

Before Prem Chand Jain and Harbans Lal, JJ.

PATIALA BUS SIRHIND (P.) LTD. SIRHIND,—*Petitioners*

versus

STATE TRANSPORT APPELLATE TRIBUNAL, PUNJAB and
others,—*Respondents.*

Letters Patent Appeal No. 36 of 1979.

May 30, 1980.

Motor Vehicles Act (IV of 1939)—Sections 57 (8), 64 and 64-A—Order varying the conditions of a permit under section 57 (8)—Whether amounts to the grant of a new permit—Word ‘treated’ used therein—Meaning of—Such order—Whether appealable.

Held, that sub-section (8) of Section 57 of the Motor Vehicles Act, 1939 consists of three parts and provides as to what application should be treated as an application for the grant of a new permit. The first category comprises of an application to vary the condition of any permit other than a temporary permit by the inclusion of a new route or routes or a new area. The second group comprises applications in regard to stage carriage permits for increasing the number of services above the specified maximum. The third category comprises applications in the case of a contract carriage permit or a public carrier's permit for increasing the number of vehicles covered by the permit. Under this sub-section, an application to 'vary the conditions' is required to be treated as an application for the grant of a new permit. The word 'treated' in this provision obviously means 'dealt with' or 'regarded' in the same manner as an application for the grant of a new permit. Section 57 prescribes the procedure for the making of an application and for grant of permits. Therefore, when sub-section (8) of Section 57 lays down that an application to vary the conditions of any permit shall be treated as an application for the grant of a new permit, all that the law meant was that such an application should be dealt with and disposed of in the same manner as an application for the grant of a permit is dealt with and disposed of. The procedural formalities required to be followed in the case of the grant of a new permit are also required to be strictly observed in an application filed for the variation of the conditions of the permit as envisaged under sub-section (8). If an application for variation is granted then it would not result into the grant of a new permit and it would be a wholly untenable approach to treat an order granting a variation in any of the conditions by any permit under sub-section (8) of Section 57 as a grant of a new permit.

(Para 10).

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Held, that by treating an application under sub-section (8) of Section 57 as an application for the grant of a new permit, it cannot be said that any order passed on an application to vary the conditions of a permit would tantamount to grant of a new permit for the purpose of appeal under section 64(1) (f) of the Act. The bare perusal of section 64(1) (f) goes to show that an appeal has been provided only against the grant of a permit or any condition attached thereto. The variation made in the permit by the inclusion of a new route under sub-section (6) of Section 57 cannot be treated as a grant of a new permit. Hence, there can be no escape from the conclusion that an appeal against such an order would not be competent under section 64(1) (f). If the Legislature had intended to provide for an appeal against the order passed under sub-section (8) of Section 57 then a suitable amendment in section 64(1) (f) would have been made. The right of appeal springs from an express legislative authority and cannot be inferred by implication. Thus, an application filed to vary the condition of any permit as envisaged under sub-section (8) of Section 57 has to be treated as an application for the grant of a new permit only for the purpose of following the procedure laid down in section 57; that an order passed on such an application varying any condition cannot be treated as an order granting new permit; that against an order passed under section 57(8) no appeal lies under section 64(1) (f) of the Act and that a revision under section 64-A is competent. (Paras 11 and 13).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice J. M. Tandon, dated 30th January, 1979.

H. S. Sawhney, Advocate, for the appellant.

B. S. Wasu, Advocate, for respondent No. 2.

Suresh Amba, Advocate and N. K. Sodhi, for respondent No. 3.

JUDGMENT

Prem Chand Jain, J.

(1) The Patiala Bus Sirhind (P) Limited, Sirhind, and the Sirhind-Khanna Transporters (P) Limited, Sirhind (hereinafter referred to as the appellants) held one permit for two return trips each on Patiala-Bassi via Rajpura route. They applied to the State Transport Commissioner, Punjab, respondent No. 2, for the extension of the route beyond Bassi upto Morinda. The contents of their application were published under section 57(3) of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) in the weekly 'Shamsher Hind' Patiala on November 1, 1973, for inviting representations. The Ambala Bus Syndicate (Private) Limited, Ropar,

respondent No. 3, held route permits to cover the portion between Bassi and Morinda. No representation was filed by respondent No. 3 in writing before the appointed date against the extension of the route prayed for by the appellants. The State Transport Commissioner, respondent No. 2, considered the prayer of the appellants on February 11, 1974. Respondent No. 3 appeared before respondent No. 2, on the date fixed and objected to the grant of the extension of the route on the ground that it would adversely affect its business. The said objection did not prevail with respondent No. 2 for the reason that the same had not been made within the time limit and no copy thereof had been furnished to the appellants. Finding that the extension of the route prayed for was in the interest of the public, the Commissioner, respondent No. 2, allowed the application of the appellants and extended Patiala-Bassi via Rajpura route upto Morinda.

