

Maharashtra State Road Transport Corporation

Vs

State Transport Authority and Another

Civil Appeal No. 353 of 1967

(K. S. Hegde, A. N. Grover, G. K. Mitter JJ)

05.04.1972

JUDGMENT

HEGDE, J. -

1. The appellant is a State Transport Corporation constituted under the Road Transport Corporation Act, 1950. It is carrying on the business of Motor Transport in the State of Maharashtra. By its notification No. 2309-P-I-NGR-RTA-65, dated March 18, 1965, the Regional Transport Authority, Nagpur, invited applications for three trips in the route Malegaon Selubazar. This was a new route. The appellant, respondent No. 2 and others applied for the route in question. The R.T.A. accepted the application of the appellant and granted permit in respect of all the three trips on the route, to the appellant. Aggrieved by the decision of the R.T.A. respondent No. 2 went up in appeal to Appellate Committee of the Transport Authority of Maharashtra State. In its appeal the only contention taken was that the R.T.A. erred in granting permit in respect of all the three trips in favour of the appellant and it should have granted the permits in question to it, viz. respondent No. 2. The Appellate Committee in a brief order came to the conclusion that though the respondent No. 2's record is unblemished the appellant "being a larger operator will be able to offer a superior type of service with a headquarter at the starting point of the route". In view of that conclusion it confirmed the grant made in favour of the appellant but strangely enough at the same time directed the grant of a permit to respondent No. 2 for the two new trips in the same route. As against that decision the appellant moved the High Court of Maharashtra under Article 226 of the Constitution. The application of the appellant was summarily dismissed. As against that order this appeal has been brought after obtaining special leave from this Court.

2. The only question for consideration in this appeal is whether there is error of law apparent in the Appellate Committee's order. It may be noted that the R.T.A. had fixed under Section 47(3) of the Motor Vehicles Act, 1939 only three trips in respect of the route in question. It may again be mentioned that the route in question was a new route. Respondent No. 2 had not objected to the fixation of the trips. The only question before the Appellate Committee was whether the permit in respect of all the three trips should have been given in favour of the appellant or in favour of the respondent. But the Appellate Committee after deciding that question, proceeded to direct the R.T.A. to grant a permit to respondent No. 2 for two trips in the route in question. It was not within the competence of the Appellate Committee to give that direction. Apart from that fact the question whether there was need for additional buses in that route was not before the Appellate Committee. Hence that Committee was not competent to go into that question. It was so decided by two decisions of this Court, viz. Abdul Mateen v. Ram Kailash Pandey, ((1963) 3 SCR 523 : AIR 1963 SC 64) and Mohd. Ibrahim v. State Transport Appellate Tribunal, Madras. ((1971) 1 SCR 474 : (1970) 2 SCC 233). In both those decisions this Court ruled that where a limit has been fixed under

section 47(3) by the Regional Transport Authority, and thereafter the said authority proceeds to consider applications for permits under Section 48 read with Section 57, the Regional Transport Authority must confine the number of permits issued by it to 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 Section 47(3). This Court further ruled that even the State Government cannot pass any order when exercising revisional authority which the authority whose orders the Government is revising, has no authority to pass. In view of these decisions we must hold that the Appellate Committee was not competent to make the impugned order.

3. Mr. E. C. Agrawala learned counsel for the respondent No. 2 urged that the R.T.A. had not fixed the number of permits but had merely fixed the number of trips. This is an argument which has merely to be stated to be rejected, Section 47(3) of the Act does not refer to number of permits but it refers to number of stage carriages. It may be that the R.T.A. may give a single permit for more than one carriage or one permit for each carriage. That is merely a matter of procedure. The next contention of Mr. Agrawala was that the fixation of the number of trips made by the R.T.A. was illegal. No such contention was taken before the Appellate Committee. Therefore that contention cannot be entertained for the first time in this Court.

4. For the reasons mentioned hereinbefore this appeal is allowed. The summary dismissal made by the High Court is set aside and the order made by the Appellate Committee granting permits to the respondent No. 2 is also set aside. In the result the order of the R.T.A. is restored. No costs.

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