

(1970) 09 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 236 of 1970

Ali Ahmad and Sons

APPELLANT

Vs

Brij Kishore Pateria and Others

RESPONDENT

Date of Decision : 15-09-1970

Acts Referred:

Constitution of India, 1950 — Article 166
Motor Vehicles Act, 1939 — Section 64

Citation : AIR 1971 MP 71 : (1976) ILR (MP) 500 : (1970) JLJ 999 : (1970) 15 MPLJ 952 : (1970) MPLJ 952

Hon'ble Judges : Bishambhar Dayal, C.J;S.P. Bahrgava, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; K.K. Dube, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bhargava J.

This petition under Article 226 of the Constitution of India is directed against the two orders made by the first respondent Shri Brij Kishore Pateria, Minister of State (Home), Madhya Pradesh, on 20-3-1970 and 11-5-1970, staying the operation of a permit on an inter State route Jashpur-Ranchi via Gumla, which was granted by the State Transport Authority on 7-2-1970, pending consideration of the appeal filed by respondent No. 5 Ganesh Prasad Gupta against the grant of the said permit. The petitioner also seeks a direction restraining the first respondent by a writ of Prohibition or Mandamus from dealing with the appeal preferred by respondent No. 5 against the Order of the State Transport Authority (respondent No. 4) dated 7-2-1970 to the aforesaid effect.

Briefly stated, the facts are these. The petitioner and some other bus-operators, including respondent No. 5 Ganesh Prasad Gupta, had made applications for the grant of two single trip permits, i. e., one return trip permit on route Jashpur-Ranchi which lies partly in the State of Madhya Pradesh and partly in Bihar. The

State Transport Authority, after giving a hearing to all the applicants, granted the permit to the petitioner by its order dated 7-2-1970- The permit was duly counter-signed by the relevant authority of the State of Bihar on 7-3-1970 and the petitioner started operation of the service on 13-3-1970. He operated the said permit upto 29-3-1970. The fifth respondent Ganesh Prasad Gupta feeling aggrieved by the order of the State Transport Authority filed an appeal before the State Government u/s 64 of the Motor Vehicles Act and filed an application for staying operation of the permit granted to the petitioner by the State Transport Authority. After hearing the application ex parte, the first respondent granted an ad interim stay order on 20-3-1970. In the application for stay it was mentioned by Ganesh Prasad Gupta that he held a temporary stage carriage permit for return trip daily over the said route and the said permit was valid upto 20-3-1970. It would be seen that the stay order was granted on the very day on which the temporary permit expired. Thereafter the petitioner moved an application (Annexure F) for vacating the said stay order on March 28, 1970. The application was heard in the presence of both the parties and the State Minister confirmed the stay order on 11-5-1970. Feeling aggrieved by the said two orders, this writ petition has been filed seeking the reliefs stated above.

The first contention raised on behalf of the petitioner is that the respondent No. 1 had no authority to hear an appeal or to pass an order in the matter as appellate authority u/s 64 of the Motor Vehicles Act. It is urged that u/s 64 and Rule 72 an appeal against the order of the State Transport Authority lies to the Provincial Government or the Tribunal appointed under Sub-rule (b) of Rule 72. It is urged that respondent No. 1 was neither the Provincial Government nor was appointed Tribunal under the said sub-rule and therefore was not competent to hear the appeal or to pass any order in connection with the said appeal.

On the other hand, it is contended on behalf of the respondents that in exercise of powers conferred by Clauses (ii) and (iii) of Article 166 of the Constitution, the Governor of Madhya Pradesh had framed rules of business of the Executive Government and under those rules called "the Madhya Pradesh Government Executive Business Rules" the Governor had allocated amongst the Ministers, State Ministers and Deputy Ministers the business of the Government by assigning each Department or any item of business of the Department of the Secretariat. It is urged that these rules were published in the Madhya Pradesh Raj Patra dated 10-4-1969 and according to the allocation of business made by the said notification the business in the Home Department had been assigned to respondent No. 1 Shri Brij Kishore Pateria, Minister of State (Home). It is further urged that item No. 14 specified in the schedule specifically deals with mechanically propelled vehicles and control over them and respondent No. 1 was in charge of the said item and therefore he could undertake and transact any business and perform any duty or discharge any obligation enjoined by the Motor Vehicles Act which was required to be done by the State Government.

