

# ALLAHABAD HIGH COURT

Masi Ullah

Vs.

State Tribunal Appellate U. P

Writ Petn. No. 581 of 1963

(G.D. Sahgal, J.)

21.10.1965

## ORDER

### **G.D. Sahgal, J.**

1. These two writ petitions raise a common question of law and so they have been heard together.
2. The petitioner in writ petition No. 581 of 1963 held a stage carriage permit on the Lucknow-Tikaitganj Babaganj route. He applied for the renewal of his permit and by a resolution of the Regional Transport Authority, opposite party No. 2 dated the 7th of March, 1962, it was allowed to be renewed for a further period of three years on condition that the petitioner shall place 1952 model or later model on the route.
3. The petitioner of writ petition No. 582 of 1963 also was the holder of a permanent stage carriage permit on the Lucknow-Mall route. In his case also at the time of the renewal of the permit a condition was imposed on the 7th of March, 1962 by the opposite party No. 2, the Regional Transport Authority, that he shall place 1960 or later model on the route.
4. Both the petitioners made appeals to the State Transport Appellate Tribunal, opposite party No. 1. But their appeals were dismissed. It is in these circumstances that these two writ petitions have been filed.
5. The prayer is for the issue of a writ of certiorari for the quashing of the orders of opposite party No. 1 dated the 21st of August, 1963, dismissing the appeal and of opposite party No. 2 dated the 7th of March, 1962, granting permit imposing condition

aforesaid. In writ petition No. 581 of 1963 there is also a prayer to the effect that a writ of mandamus be issued commanding the Regional Transport Authority to allow the petitioner to operate his bus so long as it was found fit as required by the Motor Vehicles Act and Rules. In writ petition No. 582 of 1963 the prayer is that the opposite party No. 2 be commanded to allow the petitioner to ply his vehicle. Apart from these two prayers there is a general prayer for the grant of such writ, direction or order which the Court may deem fit in the circumstances of the case to pass.

6. The contention on behalf of the petitioner is that the provisions of the Motor Vehicles Act, 1939 did not justify the imposing of the condition of the type that has been imposed in the two cases requiring the petitioner in writ petition No. 581 of 1963 to place on the route a bus of 1952 or later model and in the case of writ petition No. 582 of 1963 requiring the petitioner to place on the route bus of 1960 or later model.

7. In order to appreciate the case of the petitioners certain provisions of the Motor Vehicles Act, 1939 have to be looked into. Sub-section (2) of section 58 in so far as it is relevant for our purposes reads :

"58 (2) A permit may be renewed on an application made and disposed of as if it were an application for a permit. "Section 47(1) Provides:

"47(1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely:

- (a) the interests of the public generally;
- (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;
- (c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served;
- (d) the benefit to any particular locality or localities likely to be afforded by the service;
- (e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;
- (f) the condition of the roads included in the proposed route or area; ....."

8. Sub-section (3) of section 48 in so far as it is relevant, reads as follows:

"48(3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a 'specified description' (the underlining (here into ' ') is mine) or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:  
(xxiii) ....."

9. An application for renewal of a permit may be disposed of as if it were an application for a permit. One of the considerations that should prevail with the Regional Transport Authority in considering the application for a permit or for a renewal of a permit is the interests of the public generally. After the Regional Transport Authority has decided to grant a permit it may grant the permit for service of stage carriages of a specified description. In none of the provisions on which reliance has been placed and which have been referred to above is it specifically provided that one of the conditions that may be imposed in the granting of a permit may be as to the year of manufacture of the vehicle. The learned counsel on behalf of the State, however, relies on the provisions of sub-section (1), clause (a) of Section 47 and the main provisions of sub-section (3) of Section 48 above referred to.

10. Sub-section (1) of section 47 relates only to the considerations that should prevail with the Regional Transport Authority at the time an application for permit comes before it and among other things it has to take into consideration the interests of the public generally. Sub-section (1) of section 47 does not deal with a condition that may be imposed in the permit if it is granted. It deals as to what should be considered by the Regional Transport Authority at the time of the grant of a permit when an application is before it and it has to take into consideration the interests of the public generally among other things while deciding as to whether a permit should be granted or not on the application made to it.

