

Attar Singh and Others

Vs

The Regional Transport Authority, Agra and Others

Civil Appeal No. 1871 of 1977

(R. S. Sarkaria, N. L. Untwalia, P. N. Kailasam JJ)

08.03.1978

JUDGMENT

UNTWALIA, J. -

1. The facts of this appeal by special leave are very much similar and the points involved are almost identical to those in the case of Sharif Ahmad v. Regional Transport Authority, Merit ((1978) 1 SCC 1 : AIR 1978 SC 209). The Allahabad High Court, in the order under challenge in this appeal, has followed its earlier decision which was upset by this Court in the case aforesaid. We could have disposed of this appeal by a short order saying that it is covered by the earlier decision of this Court, but some differences in the facts of the two cases led Mr. Yogeshwar Prasad, learned counsel for the respondent operators to advance a strenuous argument to oppose the following of the above course. But on scrutiny, we find that there is no distinction between the two cases on the main point. For the reasons stated hereinafter there has to be made a difference in the operative portion of the order of this Court. We need not state all the facts, the entire history of the litigation, and all the points decided in the earlier case. We shall merely proceed to mention in this judgment facts which are somewhat different and enabled the respondents to endeavour to make out some points of distinction justifiably or unjustifiably.

2. The route in question is Firozabad-Etah via Pharia-Mustafabad- Phaphotu. The Regional Transport Authority, Agra refused to grant permits to the appellant for plying their stage-carriages on this route by its order dated October 25, 1969 on the grounds that a part of the route was not motorable. In appeal from the said order the Transport Appellate Authority held on January 16, 1971 that it was a motorable route and directed the Regional Transport Authority to consider the applications of the appellants on merits. Respondent 3-one of the existing operators filed Writ Petition 501 of 1971 in the High Court challenging the Appellate Order dated January 16, 1971. In this writ petition, the High Court made a stay order on May 20, 1971 permitting the Regional Transport Authority to consider the applications for the grant of the permits on the route and grant them, if on merits, the applications were fit to be allowed. But the permit so granted should not be issued until further orders of the High Court. Then came the insertion of Section 43A in the Motor Vehicles Act by an amendment of the U.P. Legislature and the general direction of the Government on March 30, 1972, which are all referred to in the judgment of this Court in Sharif Ahmad's case.

3. On May 1, 1973 the Regional Transport Authority sanctioned or granted the permits to all the appellants by an order made in the following terms :

Permits are sanctioned to these applicants for three years on usual conditions in public interest subject to the order of the High Court in the pending writ petition in

which stay order is at present operating to the effect that although permits can be sanctioned but they will not be issued. Vehicles will have to be put up on the route and affidavits that there has been no conviction under the I.P.C. during the last five years will have to be filed in each case within one month of the receipt of the High Court order in office in case the stay order is vacated and the writ is disallowed.

The operator respondent challenged the said order of the Regional Transport Authority by filing Writ Petition 4158 of 1973 in the High Court. In this writ petition also an interim order of stay was made by the High Court on July 18, 1973 in the following terms :

Until further orders, on new permit shall be issued on Firozabad-Etah via Phaphotu route in pursuance of U.P. Act 25 of 1972 or any notification issued thereunder. We further direct that if any permit has been granted under the Amending Act to respondents 5 to 15, it shall not be issued to them until further orders.

Writ Petition 4158 of 1973 was dismissed by the High Court on February 7, 1975 and with the dismissal of the said writ petition came to an end the interim order made by the High Court therein on July 18, 1973. But the interim order made in Writ Petition 501 of 1971 on May 20, 1971 continued. It was formally vacated on September 29, 1975 - five days after the issuance of the notification making a change in the law on September 24, 1975, a copious reference to which has been made in Sharif Ahmad's case. According to the appellants in spite of the fact that they had complied with the conditions imposed by the Regional Transport Authority in its order dated May 1, 1973 and thus had become entitled to the issuance of the permits which had already been sanctioned or granted, the said Authority did not issue permits to them. They, therefore, moved the High Court by a writ petition which was dismissed by a learned Single Judge and his decision was upheld in Letters Patent appeal by a Division Bench of the High Court. The High Court thought that the position in the present case is precisely the same as in the other. The Bench, therefore, upheld the order of the Single Judge on that account.

4. We now proceed to briefly notice and discuss the various differences pointed out to us in the instant case from the facts of the facts of the earlier case.

