

KANCHAN AND ORS.

A

v.

STATE TRANSPORT APPELLATE TRIBUNAL AND ORS.

JANUARY 17, 2006

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

B

Motor Vehicles Act, 1988; Section 68(3)(b):

Grant of permits to Transporters—Power of State Transport Authority/ STA—Mala fides—Held: Authorities granted permits to Transporters even without filing an application for grant of such permits—Relevant records not produced by the authorities on the pretext of vigilance inquiries in the matter—In deciding the question of mala fides if the authorities acted without application of mind, which act of the authority is sufficient to attach vulnerability to the action against it on the question of mala fides—Thus, High Court rightly found the mala fides of the authorities in granting the permits.

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The question which arose in these appeals was as to whether the permit granted to the appellants/Transporters by the State Transport Authority could be legally sustained. The permits so granted were set aside by the State Transport Appellate Tribunal on the ground that the action of the authorities was *mala fide*. On appeal, order of the Tribunal was affirmed by the High Court. Hence the present appeals.

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It was contended by the appellant that the High Court did not take note of the fact that the revision petition filed before the Appellate Tribunal was not maintainable as the Revision petitioner, the existing operators had no *locus-standi* to file the petition. The authorities, in exercise of power under Section 68(3)(b) of the Motor Vehicles Act, 1988 had taken over the power to grant permits and in *bona fide* exercise of the power issued permits; and that there was no specific challenge in the Revision Petition before the Tribunal about the infirmities which the High Court has highlighted.

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The respondents submitted that the whole exercise clearly smacked of non-transparency and *mala-fides*; that 48 permits were granted and in some cases, the files which were produced before the Tribunal indicated

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- A that even applications for grant of permits were not there; that the permits were granted on the very same day on which the State Transport Authority (STA) purportedly took over the power to grant permits in exercise of powers under Section 68(3) (b) of the Act and that too without issuing a notification in connection thereto leaves no manner of doubt that the STA was acting contrary to law; and that as to how the applications could be made to the STA much before it assumed power in exercise of powers under Section 68(3)(b) of the Act.

Dismissing the appeals, the Court

- C HELD. 1.1. This is not a fit case for interference. The findings of the High Court about the *mala-fides* of the State Transport Authority (STA) are clearly borne out from the records seen by the Tribunal. Both the Tribunal and the High Court have recorded categorical findings that there were not even applications for grant of permits in such case. It baffles one as to how the permits could be granted even without application. The State Transport Authority did not produce all the 48 files relating to the grant of permits. A plea was taken that some of the files were taken by the vigilance authorities inquiring into the allegations of corruption. Be that as it may, the fact remains that in some cases elaborated by the Tribunal and the High Court, the applications were not there. [454-D-E]
- E 1.2. While deciding the question of *mala-fides*, the very fact that in certain cases, the authorities have acted without application of mind, is itself sufficient to attach vulnerability to the action. [454-F]

F *U.P. State Road Transport Corporation through its Chairman v. Omaditya Verma and Ors.*, [2005] 4 SCC 424, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7305 of 2003.

From the Judgment and Order dated 4.4.2003 of the Allahabad High Court in Civil Misc. Writ Petition No. 48624/2002.

G WITH

C.A. No. 7306/2003 and Cont. Pet. (C) No. 159/2005 in C.A. No. 7306/2003.

H Vijay Hansaria, P.D. Sharma and Minakshi Sharma for the Appellants.

Rakesh Dwivedi, Ranjeet Kumar, Ms. Gauri Chhabra, Ms. Sudha Pal, Mrs. Rani Chhabra, Pramod Swarup, Pramod Dayal and Pradeep Mishra for the Respondents. A

Dinesh Dwivedi and Prashant Chowdhary for the Intervenor.

