Sharif Ahmad and Others

Vs

Regional Transport Authority, Meerut and Others

Civil Appeal Nos. 1214 And 1292 of 1977

Mehar Chand Gupta

Vs

Regional Transport Authority, Meerut and Others

Civil Appeal No. 1293 Of 1977

Ram Murti Devi and Others

Vs

Regional Transport Authority, Meerut and Others

Civil Appeal No. 1342 of 1977

Sudharani Sharma and Others

Vs

Regional Transport Authority, Meerut and Others

Civil Appeal Nos. 1487, 1341 And 1412 of 1977

(N. L. Untwalia, P. K. Goswami JJ )

31.10.1977

JUDGMENT

UNTWALIA, J. -

1. In this batch of seven appeals by special leave the points involved are identical. It is a glaring example of unnecessary litigation between the various stage carriage operators, which could have been avoided if the State Government of Uttar Pradesh would not have come out with varying laws and oscillating policies. The facts of all the appeals are similar and common except in regard to the parties, routes in question, and some other consequential details. We proceed to state the facts from Civil Appeal 1214 of 1977 only.

2. Under Section 47(3) of the Motor Vehicles Act, 1939 - hereinafter to be referred to as the Central Act, the Regional Transport Authority, Meerut had limited the number of stage carriage permits to be thirty only for the rout Meerut-Rohta-Sinauli-Baraut. In or about the year 1971 an advertisement

was made calling for the applications to fill up eight vacancies, as twenty-two permits out of the limit of thirty having been already granted were operative and in force. In October, 1971 the Regional Transport Authority granted eight permits to the respondents in one appeal or the other. Fifty applicants who were not granted permits by the Regional Transport Authority filed appeals before the State Transport Appellate Tribunal (for brevity, hereinafter, the Appellate Tribunal) under Section 64 of the Central Act. While the said appeals were pending, The U.P. Motor Vehicles Amendment Ordinance 9 of 1972 was promulgated on March 16, 1972. It was replaced by the Motor Vehicles (Uttar Pradesh Amendment) Act, 1972 - U.P. Act 25 of 1972 - hereinafter called the U.P. Act of 1972. By the Ordinance followed by the Act aforesaid, Section 43A was inserted in the Central Act after Section 43 authorising the State Government to "issue such directions of a general character as it may consider necessary or expedient in the public interest in respect of any matter relating to road transport" to the various Transport Authorities. The object of the Act was to do away with the limit on the number on the number of permits to be granted for stage carriages. Sub-section (2) of Section 43-A, in particular, empowered the State Government in public interest to issue a direction by a notification in the Gazette to grant permits to all eligible applicants except in respect of routes or areas for which schemes had been published under Section 68C of the Central Act. Some amendments were brought about in Section 47 of the Central Act. But for the purposes of these appeals the one to be pin-pointed is the deletion of sub-section (3) from Section 47, the consequence of which was to delimit the number of permits to be granted for a particular route. On March 30, 1972, a notification was issued by the state Government under Section 43A(2) of the U.P. Act of 1972 directing the Transport Authorities to grant stage carriage permits to all the eligible applicants. Some of the stage carriage permit holders on various routes in U.P., including some of the respondents, challenged the validity of the U.P Ordinance followed by the U.P. Act of 1972 and the notification dated March 30, 1972 by filing writ petitions in the Allahabad High Court. The High Court dismissed their writ petitions. They came up in appeal to this Court. The appeals were dismissed and the constitutional validity of the impugned law and the notification was upheld by a Bench of four learned Judges including one of us (Goswami, J.). The decision of this Court is reported in Hans Raj Kehar v. The State of U.P. ((1975) 2 SCR 916 : AIR 1975 SC 389 : (1975) 1 SCC 40)

