

**Mohammad Raihan Vs. State of Uttar Pradesh and ors.**

**Mohammad Raihan Vs. State of Uttar Pradesh and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/465866](http://sooperkanoon.com/465866)

**Court :** Allahabad

**Decided On :** Apr-23-1956

**Reported in :** AIR1956All594

**Judge :** Mehrotra, J.

**Acts :** [Constitution of India](#) - Articles 226 and 227; [Motor Vehicles Act, 1939](#) - Sections 47 and 64

**Appeal No. :** Civil Misc. Writ No. 933 of 1954

**Appellant :** Mohammad Raihan

**Respondent :** State of Uttar Pradesh and ors.

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** S.S. Dhawan, Adv.

**Disposition :** Petition allowed

**Judgement :**  
ORDER

**Mehrotra, J.**

1. The petitioner Mohammad Raihan had applied for a stage carriage permit which was rejected by the Regional Transport Authority, Meerut. An appeal was filed to

the State Transport Authority and the decision of the Regional Transport Authority was confirmed by the State Transport Authority. An application under Article 226 of the Constitution was thereafter filed in this Court for a writ of certiorari quashing the order of the Regional Transport Authority refusing the stage carriage permit to the petitioner and also for a mandamus commanding the Regional Transport Authority to grant a permit in favour of the applicant.

By my order dated 25-2-1955, the petition was allowed, the order of the Regional Transport Authority was quashed and the Regional Transport Authority was directed to consider the application of the petitioner for the grant of a permit and it was directed further not to reject it on the ground that there was adequate transport service on the route. The application remained pending for some time and no orders were passed by the Regional Transport Authority. Thereafter an application was made on 25-7-1955 to this Court praying that a direction be issued to the Regional Transport Authority to carry out the orders and directions of this Court.

The Standing Counsel however, took time to take the necessary instructions from his client. On a subsequent date, the Standing Counsel gave an undertaking that the application would be disposed of by the Regional Transport Authority by 21-10-1955. Thereafter on 18-10-1955, the Regional Transport Authority rejected again the petitioner's application for a permit and an application was made to this Court praying that the reliefs claimed in the Misc. Appln. made on 25-7-1955, which was numbered as 1127 of 1955 (All) (A) be allowed to be amended.

By amendment it was prayed that the order of the Regional Transport Authority dated 18-10-1955 refusing the permit to the petitioner be quashed and further a writ of mandamus be issued commanding the opposite party to grant a permit to the petitioner. Notice was issued to the opposite parties, the State of Uttar Pradesh and the Regional Transport Authority, Meerut and the Standing Counsel took time to file a counter-affidavit. A counter-affidavit was filed on behalf of the State and the Regional Transport Authority.

The Regional Transport Authority in its order dated 18-10-1955 has stated that as another writ petition filed by Ved Singh Sohan Vir Singh, which was of similar

nature, was pending before the Lucknow Bench, the consideration of the petitioner's application was postponed till the final decision in that petition. The petition before the Lucknow Bench was disposed of on 2-7-1955 and thereafter the present application was considered.

The Regional Transport Authority further remarked that there were two vacancies on the route and two buses on temporary permits were plying against those vacancies. As the applicant was only a driver and not even a recently displaced operator, his application could not be granted. It was observed by the Regional Transport Authority that there were many others who were recently displaced operators and had more experience and claim than the applicant. It was, therefore, not in the public interest to grant a permit to the applicant who was a fresh comer as against those who were old operators and had a longer standing and experience.

As there were no suitable applicants the application was rejected. A counter-affidavit has been filed in which it is stated that the Regional Transport Authority, after consideration, has rejected the application of the petitioner on merits and has exercised its discretion bona fide.

The main contention raised by the petitioner in the present petition is that the application of the petitioner has been rejected on grounds which are extraneous to the considerations under the Act. Section 47, Motor Vehicles Act provides:

'47 (1). A Regional Transport Authority shall in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters namely:

(a) the interest of the public generally;

(b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the adequacy of existing road passenger transport services between the places to be served, the fares charged by those services and the effect upon those services of the service proposed;

(d) the benefit to any particular locality or localities likely to be afforded by the service;

(e) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services; and

(f) the condition of the roads included in the proposed route or routes; and shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local<sup>1</sup> authority or police authority within whose jurisdiction any part of the proposed route or routes lies or by any association interested in the provision of road transport facilities.'

The contention of the petitioner is that the Regional Transport Authority has not rejected the petition on any of the grounds in Section 47. The reason given by the Regional Transport Authority for rejecting the application of the petitioner is that he was only a driver and not even a recently displaced person. There were other displaced operators available. The Regional Transport Authority has no doubt said that it would not be in the public interest to grant a permit to the applicant who was a fresh comer as against those who were old operators.