(2) Feeling aggrieved from the order of respondent No. 2, respondent No. 3 preferred an appeal before the State Transport Appellate Tribunal, respondent No. 1, which was allowed on June 5, 1974, and the order of respondent No. 2 was set aside. The appellants challenged the legality of the said order in this Court by filing C.W.P. No. 2052 of 1974, which was dismissed by a learned Single Judge of this Court on August 27, 1974. Still dissatisfied, letters patent appeals were filed by the appellants separately which were partly allowed on March 15, 1977 and the case was remitted back to respondent No. 1 for a fresh decision.

(3) The appeal was again heard by respondent No. 1 on merits after remand and was dismissed on the ground that it was not maintainable because respondent No. 3 (appellant before respondent No. 1) had not filed representation in writing under sub-section (3) of section 57 of the Act. The prayer made on behalf of respondent No. 3 to the effect that the appeal be treated as a revision under section 64-A of the Act was also negatived on the ground that the order of the State Transport Commissioner was appealable under section 64(1) (f) of the Act.

(4) Feeling aggrieved from the order of respondent No. 1, respondent No. 3 filed C.W.P. No. 4238 of 1978 in this Court. The learned Single Judge, who heard the petition, allowed the same on January 30, 1979 and quashed the order of respondent No. 1 dated September 7, 1978, copy Annexure P. 3, and remitted the case to

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respondent No. 1 for hearing the same as a revision. It is against the said judgment of the learned Single Judge that the present appeal under Clause X of the Letters Patent has been filed.

(5) Various points were raised before the learned Single Judge, but the only matter that survives for our consideration and was debated before us is, whether an order passed by the Regional Transport Authority on an application under sub-section (8) of section 57 of the Act is appealable to the prescribed authority under section 64 of the Act? In other words, what is required to be decided by us is whether an operator who has failed to file his representation within the notified time in response to the notice of application for variation of routes published under section 57(3) of the Act, can file an appeal under section 64(1) (f) of the Act?

(6) A similar contention was raised before the learned Single Judge and the same, on the basis of the judgment in *Swami Motor Transports (P) Ltd., Tanjore v. Raman and Raman (P) Ltd. Kumbakonam and another*, (1); *A. Janardhana Rao v. Deputy Transport Commissioner, Kakinada and others*, (2) and *Hazarilal Gupta v. State Transport Appellate Authority, M.P. and others*, (3), was repelled thus :—

“No cogent argument has been advanced from the side of the respondents to discard the view expressed in these authorities and to hold otherwise. I concur with the view expressed therein and hold that the provision contained in section 57(8) for treating an application to vary the conditions of a permit as one for grant of a new permit is restricted exclusively to section 57 and cannot be extended to section 64. The petitioner, therefore, has no right of appeal against the impugned order (Annexure P. 1) under section 64(1) (f). In this situation the omission to file written objections within the stipulated date stands rendered irrelevant.

The learned counsel for the respondents has argued that under section 64(1) (f) a right of appeal is given to a party

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- (1) AIR 1965 Madras 321.
 - (2) AIR 1965 Andhra Pradesh 115.
 - (3) AIR 1970 M.P. 220.

aggrieved by the grant of a permit or by any condition attached thereto. The words 'by any condition attached thereto' include an order varying conditions of a permit. The petitioner could file an appeal under section 64(1) (f) provided written objections had been filed within time. As the impugned order (Annexure P. 1) is appealable, no revision under section 64-A is competent. I am not impressed by this contention. Section 64(1) (f) deals exclusively with the grant of a permit or any conditions attached thereto. An application to vary the conditions of a permit in terms of section 57(8) is not one for grant of a permit in the context of section 64(1) (f). The words 'thereto' in section 64(1) (f) relates to the grant of a permit and cannot be linked with section 57(8). The words by any conditions attached 'thereto' in section 64(1) (f) will thus not make the impugned order Annexure P. 1 appealable at the instance of the petitioner if written objections had been filed within time."

