

Jasram and anr. Vs. State Transport Authority and ors.

Jasram and anr. Vs. State Transport Authority and ors.

SooperKanoon Citation : sooperkanoon.com/499027

Court : Madhya Pradesh

Decided On : Aug-12-1960

Reported in : AIR1961MP81

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 45, 57(8), 63, 64 and 64A

Appeal No. : Misc. Petn. No. 27 of 1960

Appellant : Jasram and anr.

Respondent : State Transport Authority and ors.

Advocate for Def. : Y.S. Dharmadhikari, Adv. for Opposite Party (No. 3)

Advocate for Pet/Ap. : R.K. Tankha, Adv.

Disposition : Petition allowed

Judgement :

Pandey, J.

1. This petition under Articles 226 and 227 of the Constitution is directed against a revisional order of the State Transport Authority (respondent 1) dated 20-11-1959, by which an order of the Regional Transport Authority, Gwalior (respondent 2) dated 24/25 February 1958 granting to the petitioner extension of a permit for

Datia-Nowgong route up to Chhatarpur was set aside.

2. While Hassanand Dharamsingh of Datia and Virbhandas Jasram of Satna, who had combined, held a permit for Datia-Nowgong route for three years commencing from 8-12-1956 the Nowgong Bus Association held another like permit. These two permit-holders applied to the Regional Transport Authority, Gwalior, for including the route Nowgong-Chhatarpur in the permits granted to them. The two applications were duly published and representations were invited against the proposed variation.

One of the two objectors was the Bundelkhand Motor Transport Company, Nowgong (respondent 3), who urged that the applications could not be entertained by the Regional Transport Authority, Gwalior. Although that objector was not present at the public hearing fixed for the purpose and his representation was also made beyond time, the Regional Transport Authority considered the objection and held that, in view of Section 45 of the Motor Vehicles Act, it had jurisdiction to entertain the application made by Hassanand Dharamsingh and Virbhandass Jasram.

Since the other objector withdrew his objection, the application was allowed on 24/25 February 1958 and the new route Nowgong-Chhatarpur was included in the permit granted to them subject to the condition that it was validated under Section 63 of the Act by the countersignature of the Regional Transport Authority, Rewa. This variation of the permit was duly countersigned by the Regional Transport Authority, Rewa. Even so, on 11-4-1958, the respondent 3 filed an application for revising the order dated 24/25 February 1958.

By the impugned order dated 20-11-1959, the State Transport Authority set aside the order of the Regional Transport Authority, Gwalior, on the ground that the application for inclusion of the route Nowgong-Chhatarpur was one made for the grant of a fresh permit and that since the route was wholly outside the territorial jurisdiction of the Regional Transport Authority, Gwalior, that Authority was not competent to make a grant in respect of that route.

3. The petitioner has challenged the order of the State Transport Authority on the following grounds:

(a) The respondent 3, which was not present at the public hearing to press its objection preferred beyond time, was incompetent to challenge the order of the Regional Transport Authority, Gwalior.

(b) Since an appeal lay under Section 64 of the Motor Vehicles Act, the revision application under Section 64-A of that Act did not lie.

(c) The application for revision was barred by time and had to be dismissed on that short ground alone.

(d) The petitioner's principal place of business was within the jurisdiction of the Regional Transport Authority, Gwalior, and that Authority alone had, in view of Section 45 of the Motor Vehicles Act, jurisdiction to deal with the matter.

(e) The alleged lack of jurisdiction was cured by the countersignature of the Regional Transport Authority, Rewa which, as required, followed the complete procedure prescribed for making a fresh grant.

(f) The State Transport Authority failed to consider and decide the aforesaid points which were urged before it at the hearing.

4. The respondent 3 contested the above-mentioned points and further raised in support of the impugned order the following other contentions:

(a) The permit originally granted for the Datia-Nowgong route was a double permit and only one partner, namely Jasram, was disentitled to claim any relief in respect of that permit.

(b) This is more particularly so because the partnership between Hassanand Dharamsingh and Virbhandass Jasram was a partnership-at-will which was dissolved.

(c) Virbhandass Jasram is a resident of Satna and had no place of business at Datia or any place within the territorial jurisdiction of the Regional Transport

Authority, Gwalior, which had therefore no jurisdiction to consider his application.

(d) The Bus No. MPG 2561 in respect of which the original permit was granted met with a serious accident on 11-2-1960. Subsequently Jasram assigned his permit to one Vishkarma for a valuable consideration of Rs. 19,000/- and was operating the permit with the help of a bus belonging to the said Vishkarma.

5. Only one of the contentions mentioned in the last paragraph was raised but not pressed in the revision before the State Transport Authority. In his affidavit, the petitioner has challenged the factual basis of all those contentions. Also, the respondent 3 did not press those contentions before us. For these reasons, we do not think it necessary to consider them.

6. One of the contentions urged before us is that since an appeal lay under Section 64 of the Motor Vehicles Act, the revision under Section 64-A of that Act was incompetent. The question, therefore, is whether the respondent 3 was entitled to file an appeal under Section 64 *ibid*. Under that provision, an appeal may be filed by -

'Any person-

..... (b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof or

..... (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'.

One view is that only the permit-holder, who is aggrieved by the variation of the condition of his permit can appeal under clause (b) and other persons providing transport facilities are disentitled to appeal thereunder: *Kali Mudaliar v. Vedachala Mudaliar*, AIR 1952 Mad 545 and *V. G.K. Bus Service v. Kerala State Transport Authority Tribunal*, AIR 1960 Kerala 18. This view finds support in the observations of the Supreme Court in *Ram Gopal v. Anant Prasad*, AIR 1959 SC 851.

