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Court : Rajasthan

Decided On : Sep-01-1994

Reported in : AIR1995Raj27; 1995(1)WLC95; 1994(2)WLN506

Judge : P.K. Palli, J.

Acts : Motor Vehilces Act, 1988 - Sections 80(3); Constitution of India - Article 226

Appeal No. : Civil Writ Petn. No. 3788 of 1991

Appellant : Narottam Paliwal

Respondent : Regional Transport Authority, Udaipur and ors.

Advocate for Def. : Vineet Kochari,; R.N. Munshi, Advs. and; S.K. Vyas,

Advocate for Pet/Ap. : M.S. Vyas, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

P.K. Palli, J.

1. The petitioner has impugned the resolution of the Regional Authority Udaipur Region, Udaipur (for short called hereinafter as 'the R.T.A.') dated 21-12-1990 (Annex. P.4) and the order of the State Transport Appellate Tribunal Rajasthan,

Jaipur dated 17-5-1991 (Annexure P.6).

2. As per the averments made in the petition, the petitioner is an exisiting operator on the route Nathdwara to Kelwara holding one non-temporary permit and this route is via Vagol, Usarwas, Chaktor and Gaonguda. Respondent (sic) was operating on the route from Nathd (sic) to Sayo Ka Kheda and this route was via Vagol, Usarwas and Dhindagarh. Respondent No. 3 applied for extension of the route from Nathdwara to Palana. The distance given was 24 kms. Respondent No. 3 also applied for curtailment of his route from Dhindagarh to Sayo Ka Kheda which distance is 15 kms. The total length from Nathdwara to Sayo Ka Kheda is stated to be 30 kms.

3. The R.T.A. on 14-6-1990 granted extension to the respondent No. 3 from Nathdwara to Palana and it is stated that the proposal for curtailment from Dhindagarh to Sayo Ka Kheda was not pressed by the respondent No. 3. This resolution has been placed as Annex. P. 1. It is said that respondent No. 3 for some time could not avail the required endorsement of extension and on 30-8-1990 the application for curtailment and extension was rejected but the authority allowed time to avail the endorsement in sequence of its previous resolution. This resolution has been placed as Annex. P. 2.

4. The respondent No. 3 again applied for curtailment of the route from Sayo Ka Kheda to Dhindagarh and on 25-10-1990 it was resolved that he would operate on the route from Palana to Dhindagarh. It was further observed in this very resolution that till the portion of the route Dhindagarh to Sayo Ka Kheda remained unmotorable it would be treated as a curtailed portion. The resolution dated 25-10-1990 has been placed as Annex. P.3.

5. The petitioner again applied for curtailment of his route from Palana to Nathdwara and simultaneously sought extension of the route from Dhindagarh to Jhalo Ki Madar. It is an admitted position that the distance from Dhindagarh to Jhalon Ki Madar via Manoharpura Gaonguda is 11 kms. in length.

6. On 21-12-1990, the application moved by the respondent No. 3 came up for consideration before the R.T.A. and the route from Palana to Nathdwara was

resolved to be curtailed which is admittedly 24 kms. in length and simultaneously the rotue as prayed for by the respondent No. 3 was resolved to be extended from Dhindagarh to Jhalon Ki Madar via Mohanpura, Bhesa Comed Chittori Cahuraya and Gaonguda. It is said in paragraph 17 of the petition that after curtailment and extension, the routethat remained in existence would be 26 Kms. in length. It may be stated that the route from Dhindagrh to Sayo Ka Kheda already stood curtailed vide Annex. P.4. According to the petitioner he was affected directly or indirectly on his route from Nathdwara to Gaonguda which is at a distance of more than 15 Kms. and to support this contention the petitioner has placed Annex. P. 5 whch is sketch plan of his route. The petitioner, thus, aggrieved against the resolution of the R.T.A. Annex. 4 preferred an appeal before the State Transport Appellate Tribunal Rajasthan, Jaipur (referred to hereinafter as 'the Tribunal') and vide this order dated 17-5-1991 (Annexure P.6) the said appeal has been dismissed after holding that there was no limit for extending varying or curtailing of a particular portion of the route under Section 80(3) of the Motor Vehicles Act, 1988 (referred to hereinafter as 'the Act'). Aggrieved of this resolution and the order of the Tribunal, the present writ petition has been filed.

