

Rattan Lal Gupta and Others

Vs

Shri Suraj Bhan and Others

Suraj Bhan

Vs

The State Transport Authority and Others

Harish Chandra and Others

Vs

The State Transport Appellate Tribunal and Others

Messrs. Bhumarg Yatayat

Vs

The State Transport Tribunal, U. P. and Others

Civil Appeals Nos. 1592-1595

(S. N. Dwivedi, P. Jagmohan Reddy, P. K. Goswami JJ)

29.11.1973

JUDGMENT

GOSWAMI, J. –

1. There are three groups of appeals with certificate directed against the judgment of the Allahabad High Court of September 30, 1969. The first group (Civil Appeals Nos. 1592-1595 of 1971) is by Rattan Lal Gupta, Uma Sharma, Sewa Ram, Dharam Das Agarwal, Land lines Pvt. Ltd., Smt Kusum Lata and Tribhuvan Kumar, the last two being the widow and son of Madan Mohan Lal, deceased. The second group (civil Appeals Nos. 1628-1631 of 1971) is by Suraj Bhan (in Civil Appeal No. 1628 of 1971) and others. The third group (Civil Appeals Nos. 1634-1639 of 1971) is by Harish Chandra Mahendra Kumar Tayal, Shanti Swarup Jain, Mitranand Kaushik, Baru Mal Agarwal, Guru Prasad, Richpal Singh and Bhagwan Singh Sambhi. There are also two special Leave Petitions Nos. 3094-3095 of 1971 which have not been admitted but by an order of this Court dated February 7, 1972, the petitioners were allowed to intervene in these appeals.

The facts relating to the appeals have got to be narrated in some detail. On October 13, 1950, a route for stage carriage permit described as Muzaffarnagar-Budhana-Kandhla (hereinafter the shorter route) was classified as 'B' class route and the strength of the permit was fixed at 17. On July 18, 1958, the Regional Transport Authority (briefly RTA) Meerut decided to extend the route from 17 to 25 under Section 47 (3) of the Motor Vehicles Act, 1939 (briefly the Act). As there were

already 17 permits in operation, the RTA on June 13, 1959, advertised for 8 vacancies in the shorter route and fixed July 27, 1959, as the last date for receiving the applications and it appears 1,117 applications were received. The State Transport Appellate Tribunal (briefly STA) approved the extension of the route to Issapurteel on August 8, 1959. The applications which were received in response on the advertisement were published in the U.P. Gazette of September 15, 1962. There were some other application on June 16, 1963 including a second application of M. N. Kaushik. These were also published in the U.P. Gazette on June 16, 1963. Mohd. Ibrahim filed his objections to the applications published on September 15, 1962. He objected to the increase in the strength and to the route being wrongly described in the advertisement. On 2nd to 4th August, 1961, the RTA had decided that there was only one route up to Issapurteel and that applications presented either up to Kandhla or up to Issapurteel should be considered as presented for the entire route viz, the longer route. The RTA also held that Muzaffarnagar-Budhana-Kandhla route ceased to exist in 1958 by referring to its earlier resolution No. 71 of July 18, 1958 and that thereafter the only route survived was the longer route up to Issapurteel. It appears most of the existing permits for the shorter route were in the meantime converted into the longer route under section 57 (8) of the Act. Suraj Bhan's application for a permit was published on November 2, 1963. Meanwhile 7 renewal applications from the existing permit holders were received between November 4, 1963 and May 18, 1964, in anticipation of expiry of their permits. The appellants in the first group objected to these renewals and prayed for grant of fresh permits to them for the longer route. On June 13, 1964, their objections to the renewals as well as those for fresh permits were published in the Gazette. On July 4, 1964, some more applications were published for the longer route were published on July 1, 1961; twenty-seven on June 15, 1963 and two on November 2, 1963. Mohd. Ibrahim and his union of the existing operators objected to these applications. On 28th and 29th August, 1964, the RTA considered only 11 renewal applications and 12 fresh applications and other applications were not even up before the RTA. The RTA ordered renewal of 11 permits and rejected the objection to the renewal of the appellants in the first group as well as their applications for fresh permits. The ground given was that none of the objectors and 12 applicants for fresh permits and rejected the objection to the renewal of the appellants for fresh permits had turned up. The appellants in the first group appealed to the STA impleading 8 out of the 11 renewed permit holders. The STA by its order dated November 10, 1964, set aside the order of the RTA dated 28th/29th August, 1964. Four writ petition were filed in 1964 against the order of STA dated November 10, 1964. The appellants in the third group had applied for permits on the shorter route. Certain persons had objected to their applications on the ground that the shorter had ceased to exist. On May 6-8, 1968, their objections were overruled and the RTA granted 8 permits to the said appellants. This order was upheld by the STA on August 29, 1967. There were 19 other writ petitions of 1967 and 1968 before the High Court which were also heard together. Of these five petitions were directed against the order of the STA of August 29, 1967. Seven petitions were directed against the orders of both the RTA and of the STA made respectively on 6th to 8th May, 1965 [item 30 (a)] and on 29th August, 1967. Seven more petitions were directed against the orders of the RTA of 6th to 8th May, 1965 [item (c)] and of the STA of August 29, 1967.

