

dependant on my above noted conclusion, i.e., whether the petitioner can be held guilty of not disclosing 'fully and truly the material facts necessary for the assessment of his net wealth'. Since my conclusion on this question, as already indicated above, has gone against the respondent authorities, this submission of Mr. Ashok Bhan obviously is untenable and is rejected.

(4) In the light of the above discussion I allow this petition and set aside the impugned notices but with no order as to costs.

N.K.S.

Before G. C. Mital, J.

PATIALA BUS (SIRHIND) PVT. LTD. SIRHIND,—*Petitioner.*

versus

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

Civil Writ Petition No. 5109 of 1973

February 7, 1986.

Motor Vehicles Act (IV of 1939) (as amended by Punjab Act XXXI of 1955)—Sections 44-A, 47(3), 48, 57, 64, 64-A and 134(2)—Stage carriage permits granted by the State Transport Commissioner—Operator who is neither an applicant nor an objector—Whether could file an appeal under section 64(1)(gg)—Appeal if not competent—Whether could be treated as a revision under section 64-A—Order granting permits in excess of the number fixed under section 47(3)—Whether valid—Such an order—Whether saved by the provisions of section 134(2).

Held, that no appeal was competent under clause (a) to (g) of Section 64(1) of the Motor Vehicles Act, 1939 since the appellant was neither an applicant nor an objector under Section 57 of the Act. The order of the State Transport Commissioner granting stage carriage permits is an order passed by an authority specially authorised under Section 44-A of the Act and since the order of such an authority has been made appealable by virtue of clause (gg) of Section 64(1) of the Act, the appeal would be competent. Assuming that the appeal was not competent, then by virtue of section 64-A of the Act, the appellant was entitled to file revision and the appellate authority should have considered the appeal as revision petition and should not have declined to do so.

(Paras 5 and 6).

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Held, that the Regional Transport Authority has to first fix the number of stage carriage permits for the routes in question and it is only thereafter that the application for grant of stage carriage permits could be entertained. The Regional Transport Authority while acting under section 48 of the Act in regard to the grant of permits has no jurisdiction and authority to modify any order passed by it under section 47(3) of the Act i.e. the limit fixed by it under section 47(3) of the Act cannot be altered at the time of grant of permits. Where the Regional Transport Authority grants permits in excess of the number fixed, it acts beyond jurisdiction and beyond the mandatory provisions of Section 47(3) of the Act. Once the Regional Transport Authority had no jurisdiction to grant permits more than the number fixed on the route, the failure of justice is implicit and such an order would not be protected by the provisions of Section 134(2) of the Act. (Paras 9 and 12).

Petition Under Articles 226/227 of the Constitution of India praying that the petition be accepted, records of the case sent for and

- (a) A writ in the nature of certiorari be issued quashing the impugned orders Annexures P. 3 and P. 4;
- (b) Any other suitable writ, order or direction be issued which this Hon'ble Court deems fit and proper in the circumstances of the case;
- (c) Filing of certified/original copies of annexures P. 1 to P. 4 be dispensed with;
- (d) Service of notice of motion be dispensed with;
- (e) Operation of the impugned order Annexure P. 3 be stayed till the writ petition is finally disposed of; and
- (f) Costs be awarded to the petitioner.

N. K. Sodhi, Advocate with Rajiv Narain Raina, Advocates, for the Petitioners.

Baldev Kapur, Advocate, for Respondent No. 3.

T. P. S. Mann, Advocate, for Respondent Nos. 1, 2 and 4.

JUDGMENT

Gokal Chand Mital, J.

(1) Punjab Roadways, Ludhiana was holding one temporary stage carriage permit with one return trip on each of the routes, Ludhiana-Patiala via Ahmedgarh and Ludhiana-Patiala via

Khanna, Nandpur Kesho. They applied for grant of regular permits on those routes. Regional Transport Authority, Patiala gave public notice on 22nd December, 1975 about it and also asked the persons to put in applications who had a claim thereon or wanted to ply on those routes. A copy of the same is Annexure P-1. A reading of it shows that it was clearly mentioned that there was one permit and one return trip on each of the two routes.

