

Ikram Khan

Vs

The State Transport Appellate Tribunal and Others

Civil Appeal No. 874 of 1975

(Y.V. Chandrachud, P.K. Goswami JJ)

31.08.1976

JUDGMENT

GOSWAMI, J. -

1. The applicant and the respondents 3 and 4 were the former existing stage-carriage operators of Jaipur-Sainthal route which was nationalised on January 25, 1973. All of them applied for the grant of non-temporary stage-carriage permits of Jaipur-Padampura route as alternative route permits. The Regional Transport Authority, Jaipur (briefly the RTA) by its order of July 22, 1974, granted non-temporary permits to the appellant and respondent 4 and rejected the application of respondent 3. That led to an appeal to the State Transport Appellate Tribunal at Jaipur, Rajasthan, by respondent 3. The notice of appeal was served upon the appellant but since he did not appear the appeal was heard ex-parte and by its order dated December 17, 1974, the State Transport Appellate Tribunal set aside the order of the RTA and granted the permit in favour of respondent 3. The appellant filed a writ application under Article 226 of the Constitution before the Rajasthan High Court and the learned Single Judge by a rather long speaking order dismissed the same summarily. A further appeal by the appellant to the Division Bench met with the same fate. The High Court also refused to grant certificate to appeal to this Court. Hence this appeal by special leave.

2. Mr. Bhandare, the learned Counsel on behalf of the appellant submits that the order of the State Transport Appellate Tribunal (briefly the Tribunal) is invalid inasmuch as the appeal was heard in the absence of a proper notice of appeal as required under the law. He draws our attention to Rule 108(c) of the Rajasthan Motor Vehicles Rules, 1951. Which reads as follows :

Upon receipt of an appeal preferred in accordance with sub-rule (b) the Appeal Tribunal may appoint a date, time and place for hearing of the appeal giving the state Transport Authority, or the Regional Transport Authority, as the case may be, and the appellant not less than thirty days notice thereof.

3. Although the above rule does not contain any provision for service of notice on the respondent it is, however, implicit that a notice similar to one intended under the rule for service on the appellant must also be served on the respondent. Mr. Bhandare could not dispute the factual service of notice on the appellant in view of the tribunal's finding. He, however, submits that the notice which was served on the appellant did not recite the place for the hearing of the appeal although the date and time were noted therein. It is true that the tribunal could not, in law, hear the appeal without intimating the respondent about the date, time and place for hearing of the appeal but since the appellant had received the notice from the tribunal indicating the date and time for hearing of the appeal, the omission in the notice to describe the place where the appeal is to be heard is not fatal

enough to make the appeal proceeding invalid before the tribunal. The appellant admittedly, is a resident of state-carriage permit-holder and not a stranger to the office of the transport authorities. Besides, although the notice of the appeal fixed the date of hearing on October 8, 1974, the appeal was adjourned on that day to November 12, 1974 and it was only on December 12, 1974 that the final hearing of the appeal took place. It is, therefore, clear that the appellant was duly notified about the hearing of the appeal and in view of the fact that he did not make any effort to be present during this entire period, when the appeal was pending, he could not be allowed to take advantage of the mere omission of the place of hearing of the appeal in the notice. Beside, the RTA was present as provided for under Section 64(1) of the Motor Vehicles Act, 1939 (briefly the Act) before the tribunal to defend its own order. The submission of the appellant is, therefore, of no avail.

4. Mr. Bhandare next submits that the tribunal failed to comply with Section 47 of the Act and did not all consider the relevant matters (a) to (f) provided therein. It is well settled that in considering an application for a state-carriage permit the RTA shall have regard to the matters described in Section 47. Before we go to consider about the submission of the learned Counsel with reference to the order of the tribunal it is manifest, on the face of the order of the RTA, that that Authority, even at the first instance, did not make any reference to the relevant considerations under Section 47 of the Act. The only reason given by the RTA in rejecting the application of respondent 3 is that "there is no other vacancy". There is nothing to show that the case of respondent 3 was at all considered by the RTA on merits. The tribunal, on the other hand, has considered various aspects of the matter although without a reference to Section 47 as such. For example, the condition of the vehicles of the two parties was duly considered by the tribunal. The fact that the respondent 3 had a later model vehicle being 1965 model whereas the appellant had only a 1962 model vehicle tilted the balance in favour of the respondent 3. This aspect can well arise under clauses (a) and (b) of Section 47. We are unable to say that the relevant considerations under Section 47, on the facts and circumstances of the grant of the particular permit, were not kept in view by the tribunal in considering the whole matter and the Division Bench was justified in summarily rejecting the special appeal. The second submission of the learned Counsel also fails.

5. In the result the appeal is dismissed but we will make no order as to costs.

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