

# RAJASTHAN HIGH COURT

RadheyShyam

Vs.

State of Rajasthan

Civil Special Appeal No. 17 of 2004

(N.N. Mathur and K.K. Acharya, JJ.)

13.05.2004

## JUDGEMENT

**N. N. Mathur, J.**

1. The instant special appeal is directed against the order dated 14-11-2003 passed by the learned single Judge, dismissing the writ petition.

2. The controversy in the instant special appeal pertains to grant of inter- State route permit i.e. Bhadra to Hisar via Adampur. It is averred that in the year 1968, the State of Rajasthan and the State of Haryana entered into reciprocal transport agreement, which came into force on 1-4-1968 in respect of the inter-State route, whereby, it was agreed that the nominees of Rajasthan would operate daily 8 return services. In pursuant to it, permits were granted on the said route. A fresh reciprocal transport agreement was entered into between the two States on 9-7-1997, which came to be published in the Rajasthan Gazette on 15-7-1997 and in a local newspaper namely 'Rajasthan Patrika' on 22-7-1997. The appellant submitted an application on 21-7-1997 for grant of permit on the said route. The Regional Transport Authority, Bikaner rejected the application by order dated 25-4-1998 for want of any vacancy. The matter was carried unsuccessfully by the appellant to the State Transport Appellate Tribunal, *Jaipur*. The Tribunal by judgment dated 29-8-2000 held that the appellant's application was premature inasmuch as, the application was submitted before the agreement between the two States came into force by publication in the local newspaper i.e. on 22-7-1997. The appellant further carried the matter in writ petition before this Court. The learned single Judge allowed the writ petition and remitted the matter to the R. T.A. for fresh consideration. The R. T. A. considered the application of the appellant along with the other applications. The R. T. A. on fresh consideration of the application of the appellant and the other applicants resolved to grant permit on

the said route in favour of the third respondent. The appellant's application was rejected on the ground of it being premature. The appellant approached to this Court in second round. The learned single Judge by the impugned order having found the appellant's application being premature, dismissed the writ petition.

3. It is submitted by Mr. B. L. Maheshwari, learned counsel for the appellant that the subject agreement was entered into in between the two States on 9-7- 1997, which is the crucial date and not 22-7-1997 the date on which it was published in the Official Gazette on 15-7-1997 and in the local newspaper on 22-7-1997 (sic). It is further submitted that the learned single Judge has committed error in holding that the counter-signatures cannot be seen in isolation from the grant of permit. Elaborating the contention, it is submitted that the permit on an inter-State route is granted by one State and it becomes effective on counter-signature. Thus, the making of an application after the two States entered into an agreement cannot be subjected to the publication of the notification under sub-section (6) of Section 88 of the Act of 1988. It is further submitted that the publication of an agreement is only a procedure in hand. On the other hand, the learned Additional Government Advocate has supported the judgment of the learned single Judge.

4. The scheme for grant of route permit is provided under different provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988'). Section 69 of the Act of 1988 deals with the general provisions as to the applications for permits. The second proviso provides that "if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which applicant resides or has his principal place of business". Sub-section (1) of Section 71 of the Act of 1988 provides that "a Regional Transport Authority shall, while considering an application for a stage carriage permit, have regard to the objects of this Act. Section 80 of the Act of 1988 provides the procedure for applying and grant of permits. Section 88 of the Act of 1988, which is most relevant in the present controversy provides validation of permits for use outside region in which it is granted. Sub-section (1) of Section 88 of the Act of 1988 empowers the R. T. A. of the concerned region to grant a permit on the inter-State route provided that it is counter-signed by the State Transport Authority or by the Regional Transport Authority of the concerned region of inter-State (route) if the counter-signatures are not obtained then automatically that grant will confine within the region of the State. In order to appreciate the controversy involved it would be apt to read sub-sections (5) and (6) of Section 88 of the Act of 1988, which reads as

follows :--

"(5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Government concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place, at which, the proposal and any representation received in connection therewith will be considered."

"(6) Every agreement arrived at between the States shall, insofar as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it."

5. Thus, sub-section (5) of the Act of 1988 provides that every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Government concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered. Sub-section (6) of the Act of 1988 provides that every agreement arrived at between the States shall, insofar as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it.

6. The Apex Court in *Ashwani Kumar v. R. T. A.*, reported in AIR 1999 Supreme Court 3888, considering the provisions of sub-sections (5) and (6) of Section 88 of the

Act of 1988 held as follows :-

"The Act envisages three categories of permit-seekers, namely (i) inter- region, (ii) intra-region, and (iii) inter-State. Different criteria and procedure has been provided under the Act for granting permits in respect of each of the categories. The grant of inter-State permits with which we are concerned in these appeals are permissible under Section 88 (5) of the Act. The existence of a route is a condition precedent for exercise of the power under sub-section (1) of Section 88 of the Act. Intra (inter) State route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by one State or an Authority in the State. The concerned State Governments are supposed to deliberate and decide the routes to be opened as inter-State routes by determining the number of trips each route to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective which is claimed to be a social welfare legislation."

7. It is evident that sub-section (5) of Section 88 of the Act of 1988 provides a proposal to enter into an agreement regarding fixing of number of permits which is proposed to be granted or countersigned. Sub-section (6) of Section 88 of the Act of 1988 provides the subsequent stage i.e. after the publication of the proposed agreement. It provides the publication of the agreement in the Official Gazette as well as in the local newspaper. The authorities can give effect to such an agreement only when such agreement is published in Gazette as well as in the newspaper. Thus, an agreement can be effected only after the same is published in the Official Gazette as well as in the local newspapers. The R. T. A. cannot give effect to the agreement before its publication in the local newspapers.

8. In the instant case, there is concurrent finding of fact, that the application was submitted by the appellant for grant of inter-State permit on 21-7-1997, whereas, the agreement came into force on 22-7-1997 when it was published in the local newspaper. Thus, the learned single Judge has rightly confirmed the finding of the Transport Authorities that the application filed by the appellant was premature, which does not warrant interference by this Court.

9. In view of the aforesaid, the special appeal being devoid of merit stands dismissed.

Appeal dismissed.