(2) In response to the notice, Patiala Bus Highways (P) Ltd., Patiala, Punjab Roadways, Ludhiana and Pepsu Road Transport Corporation, Patiala put in their applications for grant of the advertised permits. Their applications were published on 15th May, 1976 under section 57(3) of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') for inviting objections. Copy of the notice is Annexure P.2. Ultimately, the State Transport Commissioner considered the applications on 20th May, 1977 and by order Annexure P.3 granted one permit with one return trip on both the routes to Punjab Roadways, Ludhiana and in addition one permit with one return trip to Pepsu Road Transport Corporation, Patiala on Ludhiana-Patiala *via* Ahmedgarh route and one permit with one return trip to Patiala Bus Highways (P) Ltd. on Ludhiana-Patiala *via* Khanna, Nandpur Kesho. The resultant effect was that on both the routes, two permits with two return trips were granted.

(3) Here, it would be important to notice that M/S Patiala Bus (Sirhind) Pvt. Ltd., who is the writ petitioner in this Court, neither applied for grant of any of the two permits in pursuance of notice P. 1 nor raised any objection to notice P. 2. However, it filed an appeal before the State Transport Appellate Tribunal, Punjab, under section 64 of the Act against the order granting permits which was rejected by order Annexure P.4 dated 3rd October, 1978 on the ground that the same was not competent as the appellant had neither filed any application for grant of permit nor filed objections to the grant of permits. A prayer was made before the Tribunal for treating the appeal as revision under section 64-A of the Act which prayer was also declined. Feeling aggrieved, this petition under Article 226/227 of the Constitution of India has been filed.

(4) Shri N. K. Sodhi appearing for the petitioner has urged the following points:—

- (i) that appeal was competent in view of clause (gg) added to section 64 by the State amendment.

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(ii) in case it is held that the appeal is not competent, the same should have been treated as a revision under section 64-A of the Act.

(iii) section 47(3) of the Act requires that before the applications for permits are obtained an order fixing or limiting the stage carriage permits has to be passed and without doing so permits could not be granted. In the alternative it is urged that in case the public notice dated 22nd December, 1975, Annexure P.3 is treated as an order fixing or limiting the stage carriages on the mentioned routes, since one permit each on the two routes was mentioned, permits in excess could not be granted.

(5) After considering the aforesaid arguments, I am of the view that all of them deserve to prevail. By the State amendment clause (gg) has been added to section 64(1) of the Act, which is in the following terms:—

64(1)

“(gg) Aggrieved by an order of the State Transport Commissioner or Deputy State Transport Commissioner or any officer subordinate to them in exercise and discharge of such powers and functions with which they have been specifically authorised under section 44-A”.

It is admitted case of the parties that no appeal was competent under clauses (a) to (g) of section 64(1) of the Act. The order granting permits is an order passed by an authority specially authorised under section 44-A of the Act. Section 44-A of the Act has also been inserted by a State amendment. Since order of such an authority has been made appealable by virtue of clause (gg) of section 64(1) of the Act, the appeal was clearly competent.

(6) Assuming for the sake of argument that appeal was not competent then by virtue of section 64-A of the Act, the petitioner was entitled to file revision and the Appellate Authority should have considered the appeal as revision should not have declined to

do so. No reason has been given by it as to why the appeal could not be treated as revision.

(7) On behalf of the respondents reliance was placed on *Victory Public Hill Motor Transport Co. (Pvt.) Ltd v. Kartar Bus Service Ltd, Jullundur* (1) and *Patiala Bus (Sirhind) Private Limited, Sirhind, vs. State Transport Appellate Tribunal, Punjab*, (2) for the proposition that neither appeal nor revision was competent. In *Victory Public Hill Motor's case* (supra) section 64 of the Act was being dealt with, as it stood before the amendment was made by Act No. 56 of 1969, which came into effect on 1st April, 1971. Moreover, at that time revision was competent only against the appellate order whereas under section 64-A revision is competent only against an order in which no appeal lies. Hence this decision is of no help.

(8) As regards Patiala Bus's case (supra), there section 64(1) (f) was under consideration and neither clause (gg) nor section 64-A of the Act came up for consideration. Hence, that decision is also of no assistance.

(9) Adverting to the third point, which is the main point on merits of the case, it is argued on behalf of the petitioner that before an order granting permits is passed, the number of stage carriage permits has to be fixed by the concerned authority as required by section 47(3) of the Act, and it is only thereafter that permits can be granted. In this behalf reliance is placed on *Abdul Mateen v. Ram Kailash Pandey* (3), *R. Obliswami Naidu v. Addl. State Transport Appellate Tribunal, Madras* (4), *Mohd. Ibrahim vs. The State Transport Appellate Tribunal, Madras* (5) and *M/s. Gajendra Transports (P) Ltd Tiruppur v. Anamallais Bus Transports (P) Ltd Pollachi and another*, (6) A reading of the aforesaid decisions clearly bears out that the Regional Transport Authority had to first fix the number of stage carriage permits for the routes in question and it is only thereafter that the application for grant of stage carriage permits could be entertained. It is also clear from the aforesaid decisions that the Regional Transport Authority while acting

(1) AIR 1971 P&H 491

(2) 1975 PLR 224.