7. A return has been filed on behalf of the R.T.A. as well as by the respondent No. 3 separately. In the reply, it has been said that the reference to Annexs. P.1 to P. 3 was wholly irrelevant for the purposes of the points raised in the writ petition. It is further said that the curtailment and extension were rightly considered by the R.T.A. and the route of the respontent No. 3 which in the beginning was from Nathdwara to Sayo Ka Kheda was extended to the length of 24 Kms. to Palana and, thus, the route became from Palana to Sayo Ka Kheda. It was thereafter respondent No. 3 moved for curtailment of the route from Sayo Ka Kheda to Dhinda-garh and this prayer was accepted on 25-10-1990 and thereafter the route became Palana to Dhindagarh. It is said that there is nothing on the record to show that any direction was issued asking respondent No. 3 to provide transport service on the curtailed portion i.e. Sayo Ka Kheda to Dhindagarh. It was in this situation that in the order dated 21-12-1990 a reference came to be made to the earlier order dated 25-10-1990.

8. It is said that there is no endorsement in regard to the curtialment of Sayo Ka Kheda toDhindagarh in the permit. For all intents and purpose after the interpretation of the order dated 25-10-1990 it was made absolutely clear that the route had been curtailed from Sayo Ka Kheda to Dhindagarh and thus, leaving the route from Palana to Dhindagarh only. It is further said on behalf of the respondents that the extended route of the respondent No. 3 overlaps the route of the petitioner from Chittori Chauraya to Gaonguda which has a total length of 4 Kms. only and, thus the same was too negligible and for that matter the petitioner is not an aggrieved person and could not maintain this petition nor the validity or illegality of the orders passed by the R.T.A. as well as the Tribunal could be challenged. It has been emphatically denied that the overlapping distance is of 15 Kms. as projected by the petitioner.

9. Respondent No. 1 in the reply has stated that the impunged orders were perfectly valid, legal and within the domain of the respondents and these were passed keeping in view the larger interest and benefit of the public and no provision of the Act has been violated and that the petition was misconceived. The total overlapping is of 4 Kms. and there is no violation of Section 80(3) of the Act.

10. Mr. M.S. Vyas, learned counsel appearing for the petitioner, has argued that the Tribunal has committed an illegality in interpreting the provisions of Section 80(3) of the Act. He has argued that there is no doubt that the extension of a route can be done by the R.T.A. upto a distance of 24 Kms. and the Tribunal has gone wrong in holding that there was no such limit in so far as curtailment of the route is concerned. Learned counsel further proceeds to urge that it is clearly borne out on the record that the route stood from Palana to Sayo Ka Khed(sic) and was not curtailed finally and the same (sic) only a stopgap arrangement till the (sic) portion of the route becomes motorable. Learned counsel has further vehemently argued that the creation of new route from Nathdwara to Jhalo Ki Madar seriously affects the business of the petitioner and the overlapping distance is more than 15 Kms. In short what thelearned counsel for the petitioner tries to project is that the creation of the route after curtailment is not covered by Section 80(3) of the act and, thus, the two orders are wholly without jursdiction. Learned counsel for the petitioner on my asking has also placed sketch plans as indicating the route as

these stood before the curtailment and extension and thereafter. Learned counsel for the respondents has also sketch plans separately.

