
(1962) 07 AHC CK 0010
In the Allahabad High Court
Case No : Writ Petition No. 68 of 1961

Anwar Ahmad Khan

APPELLANT

Vs

The Regional Transport Authority, Lucknow and Others

RESPONDENT

Date of Decision : 20-07-1962

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(3)

Citation : AIR 1963 All 38

Hon'ble Judges : N.U. Beg, J

Bench : Single Bench

Advocate : A.J. Fanthome, for the Appellant; Standing Counsel for Opposite Parties 1 and 2 and J.S. Trivedi, for Opposite Party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

N.U. Beg, J.—This is a writ Petition under Article 226 of the Constitution of India. It arises out of a contest for permit for the route of Tambor to Sitapur via Hargaon and Laharpur. It appears that respondent No. 3 Shyam Sunder Lal was holding one Regular Stage Carriage Permit No. 324/ST valid for three years from the 4th April 1957, to the 3rd April, 1960, for the said route. On the 2nd April 1960, he applied for renewal of the said permit for a further period of three years. This application for renewal was obviously time-barred, as u/s 58 (2) of the Motor Vehicles Act (Act No. IV of 1939), hereinafter called the Act an application for renewal of such a permit could be made sixty days before the main permit is due to expire. u/s 58(3) the Regional Transport Authority could, however, condone delay up to a period of 15 days only.

Even making a margin for a period of 15 days" which could be condoned by the Regional Transport Authority the application of the respondent No. 3 for renewal dated the 2nd April, 1960, was obviously time-barred as his permit was due to expire on the very next day i.e. the 3rd April, 1960. Seeing that the application for renewal made by respondent No. 3 was time-barred u/s 58(3) at the Act, the petitioner applied for a fresh permit on the same route on the 24th May 1960 in

case renewal of permit No. 324/ST was refused. Another person named Shyam Behari Lal also applied like the petitioner for a fresh permit. The application of respondent No. 3 for renewal as well as of the petitioner and Shyam Behari Lal for a fresh permit were sent by respondent No. 1., the Regional Transport Authority, Lucknow Region, Lucknow, on the 30th May 1960, for publication u/s 57(3) of the Act in the U. P. Gazette. All the three applications were published in the Gazette; dated 11th June, 1960. They were fixed for final disposal before the respondent No. 1 in their meeting to be held on the 15th and 16th July, 1960. On the 15th July, 1960, when these applications came up for consideration before respondent No. 1, the petitioner appeared and pressed for the rejection of the application of respondent No. 3 on the ground that it was barred by time u/s 58(3) of the Act. The Regional Transport Authority rejected the application of respondent No. 3 on the ground that it was obviously time-barred. Thereafter they decided to reduce the strength from 5 to 4 with the result that there was no vacancy left for an additional permit on the route. The remaining two applications for a fresh permit, namely that of the petitioner as well as of the other applicant, namely Shyam Behari Lal, were rejected on the ground that there was no vacancy on the route.

2. Shyam Behari Lal did not file an appeal against the said order. The petitioner as well as respondent No. 3 Shyam Sunder Lal, however, did file an appeal before respondent No. 2, namely the State Transport Authority, Tribunal, U. P., Lucknow. The appeal of the petitioner was numbered as appeal No. 262 of 1960 while that of respondent No. 3 was numbered as 310 of 1960. Both these appeals were fixed for disposal on the 16th March, 1961. On that date two more appeals were on the agenda, one being appeal no. 255 of 1960 by respondent No. 3 and the other being appeal No. 294 of 1960 filed by Messrs. D. M. Agarwal. Both these appeals related to the same vacancy. Appeal No. 310 of 1960, by respondent No. 3 for renewal of his permit was dismissed by the State Transport Authority, Tribunal, as time-barred on the objection of the petitioner. Appeal No. 294 of 1960 filed by Messrs. O. M. Agarwal was also dismissed. In respect of appeal No. 255 of 1960, it was stated on behalf of the petitioner that the alleged application for fresh permit by respondent No. 3 out of which this appeal purported to arise not having been published u/s 57(3) of the Act, the appeal was not maintainable, and was, therefore, liable to be dismissed summarily.