11. Sub-section (3) of section 48, however, deals specifically as to the imposition of conditions at the time of the granting of a permit. The specific conditions mentioned in clauses (i) to (xxiii) in the section have not been relied upon. Reliance is placed on the main provision of sub-section (3) only and it is pointed out that the condition that the manufacture of the stage carriage will be of a particular year is covered by the words "stage carriages of a specified description" contained in that section. The question is

whether the provision that a stage carriage that is plied on a route will be the manufacture of a particular year or of manufacture of a later year can be said to be a specified description of a stage carriage. The word "description" according to the Webster's New International Dictionary Second Edition means an enumeration of the essential qualities of a thing or species; the characterizing features of a class. There are several manufactures of the stage carriages on the route, for instance, Tata, Mercedes and Leyland. It may be that a particular vehicle is of 1952 or of 1960 model, but the two manufactures may be different in description one from the other. The amenities provided in the two may be different, the sitting arrangement may be different, the widths may be different, the legroom may be different, the models of the engines may be different and so forth. The mere description that a vehicle may be of the make of a particular year cannot be said to be a specified description of that vehicle. The condition placed by the Regional Transport Authority that the vehicle should be of the year 1952 model or of a later date or of the year 1960 or of a later date does not amount to the prescribing of a specified description of the stage carriage.

12. The word "specified" according to the dictionary meaning means definitely or specifically mentioned, determined, fixed, or settled. The condition that a stage carriage that may ply on a particular route should be the manufacture of a particular year or of a later year cannot be said to be a condition providing for service stage carriages of a specified description for, as I have already pointed out, different manufacturers may produce different types of vehicles in the same year and the mere description that the vehicle may be of a particular year's manufacture without specifying the manufacturer's name does not amount to the providing of a carriage of a specified description. Thus when a condition is prescribed by the Regional Transport Authority in the permit that the stage carriage will be of a particular year's manufacture or of a manufacture of later date, it cannot be said to have been done under the authority of sub-section (3) of section 48 of the Motor Vehicles Act.

13. The learned counsel for the petitioner relied on *Mangilal Sharma v. Appellate Tribunal of State Transport Authority, Rajasthan*<sup>1</sup> to show that the case is not covered by section 48. The relevant provisions of section 48 that were considered in that case were different from the relevant provisions as they now exist after the amendment made by the Motor Vehicles Amendment Act, 1956. The old section 48(d) read as follows:

"A Regional Transport Authority may, after consideration of the matters set forth in sub-section (1) of section 47 -

.....

(d) attach to a stage carriage permit any prescribed condition or any one or more of the following conditions, namely:

(i) that the service specified in the permit shall be commenced not later than a specified date and be continued for a specified period;

(ii) that the service may be varied only in accordance with specified condition;

(ii) (a) that the stage carriage or stage carriages shall be used only on specified routes or in a specified area;

(iii) that copies of the fare-table and time-table shall be exhibited on the stage carriage and that the fare-table and time-table so exhibited shall be observed;

(iv) that not more than a specified number of passengers and not more than a specified amount of luggage shall be carried on any specified vehicle at any one time;

(v) that within municipal limits and in such other areas and places as may be prescribed passengers shall not be taken up or set down at or except at specified points; or

(vi) that tickets shall be issued to passengers for the fares paid."

14. It was in these circumstances that it was pointed out that in view of these provisions the State Transport Authority was not empowered to attach the condition of the type which was the subject matter of enquiry in that case for it was not covered by any of the conditions laid down in clauses (i) to (vi) of section 48(d) making no reference to such condition.

15. It was, however, pointed out in *Sheel Chand and Co. v. State Transport Appellate Authority, Gwalior*,<sup>2</sup> by a Division Bench that after the amendment of section 48, as it now stands, a condition may be prescribed to the permit that the stage carriage will be of a particular year of manufacture. It has been pointed out therein that the specific description of a stage carriage is not confined to its class, name, maker, number of cylinders or horse-power, but also includes the years of manufacture. With this view however, I respectfully differ. A stage carriage cannot be said to be specifically described only by saying that it should be of a particular year of manufacture for there may be several manufacturers in the market and the stage carriages manufactured by them in a particular year may be of different descriptions. As I have already pointed

out above, the word "description" means an enumeration of the essential qualities of a thing or species or the characterizing features of a class. Merely saying that a stage carriage must be of the manufacture of a particular year will not amount to the enumeration of the essential qualities of the stage carriage or its charactering features for stage carriages of different manufacturers during a particular year may be of different descriptions.

16. In the circumstances of the case, the opposite parties exceeded their jurisdiction in attaching the condition of the type they have attached in the permits granted by them.

17. The writ petitions are accordingly allowed and the impugned orders of the opposite parties dated the 21st August, 1963 and the 7th of March, 1962 are quashed. It will, however, be open to them to impose such conditions on the grant of the permit as are covered by the provisions of sub-section (3) of section 48 of the Motor Vehicles Act and to see that the vehicle which is sought to be plied is fit in every respect for the purpose for which the permit is granted. The opposite parties shall bear the costs of the petitioners.

Petitions allowed.

Cases Referred.

1. AIR 1957 Raj 167
2. AIR 1964 Mad Pra 8