With reference to the first group of writ petitions, the High Court held that the strength of 25 had not been fixed by the RTA for the longer route. It further held that the grant of six permits forthwith on the longer route was illegal that since the number of applicants for permits on this route were in excess of the number of permits which could be granted no grant could be made without first fixing the strength of the longer route. The High Court, therefore, set aside of the STA dated November 10, 1964. It also at the same time set aside the part of the order of the RTA of August 28/29, 1964 by which their applications for fresh permits had also been rejected. The High Court also quashed

the orders of the RTA and STA dated May 6-8, 1965 and August 29, 1967 respectively. The High Court further observed that "until the shorter and the longer routes were held on legally relevant considerations to be separate for purposes of granting permits, all the pending applications whether for the extended or unextended route should have been taken up together". Since this was not done by the RTA nor by the STA, the orders of both were "vitiating by patent illegality as regards applications for fresh permits". The High Court also noted that it was admitted by all parties that the strength of 25 had been fixed for the unextended route and that no strength of the extended route had been fixed at all. That being the position, following the decisions of this Court in *R. Obilaswami Naidu V. Transport Appellate Tribunal, Madras and Messrs. Jaya Ram Motor Service v. S. Rajarathinan*, the High Court held that without fixing the strength first on the longer route permits could not be granted for it. On the question of routes, the High Court observed that the RTA should have first decided whether there were two routes or one route and then fixed the strength of the route or routes or one route and that not having so done, in accordance with law, there was no proper disposal of the applications for permits. The High Court further pointed out that the reduction of the strength of 25 to 9 in the shorter route in the manner done by the RTA was illegal. The High Court finally decided as follows :

"In our opinion the applications of all the petitioners and the contesting opposite parties could be properly considered by the Transport Authorities only after deciding the following questions on relevant considerations contained in Section 47 (1) of the Act : (a) Whether it is necessary to notionally separate the whole into two overlapping routes for the purposes of granting permits ?

(b) What should be the strength of the whole route, or, if it is decided to fix two routes, one within the other, the respective strengths of the two routes ?"

The High Court gave also other appropriate directions in the decision.

4. The learned Counsel, Mr. Yogeshwar Prasad, at first made some submissions with regard to abatement of the writ applications before the High Court on account of non-substitution of the heirs and legal representatives of deceased, Madan Mohan Lal. But he finally did not press the same. The learned Counsel, however, submitted that there was no defect or lack of jurisdiction in the order of the STA to merit interference by the High Court. He further submitted that the strength of the longer route was fixed and the longer route was in existence and the STA was perfectly justified in granting the permits by their order of November 10, 1964.

5. Mr. Garg, on the other hand, submitted that there was a shorter route and its strength was rightly reduced to none and the nine permits were validly granted. His further contention is that in the absence of the strength being fixed for the longer route and of consideration of all the applications for the longer route, grant of permits to Rattan Lal Gupta and others was bad. Mr. Goyal drew our attention to the fact that in the absence of special orders of this Court his client was granted permits by the RTA

It has been Held in *Mohd. Ibrahim etc, V. State transport Appellate Tribunal, Madras, etc.*, following the earlier decisions in *Abdul Mateen v. Ram Kailash Pandey, Messrs. Jaya Ram Motor Service (supra)*, *Baluram v. State Transport Appellate Authority, M.P.*, and *R. Obilaswami Naidu (supra)*, as follows :

"The next question which falls for determination is the point of time when a Regional

