

SUPREME COURT OF INDIA

Mahavir Transport Company

Vs.

State Transport Appellate Tribunal

C.A.Nos.2603, 2604 and 2605 of 1987

(E. S. Venkataramiah, K. N. Singh and S. Ranganathan JJ.)

27.10.1987

JUDGMENT

S. RANGANATHAN, J.

1. Special Leave granted. Appeals are disposed of by this order.

2. The three appellants had been granted permits on a route from Bhadra to Hissar via Adampur. This route lay both in the State of Rajasthan and in the State of Haryana and was thus an inter-State route. When the permits were about to expire the petitioners filed applications for their renewal in accordance with the provisions of Section 58 of the Motor Vehicles Act (hereinafter called 'the Act'). At the same time, the Rajasthan State Road Transport Corporation (hereinafter referred to as 'the Corporation') also moved applications before the Regional Transport Authority, Bikaner, for the grant of fresh permits to it on the same route. The applications for renewal of permits made by the petitioners as well as the applications for the grant of permits by the Corporation were heard together by the Regional Transport Authority, Bikaner (R.T.A.) on several dates, the last of which was the 6th of November, 1981. On that date, orders were reserved by the R.T.A. The R.T.A., however, passed its order only on 27th November, 1982, about a year after the date of the hearing. It rejected the renewal applications of the petitioners and granted permits to the Corporation in respect of the above route.

3. Aggrieved by the orders of the R.T.A., the petitioners filed appeals before the State Transport Appellate Tribunal (S.T.A.T.). The S.T.A.T. dismissed the appeals preferred by the petitioners and confirmed the order of the R.T.A. The petitioners filed writ petitions in the High Court of Rajasthan, which were dismissed by a single Judge on 21st July, 1986. Further appeals preferred by the petitioners and certain other operators were dismissed by a Division Bench of the High Court of Rajasthan by its judgment and order dated 8th December, 1986. These Special Leave Petitions have been preferred against the order of the Division Bench dated 8th December, 1986.

4. We have come to the conclusion that the order of the R.T.A. (and consequently the orders of the STAT and the High Court) should be set aside and the matter should be remitted back to the R.T.A. for fresh consideration on the short ground that the petitioners have not had a fair opportunity of putting forward and being heard on their contentions relevant to the issue before the R.T.A.

5. The principal issue that had to be considered by the R.T.A. was whether the claims of the Corporation for the grant of a permit had precedence over the claims of the petitioners for renewal.

This issue had to be decided in the context of two statutory provisions. The first is Section 47(1H) of the Act which reads as follows:

Notwithstanding anything contained in this section, an application for a stage carriage permit from a State transport undertaking for operating in any inter-State route shall be given preference over all other applications:

Provided that the authority shall not grant a permit under this sub-section unless it is satisfied that the State transport undertaking would be able to operate in the inter-State route without detriment to its responsibility for providing efficient and adequate road transport service in any notified area or notified route as is referred to in Sub-section (3) of Section 68D where the undertaking operates the service.

Explanation- For the purposes of this subsection, "inter-State route" means any route lying contiguously in two or more States.

The second relevant provision is the third proviso inserted in Section 58(2) of the Act by an Amendment applicable to the State of Rajasthan. This sub-section, in so far it is material for our present purposes, reads:

(2) A "permit may be renewed on an application made and disposed of as if it were an application for a permit:

Provided further that, other conditions being equal, an application for stage carriage permit by a State transport undertaking as defined in Section 68-A, shall be given preference over applications from individual owners and co-operative societies.

6. The arguments before the R.T.A. primarily ranged round the question whether the terms of the proviso to Section 47(1H) were fulfilled in the present case or not. The petitioners (as well as operators on several other routes whose requests for renewal had also been countered by applications for permits by the Corporation) contended that the Corporation was not in a position to operate in the inter-State routes in question without detriment to its responsibility for providing efficient and adequate road transport service in routes which had already been nationalised under Chapter 1V-A of the Act. The R.T.A. has applied its mind to this contention in what may be described as a piecemeal manner. This was because applications made by several private operators and the corporation in regard to various routes came up for consideration by it in separate meetings held at different places on different occasions. In fact it is this which also explains the delay in the passing of its order by the R.T.A. in the present case. In course of the hearing before us, we called upon the respondents to produce the original records. These show that the matter relating to renewal of permits of six operators (including the present petitioners) was heard on 6-11-1981 and orders reserved. On 30-11-81, the counsel for the Corporation made a request to the R.T.A. that certain other matters pertaining to renewals of permits in the Bikaner region were coming up for consideration on 16-12-81 and that, therefore, the orders in the instant cases may be deferred till

