RAJASTHAN HIGH COURT

Automobile Transport (Rajputana) Ltd.

Vs.

Nathuram Mirdha

Civil Writ Petn. No. 138 of 1957
(K.L. Bapna, Ag. C.J. and Jagat Narayan, J.)

14.10.1958

JUDGMENT

Jagat Narayan, J.

1. This is an application under Article 226 of the Constitution against an appellate order under the Motor Vehicles Act (hereinafter called the Act) granting 5 further permits along the Ajmer-Beawar route to respondents Nos. 2 to 6. The petitioners are the existing operators on the route. Members of the Automobile Transport Ltd., petitioner No. 1, hold 6 permits on this route. Petitioners Nos. 2 and 3 hold one permit each.

2. The facts which have given rise to this application are these. In its meeting held on 25-2-56 the Ajmer State Transport Authority decided to increase the number of buses operating on this route from 14 to 17. Applications for the grant of three permits were consequently invited by means or a notice published in accordance with the Rules prescribed by the Ajmer Government for publishing the applications for grant of permits under Section 57 of the Act.
No less than 102 bus owners filed applications for the grant of further permits for the route. These applications included two applications by Naraindas Lonia, Chairman of the Automobile Transport (Rajputana) Ltd., petitioner No. 1 (one in his own name and one in the name of Messrs. Lohia Transport Co.) and one by petitioner No. 3 Smt. Guiab Devi. No one filed any objection that the existing number of permits issued for this route were sufficient to meet the needs of the traffic. These applications were considered by the Ajmer State Transport Authority at its meetings dated 2-7-56, 12-7-56, 18-7-56, 1-8-56 and 16-8-56 and three permits were granted to Kedar Nath Heda, Baba Transport Co. and Brij Raj respectively. The remaining 99 applications for

permits were rejected. These included the three applications on behalf of the petitioners referred to above and the 5 applications of respondents Nos. 2 to 6.

Only respondents Nos. 2 to 6 filed appeals under Section 64 of the Act to the Chief Commissioner Ajmer against the order of the Ajmer State Transport Authority refusing to grant them permits. Before these appeals could be decided the States Reorganization Act came into force as a result of which the State of Ajmer was merged with the State of Rajasthan. The rules framed under the Act by the Ajmer Stats were adapted and the State of Rajasthan became the Appellate Authority in place of the Chief Commissioner. The appeals were heard by the Minister for Transport on 15-7-57. A decision was given by him on 24-7-57 holding that it was necessary to allow at least 5 more buses along the route in the interest of public to provide for weekly holiday and emergencies like breakdowns, sickness etc., and granting 5 further permits to respondents Nos. 2 to 6. The present application was filed against that order on 22-8-57 challenging it inter-alia on the ground that the Minister was not competent to decide the appeals. This defect was subsequently remedied by the issuing of an order on 6-11-57 in the name of the Governor. The decision of the Transport Minister dated 24-7-57 was treated as advice to the Governor under Article 163(1) of the Constitution, which was accepted and was embodied in the order. The writ application was then amended and this order was also challenged.

3. The first contention on behalf of the petitioners is that the resolution of the Ajmer State Transport Authority dated 25-2-56 deciding to increase the number of permits from 14 to 17 amounted to an order under Section 48(a) as it stood before its amendment by Act No. 100 of 1956 and that this order was final and binding on the Appellate Authority who could not have increased the number of permits while deciding an appeal against an order of the State Transport Authority refusing to grant a permit. It may be mentioned here that the present proceedings are governed by the unamended Act. Reliance was placed on the decision of this Court in *Bajranglal v. R.T.A. Jodhpur,* [1] in which it was held that when the Regional Transport Authority takes a decision under Sub-Section (3) of Section 47 of the amended Act it has to consider the matters provided in Sub-Section (1) one of which is that it shall take into consideration any representation made by the existing operators and that unless some kind of notice is given to the existing operators enabling them to make a representation its decision is invalid. It was argued that these observations are equally applicable to the Appellate Authority while it is deciding an appeal under Section 64 of the Act and that it is consequently not open to the Appellate Authority to increase the number of permits along the route without giving notice of its intention of doing so

to the existing operators.

4. Having heard the learned counsel for the parties we are satisfied that the above contention raised en behalf of the petitioners has no force. The Act nowhere provides that a decision of the Regional Transport Authority limiting the number of stage carriages on any specific route is final and binding on the Appellate Authority. Section 64 which provides for an appeal by a person aggrieved by the refusal of a permit nowhere lays clown that in deciding the appeal the Appellate Authority cannot increase the number of permits fixed by the Regional Transport Authority without giving notice to the existing operators.

5. As was pointed out by their Lordships of the Supreme Court in *Saghir Ahmad v. State of U.P.*[2]

> "all public streets and roads vest in the States but that the State holds them as trustees on behalf of the public. The members of public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally; but subject to such limitations the right of a citizen to carry on business in transport vehicles on public pathways cannot be denied to him on the ground that the State owns the highways. Within the limits imposed by State regulations, any member of the public can ply motor vehicle on a public road. To that extent he can also carry on the business of transporting passengers with the aid of the vehicles. It is to this carrying on of the trade or business that the guarantee in Article 19(1)(g) is attracted."