The secretary of the State Transport Authority, U. P. who is stated to be always present in the meeting, however, stated that the application had been duly published, and was in order, and appeal No. 255 of 1960 was, therefore, maintainable. The petitioner believed this assurance given by the Secretary, and, presuming it to be correct, conceded that in view of the above position Shri Shyam Sunder Lal should be given preference. Thereafter the petitioner's Counsel wanted the question of publication of the application for fresh permit alleged to have been given by the respondent No. 3 to be verified from the Gazette, but the Secretary of the State Transport Authority again held forth the assurance that he had looked into the matter and the application of the

respondent No. 3 was in order. In view of the said assurance given by the Secretary of the State Transport Authority and the Statement made by him, the State Transport Authority Tribunal, U. P., Lucknow proceeded to dispose of the appeal. They reversed the order of respondent No. 1, the Regional Transport Authority, Lucknow, reducing the strength on the route. They increased the strength on the route by one, allowed the appeal of respondent No. 3 and directed that a Stage Carriage permit be issued on the said route in his favour. Appeal No. 255 of 1960 filed by respondent No. 3 having been allowed appeal No. 262 of 1960 filed by the petitioner was dismissed.

3. After this order was passed, the petitioner looked up the Gazette with a view to further ascertain whether the application alleged to be given by Shyam Sundar Lal respondent No. 3, for a fresh permit was actually published in the Gazette or not. As a result of his further search and scrutiny he found that no such application was ever published in any Gazette. He, therefore, filed the present writ petition praying that the order of the Regional Transport Authority rejecting his application and that of the State Transport Authority dated the 16th March, 1961, rejecting appeal No. 262 of 1960 filed by him and allowing appeal no. 255 of 1960 filed by respondent no. 3 be quashed.

4. At the very outset, it may be stated that the learned Counsel for the State who appeared for the regional Transport Authority, Lucknow, respondent No. 1, and the State Transport Authority, Tribunal, U. P. Lucknow respondent No. 2 frankly stated before me that he was not prepared to oppose this writ petition. The reason given by him was that the application for a fresh permit which was represented to have been published in the Gazette, was never, in fact, published. He also stated that the applications for permit on this route were actually sent for publication on the 30th May, 1960, and the application by Shyam Sundar Lal for a fresh permit was given one day after that, i.e. on the 31st May, 1960. This application could not, therefore, have been published in the Gazette. As the said application was never published u/s 57(3) of the Act, he conceded that the said, application could not be considered by the Regional Transport Authority, Lucknow and the order of the State Transport Authority, Tribunal U. P. allowing appeal No. 255 of 1960, filed by Shyam Sundar could not be sustained. On this concession, which was rightly made, I would have allowed the writ petition straightaway. The learned counsel for respondent No. 3, however, stated that, in spite of the above concession, he wanted to contest the writ petition on merits.

5. The main argument advanced on behalf of the petitioner was that the application for fresh permit not having been published in the Gazette u/s 57(3) of the Act, the order of the State Transport Authority allowing the appeal and granting the said application could not be rested on any valid foundation. The learned Counsel for respondent No. 3 also stated that an application for fresh permit by respondent No. 3 was made on the 31st May, 1960. It could not, therefore, be published and was not actually published. He, however, contended that the provisions of Section 57(3) are not mandatory and it is possible for the

Transport Authority to take into consideration an application which was not published in the Gazette in compliance with the provisions of Section 57(3). He however, could not cite any authority in support of this contention. On the other hand, on behalf of the petitioner, the learned Counsel referred to an unpublished Bench judgment of this Court in Special Appeal No. 5, of 1955, Pooran Chand v. State Transport Authority by V. D. Bhargava, R. Singh JJ. dated the 8th May 1957. It may be mentioned that in this case the application was actually published but the date, time and place for the consideration: of the application of the representations were not mentioned in the publication. In spite, of it, the Bench held that, there being non-compliance with, the provisions of Section 57(3) of the Act, no action could be taken on the application, in that case the Bench follows another Divisional Bench Judgment of this very Court, and, while dealing with this point, after quoting the provisions of Section 57(3) observed thus:

"A perusal of the provisions of the section quoted above shows that it is imperative that the notice published by the Regional Transport Authority shall contain not only the date before which the objection or representations from persons opposing the application have to be made but also the date, time and place of the hearing of the application and the representations, if any, it is not disputed that the time, date or place of the hearing of the petition was not notified in the Gazette or in the notice which was published in the Gazette dated the 31st February 1954. A similar point arose for consideration in a Division Benefit case of this Court very recently vide Special Appeal No. 154 of 1956, Sardar pal Singh v. State Transport Authority, decided on 6-9-1956. It was held in that case that the provisions of Section 57(3) are imperative and unless they we complied with any other mode of compliance cannot be taken to be a sufficient compliance with the provisions of Section 57(3), Motor Vehicles Act."

