

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 465 of 2019**

Sayyad Anwar Ali, S/o Saayyad Ahmad Ali, aged about 51 years, C/o Royal Travels Shop No. 3, Pagaria Complex, Pandari, PS Devendra Nagar, Raipur, 492001 (CG)

---- Appellant

Versus

1. M/s Kanker Roadways, through its partner Navpreet Singh Garcha, Near Gandhi Udyan, Civil Lines, Raipur, 492001 (CG)
2. State Transport Appellate Authority, Through-Presiding Officer, State Transport Appellate Authority Raipur, 492001 (CG)
3. The Secretary, Regional Transport Authority, Raipur, 492001 (CG)
4. Payal Travels Near Khalsa School, Raipur, 492001 (CG)
5. Mr. Vasan Singh, New Bus Stand Pandri, Raipur, 492001 (CG)

---- Respondents

WP227 No. 608 of 2019

Wasan Singh, S/o Jogender Singh, aged about 77 years, Mahendra Travels, Pandri, Raipur Through POA Ajay Singh, aged 29 Yrs., S/o Late Satwant Singh, Shukla Colony, Rajatalab, Raipur.

---- Petitioner

Versus

1. Regional Transport Authority, Raipur 492001 Chhattisgarh.
2. Syed Anwar Ali, S/o Syed Ahmed Ali, Royal Travels, New Bus Stand, Pandri, Raipur.
3. Payal Travels, Near Khalsa School, Raipur.

---- Respondents

WP227 No. 614 of 2019

Wasan Singh, S/o Jogender Singh, aged about 77 years, Mahendra Travels, Pandri, Raipur Through POA Ajay Singh, aged 29 Yrs., S/o Late Satwant Singh, Shukla Colony, Rajatalab, Raipur.

---- Petitioner

Versus

1. Regional Transport Authority, Raipur 492001 Chhattisgarh.
2. Syed Anwar Ali S/o Syed Ahmad Ali, Royal Travels, New Bus Stand, Pandri, Raipur.
3. Manish Travels, Near Khalsa School, Raipur.

---- Respondents

WA No. 488 of 2019

Sayyad Anwar Ali, S/o Saayyad Ahmad Ali, aged about 51 years C/o Royal Travels, Shop No.3, Pagaria Complex, Pandari, PS Devendra Nagar, Raipur 492001 (CG)

---- Appellant

Versus

1. M/s Kanker Roadways, through its partner Navpreet Singh Garcha, Near Gandhi Udyan, Civil Lines, Raipur - 4920071 (CG)
2. State Transport Appellate Authority, Through Presiding Officer, State Transport Appellate Authority Raipur 492001.
3. The Secretary Regional Transport Authority, Raipur 492001 (CG)
4. Payal Travels Near Khalsa School, Raipur 492001 (CG)
5. Mr. Vasan Singh New Bus Stand Pandri, Raipur 492201 (CG)

---- Respondents

WPC No. 2118 of 2019

M/s Kanker Roadways, Through Partner Navpreet Singh Garcha, Near Gandhvi Udyan, Civil Lines, Raipur - 492001 (CG)

---- Petitioner

Versus

1. State Transport Appellate Authority, Through Presiding Officer, State Transport Appellate Authority Raipur 492001 (CG)
2. The Secretary, Regional Transport Authority, Raipur 492001 (CG)
3. Sayyad Anwar Ali, S/o Sayyad Ahmed Ali, Royal Travels, New Bus Stand, Pandri, Raipur 492001 (CG)
4. Payal Travels Near Khalasa School, Raipur - 492001 (CG)
5. Mr. Vasan Singh New Bus Stand, Pandri, Raipur 492001 (CG)

---- Respondents

WPC No. 2160 of 2019

M/s Kanker Roadways, Through Partner Navpreet Singh Garcha, Near Gandhvi Udyan, Civil Lines, Raipur - 492001 (CG)

---- Petitioner

Versus

1. State Transport Appellate Authority, Through Presiding Officer, State Transport Appellate Authority Raipur 492001 (CG)
2. The Secretary, Regional Transport Authority, Raipur 492001 (CG)
3. Sayyad Anwar Ali, S/o Sayyad Ahmed Ali, Royal Travels, New Bus Stand, Pandri, Raipur 492001 (CG)
4. Payal Travels Near Khalasa School, Raipur - 492001 (CG)
5. Mr. Vasan Singh New Bus Stand, Pandri, Raipur 492001 (CG)

