

# ALLAHABAD HIGH COURT

Mohammad Luqman Sharif

Vs.

State Transport Authority

Special Appeal No. 128 of 1959 . against decree of Jagdish Sahai, J., in Civil Misc. Writ No. 2139 of 1958

(Raghubar Dayal and R.A. Misra, JJ.)

## JUDGMENT

**Raghubar Dayal, J.**

1. This is a special appeal by the appellant against the order of a learned Judge dismissing his petition under Article 226 of the Constitution.
2. The facts leading to the petition are a bit complicated, as they concern not only the proceedings on the application of Santosh Kumar, Respondent No. 2, for a stage carriage permit but are also connected with the applications of two other persons bearing the same name Shanti Swarup.
3. We shall first mention the facts concerning the proceedings on the application of Santosh Kumar.
4. The appellant runs a stage carriage as private carrier on Muzaffarnagar-Shamli-Kairana route. This route formed part of two other routes also, namely Muzaffarnagar-Shamli-Kairana-Jhinjhana route and Muzaffarnagar-Shamli-Kairana-Kandhla route. The portion between Muzaffarnagar and Shamli of this route was common to two other routes also namely, Muzaffarnagar-Shamli-Jhinjha-na-Chausana and Muzaffarnagar-Shamli-Jhinjhana-Ridauli. Up to 1950 four stage carriages used to ply on Muzaffarnagar-Shamli-Jhinjhana-Chausana-Bidauli route. This route was split up by the Regional Transport Authority (hereinafter called the Authority) by a resolution dated 13th October, 1950, into three routes and a number of buses were distributed as follows :-

Two buses were fixed for Muzaffarnagar-Shamli-Jhmjhana-Chausana route, and one bus each was allotted to the other two routes Muzaffarnagar-Shamli-Jhinjhana-Bidauli and Shamli-Jhinjhana-Chausana. Santosh Kumar, respondent No. 2, applied for a permit on Muzaffarnagar-

Kairana-Jhinjhana route. The authority at Meerut rejected his application at its meeting of the 28th November, 1950. Santosh Kumar filed an appeal to the State Transport Authority Tribunal (hereinafter called the Tribunal) : so did Smt. Sona Devi against the Authority granting a temporary permit to Shanti Swarup on Muzaffarnagar-Shamli-Kairana-Jhinjhana route.

5. Both the appeals of Santosh Kumar and Sona Devi were disposed of by the Tribunal on the 4th February, 1955. The two appeals were allowed. The Tribunal directed the Authority to consider the objections of Smt. Sona Devi and other operators, to consider the comparative merits of the claims of Santosh Kumar and Shanti Swarup, to grant permit to the persons considered deserving and to allow the permit granted to Shanti Swarup to remain in operation till the Decision of the Authority and that he should not be granted the permit.

6. Authority by its resolution dated the 2nd July, 1955, rejected the application of Santosh Kumar. Santosh Kumar filed an appeal to the Tribunal (Appeal No. 5 of 1956). At the hearing of this appeal on the 6th February, 1958, the Tribunal suggested to Santosh Kumar whether he would like to have a permit on Muzaffarnagar-Shamli-Jhinjhana-Chausana route, and, on his expressing his readiness to have it, passed the following order

"The appellant would be satisfied and the appeal will stand disposed of if the appellant can be given a permit on any of the two aforesaid routes in the alleged vacancies. The R.T.A. may consider the request and give the vacancy if there is no arrangement yet on any of these routes. So far as the formalities are concerned the variation is so small that it may be deemed to be covered by the intention of Rule 50(b). The R.T.A. will, therefore, consider this suggestion and report by 7th April 1958."

