

## Saleem Vs State Transport Appellate Tribunal

**Court:** Allahabad High Court

**Date of Decision:** Dec. 19, 2014

**Acts Referred:** Motor Vehicles Act, 1988 " Section 66, 80, 89, 90

**Citation:** (2015) 2 ADJ 65 : (2015) 109 ALR 23

**Hon'ble Judges:** Mahesh Chandra Tripathi, J

**Bench:** Single Bench

**Advocate:** Shiv Ram Misra and Shashi Nandan, Advocate for the Appellant

### Judgement

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Mahesh Chandra Tripathi, J.

Heard Sri Shashi Nandan, Senior Advocate assisted by Sri Shiv Ram Misra and Sri G.K. Malviya, learned

counsels for the petitioners and Sri Pankaj Rai, learned Additional Chief Standing Counsel for the respondents.

2. By means of the writ petition No. 29556 of 2013, the petitioners have prayed for following reliefs:--

i. to issue a writ, order or direction in the nature of certiorari quashing the judgment and order dated 10.05.2013 passed by the State Transport

Appellate Tribunal, U.P., Lucknow (respondent No. 1) in Appeal No. 36 of 2011, Mohd. Saleem v. S.T.A. U.P. Lucknow and another

(annexure No. 6 to the writ petition);

ii. to issue a writ, order or direction in the nature of certiorari quashing the Resolution/Order dated 17.03.2011 passed by the State Transport

Authority, U.P., Lucknow (Annexure No. 2 to this writ petition).

iii. to issue a writ, order or direction in the nature of mandamus directing the respondent No. 1 to decide the appeal as fresh after considering the

material on record and following the procedure prescribed under Section 80 of the Motor Vehicle Act, 1988 and Rule 58 (7) and (72) of the

Motor Vehicle Rules, 1988.

iv. to issue any other and further order or direction as this Hon"ble Court may deem fit and proper in the circumstances of the case.

v. to award cost of the petition to the petitioner.

3. All these nine writ petitions are being filed against the order dated 10.05.2014 passed by the State Transport Appellate Tribunal (hereinafter

referred as ""STAT""), U.P., Lucknow as well as Resolution/Order dated 17.03.2011 passed by the State Transport Authority, U.P., Lucknow

(herein after referred as ""STA""), by which the grant of regular stage carriage permits had been denied to the petitioners.

4. All the above mentioned writ petitions involve common issues, therefore, they have been clubbed and heard together. The Writ Petition No.

29556 of 2013 has been heard as the leading petition.

5. Brief facts giving rise to the above mentioned writ petitions are that the interstate route known as Datia-Chhatarpur via Jhansi-Naugaon

(hereinafter referred as ""route in question"" ) is within the jurisdiction of STA Lucknow. The total length of route is 158 km, out of which 87 km lies

within the jurisdiction of State of U.P. and 71 km lies in M.P.

6. It appears from the record that the reciprocal agreement was arrived at in between the two States on 21.11.2006 and at present, the vacancy of

5 permits with ten trips are available in the route in question. The petitioner has submitted his application for grant of one regular stage carriage

permit on the route in question. The STA after considering the application of the petitioner refused to grant the permit and rejected the application

of the petitioner vide order dated 17.03.2011.

7. Aggrieved with the order dated 17.03.2011, the petitioner had filed Appeal No. 36 of 2011 under Section 80 of the Motor Vehicle Act, 1988

(herein after referred as ""Act 1988"" ). It is apparent from the record that the present appeal alongwith other connected appeals were decided by

the STAT vide order dated 21.02.2013, and permitted to the STA for reconsideration of the matter. It would be appropriate to see the order for

proper adjudication of the matter. The operative portion of the same is reproduced herein below:--

(xi) Considering all the facts and circumstances alongwith aforementioned legal provisions, I am of the considered opinion that the impugned order

dated 17.3.2011 has not been passed on merit by the STA and the STA has acted illegally and with material irregularity in exercising his power,

while considering the applications of the appellants for grant of permits for the route in question. Therefore, the impugned order dated 17.3.2011 is

not according to law and liable to be set aside and the matter needs reconsideration by the STA.