Transport Authority will under Section 47 (3) of the Act fix the limit of number of stage carriage permits. This Court in Abdul Mateen's case said that the general order by the Regional Transport Authority under Section 47 (3) of the Act in regard to the limit number of stage carriage permits can be modified only by the Regional Transport Authority when exercising the jurisdiction under Section 47 (3) of the Act. The regional Transport Authority while acting under Section 48 of the Act in regard to the grant of permits has no jurisdiction and authority to modify any order passed by the Regional Transport Authority under Section 47 (3) of the Act. In other words, the limit fixed by the Regional Transport Authority under Section 47 (3) of the Act, cannot be altered by the Regional Transport Authority at the time of grant of permits. It is therefore, established that the determination of limit of grant of permits is to be made before the grant of permits. That is why Section 47 of the Act' meaning thereby that the jurisdiction of the Regional Transport Authority to grant permits is subject to the determination of the limit of number of permits under Section 47 (3) of the Act, this Court stated the legal position in Messrs. Jaya Ram Motor Service's case and said 'it is therefore clear the authority has first to fix the limit and after having done so consider the application or the representations in connection therewith in accordance with the procedure laid down in Section 57 of the Act. Again in the case whether the Regional Transport Authority could allow an operator who happened to apply first to be in a commanding position with the result that the Regional Transport Authority would have no opportunity to choose between competing operators and public interest might suffer. In the same case it is again said that the determination of the number of stage carriages for which stage carriage permits may be granted for the route is to be done first and thereafter applications for permits are to be entertained".

7. AS the RTA had not fixed the number of permits for the longer route, we agree with the High Court that the grant of permits for the longer route is invalid. But the legal position in regard to the grant of permits on the shorter routes is different. Admittedly, on March 23, 1959, the RTA had fixed the number of permits for this route at 25. As 17 permits had already been granted, the RTA invited applications for eight vacancies on June 13, 1959. So the strength was fixed long before the invitation of applications for permits. It is true that at one stage the RTA had taken the view that the shorter route had merged in the longer route; but later it rectified the mistake and held that the shorter route and the longer route existed separately. We think that the second view of the RTA was correct in the then prevailing circumstances. On July 18, 1958, the RTA resolved that "Muzaffarnagar-Budhana-Kandhla route be extended to Gangeru-Issupurteel" The extension was made under the U.P. Motor Vehicles Taxation Act. At no time the RTA had taken a decision for abolishing the shorter route. In its meeting on August 2-4, 1961, the RTA upheld the objection that the shorter route had ceased to exist. The RTA said, "Originally Muzaffarnagar-Budhana-Kandhla was the name of the route. Subsequently about six miles of Kachcha route was considered motorable and then the RTA On July 18, 1958 declared that Muzaffarnagar-Budhana-Kandhla route be extended up to Issupurteel. After this decision the Muzaffarnagar-Budhana-Kandhla route could not have separate existence but was merged in the longer route". As already pointed out, a decision to extend the shorter route to a longer distance under the Motor Vehicles Taxation Act will not automatically merge the shorter route in the longer route. For that purpose it was necessary for the RTA to take an independent decision under the Motor Vehicles Act. But no such decision was taken. The RTA realised the mistake and rectified it in its meeting on May 6-8, 1965. The RTA then decided : "We have considered the entire matter carefully and have persued all earlier resolutions of the RTA. WE are of the opinion that Muzaffarnagar-Budhana-Kandhla (the shorter route) still exists

with a strength of 25 stage carriages and that the shorter route and the longer route are separate routes. Even after the approval of the longer route by the STA, the RTA had offered permits to displaced operators on the shorter route". WE think that this resolution states the correct position.

8. It may be mentioned at this place that in August meeting the RTA reduced the Strength of shorter route from 25 to 9, that could not be done. In the result, there would remain eight vacancies on the shorter route for which the RTA had already invited applications. So the RTA could validly grant eight permits to the appellants in the third group. The STA rightly affirmed the decision of the RTA. The High Court, in our view, was not right in quashing the grant of permits to the appellants in the third group.

9. In the result, the appeals in the first and second groups are dismissed. The appeals in the third group are allowed and the judgment of the High Court qua these appeals is set aside. The permits granted to the appellants in the third group of appeals, if already cancelled in pursuance of the order of the High Court, will be resorted to them. Shri Garg Counsel for the Appellants, has given an undertaking that the appellants will surrender permits granted to them for the longer route. The Special Leave Petitions Nos. 3094 and 3095 of 1971 are admitted, and the appeals arising out of them are dismissed. Parties will bear their own costs.

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