On 24th March 1958 the Authority wrote to the Tribunal indicating that a permit could be granted on the route specified in the application, that the power to modify could not extend to change of route entirely and that the vacancy on the Muzaffarnagar-Chausana route would be filled by properly inviting applications; and the appellant (Santosh Kumar) at best could apply then. On the 12th June, 1958, the Tribunal however passed an order, relevant extracts of which are reproduced below :-

"We have heard this appeal at length and we are of the opinion that the fourth vacancy on the Muzaffarnagar-Shamli-Jhinjhana-Chausana route be filled up by granting a permit to the appellant (Santosh Kumar) and necessary variation may be made in his application for the purpose.

We further direct that the timings of these four permit-holders will be so arranged that the public may be inconvenienced. We understand that the arrangement at present is that the permit-holders run in rotation every day and the result is that only one bus plies per day disregarding the congestion on the route. This should now be relieved by having two services every day at such

timings as may be necessary. It is this, order of the Tribunal which the appellant desired to be quashed by his writ petition.

7. Now, we may have details of facts in Connection with an application by one Shanti Swamp other than the person already referred to.

8. One Munnalal held a permit in respect of a certain vehicle of Muzaffarnagar-Roorkee route. When that route was taken over by the Government Roadways a temporary permit on Muzaffarnagar-Jhinjhana-Chausana route was issued to Munnalal. Such temporary permits were issued upto 31st December, 1950. During this period, the vehicles changed and Munnalal first transferred the vehicle and the permit to Bhagat Ram Sewa Ram, who in their 'turn, transferred the permit to this Shanti Swarup. No intimation was given to the authorities for fear of cancellation of permit, which, as already indicated, continued in the name of Munnalal. In 1950 this Shanti Swarup applied for the regular transfer of this permit to his name. His application was rejected by the Authority. He filed an appeal to the Tribunal, The appeal was decided on 15th November, 1956. The relevant portions from this order are reproduced below :-

"The next difficulty stated by the Regional Transport Authority is that there is now no vacancy left on this route; because the strength of the route was fixed at 2 and there are already two vehicles plying on this route. Accordingly the Regional Transport Authority thought that the order will be ineffective for want of a new vacancy on this route. It is true that the Regional Transport Authority fixed the strength at 2 but it was because of misrepresentation of facts to it. From the extract of the proceedings of the Regional Transport Authority it appears that only one bus was plying on this route; accordingly, they sanctioned the strength at 2. This report that only one bus was plying is absolutely incorrect, because from the order dated May 19, 1948 on serial No. 4 of the File No. RTA/XXIV-241 (A) of the Regional Transport Authority, Meerut, it is clear that in 1948 there were three vehicles plying and one more vehicle of Sri Munnalal was allowed to ply on this route and in their comments the Regional Transport Authority have admitted that the vehicle of Sri Munnalal did ply. The strength of the route has been under-fixed at 2.

Accordingly it is clear that at the time the application was made by the appellant the strength of the route was four and could not have been subsequently reduced to two to the prejudice of the appellant.

Accordingly we allow the appeal and order that the appellant be given one permit besides the two permits already in force and the Regional Transport Authority should revise and fix the strength at 4 and fill the remaining vacancies by observing the usual procedure."

This is the second order which the appellant wanted to be quashed. He also prayed for the issue of a writ of mandamus to the Tribunal and the Authority not to increase the strength of Muzaffarnagar-Shamli-Jhinjhana-Chausana route, or to grant any new permits thereon to any one otherwise that in accordance with law.

9. In consequence of the order of the Tribunal dated 15th November, 1956, the Authority resolved to issue a stage carriage permit to Shanti Swarup on Muzaffarnagar-Shamli-Jhinihana-Chausana route and to take necessary action for the invitation of applications to fill the fourth vacancy on this route. It however stated in its resolution that the Tribunal had arbitrarily fixed the strength of the permits at four without considering the factors which the Authority had taken into consideration by fixing strength on the route and that its order directing a permit to be issued to Shanti Swarup was incorrect. In its order dated 12th June, 1958, the Tribunal rightly criticised the Authority for these remarks, though, as it would appear from our later comments, the remarks were correct.

