Abdul Mateen

Vs

Ram Kailash Pandey and Others

Civil Appeal No. 195 of 1962

(CJI B. P. Sinha, K. N. Wanchoo, J. C. Shah JJ)

31.07.1962

JUDGMENT

WANCHOO, J. -

This is an appeal by special leave from the judgment of the Patna High Court. Brief facts necessary for present purposes are these. It appears that a new route Gopalganj-Pahlezghat was advertised by the North Bihar Regional Transport Authority in July 1957 and applications were invited for permanent stage carriage permits and the advertisement stated that there were two vacancies on the route. A number of persons applied for the two permits and in January 1958, the Regional Transport authority granted permits to the appellant and another person. This order was taken in appeal to the Appellate Authority, which however failed. Thereafter Sudhakar Sharma who is one of the respondents, before us, moved the High Court under Art. 226 of the Constitution and in April 1960 the High Court quashed the order of the Appellate Authority on the basis of the judgment of this Court in Ram Gopal v. Anant Prasad [[1959] Supp. 2 S.C.R. 692.]. The case then went back to the Appellate Authority for re-hearing. The Appellate Authority thereupon modified the order of the Regional Transport Authority and the permit granted to the appellant was cancelled and in his place a permit was granted to Sudhakar Sharma; the permit granted to the other person was not interfered with. Thereupon, the appellant made an application to the State Government under s. 64-A of the Motor Vehicles Act, No. 4 of 1939, (hereinafter referred to as the Act) as amended by the Bihar Amendment Act No. 27 of 1950, which provides that "the State Government may, on application made to it in this behalf within 30 days of the passing of the order in the course of any proceeding taken under this Chapter by any authority or officer subordinate to it, call for the records of such proceeding and after examining such records pass such orders as it thinks fit". The application was heard by the Minister for Transport and he upheld the order of the appellate Authority. At the same time, however, he took the view that "with the introduction of bus-service in North Bihar, people are becoming more and more bus-minded as they have been getting cheap an quick m__eans of transport and therefore an additional service could be allowed on this route, and that would add to the facilities provided to the public without impairing in any way the efficiency of the existing service". Therefore, while upholding the order of the Appellate Authority cancelling the permitf the appellant and granting a permit instead to Sudhakar Sharma, he felt that the ends of justice would be met if an additional permit was granted to the appellant, who had proved to be a desirable operator. He therefore ordered that an additional service be allowed to the appellant for the said route. Thereupon Ram Kailash Pandey who had also made an application under s. 64-A and whose application had been dismissed failed a writ petition before the High Court challenging the order of the Minister for Transport. His main contention was that the grant of an additional permit to the appellant was wholly unjustified, particularly in the face of his far superior claim. To this petition the appellant as well as the two persons to whom permits were granted and the State of Bihar, the

Appellate Authority as well as the Regional Transport Authority were made parties. When the petition came to be heard before the High Court it was contended that the State Government had no power when dealing with an application under s. 64-A, to increase the number of permits to be granted from two which was the limit fixed by the Regional Transport Authority, to three, and therefore, its order granting the third permit to the appellant was without jurisdiction. This contention was accepted by the High Court, an it set aside that part of the order by which a third permit was granted to the appellant. But the High Court refused to interfere with the rest of the order granting permits to the two other persons. Thereupon, the appellant applied for a certificate to appeal to this Court, which was refused. He then moved this Court for special leave, which was granted; and that is how the matter has come up before us.

The main question for decision in this appeal's whether the State Government acting under s. 64-A of the Bihar Amendment Act had the power to increase the number of permits for which application had been invited by the Regional Transport Authority. It is contended on behalf of the appellant that the State Government has the same power under s. 64-A as the Regional Transport Authority has, as held by this Court in RAM GOPAL'S CASE, and it was therefore open to the State Government to increase the number of permits as the Regional Transport Authority would always have the power to increase the number of permits whenever it thought necessary to do so.

In order to appreciate the argument put forward on behalf of the appellant, it is necessary to refer to the scheme of the Act in the matter of granting stage carriage permits. The scheme of the Act for the control of transport vehicle is to be found in Chap. IV. Section 42 provides that "no owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority..." Section 43 gives power to the State Government to issue directions to the State Transport Authority with respect to various matters specified therein. Section 44 provides for the constitution of Regional Transport Authorities and the State Transport Authority and powers thereof. Section 45 then provides that an application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle and this is subject to two provisos, with which however we are not concerned in the present appeal. Section 46 then provides for the form in which an application for a stage carriage permit shall be made. Then we come to s. 47(1) which lays down certain criteria which shall be taken into consideration by a Regional Transport Authority while dealing with an application for a stage carriage point. Section 47(3) which is important gives power to the Regional Transport Authority to 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, having regard to matter mentioned in sub s. (1). Section 48 then provides that subject to the provisions of s. 47, the Regional Transport Authority may, on an application made to it under s. 46, grant a stage carriage permit in accordance with the application or with such modification as it deems fit or refuse to grant such a permit and also provides, subject to rules, for conditions that may be attached to a permit. Section 57 provides for the procedure in applying for and granting permits. Section 64 provides for an appeal from certain orders passed by the Regional Transport Authority within prescribed time and in the prescribed manner to the prescribed authority. Then comes s. 64-A, as inserted by the Bihar Amendment Act providing for revision by the State Government.

