The Maharashtra State Road Transport Corporation

Vs

Babu Goverdhan Regular Motor Service and Others

Civil Appeal No. 1297 of 1968

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

10.09.1969

JUDGMENT

VAIDIALINGAM, J. –

1. The appellant, the State Corporation, constituted under the Road Transport Corporation Act (LXIV of 1950), challenges in this appeal, by special leave, the order of the Nagpur Bench of the Bombay High Court, dated October 5, 1967, in Special Civil Application No. 770 of 1967.

2. The appellant, as well as Respondents 1 to 5 and 8 to 16, applied to the Regional Transport Authority, Nagpur, on various dates in the years 1964-65, under Section 46 of the Motor Vehicles act, 1939 (Act IV of 1939), (hereinafter called the Act), for grant of stage carriage permits on the routes (a) Chanda to Chimur; (b) Arni to Manora; (c) Sakoli to Lakhandur; (d) Gondkheri to Kalmeshwar; and (e) Chanda to Rajura. The appellant's applications in respect of routes (a) and (c) were for additional trips and timings, Regarding (b), (d) and (e), the appellant's applications were for grant of permits over the new routes opened for the first time. The applications were notified by the Regional Transport Authority under Section 57(3) of the Act. The appellant and the other applicants filed objections and representations against each other's applications. The Regional Transport Authority, after considering the applications and objections and hearing the parties, passed orders granting the permits in favour of the appellant, in respect of all the routes. The order in respect of route (a) was passed on May 18, 1965, for routes (b) and (c) on August 19, 1965, for route (d) on October 9, 1965, and for route (e) on October 30, 1965.

3. Respondents 1 to 5, filed appeals before the Appellate Committee of the Transport Authority of Maharashtra, challenging the grant of permits in favour of the appellant and rejecting their respective applications. Their appeals were Nos. 64, 82, 84, 106 and 114, all of 1965. Respondents 8 to 16 do not seem to have filed any appeals. All the appeals were heard and disposed of by the Appellate Committee by a common order, dated June 9, 1966.

4. Before the Appellate Committee Respondents 1 to 5 raised a contention that the mandatory information required to be submitted in an application for permit under Section 46 of the Act, read with Form P. St. S.A., prescribed under Rule 80 of the relevant rules, have not been fully and completely furnished by the appellant in its application. They also filed an affidavit pointing out what, according to them, were the details of information that should have been furnished by the appellant. The Appellate Committee, after noting that the appellant herein represented that the major items of information, as required under Section 46 and the relevant form, had been given in the application, has expressed the view that information regarding certain other matters, as provided in the form of application, had not been provided by the State Corporation, and in consequence there

was a major defect in its application and that the other operators had no opportunity to properly object and contest the claim of the State Corporation. In this view the Appellate Committee remanded the matter to the Regional Transport Authority for reconsideration with a direction that the State Corporation should be asked to furnish complete information and, after receipt of such information in the prescribed form, they must be duly published and an opportunity afforded to the Respondents 1 to 5 herein to be duly heard by way of objection and that the entire matter be re-heard and decided afresh.

5. Respondents 1 to 5 challenged this order of the Appellate Committee before the Nagpur Bench of the Bombay High Court in Special Civil Appeal No. 770 of 1966, under Articles 226 and 227 of the Constitution. They contended before the High Court that the Appellate Committee should have rejected the application of the State Corporation on the ground that the mandatory provisions of Section 46 of the Act had not been complied with. They also urged that the application, filed by the State Corporation, inasmuch as it lacked information on vital matters, as provided in Section 46 of the Act, read with the form prescribed, could not be considered to be an application under the Act and, as such, it did not deserve to be considered at all. The order of the Appellate Committee really amounted to allowing the appellant to convert a defective application so as to bring it in conformity with the provisions of the Act and the form, which is not permissible in law.