---- Respondents

WPC No. 3044 of 2019

- Manish Travels Through the Proprietor Shri Manish Jain, aged 49 Years, R/o G.E. Road, Durg (CG)

---- Petitioner

Versus

1. Saiyed Anwar Ali, S/o - Saiyed Ahemad Ali, C/o Royal Travels, Near Bus Stand, Pandri, Raipur (CG)
2. Regional Transport Authority, Raipur Division Raipur (CG)
3. Regional Transport Authority, Bastar Division, Bastar (CG)
4. Vasan Singh, New Bus Stand, Pandri, Raipur (CG)
5. State Transport Appellate Tribunal, Old DKS Bhawan, Raipur (CG)

---- Respondents

WPC No. 3049 of 2019

Payal Travels, through the Partner Shri Piyush Deshlehra, aged 30 years, S/o Prakash Deshlehra, R/o G.E. Road, Durg (CG)

---- Petitioner

Versus

1. Saiyed Anwar Ali, S/o Saiyed Ahemad Ali, C/o Royal Travels, Near Bus Stand, Pandri, Raipur (CG)
2. Regional Transport Authority Raipur, Division - Raipur (CG)
3. Regional Transport Authority, Bastar, Division - Bastar.
4. Vasan Singh New Bus Stand Pandri, Raipur (CG)
5. State Transport Appellate Tribunal Old DKS Bhawan, Raipur (CG)

---- Respondents

WA No.465/2019 & 488/2019

For Appellants : Shri Ajay Pal Singh & ShriAjay Shrivastava, Advocates
 For Respondents : Shri Sudeep Johri, Shri Shailendra Bajpai, Shri Varun Sharma, Advocate & Shri S. Agrawal, Dy. Advocate General

WP227 No.608/2019 & 614/2019

For Petitioner : None
 For Respondents : Shri Ajay Pal Singh, Shri Sudeep Agrawal, Dy. Advocate General & Shri Sudip Johri, Advocates

WPC No.3044/2019 & 3049/2019

For Petitioner : Shri Sudeep Johri, Advocates
 For Respondents : Shri Ajay Pal Singh, Shri Sudeep Agrawal, Dy. Advocate General.

WPC No.2118/2019 & 2160/2019

For Petitioner : Shri Shailendra Bajpai & Shri Varun Sharma, Advocates
 For Respondents : Shri Sudeep Agrawal, Dy. Advocate General Shri Ajay Pal Singh, Shri S.Johri, Advocates

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Parth Prateem Sahu, J

04/12/2019

1. Since the above writ appeals & writ petitions are arising out of the similar order and involving similar facts, they are analogously heard and decided by this common order.
2. Facts of the case, in brief, are that petitioner/appellant Syed Anwar Ali, who is a private bus operator, has submitted two applications before the Regional Transport Authority, Jagdalpur for grant of two permanent stage carriage permit to operate buses with one return trip on the route 'Raipur to Konta via Kanker, Jagdalpur & Sukma. The Regional Transport Authority, Jagdalpur allowed both the applications of appellant Anwar Ali and granted permits bearing No.763/BTR & 764/BTR/18 on the said route prescribing time schedule therein. Thereafter, said Anwar Ali applied to the Regional Transport Authority, Raipur for counter signature. The applications filed for counter signature were objected by the Kanker Roadways, Manish Travels, Payal Travels & Wasan Singh. The Regional Transport Authority, Raipur heard the parties in the matter and passed orders rejecting both the applications for grant of 'counter-signature'. Feeling aggrieved therewith said Anwar Ali preferred two separate appeals bearing Nos.21/19 & 20/19 before the State Transport Appellate Tribunal (STAT) without impleading the Objectors as

party respondents. However, on application being filed by Manish Travels, Payal Travels & Wasan Singh (petitioners in WPC Nos.3044/19, 3049/19 and WP(227) No.608/19, 614/19 respectively), they have been arrayed as 'respondents'. After hearing the case, the STAT passed an order on 30.5.2019 allowing appeal preferred by appellant Anwar Ali.

