

M/S. Gajendra Transport (P.) Ltd.

Vs

The Anamallais Bus Transport (P.) Ltd. and Another

Civil Appeal No. 1484 of 1970

(K. K. Mathew, P. N. Bhagwati, N. L. Untwalia JJ)

11.12.1974

JUDGMENT

BHAGWATI, J. -

1. This appeal, brought by special leave, relates to grant of a stage carriage permit for the route Pollachi to Tiruppur via Kamaickenpalayam and Palladam in Coimbatore District. It appears that a traffic survey had been conducted during the period from June 1, 1966 to July 15, 1966, on various routes in Coimbatore District and it was found as a result of this traffic survey that the load on the route Pollachi to Tiruppur via Kamaickenpalayam and Palladam was heavy and it was, therefore, decided to introduce one more bus on this route. The Regional Transport Authority accordingly issued a notification under Section 57, sub-section (2) of the Motor Vehicles Act, 1939 inviting applications for the grant of a stage carriage permit for one additional bus on this route. There were forty-two applications received in response to this invitation. The Regional Transport Authority considered these applications as also the representations received in connection with them and by an order, dated November 4, 1967, granted a stage carriage permit to the appellant to ply an additional bus on the route. The first respondent being aggrieved by the refusal of the Regional Transport Authority to grant a stage carriage permit to him preferred an appeal to the Additional State Transport Appellate Tribunal under Section 64(1)(a) of the Act. At the hearing of the appeal, the first respondent raised, for the first time, a contention that the Regional Transport Authority had no jurisdiction to proceed with consideration of the applications under Section 48(1) read with Section 57(3), since no prior order limiting the number of stage carriages for which permits might be granted on the route was made under Section 47(3). The Tribunal allowed this contention to be raised, though it had not been taken before the Regional Transport Authority, and taking the view that it was well founded, held that no valid order limiting the number of stage carriages for which permits might be granted on the route had been made by the Regional Transport Authority under Section 47(3) before considering the applications and representations in connection therewith and the order made by the Regional Transport Authority granting stage carriage permit to the appellant was, therefore, without jurisdiction. On this view, the Tribunal by an order, dated June 11, 1968, allowed the appeal of the first respondent and setting aside the order of the Regional Transport Authority granting stage carriage permit to the appellant, remitted the matter to the Regional Transport Authority "for being proceeded with in accordance with law". The appellant challenged the validity of this order made by the Tribunal by a petition filed under Article 226 of the Constitution in the High Court of Madras. The petition came up for admission before a Single Judge of the Madras High Court who summarily rejected the petition. This led to the filing of a letters patent appeal before a Division Bench of the Madras High Court. The Division Bench considered various decisions of this Court and held that it was not competent to the Regional Transport Authority to exercise the power to grant stage carriage permit under Section 48(1) read with Section

57(3) without first fixing the limit of the number of stage carriages for which permits might be granted on the route under Section 47(3) and since in the present case there was no order under Section 47(3) and since in the present case there was no order under Section 47(3), the Regional Transport Authority had no power to grant stage carriage permit under Section 48(1) read with Section 57(3) and the order granting stage carriage permit to the appellant was bad as rightly held by the Tribunal. The Division Bench accordingly upheld the order passed by the Tribunal and dismissed the appeal. The appellant thereafter preferred the present appeal after obtaining special leave from this Court.

2. The question arising in this appeal lies in a narrow compass and stand concluded by a recent decision of this Court in *Mohd. Ibrahim v. State Transport Appellate Tribunal, Madras* ((1971) 1 SCR 474 : (1970) 2 SCC 233). This decision was given in a batch of appeals against the judgments of the Madras High Court in similar cases where the same Division Bench, which decided the appeal in the present case, took the view that since there was no valid order made by the Regional Transport Authority under Section 47(3) prior to the grant of stage carriage permits, the orders of the Regional Transport Authority granting such stage carriage permits to one or the other applicants were invalid. This Court, speaking through Ray, J., as he then was, after referring to the earlier decisions of the Court, stated the law on the subject in the following terms :

This Court in *Abdul Mateen's case* ((1963) 3 SCR 523 : AIR 1963 SC 64) said that the general Order by the Regional Transport Authority under Section 47(3) of the Act in regard to the limit of 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 number of permits is to be made before the grant of permits. That is why Section 48 of the Act is prefaced with the words "Subject to the provisions of 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 *Jaya Ram Motor Service's case* (C.A. No. of 1965, decided on October 27, 1967) and said "it is therefore clear that 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 of *R. Obliswami Naidu* ((1969) 3 SCR 730 : (1969) 1 SCC 733) this Court considered the submission in that case as whether the Regional Transport Authority could decide the number of permits while considering applications for permits. This Court did not accept the submission because such a view would 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.

