

Ishwru Yatayat Co-Op. Society

Vs

State Transport Appellate Authority and Others

Civil Appeal No. 758 of 1971

(K.K.Mathew, A.N. Ray, V.V. Chandrachud JJ)

22.08.1975

JUDGMENT

MATHEW, J. -

1. This is an appeal, by special leave, from the judgment of the High Court of Madhya Pradesh at Jabalpur holding that the appellate was not entitled to the permit in question for the reason that the application for grant of permit was not maintainable in law.
2. The Regional Transport Authority, Indore, by a notification dated October 23, 1959 invited applications for two single trip permits for running stage carriage on Nagda-Indore and Indore-Nagda routes via Hingoria, Gautampura and Dapalpur. The appellant submitted an application for grant of permit on the Nagda-Indore route on November 11, 1959 and M/s. Jawahar Yatayat Co-operative society submitted its application on November 20, 1959 for Indore-Nagda route. One Smt. Akhtari Begum, now represented by respondent No. 3, submitted two applications, one for grant of permit on the Nagda-Indore route and the other for a permit on the Indore-Nagda route. One Jaiswal Transport Co-operative Society and a few others also applied for permits.
3. The Regional Transport Authority by its order dated February 27, 1961 granted two permits : one to the appellant and the other to M/s. Jawahar Yatayat Co-operative Society and rejected the other applications. Smt. Akhtari Begum, Jaiswal Transport Cooperative Society and two others filed separate appeals before the State Transport Appellate Authority (hereinafter called 'Appellate Authority'). The appellate authority by its order dated September 25, 1962 maintained the order of the Regional Transport Authority and dismissed the appeals.
4. Smt. Akhtari Begum and Jaiswal Transport Cooperative Society challenged the validity of the order in writ petitions before the High Court. The High Court quashed the order of the appellate authority and remanded the case for fresh disposal by that authority. Thereafter the appeals filed by Smt. Akhtari Begum and Jaiswal Transport Co-operative Society were heard, and the appellate authority by its order dated August 7, 1964 again dismissed the appeals and thus maintained the order passed by the Regional Transport Authority granting permits in favour of the appellant and M/s. Jawahar Yatayat Co-operative Society.
5. Smt. Akhtari Begum and M/s. Jaiswal Transpost Cooperative Society again filed separate writ petitions before the High Court challenging the order of the appellate authority. The High Court allowed the writ petitions and remanded the cases to the appellate authority for deciding both the appeals afresh. The appellate authority, by its order dated January 31, 1968 allowed the appeal filed by Smt. Akhtari Begum and set aside the order of the Regional Transport Authority granting

permits in favour of the appellant and M/s. Jawahar Yatayat Cooperative Society. Both the permits were ordered to be granted to Smt. Akhtari Begum.

6. The reasoning of the appellate authority was that the applications of the appellant and M/s. Jaiswal Transport Cooperative Society invalid as they were not registered as cooperative societies on the date on which the applications for permits were made the Regional Transport Authority and so the applications were not maintainable in law. Two writ petitions were filed before the High Court by the appellant as well as by M/s. Jawahar Yatayat Cooperative Society challenging the order. The High Court agreed with the conclusion of the appellate authority that the applications for grant of permits filed by the writ petitioners were not maintainable and dismissed the writ petitions by a common order.

7. The only question which falls for consideration in appeal is whether the view taken by the High Court that the application for permit was not maintainable as the appellant was not a registered cooperative society when the applications were considered were disposed of by the Regional Transport Authority, was correct.

8. It is no doubt true that in both the writ petitions filed by Smt. Akhtari Begum, no challenge was made to the grant of the permit in favour of the appellant for the reason that the application for permit was filed before the society was registered. But the plea was entertained and considered by the appellate authority without any objection by the appellant. In other words, the appellant never objected to the plea being raised and considered by the appellate authority. Nor did the appellant plead in the writ petition before the High court that it was not open to the appellate authority to entertain or consider this plea as it was not raised by Smt. Akhtari Begum before the appellate authority or the High Court at any previous stage of the proceeding. Even in the special leave petition, the appellant has not taken a ground that the plea was not available to the third respondent before the appellate authority and in the High Court as it was not raised by Smt. Akhtari Begum in the appeal filed by her before the appellate authority or in the writ petitions filed before the High Court. Therefore, we cannot allow the appellant to contend at this stage that the appellate authority and the High Court went wrong in entertaining the plea.

9. When the application for grant of permit was made, there was no registered cooperative society in existence. The appellant submitted that an application for the registration of the society was pending when the application for grant of permit was made. But that is a matter of no moment. Since no registered cooperative society was in existence on the date of the application for grant of permit, the application was not maintainable. The fact that the appellant was registered as a cooperative society before the date on which the Regional Transport Authority considered the applications for permits is also of no consequence as there was no valid application before the Regional Transport Authority. When an application for permit is filed by a person, it has to be published and objections invited. The objectors are free to file representations against the grant of permit to the applicant. Now, if an application for grant of permit is filed on behalf of a non-existent person, it is impossible for objectors to state the reasons for their objections. There was no certainty in this case that the application for registration would be granted and that the appellant would become a juristic person even when the objectors would have had to file the representations.

10. In *Kali Kinkar Kundu v. Sadhan Chandra Dey* (AIR 1971 Cal 171) the High Court of Calcutta had to consider the question whether an application for grant of permit could be filed on behalf of a company before it was incorporated. The Court held that the application was incompetent.

11. In Azad Hind Motor Transport Cooperative Society Ltd. v. State Transport Appellate Authority (Misc. Petition No. 489 of 1966 decided on November 17, 1966 by the High Court of Madhya Pradesh at Jabalpur (Unreported)) it was held by the High Court of Madhya Pradesh that until a cooperative society is registered, it has no juristic personality and so an application for grant of permit made by a person purporting to be on its behalf was not maintainable.

12. We think that, in principle, it stands to reason to hold that since the appellant was not a registered cooperative society on the date of the application for grant of the permit, there was no person in the eye of the law who could file a valid application under Section 46 of the Motor Vehicles Act for grant of a permit. The High Court was right in its view that the application for grant of permit to the appellant was not maintainable and in dismissing the writ petition.

13. We dismiss the appeal but in the circumstances without any order as to costs.

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