

Ranveer Singh and ors. Vs. Regional Transport Authority

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Court : Rajasthan

Decided On : Aug-12-2004

Reported in : I(2005)ACC423; 2004(4)WLC607

Judge : K.S. Rathore, J.

Appellant : Ranveer Singh and ors.

Respondent : Regional Transport Authority

Judgement :

ORDER

K.S. Rathore, J.

1. The aforesaid writ petitions are similar in nature and common question of law is involved in the writ petitions, therefore, at the request of the respective parties both the writ petitions are heard finally and are being decided by this common order.

2. The brief facts of the case are that on the inter-State route Rajgarh-Hissar via Jhupa 70 km long in length out of which 22 km lies in the State of Rajasthan and rest 48 km lies in the State of Haryana. As per agreement dated 9.7.1997 entered into between the State of Rajasthan and Haryana it was agreed upon that the number of permits for Rajasthan nominees on Rajgarh-Hissar route would be 5 to provide 10 single trips. This agreement was published in Rajasthan Gazette through notification dated 15.7.1997.

3. The petitioners having vehicle of required model moved an application on a prescribed form R.S. 5.1 after completing all the formalities as required under the provisions of the Motor Vehicles Act, 1988 and Rajasthan Motor Vehicles Rules, 1990 with the requisite fees and necessary essentials for the grant of permit over the route in question on 10.2.2003 and 22.4.2003 respectively on occurring vacancy of 2 permits as per decision delivered by this Court on 5.2.2003 in D.B. Special Appeal No. 1068/98 Rishi Kumar v. State and Ors.

4. Since the Regional Transport Authority, Sikar neither considered the petitioner's application as required under the provisions of M.V. Act, 1988 and rules made thereunder nor notified the vacancy inviting the application for a long period of 6 months. In the meantime, the RTA vide notification dated 5.8.2003 invited application from the aspirant applicant to be submitted within a period of 30 days mentioning therein not to consider the application submitted after 30 days.

5. It is also notified on 31.7.2004 in the Rajasthan Patrika and Dainik Bhaskar a scheduled date of meeting as mentioned 4.8.2004 for hearing of 14 applications received for the grant of non-temporary stage carriage permit on Rajgarh-Hissar route.

6. Aggrieved and dissatisfied of non-consideration of their applications the petitioner submitted these writ petitions before this Court. Since the respondent put in appearance as a caveator on the said date through caveat, therefore, notice need not to be issued to the respondent and vide interim order RTA Sikar was directed to consider the case of the petitioner but shall not communicate without prior permission of this Court.

7. Learned Counsel for the petitioners challenged the action of the RTA on several counts and more particularly Mr. K.C. Sharma referred Section 80 of Motor Vehicles Act, 1988, which is reproduced hereunder-

Procedure in applying; for and granting permits-

(1) An application for a permit of any kind may be made at any time.

(2) A Regional Transport Authority, State Transport Authority or any prescribed authority referred to in Sub-section (1) of Section 66 shall not ordinarily refuse to grant an application for permit of any kind made at any time:

Provided that the Regional Transport Authority, State Transport Authority or any prescribed authority referred to in Sub-section (1) of Section 66 may summarily refuse the application if the grant of any permit in accordance with the application would have the effect of increasing the number of stage carriage as fixed and specified in a notification in the Official Gazette under Clause (a) of Sub-section (3) of Section 71 or of contract carriage as fixed and specified in a notification in the Official Gazette under Clause (a) of Sub-section (3) of Section 74:

Provided further that where a Regional Transport Authority, State Transport Authority or any prescribed authority referred to in Sub-section (1) of Section 66 refuses an application for the grant of a permit of any kind under the Act, it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter.

8. After referring Section 80 of the Motor Vehicles Act he submits that grant of permit is a rule, and its refusal is an exception and that too in very exceptional circumstances. It is further submitted that even RTA want to-refuse the grant of permit they have to give the reason after affording the opportunity of being heard to the petitioner.

9. He also referred Rule 5.6(5), which is reproduced hereunder:

The application submitted and found complete by the State Transport Authority/Regional Transport Authority shall be disposed of within two months from the date of receipt. While granting the permit, of the Stage Carriage the Regional Transport Authority shall also approve the proposed time-table and the fare chart submitted by the applicant.

