the Authority had already resolved to introduce a new bus route and invited applications for a permit under sec. 57(2). It could no doubt have acted under sec. 47 (3) and modified its earlier decision. instead, what it did was that while considering the question as to who amongst the 34 applicants should be granted that permit, i.e., at the stage not under section 47(3) but under sec. 48 (1), it decided to refuse all applications on the ground that there was no longer any need for any such permit. In other words, though the earlier order was still intact, the authority rejected the applications on the ground that there was no need for any fresh permit. The order was clearly contrary to the previous order passed under sec. 47(3) and therefore cannot be said to be in consonance with sec. 47 as required by sec. 48 (1). The order was not one under sec. 47(3) but under sec. 48(1) refusing thereby the applications including those of the appellant and the respondents and was therefore subject to an appeal under sec. 64(a)."

Does it make any difference to. the principle laid down in these decisions whether the R.T.A. invites applications having previously decided to introduce a new route or whether an applicant proposes such a new route and applies for a permit. Abdul Mateen's case(2) and the case of Java Ram Motor Service(1) were cases where the R.T.A. had first decided to introduce A new route and had then invited application. On the other hand, in R. Obliswami Naidu v. The Addl. State Transport Appellate Tribunal, Madras(3) no such decision had been previously taken by the R.T.A. and the appellant had applied for a permit on a new route. The question canvassed there was whether the R.T.A. had first to decide the necessity of such a new route, and then having come to such a decision proceed (1) CA 95 of l965 decd. on October 27, 1967.

(2) [1963] 3 S.C.R. 523.

(3) C.A. 1426 of 1968, dec. on Feb. 17, 1969.

to examine the question whether an applicaNT should or should not be' granted the permit. The Appellate Tribunal had held that the: procedure followed by the R.T.A. was not in accordance with law as it had failed to determine the question of the need for a service for the new route applied for by the appellant before deciding his application for permit, and had contravened the provisions of s. 47(3). The appellant challenged the order by a writ petition in the High Court which was dismissed. In the appeal in this Court against that order, Hegde, J., speaking for the Court, upheld the view of the Appellate Tribunal and held that though s. 47 (3), if read by itself, did not throw light on the question, secs. 47 and 57, when read together, made it clear that the R.T.A. had first to arrive at a decision whether there was the necessity for. the new route, and then decide under s. 48 whether the appellant should be granted a permit or not This decision clearly shows that it makes no difference between cases where applications are invited by the R.T.A. after having come to the conclusion as to the necessity for a new route, or where an applicant himself proposes a new route and applies for a permit. In both the cases, the R.T.A. has to decide, before reaching the stage of s. 48 when he considers individual applications for deciding as to whom amongst the applicants the permit should be granted, whether the new route is necessary in the interest of the public.

The decisions referred to above, in our opinion, clearly lay down that the R.T.A. has first to make "a general order"

> as stated in Abdul Mateen's case(1) under s. 47(3) as to the number of permits necessary for a new route and he cannot exceed that limit while he is at the next stage when he considers.rs under s. 48 read with s. 57 as to who amongst the applicants shouId be granted the permit or permits. Such a "general order" limiting the number of permits presupposes that he has come to a decision that the new route either proposed by him or by an applicant or applicants is necessary in public interest. Obviously, he does not have to decide the number of permits necessary for such a new route unless he first decides that the new route should be opened. If the order as to the number of permits is a "general order" passed under s. 47 (3), in respect of which the individual applicants are not concerned with and is anterior to the stage under s. 48 when applications of the individual operators are taken into

consideration,and therefore, not appealable under s. 64(a), it must follow a fortiori that the decision as to whether the new route is necessary. or not is equally a "general order" arrived at either earlier or contemporaneously with the decision as 10 the number of permits. If the latter order is not appealable, (1) [1963] S.C.R. 523.

it cannot be that the former, i.e., the decision whether the new route is necessary or not, is not an equally "general order" with which individual applicants are not concerned, and can appeal against it under s. 64(a).

On this view, it would at first sight appear as if the R.T.A. has an unlimited or unbridled power in connection with the decision as to whether a proposed route should be opened or not. That it is not so is clear from s. 64-A introduced in the Act by Act 100 of 1955 which confers revisional power on the State Transport Authority, either on its own motion or on an application made to it, to call for the record of any case in which an order has been made by the: R.T.A. and in which no appeal lies, and if it appears to the State Transport Authority that such an order is improper or illegal, to pass such order as it deems fit. In our view the Division Bench of the High Court correctly interpreted ss. 47, 48, 57 and 64, and the decisions of this Court in Abdul Mateen's case(1) and the case of Jaya Ram Motor Service(2). The appeal, consequently, must fail and has to be dismissed. The Appellants will pay to the respondents the costs of this appeal.

R.K.P.S. Appeal dismissed.

(1) (1963) 3 S.C.R. 523.

(2) C.A. No. 95 of 1965 decd. on Oct. 27, 1967.