11. Mr. Vineet Kothari, learned counsel appearing for the respondents Nos. 1 and 2 and Mr. R.N. Munshi, learned counsel appearing for the respondent No. 3, have adotped the same reasoning to support their contentions as has been projected in the two orders passed by the respondents Nos. 1 and 2 i.e. Annexs. P.4 and P.6. The arguments raised by both the learned counsel are supplementary and complementary to each other. It is rightly argued by them that the reference to Annexs. P. 1 to P.3 is wholly futile and irrelevant for the purposes of decision of this writ petition. There appears to be some merit in this contention. Under challenged in this writ petition is the resolution of the R.T. A. and the order of the Tribunal whereby the route from Palana to Nathdwara has been curtailed on the prayer made by the petitioner and the said route has been extended from Dhindagarh to Jhalo Ki Madar thereby the route becomes Nathdwara to Jhalo Ki Madar.

12. After hearing the learned counsel for the parties and after carefully scanning the petition, the replies, Annexures as well as sketch plans placed on record by the parties, I am of the opinion that the petition is wholly misconceived. The admitted position that comes on the surface is that the petitioner is continuously enjoying the route from Nathdwara to Kelwara. So far as the respondent No. 3 is concrned his original route was from Nathdwara (sic) Sayo Ka Kheda. On prayer being (sic) route was extended from Nathdwara to Palana which has a distance of 24 Kms. It is further not denied and is borne out on the record that the route Palana to Nathdwara has been curtailed and so the route from Dhindagarh to Sayo Ka Kheda and an extension has now been provided fromDhindagarh to Manoharpura, Chittori Chauraya which is a different route from the petitioner because the petitioner's route bifurcates from Usarwas to Chittori Chauraya and his is a metalled route whereas the route extended in favour of the respondent No. 3 is a kuchha route from Bamaniya Bor to Chittori Chauraya. It is further not disputed that the distance between Chittori Chauraya to Gaonguda is only 4 Kms. and thereafter the two routes bifurcate, one towards Kelwara and the other towards Jhalo Ki Madar. For a proper appreciation I have marked the sketch plan

placed on record by the petitioner as Annexure C. 1 and I have put marks with red ink to identify the two routes, the curtailment, extension and overlapping. The petitiner is absolutely wrong in projecting that the overlapping distance is 15 Kms. i.e. from Usarwas to Chittori Chauraya. A look at the plan submitted by the petitioner himself makes out that the two routes are different and the overlapping is only to the extent of 4 Kms. i.e. between Chittori Chauraya to Gaonguda. I further find that there is no illegality touching the interpretation of Section 80(3) of the Act of 1988 nor the two orders suffer from any infirmity. The limit of 24 Kms. as prescribed in sub-section (Sub-clause) (2) of Second Proviso appended to Sub-section (3) applies only to extension and not to curtailment. The second proviso deals with the cases of variations and Clause (ii) deals with the cases of extension. It, therefore, follows that so far as curtailment is concerned, there is no embargo on the power exercised by the authorities and it lies totally in its discretion to grant the permits not only for the entire route but for a shorter route also. Moreover, these matters are expected to be gone into deeply by the authorities constituted under the Act and the primary consideration which has to be kept in view is the public interest and unless and until mala fides are shown apparent on the record or there is some gross misuse of jurisdiction or the orders are violating some provision of the Act or the Rules framed thereunder, no interference should be made in the extraordinary writ jurisdiction of this Court. I have deeply perused the two orders and find that these areperfectly in accordance with the provisions of the Act and there is no illegality or infirmity least error of jurisdiction committed by the R.T.A. as well as the Tribunal. In so far as overlapping distance of 4 Kms. is concerned. the same is too negligible and for that reason no fault can be found in the impugned orders. Both the operators have been using the route for quite some time. The route was earlier extended to Palana and curtailed from Palana to Nathdwara and further curtailed from Dhindagarh to Sayo Ka Kheda. The petitioner has at no such time felt aggrieved and, therefore, the grievance that there is overlapping of 15 Kms. is not substantiated.

13. No other point has been stressed byeither side.

14. After hearing the learned counsel for the parties and for the reasons recorded, the petition is ordered to be dismissed. No ordersas to costs.

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