10. In support of his submissions he placed reliance on the decision passed, by this Court in the case of Khusinand v. RTA S.B. Civil Writ Petition No. 556/93 dated 28.1.1993 wherein this Court has held that the principle of first come first

serve will be applied in view of Rule 5.6(5).

11. Mr. Sharma after quoting the Rules 5.6 and 5.7 of Rajasthan Motor Vehicles Rules, 1990 submits that rules are mandatory in nature, which require the RTA to consider the merit and demerit of the applicant after giving them an opportunity of being heard and in case of rejection the reasons of rejection are required to be given in writing but even that the RTA ignoring above rules is going to consider only 14 applications in its meeting scheduled to be held on 4.8.2004 ignoring application of the petitioner submitted on 10.2.2003 as per the direction issued by this Court on 5.2.2003.

12. Mr. Sharma further submits that there is no such provision in Motor Vehicles Act, 1988 and rules made thereunder for inviting application. Moreover, the application of the petitioner submitted on 10.2.2003 and 22.4.2004 respectively is after the decision of this Court dated 5.2.2003 as such it cannot be said suo motu even if it is so then it is required to be considered along with invited applications in view of law laid down by the Hon'ble Apex Court.

13. Much emphasis has been given that in the writ petition the petitioner only asked for consideration of his application for which he is legally entitled as per the law laid down by Hon'ble Apex Court in the case of Patila Bus (Sirhind) Pvt. Ltd. v. State Transport Appellate Tribunal : AIR 1974 SC1174 .

14. As per Section 71 read with Section 80 the petitioner is entitled to make an application at any time for grant of permit, Since he has been deprived with the consideration of his application, which is found a valuable legal right, therefore, this writ petition is filed.

15. Mr. Sharma on various legal points has referred the following judgments:

(1) 1968 RLW 461 Shivcharan Lal v. Regional Transport Authority, Jaipur.

(2) Judgment passed in S.B, Civil Writ Petition No. 556/1993 dated 9.1.1993.

(3) 1981 WLN (UC) 217 Jaswant Singh, Sewaram and Pratap Singh v. State Transport Appellate Tribunal, Rajasthan Jaipur, and Ors.

(4) 1967 RLW 481 Bhonrilal v. Regional Transport Authority, Jaipur.

(5) : AIR 1973 MP209 Bipatlal Jaiswal v. Regional Transport Authority, Jabalpur and Ors.

(6) 1970 AIR SC 1707 M.V. Shantnugam and Co. v. The Commissioner of Income Tax, Madras.

(7) 1981 WLN (UC) 347 Asharaf v. RTA, Jodhpur and Ors.

16. Per contra learned Addl. Advocate General Mr. Bharat Vyas filed an application for vacation of interim order and along with the application he placed the judgments passed by the Division Bench of this Court and the Honble Supreme Court. The main thrust of the learned Addl. Advocate General is regarding maintainability of the present petition as the present petition is not maintainable being premature as the concerned authority is yet to finally decide the matter under intimation to the concerned applicants.

17. Learned AAG gave much emphasis on the aspect that the petitioner has suppressed material facts from this Court and submitted that the dispute has a chequered history. In 1997 the scope over the route Rajgarh to Hissar via Jhupa was revised which gave rise to creation of two vacancies. Initially two permits came to be granted to the Corporation. Certain persons filed appeal and revisions before the STAT. The STAT accepted the revisions filed against the grant of permit to the Corporation and quashed and set aside the permit granted by the RTA. Appeals filed by Shri Rishi Kumar and Pawan Kumar under Section 88(1) came to be allowed and one permit each was granted in their favour against the vacancies. The Rajasthan State Road Transport Corporation filed writ petition in the Rajasthan High Court, which came to be allowed and the permit granted in favour of above stated two persons were set aside.

18. Shri Rishi Kumar and Pawan Kumar filed appeals before the Division Bench and ultimately vide judgment and order dated 5.2.2003 the appeal was decided. Against the decision dated 5.2.2003 SLP is filed before the Hon'ble Supreme Court and the Supreme Court also dismissed the SLP.

