Ishwar Dayal Vs The State of Uttar Pradesh and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Oct. 24, 1960

Acts Referred: Constitution of India, 1950 â€" Article 226
Uttar Pradesh Motor Vehicles Taxation Act, 1997 â€" Section 4, 4(2)
Uttar Pradesh Motor Vehicles Taxation Rules, 1998 â€" Rule 5, 6

Citation: AIR 1961 All 374 : (1962) 32 AWR 295

Hon'ble Judges: J.K. Tandon, J

Bench: Single Bench

Advocate: B.N. Roy, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

J.K. Tandon, J.
The petitioner possesses a Stage Carriage Permit No. 809-1622 for his transport vehicle on the Bulandshahr, Anupshahr,

Debai, Naraura and Debai Ramghat route in the Meerut Region. This route earlier was classified as a B Class route and also approved as such by

the State Transport Authority. It is said that originally it was partly metalled and partly Kankar, while the extension from Debai to Ramghat was

sandy. In 1957-58 this route was extended up to Ramghat and again classified by the Regional Transport Authority as a "B" class route. When,

however, the classification made by the Regional Transport Authority came up before the State Transport Authority, the latter by its resolution,

dated the 29th/30th September, 1958, declared it to be an "A" class route.

2. One of the consequences of classifying the route as an "A" class route has been an increase in the rate of taxes payable by the permit holder and

also a decrease in the fate chargeable from persons travelling. It is common ground that the State Transport Authority gave no opportunity to the

petitioner, or to the other permit holders plying their vehicles on this particular route, to show cause against the re-classification before declaring the

route to be an "A" class route. The petitioner claiming that it was incumbent on the State Transport Authority to give such a notice and hear

objections, if any, against the proposed re-classification has asked the same to be quashed and the increased tax also not to be recovered.

3. It will be useful to note at the very outset that the re-classification has been done by the State Transport Authority by virtue of the provisions in

Sub-section (2) of Section 4 of the U. P. Motor Vehicles Taxation Act, 1935. Under its provisions the routes have to be classified into various

classes for the purpose of determining the amount of tax payable in respect of transport vehicles plying for hire or reward on those routes. The

sub-section reads :-

For the purpose of determining the amount of the tax payable in respect of transport vehicles plying for hire or reward under Articles IV to VII of

the first schedule to this Act, all routes in Uttar Pradesh shall be classified by the prescribed authority as special routes or ordinary routes, and

every ordinary route shall be further classified as an A class route, or a B class route, or a C class route"".

The authority or rather the duty to classify routes into various classes has thus been cast by the section on the prescribed authority. The expression

prescribed authority"" has been defined in the Act to mean ""prescribed by rules under the Act."" Rule 5 of the Rules framed under the Motor

Vehicles Taxation Act has prescribed the State Transport Authority, as also the Regional Transport Authority with the approval of the State

Transport Authority as the authority which shall be competent to classify the routes. In this case the re-classification which has been impugned was

done by the State Transport Authority. The Regional Transport Authority recommended in favour of classifying the route as ""B"" class but the State

Transport Authority whose approval was necessary classified it as an ""A"" class route.

4. One of the grounds which the petitioner has urged against the legality of the impugned classification has been that the State Transport Authority

had no jurisdiction under the Act to do so. Whether one refers to Sub-section (2) of Section 4, or to Rule 5 framed thereunder, the State

Transport Authority as the prescribed authority is competent to decide and order the classification. It has independent power to do so and do so

also when its approval is sought by the Regional Transport Authority. It is futile to urge in the face of the above provision that the State Transport

Authority was incompetent to order the classification.

5. The next ground on which the petitioner has laid great stress is the failure of the, State Transport Authority to give an opportunity to him and

other persons plying transport vehicles for hire on the particular route before ordering the classification. The argument in support of this contention,

firstly, is that the classification as regards the route is a condition of the permit which could not be altered without previously hearing the persons

affected.

The learned Counsel appearing for the petitioner has referred to Section 48 of the Motor Vehicles Act, 1939, which provides in Clause (xxi) Sub-

section (3) that the conditions attached to any permit may not be changed without giving a notice of not less than one month to the persons

affected. Hs has also referred to Section 46 of that Act which in Clause (a) provides that the route is a necessary factor in the permit and any

change in it will result in changing the conditions of the permit.

6. To my mind there is a fundamental error in this contention. The classification of routes into ""A'' class routes, or ""B"" class routes or for the matter

of that, ordinary routes or special class routes is done under the provisions of the U. P. Motor Vehicles Taxation Act, 1935. The question,

therefore, whether the classification has been properly done or not, or whether any notice was required to be given before re-classifying the routes,

must be decided on the terms of that Act.

The Motor Vehicles Act, 1939, which has nothing to do with the classification, of routes for the purposes of Section 4 of the U. P. Motor Vehicles

Taxation Act, does not enter into the picture. Section 4 of the U. P. Motor Vehicles Taxation Act. 1935 is not subject to the provisions of Section

48 of the Motor Vehicles Act, 1939, or for the matter of that of any other section in this Act. Irrespective therefore of the fact whether classifying

the route into class ""A"" or class ""B"" has the effect of not of altering the route, for which the permit is granted under the Motor Vehicles Act, 1939,

the legality of the action will have to be judged not on anything contained in the Motor Vehicles Act but on the provisions found in the U. P. Motor

Vehicles Taxation Act, 1935.