It follows from this that a citizen can legitimately complain if any order passed under the Motor Vehicles Act by the Regional Transport Authority takes away or curtails that right any more than is permissible under clause (6) of that article. Therefore when an application for the grant of a permit is made under Section 46 of the Act what the Regional Transport Authority is bound to consider is whether it would be against public interest to grant it. If it finds that it will not be against public interest to grant it then the Authority is bound in view of the constitutional guarantee, to allow the application. The Regional Transport Authority has to put this question to itself every

time when a fresh application for grant of a permit is made. Under the Act as it stood before its amendment by Act No. 100 of 1956 the Regional Transport Authority was bound to publish every application for grant of a permit and to hear it at a public hearing in the manner provided under Section 57. It is open to the applicant to prefer an appeal under Section 64 against an order refusing to grant a permit. The Appellate Authority has to apply its mind to the same question again namely whether public interest demands that the application should be rejected. There would be no sense in providing for an appeal if it were not open to the Appellate Authority to grant a permit to the appellant. The result of the grant of such a permit would be to increase the total number of permits along the route by one.

6. When an application for a permit is made and is published in the manner provided in Section 57(3) the public at large including the existing operators get notice of the fact that an application for the grant of a further permit has been made to the prescribed authority and that the application is bound to be granted unless the authority is satisfied that it would be against the public interest to do so. If any one wishes to make a representation against the grant of permit to the applicant on any ground whatsoever he must proceed in the manner provided under Section 57. He must file a representation before the Regional Transport Authority before the date published under Section 57(3) and must simultaneously furnish a copy of the same to the applicant as provided under Section 57(4). If he does so his representation will be duly considered by the Regional Transport Authority under Section 57(5). If the representation is rejected the person making the representation can file an appeal under Section 64(f) against the grant of the permit. If however the representation is allowed and the application for grant of a permit is rejected the applicant can prefer an appeal under Section 64(a). In this appeal the person making the representation has no right of being heard. This is as should be. For it is the refusal of the permit which is likely to affect the constitutional guarantee contained in Article 19(1)(g). The grant of a permit may in certain circumstances be against public interest. Such cases are however likely to be rare. Both fares and timings of buses are fixed by the order of the Regional Transport Authority and there can be no uneconomic competition which might be against public interest. If too many buses are allowed on a particular route so as to make their running uneconomical some of the operators will in due course withdraw their buses and only such number of them will be run as is profitable. But the Legislature has not thought it proper to enact that persons who have opposed the grant of the permit before the Regional Transport Authority successfully should be

heard by the Appellate Authority. All that the Legislature has thought fit to enact is that the Regional Transport Authority shall be heard by the Appellate Authority. No existing operator has any vested right to prevent others from plying their buses on the same route. It is only when the plying of more buses is-opposed to public interest that a permit can be refused. If the Regional Transport Authority is satisfied that the grant of a permit is against public interest then naturally the Regional Transport Authority would oppose the grant of the permit before the Appellate Authority also and the Legislature has thought it fit that the interest of the general public shall in such circumstances be represented before the Appellate Authority by the Regional Transport Authority alone. In case however a person authorized to make a representation against the grant of a permit is unable to convince the Regional Transport Authority that no more permits should be granted that a right of appeal to him has been provided so that he may get a hearing before the Appellate Authority. This right has been given for the public benefit and not for safeguarding the financial interest of the existing operators.

7. A decision under Section 48(a) is not even binding on the Regional Transport Authority itself. For even after the number of buses is limited the Authority has to consider afresh whenever another application for a permit is made as to whether or not it should be increased. That involves reconsideration of the number of buses fixed under Section 48(a) whenever a fresh application is made. It will thus be seen that a decision under Section 48(a) by the Regional Transport Authority can never be regarded as a final decision binding ever on itself.

8. The number of buses has no doubt to be fixed under Section 48(a), having regard to the matters mentioned in Section 47(1). But no procedure for doing so has been provided either under the Act or under the Rules. The reason obviously is that a decision under Section 48(a) can, from the very nature of it, as has been shown above, be only tentative. It is no use arriving at a tentative decision after hearing interested parties. It is only when a permit is granted in pursuance of the decision that any party can really have a grievance against the decision. The procedure prescribed for the grant of a permit involves publication of the application and as has been pointed out above when the application is published all those interested in opposing the application get notice that an application has been made and is bound to be allowed unless the Regional Transport Authority is satisfied that it would be against public interest to do so. That is the proper time when persons who are interested in the matter

should make a representation against the grant of the permit. That is the only opportunity which has been provided to them under the law for making representations. They are not entitled to a hearing before the Appellate Authority which has full power to grant as many permits as it considers necessary to do in public interest after hearing the Regional Transport Authority.