19. The Division Bench of this Court directed that the vacancies must be notified by inviting applications. Accordingly, the Regional Transport Authority invited applications vide notification dated 5.8.2003 published in the Rajasthan Raj Patra dated 13.8.2003. In the notification it was stipulated that the persons can apply for grant of permit within a period of 30 days and the RTA received 15 applications within the time stipulated, therefore, the notification dated 31.7.2004 was published mentioning the names of the applicants, whose applications were received within the period of 30 days as specified in the notification dated 5.8.2003.

20. In the meantime the RTA granted two permits vide its order dated 5.3.2004 pursuant to the notification dated 13.8.2003 in favour of Shri Bharat Singh and Shri Subey Singh. The aforesaid order dated 5.3.2004 was challenged by one Shri Narendra Kumar out of 15 applicants through CWP No. 1266/2004, which was also dismissed on 12.4.2004, against which Shri Narendra Kumar filed D.B. civil special appeal at Jodhpur, which was allowed by the Division Bench of this Court vide judgment dated 13.5.2004.

21. Bharat Singh filed SLP before the Hon'ble Supreme Court against the judgment dated 13.5.2004. The Supreme Court dismissed the SLP vide judgment dated 28.6.2004.

22. The Division Bench of this Court vide its judgment dated 13.5.2004 issued direction to the consider the applications submitted by the appellants pursuant to the notification dated 13.8.2003 within a period of two months against the existing vacancies on the inter state route Rajgarh-Hissar via Jhupa afresh in accordance with law i.e., upto 12.7.2004.

23. Since the RTA is not able to decide the application upto 12.7.2004 on behalf of the RTA an application was moved before the Division Bench of this Court for extension of time and vide order dated 13.7.2004 one month time was extended upto 12.8.2004 by the Division Bench.

24. Mr. Bharat Vyas, learned AAG submits that as per the directions issued by the Division Bench and as per the time-bound programme so given by the Division

Bench, by 12.8.2004 the RTA have to decide the application pursuant to the notification dated 5.8.2003. It is also submitted by learned Counsel for the respondent that the application filed by the petitioner is already dismissed vide order dated 5.3.2004 and the petitioner has not challenged this rejection order before any Court of law. Thus, the petitioner has suppressed the material facts from this Court.

25. Mr. Vyas further submits that as per the record the petitioner filed an application on 10.2.2003 much prior to the notification dated 13.8.2003 and the vacancies were notified through gazette and if the petitioner was interested to have his application considered, he was required to submit fresh application within the time allowed under the said notification. However, that was not done by the petitioner.

26. Mr. Vyas also submits in its application that these petitions, which are filed herein the Jaipur Bench just to avoid the possible intervention since the record is available there at principal seat Jodhpur. He also submits that since the petitioner has not challenged the order of cancellation dated 5.8.2004, which is an appealable order and without challenging the cancellation order the petitioner cannot file this writ petition.

27. The respondent also placed the judgment passed by the Division Bench on 5.2.2003 in the case of Rishi Kumar v. STAT and Ors. The notification dated 5.8.2093 by which the applications were invited afresh within the period of 30 days making it clear that applications only be considered, which is received within a period of 30 days.

28. Mr. Vyas also placed reliance on the judgment rendered by the Division Bench in the case of Narendra Kumar dated 13.5.2004, the Hon'ble Supreme Court's judgment dated 29.6.2004 and the decision dated 13.5.2004 by which one month time has been extended by the Division Bench and the resolution dated 5.3.2004.

29. Heard learned Counsel for the respective parties at length and perused the relevant provisions of law as well as the judgment cited before me.

30. To decide the present controversy first of all I like to deal with the relevant provisions of Motor Vehicles Act, 1988. By bare perusal of Section 80 of Motor Vehicles Act, 1988 reveals this fact that an application can be moved for a permit at any time. As per Sub-Section 2 of Section 80 a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time. If the matter is referred in Sub-Section 1 of Section 66 the Regional Transport Authority has power to refuse an application for the grant of a permit of any kind under the Act, it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter.