6. Though the appellant pleaded that all the necessary particulars had been furnished in its application and that even in respect of all matters on which further information was called for, had already been furnished and that the authorities had jurisdiction to call for any additional information that may be necessary for a proper consideration and disposal of the applications filed by the parties, the High Court, in the order under attack, has taken the view that there has been no proper compliance, by the State Corporation, with regard to the matters dealt with, particularly in Columns 10, 14 and 15 of the prescribed form, viz., the application for permit. The High Court is of the view that the information furnished by the appellant, under those headings, cannot be considered to be either sufficient or adequate. The High Court has taken the view that withholding of information on vital points, constitutes a defect in the application of the appellant and that creates considerable difficulty to the authorities in considering the claim for grant of a permit. It is also of the view that the Act does not, either expressly or impliedly, give power to either the Regional Transport Authority or the Appellate Committee to give an opportunity to an erring applicant to furnish additional or further particulars so as to convert a defective application into a proper application. The High Court is also of the view that the provisions of Section 46 of the Act, read with Section 48, cast a mandatory duty upon an applicant, applying for a permit, to give the particulars required in the several clauses of Section 46. If the required particulars are not given, it is of the view of the High Court that such applications are not applications within the meaning of Section 46 and the rules and therefore are liable to be rejected. In the end the High Court has held that after the application filed by the State Corporation had been held to be defective, the Appellate Committee had no jurisdiction to give the State Corporation a fresh opportunity to furnish additional particulars and, in that view, set aside the order of the Appellate Committee. The High Court, in consequence, remanded the appeals to the Appellate Committee, directing the latter to reconsider, on the materials already on record, the applications of all parties excepting that of the State Corporation and to decide the question of grant of permits between the rival parties afresh. The appellant has come up to this Court, against this order of the High Court.

7. Mr. Gupte, learned counsel for the appellant, apart from contending that the High Court was in error in interfering in a writ petition with the order of the Appellate Committee when exercising jurisdiction under Articles 226 and 227, has raised substantially two contentions : (1) That the form

prescribed by the State Government, in this case, for an application for permit, has gone beyond the rule-making power of the State Government under Section 68 of the Act. (2) That the provisions of Section 46 of the Act are not mandatory and there is no jurisdiction in the authorities functioning under the Act to reject an application summarily on the ground that the application is not in conformity with the Act or the rules framed thereunder.

8. It is not necessary for us to reiterate the nature of the jurisdiction exercised by a High Court under Article 226 or Article 227. Under Article 226 the High Court has power to quash an order when the error committed by a Tribunal or Authority is one of law and that is apparent on the face of the record. Similary the powers of judicial supervision of a High Court under Article 227 of the Constitution are not greater than those under Article 226 and must be limited to seeing that the Tribunal functions within the limits of its authority (vide : Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam). ((1958) SCR 1240). In this case, as we have already pointed out, the High Court has taken the view that the application filed by the appellant, for lack of the necessary particulars provided in the form prescribed, cannot be considered to be an application under the Act and in respect of such an application, the authorities have no jurisdiction to deal with. It is really the correctness of this view expressed by the High Court that arises for consideration. Since the impugned order of the Appellate Committee was challenged on the ground of lack of jurisdiction, it is not possible to hold that the High Court could not have entertained the writ petition.

9. Mr. B. R. L. Iyengar, learned counsel for the contesting respondents, has urged that in order that an application filed by a party may be considered by the authorities charged with the duty of granting permits, the essential condition precedent is that the application must conform to the requirements of the statute - in this case the Act. Section 46 of the Act provides various matters in respect of which an applicant will have to give full and detailed particulars. Over and above the requirements contained in clauses (a) to (e) of the said section, any other matter that may be prescribed by the rules framed under the Act, by virtue of clause (f) of Section 46 will have also to be properly and fully dealt with by an applicant. By virtue of the rule-making powers under Section 68 of the Act, the State Government have framed the Bombay Motor Vehicles Rules, 1959 (hereinafter referred to as the rules); and Rule 80(1) provides that every application for a permit in respect of a transport vehicle, including a private service vehicle, is to be in one of the forms mentioned therein. The appropriate form with which this Court is concerned now is the Form P. St. S.A. in respect of Item 2. The form deals with various items, some of which may be covered by clauses (a) to (d) and others are over and above these particulars. The object underlying the Act, of an applicant being called upon to give the necessary particulars in respect of these matters, is obvious, viz., that the other applicants and the various other interested persons will be able to know the nature of the claim made by a particular applicant and either make suitable representations against the same or file objections. The High Court's view, counsel points out, that the absence of particulars in this case, in respect of Items 10, 14 and 15 in the form is a non-compliance with the Act and is no application under the Act, is correct. Therefore, counsel urged that the Appellate Committee's order allowing the appellant to, so to say, amend the application, by giving additional particulars, was properly set aside by the High Court.

10. Mr. Bindra, appearing for the State, while supporting the appellant that the Appellate Committee, in this case, acted within its jurisdiction in calling for particulars, urged that the form prescribed under the rules was perfectly valid and is not beyond the rule-making power of the State Government.