after the other matters were also heard by the R.T.A. This request of the counsel for the Corporation >was accepted by the R.T.A. The other matters referred to could not be heard on 16-12-1981 but got adjourned from time to time. The order sheet of the R.T.A. in the present case shows that the decision in the present cases was deferred on three subsequent occasions up to 22-3-1982. The records do not indicate what happened thereafter but it appears that the decision was postponed on subsequent occasions also for the same reason and ultimately announced by the R.T.A. on 27th November, 1982, after the connected matters had been heard. This is clear from the order of the R.T.A. which, in arriving at its final decision, has followed the orders passed by it on 13-9-82 and 24-11-82 in certain other matters and the orders passed by the R.T.A., Jaipur on 7-4-82 and 10-9-82 in relation to two routes falling within its jurisdiction.

7. The short grievance of the petitioners was that, by adopting the above procedure, the R.T.A. has imported into its final decision and order various transactions, facts, events and arguments of which they had no notice and which they had not been given a proper opportunity to rebut. The STAT dealt with, the argument by simply observing that "for considering the obtainable facts a fresh opportunity to appellants in my opinion was not very much required, as there would not be any end to it." The learned single Judge in the High Court recognised that: "If such long spell of time has lapsed and such new material has come into existence the proper course for the RTA should have been to get the case listed back for comments of both the parties" but did not think that "the case warranted any interference on this aspect."

The Division Bench observed:

It was urged on behalf of the appellants that the Regional Transport Authority took into account events after hearing and closing the cases without giving any opportunity to the appellants to rebut that material. It was also urged that out of 83 documents filed by the appellants before the Regional Transport Authority in rebuttal of this material, only 2 were accepted, while remaining 81 were rejected. There is no merit in this contention. The mere fact that the appellants filed these documents out of which two were taken into account shows that they had the knowledge of the subsequent material being used for the purpose of deciding these cases and it is for this reason that they filed these documents out of which two were also taken into account. Moreover, the subsequent events relate only to matters of record pertaining to operation of the existing routes by the State Transport Undertaking. There is thus no prejudice to the appellants. This argument is, therefore, devoid of any merit.

8. In our opinion the approach of the STAT as well as the High Court was erroneous. There is no doubt that the R.T. A. in deciding the present case has been influenced not merely by the discussions which took place during the hearing of the applications of these petitioners and the Corporation but also the facts, circumstances, and arguments that surfaced at the meetings held by it in relation to various other permits in the State. It is true that the point that arose for consideration viz. whether the Corporation had placed sufficient material on record to satisfy the R.T.A. concerned that the grant of a further permit or further permits to it would not prejudicially affect the nationalised services already run by it was, in a sense, a point common to all the meetings. Nevertheless, the grant of a permit in each case is a separate issue to be decided on the facts and circumstances placed on record in relation to that case. In support of their claims for permits, the petitioners had placed some material before the R.T.A. and so also the Corporation. If, in reaching its decision, the R.T.A.

desires to take into account circumstances and facts placed by other petitioners or by the Corporation at other meetings, the petitioners should at least have had an opportunity of knowing what that material was. This could have been done either by allowing the petitioners to participate at the other meetings or by giving the substance of that material to the petitioners, and giving them an opportunity of rebutting it before passing the final order. In this context it is important to remember that the Corporation was a party at all the meetings and was aware of all the materials that had been placed on record by other operators as well as by themselves thereat. On the contrary, the petitioners were handicapped in that they had no knowledge of the material placed at the other meetings. In our opinion, the requirements of natural justice were flouted by the failure of the R.T.A. to apprise the petitioners, at least broadly, of what had transpired at the other meetings.