31. I also carefully perused the judgment of the Division Bench of this Court in the case of Bhonrilal v. Regional Transport Authority, Jaipur (supra), wherein the Division Bench is of the view that the Regional Transport Authority to publish all the applications that were pending at the time it ordered the publication of respondents' applications and then to consider them together so that their just and proper disposal would be ensured.

32. It is not disputed that the petitioners applied for permit prior to publication of the notification dated 5.8.2003. In view of the ratio decided by the Division Bench in the case of Bhonrilal the applications belong to the petitioners were pending at that time and such application may be considered as per the provisions of law. It is submitted by learned Counsel for the respondents that the application of the petitioners was rejected vide order dated 5.3.2004. Thus the applications of the petitioners were not pending at that time.

33. The order dated 5.3.2004 by which the permits were quashed so far as it relates to permit to Subey Singh and Bharat Singh meaning thereby with regard to other applicants the resolution dated 5.3.2004 is not quashed and set aside. The application belongs to other than Bharat Singh and Subey Singh no doubt were pending for consideration as upon cancellation of the grant of permit in favour of Subey Singh and Bharat Singh two vacancies of route are vacant.

34. The Division Bench of this Court in the case of Narendra Kumar has further directed to reconsider the applications submitted by the applicant and other appellant in pursuance of the notification dated 5.8,2003 within a period of two

months for grant of permit against the existing vacancies on the inter-State route Rajgarh-Hissar via Jhupa afresh in accordance with law i.e., upto 12.7.2004 meaning thereby the respondents are directed to consider the applications including appellant and other applicants. They were pending pursuant to the order dated 5.8.2003, It is also not disputed that the name of the applicants find place in the resolution dated 5.3.2004 were about 58 and out of which the permit in favour of Bharat Singh and Subey Singh was granted. This grant of permit in favour of Bharat Singh and Subey Singh was challenged by emu Narendra Kumar and other applicants have not challenged the resolution dated 5.3.2004, The petitioners' name also find place in the resolution at Sl. Nos. 20 and 23. Since the Division Bench of this Court in the case of Narendra Kumar has set aside the resolution dated 5.3.2004 the question of challenging by other applicants does not arise.

35. In view of this fact I am not impressed with the submissions made on behalf of the respondents, So far as the petitioners are concerned, their applications were rejected vide resolution dated 5.3.2004. As evident by the resolution dated 5.3.2004 if it is rejected so far as the petitioners are concerned, it is also rejected so far other applicants, whose name find place in the aforesaid resolution. It appears that pursuant to the notification dated 5.8.2003 only 14 applicants have applied afresh and rest have not applied afresh within a period of 30 days in view of the notification dated 5.8.2003.

36. I further perused the directions issued by this Court wherein the Division Bench directed to consider all applications submitted by the appellant and Ors. which are filed pursuant to the notification dated 5.8.2003. It was nowhere stipulated in the Division Bench order that the fresh applications were to be invited by the RTA pursuant to the notification dated 5.8.2003. It appears that RTA only has put the rider of 30 days. No such direction was issued by the Division Bench.

37. As per the provisions discussed hereinabove and Section 80 and Rule 5.6(5) it is mandatory for the RTA to consider all such applications, which were pending at relevant point of time. The RTA at their whims had interpreted the order of the Division Bench in the manner he wanted.

38. Respondents are only considering the 14 applications, which is also contrary to the spirit of the scheme of the Act and the Rules.

39. Action of the respondents not only contrary to the rules and the Act the action of the respondents is also contrary to the interest of public at large. The Division Bench of this Court in the case of Narendra Kumar has directed the respondents to re-consider the application except Bharat Singh and Subey Singh as the resolution dated 5.3.2004 was set aside so far as Shri Bharat Singh and Subey Singh is concerned. In such eventuality the RTA have to consider all the applications, which are pending.

40. I carefully examined the ratio decided by the Hon'ble Supreme Court and the Division Bench of this Court. I am not convinced with the interpretation given by the respondents.

41. Consequently, both the writ petitions succeed and the RTA is directed to declare the result and further directed to consider all the applications, which were considered in the meeting held on 5.3.2004 except Subey Singh and Bharat Singh.

42. Since both the writ petitions have been decided, the misc. applications moved for impleadment as party also stand rejected.