It will be clear from this scheme of the Act that the main section for the grant of a stage carriage permit is s. 48 and in passing an order granting or refusing to grant a stage carriage permit, the Regional Transport Authority has to act subject to the provisions of s. 47. Section 57 is a procedural section and provides for the procedure in applying for and granting permits. The power of the

Regional Transport Authority to grant stage carriage permits is to be found in s. 48 and that power is subject to the provisions of s. 47. Section 47(1) lays down matters for which the Regional transport Authority shall have regard when considering an application far a stage carriage permit and s. 47(3) gives power to the said authority having regard to the matters mentioned in sub-s. (1) to limit the number to 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. 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. Section 57(2) shows that an application for permit may be made at any time not less than six weeks before the date on which it is desired that the permit shall take effect or if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates. All applications, whether received one way or the other, have to be dealt with in the manner provided by s. 57 and the final order for grant of stage carriage permit has to be passed under s. 48. But, at that stage, as we have already pointed out, the Regional Transport Authority is only considering whether the applications made before it are to be granted or not and has to choose between various applicants where there are more applicants than the number of vacancies which might have been advertised or there are more applicants that the number limited under s. 47(3). The scheme of the Act therefore is that a limit is fixed under s. 47(3) and the applications received are dealt with in the manner provided by s. 57 and permits can be granted under s. 48 subject to the limit fixed under s. 47(3).

Further, it will be clear from s. 64 that the appeal there contemplated is by a person who is aggrieved by various orders specified therein. Section 64 clearly does not contemplate any appeal from an order under s. 47(3) limiting the number of stage carriages generally etc. for that order being a general order cannot be a ground for grievance to any individual who may have the right of appeal under s. 64. Therefore, when the Appellate Authority deals with an appeal under s. 64 it is not sitting in appeal on the general order passed under s. 47(3) and has to deal with the same matters with the Regional Transport authority dealt with under s. 41, namely, to choose between various applicants in the matter of grant of permits. Further, when under s. 64-A of the Bihar Amendment Act an application is made to it, the State Government can call for the record of any proceeding taken under Chap. IV by any authority or officer subordinate to it and pass such order in relation to the case as deems fit.

It may be mentioned that s. 64-A as it now stands in the Act is very different from s. 64-A as inserted by the Bihar Amendment Act and there is no power in the State Government now to act

under the present s. 64-A. A question may very well arise whether s. 64-A as inserted by Central Act No. 100 of 1956 has by necessary implication repealed s. 64-A as inserted by the Bihar Amendment Act. As the proceedings in the present case began in 1957 Central Act 100 of 1956 would apply to these proceedings and therefore if s. 64-A as inserted by the Bihar Amendment Act is repealed by necessary implication by s. 64-A as inserted by Central Act 100 of 1956, there would be no power in the State Government to revise the order of the Appellate Authority after 1956. However, we need not consider this matter further, as it was never raised in the High Court and shall proceed on the assumption that s. 64-A of the Bihar Amendment Act applied.