On behalf of the respondents, it was argued before the Bench in the above case that a letter was sent to the other party, who was the appellant, by post informing him about the date of the meeting and it could be treated a substitute for publication in the Gazette. Dealing with this argument the same Bench observed as follows:--

"A similar argument was also raised before the learned Judges who decided Special Appeal No. 154 of 1956 and they came to the conclusion that the provisions of Section 57(3) are imperative and any other form at compliance would not be a compliance with the provisions of Section 57(3)."

After expounding the law as above, the Bench quashed the impugned order passed by the State Transport Authority and allowed the appeal. The position in the present case is much stronger. Whereas in me case cited there was publication, although an insufficient one, in the present case there was no publication at all. Under the circumstances, I fail to see how it is possible in a situation like the present to contend with any show of reason that the order granting such an application is sustainable.

6. The only case cited on behalf of the respondent No. 3 is the one reported in A. Narayana Kamath Vs. State Transport Authority and Others, A perusal of the judgment of this case shows that the application which came up for consideration before the learned Judges in this case was actually published in the Gazette, but the publication was defective in so far as the date, time and place of hearing was not duly published. In this situation, it was observed that the provisions of Section 57(3) requiring the publication of the date and time and place of hearing in the notification are not Imperative, and their non-observance should not result in the total failure of proceedings unless prejudice is proved. On this point, the view of the Allahabad High Court as cited in the judgment mentioned above appears to be a different one. I am bound by the Bench decisions of our Court. In any case, whatever the merits of the two contrary views regarding the importance and effect of the non-publication of the particulars relating to date, time and place, might be, I have no doubt in my mind that a complete non-publication of the application is not a matter which can be considered to be an immaterial irregularity which can be condoned by the Transport Authorities or by Courts of law. Such a view would make the very existence of Section 57(3) of the Act superfluous and nugatory. Non-publication of the application, in my opinion, goes to the root of the matter, and, in its absence, the Authorities would have no jurisdiction to proceed with the application.

7. The learned Counsel for respondent No. 3, however, argued another point. He contended that this point should have been agitated before the State Transport Authority, Tribunal. In this connection he argued that a new point cannot be raised in writ proceedings for the first time. He relied on a case reported in Ram Mohan Basu and Others Vs. State of West Bengal and Others, in support of his contention. The argument obviously appears to be a misconceived one. It seems to "ignore the contents of the affidavit filed on behalf of the petitioner. According to this affidavit, the petitioner could not have taken this point at that stage for the simple reason that his affidavit shows that he had believed the assurance given by the Secretary of the State Transport Authority, U. P., that the said application was duly published, and, honestly believing that assurance, he frankly conceded that in that situation respondent No. 3 would be entitled to preference. The allegation in that regard is contained in paragraph 21 of the affidavit of the petitioner. Paragraph 21 reads thus:--

"The Secretary of the State Transport Authority, U. P., who is always present in these meetings, and is said to act as Secretary of the respondent No. 2, stated that the application had been published and was in order and the appeal No. 255 of 1960 maintainable."

This statement has not been controverted either by the Secretary of the State Transport Authority, U. P., respondent No. 2, or by any one on behalf of the State Transport Authority itself. On the other hand, the State Counsel appearing for the State Transport Authority has stated before me that he did not file any counter affidavit on behalf of respondents Nos. 1 and 2, as he did not wish to contest the

application either on facts or on law.