(xii) In any case, the transport system in a State is meant for the benefit and convenience of the public. The policy to grant permits under the Act is

directed towards the said goal. But it appears that the STA is not interested in following the relevant Laws and Rules contained under the Act and

also not inclined to follow the laws laid down by the Hon"ble Supreme Court and the Hon"ble High Court, time and again, in this regard. Due to

this arbitrariness and lack of the foresight of the STA, vacancies of 5 permits with 10 trips are still lying vacant since 2006, which is causing

recurring loss of revenue to the Government Exchequer as well as the commuters of the route in question also are bound to face horrible trouble

and pain due to scarcity of the vehicles.

In view of the above, all the appeals are liable to be allowed.

## ORDER

All the 19 appeals are allowed.

The impugned order dated 17.3.2011 passed by the State Transport Authority, U.P. Lucknow is set aside.

The State Transport Authority, U.P. Lucknow is directed to take decision on the applications of the appellants afresh after considering the

comparative merits of the appellants/applicants and pass an appropriate order according to the law and in the light of the observations made

above.

8. Meanwhile, the petitioner had filed Writ Petition No. 13684 of 2013 (Mohd. Saleem v. State Transport Appellate Authority, U.P. Lucknow

and others) and the High Court vide order dated 12.03.2013 had quashed the order dated 21.02.2013 passed by the STAT. The operative

portion of the order dated 12.03.2013 is reproduced herein below:--

..... The submission on the part of the petitioner is that the Tribunal had ample power to rectify the mistake and allow the appeal by granting

permit instead of remitting the matter to the State Transport Authority. With regard to the powers of the Tribunal, reliance has been placed upon

the following judgments of this court:

(i) Mohd. Yunus Khan v. State of U.P. and others passed in the Writ Petition No. 67272 of 2010 decided on 25.11.2010.

(ii) Salim Ahmad v. State of U.P. and another passed in the Writ Petition No. 26325 of 2011 decided on 5.5.2011.

In the case of Mohd Yunis Khan (Supra) the Tribunal had remitted the matter to the State Transport Authority. This court held that in view of the

power to rectify the mistake and grant the permit in the Tribunal there was no justification to remand the matter for completing the application form

which could have been done by the Tribunal itself.

Accordingly, the impugned order dated 21.02.2013 passed by the Tribunal in Appeal No. 36 of 2011 is hereby quashed. The Tribunal shall

rehear the appeal of the petitioner on merits and pass appropriate orders in accordance with law keeping the law laid down on the aforesaid

judgments referred to above. The said exercise may be undertaken within a period of two months from the date of production of certified copy of

this order. Writ petition stands allowed as above"".

In pursuance to the direction issued by this Court dated 12.03.2013, the STA vide its order dated 10.05.2013 had dismissed the appeal with

observation that "" In view of the above, I am of the considered opinion that as it is only valid application which is to be considered, but in the

present case at the time of reconsideration of application of the applicant by the STA material particulars were lacking and missing in the

application and as such the application of the appellant was invalid and legally not maintainable. Therefore, the impugned order of the STA dated

17.3.2011, rejecting such invalid application cannot be said illegal and this appeal has no merit and liable to be dismissed.

#### ORDER

The appeal is dismissed.

9. By means of these writ petitions, the petitioners have assailed the order dated 10.05.2013 as well as order dated 17.3.2011 passed by the

STA.

10. Shri Shashi Nandan, Senior Advocate submitted that the order impugned cannot be sustained on the ground that the petitioners had merely

unfilled the column Nos. 9, 12 and 14 of the application form (known as Form SR-20) but simultaneously, the petitioners had provided all the

necessary information as required in the form and further the defects were eventually rectified by the petitioner through an affidavit, which is clearly

reflected from the order dated 17.03.2011 passed by the STA. He further submitted that once the petitioner at the time of hearing had produced

the proof of vehicle registered in his name, then the STA was not correct to reject the application merely on the ground that the petitioner had left

the column Nos. 9, 12 and 14 as blank. He has also submitted that the STA, while processing the application of the petitioner for granting permit

on the route in question, had not made any sincere efforts to follow the legal provisions as contained in Section 80 of the Act 1988 and Rules 58

and 72 of the U.P. Motor Vehicles Rules, 1998 (hereinafter referred as ""Rules"").