After having at the aforesaid finding the learned Single Judge further held that a revision was competent before the State Transport Appellate Tribunal. It was on the basis of the aforesaid finding that the writ petition was allowed, the order of the State Transport Appellate Tribunal dated September 7, 1978 (copy Annexure P. 3) was set aside and the case was sent back to the State Transport Commissioner for deciding the same as a revision.

(7) Mr. Sawhney, learned counsel for the appellants, contested the aforesaid finding of the learned Single Judge and submitted that against the order of the State Transport Commissioner passed under section 57(8) of the Act no revision lay under section 64-A of the Act and that an appeal could only be filed under section 64(1) (f) in case representation had been filed on the receipt of the notice of application which was published in accordance with the provisions of section 57(3) of the Act.

(8) On the other hand, it was submitted by Mr. Amba, learned counsel appearing for the counsel for respondent No. 3, that the order passed under section 57(8) was not appealable under section 64(1) (f) of the Act and as against such an order no appeal lay the only remedy available to respondent No. 3 was by way of revision under section 64-A of the Act.

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(9) In order to properly appreciate the contentions of the learned counsel for the parties, it would be appropriate at this stage to notice the relevant provisions of sections 57, 64 and 64-A of the Act, which read as under :—

- “57. (1) An application for a contract carriage permit or a private carrier's permit may be made at any time.
- (2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such application, on such dates.
- (3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner 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 such publication, on which, and the time and place at which the application and any representations, received will be considered ;

Provided that, if the grant of any permit in accordance with the application or with modifications would have the effect of increasing the number of vehicles operating in the region or in any area or on any route within the region, under the class of permits to which the application relates, beyond the limit fixed in that behalf under sub-section (3) of section 47 or sub-section (2) of section 55, as the case may be, the Regional Transport Authority may summarily refuse the application without following the procedure laid down in this sub-section.

- (4) No representation in connection with an application referred to in sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is

furnished simultaneously to the applicant by the person making such representation.

- (5) When any representation such as is referred to in subsection (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.
- (6) When any representation has been made by the persons or authorities referred to in section 50 to the effect that the number of contract carriages for which permits have already been granted in any region or any area within a region is sufficient for or in excess of the needs of the region or of such area, whether such representation is made in connection with a particular application for the grant of a contract carriage permit or otherwise, the Regional Transport Authority may take any such steps as it considers appropriate for the hearing of the representation in the presence of any person likely to be affected thereby.
- (7) When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.
- (8) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of trips above the specified maximum or by altering the route covered by it or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit :

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service so provided, without any increase in the number of vehicles.

(9) _____

(10) _____

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64. (1) Any person—

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(f) being a local authority or police authority or an association which or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or

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may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

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64-A. *Revision* : The State Transport Appellate Tribunal may, either on its own motion or on application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final :

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport authority unless the application is made within thirty days from the date of the order ;

Provided further that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

(10) On an examination of sub-section (8) of section 57, it would be evident that it consists of three parts and provides as to what application should be treated as an application for the grant of a new permit. The first category comprises of an application to

vary the conditons of any permit other than a temporary permit by the inclusion of a new route or routes or a new area. The second group comprises applications in regard to stage carriage permit for increasing the number of services above the specified maximum. The third category comprises applications in the case of a contract carriage permit or a public carrier's permit for increasing the number of vehicles covered by the permit. As earlier observed, under this sub-section, an application to 'vary the conditions' is required to be treated as an application for the grant of a new permit. The word 'treated' in this provision obviously means dealt with' or 'regarded' in the same manner as an application for the grant of a new permit. Section 57 prescribes the procedure for the making of an application and for grant of permit. Therefore when sub-section (8) of section 57 lays down that an application to vary the conditions of any permit shall be treated as an application for the grant of a new permit, all that the law meant was that such an application should be dealt with and disposed of in the same manner as an application for the grant of a permit is dealt with and disposed of. Sub-section (8) of section 57 was introduced by the Motor Vehicles (Amendment) Act, 1956 and this change seems to have been made by the Legislature for the protection of the persons opposing the application. It is for this reason that the procedural formalities required to be followed in the case of the grant of a new permit are also required to be strictly observed in an application filed for variation of the conditions of the permit as envisaged under sub-section (8). In our view, if an application for variation is granted, then it would not result into grant of a new permit. We have no doubt in our minds that it would be a wholly untenable approach to treat an order granting a variation in any of the conditions of any permit under sub-section (8) of section 57 as a grant of a new permit.