11. The scheme of the Act has been considered in several decisions of this Court and we do not propose to cover the ground over again. Chapter IV containing Sections 42 to 68, deals with control of transport vehicles. Section 42 emphasises the necessity for permits. Section 45 deals with the various authorities to whom the application for permits, in the circumstances stated therein, is to be made. Section 46 provides that an application for a permit shall as far as may be, 'contain' the particulars mentioned in clauses (a) to (f). Clauses (a) to (e) deal with certain definite particulars, but clause (f) refers to 'such other matters as may be prescribed'. Section 2(21) defines the expression 'prescribed' to mean 'prescribed by rules made under the Act'. Therefore it will be seen that an application for a permit, apart from containing the particulars referred to in clauses (a) to (e) of Section 46, must also contain, under clause (f) such other matters as may be prescribed. We will come to the rule-making power a little later. Section 47 provides for the various matters to be taken into account by the Regional Transport Authority in considering an application for a stage carriage permit. That section also provides for taking into consideration any representation made by certain other parties referred to therein. Sub-section (2) gives power to a Regional Transport Authority to refuse to grant a permit if from any time table furnished it appears that the provisions of the Act relating to the speed at which vehicles may be driven are likely to be contravened; but the proviso to this sub-section casts a duty on the authority to give an opportunity to the applicant to amend the time table before such refusal. Sub-section (3) gives power to a Regional Transport Authority to limit the number of stage carriages in a region or in any specified area or in any specified route within the region. Section 48 empowers the Regional Transport Authority, on an application made to it under Section 46, to grant a stage carriage permit, subject to the provisions of Section 47, in accordance with the application or with such modifications as it deems fit. It also gives the authority power to refuse to grant such a permit. Section 57 deals with the procedure in applying for and granting permits. Sub-section (3) provides for the Regional Transport Authority making available an application for a permit for inspection as its office and also publish the application in the prescribed manner inviting representations within the period mentioned therein. The proviso to sub-section (3) gives power to the authority concerned to summarily refuse the application without following the procedure laid down in sub-section (3), in the circumstances mentioned therein. Sub-sections (4), (5) and (6) read together, deal with the consideration of the representation received from a party and disposal of an application for a permit at a public hearing in which an applicant and a person who had made a representation are given an opportunity of being heard. Sub-section (7) casts a duty on the Regional Transport Authority, when refusing an application for permit, to give in writing to the applicant concerned, its reasons for the refusal. Section 68(1) gives power to the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV. Sub-section (2) enumerates the various matters in respect of which rules can be framed without prejudice to the generality of the power contained in sub-section (1). Clause (c) of sub-section (2) deals with the 'forms to be used for the purposes of this Chapter, including the forms of permits'. The State Government has framed the rules.

12. Rule 80(1) provides that every application for a permit in respect of a transport vehicle, including a private service vehicle shall be in one of the enumerated forms and the forms are mentioned as items (i) to (x). Item (ii) deals with a permit in respect of a service of stage carriages and the form prescribed is Form P. St. S.A. Sub-rule (2) provides that the application shall be addressed to the Regional Transport Authority or to the Regional Transport Officer, as the case may be and accompanied by the fee prescribed by Rule 84. In this case we are concerned with the Form P. St. S.A. It is seen from the judgment of the High Court that a copy of an application filed by the appellant in respect of the route Arni to Manora has been filed and it has been directed to form part of the record of the case. The Form P. St. S.A. provides for nearly 22 items in respect of which a

party has to fill up particulars. The particulars governed by Item 4 may be related to Section 46(a), those of Items 5 and 7 to Section 46(b), Items 6 and 8 to Section 46(c), Item 10 to Section 46(d) and Items 11, 12, 13 to Section 46(e). Over and above these particulars, the form provides several other matters on which information has to be given. The ground on which the High Court has regarded the application of the appellant as invalid is that the application did not give full and detailed particulars in respect of Items 10, 14 and 15.

13. We will now refer to the relevant entries in the application made by the appellant regarding the route Arni to Manora in respect of Columns 10, 14 and 15 and also the answers given by the appellant :

> "10. Number of vehicles kept in reserve to maintain the service regularly and to provide for special occasions :-
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> Nagpur Division which will operate this/these route (s) holds 470 vehicles against 376 scheduled to be operated by that Division. Thus there will be 94 vehicles in reserve to maintain the services regularly and to provide for special occasions.
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14. Particulars of any stage or contract carriage permit valid in the State held by the applicant :-

P. St. S. 4/61, 5/61, 6/61, 7/61, 8/61, 9/61, 10/61, 13/61, 39/63, 40/63, 63/63 etc.

15. Particulars of any permit held by the applicant in respect of the use of any transport vehicle in any other State :-

P. St. S. 4/52, 4/53, 7/59, 1/60, 63/63 etc."

According to the High Court, the information given by the appellant is not sufficient and, that especially in respect of Columns 14 and 15 the applicant has not given exhaustively the list of the permits owned by it.