3. The legality and sustainability of the order dated 30.5.2019 is put to challenge by M/s Kanker Roadways (petitioner in WPC No.2160/19 & 2118/19) on the ground of non-joinder of necessary party. It was pleaded in the writ petition that M/s Kanker Roadway objected to the application for counter signature of the permit in favour of appellant Anwar Ali before the Regional Transport Authority, Raipur yet the petitioner has not been arrayed as a party before the STAT and the Tribunal passed orders prejudicial to the interest of respondent/petitioner without affording opportunity of hearing. The learned Single Judge passed interim order in favour of petitioner Kanker Roadways and stayed the effect and operation of order passed by the STAT. The interim order passed by learned Single Judge is under challenge in WA Nos.465/19 & 488/19.
4. Petitioners Manish Travels & Payal Travels have also preferred writ petitions challenging the order dated 30.5.2019 on the ground that they have preferred revision petitions before the STAT against the order of the Regional Transport Authority, Jagdalpur granting permit to appellant Anwar Ali, but

the STAT ignoring pendency of said revision has passed the order allowing application for counter-signature in the permit granted by the RTA, Jagdalpur.

5. Petitioner Wasan Singh in WP(227) No.608/19, 614/19 challenged the order granting counter-signature on the ground of unhealthy competition amongst others.
6. Mr. Ajay Pal Singh, learned counsel for appellant Anwar Ali submitted that interim orders passed by the learned Single Judge appears to be final in nature as by the said order effect and operation of the order dated 30.5.2019 has been stayed and thereby appellant has been stopped from enjoying the fruits of permit granted in his favour. He also submits that the other operators who raised objection before the RTA, Raipur, have also been arrayed as party in the application filed before the STAT though on their application for impleadment and after hearing all the sides, the STAT has passed the order dated 30.5.2019. Hence, the grievance of other bus operators, who have also filed writ petitions before this Court challenging order dated 30.5.2019, does not subsist.

Shri Singh further submits that Section 89 of the Act, 1988 does not provide for hearing of all the Objectors by the STAT and only envisages for opportunity of hearing to the person who preferred appeal. Whereas, learned counsel for the respondents submits that Rules 142 & 143 of the CG Motor Vehicle Rules, 1994 provide for the procedure and manner in which appeal to be preferred by a person before the

Appellate Tribunal and the manner in which Appellate or Revisional Authority to proceed and decide the case before it.

7. Mr. Shailendra Bajpayee & Mr. Varun Sharma, learned counsel representing M/s Kanker Roadways submit that as per provisions of Section 89 of the Motor Vehicles Act, 1988, the petitioner being an objector before the RTA, Raipur has a right to be impleaded as respondent and it is the duty of the appellant to implead all the affected persons/objectors as party to the appeal. Non-impleadment of petitioner/respondent has resulted in deprivation of his right to object and make submissions before the Appellate Tribunal. He submits that the order impugned being passed without affording opportunity of hearing is arbitrary and illegal.
8. Shri Bajpai further submitted that sub-rule (3) of Rule 143 of the CG Motor Vehicle Rules, 1994 (for short 'the Rules of 1994') envisages that the Tribunal shall intimate time and place of hearing along with others also to any person likely to be prejudicially affected by grant of relief prayed for. He submits that the word 'shall' is used in the aforesaid Rule which makes the intimation to any person prejudicially affected by the Tribunal to be mandatory.
9. Shri Johri, learned counsel for petitioner Manish Travels & Payal Travels in WPC No.3044 & 3049 of 2019 submits that the order passed by the STAT does not stand because revision challenging the order granting permit to appellant Anwar Ali itself is pending before the STAT and unless & until

the said revision is decided, no order granting counter signature in an appeal should have been passed. He submits that he has also taken other grounds of irregularity and illegality committed by the RTA, Jagdalpur in passing order dated 16.10.2017 granting permit to respondent Anwar Ali in his petition. He submits that if the order granting permit by the RTA, Jagdalpur is set aside, then there would be no question of deciding appeal of counter signature.