5. We may, at the outset, note that in Sharif Ahmad's case following the general direction given in the notification dated March 30, 1972 issued by the State Government under Section 43A of the Motor Vehicles Act, the State Transport Appellate Authority had granted the permits and left the matter of their issuance to the Regional Transport Authority on the fulfilment of certain conditions by the persons concerned. With reference to such a situation the law laid down by this Court was at page 7 of 1978 Vol. 1 of S.C.C. :

To our mind the problem does not present much difficulty. The applications filed by the appellants for grant of 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 no 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.

In the instant case, as a result of the limited stay order passed by the High Court on May 20, 1971,

the Regional Transport Authority itself granted the permits. The applications, therefore, stood disposed of and were not pending. What remained pending was the ministerial act of issuing the permit on the fulfilment of the conditions imposed in the order. There was no difference between the sanction of a permit and grant of a permit as was sought to be made out by Mr. Yogeshwar Prasad. In our opinion, it was also a futile attempt on his part to show that in the judgment of this Court in Sharif Ahmad's case it had been laid down that the applications stood disposed of because the conditions imposed by the Appellate Authority had been complied with before the notification dated September 24, 1975 came into force and even the stay order had been vacated in that case some time in June or July, 1975 prior to that notification. Nothing of the kind was said in that case to call out the alleged ratio. The two limbs of the decision are quite distinct and separate. When the order of grant was made by the Appellate Authority, the applications stood disposed of. Of course, for the purpose of seeing whether by a writ of Mandamus the Regional Transport Authority could be directed to issue the permit it had to be seen whether the conditions imposed by the Appellate Authority had been complied with in time. Similarly in this case the grant was complete and the applications stood disposed of finally by the Regional Transport Authority on May 1, 1973. Permits, however, could not be issued until the order of stay made by the High Court on May 20, 1971 was vacated. We do not think that the argument of Mr. A. K. Sen that the stay order made by the High Court in the earlier writ petition was merged in the stay order of the High Court made in Writ Petition 4158 of 1973 and since that writ petition was dismissed on February 7, 1975 the stay as a whole stood vacated on that date before coming into force of the notification dated September 24, 1975, is correct. In our opinion on a strict interpretation of the order of the Regional Transport Authority made on May 1, 1973 in pursuance of the earlier order of stay made by the High Court the issuance of the permit was made subject to the vacation of this order which was vacated only on September 29, 1975 - five day after the notification in question. But that makes no difference. As held in the earlier case, issuance of a permit was a ministerial act. The notification dated September 24, 1975 did not make the application for grant of permit pending only because of that. The change of the law brought about by the said notification or even later in the year 1976 by some Ordinance and Acts as discussed in Sharif Ahmad's case did not make any difference. The appellants, if they complied with the conditions imposed by the Regional Transport Authority in its order dated May 1, 1973 within a month of the receipt of the High Court order vacating the earlier order of stay then permits had to be issued to them. The Regional Transport Authority could not refuse to issue the permits because of the notification dated September 24, 1975.

6. Mr. Yogeshwar Prasad also tried to point out that a part of the route in question is not motorable. We are concerned with this matter in this appeal. Even on the basis of the report of the Regional Transport Authority dated August 31, 1977 submitted to this Court in pursuance of the order of this Court dated August 17, 1977 it would be found that a portion of the route is non-motorable only during the rainy season. We cannot, therefore, hold in this appeal that permit should not be issued on that account.

7. After the conclusion of the hearing in this case we had asked the parties to file papers and/or affidavits in support of their rival contentions regarding the fulfilment of the conditions imposed by the Regional Transport Authority in its order dated May 1, 1973. Parties have accordingly done so. The position is not quite clear on the basis of the papers filed by the appellants. On behalf of the respondents, however, an affidavit has been filed to indicate that only Sadat Hussain, one of the appellants in this appeal, had complied with the conditions within time or before time. The other appellants had not. It is stated in this affidavit that the order of the High Court dated September 29, 1975 vacating the stay order dated May 20, 1971 was received in the office of the Regional Transport Authority on October 9, 1975. The conditions had to be fulfilled within a month thereof.

But the affidavit shows that the other appellants had filed their affidavits required to be filed by them by the Regional Transport Authority in its order dated May 1, 1973 on various dates in December, 1975 and thus the conditions were not complied with in time. We leave this matter open to be looked into by the Regional Transport Authority.

8. For the reasons stated above, we allow this appeal and direct the Regional Transport Authority to issue permits for the route in question to such of the appellants who are found to have complied with the conditions in time. Permits will not be issued to those who had failed to comply with any of the conditions in time. In regard to the period of permits to be issued in pursuance of our order, we would like to make it clear that the permits were to be issued for period of three years only. Temporary permits seem to have been 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 makes no order as to costs in this appeal.

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