3. The decision of this Court was handed down on December 4, 1974. The appeals remained pending before the Appellate Tribunal because of this first round of litigation. Eventually the appeals were allowed on February 19, 1975 by the Appellate Tribunal and each one of the fifty applicants was granted one permit over and above the eight already granted by the Regional Transport Authority. Pursuant to the order of grant made by the Appellate Tribunal, permits were to be issued by the Regional Transport Authority if the grantee produced a fit vehicle, meaning thereby roadworthy vehicle, registered in his name by March 31, 1975 and if by the said date he filed an affidavit sworn by him before the Regional Transport Authority to the effect that he had not been convicted of any criminal offences under the Indian Penal Code during the preceding five years. The Appellate Tribunal, in its order, had further made it clear that the time fixed by it for the implementation of the order of grant was under no circumstances to be extended and if any of the applicants failed to comply with it, sanction of the permit in favour of the defaulting applicant was to stand automatically revoked. The appellants, however, complied with the order and fulfilled the conditions of the grant within time. But before permits could be actually issued, another round of litigation started at the instance of Rama Kant Ahluwalia and other who had been granted eight permits by the Regional Transport Authority as per its Resolution passed on October 29, 1971. They challenged the order of the Appellate tribunal by filing a writ petition in the High Court which was summarily dismissed on February 27, 1975. Three more writ petitions filed by some other operators

challenging the very same order of the Appellate Tribunal were also dismissed after hearing on September 10, 1975. It may be stated here at this stage that permits were not actually issued even though the High Court had vacated the stay orders sometime in June or July, 1975.

4. After the dismissal of the writ petitions by the High Court, came another notification issued by the State Government on September 24, 1975 under Section 43A of the U.P. Act of 1972 proposing to change their policy of granting permits to all eligible applicants. In the main, we shall be concerned in these appeals with the true meaning and effect of this notification the relevant portions of which will be quoted hereinafter. The notification of September 24, 1975 was considered by the Regional Transport Authority as putting a bar to the issuance of the permits. The appellants, therefore, filed Civil Miscellaneous Writ Petition 12238 of 1975 in the High Court challenging the notification as also the U.P. Ordinance 35 of 1975 which had been promulgated in the meantime on November 12, 1975. They prayed for an order or a writ of mandamus directing the Regional Transport Authority to issue the permits pursuant to the order dated February 19, 1975 of the Appellate tribunal. The writ petition was dismissed by a learned single judge of the High Court on February 12, 1975. The appellants went up in appeal under the letter patent. The appeals were dismissed by a Division Bench on March 31, 1976. Hence these appeals.

5. U.P. ordinance 35 of 1975 followed by Ordinance 9 of 1976 promulgated on February 16, 1976 was replaced by U.P Amendment Act 15 of 1976 which came into force on May 1. 1976, Although the Division Bench of the High Court has not rested its judgement, and in our opinion rightly, upon the Ordinance and U.P. Act of 1976, the learned single judge had done so. We shall briefly refer to the change of law brought about by the said Ordinance and the Act because the learned Solicitor General appearing for the State of Uttar Pradesh endeavoured to make some point out of it. So did the other counsel appearing for the operator respondents.

6. The main question, however, which falls for our determination in these appeals is as to whether the Regional Transport Authority failed to do its legal duty in refusing to issue the permits pursuant to the order of the Appellate Tribunal in view of the notification of the State Government issued on September 24, 1975 under Section 43A of the U.P. Act of 1972 and whether the High Court was right in not granting the writ asked for by the appellants.

7. The Appellate Tribunal in its order dated February 19, 1975 following the notification of the State Government issued on March 30, 1972 had ordered the grant of permits to all the applicants. The relevant words of the order are as follows :

> It would, therefore, appear to be reasonable that these appellants may also be granted one permit each on this route, if they can produce a fit vehicle within the given time and they can satisfy the RTA as to their antecedents, by means of an affidavit.

All the fifty appeals were allowed. The order of the Regional Transport Authority was set aside and the operative portion of the order was made in terms as mentioned below :

> Without disturbing the grant of permit in favour of the respondents, these 50 appellants will also be granted one regular stage carriage permit each on this route, provided they produce a fit vehicle duly registered in their own name by March 31, 1975, and during this period they also file their own personal affidavits before the RTA to this effect that they have not been convicted of any criminal offence under IPC during the last 5 years. This time for placing the vehicle and for filing the

> affidavits, will not be extended on any grounds, and if the compliance as above is not made in the given time, the sanction of the permit in favour of the defaulting appellants will automatically stand revoked.

8. In Kundur Rudrappa v. The Mysore Revenue Appellate Tribunal ((1976) 1 SCR 188 : (1975) 2 SCC 411) it was held by a Division Bench of this Court, to which both of us were parties, that appeal under Section 64 of the Central Act lies only against the grant of permit and not against the order issuing a permit made in pursuance of the order granting the permit."Issuance of the permit is only a ministerial act necessarily following the grant of the permit' was the distinction pointed out at page 190.

