
(1984) 07 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1004 of 1984

Ali Ahmed and Sons, Bilaspur

APPELLANT

Vs

Regional Transport Authority Bilaspur and another

RESPONDENT

Date of Decision : 31-07-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 62(1)(c)

Citation : (1985) JLJ 183 : (1985) MPLJ 199

Hon'ble Judges : G.L. Oza Actg, C.J; B.M. Lal, J

Bench : Division Bench

Advocate : S.O. Hasan, for the Appellant; P.R. Bhawe, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal, J.

This petition under Articles 226 and 227 of the Constitution of India raises the question about validity of a temporary permit granted u/s 62 (1) (c) of the Motor Vehicles Act, 1939 (hereinafter referred to as the "Act") in favour of the respondent No. 2 by the respondent No. 1, the Regional Transport Authority, Bilaspur, for the route, Bilaspur to Korba via Katghora for 4 months which is valid upto 14-8-1984. The petitioner prays for quashing the order dated 11-4-1984 contained in Annexure B, passed by the Regional Transport Authority, respondent No. 1 and also the permit, Annexure-C, issued to the respondent No. 2 in pursuance of the said order.

Facts leading to this case are that the petitioner is holding regular permits for the route, Bilaspur to Katghora and Katghora to Korba on the following timings:

Bilaspur

Katghora

Dep. 2.30 P.M.

Arr.

50 P.M.

Katghora

..

Korba

Dept. 5.00 P.M.

Arr.

30 P.M.

The respondent No. 2 applied for grant of temporary permit for four months for the route, Bilaspur to Korba via Katghora by his application dated 2-3-1984, Annexure A, u/s 62 (1) (c) of the Act.

The respondent No. 1 by his order dated 4-4-1984, Annexure-B, determined the temporary need and in pursuance of the order dated 4-4-1984 granted a temporary permit for four months vide, Annexure-C, for the period commencing from 15-4-1984 to 14-8-1984. The petitioner being aggrieved by the grant of temporary permit referred to above has filed this petition for quashing the same.

The learned counsel, Shri S.Q. Hasan, appearing for the petitioner has challenged the grant of temporary permit. His first submission was that the application, Annexure- A, as had been made for the grant of temporary permit, does not disclose any purpose enumerated u/s 62 (1) (c) of the Act and, therefore, such application had to be rejected outright. His second submission was that the order contained in Annexure-B, does not show application of mind by the respondent No. 1 relating to determination of particular temporary need and the order contained in Annexure-B is also not a speaking order. His third submission was that the timing granted is only 25 minutes ahead of the petitioner's timing. Therefore, on all these three counts the grant of temporary permit is without jurisdiction and the same is liable to be quashed. On the other hand, learned counsel, Shri P.R. Bhave, appearing for the respondent No. 2 has supported the order of the Regional Transport Authority, Bilaspur.

We have heard the learned counsel for both the sides at length and have perused the documents filed by the parties i.e. Annexures A, B and C and the rejoinder of the petitioner and have reached the conclusion that there is no force in all submissions of the petitioner for the following reasons.

The statement as made in the petition is that in the application form i.e. Annexure-A, in the column of "particular temporary need", the respondent No. 2 has not disclosed the particular temporary need, is wholly incorrect. A perusal of Annexure-A discloses that the respondent No. 2 has disclosed in all 4 types of temporary need viz.:

- (i) open season;
- (ii) marriage season;
- (iii) Bilaspur being the head-quarter of Revenue Commissioner Division of Bilaspur Division, and
- (iv) Korba is an industrial city

which had given rise to grant of temporary permit and hence the statement to this effect as made in this petition is wholly misconceived and appears to be a mis-statement of fact. Therefore, we reject the contention of the petitioner that Annexure-A does not disclose the particular temporary need.

Regarding the second submission that the order contained in Annexure B is not a speaking order, we have seen that the Secretary, Regional Transport Authority has prepared a note for submitting it before the Regional Transport Authority and wrote in his note sheet:

ASTHAYI ANUGYA-PATRA JAN-SUVIDHA KI DRISHTI SE UCHIT HOGA.