In spite of this situation, however, respondent No. 3 who was present in Court personally instructed his Counsel to argue that the statement made in paragraph 21 was wrong. On the basis of his instructions, it was argued by his learned counsel before me that respondent No. 3 was present throughout the hearing of the appeal, and no such statement was made by the Secretary of the State Transport Authority, U. P. The instructions given by respondent No. 3 obviously appear to be wrong, and deliberately made for the purpose of misleading the Court. Their falsity appears to be borne out by the judgment of the State Transport Authority itself in which it is observed as follows:--

"We heard the Counsel for the parties except Sri Shyam Sundar Lal who was represented by his father. The R.T.A., Lucknow, was represented by their Secretary who was also heard."

The above observation would indicate that the statement made on behalf of respondent No. 3 that he was present on that date throughout the hearing of the appeal is not a correct one. The reply filed by respondent No. 3 to paragraph 21 of the affidavit also appears to be of an evasive type. The reply is as follows :

"Paragraph 21 of the Counter affidavit, denied. No such talk took place in the hearing of the deponent." The above mode of reply shows that the persons who swore this affidavit knew that the allegation that such a talk did take place might be true. In order, therefore, to save himself from perjury he stated that no such talk took place in his hearing.

If the deponent Shyam Sundar Lal was present throughout during the hearing of the appeal, it is difficult to imagine that any such talk would take place without being heard by him. In fact, respondent No. 3 has in his affidavit nowhere even stated that he was present throughout the hearing of the appeal or for any length of time. The order passed by the State Transport Authority on that day, as I have mentioned above, contradicts such assertion, it is probably for this reason that the contents of paragraph 21 of the affidavit have not been verified to the personal knowledge of the deponent. This again appears to have been done by respondent No. 3 for the purpose of safeguarding his position, and saving himself from the charge of having committed any offence of perjury. The contents of paragraph 21 have merely been verified by him as "true to my knowledge". In spite of it he instructed his Counsel to argue that knowledge in this verification clause meant not hearsay knowledge but personal knowledge. It was further argued that the verification of the affidavit in this court is usually done in this form. I find it difficult to accept this argument. A conclusive reply to it will be found by a reference to the affidavit filed by the petitioner himself in this very case. In this affidavit the petitioner has in the verification clause stated that "the contents of paragraphs 1 to 28 are true to my personal knowledge."

Moreover, the position adopted on behalf of the petitioner appears to be supported by the probabilities of the case also. The petitioner had given an

application for a fresh permit He contested the matter keenly before the Regional Transport Authority. When he lost before respondent No. 1, and his application was rejected he took the matter in appeal before respondent No. 2, the State Transport Authority, Tribunal. Mr. Fasthome who is appearing for the petitioner in this Court stated that he was appearing for the petitioner when the appeal was fixed for hearing before respondent No. 2. After his appeal was dismissed he filed a writ petition in this Court and the matter was argued by his Counsel before me with vehemence, zeal and vigour. It is difficult to imagine how the petitioner, who was contesting the matter throughout tooth and nail would suddenly make a statement before the appellate Authority giving up his own rights, and conceding the claim of respondent No. 3, unless and until something unusual had happened" which had induced him to change his attitude and make the aforementioned concession. The concession obviously appears to have been made as a result of the misapprehension created in his mind from the representation made by the Secretary of the State Transport Authority Tribunal, U. P. It was, therefore, a bona fide concession made under mistake and in ignorance of facts cannot therefore be said to be binding on him. Apart from that, all the parties have conceded before me that the application was never actually published. In this situation, the question arising is purely one of law. No concession made on a point of law can be binding on a party. There can be no estoppel against Statute. From whichever point of view the matter is approached, I am of opinion that the contentions advanced on behalf of respondent No. 3 are without substance and cannot be sustained or upheld.

8. For the above reasons, I am of opinion that this writ petition has force. I, accordingly, allow this Writ petition and quash the order dated the 16th March, 1961, contained in Annexure 3 passed by respondent No. 2, the State Transport Authority Tribunal, U. P., Lucknow, allowing appeal No. 255 of 1960 filed by respondent No. 3 and dismissing appeal No. 262 of 1960 filed by the petitioner and remand the case to respondent No. 2 with a direction that both these appeals be disposed of according to law. The petitioner will be entitled to his costs against respondent No. 3.

9. Civil Miscellaneous Application No. 45 of 1961 filed by the petitioner for interim relief has now become infructuous, and is, accordingly, rejected.