Further, it is not necessary in the present case to decide whether under s. 64-A as inserted by Central Act 100 of 1956 it was open to the State Transport Authority to vary a general order passed under s. 47(3); we are here dealing with a revision based on an application made under s. 64-A, as inserted by the Bihar Amendment Act, by a person who was aggrieved by the order of the Appellate Authority under s. 64. In such a case we are of opinion that the power of the revisional authority is confined only to considering matters which the Regional Transport Authority and the Appellate Authority could have considered under s. 48 and s. 64. We have already pointed out that under s. 48 the Regional Transport Authority is to choose between various applicants in the matter of granting permits or refusing to grant permits and under s. 64 the power of the Appellate Authority is also limited to the same function on an appeal by a person aggrieved as provided therein. Therefore, when a revisional authority is dealing with an application under s. 64-A by a person who is aggrieved by an order under s. 64, it is also confined within the same limits within which the Appellate Authority acting under s. 64 and the Regional Transport Authority acting under s. 48 are confined. This was the view taken by this Court in Ram Gopal's case [[1960] 3 S.C.R. 764.] and the same view has been reiterated in A.S.T. Arunachalam Pillai v. Messrs. Southern Roadways (Private) Limited [[1959] Supp. 2 S.C.R. 692.], where it was pointed out that though the words "as it deems fit" in s. 64-A are wide in expression, they do not mean that the State Government can pass any order when exercising revisional authority which the authority whose orders the Government is revising has no authority to pass. The argument on behalf of the appellant is that the Regional Transport Authority undoubtedly has the power to revise a general order passed under s. 47(3) and therefore the revisional authority when acting under s. 64-A would have power to go beyond the limits fixed under s. 47(3) and grant a permit even in excess of the number fixed under s. 47(3). There is a fallacy in our opinion in this argument. It is true that the Regional Transport Authority has the power to revise the limit fixed by it under s. 47(3) but that power to revise the limit in our opinion is not under s. 48, when it is dealing with the question of grant or refusal of permits to individuals. Section 48 is always subject to the provisions of s. 47 and therefore must be subject to the limits which may be fixed under s. 47(3). The power to revise the limits under s. 47(3) in the Regional Transport Authority must not be confused with the powers which it has when it is dealing with the grant or refusal of permits under s. 48. Therefore, though it is true that the Regional Transport Authority can revise the general order passed by it under s. 47(3), that revision is a separate power in the authority and not a power arising when it is dealing with individual permits. Therefore, when an appeal is taken from an order under s. 48 and a revision is taken by an aggrieved person under s. 64-A, the power of the Appellate Authority as well as of the revisional authority is as much subject to s. 47(3) as the power of the Regional Transport Authority under s. 48. This means that the Appellate Authority as well as the revisional authority under s. 64-A when dealing with an appeal or a revision of an aggrieved person with respect to grant or refusal of permits must act in the same manner as the Regional Transport Authority and its order will be subject to the same restriction (namely, that it must act subject to the provisions of s. 47) and if there is a limit fixed by the Regional Transport Authority under s. 47(3) that limit will apply equally to

the Appellate Authority under s. 64 and to the revisional Authority under s. 64-A, when the revisional authority is dealing with the matter on an application by an aggrieved person. In the present case, the Regional Transport Authority was dealing with certain applications made to it on its advertisement for two vacancies on the route concerned and had to choose between a large number of applications who had applied for the two permits. It made a certain choice and passed an order under s. 48. There were then appeals to the Appellate Authority which made a modification in the orders passed by the Regional Transport Authority; but both these authorities proceeded on the basis that there were only two permits to be issued, that being the number fixed under s. 47(3). Then there was a revision under the Bihar Amendment Act by one of the aggrieved persons, the grant of permit to whom had been set aside by the Appellate Authority. In such a case the revisional authority acting under s. 64-A could only consider the question as to which persons should be chosen and could not go beyond the limits fixed under s. 47(3) by the Regional Transport Authority and increase the number of permits to be issued from two to three.

We may in this connection refer to the proviso to s. 57(3) introduced in 1956 which lays down that where limits have been fixed under s. 47(3) the Regional Transport Authority may summarily refuse applications for permit if the result of granting permits on such application would be to increase the number of vehicles beyond the limit fixed under s. 47(3). This shows that the power under s. 48 read with the procedure under s. 57 is to be exercised within the limits fixed under s. 47(3) and it is not necessary for the Regional Transport Authority even to go through the procedure provided under s. 57, if the vehicles operating on a particular route are already equal to the number limited under s. 47(3). This also shows how an order under s. 48 read with s. 57 is subject to the provisions of s. 47(3) and how when dealing with an application for permit under s. 48 read with s. 57, the Regional Transport Authority is to act within the limits prescribed under s. 47(3) and the order under s. 47(3) is not open to modification when the Regional Transport Authority is acting under s. 48 read with s. 57, though as we have said, it may be revised at any time by the Regional Transport Authority if it properly comes to the conclusion that revision is necessary in view of factors specified in s. 47(1).

We therefore agree with the High Court 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 within 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).

It is further contended on behalf of the appellant that there were no limits fixed by the Regional Transport Authority and therefore it was open to the State Government to increase the number of permits from two or three. Now the usual manner in which a Regional Transport Authority can fix a limit under s. 47(3) is by a resolution. Similarly it can vary those limits by another resolution. It is urged that there is no proof on the record that there was any such resolution under s. 47(3) by the Regional Transport Authority in this case. It is true that there is nothing on the record to prove that there was any resolution as such by the Regional Transport Authority in this case limiting the number of stage carriages on this ratio to two. But the High Court has held that the number can be deemed to have been fixed in view of the advertisement issued by the Regional Transport Authority calling for applications for two vacancies. This view of the High Court is however strenuously challenged on behalf of the appellant. It may be conceded that it may not be generally possible to conclude from the number of vacancies shown in an advertisement of this kind that that is the number fixed under s. 47(3) by the Regional Transport Authority. There is, however, in our opinion, one exceptions to this general rule, and that is when a new route is being advertised for the first