But the question of comparative merits of different applicants could only arise if there were other applicants in the field and where there are no other applications, it cannot be said that as other displaced operators may be available, the petitioner, who was not even a displaced operator, was not entitled to be granted a permit and that it was in the public interest not to grant permit to him. The words 'public interest' in Section 47 mean interest of the public which uses the stage carriage and not the public in general.

There is nothing in the Act which disqualifies a driver or a person who is not a recently displaced person for being granted a stage carriage permit. The effect of the Regional Transport Authority's order rejecting the application is that the petitioner cannot apply for the grant of a stage carriage permit at all.

Where there are a number of applicants and lesser number of permits are to be granted in view of the number of vacancies, it may be open to the Regional Transport Authority, in order to make selection, to consider the respective claims of the various applicants and the experience in the business may be a criterion for giving preference to one applicant over the other but when the number of applicants is not more than the vacancies, the fact that an applicant is not a displaced operator cannot be regarded as an absolute disqualification and the application cannot be rejected on the ground that other displaced persons may be available and, in my opinion, the considerations on which the petitioner's application was rejected do not come within the scope of Section 47.

Reliance was placed by the Standing Counsel on the decision of the Lucknow Bench in -- 'Gokul Chand v. The State Transport Authority', Writ Petn. No. 19 of 1954 (All) (B). In that case Gokul Chand made an application to the Regional Transport Authority, Agra for the grant of a stage carriage permit and his application was made in 1950 and it was rejected on 15-5-1951 by a short order that adequate transport facility was available on the route.

An appeal was preferred to the State Transport Authority and it was dismissed. Thereafter a petition was filed before the Lucknow Bench which was based on the ground that on the date when the Regional Transport Authority passed the order rejecting the application of the petitioner, there were vacancies in existence and that the Regional Transport Authority was, therefore, bound to issue permits. It was held by the Bench that no writ of certiorari could be granted in the case as the decision of the Regional Transport Authority was not without jurisdiction or against the principles of natural justice.

Considering the next argument advanced by the petitioner that in fact there were vacancies existing on the date on which the petition was refused, the Bench came to the conclusion that there was no evidence on the record to substantiate the allegation that the decision of the Regional Transport Authority on the question of adequacy of transport facility on the route was incorrect,

It was then urged by the petitioner in that case that by the time the matter came up before the Appellate Tribunal, vacancies had come into existence and the

Appellate Tribunal should have directed the Regional Transport Authority, in view of the changed circumstances, to grant a permit. It was held by the Bench that under the circumstances, it could not be said that the State Transport Authority did not exercise its jurisdiction properly.

It cannot, therefore, be said that this case is an authority for the proposition that it is open to the Regional Transport Authority to reject the application on grounds which do not come within the ambit of Section 47. Particular emphasis was laid on the following observation in that case :

'Supposing that there were ten vacancies and twenty applicants, it is certainly in the discretion of the authority empowered to issue permits to refuse ten of the permits since it can issue only ten permits. Supposing it were to issue ten permits and refuse the a other ten, each of the persons to whom it refused to grant the permit may come forward and say that since the vacancies existed on the date on which he applied, the authority had no jurisdiction to refuse the permit sought. Such a contention is wholly untenable.

The authority concerned has been given a discretion, when there are a certain number of applicants before it and the number of vacancies is less, to choose to whom it shall issue the permits. If it finds that, as a matter of fact, no suitable applicant has made an application, it can reject all the applications. It is the responsibility of the authority exercising quasi judicial functions of this character to see that the persons whom it chooses to operate a public service of this nature are fully qualified to do so and it is neither reasonable nor proper to compel it to issue a permit to any person who chooses to apply.'

In my judgment these observations are obiter and do not lay down that an application can be rejected on grounds which do not come within the purview of Section 47 even though there were vacancies. A person has a fundamental right to carry on the business of plying buses and any restriction placed on such a right can only be justified if it comes within the purview of Article 19(6) of the Constitution.

The reasonable restriction placed on the rights of a bus-owner to carry on his business is to be found in Section 47 and the ground on which a petition can be rejected is to be found within the ambit of Section 47. It is not open to the Regional Transport Authority, therefore, to go beyond the scope of Section 47 in rejecting an application.

In the case of -- 'Moti Lal v. The Govt. of the State of Uttar Pradesh', 1951 All 257 (AIR V 38) (FB) (C), it was held by a Full Bench of this Court that the conditions for the grant or refusal of permits are to be found in Section 47 and the discretion of the Regional Transport Authority in granting or refusing a permit is to be exercised in accordance with the provisions of Section 47. In that case, during the pendency of the applications for the renewal of permanent permits, the State Government decided to run State buses on certain routes.