We have perused Annexures R/1 and R/2. The Business Allocation Rules

(Annexure R/1) make clear that the Governor shall allot amongst Ministers the business of the Government by assigning each Department or any item of business in a Department of the Secretariat to the charge of a Minister. At serial No. 14, under the heading "II-Home, A-General" mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied is shown. Annexure R/2 is the notification in pursuance of Rule 4 of the M. P. Government Business Allocation Rules. This clearly indicates that Shri Nand Kishore Sharma and Shri Brij Kishore Pateria are the Ministers of State in charge of the Home Department. The order of the Chief Minister dated 5-9-1969 purporting to have been made under Rule 13 of the Business Rules shows that Shri B. K. Pateria is the Minister in charge of the Transport. These documents sufficiently prove that respondent No. 1 had jurisdiction to hear the appeal in consequence of the allocation of the work of this Department to him under R/1 and R/2.

The second contention raised by the learned counsel is that the order of the Minister has neither been made in the name of the Governor nor has been authenticated in the manner required by Article 166 and therefore could not be treated to have been issued as an order of the Government. The learned counsel has relied on Pioneer Motors Ltd., Tirunelveli and Others Vs. O.M.A. Majeed, Mirania Motor Service, Tirunelveli and Others, in support of his contention. It is urged that due to the said infirmities the said order cannot operate as a valid order of the State Government.

A proper compliance with the requirements of Article 166 of the Constitution gives immunity to the order in the sense that it cannot be challenged in the Court of Law on the ground that it is not an order of the Governor. If the requirements of the said Article are not complied with, the resulting immunity cannot be claimed by the State but that by itself does not nullify the order if it appears from other material that such a decision in fact was taken by the Government (See Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others,). The learned Government Advocate placed before us the original file of the appeal which clearly shows that the said order had been made by the Minister of State (Home) who had jurisdiction to pass the orders challenged before us. The requirement of authentication is of a directory nature and not imperative in the character. In this view we hold that the orders made by respondent No. 1 on 20-3-1970 and 11-5-1970 cannot be held to be invalid by not being expressed or authenticated according to Article 166.

The last contention raised by the learned counsel is that as the temporary stage carriage permit of respondent No. 5 was going to expire on 20-3-1970, there was absolutely no reason for depriving the route totally of the service of any vehicle from that date under the ex parte order made on that date and by the subsequent order dated 11-5-1970. It is urged that as the ex parte stay order was made on 20-3-1970 and as on that date the petitioner taking advantage of the permit in his favour had already put in operation his vehicle on the route

from 13-3-1970, no new state of things could be introduced on the route by staying operation of the order dated 7-2-1970 which had been passed in favour of the petitioner. The learned counsel for the petitioner has placed reliance on Durg Transport Co. Private Ltd. Vs. Regional Transport Authority and Others, for the proposition that stay order or an ad interim injunction is issued to maintain and preserve the status quo existing at the time of the institution of the proceedings. It stressed that stay order could be granted only to restore the status quo ante but could not be granted to establish a new state of things different from the state which existed at the date when the proceedings were instituted.

For appreciating the contention advanced on behalf of the petitioner, it would be useful to notice at this stage that the application for the grant of the stay in the appeal filed by respondent No. 5 before the first respondent was made on 24-2-1970. On 24-2-1970 the bus service of the petitioner had not commenced its operation on the route. It commenced to operate subsequently from 13-3-1970. Thus, it cannot be urged that respondent No. 1 by making the stay order brought into existence a new state of things different from the state which existed at the date when the proceedings were instituted. The order passed by the first respondent cannot be held to be against the principle enunciated in Durg Transport Co. Private Ltd. Vs. Regional Transport Authority and Others, .

The fact that respondent No. 5 had a temporary stage carriage permit on the route upto 20-3-1970 is not very material. It was only a circumstance which required consideration of the first respondent for judging the public need of there being a vehicle on the said route. The mere fact that some other Tribunal or Authority may not have passed the stay order which was made by respondent No. 1 on 20-3-1970 and 11-5-1970 cannot by itself be held to be sufficient for vacating the stay order. As the first respondent had, in our view, jurisdiction to grant stay order for maintaining status quo ante as it existed on the date of making the stay application, we are of the view that the petitioner is not entitled to have the two stay orders quashed in our writ jurisdiction. However, as the appeal is still pending before the first respondent and as in granting the stay order an important point for consideration would be to see that public is not put to inconvenience on account of no vehicle being permitted to operate on the route during the pendency of the appeal, apart from the rights of the parties in getting the appeal decided according to law we feel confident that on a proper application being moved before the first respondent by the petitioner bringing to his notice the change of circumstances which have taken place after expiry of the temporary permit of respondent No. 5 and the facts about public interests being adversely affected on account of there being no vehicle being permitted to cater for public needs, he would make a proper order paying attention to all the circumstances of the case and the need of the public.

In the result, with these observations the writ petition is dismissed, but considering the circumstances of the case we leave the parties to bear their costs.