

Prabhu Dayal Vs. Rta

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Court : Rajasthan

Decided On : Nov-11-1982

Reported in : 1982WLN(UC)309

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Civil Misc. Writ Petition No. 1474 of 1982

Appellant : Prabhu Dayal

Respondent : Rta

Disposition : Petition allowed

Judgement :

S.C. Agrawal, J.

1. Asind-Vijayanagar via Parasoli, Shimbhugarh, Antoli, Gulabpur (here in after referred to as the 'route') is an 'A' Class route having a length of 54 kilometers. It is over lapped by the notified scheme for Aimer-Udaipur route upto a distance of 4 kilometers from Vijayanagar to Gulabpura Chauraya. The said scheme has been implemented in the year 1975 Rest of the route is being over lapped by a draft scheme published under Section 68 C of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') for the Asind-Vijaynagar via Parasoli Shimbugarh Antoli etc. duly published in the Rajasthan Rajpatra dated July 26, 1976. Prabhu Dayal,

the petitioner in this writ petition is an existing operator on the route and holds a non-temporary permit valid upto December 5, 1982 subject to the incidence of nationalisation. The scope for the route was five See carriages to perform 5 return services. By resolution (Anx. P. 10) dated July 8/9, 1982 the Regional Transport Authority Udaipur Region (here in after referred to as the RTA) increased the scope for the route to 10 stage carriages with eight return services. By another resolution (Ann. P.9) dated July 8/9, 1982, the RTA granted five temporary permits on the route to respondents numbers 2 to 6. Being aggrieved by the age(sic)esel and grant of temporary permit in favour of respondent numbers 2 to 6, the petitioner has filed this writ petition wherein he has prayed that a writ of certiorari be issued to quash the resolution (Ex. P/9) of the RTA dated July 8/9 1982 granting one temporary permit each in favour of respondents Nos 2 to 6 on the route.

2. In the writ petition the petitioner has submitted that the RTA was not competent to grant temporary permits to respondents Nos. 2 to 6 on The route in as much as Section 68 F (IC) of the Act does not empower the RTA to grant a temporary permit for a route which is partly covered by a notified scheme and is partly covered by a draft scheme published under Section 68 C of (sic) Act. Respondents Nos. 2 to 6 have filed a reply to the writ petition where in a preliminary objection has been raised with regard to the maintainability of the writ petition on the ground that a(sic)revision under Section 64 A if the Act lay before the State Transport Appellant Tribunal (sic) the impugned resolution of the RTA and That the petitioner could (sic) the extraordinary jurisdiction of this Court under Article 226 of the Constitution without resorting to the alternative remedy of revision available to him under Section 64 A of the Act. In the reply aforesaid it has also been stated that the RTA is competent to grant temporary permits in respect of a route which is partly covered by notified scheme and is partly covered by a draft scheme and that the impugned resolution of the RTA does not suffer from any legal infirmity.

3. Before dealing with the contentions urged by Shri R.R. Vyas, the learned Counsel for the petitioner on merits, it will, be necessary to consider the preliminary objection raised by Shri Maheshwari, the learned Counsel for

respondents Nos. 2 to 6. with regard to the maintainability of the writ petition on the ground that the alternative remedy of revision under Section 64 A of the Act was available to the petitioner. It is not disputed by Shri Vyas that the alternative remedy of revision under Section 64 A of the Act was available to the petitioner. The submission of Shri Vyas is that the said alternative remedy is no bar to the petitioner approaching this Court under Article 226 of the Constitution in view of the fact that the resolution passed by the RTA is completely without jurisdiction. In support of his aforesaid submission Shri Vyas has placed reliance on the decision of this Court in *M/s Shiv Bus Service v. RTA Jodhpur* 1980 RLW 245. Shri Vyas also submitted that the alternative remedy of revision was not an efficacious remedy in the facts and circumstances of this case because one of the existing operators had filed an appeal before the state Transport Appellate Tribunal against the impugned resolution of the RTA and the said appeal has been dismissed by the State Transport Appellate Tribunal and in the circumstances no purpose would have been served by the petitioner filing a revision petition before the State Transport Appellate Tribunal.