The other view is that even third persons providing transport facilities are persons aggrieved by variation of conditions by including a new route and they are entitled to appeal under Clause (b). This view is supported by *Jairamdas v. Regional Transport Authority*, (S) AIR 1957 Raj 312 (FB) and *Heeralal v. State of Rajasthan*, AIR 1959 Raj 41. We think the first view is correct because the right of appeal by persons providing transport facilities and aggrieved by a variation having been specifically provided in clause (f), there was no point in giving to them a right of appeal under another clause.

Considered in another way, if clause (b) be regarded as conferring an unfettered right of appeal to persons providing transport facilities, the provision in Clause (f) would be, so far as those persons are concerned, otiose. We are, therefore, of opinion that other persons providing transport facilities over a route, which is included by variation under Sub-section (8) of Section 57 of the Act in another permit, can appeal only under Clause (f).

7. In the instant case, the respondent 3 did not make its representation within the prescribed time and cannot, therefore, be regarded as having validly opposed the variation. That being so, he was disentitled to appeal under clause (f) of Section 64 of the Motor Vehicles Act. Since it could not appeal, the revision filed by it under Section 64-A of the Act was not incompetent.

8. It is not disputed that the revision was filed beyond the period of thirty days prescribed by the First Proviso to Section 64-A of the Motor Vehicles Act. The plea of bar of limitation is met by the contention that the petitioner failed to raise the point before the State Transport Authority and should not now be permitted to agitate it. The petitioner has filed an affidavit to show that the point was in fact urged at the hearing before the State Transport Authority. If so, in the view that we have taken of this question in *Beharilal Chourasiya v. Regional Transport Authority, Rewa*, Misc. Petn. No. 32 of 1960, D/- 29-7-1960: (AIR 1961 MP 75) the impugned order passed on a revision application filed beyond time cannot be sustained. We do not, however, rest our decision on this ground.

8a. The State Transport Authority allowed the revision only on the ground that the Regional Transport Authority, Gwalior, had no jurisdiction to include in the

petitioner's permit the new route. Nowgong-Chhatarpur lying wholly outside its territorial jurisdiction. The relevant provisions of the Motor Vehicles Act governing this matter are these:

'Section 45: Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles:

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles:

Provided further 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 the applicant resides or has his principal place of business. Section 57(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 services above the specified maximum, 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. Section 63 (1): Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned :

Provided that a private carrier's permit, granted by the Regional Transport Authority of any one region with the approval of the State Transport Authority, for any area in any other region or regions within the same State shall be valid in that area without the counter-signature of the Regional Transport Authority of the other region or of each of the other regions concerned. (2) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:.....'

9. It is conceded before us that, in view of Section 45, a Regional Transport Authority may grant a permit for any inter-regional or inter-state route, the interests of the operators of the other regions or of the other state being protected by Section 63. It is also not disputed that under Sub-section (8) of Section 57, a Regional Transport Authority may vary the conditions of a permit by including a new route within its jurisdiction.

It is, however, contended that if the new route included by variation lies wholly outside the jurisdiction of the Regional Transport Authority, that Authority is not competent to include it in the permit already issued by it. Support is sought to be derived for this view from the provision of Sub-section (8) to the effect that an application to vary the conditions of any permit has to be treated as an application for the grant of a new permit.

An application for variation is not in fact an application for the grant of a new permit. It has only to be treated as such an application. The fiction appears to have been created in order that the procedure prescribed for dealing with an application for the grant of a new permit must be followed. We are of opinion that in the context of variation of the conditions of an existing permit it was not intended that the jurisdiction of the Regional Transport Authority granting that permit should be disregarded. The reason is this.

An application for variation of a permit has to be taken as a whole and fictionally treated as an application for a new permit for the entire route. A Regional Transport Authority, which had no jurisdiction to issue the original permit, cannot be required to vary its conditions. The application must, therefore, be made to the Regional Transport Authority issuing or having jurisdiction to issue the original permit. This brings us to the main question whether Sub-section (8) authorises, by variation, the inclusion of a new route lying wholly outside the territorial jurisdiction of a Regional Transport Authority.

The contention of the learned counsel for the respondent 3 implies that the words 'within the territorial jurisdiction of a Regional Transport Authority' should be read after the expression 'a new route or routes' occurring in Sub-section (8). In our opinion, since those words are not there, it would not be right to give to the wide words of the expression a restricted meaning. It must be emphasised that, by varying the conditions of a permit by including a new route lying outside its jurisdiction, a Regional Transport Authority is not doing anything which it could not have done at the time of granting the original permit.

Now, when it could include the new route at the [time of the original grant, there is no good reason why it should not be able to do so when varying the conditions of a permit. It is obvious that, in either case, the permit has to be validated for use outside the territorial jurisdiction of the Regional Transport Authority concerned in the manner provided by Section 63 and the interests of the person affected are thus amply safeguarded. It is also contended that Section 45 applies only to applications for permits and is inapplicable to applications for variation of conditions of existing permits.

The short answer to this argument is that applications for variation have also to be treated as applications for the grant of new permits. For all these reasons, we are of the view that, in this case, the Regional Transport Authority, Gwalior, was competent to vary the conditions of the original permit so as to include in it the new route Nowgong-Chhatarpur. In this view, it is unnecessary to consider whether, if the Regional Transport Authority, Gwalior, had no jurisdiction to do so, that defect of jurisdiction could be cured by the counter-signature of the Regional Transport

Authority, Rewa.

10. Having regard to the view that we have taken of this case, the impugned order of the State Transport Authority dated 20-11-1959 is erroneous and the error is apparent on the face of the record. We, therefore, quash that order and direct that the respondent 3 shall bear its own costs and pay those of the petitioner. The security amount shall be refunded to the petitioner. Hearing fee Rs. 50/-.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com