

Kishanchand Narsinghdas Bhatia

Vs

State Transport Appellate Authority & Others

Civil Appeal No. 740 of 1968

(CJI M. Hidayatullah, R. S. Bachawat, C. A. Vaidialingam, A. N. Grover, K. S. Hegde JJ)

28.03.1968

JUDGMENT

GROVER, J.-

This appeal by special leave is from the judgment of the High Court of Madhya Pradesh dismissing a petition filed under Arts. 266 & 227 of the Constitution challenging an order made by the State Transport Appellate Authority in respect of a stage carriage permit for the route, Digthan-Indore via Ghata Billod.

The appellant had applied for renewal of his stage carriage permit for that route. Respondent No. 3 and another person of the name of Balwantrao Gaikwad and the Madhya Pradesh Road Transport Corporation filed applications for grant of a fresh permit for the same route. As the application of Balwantrao Gaikwad was not ripe for hearing and the Corporation withdrew its application, the Regional Transport Authority considered the rival claims of the appellant and respondent No. 3. The latter made an offer at the hearing that he would run an air-cooled 1965 model vehicle. The Transport Authority, however, took the view that the offer had been made by way of a competitive bid. In its opinion both the applicants were at par in the matter of coverage and adverse remarks, but the appellant was superior in experience and provision of facilities for passengers. The permit of the appellant was renewed for a period of three years from the date of its expiry on the existing terms. Respondent No. 3 preferred an appeal under s. 64 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) which was disposed of by the State Transport Appellate Authority. The Appellate Authority gave weight to the fact that whereas respondent No. 3 had offered to run an air-cooled vehicle of 1965 model, no such offer had been made by the appellant who was operating the route with a vehicle of 1957 model. It further found that the appellant had not been running the bus on the kachha portion of the road during the rainy season in the years 1962 and 1963. This was taken to amount to "adverse record of considerable significance" against the appellant. The Appellate Authority therefore decided that respondent No. 3 was entitled to the grant of the permit as against the renewal of the permit in favour of the appellant. It made a direction that a permit be issued to respondent No. 3 for a period of three years provided he put into service an air-cooled vehicle within four months.

The appellant moved the High Court by means of a writ petition. It appears from the order of the Division Bench that the following points were pressed on behalf of the appellant : (1) Respondent No. 3 had not applied for the grant of a fresh permit for the same route for which renewal had been applied for by the appellant. (2) The Appellate Authority had taken into account an extraneous consideration when it regarded respondent No. 3's offer of operating an air-cooled bus as giving material superiority. (3) The finding that the appellant had been guilty of non-maintenance having

not operated service on the kachha section of the route during the rainy season for two years was not well-founded. (4) The Appellate Authority did not give due weight to all the relevant considerations.

The High Court found that the Appellate Authority had rightly regarded the application of respondent No. 3 as one made for the same route and that the offer of operating an air-cooled bus was a perfectly relevant consideration and could not be regarded as extraneous vide : *Samrathmal v. State Transport Appellate Authority & Ors* [C.A. 503 of 1965 decided on 25th August 1965.]. It was further of the opinion that the Appellate Authority had rightly not accepted the explanation of the appellant that the kachha section of the route was not operable during the rainy season, because respondent No. 3, who held a permit for Indore-Digthan route (which was the same as the Digthan-Indore route), had maintained the service even during the rainy season without finding it risky to do so. The High Court repelled the last contention raised before it by relying on *Sri Rama Vilas Service (P) Ltd. v. C. Chandrasekaran & Others* [[1964] 5 S.C.R. 869.] according to which it was for the Transport Authority to appreciate how public interest would be best served and in doing so it was entitled to take the view that one consideration was more likely to effectuate it than the other.

Mrs. S. V. Gupte for respondent No. 3 sought to ask for revocation of the special leave on the ground that it had been obtained by a mis-statement of material facts, but it was altogether unnecessary to go into that matter as this appeal cannot succeed for other reasons.

Mr. M. C. Chagla for the appellant laid a great deal of emphasis on the acquisition of a vehicle of 1966 model by the appellant after the renewal of his permit had been ordered by the Regional Transport Authority. It was pointed out that respondent No. 3 had been hitherto running a vehicle of 1957 model and had only made an offer to put into service an air-cooled 1965 model vehicle at the time of hearing. According to Mr. Chagla the 1966 model vehicle would have been equally, if not more, convenient and serviceable and it was wholly unjust to deprive the appellant of the permit which he had held for the past several years. He further sought to attack the finding of the Appellate Authority about the adverse record of the appellant and the route for which the application for the permit had been made by the contending parties. Finally, he forcefully raised the question whether under the second proviso to sub-s. (2) of s. 58 of the Act, the appellant was entitled to preference in the matter of renewal on the facts established in the present case. According to him the appellant's permit should have been renewed, although it was open to the Authority concerned to impose a condition under cl. (ix) of sub-s. (3) of s. 48 of the Act that the appellant should acquire an air-cooled bus within a specified period. It was maintained that the High Court failed to approach a consideration of the case by keeping in view the aforesaid provisions of the Act which were of material consequence. It may be mentioned that the second proviso to sub-s. (2) of s. 58 of the Act is to the effect that other conditions being equal an application for renewal shall be given preference over new applications for permits. According to sub-s. (3)(ix) of s. 48 of the Act the Regional Transport Authority while granting the permit may attach the condition, among other conditions, that vehicles of specified types fitted with bodies conforming to approved specifications shall be used.

It is significant that the acquisition of a 1966 model bus by the appellant found no mention in the order of the Appellate Authority which would show that either that fact was not brought to its notice or was not stressed before it. The findings or conclusions on questions of fact could hardly be re-examined or disturbed by the High Court since the decision rendered by the appropriate authority under the Act could not be interfered with under Art. 226 unless the well-recognised tests in that behalf were satisfied vide : *Sri Ram Vilas Service* [[1964] 5 S.C.R. 869.].

The other question which according to Mr. Chagla is of wide importance and relates to the scope and ambit of the second proviso to s. 58(2) of the Act does not appear to have been canvassed before the High Court and has not been raised in an appropriate manner in the petition for special leave and even in the additional grounds sought to be introduced by means of Civil Misc. Petition No. 934 of 1968. We did not permit Mr. Chagla to address us at any length on the point.

In cases of the present kind this Court would be naturally 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.

The present case has not been shown to contain any such infirmity as would justify interference under Art. 136 of the Constitution. The limitation on the exercise of power under the Article cannot be defined with any precision; but as observed in *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal* [[1955] 1 S.C.R. 941.] the power being of an exceptional and overriding nature it has to be exercised sparingly and with caution and only in special and extraordinary situations. It is well-known by now that this Court will not decide a matter brought before it by special leave as if it were an appeal court and examine or review findings of fact unless it can be shown that they are perverse or are such as are shocking to judicial conscience or the like, the paramount consideration always being the perpetuation of justice.

For all these reason, this appeal must fail and is dismissed with costs.

Appeal dismissed.##

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