11. Learned counsel for the petitioners has placed reliance to the Section 80 of the Act, 1988 and Rule 58 and 72 of the Rules. It would be

appropriate to reproduce the same for proper adjudication of the present cases and the same are reproduced herein below:--

Section 80 Procedure in applying for and granting permits:--

..... (2) A Regional Transport Authority, State Transport Authority or any prescribed authority referred to in Sub-sec. (1) of Sec. 66 shall

not ordinarily refuse to grant an application for permit of any kind made at any time under this Act:

..... Provided further that where a Regional Transport Authority, State Transport Authority or any prescribed authority referred to in Sub-sec.

(12) of Sec. 66 refuses an application for the grant of a permit of any kind under this 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.

Rule 58. Transport Authority: Conduct of business of:--

..... (7) The State or the Regional Transport Authority, as the case may be, may summon any applicant for a permit to appear before it and

may decline to grant the permit until the applicant has so appeared either in person or by an agent authorized by him in writing and until the

applicant has furnished such information as may reasonably be required by the authority in connection with the application.

Rule 72. Permit: Entry of registration mark on:--

Save in the case of temporary permit, where the registration mark of the vehicle is to be entered on a permit and the applicant on the date of

application is not in possession of the vehicle duly registered, he shall within one month of the sanction of the application by the transport authority

or such longer period as the authority may specify, produce the certificate of registration of vehicle before that authority so that the particulars or

the registration mark may be entered in the permit.

12. Shri Shashi Nandan, learned Senior Advocate further submitted that as per provisions of Section 80 of the Act, 1988, it may not be the object

of the Regional Transport Authority to reject the application for permit in a cursory manner but it is incumbent upon the Transport Authority to give

an opportunity to the applicant in writing and disclose the reasons for the refusal of the same. Further an opportunity of hearing is also required.

13. He has also placed reliance to the Rule 58(7), which also gives impression that even at the time of granting temporary permit, if the applicant is

not in possession of vehicle duly registered, he shall within one month of the sanction of the application by the transport authority or such longer

period as the authority may specify, produce the certificate of registration of vehicle before that authority so that the particulars or the registration

mark may be entered on the permit. Therefore, he submitted that the STA could not appreciate the basic features of the Act and not complied with

the above provisions and had passed the impugned order mechanically and in arbitrary manner had rejected the claim in spite of the fact that while

deciding the earlier appeal against the initial rejection order, the STAT vide its order dated 21.02.2013 had held that due to this arbitrariness and

lack of the foresightedness of the STA, vacancies of 5 permits with 10 trips were still lying vacant since 2006, which is causing recurring loss of

revenue to the Government Exchequer as well as causing great inconvenience to the commuters of the route in question.

14. He further submitted that in pursuance to the order passed by this Court dated 12.03.2013, the Court had held that in stead of remitting the

matter to the STA, the STAT had ample power to rectify the mistake and grant the permit itself, but in stead of rectifying the mistake and grant

permit to the petitioner, the Tribunal had again made an error while passing the order dated 10.05.2013, which was contrary to the provisions of

Section 80 of the Act as well as Rule 58(7) and Rule 72 of the Rules 1998. Therefore, the orders impugned cannot be sustained and are liable to

be set aside, specially in the background that vacancy of 5 permits with 10 trips are still lying vacant since 2006, which are causing great recurring

loss of revenue and creating great inconvenience to the daily commuters of the route in question due to scarcity of the vehicles, and unnecessary

present mess is going on since long.

