

(1968) 11 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No. 3295 of 1968

Anamalais Bus Transports (P.) Ltd., Pollachi

APPELLANT

Vs

Regional Transport Authority, Coimbatore and Another

RESPONDENT

Date of Decision : 06-11-1968

Acts Referred:

Motor Vehicles Act, 1939 — Section 62

Citation : AIR 1970 Mad 41

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Advocate : N.G. Krishna Aiyangar, for the Appellant; J. Kanakaraj, for Govt. Pleader and G. Ramaswami, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishnan, J.—The petitioner Anamalais Bus Transports Ltd., Pollachi has filed this writ petition under Article 226 of the Constitution, to quash the order dated 5-9-1968 made by the 1st respondent, Regional Transport Authority, Coimbatore, granting a temporary permit to the 2nd respondent for the route Coimbatore to Madathukulam (via) Udamalpet. The prior facts necessary for a consideration of the points raised for decision in this petition are briefly the following. The route Coimbatore to Udamalpet is 52 miles and 6 furlongs long. Respondent 2, K. K. Palaniswami, was granted on 19-2-1968 by the Regional Transport Authority, Coimbatore, a temporary permit for this route valid for four months under the provisions of Section 62 of the Motor Vehicles Act. The petitioner had applied subsequent to the notification for the grant of the temporary permit for the above route for a permanent permit for the same route. Aggrieved against the order granting a temporary permit to respondent 2, the petitioner filed W. P. 894 of 1968, which was dismissed by this Court on 19-3-1968.

One of the grounds which the petitioner then put forward before this Court was that the grant of temporary permit in the context of his application for a

permanent permit for the same route would attract the first proviso to Section 62 of the Motor Vehicles Act, rendering the grant of the temporary permit illegal. But I held against this contention on the principal ground that the application for the permanent permit was filed by the petitioner after the proceedings for the grant of a temporary permit had been initiated and in such a case the first proviso will not apply. Aggrieved against that decision, the petitioner filed an appeal, W. A. 151 of 1968. That appeal was dismissed by a Bench of this Court on 16-4-1968, and it was observed--"that if there was going to be any fresh temporary permit granted thereafter, it would definitely be during the pendency of the application of the writ petitioner and the first proviso would be attracted to such a context and would bar the grant of a temporary permit".

2. These observations have been followed by me subsequently in other cases (vide W. P. 2289 and 2293 of 1968). It is alleged in the affidavit of the petitioner that on 18-7-1968, the 2nd respondent applied for a temporary permit for the same route Coimbatore to Udamalpet for a further period from 20-7-1968 to 19-11-1968, that is four months after the expiry of the first permit granted earlier on 19-2-1968. The affidavit of the petitioner goes on to say-

"I understand and believe the same to be true that when this file was put up before the Regional Transport Authority, realising that the decision of this Honorable Court in W. A. 151 of 1968 would operate as a bar to the issue of a temporary permit, for the second time, during the pendency of the application suo motu made by the petitioner u/s 46 of the Act, he is understood to have expressed an opinion that all that could be done was to vary the route a little bit and give a fresh temporary permit. On that opinion, an office note would appear to have been put up before the Regional Transport Authority as to whether the route Coimbatore to Udamalpet for which a temporary permit was applied for by the 2nd respondent could be varied slightly as Coimbatore to Madathukulam (via) Udamalpet and a fresh temporary permit issued for four months in favour of the same grantee, viz. the 2nd respondent herein. The Regional Transport Authority is understood to have agreed with this view. After this opinion of the Regional Transport Authority expressed in the file concerned, the 2nd respondent, presumably getting scent of this endorsement of the Regional Transport Authority, made an application on 26-8-1968, for the Issue of a fresh temporary permit for the route Madathukulam to Coimbatore (via) Udamalpet, which is practically the former route Udamalpet to Coimbatore plus a short distance of eight miles beyond Udamalpet to Madathukulam. In other words, the temporary permit applied for by the 2nd respondent was practically for the route Coimbatore to Udamalpet plus an additional distance of eight miles beyond Udamalpet to Madathukulam".

After making the above allegations, the petitioner contended that this action of the Regional Transport Authority cannot be said to be "bona fide and commendable". Further the affidavit also alleged that there was no evidence at all before the Regional Transport Authority for holding that there was necessity in

the public interest to extend the route of the permit from Udamalpet to Madathukulam. There was no representation from the public or from the local authority for such an extension.