4, In *Shiv Bus Service v. RTA Jodhpur* (supra) this Court was dealing with a case where the grant of temporary permits by the Regional Transport Authority had been challenged in a writ petition under Article 226 of the Constitution and an objection had been raised that alternative remedy of revision under Section 64 A of the Act was available to the petitioner in that case and that the writ petition should not be entertained. The said objection was negated by a learned Single Judge of this Court and it was held that since the temporary permits had been granted in disregard of the proviso to Section 62(1)(c) of the Act, the temporary permits granted were without jurisdiction and the writ petition was maintainable even though an alternative remedy of revision under Section 64 A was available to the petitioner. In view of the aforesaid decision of this Court in *Shiv Bus Service v. RTA Jodhpur* (Supra) it can be said that the existence of an alternative remedy of revision under Section 64 A of the Act would not be a bar to a petition filed under Article 226 of the Constitution in a case where the grant of permits by the Regional Transport Authority can be said to be without jurisdiction. It is, therefore, necessary to examine whether the grant of temporary permit to respondents Nos. 2 to 6 by the R.T.A. under the impugned resolution can be said to be without

jurisdiction.

5. Shri Vyas has submitted that the grant of temporary permits in favour of respondents Nos. 2 (sic) by the R. T. A. under the impugned resolution is without jurisdiction for the reason that the R. T. A. was not competent to grant a temporary permit for a route which is partly covered by a notified scheme and is partly covered by a draft scheme. In this regard Shri Vyas has pointed out that under Sub-section (1A) of Section 68-F of the Act provision has been made for grant of a temporary permit to the State Transport Undertaking in respect of any area or route or portion thereof specified in a scheme published under Section 68 C of the Act for the period intervening between the date of publication of the scheme & the date of publication of the approved or modified scheme and that in cases where a route is partly covered by a draft scheme and partly covered by a draft scheme, express provision has been made for grant of a temporary permit to the State Transport Undertaking in Sub-section (1AA) of Section 68 F of the Act as applicable in Rajasthan. Shri Vyas has further pointed out that Sub-section (1C) of Section 68 F of the Act empowers the R. T. A. to grant a temporary permit to other persons in cases where no application for the temporary permit is made under sub-section (1A) of Section 68 F of the Act. The submission of Shri Vyas was that since Sub-section (1C) does not contain a reference to Sub-section (1AA) of Section 68 F of the Act, the R. T. A. is not competent to grant a temporary permit in respect of a route which is covered by Sub-section (1AA) of Section 68 F of the Act. I am unable to accept the aforesaid contention urged by Shri Vyas. Sub-section (1D) of Section 68 F of the Act imposes an embargo on grant or renewal of a permit during the period intervening between the date of publication under Section 68 C, of any scheme and the date of publication of the approved or modified scheme in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme. The aforesaid embargo contained in Sub-section (1D) is subject to the exceptions contained in Sub-section (1A) and Sub-section (1C) of Section 68 F of the Act. In so far as notified schemes are concerned, the embargo against grant of a permit on the route or a part of the route covered by the notified scheme is contained in Section 68 F of the Act which lays down that where a scheme has been published under Sub-section (3) of Section 68 D in respect of any notified area or 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 scheme. In other words unless the scheme itself makes provision for grant of a permit on the notified route or a part thereof, no permit can be granted. This would mean that in respect of a route which is partly covered by a scheme published under Sub-section (3) of Section 68 D and is partly covered by a draft scheme under Section 68 C, the Regional Transport Authority would be competent to grant a temporary permit under Sub-section (1C) of Section 68 F provided the scheme enables a permit to be granted on the portion of the route which is covered by the notified scheme. In this context reference may be made to the decision of the Division Bench of this Court in *Sanwat Das v. Regional Transport Authority, Jaipur and Ors.* (D.B. Civil writ petition No. 376 of 1980 decided on April 3, 1980) wherein this Court negated the contention that a temporary permit could not be granted in respect of a route which partly overlaps a notified route and partly a draft scheme route.

6. At this stage, reference may be made to the notification dated August 3, 1976 issued by the State Government, whereby, all the approved schemes including the notified scheme for Ajmer Udaipur Route which had been approved in 1975, have been modified and a clause has been added in all the approved schemes whereby the State Transport Authority as well as the R.T.A. have been empowered, if it considers necessary in the public interest to allow to the permit holders other than the State Transport under taking over lapping of the notified area, route or portion thereof, which shall in no case exceed 10 kms. with the condition that such permit holders shall not pick up or set down passengers on such overlapped portions provided that the total nationalised route shall not be less than five times the length of the overlapped portion and further there is no other route available to the private holders except the overlapped route. In the present case the extent of overlapping by the Asind-Vijaynagar route on the notified scheme route of Ajmer to Udaipur is to the extent of 4 kms. only and in view of the aforesaid modification made by notification dated August 3, 1976 it was permissible for the R.T.A. to grant permits so as to allow the permit holders to ply their vehicles over the overlapped portion of the notified route subject to the condition that such permit holder shall not pick up or set down passengers on such overlapped portions, if