10. Bishan Prakash, Pairokar of Santosh Kumar, filed a counter affidavit. In it he stated that in October, 1950, the Authority reduced the strength of stage carriages of Muzaffarnagar-Shamli-Jhinjhana-Chausan route from 4 to 2, that the Tribunal by its order dated 15th November, 1956, did not reduce and re-fix the strength of the route in question, that the appellant's rights are not affected by the permit in favour of Santosh Kumar, and that the appellant could not question the order dated the 10th November, 1956.

11. Sri R.D. Misra, Assistant Regional Transport Officer, Meerut, also filed a counter affidavit. He stated that there was no such route as Muzaffarnagar-Shamli-Jhinjhana-Chausana-Bidauli, that the Authority had wrongly fixed the strength of Muzaffarnagar-Shamli-Jhinjhana-Chausana route at 2 when four buses used to ply on that route, that the Tribunal held the strength to be 4, that the Tribunal did not revise the strength of the route but simply found that the Authority under a mistake of fact fixed it at 2 instead of 4, that the record does not have any objection against Santosh Kumar's application for a permit on Muzaffarnagar-Kairana-Jhinjhana route, that the Tribunal merely directed the Authority to consider the application of Santosh Kumar, that the Tribunal had not increased the strength on the route in question from 2 to 4 but had held that the fixing of 2 was a mistake which they simply corrected, and that the volume of traffic on the route justified the running of four stage carriages.

12. In the rejoinder-affidavit it is stated that the operators of Muzaffarnagar-Shamli-Kairana route did file objection on the 10th October, 1950 before the Authority. A rejoinder affidavit has been filed by Mohammad Ashiq, Pairokar and Joint Secretary of the Muzaffarnagar Motor Malikan Union. He states that the Union, is a registered body consisting of 23 members, 21 of whom were private operators on Muzaffarnagar-Shamli-Kairana route.

13. The learned Judge repelled the contentions for the appellant that the Tribunal could not raise the number of stage carriages fixed by the Authority for any route, that it could not issue directions for issuing a stage carriage permit to Santosh Kumar for a route which he had not mentioned in his original application for a permit and that it could not on an appeal under Section 64 of the Motor Vehicles Act direct the authority to fix the number of services on a Certain route,

and dismissed the petition.

14. The order dated the 15th November 1956, was passed by the Tribunal on an appeal by Shanti Swarup against the rejection of his application for the transfer of Munnalal's permit in his name for the Muzaffarnagar-Shamli-Jhinjhana-Chausana route. This appeal was allowed by the Tribunal. The Tribunal realised that the Authority had fixed the strength of stage carriages on this route at 2, but was of opinion that this fixation of strength had been under fixed. It also came to the conclusion that the strength of the route could not have been reduced to the prejudice of the appellant subsequent to his application for the transfer of the permit when the strength of the route was 4. It, therefore, ordered that Shanti Swarup be given one permit and that the Authority should revise and fix the strength to four and fill in the remaining vacancy by observing the usual procedure. It is strenuously submitted for the State that the Tribunal had not itself fixed the strength of the route and had merely pointed out the mistake of the Authority in fixing the strength at 2 and advised it to re-fix the strength at 4 and that there fore even if the Tribunal had no authority to disturb the strength fixed by the Authority, its order is a good order. We do not agree.

15. The Authority is empowered under Section 48 of the Act to limit the number of stage carriages in respect of which stage carriage permits might be granted for a specified route or for specified routes or for specified area. Section 64 does not allow an appeal against the order of the Authority limiting the number of stage carriages. It follows, therefore, that the appellate authority on an appeal by a person aggrieved by the refusal of the Authority to grant him a permit, cannot re-fix the number of stage carriages in respect of that route.