(3) AIR 1963 S.C. 64

(4) AIR 1969 S.C. 1130

(5) AIR 1970 S.C. 1542

(6) AIR 1970 Madras 379(DB)

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under section 48 of the Act in regard to the grant of permits has no jurisdiction and authority to modify any order passed by it under section 47(3) of the Act i.e. the limit fixed by it under section 47(3) of the Act, cannot be altered at the time of grant of permits.

(10) Shri N. K. Sodhi, Advocate, appearing for the writ petitioners, has invited my attention to para 21 of the reported judgment in *Mohd. Ibrahim's case* (supra), a reading of which shows that if the Regional Transport Authority has invited applications under section 57(2) of the Act for grant of additional permit on the route, the invitation of applications indicates in the facts and circumstances of the case that there was a valid determination under section 47(3) of the Act for an additional permit on the route. There are certain observations to the contrary in the case of *M/s Gajendra Transports's case* (supra). Following the dictum of the Supreme Court in *Mohd. Ibrahim's case* (supra) on the facts and circumstances of this case, the notice Annexure P-1 issued by the Regional Transport Authority inviting applications may be treated as an order under section 47(3) of the Act, fixing the number of permits. A reading of Annexure P-1 shows that one permit with one return trip was mentioned in the notice for Ludhiana-Patiala, via Ahmedgarh route and one permit with one return trip was mentioned for Ludhiana-Patiala via Khanna—Nandpur Kesho route. Therefore, it can be held that the aforesaid number of permits were fixed by the Regional Transport Authority under section 47(3) of the Act.

(11) However, while granting permits, *vide* order Annexure P3, two permits with two return trips have been given on one route and similarly two permits with two return trips have been given on the other route. Permits have been granted in exercise of the powers under section 57 of the Act. In view of the aforesaid decisions referred to on behalf of the petitioners, the Regional Transport Authority could not grant permits more than those fixed under section 47(3) of the Act and since more permits have been granted, order Annexure P-3 cannot be allowed to stand as the same is clearly in contravention of the mandatory provisions of the Act.

(12) It was urged on behalf of respondent No. 3 that since no interference would be called for in appeal or revision in view of section 134(2) of the Act, unless failure of justice occurs, there should be no interference in the extraordinary writ jurisdiction. The

argument is clearly devoid of merit because the Regional Transport Authority has acted beyond jurisdiction on and beyond the mandatory provisions of section 47(3) of the Act. Once the Regional Transport Authority had no jurisdiction to grant more than one permit with one return trip on each of the two routes, the failure of justice is implicit. The petitioner, who is also operating on the basis of the stage carriage permits in the State of Punjab, did not object to the grant of one permit with one return trip on each of the two routes and for that reason neither applied for grant of permit nor raised objections to the applications filed by the other transporters and the Regional Transport Authority was well within its jurisdiction to grant one permit with one return trip on each of the two routes to any of the applicants. The petitioner had to object to the order Annexure P-3 because the Regional Transport Authority granted two permits with two return trips on each of the routes i.e. it granted double the number of permits. In view of the Supreme Court's judgments, the order Annexure P-3 granting double number of permits is wholly illegal and against the mandatory provisions of the Act.

(13) For the reasons recorded above, this petition is allowed, the order Annexure P-3 is hereby quashed and the Regional Transport Authority is directed to pass fresh orders in accordance with law keeping in view the observations made above. However, there will be no order as to costs.

N.K.S.

Before D. V. Sehgal, J.

SWARAN SINGH,—*Petitioner.*

versus

FINANCIAL COMMISSIONER (TAXATION), PUNJAB and
others,—*Respondents.*

Civil Writ Petition No. 4250 of 1978.

February 12, 1986.

Code of Civil Procedure (V of 1908)—Sections 11 and 60(1)(ccc) and sub-sections (3) and (6) (as inserted by Punjab Acts VII of 1934, XII of 1940 and VI of 1942)—Punjab Tenancy Act (XVI of 1887)—Sections 77 and 88—Decree passed by a Revenue Officer against a