14. We are not inclined to accept the contention of Mr. Gupte that the form prescribed, requiring the furnishing of information on the various particulars and matters referred to therein is beyond the rule-making power of the Government.

15. Section 46, as we have already pointed out, requires information to be given by an applicant for permit not only in respect of 'all the particulars' enumerated under clauses (a) to (e), but also under clause (f). He has to give information on such other matters as may be prescribed and 'prescribed' as defined in Section 2(21), means 'prescribed by rules made under the Act'. Section 68 to which we have already referred, gives power to the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV and also, without prejudice to the generality of this power, to make rules in respect of the various matters mentioned in sub-section (2). Clause (c) of sub-section (2) specifically gives power to prescribe the form to be used for the purpose of Chapter IV, including the form of permits. Therefore, an application filed by a party for a permit must, at any rate, substantially conform to the requirements of Section 46, as well as to the form framed under the rule-making power of the State Government. We have already pointed out that Rule 80 provides that every application for permit should be in the appropriate form mentioned therein. Therefore Section 46, the relevant rule and the form prescribed, have to be read together, and so

read it follows that an applicant for a permit must comply, at any rate, substantially with the various matters mentioned therein. It must be borne in mind that Section 68 is not controlled by Section 46 of the Act. In fact it specifically enables the State Government to make rules for the purpose of carrying into effect the provisions of the Chapter. The Chapter itself, we have mentioned, is entitled 'Control of Transport Vehicles' and if, with a view to carrying into effect the object of control of transport vehicles, the form requires information on various matters over and above those enumerated in clauses (a) to (d) of Section 46, it cannot be stated that the State Government has acted beyond its rule-making powers when prescribing such a form. The form so prescribed, in our opinion, forms an integral part of Rule 80 which the State Government is authorised to make, under Section 68 of the Act. Therefore, we are not inclined to accept the contention of Mr. Gupte that the matters enumerated in a form provided by a rule framed under the rule-making power of the State Government cannot be considered to be 'such other matters as may be prescribed under Section 46(f)'. The further contention that in order to treat the matter as one prescribed under Section 46(f), it must have been enumerated as such in a rule framed under the Act, has also to be rejected. Even otherwise, we have already pointed out that Section 68 is not controlled by Section 46, in which case also it follows that the form prescribed by the State Government, by virtue of a rule framed under its rule-making powers, must be considered to be valid.

16. Mr. Gupte, drew our attention to the decision of the Mysore High Court in Narayana v. S.T. Authority. (AIR 1960 Mys 33 : ILR 1959 Mys 384). One of the questions that arose for consideration in that decision was whether an application for a permit under the Act can be considered to be defective when it did not deal with certain matters provided in a form prescribed under Rule 156 of the rules framed by the State of Madras under the Act. The High Court held that such an application has to be considered to be defective and observed :

> "It is true that if by a rule properly made by the State, it was provided that further particulars in addition to those referred to in clauses (a) to (e) of Section 46, should be furnished in the application, these particulars should have to be so furnished as directed by Section 46(f). But no such rule made by the State was pointed out to us. What the State did under Rule 156 was to merely prescribe the form in which an application should be made, although that form contained columns which referred to many matters not specified in Section 46.
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> That rule, which was made under Section 68(2)(c) of the Act prescribed only a form. It did not prescribe any particulars. That being the position, those additional matters for which columns were provided in the form prescribed by it cannot merely for that reason, claim the status of particulars prescribed by rules under the Act, and cannot, therefore, be regarded as particulars referred to in Section 46(f) of the Act."

17. We are not inclined to agree with this reasoning of the learned Judges of the Mysore High Court. We have already held that the form prescribed by the State Government under the rules becomes part of the rule itself, which the State Government is competent to frame. Therefore, the contention of Mr. Gupte that in prescribing the form the State Government has exceeded its rule-making power, cannot be accepted. The further question that arises for consideration, is as to whether the view of the High Court that the application of the appellant is defective and liable to be dismissed inasmuch as Columns 10, 14 and 15 in the application form have not been properly filled up, is correct. Here again, we are not inclined to agree with the reasoning of the High Court that under such circumstances the application filed by the appellant cannot be treated to be an application under the Act. It is needless to state that an applicant must furnish full and complete information that is within