16. It has been held in *Ram Gopal v. Anant Prasad*<sup>1</sup>, does not define the powers of the appellate authority and that if an appeal lies under any of its clauses that of course must be an effective appeal and the appellate authority must therefore have all powers to give the relief to which the appellant is found entitled. In an appeal against an order of the Authority refusing to grant the permit the appellate authority has to see whether the refusal is proper in the circumstances existing at the time the Authority considered the application for the permit. If the permits have been issued up to the limit of the number of stage Carriages fixed for a route the Authority would be justified in refusing to grant the permit. The appellate authority has therefore merely to see whether the ground for rejecting the appeal was proper or not. It cannot increase the limit in the exercise of its appellate powers and then hold that the order under appeal was bad and allow the appeal. It would then be doing which the Authority itself cannot do in those circumstances. Of course the Authority in the exercise of its powers under Section 48 of the Act may first alter the limit of the number of stage carriages fixed for a route and then consider applications for permits with respect to the increase in the number of stage carriages on that route.

17. The respondent relies on the case of *Automobile Transport (Rajasthan) Ltd. v. Nathuram Mirdha*, AIR 1959 Rajasthan 121 in support of the contention that the appellate authority can

pass an order on such an appeal re-fixing the number of stage carriages for a particular route. We, with respect, do not agree with that view. Section 48 authorises the authority to limit the number of stage carriages after consideration of the matter set forth in Sub-Section (1) of Section 47 and these matters the authority has to take into consideration in deciding whether to grant or refuse a stage carriage permit.

It follows that the decision arrived at with respect to the number of stage carriages for a particular route is decided by the authority after taking into consideration all the matters including the interest of the public generally mentioned in Sub-Section (1) of Section 47. When such a number is determined any refusal to grant a permit in excess of the permits with respect to the fixed number of stage carriages would be a rejection in view of the fact that making that extra permit would be against public interest.

18. It is not incumbent on the authority to consider every time an application is made for permit whether the granting or the refusal of the permit would be in public interest or not. If it had to do this every time there is no point in its fixing the limit in the exercise of its powers under of, (a) of Section 48 of the Act.

19. The fact that the Transport Authority can fix the limit of the number of stage carriages for a route from time to time does not mean that a decision formerly arrived at with respect to the limitation of such a number is not binding on the Authority. It is binding on

<sup>1</sup> AIR 1959 SC 851 that Section 64

the Authority so long as that number is not altered on a reconsideration of the matters mentioned in Sub-Section (1) of Section 47.

20. We, however, agree with the learned Judge that the order of the Tribunal dated 15th November, 1956, cannot be quashed as the appellant did not petition for its quashing within reasonable time. The present writ petition was presented about 21 months later. The order has been, acted upon inasmuch as Shanti Swamp had been granted the third permit. He is not a party to these proceedings.

21. By its order dated 12th June, 1958, the Tribunal ordered the granting of a permit to Santosh Kumar for Muzaffarnagar-Shamli-Jhinjhana-Chausana route. Santosh Kumar's application for a permit was with respect to Muzaffarnagar-Kairana-Jhjnjhana route. The proviso to Sub-Section (1) of Section 48 prohibits the granting of a permit in respect of any route not specified in the application. Santosh Kumar applied for a permit on a different route. His appeal was with respect to the refusal of a permit on that route. The appellate authority had to see whether the refusal to issue the permit on that route was justified or not. Its power as the appellate authority was limited. It has no power to grant a permit on a different route for which no application had been made, and when proviso to Sub-Section (1) of Section 48 definitely prohibits it. Santosh Kumar's expressing his readiness to accept a permit on this new route at the question of the Tribunal itself and the suggestion of the Tribunal to the Authority to consider granting a permit to Santosh

Kumar in the new route did not amount to Santosh Kumar's applying for a permit on that route. There is a definite procedure laid down for applying for a permit on a particular route. That procedure was not followed.

22. The Tribunal further ordered on the 12th June, 1958, that there be two services every day at such timings as may be necessary. Such an order again was not within the jurisdiction of the Tribunal as an appellate authority when dealing with the appeal against the refusal to grant a permit. We do not agree with the learned Judge that the Tribunal had the authority to pass such an order under Sub-Sections (3) and (4) of Section 44 of the Motor Vehicles Act. This view of the learned Judge is really based on the other erroneous view that the Tribunal and the State Transport Authority are one and the same authority.