As the scheme had not fully come into operation, a direction was issued to the Regional Transport Authorities to grant only temporary permits to the bus-operators who had applied for a renewal of their permits and they had been granted temporary permits. Petitions were filed in this Court challenging the orders granting temporary permits and it was held by this Court that the temporary permits were granted on grounds which were not covered by the provisions of Section 62.

It was held that the ground that the State Government had in contemplation a scheme under which the State would run its buses could not be regarded as a valid ground for granting temporary permits under Section 62, Motor Vehicles Act. If the effect of granting temporary permits could be treated to amount to refusal of the renewal of permanent permits, this was not a valid ground under Section 47 of the Act which would justify the refusal of the renewal of a permanent permit.

It was, therefore, held that the applications for the renewal of the permits would be deemed to be pending and a writ of mandamus was issued directing the Regional Transport Authorities to consider the applications for the renewal of permits in accordance with the provisions of the Act. It cannot, therefore, be argued that Section 47 gives an unfettered discretion to the Regional Transport Authorities to grant or refuse permits. Any unfettered discretion to grant or refuse a permit would

make such a law invalid under the provisions of Articles 13 and 19 of the Constitution.

It is, therefore, obvious that the discretion is not unfettered and in exercising its discretion the Authority is to be guided by the provisions of Section 47, Motor Vehicles Act. Any exercise of discretion which goes beyond the provisions of Section 47 will be ultra vires and liable to be set aside by this Court in the exercise of its powers under Article 226 of the Constitution.

As I have already observed in cases where there are a number of applicants and vacancies are less than the number of applicants, in making the selection it may not be regarded as an arbitrary exercise of discretion if the respective merits of the various applicants are considered, but the fact that the applicant is a new comer and he is not displaced person is no ground for rejecting the application, though the Regional Transport Authority is not called upon to make a selection. In my opinion, therefore, the order of the Regional Transport Authority rejecting the petition is without jurisdiction and is liable to be quashed.

2. It was contended by the State Counsel that an alternative remedy was available to the petitioner inasmuch as he could have gone up in appeal to the State Transport Authority against the order of the Regional Transport . Authority and in these circumstances this Court will not exercise its discretion in favour of the petitioner.

Ordinarily this Court will not exercise its discretion under Article 226 of the Constitution if another alternative remedy is available but, in the circumstances of the present case, it cannot be said that the alternative remedy would have been adequate. The petitioner's application had already been rejected once on the ground that there was no vacancy.

The order of the Appellate Authority was also set aside by this Court. In spite of the directions issued by this Court, the application remained pending for some time and ultimately it has again been rejected on a ground which is beyond the provisions of Section 47. In those circumstances if the petitioner is allowed to wait till the decision of the Appellate Authority, he may be considerably prejudiced and

it cannot be said that the alternative remedy was equally adequate.

3. The next question then to be considered is what is the relief to which the petitioner is entitled in the circumstances of the case. It has been strongly contended by the Standing Counsel that this Court in exercise of its powers under Article 226 of the Constitution is not acting as an appellate court and it cannot substitute its order for the order of the Regional Transport Authority to grant a permit.

The only relief -which can be granted by this Court is to set aside the order passed by the Regional Transport Authority and then to leave the matter to the Regional Transport Authority to deal with the application in accordance with law. The powers granted to this Court under Article 226 of the Constitution are wide. Article 226 of the Constitution gives power to this Court throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

The power is not confined to the issue of writs mentioned therein but any order or direction can be issued under this Article for the enforcement of fundamental rights or for the enforcement of any other right. In suitable cases, therefore, it cannot be said that this Court cannot issue a direction to the Regional Transport Authority to grant a permit.

Apart from Article 226 of the Constitution after having quashed the order of the Regional Transport Authority under Article 226 of the Constitution, it is open to this Court to issue a direction under Article 227 of the Constitution directing the Regional Transport Authority to grant a permit to the petitioner. In the case of -- 'Hari Vishnu Kamath v. Ahmad Ishaque', 1955 SC 233 ((S) AIR V 42) (D), it was observed by the Supreme Court at page 243 as follows :

'We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution, and that

that superintendence is both judicial and administrative. It may also be noted that while in a certiorari under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter.'

In a recent case of this Court -- 'Sri Vikram Narain Singh v. State of Uttar Pradesh, 1956 All 564 (AIR V 43) (E), the State Government had stopped the payment of certain pension to the petitioner and a direction was issued by this Court restraining the opposite party, the State of Uttar Pradesh, from withholding the payment of the amount of pension. In effect it was a direction to the State Government to pay the amount to the petitioner. In my opinion, therefore, there is no bar for this Court to issue a direction, in the circumstances of this case, to the Regional Transport Authority to grant a permit to the petitioner.

4. I, therefore, allow this petition with costs, quash the order of the Regional Transport Authority dated 18th October, 1955 and direct the Regional Transport Authority to grant the permit to the petitioner.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**