The Judgment of the Court was delivered by B

ARIJIT PASAYAT, J. Challenge in these appeals is to a composite order of a learned single Judge of the Allahabad High Court dismissing the writ petitions filed by the present appellants. The basic question before the High Court was whether the permits granted to the appellants by the State Transport Authority, U.P. Lucknow (in short 'the S.T.A.') could be legally sustained. It is to be noted that on a revision filed by the non-official respondents, the State Transport Appellate Tribunal, U.P., Lucknow (in short 'the Tribunal') set aside the grant of permits and held that the the action of STA was *mala-fide*; it had acted in clear contravention of the statutory requirements and, therefore, the grant of permit was an exercise which had no legal sanction. This order of the Tribunal was the subject mater of challenge in the writ petitions. The High Court essentially came to record three findings; (a) in respect of notified routes, the permits could not have been granted; (b) action of the STA in taking over the route was impermissible, *mala-fide* and (c) the exercise of power by the STA in granting the permits was equally unsustainable, being *mala-fide*. C D E

In support of the appeals, learned counsel for the appellants submitted that the High Court did not take note of the fact that the revision petition filed before the Tribunal was not maintainable as the existing operators who had filed the revision petition, has no *locus-standi* to file the same. It was further submitted that the High Court proceeded on an erroneous impression as if the routes were notified routes. The STA, in exercise of power under Section 68(3)(b) of the Motor Vehicles Act, 1988 (in short 'the Act') had taken over the power of grant of permits and in fact in *bona fide* exercise of that, directed issue of permits. It was pointed out that there was no specific challenge in the revision petition before the Tribunal about the so called infirmities which the High Court has highlighted. It was in essence, submitted that the exercise of jurisdiction by the Tribunal was *bone-fide* and there was no reasonable ground for interference by the Tribunal, as affirmed by the High Court. F G

In response, Mr. Rakesh Dwivedi, learned senior counsel for the H

A respondents submitted that the whole exercise clearly smacked of non-transparency and *mala-fides*. It was pointed out that 48 permits were granted and in some cases, the files which were produced before the Tribunal indicated that even application for grant of permits were not there. Further, the fact that the permits were granted on the very same day on which the STA purportedly took over the power to grant permits in exercise of powers under Section 68(3)(b) leaves no manner of doubt that the STA as acting contrary to law. It is pointed out that the even assuming that there was any Resolution, which according to the learned counsel for the respondents is also not a fact, there was no notification about the taking over of the jurisdiction by the STA. It is also not clear as to how the applications could be made to the STA much before it assumed power in exercise of powers under Section 68(3)(b) of the Act. Finally, the applications are to be made to RTA and one does not know under what circumstances the applications were made to the STA.

We do not consider this to be a fit case for interference. The findings of the High Court about the *mala-fides* of the STA are clearly borne out from the records seen by the Tribunal. It is to be noted that the Tribunal and the High Court have recorded categorical findings that there were not even applications for grant of permits in such cases. It baffles one as to how the permits could be granted even without application. The STA for reasons best known to it, did not produce all the 48 files relating to the grant of permits. A plea was taken that some of the files were taken by the vigilance authorities inquiring into the allegations of corruption. Be that as it may, the fact remains that in some cases elaborated by the Tribunal and the High Court, the applications were not there. The stand of learned counsel for the appellants that relief may be denied to only those persons, is clearly unacceptable. While deciding the question of *mala-fides*, the very fact that in certain cases, the authorities have acted without application of mind, is itself sufficient to attach vulnerability to the action. Therefore, we do not think it necessary to go into the other questions and the appeals are dismissed. All the interim orders consequently passed stand vacated. The contempt proceedings initiated shall stand quashed.

G An application for intervention has been filed taking a stand that certain observations made by this Court in *U.P. State Road Transport Corporation through its Chairman v. Omaditya Verma and Ors.*, [2005] 4 SCC 424 are not correct. We do not consider it necessary to deal with that question in this application. The application for intervention is, therefore, rejected.

H S.K.S.

Appeals dismissed.