23. Section 44 refers to two authorities : the State Transport Authority and a Regional Transport Authority. Section 64 allows an appeal to the prescribed authority and not to the State Transport Authority, According to clause (21) of Section 2 of the Act "prescribed" means prescribed by rules made under this Act. 'Prescribed authority' therefore is an authority which is prescribed by rules made under the Act. The relevant portion of clause (a) of R. 72 of the Motor Vehicles Rules is :-

"The authority to decide an appeal against the orders of the Regional Transport Authority under clauses (a), (b), (c), (d), (e) and (f) of Section 64 of the Act shall be a Tribunal consisting of the Judicial Secretary who shall be its ex-officio Chairman and two members of the State Transport Authority appointed by him from a panel, nominated by the State Government, of members of that Authority."

Sub-Section (2) of Section 44 of the Act provides that the State Transport Authority shall consist of such number of officials and non-officials as the State Government may think fit to appoint.

24. The mere fact that two of the members of the State Transport Authority can be members of the Tribunal does not make the Tribunal identical with the State Transport Authority. The Chairman of the Tribunal is the Judicial Secretary. He is not necessarily to be a member of the State Transport Authority. The learned Judge seems to have fallen in this error on account of his being referred to the old R. 72 which provided that the authority to decide an appeal against the orders of the Regional Transport Authority under clauses (a), (b), (c), (d), (e) and (f) of Section 64 of the Act shall be the Chairman and two members of the State Transport Authority appointed by the Chairman from a panel nominated by the State Government.

25. We are, however, of opinion that the Tribunal constituted under the old rule too was a different Authority than the State Transport Authority. A Tribunal has no powers of supervision over the Regional Transport Authority under the provisions of Section 64 of the Act. In this connection reference has been made by the learned Judge to the observations in *Pal Singh v.*

*S.T.A. Tribunal U.P.*<sup>2</sup>, The Authority dealing with the appeal against the orders of the Regional Transport Authority granting permits has been consistently described as State Transport Authority in that case. It appears to us that such a description was due to error and not due to a decision which is nowhere expressed that the State Transport Authority Tribunal is identical with the State Transport Authority.

26. The next question is whether the appellant is entitled to any relief. It has been rightly observed by the learned Judge that no right of the appellant is affected by the grant of a permit to Santosh Kumar when a fourth permit has to be issued in view of the order of the Tribunal dated 15th November, 1958 - an order which cannot be quashed in these proceedings for the reasons already given. Some one interested to have a permit on this route will get the fourth permit even if that person be not Santosh Kumar. The grant of the fourth permit to Santosh Kumar, therefore, does not affect any right of the appellant adversely. He cannot therefore be granted the relief with respect to the quashing of the order of the Tribunal granting the fourth permit on this route to Santosh Kumar.

27. The appellant is certainly affected by the direction that there be two services instead of one on this route. When only one bus per day runs on this route there is only one extra service affecting the traffic available on that route, which includes the portion of the appellant's route. If two buses run on this route, namely, Muzaffarnagar-Shamli-Jhinjhana-Chausana and one more bus runs over this common route the logical result would be that the average traffic available to the operators on the common route is liable to be reduced and thus the right of the appellant as an operator on the Muzaffarnagar-Shamli-Kairana route is adversely affected. He can therefore be granted the relief in respect of the illegal order of the Tribunal directing that two services every day be run on this route.

28. We, therefore, allow the appeal and the writ petition to this extent that we quash so much of the order of the State Transport Authority Tribunal dated 12th June, 1958, as it

<sup>2</sup> AIR 1957 All 254

directs that there be two services every day on this Muzaffarnagar-Shamli-Jhinjhana-Chausana route. In the circumstances of the case we make no order as to costs.

Appeal partly allowed.