

Kanker Roadways and anr. Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Feb-24-1999

Reported in : 1999(2)MPLJ152

Judge : R.S. Garg, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 87, 103, 103(1), 103(2), 103(3) and 104

Appeal No. : W.P. No. 3905 of 1998

Appellant : Kanker Roadways and anr.

Respondent : State of M.P. and ors.

Advocate for Def. : Vijay Shukla, Govt. Adv. for Respondents Nos. 1 and 2 and ;A.G. Dhande, Adv. for Respondent No. 3

Advocate for Pet/Ap. : B.K. Rawat, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.S. Garg, J.

1. The petitioners made an application under Section 104 of the [Motor Vehicles Act, 1988](#) inter alia pleading that though the route between Jagdalpur to Kondagaon is covered under the scheme, but as the respondent/State Road Transport Corporation was not operating under the said scheme on the said route, the petitioners were entitled to a temporary permit on the strength of the proviso appended to Section 104 of the Act. The said application was rejected by the Regional Transport Authority holding that as the route is covered under the scheme and State Road Transport Corporation was operating as many as 62 trips covering the area under the scheme, and as there was no felt need for the public at large, the petitioners were not entitled to temporary permit. Against the said order of rejection of the application, the petitioners/operators have filed this writ petition.

2. At the threshold, Shri Dhande, learned counsel for respondent No. 3 has raised an objection relating to maintainability of the petition. According to him, the order passed by the R.T.A. can be challenged in appeal before the S.T.A.T. and as the petitioners have not availed the alternative remedy, the petition deserves to be dismissed.

3. In reply to the objection, learned counsel for petitioners submits that as their application has been rejected in view of sub-section (2) of Section 103, and as no appeal lies against an action taken under Section 103 sub-section (3), they are constrained to file the petition. His further submission is that an application filed under proviso to Section 104 is to be decided under Section 104 and provisions of Section 87 of the Act would not be applicable to such a situation. I have heard the parties at length.

4. Section 104 of the [Motor Vehicles Act, 1988](#) reads as under :-

'Restriction on grant of permits in respect of a notified area or notified route. - Where a scheme has been published under sub-section (3) of Section 100 in respect of any notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme :

Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority as the case may be, may grant temporary permit to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of the area or route.'

5. According to Section 104, if no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority may grant temporary permit to any person in respect of such notified area or notified route subject to the conditions that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of the area or route. The proviso, on its plain, reading would clearly show that it is an enabling provision. If the State Transport Undertaking does not make an application for grant of permit on the notified area approved under the scheme, then public at large cannot be allowed to suffer and in such a situation, despite area being covered under the approved scheme, it would be deemed that because of the non-operation by the State Transport Undertaking, the area/route is available to the private operators. Where certain routes are available to the private operators irrespective of the fact whether it is an open area or is a deemed open area, then the private operators can make application for grant of temporary permit under Section 87 of the Act. If contention of the learned counsel for petitioners is accepted, it would lead to an anomalous situation because on one side in the open area the private operators would be required to make an application and satisfy the requirements of Section 87 of the Act; while on the other hand, in a deemed open area, a person would not be required to comply with the requirement of Section 87 and the rules made. It would be misconception to hold that in case of deemed open area if an application for grant of temporary permit is made, provisions of Section 87 would not be applicable. The submission made by learned counsel for petitioners is rejected.

6. Section 103 of the Motor Vehicles Act reads as under:--

'Issue of permits to State Transport Undertakings. -(1) Where, in pursuance of an approved scheme, any State Transport Undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a goods carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State Transport Undertaking, notwithstanding anything to the contrary contained in Chapter V.

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or, as the case may be, the Regional Transport Authority concerned may, by order -

(a) refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending;

(b) cancel any existing permit;

(c) modify the terms of any existing permit so as to -

(i) render the permit ineffective beyond a specified date;

(ii) reduce the number of vehicles authorised to be used under the permit;

(iii) curtail the area or route covered by the permit insofar as such permit relates to the notified area or notified route.

(3) For the removal of doubts, it is hereby declared that no appeal shall be against any action taken, or order passed, by the State Transport Authority or any Regional Transport Authority under sub- section (1) or sub-section (2).'

7. According to Section 103 for the purposes of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or the Regional Transport Authority concerned may, by order, refuse to entertain any application for grant or renewal of any other permit; cancel any existing permit, modify the terms of any existing permit. If such an order is passed by the competent authority, then under Section 103(3), an appeal against such an order

shall not lie. In the present case, the authority has not passed any order under sub-section (3) of Section 103. Sections 103 and 104 are to be read in juxtaposition because each is a corollary to other. If a particular route is covered under the approved scheme and the State Transport Undertaking starts its operation on the said route, then the competent authority, be he the State Transport Undertaking or the Regional Transport Authority, has to take certain actions under sub-section (1) or sub-section (2) of Section 103 of the Act, but despite approval of the scheme if the State transport undertaking is not operating on the said route covered under the scheme, then the State Transport Authority or Regional Transport Authority is entitled to grant the temporary permits. Section 103 is in respond to the action taken by the State Transport Undertaking; while Section 104 proviso is an answer to the non-action on part of the State transport, undertaking.

8. From the order passed by the Regional Transport Authority, it does not appear that he was influenced because of the coverage of the route under the approved scheme; in fact he appears to have rejected the application because of non-fulfilment of the conditions of Section 87 and by the fact that the State Transport Undertaking was operating on the said route in as many as 62 trips.

9. I find no reason to interfere. The petition deserves to and is accordingly dismissed. It is, however, directed that the petitioners shall be free to challenge the order passed by the R.T.A. before the competent appellate authority. If they file an appeal within a period of three weeks from today, none shall be permitted to raise objection of limitation. The petition is dismissed, with the liberty aforesaid. No costs.