15. Learned counsel for the petitioners has placed reliance to the judgment of Hon"ble Apex Court in the case of The Maharashtra State Road

Transport Corporation Vs. Babu Goverdhan Regular Motor Service and Others, , in which Hon"ble Apex Court has held that STA has no power

to reject an application on the ground that the application is defective. The relevant portion of the paragraph-18 is reproduced herein below:--

18..... In our opinion, the matter has to be approached from a slightly different angle, viz., whether the authorities have got the power to

reject an application summarily if it does not contain information on any matter or particulars referred to in the form. We are unable to find any

provision in the statute giving a power to the transport authorities to reject an application summarily on that ground; but, we have already

emphasized that the application must give the necessary information on the various particulars and matters enumerated in the form prescribed for

such purpose. It is to the interest of the applicant himself to give full and clear information because he stands the risk of the permit not being granted

to him for lack of information on certain matters. But this is quite a different thing from the power of the authority to reject an application forthwith

on the ground that the application is defective.

16. Sri Pankaj Rai, learned Additional Chief Standing Counsel has vehemently opposed the arguments advanced by the Sri Shashi Nandan, Senior

Advocate and submitted that the petitioner"s application was rightly rejected on the ground that he had left the column Nos. 9, 12 and 14 unfilled

and even the petitioners had not removed the material defect in the application at the time of hearing before the STA in spite of an opportunity. He

further submitted that the form SR-20, provides various clauses and it was incumbent upon the applicant to provide correct and every details

strictly as per the requirement of the Act. In the present matter, the same were lacking and missing and as such the application was rightly rejected

and the same was invalid in the eyes of law and legally unsustainable.

17. He has drawn attention of the Court regarding distinguishing features of appeal and revision provided in the Act and submitted that the STAT

had rightly rejected the appeal, whereas it had no right or jurisdiction to rectify the order of the STA in the appeal (provided in Section 89) of the

Act 1988 and this power is being vested in STAT only in revision which is provided under Section 90 of the Act 1988, by which, it may call for

record of any case in which, the order had been made by the STA or Regional State Authority, against which no appeal lies. Therefore, he justified

the impugned order passed by the STAT especially on the ground that particulars were lacking and missing in the application form (SR-20) of the

petitioners. Therefore, the STAT could only test the order passed by the STA on merit and if finds any illegality or infirmity after quashing the

same, has to return the matter back to the STA, which is only authorized and competent to consider and to process the application which is filed

under SR-20 and this exercise cannot be done by the STAT.

18. I have heard the rival submissions of learned counsel for the parties and also perused the record.

19. In the present matter, the petitioners had submitted form (SR-20) and the said application was rejected by the STA on merely two grounds,

firstly, the petitioners did not produce the relevant documents regarding vehicle and secondly some column Nos. 9, 12 and 14 were left blank. On

this very sole grounds, the STA had rejected the application of the petitioner on 17.03.2011. Considering the facts of the matter, it is the

paramount question for consideration before this Court as to whether the STA and STAT had passed the impugned orders according to the

relevant legal provisions provided under the Act/Rules as indicated above or not. As per the provisions of Section 80 of the Act 1988 which

provides that if the STA refuses the application for grant of permit of any kind made at any time under this Act, it shall provide an opportunity to

the applicant in writing and also provides its reason for refusal of the same and further an opportunity of hearing is also required.

20. It is relevant to note that the petitioner had submitted an affidavit in support of the application for grant of one regular stage carriage permit for

said route on 17.03.2011, in which he had clearly mentioned that he has got one vehicle No. U.P.-93 T 6778 of 201 model registered in his name

without permit. Once the petitioner possessed a vehicle which was categorically averred through an affidavit then there was no reason to the STA

not to consider such affidavit. It is also apparent from the provisions of the Act and Rules as mentioned above, it is expected that the Transport

Authority is to ascertain, whether the applicant possesses a duly registered vehicle or not. Even though as per Rule 72, which also provides time

limit under which the applicant may furnish the details regarding the possession of vehicle. It is also apparent from the record that while passing the

impugned order dated 17.03.2011, the STA as per Section 80 of the Act had not provided any opportunity of hearing to the petitioner and in

most mechanical way it had passed the order, ignoring the provisions of Rule 58(7), which clearly provides that if there is any discrepancy/lack of

information in the application, the STA may call the applicant for correcting the application or furnish the required information. It is also not

incumbent upon the applicant as per the Rule 72 to produce the documents pertaining to the vehicle at the time of hearing for grant of permit, even

such information may be furnished within one month's time.

