

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.A. No.806/2019

Sheikh Mohd. Anees
-Versus-
State of M.P. and others

Shri H.C. Kohli, Advocate for the appellant.

Shri Shashank Shekhar, Officiating Advocate General with
Shri Bhupesh Tiwari, Govt. Advocate for the respondents/State.

Shri Samdarshi Tiwari and Shri Subodh Pandey, Advocates for the
respondent No.5.

W.A. No.729/2019

M/s Parihar Transport Company, Satna
-Versus-
State of M.P. and others

Shri Brajesh Kumar Dubey, Advocate for the appellant.

Shri Shashank Shekhar, Officiating Advocate General with
Shri Bhupesh Tiwari, Govt. Advocate for the respondents/State.

W.A. No.766/2019

Sudhir Sharma
-Versus-
State of M.P. and others

Shri Brajesh Kumar Dubey, Advocate for the appellant.

Shri Shashank Shekhar, Officiating Advocate General with
Shri Bhupesh Tiwari, Govt. Advocate for the respondents/State.

CORAM :

Hon'ble Shri Justice R.S. Jha, Acting Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	<p>(i) The existing operators of a route are not entitled for hearing before the Regional Transport Authority, while consideration of grant of stage carriage permits to fresh applicants under sections 70, 71, 72 and 80 of the Motor Vehicles Act, 1988.</p> <p>(ii) The Authority who has been notified as Regional Transport Authority by a notification in Official Gazette under Sub-section (1) of Section 68 of the Motor Vehicles Act is competent to exercise and discharge the powers and functions specified in Section 68(3) of the Act.</p> <p>(iii) The promotion of an officer cannot be challenged in a writ petition filed by bus operators challenging grant of stage carriage permits in absence of any relief of a <i>writ of quo warranto</i>.</p>
<i>Significant paragraph No.</i>	11 and 14.

ORDER
(Jabalpur, dtd.01.7.2019)

Per : Vijay Kumar Shukla, J.-

These intra-court appeals are filed under Section 2(1) of the Madhya Pradesh Uchch Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam 2005. Considering the similitude of controversy involved, they were heard analogously and are being disposed of by a common order.

2. For the sake of clarity and convenience the facts adumbrated in W.A. No.806/2019, arising out of order passed by the learned Single Judge in W.P. No.14973/2018 are taken note of. In the said writ petition the appellant/writ petitioner has prayed for quashing of the order dated 15-12-2017 whereby the respondent No.4, who was working as Divisional Deputy Transport Commissioner, was given an additional charge of Divisional Deputy Transport Commissioner of Bhopal, Sagar, Rewa, Shahdol and Jabalpur Divisions. By that order it was further directed that the respondent No.1 will also discharge functions of Regional Transport Authority and Divisional Deputy Transport Commissioner in addition to his charge of the post of Divisional Deputy Transport Commissioner, Narmadapuram Division, Hoshangabad. By way of an amendment the writ petitioner also challenged the order dated 26-8-2015 whereby the respondent No.4 was given a proforma promotion and was posted as Divisional Deputy Transport Commissioner with effect from 01-12-2014. The learned Single Judge dismissed the writ petitions on the ground that the petitioners/appellants have no *locus standi* to question the promotion of the respondent No.4 on the post of Divisional Deputy Transport Commissioner in writ jurisdiction challenging grant of permit in absence of a *writ of quo warranto*.

3. The learned counsel appearing for the respondents/State submitted that the appellants being existing operators have no legal right to raise any objection while consideration of the fresh applications for grant of permit under sections 72 and 80 of the Act. They further submitted that the respondent No.4 was promoted on the post of Divisional Deputy Transport Commissioner and as per the notification issued under the provisions of Section 68 of the Act, Divisional Deputy Transport Commissioner has been specified to exercise and discharge the powers and functions through out the related areas and districts mentioned in the dated 5-11-2015. Therefore, the respondent was authorized and competent to grant permit under Section 68 of the Act.

