

Chandi Prosad Vs. the Regional Transport Authority and ors.

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Court : Guwahati

Decided On : Jul-09-1951

Judge : Thadani, C.J. and Deka, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 58 and 62; [Constitution of India](#) - Article 226

Appeal No. : Civil Revn. No. 79 of 1950

Appellant : Chandi Prosad

Respondent : The Regional Transport Authority and ors.

Advocate for Def. : D.N. Medhi, Govt. Adv.

Advocate for Pet/Ap. : J.C. Medhi, Adv.

Disposition : Petition dismissed

Judgement :

Thadani, C.J.

1. This is a petition by one Chandi Prosad Mahajan under the provisions of Article 226 of the [Constitution of India](#) in the matter of orders passed by the Appellate Board of the State Transport Authority, Shillong, dated 5th, 6th and 7th December, 1949.

2. The facts material to the application are these. The Regional Transport Authority, Assam, caused a notification, dated 28-9-48, to be published in the Assam Gazette, by which it invited applications for temporary permits in respect of all permits which were to expire on 31-12-48. The applications were required to be made in the prescribed form which specifically refers to s. 62 of the Motor Vehicles Act of 1939 and makes no reference to Section 58. The petitioner held 2 permits in respect of stage carriages and 2 for public carriers, which were to expire on 31-12-48. Pursuant to the notification to which we have referred, the petitioner applied in the prescribed form for 4 permits--2 for stage carriages and 2 for public carriers, praying, however, in the application that the permits be granted to him for 3 years. The Regional Transport Authority ignored this prayer and issued all the 4 permits to the petitioner for 3 months only Under Section 62 of the Motor Vehicles Act.

3. After the expiry of the duration of the 4 permits, the petitioner applied for renewal of the permits, but the Regional Transport Authority refused to renew the permit for one stage carriage and 2 public carriers, but granted a temporary permit for one stage carriage for another 3 months. Against the order of the Regional Transport Authority refusing 3 permits out of 4, the petitioner preferred an appeal to the Appellate Board which remanded the case for re-consideration by the Regional Transport Authority, Gauhati, which declined to renew the permits by its order, dated 26-10-49. The petitioner once again filed appeals to the Appellate Board, but his appeals were dismissed on 5th, 6th and 7th December 1949. Not only were the appeals dismissed as regards the 3 permits, but on 9th January 1950, the Secretary to the Regional Transport Authority informed the petitioner that the Appellate Board had cancelled the only permit, namely, for a stage carriage, which had been temporarily granted to him. This permit which was cancelled by the Appellate Board was valid till 31st March, 1949. It is against the refusal to renew the 3 permits and the cancellation of the 4th permit that this petition has been brought.

4. The petitioner prays for Writs of certiorari and mandamus upon the Regional Transport Authority, Gauhati, directing it to issue permits for the 2 stage carriages Nos. ASK 1121 and ASK 836 and 2 public carriers Nos. ASK 1281 and ASK 1254, on the following grounds:

(A) For that as the vehicles are owned by the petitioner on behalf of the Central Government, no permit is necessary for these vehicles as such, the refusal to renew the permits is ultra vires of the Regional Transport Authority, and the petrol rationing officer was, therefore, wrong to stop allotting petrol for these vehicles.

(B) For that even if it be held that permits are necessary, they were renewed by the then Regional Transport Authority in January 1949 and, though the duration was mentioned as three months, it must be held as valid for at least three years under the provisions of Section 58 of the Motor Vehicles Act. As such no question of renewal of the permits arises. The R. T. A. in its sitting on 22-7-49 and 26-10-49 acted beyond their jurisdiction.

(C) For that as there was no representation against the applications, no question of non-renewal of the permits arises.

(D) For that the Appellate Board has no jurisdiction to cancel a permit. It has no original jurisdiction, and as there was no appeal against the order of renewal of the stage carriage permit No. 421/48, the appellate Board has no jurisdiction to cancel it.

(E) For that none of the conditions required for cancellation of a permit was present in this particular case and no opportunity was given to the petitioner to submit his explanation, nor did the Appellate Board assign any reason for it. The order is, therefore definitely ultra vires and illegal.

(F) For that the Regional Transport Authority granted as many as eleven additional stage carriage permits and seven additional public carrier permits. They gave as many as eleven new applicants additional stage carriage permits and as many as seven new applicants for public carriers in preference to the petitioner. This is in direct violation of the proviso of Section 58 (2) of the Motor Vehicles Act, and has very seriously prejudiced the petitioner. The order of the petitioner, therefore, is illegal.

(G) For that the Appellate Board assigned no reason for upholding the order of the Regional Transport Authority refusing the renewal of the permits. In fact, neither

the Appellate Board nor the Regional Transport Authority had any reason for it except certain prejudice against the petitioner. The orders of the Regional Transport Authority and the Appellate Board, therefore, are not bona fide but a fraud on the Statute.'