21. It is also apparent from the record that initially the order dated 17.03.2011 passed by the STA was tested by the STAT in the appeal No. 70

of 2011. The STAT, while passing the order dated 21.02.2013, had held that the STA had acted illegally and with material irregularity in

exercising its power, at the time of considering the application of the petitioner. It had also observed that due to irregularity and lack of foresight of

the STA, vacancies of 5 permits with 10 trips were still lying vacant since 2006, which is causing recurring loss of revenue to the Government

Exchequer and also causing great inconvenience to the commuters of the route in question.

22. The Court is surprised to note that this traumatic and pathetic situation is going on unabated since 2006, either on one pretext or the other the

applications were rejected in routine manner without application of mind. The Court, while passing the order dated 12.03.2013 in Writ Petition

No. 13684 of 2013, has taken note of the judgments passed in Writ Petition No. 67272 of 2010 (Mohd. Yunus Khan v. State of U.P. and

others) decided on 25.11.2010 and also in the Writ Petition No. 26325 of 2011 (Salim Ahmad v. State of U.P. and another) decided on

5.5.2011 and had held that "In the case of Mohd. Yunis Khan (Supra) the Tribunal had remitted the matter to the State Transport Authority. This

court held that in view of the power to rectify the mistake and grant the permit in the Tribunal there was no justification to remand the matter for

completing the application form which could have been done by the Tribunal itself.

23. It is apparent that the order dated 12.03.2013, clearly provides that the Tribunal shall decide the appeal of the petitioner on merit and pass



appropriate orders in accordance with law keeping in view the law laid down in the aforesaid judgments. But instead of rectifying the mistake in the

STA order, the impugned order had been passed by the STAT upholding the original order dated 17.03.2011 passed by the STA, ignoring the

fact that the earlier order was already tested by the STAT in its order dated 21.02.2013. In which it was found that the earlier impugned order

dated 17.03.2011 passed by the STA was unsustainable and while deciding the issue, the STA had committed material irregularity in exercising its

power, while considering the applications of the petitioners for grant of permit for route in question and the same was set aside. Therefore, taking

shelter of order dated 12.03.2013 passed by this Court, the STAT, without looking into the earlier order passed by itself, had reversed the finding

and upheld the order dated 17.03.2011 passed by the STA. It is relevant to note here that earlier the STAT while passing the order dated

21.02.2013, had observed that the State Transport Authority, U.P. Lucknow directed to take decision on the applications of the appellants afresh

after considering the comparative merits of the appellants/applicants and pass an appropriate order according to law in the light of observation

made above. Therefore, it is made clear that while passing the order dated 21.02.2013, the STAT had clearly directed to the STA for considering

the comparative merits of the applicants which were submitted for grant of permit for the route in question, after setting aside the order dated

17.03.2011 passed by the STA. For the reasons best known to the petitioners, even though it was not required to assail the order dated

21.02.2013 but any how, the same had been challenged by means of the Writ Petition No. 13684 of 2013 and this Court had directed the STAT

to proceed in the matter in pursuance to the judgment referred to above. In the light of the facts and circumstances as stated above, there was no

occasion for STAT to reverse its own findings recorded in the matter on 21.02.2013 and passed the present impugned order just contrary to its

own finding.

24. On the facts and circumstances of the case, the impugned order dated 17.03.2011 passed by the STA and the order dated 10.05.2013

passed by the STAT are unsustainable and, are accordingly, quashed. The STA, U.P. Lucknow is directed to take decision on the applications of

the petitioners after considering the comparative merit of the applications, which are being filed for the route in question and pass appropriate order

in accordance with law in the light of observations made above. The said exercise shall be carried out within a period of six weeks from today.

25. With the aforesaid observation and direction, all the writ petitions are allowed.