the R.T.A. was satisfied that there is no other route available to the private licence holders except the overlapped route. In my opinion, therefore, the R. T. A. was competent to grant a temporary permit on the route under Sub-section (1C) of Section 68 F of the Act and the fact that part of the route was covered by the notified scheme for the Ajmer Udaipur route would not preclude the R.T.A. from granting a temporary permit on the route. I am, therefore, unable to accept the contention of Shri Vyas that the R.T.A. was not competent to grant a temporary permit on the route under Sub-section (1C) of Section 68 F of the Act.

7. Shri Vyas has next submitted that even if it be held that the RTA was competent to grant a temporary permit on the, route, the impugned resolution passed by the RTA granting one temporary permit each to non-petitioners Nos. 2 to 6 was without jurisdiction for the reason that the RTA had not applied its mind to the requirements of Sub-section (1C) of Section 68 F of the Act and the conditions prescribed in the clause added in the approved scheme by the notification dated August 3, 1976. In support of his aforesaid submission Shri Vyas has placed reliance on the following observations in the Division Bench of this Court in *Sanwaldas v. RTA Jaipur and Ors.* (supra):

It may further be observed that the Regional Transport Authority also did not apply its mind whether the conditions of the new clause added to the modified scheme of nationalisation by the notification dated April 12, 1979 were fulfilled or not, without which it had no jurisdiction to grant a temporary permit overlapping even a very small portion of the notified route.

The aforesaid observations show that if the RTA grants a temporary permit without applying its mind to the conditions Laid down in Sub-section (1C) of Section 68 F of the Act or the conditions Laid down by the new clause that has been added to the approved scheme of nationalisation by the notification dated August 3, 1976, then the order passed by the RTA would be an order passed without jurisdiction. Since in the present case the case of the petitioner is that the impugned resolution passed by the RTA granting one temporary permit each to the non-petitioners Nos. 2 to 6 has been passed in disregard of the conditions Laid down in Sub-section (1C) or Section 68 F of the Act as well as the conditions Laid down in the

new clause added to the approved scheme of nationalisation by notification dated August 3, 1970 the impugned resolution of the RTA would be without jurisdiction, if the aforesaid case of the petitioner is accepted. In the circumstances the petitioner is entitled to invoke the jurisdiction by this Court under Article 226 of the Constitution without filing a revision petition before the State Transport Appellate Tribunal under Section 64 A of the Act and the preliminary objection raised by Shri Maheshwari cannot be accepted.

8. Now I will come to the merits. Shri Vyas has submitted that in passing the impugned resolution, the RTA had failed to apply its mind to the requirements of Sub-section (1C) of Section 68 F of the Act as well as the conditions Laid down in the new clause to the approved scheme of nationalisation for the Ajmer-Udaipur route by the notification dated August 3, 1976. In this regard Shri Vyas has pointed out that in the impugned resolution the RTA has confined itself to the 50 knur portion of the route which is covered by the draft scheme published under Section 68 C of the Act and has made no reference whatsoever to the 4 kms. portion of the said route which is covered by notified scheme for the Ajmer-Udaipur route. Shri Vyas has submitted that while granting the temporary permit in favour of non-petitioners Nos. 2 to 6, the RTA has failed to apply its mind to the conditions Laid down in Sub-section (1C) of the Act and has not considered as to whether the State Transport undertaking had submitted an application for temporary permit under sub Section (1A) of Section 68 F or not and that the RTA has also not imposed any condition with regarl to the temporary permits issued in favour of the non-petitioners Nos. 2 to 6 ceasing to be effective on the issue of a permit to the State Transport undertaking in respect of that area or route or portion thereof as required under Sub-section (1C) of Section 68 F of the Act Shri Vyas has also submitted that under the new clause added to the approved scheme of nationalisation by notification dated August 3, 1976, before granting a permit it was necessary for the RTA to hive considered as to whether over lapping was necessary in the public interest, whether there was no other route available to the private operator except the overlapped route and also whether the nationalised route is not less than five times the length of the overlapped portion. Furthermore, it was necessary for the RTA to impose a condition on the permit holders that they shall not pick up or set down passengers on the overlapped portion of the notified

route.