We see that the reason assigned by the Secretary is sufficient to warrant the grant of temporary need i.e. for the benefit of travelling public. In this respect, if the Secretary to Regional Transport Authority prepares the note for its presentation before the Regional Transport Authority and if the Regional Transport Authority, after going through the note of the Secretary grants permits then both the note and the order are to be read together and it would form a composite order as decided by this Court in *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Sagar and Another*, . Therefore, the order in question is a valid piece of order and hence we are not prepared to say that the Regional Transport Authority has passed the order without any application of mind or that the order is not a speaking order.

As far as the third submission is concerned, we find that the route in question is quite a busy route having voluminous traffic. About 33 buses are plying round the clock on the route and, therefore, the other buses are running with the difference of 15 minutes" gap and hence in the instant case, if 25 minutes" gap is given, the same cannot be said to be granted just ahead of the petitioner"s timing. From the perusal of the record, we see that the present timing is granted in the vacant timing of the petitioner which is apparent from the perusal of Annexure-B. The petitioner has also filed a rejoinder and he pointed out that by the order of the State Transport Appellate Tribunal, Gwalior, M.P., the petitioner had to stop the operation of his bus on the route. Be that as it may but it is clear that the petitioner was operating the permit on the same timing. Therefore, it cannot be said that altogether a new timing has been granted to the respondent No. 2 which is ahead of the petitioner"s timing, but can safely say that the old vacant timing has been granted to the respondent No. 2.

Thus, considering the facts of all the three submissions we find no force in them.

Now, we consider the legal aspect and the scope of section 62 in the light of the above referred grounds raised by the petitioner.

Section 62 of the Motor Vehicles Act, 1939 has been enacted to extend extra facilities to the travelling public as looking to the whole scheme of the Motor Vehicles Act, 1939, we see that Chapters IV, IV-A, v. and VI have been enacted with the aim and object to grant and extend full and expeditious facilities to the travelling public. This is the sole dominant and paramount consideration in granting permits in favour of the bus operators. The bus operator, however, figures nowhere in the whole scheme of the Act to exercise his rights against the travelling public. of course, they have been granted certain procedural rights u/s 57 of the Act so that they may exercise their rights against the bus operators inter se.

Therefore, the. Legislature in their wisdom, while enacting the provisions of section 62 kept it aloof from the other provisions of the Act and specifically mentioned that while exercising the powers u/s 62 in granting temporary permit, the provisions of section 57, which is a procedural section of Chapter IV, has no application at all. This was so because in granting a temporary permit, the procedure u/s 57, if allowed to be followed then the very object and purpose of temporary need which arises temporarily will be frustrated because of the time consuming lengthy procedure of section 57. Thus, the granting authority while exercising their prompt discretion are supposed to grant the temporary permit expeditiously so that the travelling public may not suffer any inconvenience in reaching their destination.

Therefore, in granting a temporary permit, looking to the scheme of section 62, the other bus operators who are not prejudiced in any manner whatsoever against the grant of temporary permit, have no right to challenge the grant of temporary permit on any ground enumerated in section 62 of the Act.

While exercising the powers u/s 62 of the Act by the authorities, there is no statutory provision which requires that notice to interested parties must be given before the grant of temporary permit but because the proceedings u/s 62 being of quasi-judicial nature are supposed to be conducted in consonance with the principles of natural justice. If time permits, notice to other route operators, keeping in view the fact that the temporary need is not immediate and there is time to issue notice to hear parties whose timing is likely to be affected, may be given before the grant of temporary permit and be heard. But in the case of urgent or emergent temporary need, a temporary permit may be granted even without giving a hearing to the affected route operators so that the purpose of section 62 of the Motor Vehicles Act may not be defeated and travelling public may not suffer inconvenience.