(11) The next question that arises for consideration is whether by treating an application under sub-section (8) of section 57 as an application for the grant of a new permit, can it be said that any order passed on an application to vary the conditions of permit would tantamount to grant of a new permit for the purpose of appeal under section 64(1) (f) of the Act ? In our view, the answer has to be in the negative. The bare perusal of section 64(1) (f) goes to show that an appeal has been provided only against the grant of a permit or any condition attached thereto. As held earlier, the variation made in the permit by the inclusion of a new route under

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sub-section (8) of section 57 cannot be treated as a grant of a new permit. Hence, there can be no escape from the conclusion that an appeal against such an order would not be competent under section 64(1) (f). If the Legislature had intended to provide for an appeal against the order passed under sub-section (8) of section 57, then a suitable amendment in section 64(1) (f) would have been made. The right of appeal springs from express legislative authority and cannot be inferred by implication. The approach adopted by us finds full support from the judicial decisions referred to in the earlier part of this judgment. In *Swami Motor Transport (P) Ltd.* case, the learned Judge observed thus :—

“In my opinion, the only effect of the deeming provision in sub-section (8) of section 57 is to attract to the disposal of an application for variation of a condition the procedure applicable to the grant of permits. Section 64(1) does not expressly provide for an appeal from an order under section 57(8). Nor is or can such a right of appeal be implied in section 64(1) merely because an application for variation should be disposed of as if it was for a new permit. There is no room for such an implication. Further with respect I agree with Satyanarayana Rao and Rajagoplan JJ, (in AIR, 1953 Mad 321) that a right of appeal cannot be inferred by implication. A right of appeal is not a common law right but it springs from express legislative authority. *Lion Automobile Service Co. Triunelpeli v. State Transport Authority, Madras*, (4) is not in point as that was a case of a countersignature and section 64(1) (d) gives a right of appeal to an aggrieved person against a refusal to countersign. Nor did W.A. Nos. 43 and 58 of 1958 (Mad) decide the point. Upon my view I have indicated, I hold that the revision petition before the State Transport Authority was competent.”

(12) In *A. Janardhana Rao's* case, it was held as under :—

“The learned counsel, however, refers to section 57(8) of the Act and argues that as an application to vary certain

(4) 1958 — 2 Mad L.J. 300.

conditions of a permit is required to be treated as an application for the grant of a new permit, a favourable order passed on an application to vary the conditions of a permit must be held to tantamount to the grant of a new permit. This argument fails for two important reasons. First, section 57(8) of the Act enacts a fiction. A legislative fiction has to be strictly confined to the area assigned to it by the Legislature and must be harnessed only for the specific purpose for which the Legislature created it. The fiction enacted in section 57(8) is only for the purpose of applying the same procedure in disposing of an application for a new permit and an application to vary the conditions of a permit. The fiction has no larger part to play and no other purpose to serve. When the application to vary the condition of a permit is disposed of, the fiction embodied in section 57(8) of the Act ceases to have any play whatsoever. It cannot be transplanted in another area and put to another use. It cannot be imported into the construction of section 64 or invoked in determining as to the maintainability of an appeal under that section. A right of appeal is a creature of statute and has to be expressly conferred by statute; it cannot be inferred by implication, much less by stretching a fiction beyond its permissible limits and putting it to a use far different from what it was intended to serve by the Legislature."

(13) Thus, as a result of the aforesaid discussion we find that an application filed to vary the conditions of any permit as envisaged under sub-section (8) of section 57 is to be treated as an application for the grant of a permit only for the purpose of following the procedure laid down in section 57; that an order passed on such an application varying any condition cannot be treated as an order granting new permit that against an order passed under section 57(8) no appeal lies under section 64(1) (f) of the Act, and that a revision under section 64-A is competent.

(14) In this view of the matter, we find no merit in this appeal and consequently dismiss the same but make no order as to costs.

N.K.S.