5. It is not correct to say, as has been stated in the first ground, that the vehicles are owned by the petitioner on behalf of the Central Government--a circumstance which, under the Motor Vehicles Act dispenses with the necessity of obtaining permits. In our view, the petitioner was an independent contractor who entered into an agreement with the Governor-General-in-Council on 1st April 1938, by which he was authorised to 'establish facilities for the conveyance of goods, parcels, passengers, and their luggage between Barpeta Road Station on the then Eastern Bengal Railway and the town of Barpeta.' We can see nothing even remotely in the agreement to suggest that the petitioner owned the vehicles on behalf of the Central Government. Indeed the petitioner himself does not appear to have regarded the agreement as enabling him to dispense with the necessity of applying for permits, for the plain reason that he did, in fact, apply for them.

6. As regards the 2nd ground, the petitioner, has omitted to state that he had applied for temporary permits under the provisions of Section 62 of the Motor Vehicles Act. Mr. Medhi for the petitioner conceded that the applications which the petitioner made to the Regional Transport Authority were made under Section 62, but he contended that as in the body of the applications the petitioner had prayed for permits for 3 years, the applications must be regarded as having been made under Section 58 of the Motor Vehicles Act, notwithstanding the fact that the application forms refer only to Section 62 of the Motor Vehicles Act.

7. We are unable to accept this contention. No application was ever made by the petitioner Under Section 58 of the Motor Vehicles Act. We think, it is only just that a citizen should not be permitted in this matter to invoke the special jurisdiction of this Court under the provisions of Article 226 of the [Constitution of India](#) unless he succeeds in showing that he had taken up an unequivocal position in the matter of the grant of permits under the Motor Vehicles Act. The Regional Transport Authority was entitled, to regard the petitioner's applications for permits as

applications for temporary permits, and, to disregard the prayer as to 3 years. A Regional Transport Authority, acting under Section 62 of the Motor Vehicles Act, is not bound to follow the procedure laid down in Section 57 of the said Act--a procedure which it is bound to follow in all applications made under Section 58 of the Act. The Regional Transport Authority invited applications for temporary permits only, and there was, therefore, no obligation upon it to treat any application as an application Under Section 58 of the Motor Vehicles Act.

8. Mr. Medhi for the petitioner contended that assuming the petitioner's application was an application made Under Section 62 of the Motor Vehicles Act, none of the Clauses (a), (b) and (c) of Section 62 have any application to the facts of the case. The Regional Transport Authority was, therefore, incompetent to issue temporary permits, and any permits issued by it must be regarded as valid for 3 years. This contention is based upon the assumption that when the legal requirements for the issue of temporary permits are not present, an application must be regarded as an application for permits of 3 years' duration, notwithstanding the fact that Section 58 of the Motor Vehicles Act does not, in terms, apply. The assumption is logically unsound. If Clauses (a), (b) and (c) of Section 62 have no application, the order of the Regional Transport Authority granting temporary permits can be properly set aside,--not that another order which can be made under the Act should be substituted in its place, an order which is conditioned by the provisions of Section 57 of the Act. On this ground alone the petition is liable to be dismissed. We think, on the facts of this case, it was plainly the duty of the petitioner, if he did not want a temporary permit, to have refrained from applying for temporary permits in the prescribed form which expressly invites applications under the provisions of Section 62 of the Act only. It is open to the petitioner, if he so chooses, to apply again under the provisions of Section 58 of the Motor Vehicles Act. We express no opinion as to what the R. T. A. should do in such a case.

9. Moreover we are not satisfied that Clause (c) of Section 62, Motor Vehicles Act, has no application to the facts of the case before us. It is contended by Mr. Medhi that the reason which led the Regional Transport Authority to issue only temporary permits is to be found in the instructions of the State Government of Assam intimating to the Regional Transport Authority that nationalisation of this particular

route from the Barpeta Road Station to the Barpeta Town was in contemplation. According to Mr. Medhi, apart from the fact that the R. T. A. was in error in heeding the instructions of the State Government, the contemplated nationalisation of transport does not attract the provisions of Clause (c) of Section 62 of the Motor Vehicles Act. He has relied upon the decision of the Madras High Court in a case reported in--'Sri Rama Vilas Service Ltd. v. The Road Traffic Board, Madras', AIR 1948 Mad 400 in which Gentle C. J. expressed himself on the applicability of Clause (c) of Section 62 of the Motor Vehicles Act in these terms:

'The sole authority for grant of such permits (temporary permits) is Section 62 and only when a circumstance, therein specified, exists and for no longer than four months. No attempt was made to justify the grant by virtue of Clauses (a) and (b) of the section, but it was argued that Clause (c) has application. That clause enables a temporary permit to be granted 'to meet a particular temporary need'. It was suggested that the 'particular temporary need' was the non-availability of the Government buses at the date when the appellant's three years' permits expired on 1-5-1947 and that need was met by granting a temporary permit for the appellant's buses to ply for hire during the period preceding the date when the Government hoped to obtain its vehicles and put them into use. Incidentally it was stated, during the course of argument, that the Government's buses had not materialised within four months of the grant of the temporary permits which have been renewed once and may be they will again be renewed. If some private enterprise, instead of the Government, had been making preparations to place buses on the road but the necessary vehicles were not expected to be ready when the appellant's three years' permits expired, it is beyond doubt that the same course would not have been taken by the Board nor, indeed, by the Government as occurred in the present instance. There was not a particular temporary need within the meaning of the Act which empowered the grant of temporary permits. The grant of temporary permits, was misusing the provisions of the Act solely for the benefit of the Government and to prevent criticism and objection by the travelling public. The whole circumstance of the grant was improper in the extreme.'

With all respect, we are unable to agree with the reasoning of the learned Chief Justice. It proceeds on the assumption that 'if some private enterprise, instead of the Government, had been making preparations to place buses on the road but the necessary vehicles were not expected to be ready when the appellant's three years' permits expired, it is beyond doubt that the same course would not have been taken by the Board, not, indeed, by the Government, as occurred in the present instance.'--an assumption for which we are unable to discover any justification. If no justification can be found for this assumption, it is reasonable to suppose that, in the absence of this assumption, a State Government can, quite properly, in the interests of the public, grant temporary permits for motor vehicles, pending the finalisation of a scheme for efficient transport--whether by an individual or corporation--within the meaning of Clause (c) of Section 62. Applying the same principle to Government, -- and it is conceded that Governments are not debarred from nationalising transport --it seems to us that the inability of the Government to provide immediately transport for the convenience of the public, will create a particular temporary need within the meaning of Clause (c) to Section 62, and in order to meet that particular temporary need, the Regional Transport Authority is competent to authorise the use of a transport vehicle temporarily.

10. Clause (c) of Section 62, Motor Vehicles Act. is not restricted to a particular temporary need of any particular individual; it is very general in terms. Mr. Medhi contended that the word 'temporary' referred to in Clause (c) of Section 62 Motor Vehicles Act, cannot properly be applied to a need which is to come into existence on a certain event happening, but must be capable of being referred to an existing need, and that the existing need to provide for -transport from the Barpeta Road Station to Barpeta Town, is a permanent, and. not a temporary need. We are unable to accept this contention. As we have stated, Clause (c) of Section 62 is quite general in terms and. is not restricted to an existing particular need, but includes a particular temporary need created by the inability of Government or an individual to provide transport immediately.

11. It was next contended by Mr. Medhi that the Regional Transport Authority under the Act was not to be guided by the instructions or orders of the Government, but was to act in the performance of its statutory duties in

accordance with the provisions of the Motor Vehicles Act. The argument is based upon the assumption that the R. T. A. was acting only under the instructions or orders of the State Government. It is not difficult to conceive of a situation where a R. T. A., in the exercise of its statutory duties, works out a scheme of nationalisation or semi-nationalisation of the transport system in the State, and puts the scheme before the Government for consideration; the Government approving of the scheme as suggested by the R. T. A., issues instructions accordingly; it cannot then be said that the R. T. A. is taking orders from the Government in the matter of granting permits. It is not unreasonable to suppose that the statutory authorities appointed in pursuance of the Motor Vehicles Act are expected to act in cooperation, with Government and it is immaterial whether the suggestion comes from the Government or the Regional Transport Authority in the matter of nationalisation.

12. Mr. Medhi has in this connection also referred us to a decision of the Allahabad High Court reported in--'Moti Lal v. Govt. of the State of Uttar Pradesh', AIR 1951 All 257. It is plain from a perusal of that report that the interpretation of Clause (c) of Section 62, M. V. Act, was not involved. In this view of the matter, it is unnecessary to consider the question as to whether or not the orders relating to the permits having been passed before the [Constitution of India](#) came into force can be challenged under one or more of the Articles of the Constitution.

13. The only other point which remains for consideration is the contention of Mr. Medhi in the matter of the cancellation of the permit cancelled by the Appellate Board on 9-1-50. It may be that the Appellate Board not having issued the permit, would not have the power to cancel it. It is, however, unnecessary to consider this aspect of the case, as we have come to the conclusion that the permit having been granted temporarily for 3 months, it was valid up to 31-3-50, and as the period expired long ago, no writ can be granted in respect of it.

14. The result is that the petition is dismissed with costs. The Rule is discharged. Hearing fee is fixed at Rs. 51/-.

Deka, J.

15. I agree.

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