We are aware of the fact that there is no inherent jurisdiction in quasi-judicial Tribunal to vary the order on merits but none the less, if the order is without jurisdiction that order is a nullity and, therefore, where a gross mistake appears

on the face of record, the Tribunal may rectify its mistake as the Tribunal is also vested with an impelled power to rectify such apparent mistakes and hence the route operator who feels prejudiced with the order of the Regional Transport Authority against the grant of temporary permit may first move, by exercising his right under the principles of natural justice, the Regional Transport Authority at his earliest opportunity to redress the wrong done to his rights of regular permit demonstrating how he is prejudiced against the order of grant of temporary permit and how the Tribunal has committed gross mistake which goes to the root of the case involving exercise of jurisdiction u/s 62 of the Act which has made the order of grant of temporary permit a nullity.

Before invoking the extraordinary jurisdiction under Article 226 or 227 of the Constitution of India, the petitioner must demonstrate how he is prejudiced with the order. The benefit of discretionary power under Article 226 of the Constitution of India cannot be extended in favour of the person who is not prejudiced at all but is merely vindicating his prejudices on technical grounds. section 62 emphasises the exercise of emergent powers to grant temporary permit in the interest of travelling public which is the dominant consideration. Therefore, no order in exercise of powers under Article 226 of the Constitution of India can be passed against the travelling public whose interest is likely to be affected adversely.

We must remember that due to increase in volume of population, the frequency in traffic has also been increased tremendously and hence virtually in every route, not only in our State but in the entire country, it has become necessary to grant more permits, permanent or temporary, to meet or cope up with the increased heavy flow of traffic and, therefore, keeping in view of the statutory safeguards, it is expected from the respective transport authorities to grant permits, permanent or temporary, liberally so that not only the public interest which is the dominant and paramount consideration would be safeguarded but the State also will be benefited by getting additional revenue in the shape of passenger tax, which will be an additional source of revenue to help the economy of our under-developed State or say, the under-developed country as a whole.

Here, it will not be out of point to say that the old bus operators think that by virtue of their old permits they have acquired some sort of legal rights guaranteed under Article 19(1)(g) of the Constitution of India to operate the route by themselves alone and they do not want that any new bus operator should be introduced on their route and share their immense profits. But they forget that right under Article 19(1)(g) of the Constitution of India is guaranteed to each and every citizen and this right does not confer any exclusive right on the old route operators to mono-polise the route partially or absolutely during the subsistence of their permit so that no other temporary permit or permanent permit be granted in favour of any other bus operator.

In dealing with this aspect, it is relevant to mention that if any bus operator is in a position to monopolise the route absolutely or partially then the possibility of

his neglecting the public interest cannot be ruled out; more so, to look forward and to achieve the goal of socialistic pattern of society in these progressive modern days in our welfare State monopolistic practice, may be partial, is to be and must be deprecated and if the old conservative bus operators think that the permit is not economical to them, they may surrender their permit and make room for other progressive bus operators; in which now-a-days unemployed progressive graduate bus operators and others have taken to this trade and are standing in the queue.

We are, therefore, of the opinion that grant of temporary permit, which is based on the subjective satisfaction of the Regional Transport Authority, is not to, be interfered with lightly on technical mistake until and unless some prejudice is shown by the permanent route operator which really hits the jurisdiction of grant of temporary permit u/s 62 of the Act.

From the discussion aforesaid, we have reached the conclusion that in the instant case, no prejudice is caused to the petitioner notwithstanding the fact that the things have been granted ahead of the petitioner's timings but the same have been granted on vacant timings. Besides that, there is quite a heavy flow of traffic inasmuch as 33 buses are plying on the route round the clock with a gap of 15 minutes each whereas in the instant case, the temporary permit has been granted in favour of respondent No. 2 with a gap of 25 minutes on old vacant timing.

We, therefore, find no force in this petition and, therefore, we dismiss this petition with costs. counsel's fee Rs. 200. The balance of security deposit, if any, be refunded to the petitioner.