9. In *Sanwaldas v. RTA* (supra) this Court has observed as under:

No finding has been recorded by the Regional Transport Authority that the State Transport Undertaking had not applied for the grant of permits on the route. Nor it has even been considered by the Regional Transport Authority that draft scheme of nationalisation relating to Sikar-Ajmer and Danta Ramgarh-Jaipur routes have already been published under Section 68 (I-C) of the Act and were pending consideration before the State Government. The Regional Transport Authority also did not apply its mind as to whether the permits should be given only for the period until the Transport Authority concerned grants permits in pursuance of the approved schemes of nationalisation, which may come into existence even before the expiry of four months.

Although, the provisions of Section 68 (1)(c) clearly envisage that the temporary permits granted under that provision shall cease to exist as soon as permits are granted to the State Transport Undertaking on the publication of the approved scheme of nationalisation, but it must appear from the face of the resolution of the RTA that the situation that the route overlapped portions of two draft scheme routes was present in the mind of the Regional Transport Authority. The Regional Transport Authority should have also, while fixing the duration of the permits, limit the same to the period of four months or until the grant of permits to the State Transport Undertaking in pursuance of the approved scheme, whichever, is earlier.

In the instance case, the Regional Transport Authority had although observed that it would be in public interest that passenger transport facilities available on the route may be continued to be available, yet the Regional Transport Authority failed to apply its mind as to whether there was no other route available to the permit holders or that the total length of the nationalised route is not less than five times the length of the overlapped portion.

Even if it be assumed that the Regional Transport Authority was conscious of the fact that the route on which temporary permits have been granted to the

respondents was 88 kilometers in length and the over lapping of the notified route was only 8 kilometers; yet it was obligatory on the part of the Regional Transport Authority to give a specific finding on the question as to whether no other route was available to the permit holders. Moreover, the Regional Transport Authority even did not put any condition on the respondents that they shall not pick up or set down passengers on the overlapped portion of the notified route. Such a restriction should necessarily be placed, if a permit has to be granted overlapping a portion of the notified the Regional Transport Authority did not put such a condition on the respondents while granting temporary permits to them on the route, clearly shows that the RTA did not all apply its mind to the fact that the route overlapped about 8 kilometers of the Sikar-Nagaur notified route, Learned Counsel for the respondents again submitted that such a condition is inherent when permits are granted on a route overlapping a portion of the notified route. This contention cannot be accepted in view of the clear language employed in the new clause added in the modified scheme of nationalisation relating to Sikar-Nagaur route, which specifically provides that the transport authority concerned may, if it considers necessary in the public interest, allow the permit holders an overlapping of the notified route or portion thereof not exceeding 10 kilometers 'with the condition that such permit holders shall not pick up or set down passengers on such overlapped portion'. Thus such a restriction must be imposed on a permit holder while allowing him to overlap a portion of the notified route and if such a condition is not imposed, the grant of permit would certainly be invalid and void.

It had also failed to mention in the earlier resolution that no other route is available to the permit holders except the overlapping portion of the notified route. The argument of the learned Counsel for the respondents was that the petitioner himself was allowed to play his vehicle overlapping the very same portion of the notified route and as such it should be presumed that there was no other route available to the permit holders except the overlapped portion of the notified route. In our view, there can be no such presumption in as much as whatever conditions might have prevailed at the time of grant of a permit to the petitioner, yet whether no other route was available to the persons playing their vehicles on the Sikar Rainwala route except the over lapped portion of the notified route must have been considered by the Regional Transport Authority, while granting temporary

permits on the route and as observed earlier every time fresh temporary permits for a period not exceeding four months were grafted, the Regional Transport Authority has to consider again whether such a situation continues to exist that temporary permit holders have no other route available to them except the overlapped portion of the notified route. It may be possible that during the period of the validity of the earlier temporary permits, a new road may become ready and it may not be necessary thereafter to overlap any portion of the notified route. We, therefore, hold that the grant of temporary permit to respondents Nos. 2 to 6, by the resolution of the Regional Transport Authority dated February 6, 1980 was invalid and void as the same neither complied with the conditions specified in Section 62(1) nor those of Section 68 F(1-C), nor the essential pre-requisition for allowing such permit holders to overlap a portion of the notified scheme, not exceeding 10 kilometers, as specified in the new clause contained in the modified scheme of nationalisation relating to Sikar-Nagaur route were fulfilled.