his knowledge or possession, in his application for the grant of a permit. The scheme of the Act is quite clear, viz., that an applicant must have a proper permit for operating transport services. To obtain that permit, certain formalities and procedure have to be gone through. Apart from the other applicants having an opportunity to make representations or objections to the claim made by a particular applicant, certain other persons and authorities, as will be seen under Section 57(3), have been given a right to make representations. Such filing of objections or making of representations can be effective only if an applicant gives all the information which is in its power or control. The expression, 'as far as may be', occuring in Section 46 of the Act, must only mean that an applicant must give information on the various particulars and matters referred to in Section 46, in so far as those requirements apply to him and in respect of which it is possible to give information. In the absence of the expression 'as far as may be' in the old Section 46 of the Act, the Mysore High Court, in two of its decisions C.K.M. Services v. Mys. Revenue Board (AIR 1960 Mys 72) and Sethuramachar v. Hirannayya (AIR 1960 Mys 90) has taken the view that the provisions in Section 46 must be considered to be mandatory and non-compliance with those provisions will mean that there is no proper and valid application under the Act and that an authority would be justified in rejecting the same. In Sethuramachar's case the High Court has indicated that in the section, as it now stands, the position may be different.

18. The Madhya Pradesh High Court in an unreported decision in S.H. Motor Transport Company v. The State Transport Appellate Authority (Misc. Petition No. 6 of 1969, decided on 3-3-1969) (a certified copy of which has been given to us), has held that when an applicant does not give some information on certain particulars required under Section 46, it must be understood that he does not intend to do the necessary things as mentioned therein. In our opinion, the matter has to be approached from a slightly different angle, viz., whether the authorities have got the power to reject an application summarily if it does not contain information on any matter or particulars referred to in the form. We are unable to find any provision in the statute giving a power to the transport authorities to reject an application summarily on that ground; but, we have already emphasized that the application must give the necessary information on the various particulars and matters enumerated in the form prescribed for such purpose. It is to the interest of the applicant himself to give full and clear information because he stands the risk of the permit not being granted to him for lack of information on certain matters. But this is quite a different thing from the power of the authority to reject an application forthwith on the ground that the application is defective. The only provision where such a power to reject summarily is given is under the proviso to Section 57(3). Under this proviso, the Regional Transport Authority, without following the procedure of publishing an application and inviting objections can summarily refuse the application in the circumstances mentioned therein. No doubt it may be asked that if an application lacks information on very vital matters, the whole object of publishing the same and inviting objections could not be achieved because the parties entitled to make objections and representations cannot effectively make the same. But, as we have already pointed out, it is really in the interest of the applicant himself to give the information as far as it lies within his power, on all matters. What the High Court has done in this case, was really to reject the application of the appellant summarily, a power which even the Transport Authority does not, in our opinion, have under the Act. Probably the statute did not give power to an authority to reject an application summarily in cases not coming within the proviso to Section 57(3) because when considering an application for grant of permit on merits, it may be open to the Regional Transport Authority, after giving reasons, under Section 57(7), to refuse the application for permit. In such a case, as the Regional Transport Authority is bound to give reasons, the sufficiency and validity of the reasons given may also be canvassed before the appellate authority in an appeal under Section 64 of the Act. But all this can be done only at the time of

considering the grant of permit on merits, and not at an earlier stage, and the refusal to grant the permit will be not on the ground that the application is defective, but on the ground that the particulars or information and other matters given in the permit do not enable the Regional Transport Authority to take the view that a particular applicant's claims are superior to those of others.

19. The question can also be considered from another point of view. Section 47 makes it obligatory on a Regional Transport Authority, in considering an application for stage carriage permit, to have regard to the various matters mentioned therein. One of the matters about which regard must be had is contained in clause (e) viz., 'the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending'. In respect of Item 10, in our opinion, the answer given by the appellant appears to be fairly satisfactory. In respect of Items 14 and 15, the High Court's view appears to be that over and above the number of permits mentioned therein, the appellant should have given an exhaustive list of the other permits held by it in the State under Item 14 or in any other State, under Item 15. The Transport Authorities, in our opinion, would be acting within their jurisdiction when they take into account the matter governed by clause (e) of Section 47(1) in calling upon a party to give more complete details, and give an opportunity to the other parties before it to state their objections. That is exactly what had been directed to be done by the Appellate Committee when it sent back the proceedings to the Regional Transport Authority.

20. In this view, it follows that the order of the High Court treating the appellant's applications as invalid and excluding them from the consideration of the Transport Authority, is not warranted by the provisions of the Act. The result is that the order of the High Court, dated October 5, 1967, is set aside and that of the Appellate Committee, dated June 9, 1966, is restored. Respondents 1 to 3 and 5 will pay the costs of the appellant.

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