7. In the absence of anything contained in. Section 4 to make it subject to the provisions of Section 48 of the Motor Vehicles Act, the obligation

cast on the Regional Transport Authority by Clause (xxi) of Sub-section (3) of that section cannot be imported into it. What is necessary in the

circumstances to be judged is--does Section. 4 of the U. P. Motor Vehicles Taxation Act require a notice to be given beforehand to the persons

affected.

8. The learned counsel for the petitioner haw confessed that no express provision exists in that behalf either in the Act itself or in the rules framed,

thereunder, but he has justified his contention by urging that as one of the consequences of re-classification is--as has been the result here--that a

higher tax is payable by the permit holder while the fare chargeable by him is reduced, his interests are affected and the rule of natural justice

therefore demanded that an opportunity should be given to him.

One must not overlook the fact that the power given to the State Transport Authority by Section 4 of the Act is not a judicial power. Not even the

fact that the exercise of that power ultimately results in increasing the amount of tax payable by the permit holder will turn it into a judicial power. It,

on the other hand, is an administrative action authorised to be taken by law. The obligation to give an opportunity to the persons affected as a

result of re-classification cannot, therefore, be judged on considerations which may validly be relevant while judging the legality of any judicial

action.

9. For deciding whether a notice was necessary previously and whether an opportunity was required to be given to the persons affected, it is the

provision in Section 4 and any rules framed thereunder which will have to be searched out. As already stated there is nothing in the section or in the

rules placing any such obligation on the State Transport Authority. The rule of natural justice to which the learned Counsel has referred cannot and

in fact does not exist independently of the statutory provisions under which the impugned section has been taken. The Supreme Court has in the

case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, held:-

the rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they function.

The question whether or not any rules of natural justice had been contravened should be decided not under any preconceived notions, but in the

light of the statutory rules and provisions.. Where no such rules which could be said to have been contravened by a tribunal is brought to the notice

of the Court it is no ground for interference either under Article 226 or 227 simply because the Tribunal had viewed the matter in a light which is

not acceptable to the Court.

10. Under the circumstances I am unable to agree that any duty was cast, whether by the Act itself or otherwise on the State Transport Authority,

to hear or give an opportunity to the permit-holders before it re-classified the route. Rule 6 has laid down the conditions which shall guide the State

Transport Authority in classifying the routes. They are:-

(a) The potential income which in regard to all the circumstances of the route, it may be expected will accrue from the employment of a public

service vehicle on that route.

(b) the cost of maintenance of the road or roads or the portion or portions of any road or roads comprised within the said route,

(c) the necessity for the development of the proposed route in the public interest"".

While the State Transport Authority has to keep in view the above circumstances when ordering classification, the rule nowhere requires that it

shall also hear persons who might be plying on the route or who would be affected as a result of the re-classification. A duty is cast upon it to keep

these considerations in view and there is no reason to think that they are not kept in view by the authority when it decided that the route shall be an

A"" class route.

11. Mr. Roy cited an unreported decision of this Court in C. M. Appln. No. 237 of 1957, D/-7-1-1959 Devendra Prakash v. State Transport

Authority U. P. Lucknow, which according to him upheld the contention that notice to the persons was necessary in the above circumstances. The

learned Chief Justice observed in the above decision that inasmuch as the re-classification affected the tare chargeable by the permit holder, it was

just that an opportunity was given to him to file objections. Apparently, however, the provisions of Section 4 of the U. P. Motor Vehicles Taxation

Act, 1935 which did not require any notice to be given previously were not placed before him.

One of the consequences of re-classifying the route into an ""A"" class route may be an increase in the tax payable and a decrease in the fare rate,

but it is not possible to infer from these facts alone that the permit holder has suffered in property. Class ""A"" routes are on the whole better

economically. They are more paying because they are better built. Where, therefore, a ""B"" class route is re-classified into an ""A"" class route (sic)

though there may be an increase in the rate of tax or decrease ultimately in the total earnings.

It will not therefore be open to conclude necessarily that the re-classification has resulted in depriving a person of his property. The case of

Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others, also is not in point. That was a case under the U.P. Controlled Cotton

Cloth and Yarn Dealers Licensing Order, 1948, and its facts were substantially different. Section 4 of the U. P. Motor Vehicles Taxation Act gives

power to the State Transport Authority to classify the route.

The crassification has to be done for the purpose of determining the amount of tax payable in each case. By classifying the route the State

Transport Authority does not interfere with the property of others but it only determines the classification on which tax shall be chargeable. With

great respect I am unable to agree with the view that notice was necessary in the case.

12. The second part of the argument of the learned Counsel for the petitioner may now be considered. According to him re-classification has the

effect of changing the route, therefore also changing the condition of the permit. Admittedly the route, by which is meant the route on which the

vehicle can ply for hire or reward, has not undergone any change. By declaring the route to be an ""A"" class route there has been no change in its

constitution. It has remained the same though for purposes of determining the amount of tax payable in respect of it, it has been placed in a different

category than previously.

To urge therefore that there has been a change in the route and therefore a change in the conditions of the permit is not correct. The route has

remained the same and there has been no variation or alteration in it. So far as the Motor Vehicles Act, 1939, and its provisions are concerned

there has been no change in the permit. What-ever changes have occurred as a result of the re-classification are for the purposes of the U. P.

Motor Vehicles Taxation Act, 1935, and that too for determining the amount of tax to be paid for the motor vehicle plying on the particular route,

There is no justification for the argument that the re-classification has resulted in the change of the conditions of the permit or of altering the route.

This argument also therefore fails.

13. As the petitioner has failed on both the grounds urged by him the petition deserves to be dismissed. The same is therefore dismissed with costs.

14. As the petition has been dismissed C. M. Application No. 88 of 1959 is also dismissed.