10. Shri Johri submits on instructions that he is also appearing for petitioner in WP(227) Nos.608 & 614 of 2019. He submitted that the grounds taken in these writ petitions are regarding arbitrary and illegal act of the RTA as well as the STAT as the issue of unhealthy competition was not taken note of by the two authorities below.
11. We have heard learned counsel for the parties and perused the record.
12. From the submissions put-forth by learned counsel for the respective parties, the question which emerges for consideration of this Court is whether the STAT was justified in deciding the appeal preferred by appellant Anwar Ali without deciding the revision preferred by Manish Travels & Payal Travels challenging grant of permit in favour of appellant Anwar Ali by the RTA, Jagdalpur and further in not issuing notice to M/s Kanker Roadways, who objected the applications filed before the RTA, Raipur for counter-signature and on considering such objection application for counter

signature was rejected.

13. The order dated 18.3.2019, which is under challenge before the Appellate Tribunal, specifically mentions the names of persons who filed objections before the Regional Transport Authority, Raipur. Perusal of the appeal preferred by appellant Anwar Ali also reveals that M/s Kanker Roadway has not been arrayed in the array of respondents. It is for the appellate authority to consider contents of the order challenged before it and also to see as to whether proper/necessary/affected parties have been arrayed or not, and whether they were noticed for providing opportunity of hearing. Considering the fact that petitioner M/s Kanker Roadways was one of the Objectors before the Regional Transport Authority, Raipur, and his interest will be affected adversely, but said M/s Kanker Roadways has not been arrayed as respondents in the appeal preferred by appellant Anwar Ali against the order declining counter signature. Even sub-rule (3) of Rule 143 of the Rules, 1994 mandates the Tribunal to give intimation to a person likely to be prejudicially affected.

14. In the matter of Kanaklata Das v. Naba Kumar Das reported in (2018) 2 SCC 352 has observed as under:-

“11.5. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See Udit Narain Singh Malpaharia v. Board of Revenue³)”

15. Taking into consideration the procedure prescribed under the

Rules of 1994 for hearing appeals & revisions, particularly sub-rule (3) of Rule 143 of the Rules of 1994, and further the ruling of Hon'ble Supreme Court in the matter of Kanaklata Das (supra), we are of the view that M/s Kanker Roadways is also proper party and its non-impleadment as party respondent in memo of appeal coupled with non-intimation of date & time of hearing by the Tribunal, vitiated the entire proceeding of appeal.

16. The other reason is that when the order of grant of permit on the route 'Raipur to Konta' dated 10.10.2017 itself is under challenge in a revision petition filed by Manish Travels & Payal Travels before the STAT, then the STAT ought to have considered and decided both the cases together i.e. revision against grant of permit and appeal against rejection of application for counter signature because both proceedings are arising out of the proceeding initiated by filing application for grant of permit in question. The propriety demands that when the fact of pendency of grant of permit itself is under challenge in a revision before the same Tribunal before whom the appeal, arising out of the rejection of application for counter signature on same permit proceedings, is filed for other reliefs, the same should have been decided together. Despite knowledge of pendency of revision challenging the grant of permit in question, the Tribunal committed an error in deciding appeal of counter signature only and keeping the revision against grant of permit pending, which requires

interference by this Court.

17. For the reasons, as discussed above, the order impugned dated 30.5.2019 is liable to be set aside and the matter deserves to be remanded back to the STAT for fresh consideration of appeal & revisions in accordance with law.

18. Resultantly, the orders dated 30.5.2019 passed by the STAT in Appeal No.20/2019 & 21/19 (Syed Anwar Ali v. RTO, Raipur & ors) are set aside and the matters are remitted to the STAT, Raipur with a direction to decide the appeals afresh in accordance with law, after affording opportunity to all the parties including the Objector/petitioner Kanker Roadways before the Regional Transport Authority, Raipur. Revisions preferred by Manish Travels & Payal Travels against the order granting permit in favour of appellant Anwar Ali will also be heard and decided together with the appeal. The appeal and revision both shall be decided together by the STAT as early as possible, at any rate, within a period of one month from the date of appearance of the parties before it. All the parties present are directed to appear before the STAT on 27.1.2020.

19. In view of above observation, all writ petitions & writ appeals are disposed off.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-