9. Then came the change of policy notification involving the parties in further litigation. The Preamble of this notification dated September 24, 1975 states that State Government is of opinion that the policy of granting such permits to all eligible applicants requires review and since such review was likely to take some time in the meantime it was necessary to stay "the disposal of all pending applications for permits for entertainment of fresh applications". The notification dated March 30, 1972 was rescinded with immediate effect by clause (1) and thereafter clause (2) provided :

> The consideration of applications for stage carriage permits pending with any Transport Authority shall stand postponed until further directions are issued in this behalf by the State Government.

10. The High Court thought that since permits had not been issued, they could not be issued because of the notification dated September 24, 1975. Although not in form, in substance, the High Court thought that the effect of the order of the Appellate Tribunal was to remand the cases to the Regional Transport Authority for granting permits to the appellants on being satisfied that the vehicles put by them were roadworthy and that their antecedents were not undesirable. In our judgement the High Court has fallen into an error in this regard. All the parties were agreed before us that clause (2) of the notification had not the effect of recalling, revoking or cancelling the permits which had been granted and issued pursuant to the notification dated March 30, 1972. It was also beyond any debate or doubt that if the applications for the grant of stage carriage permits were pending with any Transport Authority when the notification was issued it stood postponed until further direction were issued in this behalf by the State Government. But the scope for litigation and argument in these cases cropped up because they did not clearly and precisely fall in one line or the other. If on the special facts of these cases consideration of the applications could be taken to be pending with any Transport Authority then they had to remain pending until further directions were issued. But if, on the other hand, on a correct appreciation of legal position the applications had been finally disposed of by the order of the Appellate Tribunal and they were not pending for any consideration then they did not stand postponed and permits had to be issued pursuant to the order of the Appellate Tribunal. The Regional Transport Authority had no discretion or power in the matter to dispose of the applications one way or the other.

11. To our mind the problem does not present much difficulty. The applications filed by the appellants for grant permits to them were rejected by the Regional Transport Authority in October, 1971. They were finally disposed of and permits were granted to them by the order of the Appellate Tribunal made on February 19, 1975. The consideration of the applications for grant of permits was not longer pending after the said order. What remained pending was a mere ministerial act to be performed by the Regional Transport Authority or by any delegate of that authority in accordance

with Rule 44A of the U.P. Motor Vehicles Rules, 1940. According to the terms of the order of the Appellate Tribunal, nothing substantial or unsubstantial was to be decided by the Regional Transport Authority in connection with the grant of permits. The Regional Transport Authority could not say that it refused to grant the permit on one ground or the other. What was left to be done by it was only to find out whether a particular applicant had complied with the terms of the order and within the time granted by the Appellate Tribunal. If the terms were not complied with by the specified time the grant stood revoked not because the Regional Transport Authority could revoked it but because the Appellate tribunal had specified it to be so. As already stated, all the applicants had complied with the terms of the Appellate order within time, actual issuance of the permits could not be done because of the stay orders made by the High Court in the earlier writ petitions. In sum and substance, therefore, the appellants became entitled to the issuance of the permits in their favour by March 31, 1975. It is difficult to understand as to in what sense their applications remained pending after March 31, 1975 and how did they remain pending even in the remotest sense of the term after the vacation of the stay order by the High Court and the dismissal of the writ petitions on September 10, 1975. When the notification dated September 24, 1975 was issued the position was absolutely clear that nothing in any sense was pending except that in the physical sense a paper containing the permit was not actually issued. Clause (2) of the said notification was not meant to cover nor did it cover a case of this kind. The Regional Transport Authority failed in its legal duty in not implementing the order of the Appellate Tribunal its legal duty in not implementing the order of the Appellate tribunal and issuing the permits as a result thereof. It was, therefore, just and proper to grant the writ of mandamus as asked for by the appellants.