3. In view of the above statements in the affidavit of the petitioner, I called for the concerned file of the Regional Transport Authority to verify if the allegations are substantiated. I gave also an opportunity through the Government Pleader to the Regional Transport Authority to file a counter-affidavit. The file has been produced, but no counter-affidavit has been filed before me. The file shows that respondent 2 applied for renewal of temporary permit for a further spell of four months from Coimbatore to Udamalpet. The office note put up by the Secretary to the Regional Transport Authority brought to the notice of the Regional Transport authority the observations of the High Court in the writ appeal filed by the A. B. T. Ltd. (petitioner) (W. A. 151 of 1968) namely, that during the pendency of the application for the grant of new permit, a temporary permit cannot be issued. There is a reference In the office note to the matter being re-agitated before the High Court and that further orders of the High Court might be expected.

The file was allowed to lie over for some time. The Regional Transport Authority thereafter remarked on 10-8-1968 that "when the matter is pending before the Court, we cannot help. All we can do is to "vary the route a little bit" (italics (here in " ") mine) and give fresh temporary permit." Then the Secretary to the Regional Transport Authority asked for instructions stating that the route for which the temporary permit was issued is Cotmbatore to Udamalpet and asking whether that route may be varied slightly as Coimbatore to Madathukulam (via) Udamalpet and a fresh temporary permit issued for four months in favour of the same grantee, Thiru K. K. Palaniswami, respondent 2. This proposal was approved by the Regional Transport Authority on 21-8-1968. The file also shows that only subsequently was an application received from Thiru K. K. Palaniswami for the grant of a temporary permit for the route Madathukulam to Coimbatore (via) Udamalpet.

4. These proceedings in the file clearly bear out the allegation expressed in the affidavit of the petitioner that It was to circumvent the observations of the High Court in the decision in W. A. No. 151 of 1968 against the grant of fresh temporary permit during the pendency of an application for the grant of permanent permit, that the present grant of temporary permit for the route Coimbatore to Madathukulam (via) Udamalpet was made by varying the route slightly in the context of an application by respondent 2 for renewing the permit only from Coimbatore to Udamalpet and without any application from him at that time for the route slightly varied as above. The file also does not show that there was any representation by the public or by the local authority or any other interested person, that there was no need to supplement the existing transport facilities from Udamalpet to Madathukulam by grant of a temporary permit to cover that extra distance, an additional length of eight miles.

5. The above would show that both the grounds on which the petitioner has attacked the grant of permit are substantiated. They are firstly, that the authority. Regional Transport Authority in this case, in granting a temporary permit from Coimbatore to Madathukulam (via) Udamalpet, was really circumventing the difficulty about granting it which arose as a consequence of the decision of the High Court, by making a slight extra addition to the route for which the second respondent had applied for temporary permit to make it appear as if it was a temporary permit for a new route, when what was intended in fact and substance ,was only the grant of temporary permit for the route Coimbatore to Udamalpet at a time when the decision of the High Court debarred the Regional Transport Authority from granting such a second temporary permit.

Secondly, there was no apparent necessity in the public interest, for granting such a variation. It has been laid down that even in respect of temporary permits the main principles of Section 47 of the Motor Vehicles Act namely, the interest of the public generally and the advantages to the public of the service to be provided, should also be borne in mind. There is nothing to show that they were borne in mind in this case. No doubt, the order of the Regional Transport Authority granting the temporary permit has made a reference to an urgent and real need for the permit. But the particulars in the file do not afford any data to support such a conclusion about an urgent and real need having arisen.

6. On the other hand, the file clearly shows that this is a case where the authority--very regrettably it must be stated, was trying to do indirectly what he was prohibited from doing directly. Learned counsel for the second respondent Sri Ramaswami referred me to several decisions upon the question of fraud on power as well as mala fides, but it is not necessary to refer to all those decisions, for, the facts of this case set out above make it crystal clear that the authority was trying to do indirectly what he could not do directly. One thing however, could be mentioned with reference to the general law on the subject of fraud on power, in the context of the aforesaid facts in this case. As pointed out by the Privy Council In the case *Vatcher v. Paull*, 1915 AC 372 -

"The term fraud in connection with frauds on a power does not necessarily denote any conduct on the part of the appointer amounting to fraud in the common law meaning of the term or any conduct which could be properly termed dishonest or immoral. It merely means that the power has been exercised for a purpose, or with an intention, beyond the scope of or not justified by the instrument creating the power".

In the present case, the instrument creating the power of granting temporary permit to the appointer, namely, the Regional Transport Authority, is the statute as clarified by the decision of the Bench of this Court in W. A. No. 151 of 1968 debarring the authority from granting a second temporary permit in the context of an application for a permanent permit But what the Regional Transport Authority has done is to exercise that power in a manner which was not justified by the Statute that granted the power to him and with a view to circumvent it. It

is to be hoped that a recurrence of such a state of affairs would not take place as it reflects little credit on the Regional Transport Authority concerned.

7. The writ petition is allowed and the order of the Regional Transport Authority granting the impugned permit to the second respondent is quashed by a writ of certiorari. No order as to costs.