

RAJASTHAN HIGH COURT

Narendra Kumar

Vs.

State of Rajasthan

D. B. C.S. A. No. 294 of 2004
(N.N. Mathur and K.K. Acharya, JJ.)

13.05.2004

JUDGEMENT

N. N. Mathur, K. K. Acharya, JJ. .

1. This Special Appeal is directed against the judgment of the learned Single Judge dated 12-4-2004 dismissing the writ petition.

2. The relevant facts giving rise to instant Special Appeal are that the Regional Transport Authority, Sikar (in short "the RTA") notified the vacancies for grant of two non-temporary stage carriage permits for single trips on the inter-State route RajgarhHissar via Jhupa vide notification dated 5-8-2003. Pursuant to the said notification, the appellant offered the vehicle of the Model 2003. The RTA considered all the applications in its meeting held on 10-2-2004. As per the circulation note, the appellant's application was listed at S. No. 34. The RTA vide its resolution dated 5-3-2004 granted permit in favor of respondent No. 3 Bharat Singh and respondent No. 4 Sube Singh, whose applications were listed at S. Nos. 40 and 41 respectively. The resolution indicates that third respondent was given preference being an ex-service man and the fourth respondent being a member of the scheduled caste. The appellant challenged the said resolution dated 5-3- 2004 before this Court by way of writ petition under Article 226 of the Constitution of India *inter alia* on the ground that the grant of permit on the inter-State route is regulated by the provisions of Section 88 of the Motor Vehicles Act, 1988, hereinafter referred to as "the Act of 1988". Neither under the Act of 1988 nor under reciprocal transport agreement entered-into in between the State of Rajasthan and State of Haryana, there is any provision for reservation of the permit in favor of the scheduled caste and scheduled tribe or ex-service man nor there is any provision to give preference to them while granting

permit under the existing vacancies on any inter-State route. The writ petition was contested by the contesting respondents *inter alia* on the ground that they were granted permit not only on the ground of being ex- service man or person of S.C./S.T. but they were preferred because (i) they hold no permit on any inter-State route; (ii) they are local residents; and (iii) they are capable of managing transport business. It was further submitted that in consideration to the appellant not being the local resident, preference to second and third respondents being local residents, was a proper and reasonable consideration in the interest of the travelling public. The respondents also sought dismissal of the writ petition on the ground of having not availed statutory alternative remedy of appeal before the State Transport Appellate Tribunal (in short "the STAT") under Section 89 of the Act of 1988.

3. Learned single Judge held that whether the provisions of Section 71 of the Act of 1988 are applicable for grant of stage carriage permits for city routes and not for inter-State routes and whether the provisions of Section 71 of the Act of 1988 are applicable for grant of stage carriage permits on inter-State route on priority basis in favor of the ex-service man or members of the scheduled castes and scheduled tribes category or not, are all such type of mixed questions of law and fact, upon which this Court would not like to straightway give express opinion or substitute its own decision unless there is a fair exercise by the statutory authority i.e. State Transport Appellate Tribunal, which is a statutory Tribunal sitting in appeal over the orders of the Regional Transport Authority.

4. It is contended by Mr. SangeetLodha, learned counsel for the appellant, that the learned single Judge has committed serious illegality in dismissing the writ petition on the ground of alternative remedy. It is submitted that whether there is any provision in the Act of 1988 providing reservation or whether the RTA has any jurisdiction to grant a permit by providing reservation de hors the provisions of the Act of 1988 are pure questions of law and no factual aspect is required to be examined in the matter, therefore, by no stretch of imagination, it can be said that the question involved in the writ petition was a mixed question of fact and law, which would not be examined by this Court in exercise of its extra-ordinary powers under Article 226 of the Constitution of India, only for the reason that the remedy of appeal was available to the appellant under the relevant Statute. On the other hand, Mr. B. L. Maheshwari learned counsel for the contesting respondents, has supported the judgment of the learned single Judge. He has placed reliance on an unreported decision of this Court in *Rajkumar Singh v. State* ¹

5. We have considered the rival contentions. Dealing with the question of alternative remedy, the Apex Court in *Raja Anand Brahman Shah v. State of U. P.*, reported in ²held that the existence of alternate remedy is always not a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction or continuing such action. It is not necessary to trace all the judgments on the point involved. Suffice it to refer the decision of the Apex Court in *Whirpool Corporation v. Registrar of Trade Marks*, reported in ³wherein the Court on review of almost all the cases on the point, reiterated three well established exceptions wherein writ jurisdiction does not operate bar, in spite of existence of statutory remedy. The Court held thus at (Page 26; of AIR) :

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

6. In order to answer as to whether the RTA acted without jurisdiction, the precise question which is required to be addressed is as to whether any non- temporary stage carriage permit on an inter-State route can be granted by the RTA by providing reservation? In order to appreciate the controversy, it would be apt to acquaint with the provisions of Section 71 of the Act of 1988, which reads as follows:

"71. Procedure of Regional Transport Authority in considering application for stage carriage permit.- (1) A Regional Transport Authority, shall, while considering an application for a stage carriage permit, have regard to the objects of this Act:

(2) (A) Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant

to amend the time-table so as to conform to the said provisions.

(3) (a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

(b) Where the number of stage carriages are fixed under clause (a), the Government of the State shall reserve in the State certain percentage of stage carriage permits for the scheduled castes and the scheduled tribes in the same ratio as in the case of appointments made by direct recruitment to public services in the State.

(c) Where the number of stage carriages are fixed under clause (a), the Regional Transport Authority shall reserve such number of permits for the scheduled castes and the scheduled tribes as may be fixed by the State Government under sub-clause (b).

