

## IKRAM KHAN

v.

## STATE TRANSPORT APPELLATE TRIBUNAL AND ORS.

August 31, 1976

[Y. V. CHANDRACHUD AND P. K. GOSWAMI, JJ.]

*Motor Vehicles Act, 1939—Sec. 47—Rajasthan Motor Vehicles Rules, 1951 Rule 108(c)—Whether considerations in Sec. 47 for grant of stage permits to be mentioned in the order.*

The appellant and respondents No. 3 and 4 applied for the grant of non-temporary stage carriage permits. The Regional Transport Authority granted the permits to the appellant and respondent No. 4 and rejected the application of respondent No. 3. Respondent No. 3 filed an appeal to the State Transport Appellate Tribunal. The notice of appeal was served upon the appellant where the date and time were mentioned but the place was not mentioned. Since the appellant did not appear the appeal was heard *ex parte*. The Tribunal set aside the order of the Transport Authority and granted the permit in favour of respondent No. 3. A writ petition filed by the appellant against the order of the Tribunal was dismissed summarily by the learned Single Judge by a long speaking order. A Division Bench dismissed the appeal filed by the appellant.

In an appeal by Special Leave the appellant contended :

1. The notice as required by rule 108(c) of the Rajasthan Motor Vehicles Rules, 1951 served on the appellant was not proper notice since it did not mention the place of the hearing of the appeal.
2. The Tribunal did not consider the relevant matters as mentioned in section 47(a) to (f).

HELD : 1. The omission to mention the place is not fatal. The appellant is a resident of Jaipur where also the office of the Tribunal is situated. He was a Stage Carriage permit holder and not a stranger to the Transport authorities. In fact, hearing of the appeal was adjourned twice even after the date mentioned in the notice. [460 F]

2. The Regional Transport Authority did not make any reference to the relevant considerations under section 47 of the Act. The Tribunal on the other hand has considered various aspects of the matter as required by section 47 although without a reference to that section. The Tribunal and the learned Single Judge duly considered the whole matter and the Division Bench was justified in summarily rejecting the special appeal. [461 B—D]

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 874 of 1975.**

**Appeal by Special Leave from the Judgment and Order dated 5-3-75 of the Rajasthan High Court in D.B. Civil Appeal No. 18 of 1975.**

*M. C. Bhandare, S. M. Jain, S. K. Jain and Mohd. Fasiuddin, for the Appellant.*

*P. C. Bhartari, for Respondent No. 3.*

*K. J. John, for Respondent No. 4.*

The Judgment of the Court was delivered by

GOSWAMI, J.—The appellant and the respondents 3 and 4 were the former existing stage-carriage operators of Jaipur-Sainthal route which was nationalised on January 25, 1973. All of them applied for the grant of non-temporary stage carriage permits of Jaipur-Padampura route as alternative route permits. The Regional Transport Authority, Jaipur (briefly the RTA) by its order of July 22, 1974, granted non-temporary permits to the appellant and respondent No. 4 and rejected the application of respondent No. 3. That led to an appeal to the State Transport Appellate Tribunal at Jaipur, Rajasthan, by respondent

- A** No. 3. The notice of appeal was served upon the appellant but since he did not appear the appeal was heard *ex-parte* and by its order dated December 17, 1974, the State Transport Appellate Tribunal set aside the order of the RTA and granted the permit in favour of respondent No. 3. The appellant filed a writ application under Article 226 of the Constitution before the Rajasthan High Court and the learned single Judge by a rather long speaking order dismissed the same summarily.
- B** A further appeal by the appellant to the Division Bench met with the same fate. The High Court also refused to grant certificate to appeal to this Court. Hence this appeal by special leave.

Mr. Bhandare, the learned counsel on behalf of the appellant, submits that the order of the State Transport Appellate Tribunal (briefly the Tribunal) is invalid inasmuch as the appeal was heard in the absence of a proper notice of appeal as required under the law. He draws our attention to rule 108(c) of the Rajasthan Motor Vehicles Rules, 1951, which reads as follows :—

- C** “Upon receipt of an appeal preferred in accordance with sub-rule (b) the Appellate Tribunal may appoint a date, time and place for hearing of the Appeal, giving the State Transport Authority, or the Regional Transport Authority, as the case may be, and the appellant not less than thirty days’ notice thereof”.
- D**

- Although the above rule does not contain any provision for service of notice on the respondent, it is, however, implicit that a notice similar to one intended under the rule for service on the appellant must also be served on the respondent. Mr. Bhandare could not dispute the factual service of notice on the appellant in view of the Tribunal’s finding. He, however, submits that the notice which was served on the appellant did not recite the place for the hearing of the appeal although the date and time were noted therein. It is true that the Tribunal could not, in law, hear the appeal without intimating the respondent about the date, time and place for hearing of the appeal but since the appellant had received the notice from the Tribunal indicating the date and time for hearing of the appeal, the omission in the notice to describe the place where the appeal is to be heard is not fatal enough to make the appeal proceeding invalid before the Tribunal. The appellant, admittedly, is a resident of Jaipur where also the office of the Tribunal is situated. He was also a stage carriage permit-holder and not a stranger to the office of the Transport Authorities. Besides, although the notice of the appeal fixed the date of hearing on October 8, 1974, the appeal was adjourned on that day to October 21, 1974 and again to November 12, 1974 and it was only on December 12, 1974 that the final hearing of the appeal took place. It is, therefore, clear that the appellant was duly notified about the hearing of the appeal and in view of the fact that he did not make any effort to be present during this entire period, when the appeal was pending, he could not be allowed to take advantage of the mere omission of the place of hearing of the appeal in the notice. Besides, the RTA was present as provided for under section 64(1) of the Motor Vehicles Act, 1939 (briefly the Act) before the Tribunal to defend its own order. The submission of the appellant is, therefore, of no avail.
- E**
- F**
- G**
- H**

Mr. Bhandare next submits that the Tribunal failed to comply with section 47 of the Act and did not at all consider the relevant matters (a) to (f) provided therein. It is well settled that in considering an application for a stage carriage permit the RTA shall have regard to the matters described in section 47. Before we go to consider about the submission of the learned counsel with reference to the order of the Tribunal it is manifest, on the face of the order of the RTA, that that Authority, even at the first instance, did not make any reference to the relevant considerations under section 47 of the Act. The only reason given by the RTA in rejecting the application of respondent No. 3 is that "there is no other vacancy". There is nothing to show that the case of respondent No. 3 was at all considered by the RTA on merits. The Tribunal, on the other hand, has considered various aspects of the matter although without a reference to section 47 as such. For example, the condition of the vehicles of the two parties was duly considered by the Tribunal. The fact that the respondent 3 had a later model of vehicle being 1965 model whereas the appellant had only a 1962 model vehicle tilted the balance in favour of the respondent No. 3. This aspect can well arise under clauses (a) and (b) of section 47. We are unable to say that the relevant considerations under section 47, on the facts and circumstances of the grant of the particular permit, were not kept in view by the Tribunal in considering the appeal. The Tribunal and the learned single Judge duly considered the whole matter and the Division Bench was justified in summarily rejecting the special appeal. The second submission of the learned counsel also fails.

In the result the appeal is dismissed but we will make no order as to costs.

P.H.P.

*Appeal dismissed.*