The learned Judge then proceeded to add that the earlier decisions of the Court established two propositions, namely :

First, that the Regional Transport Authority should fix the limit of number of stage carriage permits under Section 47(3) of the Act and after having done so the Regional Transport Authority will

consider the application for grant and representations in connection therewith in accordance with the procedure laid down in Section 57 of the Act. Secondly, when a new route is opened for the first time and an advertisement is issued calling for applications for such a new route specifying the number of vacancies for it, it would be reasonable to hold that the number of vehicles is specified as the limit decided upon by the Regional Transport Authority.

and towards the end, the learned Judge pointed out that where the Regional Transport Authority issued a notification under Section 57(2) inviting applications for a permit on a new route or a permit for an additional bus on an existing route, it can reasonably be held that the Regional Transport Authority has arrived at a decision as to the limit of the number of permits a required under Section 47(3), because it is not the form but the substance of the order that has to be considered. It is in the light of this statement of the law that we must consider whether the Regional Transport Authority acted without jurisdiction in granting stage carriage permit to the appellant as found by the Tribunal and affirmed by the Division Bench of the Madras High court.

3. It appears from the order of the Tribunal that according to it the Regional Transport Authority did not fix or revise the number of stage carriages for which permits might be granted on the route before taking up the applications for consideration and it was only at the hearing of the applications that he decided the need for an additional bus on the route and that was in breach of the requirement of law. The Division Bench of the Madras High Court also took the view that "there was no order under Section 47(3) relevant to the route". But this finding that there was no order fixing the limit of the number of stage carriages for which permits might be granted on the route, is clearly erroneous. Paragraph 4 of the order of the Tribunal is very illuminating in this connection. It says :

The facts are that as can be seen at page 1 of the Regional Transport Authority's file a traffic survey had been conducted during the period from June 1, 1966 to July 15, 1966 on various bus routes in Coimbatore District, and the load factor on the route in question was found to be high and therefore it was proposed to introduce one more bus on this route. Applications were accordingly invited by means of the notification under Section 57(2) of the Motor Vehicles Act for the grant of a permit for one bus . . . .".

This statement in the order of the Tribunal clearly shows that before the notification under Section 57(2) was issued inviting applications for grant of a stage carriage permit for plying one additional bus on the route, a decision had already been taken by the Regional Transport Authority on the basis of the traffic survey conducted during the period from June 1, 1966 to July 15, 1966, that one additional bus should be introduced on the route. It is true that a formal order was not passed by the Regional Transport Authority revising the limit of the number of stage carriages by the addition of one more bus on the route but, as pointed out by this Court in *Mohd. Ibrahim v. State Transport Appellate Tribunal, Madras* (supra), "an order under Section 47(3) of the Act is not a matter of mere form but of substance". The decision of the Regional Transport Authority to introduce one more bus on the route must be regarded as an order under Section 47(3). It would also be reasonable to hold on the strength of the decision in *Mohd. Ibrahim v. State Transport Appellate Tribunal, Madras*, that since the notification under Section 57(2) was issued by the Regional Transport Authority inviting applications for grant of stage carriage permit for an additional bus on the route, it represented a determination of the Regional Transport Authority as to the limit of number of stage carriages on the route under Section 47(3). There was, thus, clearly a valid order under Section 47(3) fixing the limit of the number of stage carriages for which permits might be granted on the route before the applications were taken up for consideration and the order was made granting stage carriage permit to the appellant. The Tribunal was, therefore, not right in setting aside the order of the Regional

Transport Authority on the ground that there was no valid order under Section 47(3) and the Single Judge as well as the Division Bench of the Madras High court were also in error in confirming the order made by the Tribunal.

4. We, therefore, allow the appeal and set aside the order of the Tribunal and since the appeal preferred by the first respondent against the order of the Regional Transport Authority has not been heard on merits, we remit the matter to the Tribunal for hearing the appeal before it on merits. There will be no order as to costs.

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