12. We may now briefly deal with the additional points urged by the Solicitor General and M/s B. Sen and Yogeshwar Prasad. for the purpose of appreciating some of those points it would suffice to refer to the provisions of U.P. Act 15 of 1976 which were almost in identical terms to the two Ordinances which had preceded it. Section 21 of this Act amended Section 43A with retrospective effect. The effect of this was to bring into force Section 47(3) of the Central act and with retrospective effect. Sub-section (3) of Section 21, however, provided : "Any direction under sub-section (1) may be issued with retrospective effect". Then sub-section (5) is in the following terms :

Where any direction is issued under sub-section (1) with retrospective effect then -

> (a) any Transport Authority or the State Transport Appellate Tribunal may review any order passed earlier by it with a view to making it conform to such directions, and may for that purpose cancel any permit already issued;
>
> (b) any transport Authority may apply to the High Court for review of any order passed by such Court earlier with a view to enabling such Authority to comply with such direction.

The argument on behalf of the State was that the order of the Appellate Tribunal became illegal as being against the law which was, by a legal fiction, made to come into force by its retro-active action when the said order was passed. Reliance was place upon the decision of this Court in C.I.T., Bihar and Orissa v. Maharaja Pratapsingh Bahadur of Gidhaur ((1961) 2 SCR 760 : AIR 1961 SC 1026 : (1961) 41 ITR 421). In our opinion the argument is devoid of any substance. There was nothing in the Ordinance or the U.P. Act of 1976 to make the order of the Tribunal illegal. The order when made was legal and with jurisdiction. The retrospective change in law had not the effect of nullifying the order. It is to be further emphasised that if the order was complete and final, in the sense we have explained above, then two formalities had to be gone into in order to get rid of that

order. Firstly, a special direction had to be issued under sub-section (1). No such direction issued was brought to our notice. Secondly, the procedure of review had to be followed as provided for in sub-section (5) of Section 21 of the Amending Act of 1976. In Maharaja Pratapsingh's case (supra) the amendment of the law with retrospective effect had made the proceeding void ab initio. The law was retrospectively amended during the pendency of the appeals before the Appellate Assistant Commissioner. Any order made in such a proceeding was, therefore, held to be void. The ratio of that case is wholly inapplicable for nullifying the order of the Appellate Tribunal.

13. It was then submitted by learned Counsel for the parties that because of the change in law in 1976, this Court should not for the sake of justice allow these appeals filed on grant of special leave under Article 136 of the Constitution and issue a writ of mandamus which will have the effect of directing the Regional Transport Authority to do something contrary to the present law. In our opinion, there is no substance in this point either. The High Court refused to issue the writ on a misapprehension of the correct position in law and by misreading the order of the Appellate Tribunal and the notification dated September 24, 1975. Retrospective change in law brought about in 1976 cannot justify allowing the wrong to continue. The injustice done to the appellants must be rectified. The result of the writ will not be tantamount to asking the Regional Transport Authority to do something which will run contrary to Section 47(3) or the proviso to Section 57(3) of the Central Act. It would be merely asking the Regional Transport Authority to obey the valid order of the Appellate Tribunal which has not been rendered void on any ground whatsoever.

14. Mr. A. K. Sen, learned Counsel for the appellants drew our attention to what S. A. de Smith has pointed out at page 59 of the third edition of his well-known treatise "Judicial Review of Administrative Action" :

> It may describe any duty, the discharge of which involves no element of discretion or independent judgment. Since an order of mandamus will issue to compel the performance of a ministerial act, and since, moreover, wrongful refusal to carry out a ministerial duty may give rise to liability in tort, it is often of practical importance to determine whether discretion is present in the performance of statutory function. The cases on mandamus show, however, that the presence of a minor discretionary element is not enough to deter the Courts from characterising a function as ministerial.

We think that the Regional Transport Authority, pursuant to the order of the Appellate Tribunal, had merely to perform a ministerial duty and the minor discretionary element given to it for finding out whether the terms of the Appellate Order had been complied with or not is not enough to deter the Courts from characterising the function as ministerial. On the facts and in the circumstances of this case by a writ of mandamus the said authority must be directed to perform its function.

15. For the reasons stated above, we allow these appeals and direct the Regional Transport Authority or Authorities, as the case may be, to implement the orders of the Appellate Tribunal and issue the permits to the appellants in all the cases. We would, however, like to make it clear that permits were to be issued for a period of three years only. Temporary permits were issued to the appellants or some of them from time to time in pursuance of the interim order made either by the High Court or by this Court. The total period of such temporary permits in the case of any of the appellants must be deducted and adjusted as in the present situation of the law it would be just to do so, from the period of three years. In the circumstances, we make no order as to costs in any of the appeals.

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