9. The High Court has observed that the petitioners had not been prejudiced as is seen from the fact that they had placed several documents on record in rebuttal of the Corporation's case. It may be, as pointed out by the High Court, that the petitioners were vaguely aware of the nature of the general contentions urged as well as the evidence placed by the Corporation and also tried to put in some documents to controvert the material placed on record by the Corporation but they had no direct knowledge of such material. Further, the petitioners' grievance is that out of 83 documents placed by the petitioners only two were considered. We are not able to appreciate the High Court's answer to this contention in the extract we have quoted above. We could have understood it if the other 81 documents which the petitioners relied upon had been found to be irrelevant. The R.T.A. has not discussed this evidence. Nor does the STAT appear to have considered the material or given the petitioners an opportunity, at least at the appellate stage to attempt to substantiate its contentions by reference to these documents. In the Special Leave Petitions before us, the petitioners have catalogued several circumstances to substantiate a contention that the Corporation was not in a position to undertake the plying of buses on the routes in question without prejudice to the efficiency of the nationalised services already being run by it. We express no opinion on the correctness of these averments or the effect they can have on the satisfaction to be reached by the Regional Transport Authority but it appears manifest that the impugned order rejecting the renewal applications of the petitioners has been passed without there being reasonable opportunity given to the petitioners to counter the case put forward by the Corporation. On this short ground that the procedural requirements of natural justice have not been complied with, we think, the impugned order should be set aside and the R.T.A. directed to pass a fresh order after giving the opportunity to the petitioners to put forward their contentions.

10. Shri Shanti Bhushan, learned Counsel for the Corporation, raised two contentions. He urged, firstly, that the present case was governed by Section 58(2) and not by Section 47(1H) and that the Corporation was rightly granted precedence over the private operators. We are unable to accept this contention for two reasons. In the first place the grant of a permit for an inter-State route is governed by the special provision contained in Section 47(1H) and not by Section 58 which is a general provision. Secondly, even under Section 58, the Corporation is not entitled to a permit automatically by reason of the fact that it is a State Road Transport Undertaking. It is entitled to a priority over private operators only on "other things being equal". In other words, even if Section 58 is to apply, the R.T.A. has to apply its mind to the relative merits of the private operators on the one hand and the Corporation on the other and it is only if both of them stand on the same footing that the Corporation would be entitled to a preference. This would necessarily involve a hearing by the R.T.A. of the merits of both the contending parties.

11. The second contention of counsel is based on an interpretation of Section 47(1-H). The principle

and ratio of this provision has been discussed and approved by this Court in *Sher Singh v. Union of India*: [1984]1SCR464 . This provision no doubt enables the Corporation to have a preference over private operators and individuals but this is subject to a condition precedent that it should satisfy the Authority that it would be able to operate the inter-State route for which permit is sought without detriment to the efficiency and adequacy of the nationalised services it is already running in the State, *shri Shanti Bhushan* would contend that this is a matter on which the Regional Transport Authority has to reach a subjective satisfaction in the light of such material as it may be able to gather and that it is not necessary that it should be arrived at after giving an opportunity to all the persons appearing before the Authority. We cannot accept this interpretation. Like analogous provisions contained in several statutes which require or permit certain action to be taken on the satisfaction of a particular specified Authority, the provision in Section 47(1-H) also requires the R.T.A. to arrive at its satisfaction not subjectively but on an objective consideration of the various facts and circumstances placed before it. It will at once be obvious that such a satisfaction cannot be reached by the Authority without hearing the various operators. The matter comes up before the Authority on a contest between an application for a permit or a renewal application of a private operator and an application for permit by the Corporation. Naturally, the Corporation will place before the Authority some material to satisfy the Tribunal that the condition mentioned in the proviso to Section 47(1H) is satisfied. The R.T.A. on its own can have no method of assessing the merits of this plea. It is only the private operators, who are seeking permits for themselves that may be in a position to place material which would show that the Corporation does not have the capacity to take up this additional responsibility of running buses on the inter-State route for which it seeks a permit. It is clearly the duty of the R.T.A. to consider the evidence placed by both the parties, allow each party an opportunity to rebut the material placed by the other and arrive at its satisfaction one way or the other. The satisfaction contemplated under Section 47(m) is a satisfaction to be arrived at on the basis of such a quasi-judicial enquiry conducted by the R.T.A. It is, therefore, not possible to accept the contention that the petitioners were not required to be heard before the R.T.A. reached its conclusion in favour of the Corporation.

12. For the reasons discussed above, we hold that the petitioners' applications for renewal of permits as well as the Corporation's application for fresh permits on the inter-State route Bhadra to Hissar via Adampur require to be considered afresh. We, therefore, set aside the order of Regional Transport Authority dated 27-11-1982, the Order of the State Transport Appellate Tribunal dated 20-1-1983 as well as the order of the single Judge of the High Court dated 21st July, 1986 and the order of the Division Bench of the High Court dated 8-12-1986. The matter will stand remanded to the file of the R.T.A., Bikaner, for being disposed of afresh in the light of the above observations:

13. The appeals are allowed but in the circumstances we make no order as to costs.