Jeewan Nath Wahal and Others

Vs

Sheik Mahfooz Jan and Others

Civil Appeal No. 1278 Of 1969

(J.M. Shelat, C.A. Vaidialingam, I.D. Dua JJ)

08.09.1969

JUDGMENT

SHELAT, J. –

1. The question arising in this appeal, by certificate, may be stated thus :

> When an applicant applies for a permit to run a passenger but 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 Section 48 of the Motor Vehicles Act, 4 of 1939 and is, therefore, appealable under Section 64(a) of that Act ?

2. The route involved in this case was the one between Meerut and Dankaur which had no direct passenger bus service. There were, however, two routes which were being operated, namely, one from Meerut to Bulandshahar 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., following the procedure laid down in Section 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.

3. 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 :

> "To pronounce decision regarding recognition and classification of Meerut 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 Section 64(a), and that consequently, 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 Section 64(a), and accordingly, allowed the writ petitions and quashed the Tribunal's order. This appeal is directed against this order.

4. 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 a particular route proposed by an applicant should be opened or not. It was argued that the provisions of Chapter IV, and in particular Sections 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 Sections 48 and is appealable under Section 64(a). The rival contention, on the other hand, was that Section 47(3), which 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 Section 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 Section 48, and it is against an order under that section that an appeal under Section 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.

5. 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 (1963 (3) SCR 523) the question was whether the Bihar Government acting under Section 64-A, as amended by the Bihar Amendment Act, 1950, has 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 Section 47(3) was concerned with a "general order" limiting stage carriages on a consideration of matters specified in Section 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 Section 48 read with Section 57, for, at that stage what the R.T.A. has to do is to choose between various applicants who may have applied under Section 46. The Court held that is not the stage when the "general order" passed under Section 47(3) can be reconsidered, for, the order under Section 48 is subject to Section 47 including the provisions of Section 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 Section 64 is by a person who is aggrieved by the orders specified therein and does not contemplate any appeal against "the general order" passed under Section 47(3). On this view of Section 47, it was lastly held that when an appeal is taken from an order under Section 48 and a revision is applied for under Section 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 Section 47(3) as the power of the R.T.A. under

Section 48, i.e., it cannot grant a permit beyond the limit already decided upon under Section 47(3). In M/s. Jaya Ram Motor Service v. S. Rajarathinam, (CA 95 of 1965, decided on October 27, 1967) 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 Section 64(a) against such rejection. Following the decision in Abdul Mateen's case (supra) we held that :

> "the authority had already resolved to introduce a new bus route and invited applications for a permit under Section 57(2). It could not doubt have acted under Section 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 Section 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 Section 47(3) and therefore cannot be said to be in consonance with Section 47 as required by Section 48(1). The order was not one under Section 47(3) but under Section 48(1) refusing thereby the applications including those of the appellant and the respondents and was therefore subject to an appeal under Section 64(a)."

6. 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 (supra) and the case of Jaya Ram Motor Service case (supra) were cases where the R.T.A. had first decided to introduce a new route and had then invited applications. On the other hand, in R. Obliswami Naidu v. The Addl. State Transport Appellate Tribunal, Madras (CA 1426 of 1968, decided on February 17, 1969) 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 to such a new route, and then having come to such a decision proceed 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 Section 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 Section 47(3), if read by itself, did not throw light on the question, Sections 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 Section 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 Section 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.

7. 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 (supra) under Section 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 Section 48 read with Section 57 as to who amongst 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 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 Section 47(3), in respect of which the individual applicants are not concerned with and is anterior to the stage under Section 48 when applications of the individual operators are taken into consideration, and therefore, no appealable under Section 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 in necessary or not, is not an equally "general order" with which individual applicants are not concerned, and can appeal against it under Sections 64(a).

8. 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 Section 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.

9. In our view the Division Bench of the High Court correctly interpreted Sections 47, 48, 57 and 64, and the decisions of this Court in Abdul Mateen's case (supra) and the case of Jaya Ram Motor Service (supra). The appeal, consequently, must fail and has to be dismissed. The appellants will pay to the respondents the costs of this appeal.

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