10. In view of the aforesaid observations in *Sanwaldas v. R.T.A.* (supra) it can be said that in passing the impugned resolution the R.T.A. did not apply its mind to the requirements of Sub-section (1C) of Section 68 F of the Act in as much as the R.T.A. has neither recorded a finding that on application for temporary permit had been submitted by the State Transport Undertaking under Sub-section (1A) of Section 68 F of the Act nor has the RTA Sub-section (1C) of Section 68 F of the Act about the temporary permits ceasing to be effective as soon as the permits granted to the State Transport Undertaking on the publication of the approved scheme of nationalisation. In the impugned resolution the RTA has imposed a condition the temporary permits granted by it would be subject to the scheme of nationalisation. But the aforesaid condition does not satisfy the requirements of Sub-section (1C) of Section 68 F of the Act. In my view, therefore, in passing the impugned resolution, the R.T.A. has not applied its mind to the requirements of Sub-section (1C) of Section 68 F of the Act.

11. The same can be said with regard to the conditions imposed by the new clause added to the approved scheme of nationalisation dated August 3, 1976. The said clause required the R.T.A. to consider as to whether:

- (i) overlapping on the 4 kms. portion was necessary in the public interest;
- (ii) any other route was available to the private operators except the overlapped route, and
- (iii) the nationalised route was not less than five times the length of the overlapped portion.

The R.T.A. was further required to put a condition on the persons who were granted temporary permits that they shall not pick up or set down the passengers on the overlapped portion of the modified route. The impugned resolution passed by the R.T.A. does not refer to any of these matters.

12. Shri Maheshwari has submitted that by the impugned resolution the R.T.A. has granted temporary permits to non-petitioners Nos. 2 to 6 only over the 50 kms. portion of the route which is covered by the draft scheme published under Section 6(sic)C of the Act and that by the impugned resolution the RTA did not intend to grant temporary permits to the petitioner in respect of the 4 kms. portion of the route which overlaps the Ajmer Udaipur notified scheme route. I am unable to accept the aforesaid contention of Shri Maheshwari. A perusal of the impugned resolution shows that the R.T.A. was dealing with the applications for grant of temporary permit submitted by non-petitioners Nos. 2 to 6 for the Asind-Vijaynagar route and there is nothing in the said resolution to show that the R.T.A. was granting temporary permits non petitioners Nos. 2 to 6 over apart of the said route only. In the absence of any such condition being imposed in the resolution the said resolution can only be construed as a resolution for a grant of temporary permits over the entire Asind-Vijaynagar route for which the application had been submitted. The authorities have also construed the said resolution of the R.T.A. in the same manner and temporary permits for the entire Asind-Vijaynagar route have been granted to the non-petitioners Nos. 2 to 6.

13. Shri Maheshwari has next submitted that it is permissible for the Court to sever the invalid part from the valid part of the resolution and uphold the valid part and that the impugned resolution of the R.T.A. may, therefore, be served so as to restrict the grant of temporary permits on the portion of the route from Asind

to Gulabpura. In my opinion, it is not possible to accept the aforesaid contention. To hold that by the impugned resolution of the R.T.A. has granted temporary permits to non-petitioners Nos. 2 to 6 from Asind to Gulabpura only even though they had submitted their applications for grant of temporary permits on the entire Asind-Vijaynagar route would involve re-writing the said resolution and not severance of the invalid portion from the valid portion. This Court, in exercise of its jurisdiction under Article 226 of the Constitution, cannot re-write the impugned resolution of the R.T.A. in the manner suggested by Shri Maheshwari. In my opinion, therefore it must be held that the R.T.A., in passing the impugned resolution granting one temporary permit each to non-petitioners Nos. 2 to 6 on the Asind-Vijayanagar route has failed to take into account the conditions imposed by the new clause added to the approved scheme by notification dated August 3, 1976.

13. It must, therefore, be concluded that in passing the impugned resolution, the R.T.A. has failed to take into account the conditions imposed in Sub-section (10) of Section 68 F of the as Act well as the conditions Laid down in the new clause added to the approved scheme for Ajmer-Udaipur route, by the notification dated August 3, 1976 and the impugned resolution passed by the R.T.A. whereby temporary permit has been granted to each of the non-petitioners Nos. 2 to 6 cannot be upheld and must be quashed.

14. In the result, the writ petition is allowed and the resolution (Anx. P/3) dated July 6, 1982 passed by the R.T.A. granting one temporary permit each to non-petitioners Nos. 2 to 6 on Asind-Vijaynagar route is quashed and the temporary permits issued in favour of non-petitioners Nos. 2 to 6 in pursuance of the said resolution are also quashed. In the circumstances of the case, the parties are left to bear their own costs in this writ petition.