4. Regard being had to the arguments advanced on behalf of the parties, the issues which have been cropped up for consideration before this Court are :

(i) Whether the appellants/writ petitioners are entitled to get an opportunity of being heard before granting permit to a third party under the provisions of the Motor Vehicles Act, 1988 [for brevity 'the Act'] ?

(ii) Whether the respondent No.4 was authorized to act in the capacity of Regional Transport

Authority under the provisions of Section 68 of the Act ?

(iii) Whether the appellants have any *locus standi* to question promotion of the respondent No.4 on the post of Divisional Deputy Transport Commissioner in a writ petition assailing grant of permit without seeking a *writ of quo warranto* ?

5. The first issue that whether the appellants, who are existing operators have any legal right to be heard at the time of consideration of the application for grant of a permit by any other applicant. Chapter V of the Act provides the provisions pertaining to grant of permits. Section 70 envisages that an application for permit in respect of a stage carriage has to be submitted. The procedure of Regional Transport Authority in considering application for stage carriage permit is engrafted under Section 71 of the Act. Section 72 envisages that subject to the provisions of sections 70 and 71 the Regional Transport Authority (RTA) shall grant such permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit. Section 80 of the Act prescribes the procedure in applying for and granting permits.

6. On a bare perusal of the aforesaid provisions, it is vivid that there is no provision for giving any notice to the existing operators nor any opportunity of hearing to them. The Apex Court in the case of **Mohd. Ibrahim etc. vs. The State Transport Appellate Tribunal, Madras etc., AIR 1970 SC 1542** and a Division Bench of this Court in **Munnawar Jahan Begum (Smt.) and another vs. Union of India and others, 1992 JLJ 180** while dwelling on the validity of Section 80 of the Act held :

“2. Referring to sub-sections (1) and (3) of Section 47 of the Motor Vehicles Act, 1939, (in short, the “old Act”) the learned counsel for the petitioners argued that while considering an application for a stage carriage permit, the Regional Transport Authority was bound to consider the various matters enumerated in sub-section (1), as also to “take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies”, and that he could “limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region” in exercise of his powers under sub-section (3) and having regard to the matters specified in sub-section (1). Absence of similar safeguards and restrictions rendered the provisions of section 80 of the New Act invalid.

3. The argument has no substance. As held by the Supreme Court in **Mohd Ibrahim vs. S.T.A. Tribunal Madras, (AIR 1970 SC 1542)**, at the stage of limiting the number of permits under section 47(3) of the old Act, the existing operators had no

legal right of making representation, or that of hearing. Accordingly if the new Act makes no restriction to the number of permits that may be granted under Section 80, the petitioners can have no say that any of their right is taken away.”

The same view was taken by a Full Bench of the Andhra Pradesh High Court in **The Secretary, Regional Transport Authority, Guntur and another etc. vs. E. Rama Rao and others etc., AIR 1991 Andhra Pradesh 11.**

7. In the present case it is not in dispute that the appellants herein were not applicants for the route for which other persons had applied. In view whereof and taking note of the law laid down in **Mohd. Ibrahim (supra); Munnawar Jahan Begum (Smt.) (supra) and E.Rama Rao (supra)**, there remains no iota of doubt that the writ-petitioners/appellants had no locus to question the grant of stage carriage permit.

8. Thus, the learned Single Judge has rightly held that the writ petitioners/appellants had no right to be heard. If they were aggrieved they could have challenged the same in a revision under Section 90 of the Act, but they had directly approached this Court to invoke writ jurisdiction under Article 226 of the Constitution of India.

9. The other issue that whether the respondent No.4 who was working as Divisional Deputy Transport Commissioner, was authorized to act in the capacity of Regional Transport Authority under the provisions envisaged under Section 68 of the Act. Learned counsel appearing for the appellants heavily relied on the judgment passed by a Single Bench of this Court in **Surendra Tanwani vs. State of M.P. and others [W.P. No.4001/2017] and other connected writ petitions, dated 21-12-2017** whereby the learned Single Judge allowed the writ petitions on the ground that by administrative orders, the powers under Section 68 of the Act could not have been conferred to any Authority to act as Regional Transport Authority.