time. It is not disputed that in this case a new route was being advertised for the first time and the advertisement said that there were two vacancies for which applications were invited. In the case of a new route it is clear that the Regional Transport Authority must have come to some conclusion as to the number of stage carriages which were to be permitted to operate on that route and the advertisement would only be issued on behalf of the Regional Transport Authority calling for applications for the number so fixed. Therefore when it is a case of a new route which is being open for the first time and an advertisement is issued calling for applications for such a new route specifying the number of vacancies for it, we think, it is reasonable to infer that when the number of vacancies was specified that shows the limit which must have been decided upon by the Regional Transport Authority under s. 47(3); otherwise, it is impossible to understand in the case of a new route why the advertisement was only for two vacancies and not (say) for four or six. The very fact that in the case of a new route opened for the first time, the advertisement mentions two vacancies shows that the Regional Transport Authority must have decided before issuing the advertisement that on that route the number of stage carriages will be limited to two under s. 47(3). This is also the inference which the High Court has drawn in this connection, though it has not specifically mentioned the fact that this was a case of a new route opened for the first time. As we have said above, such an inference from the advertisement would be justified in the case of a new route which is opened for the first time. Where the advertisement is with respect to an old route the fact that the advertisement mentions a particular number of vacancies would not necessarily mean that that was the number fixed under s. 47(3), for the number fixed may be much more and there may be only a few vacancies because a few permits has expired. Therefore, in the circumstances of this case we are of opinion that it will be legitimate to infer as it was a new route opened for the first time that when the advertisement was made for only two vacancies, that was because the Regional Transport Authority had already decided to limit the number of state carriages on this route only to two under s. 47(3). Once this is held, it follows that under s. 48, the Regional Transport Authority could not grant more than two permits and therefore the Appellate Authority also could not grant more permits under s. 64; nor could the revisional authority on an application made to it by an aggrieved person grant more permits. We have already said that it is not necessary to decide in this case whether it would be open otherwise to the revisional authority under s. 64-A as inserted by Central Act 100 of 1956 to revise a general order of the Regional Transport Authority passed under s. 47(3). We are in the present case concerned only with a case where an order passed under s. 48 by the Regional Transport Authority has been taken in appeal by an aggrieved person to the Appellate Authority under s. 64 and thereafter the order of the Appellate Authority has been taken in revision by an aggrieved person under s. 64-A as inserted by the Bihar Amendment Act and in such a case the limit fixed under s. 47(3) would bind the Regional Transport Authority, the Appellate Authority as well as the revisional authority and they cannot issue permits beyond the limits fixed under s. 47(3). We are therefore of opinion that the High Court was right on the facts of this case in holding that the State Government had no power to increase the number of permits which had been fixed at two by the Regional Transport Authority under s. 47(3) to three on the application of an aggrieved person under s. 64-A arising from a proceeding before the Regional Transport Authority under s. 48 and the Appellate Authority under s. 64.

We may point out that there has been a difference of opinion between various High Courts on this question. The Rajasthan High Court in The Automobile Transport (Rajasthan) v. Shri Nahtu Ram Mirdha [I.L.R. (1959) Raj. 120.] has taken one view and the Allahabad High Court in Mohammad Luqman Sharif v. State Transport Authority [A.I.R. (1961) All. 342.] has taken the contrary view. The Rajasthan High Court held, dealing with s. 48(a) of the Act (as it was before the amendment of 1956) which is similar to s. 47(3) after the amendment, that under s. (48)(a) as it stood before the

amendment, limiting of the number of stage carriages on any specific route did not make the order of the Regional Transport Authority a final decision binding on the appellate authority. The Allahabad High Court on the other hand held that when an order limiting the number of stage carriages had been passed under s. 48(a) as it was before the amendment of 1956, there could be no appeal against that order under s. 64 and therefore the Appellate Authority on an appeal under s. 64 could not refix the number of stage carriages in respect of that route. We are of opinion, in view of what we have said above and in the light of the limitations which we have indicated above, that the view of the Allahabad High Court is correct.

Lastly, it is argued on behalf of the appellant that respondent No. 1 who filed the writ petition in the High Court had no locus standi. We are of opinion that there is no force in this contention. Respondent No. 1 was contending in the High Court that he should have been granted a permit and not the appellant. Therefore he had locus standi to file the writ petition and it was during the consideration of that writ petition that the point on which the appellant has lost, arose.

We therefore dismiss the appeal with costs to respondent No. 2 (Sudhakar Sharma) as he alone supported the construction of the High Court on the question of jurisdiction.

Appeal dismissed.

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