(d) After reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application have regard to the following matters, namely:-

(i) financial stability of the applicant;

(ii) satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service; and

(iii) such other matters as may be prescribed by the State Government:

Provided that, other conditions being equal, preference shall be given to applications for permits from-

(i) State transport undertakings;

(ii) co-operative societies registered or deemed to have been registered under any enactment for the time being in force;

(iii) ex-servicemen; or

(iv) any other class or category of persons, as the State Government may, for reasons to be recorded in writing, consider necessary."

7. A bare reading of sub-section (3)(a) of Section 71 shows that the RTA has a power to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs, where the State Government has issued notification having regard to the number of vehicles, road conditions and other relevant matters under the directions of the Central Government. Under sub-section 3(b), where the number of stage carriages are fixed under clause (a) i.e. with respect to stage carriages operating on city routes, certain percentage of stage carriage permits in the same ratio as in the case of appointments made by direct recruitment to public services in the State, is to be provided. Further clause (c) of sub-section (3) makes it clear that the Regional Transport Authority shall reserve such number of permits for the scheduled castes and the scheduled tribes as may be fixed by the State Government under sub-clause (b), where the number of stage carriages are fixed under clause (a). Further, clause (d) provides that after reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application have regard to the following matters viz; (i) financial stability of the applicant; (ii) satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service; and (iii) such other matters as may be prescribed by the State Government, provided that, other conditions being equal, preference shall be given to applications for permits from (i) State transport undertaking; (ii) co-operative societies registered or deemed to have been registered under any enactment for the time being in force; (iii) ex-servicemen; or (iv) any other class or category of persons, as the State Government may, for reasons to be recorded in writing consider necessary.

8. Thus, it is abundantly clear that the aforesaid provisions with regard to reservation for S.C./S.T. and the ex-serviceman pertain to city routes in towns with a population of not less than five lakhs, while the number of stage carriages generally or of any specified type, has to be fixed by the State Government as directed by the Central Government. In view of the aforesaid, we have no hesitation in holding that the provisions of Section 71(3)(a), (b), (c) and (d) providing reservation for SC/ST or ex-serviceman have no application to inter-State route. It is admitted by the learned counsel for the contesting respondents that there is no provision under the Act of 1988 providing reservation or preference to applicants for non-temporary stage carriage

permits on the inter-State route on the ground that they belong to SC/ST or ex-service man category. Thus, by no stretch of imagination, it can be said that whether the provisions of Section 71 of the Act of 1988 are applicable for grant of stage carriage permits on inter-State route on priority basis in favor of the ex-service man or members of SC/ST category or not, is a mixed question of law and facts.

9. It is, however, submitted by Mr. B. L. Maheshwari, learned counsel for the respondents Nos. 3 and 4 that the permit has not been granted in favor of respondent Nos. 3 and 4 only on the ground that they are ex-service man or members of the SC/ST but other relevant considerations as well.

10. In order to appreciate the contention, we have carefully perused the impugned reservation made by the R.T.A. With a view to verify if the RTA resolved to grant permit to third and fourth respondents solely on the ground of their being ex-service man or persons of SC/ST, we have read the relevant part of the resolution, which is extracted as follows:

(vernacular matter omitted)

11. It clearly appears that the RTA has granted permit in favour of respondent Nos. 3 and 4 solely on the ground of their being persons belonging to category of ex-service man and SC/ST respectively. Thus, we are of the view that the RTA had no jurisdiction to grant permit to third and fourth respondent de hors the provisions of the Act of 1988 and the rules made thereunder. The RTA has exceeded the jurisdiction in applying reservation which is not provided under the Act to the respondent Nos. 3 and 4 in the matter of grant of permit on inter-State route. It was obligatory on the RTA to have considered the competitive claims of the parties concerned. The resolution of the RTA as far as grant of permit to respondent Nos. 3 and 4 is concerned, is *ex facie* without authority of law, illegal and void.

12. As far as the unreported decision cited by the learned counsel for the respondents in Rajkumar Singh's case supra is concerned, it is distinguishable inasmuch as in the said case, preference was given to Co-operative Society. The RTA also took into consideration other relevant aspects. Learned single Judge observed-

".It is not the case of the petitioner that he has offered the vehicle of the higher model than the vehicle which has been offered by the respondent No. 3 to be plied on the route on grant of stage carriage permit."

13. In the instant case, the appellant had offered the latest model of 2003. Learned

single Judge has committed an apparent error in dismissing the writ petition relating appellant to the alternative remedy of Section 88 of the Act of 1988. The instant case clearly falls in one of the categories wherein the alternative remedy is not a bar.

14. The upshot of the aforesaid discussion is that the instant appeal is allowed. The order of the learned single Judge dated 12-4-2004 is set aside. The writ petition is allowed. The resolution dated 5-3-2004 (Annex. 7) passed by the RTA, Sikar is quashed, so far as it relates to grant of permit to respondent Nos. 3 and 4 is concerned. The second respondent is directed to reconsider the applications submitted by the appellant and others in pursuance of the notification dated 5-8-2003 within a period of two months for grant of permit against the existing vacancies on the inter-State route RajgarhHissar via Jhupa afresh in accordance with law i.e. upto 12-7-2004, keeping in view convenience of the travelling public. It is further directed that respondent Nos. 3 and 4 would continue to ply the buses on the subject route upto 12-7- 2004.

Appeal allowed.

Cases Referred.

1. S. B. Civil Writ Petition No. 4758/2003 decided on 18-8-2003.
2. AIR 1967 SC 1081
3. 1998 (7) JT (SC) 243: (AIR 1999 SC 22)