10. Learned counsel for the State astutely urged that in the present case the said respondent was promoted on the post of Divisional Deputy Transport Commissioner and thereafter by virtue of notification dated 5-11-2015 issued under Section 68 of the Act he was authorized to exercise and discharge the powers and functions of the Regional Transport Authority in the area which was mentioned in the said notification.

11. To appreciate the aforesaid rival contentions in regard to the said issue it is apposite to refer the provisions of Section 68(1) of the Act which reads as under:

“68. Transport Authorities – (1) The State Government shall, by notification in the Official Gazette constitute for the State and State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority; the powers and functions conferred by or under this Chapter on such Authorities :

Provided that in the Union Territories, the Administrator may abstain from constituting any Regional Authority.”

A plain reading of the provisions shows that the State Government by notification in the Official Gazette can constitute Regional Transport Authority to exercise and discharge functions throughout the areas specified in the notification or for the entire State.

12. Upon perusal of the record we have noted that the respondent No.4 was promoted as Divisional Deputy Transport Commissioner by order dated 26-8-2015 granting him proforma promotion on the said post with effect from 01-12-2015 and thereafter he was posted on the vacant post of Divisional Deputy

Transport Commissioner (Narmadapuram) Hoshangabad Division. The respondents have produced before us the gazette notification dated 5-11-2015 issued in exercise of powers conferred by sub-section (1) read with second proviso to sub-section (2) of Section 68 of the Act, by which the State Government has constituted a Single Member Regional Transport Authority for discharge of functions and fixing the responsibility of work within the time-limit, instead of the earlier Multi-members Regional Transport Authorities. By the said notification the Regional Transport Authority was specified in Column (2) of the Schedule and was empowered to exercise and discharge the powers and functions throughout the related areas and districts conferred under the said Act or any other Act for the areas specified in column (3) including the corresponding districts specified in Column (4) of the said Schedule and the Headquarters specified in column (5) thereof.

13. Thus, the respondent No.4 who was promoted as Divisional Deputy Transport Commissioner and was posted in Sagar and Narmadapuram (Hoshangabad) Division became the Regional Transport Authority by virtue of the Gazette Notification dated 5-11-2015 to exercise the powers in relation to the areas specified in respect of Sagar and Narmadapuram (Hoshangabad) Divisions and in view of the Gazette Notification dated 5-11-2015, we are of the

considered view, that the respondent No.4 was authorized to act in the capacity of Regional Transport Authority under the provisions of Section 68 of the Act and there is no illegality in the permits granted by him. In the case of **Surendra Tanwani (supra)** before the learned Single Judge, the Gazette Notification dated 5-11-2015 issued under Section 68 of the Act authorising Divisional Deputy Transport Commissioner to act in the capacity of Regional Transport Authority was not brought to the notice of the Court.

14. As regards the third issue, it has been argued by the learned counsel appearing for the appellants that the learned Single Judge has erroneously dismissed the petition on the ground that they have no *locus standi* to question the promotion of the respondent No.4 on the post of Divisional Deputy Transport Commissioner. In the present appeals admittedly, the appellants/writ petitioners are bus operator. The respondent No.4 who was working as Regional Transport Officer in the Transport Department, was granted proforma promotion with effect from 01-1-2-2014 and was posted as Divisional Deputy Transport Commissioner. Learned counsel for the State urged that his case was considered in the review departmental promotion committee and thereafter, he was promoted by granting proforma promotion with a retrospective date. The present appellants are not employees of the Transport Department.

They are bus operators and they cannot question the legality and validity of a promotion order of an employee of the Department in a writ petition challenging grant of permit to a third person. The instant writ petitions were not preferred for issuance of a writ of *quo warranto* or *pro bono publico*.

15. In the case of **Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others, (1996) 3 SCC 52**, the Apex Court ruled that in an intra-court appeal the appellate Court is a Court of Correction which corrects its own orders, in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error.

16. In view of the aforesaid discussion, we do not find any illegality in the impugned order passed by the learned Single Judge warranting any interference in these intra-court appeals. *Ex-consequenti*, the **writ appeals are dismissed**. There shall be no order as to costs.

(R.S. Jha)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

ac.