9. The decision of the Ajmer State Transport Authority dated 25-2-56 increasing the number of permits to 3 can only be regarded as a tentative one. When 102 persons applied for permits and these applications were published the petitioners and other existing operators had notice of these applications. They will be deemed to have notice of the provisions of the Act. That Act allows the Regional Transport Authority or the Appellate Authority to grant each one of the applications made for the grant of permits provided it is not against public interest to do so. The petitioners or the other existing operators were not entitled to assume either that the Regional Transport Authority would not grant more than three permits or that the Appellate Authority would not grant more than three permits on considering the applications. If they had any representation to make they could have only done so as provided under Section 57 of the Act. They were entitled to a hearing only before the Regional Transport Authority and not before the Appellate Authority. In the present case the petitioners filed no objection before the Regional Transport Authority. On the other hand some of them applied for the grant of further permits to themselves. Their argument is that they were not aggrieved by the grant of three more permits but they are aggrieved by the grant of further 5 more permits, which had been issued by the Appellate Authority in view of the provisions of the Act they should have known that the Appellate Authority had power to grant more permits than the number fixed by the Regional Transport Authority. If they had any objection to the grant of more permits than three that objection should also have been made as provided under Section 57. If they had made such representations and if there had been any substance in them the Regional Transport Authority would have placed that substance before the Appellate Authority for its consideration.

10. We have already pointed out above that the observations made in Bajranglal's case 1958 Raj LW 370 are only applicable to a decision made by the Regional Transport Authority under Section 48(a) and that they cannot be applied to the Appellate Authority in deciding an appeal against the decision of the Regional Transport Authority under Section 64. As has been shown above the notice implicit in Section

48(a) to the existing operators and local authorities is given when applications for permits are published as required under Section 57. In that view of the case the interference by this Court in Bajranglal's case 1958 Raj LW 370 was premature. The petitioner in that case came to the Court before any permit was granted as soon as he came to know that the Regional Transport Authority had passed a resolution increasing the number of permits. The petitioner could only be said to have a real grievance if an order granting further permits had been passed. Before such an order could be passed the applications would have been published as provided under Section 57 and the applicant would have got notice of the proposal of the Regional Transport Authority to increase the number of permits. He could have preferred his objection in the manner provided in Section 57 and would have got a hearing. One of us was a party to, the decision in Bajranglal's case 1958 Raj LW 370. This aspect of the matter was not brought to the notice of the Court when that decision was given.

11. We accordingly hold that it was open to the Appellate Authority to have increased the number of permits by 5 beyond the limit fixed by the Regional Transport Authority under Section 48(a) without giving notice of its intention to do so to the existing operators.

12. The second contention put forward on behalf of the petitioners is that the decision of the Governor conveyed in order dated 6-11-1957 is invalid as a decision on an appeal filed under Section 64, for in a quasi-judicial matter it was incumbent on the Governor to have given a personal hearing to the parties to the appeal before deciding it. Reliance was placed on the decision of this Court in *Purshotam Singh v. Narain Singh*, [3]We have carefully read the judgment of that case and we are firmly of the opinion that the observations made in it are only applicable where the Governor is required to exercise his function in his discretion within the meaning of Article 163(1) of the Constitution. Purshotam Singh's case AIR 1955 Rajasthan 203 related to a decision with regard to the succession to a jagir made by the Rajpramukh under Art. VII(3) of the Covenant which runs as follows :

> "Unless other provision is made by an Act of the Legislature of the United State, the right to resume Jagirs or to recognize succession, according to law and custom, to the rights and titles of the Jagirdars shall vest exclusively in the Raj Pramukh."

In arriving at his decision the Raj Pramukh was not prevented from consulting his Ministers, but he was not hound to do so or to act on their advice. The decision was to be exclusively that of the Raj Pramukh. It was in such, circumstances that it was held in that case that the Raj Pramukh should have even a personal hearing to the applicant before deciding the case.

13. The expression 'executive action' in Article 166 of the Constitution is comprehensive enough to include orders which emerge as a result of a quasi-judicial decision by the Government. Such decisions can only be made on the advice of the Ministers, as there is no provisions in the Constitution requiring the Governor to exercise quasi-judicial functions in his discretion. There is an allocation of business among the Ministers and each Minister is assigned some department in regard to which he takes the primary responsibility for the advice. The 'decision' taken by the Minister on 24-7-57 was the advice which he tendered to the Governor on behalf of the Council of Ministers and it became an order of Government when it was embodied in a formal order issued on the authority of the Governor. A similar view was taken in *Pioneer Motors v. O.M.A. Majeed* [4] with which we are in respectful agreement.

14. We accordingly hold that the order dated 6-11-57 issued in the name of the Governor was perfectly a valid Quasi-judicial decision under Section 64 of the Act.

15. In the result we dismiss the petition with costs and discharge the stay order.

Petition dismissed.

Cases Referred.

1. 1958 Raj LW 370
2. AIR 1954 SC 728
3. AIR 1955 Raj 203
4. AIR 1957 Mad 48