

(1985) 09 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14894 of 1982

Arif Akhtar Khan

APPELLANT

Vs

State Transport Appellate Tribunal, U.P., Lucknow and Others

RESPONDENT

Date of Decision : 20-09-1985

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Motor Vehicles Act, 1939 — Section 47, 64A, 68F(1C)

Citation : AIR 1986 All 188

Hon'ble Judges : S.K. Dhaon, J

Bench : Single Bench

Advocate : R.A. Sharma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dhaon, J.—The petitioner, an intending applicant for the grant of a stage carriage permit on a certain route, challenges the legality of an order passed by the State Transport Authority, U. P., Lucknow (hereinafter referred to as the Transport Authority) granting temporary permission (for) a certain route. He also challenges the legality of the order passed by the State Transport Appellate Tribunal (hereinafter referred to as the Tribunal) dismissing the revision preferred by him against the order of the Transport Authority.

2. The route Etah-Mainpuri-via-Karnai (hereinafter referred to as the route) is covered by a notification issued u/s 68C of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act). The, Transport Authority, keeping in view the need of the travelling public, commenced granting temporary permits on the route to the U. P. State Road Transport Corporation (hereinafter referred to as the Corporation) u/s 68F(1A). It appears that on 16th Nov. 1981, temporary permits were granted to the respondents Nos. 3, 4 and 5 to be valid for a period of four months. The Transport Authority by an order dt. April, 5, 7 and 8, 1982, decided to grant three additional temporary permits on the route to the

Corporation. On the same date it resolved that its Secretary would continue to issue temporary permits to the respondents 3, 4 and 5 at an interval of every four months. However, it made it clear that these permits would be issued unless and until the Corporation contains permits u/s 68F(1A) or the route is declared a notified one by means of a notification u/s 68D(3) of the Act, whichever event occurred earlier. The petitioner felt aggrieved and, therefore, challenged the legality of the said order by means of a revision No. 143 of 1982 before the Tribunal. In a nutshell his case was that he had every intention to make an application for a temporary permit and the Transport Authority without giving him any opportunity of doing so passed the aforementioned order. In the revision the petitioner prayed that the orders dt. Nov. 16, 1981 and April 5, 7 and 8, 1982 passed by the Transport Authority may be set aside. The Tribunal rejected the revision on two grounds. First, the petitioner could not have any grievance as on April 5, 7 and 8, 1982, his application for temporary permit was not pending before the Transport Authority. Secondly, the revision was incompetent as therein a prayer had been made to quash two orders of different dates.

3. Before the amendment of the Act by Act No. 56 of 1969 the position was that permanent stage carriage permits could be granted on a route covered by a notification u/s 68C of the Act if with respect to it no notification u/s 68D(3) had been issued. To put it differently, permanent permits could be granted to a private operator without any let or hindrance during the period when a notification u/s 68C has been issued and the issue of a notification u/s 68D(3) was being awaited. By Act 56 of 1969 Parliament made a drastic change and it imposed a ban on the grant of a permit during the period intervening between the date of publication u/s 68C of any scheme and the date of publication of an approved or modified scheme, in relation to an area or route or portion thereof, covered by such scheme. However, being conscious of the growing need of the travelling public it diluted the rigour of the embargo by inserting Sections 68F(1A) and 68F(1C). These provisions may be read:

"68F(1A)-- Where any scheme has been published by a State Transport Undertaking u/s 58C, that undertaking may apply for a temporary permit, in respect of any area or route or portion thereof specified in the said scheme, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme, and where such application is made, the State Transport Authority or the Regional Transport Authority, as the case may be, shall, if it is satisfied that it is necessary to increase, in the public interest the number of vehicles operating in such area or route or portion thereof, issue the temporary permit prayed for by the State Transport Undertaking."

"68F(1C).-- If no application for a temporary permit is made under Sub-section (1A), the State Transport Authority or the Regional Transport Authority, as the case may be, may grant, subject to such conditions as it may think fit, temporary permit to any person in respect of the area or route or portion thereof specified

in the scheme and the permit so granted shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route or portion thereof."

4. So far as the grant of permits u/s 68F(1A) to the Corporation is concerned, the Transport Authority concerned has no option. It is duty bound to grant a permit or permits to the Corporation, if an application is made in that behalf. Of course, the relevant Transport Authority has to first arrive at a conclusion that it is in the public interest to increase the number of vehicles already operating on a particular route. In the case of the Corporation a Transport Authority is not required to undergo the exercise of pick and choose. However, when the provisions as contained in Section 68F(1C) are attracted and the relevant Transport Authority is set with the task of granting temporary permits then it becomes obligatory upon it to pick and choose the best candidate for a permit from amongst the various applicants, if the number of applicants exceed the number of permits to be granted. In Section 68F(1C) it is true, no criteria of selection has been laid down. But that does not mean that a particular Transport Authority has an absolute discretion in the matter. Section 2(20) defines a permit as meaning the document issued by a Transport Authority authorising the use of a transport vehicle as contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle. In the definition clause no distinction between a permanent or a temporary permit has been shown. Both the categories are included in it. Sub-section (i) of Section 47 enjoins that a Regional Transport Authority shall, in considering an application for a stage carriage permit have regard to the matters enumerated therein from Clause (a) to Clause (f). It also provides that a Regional Transport Authority shall take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or public authority within whose jurisdiction any part of the proposed route or area lies.

5. The interest of the travelling public is the sheet anchor around which the machinery of the Act rotates. Ostensibly, there are two private parties or contenders for the grant of a permit, either permanent or temporary, yet there is a latent party, namely, the travelling public which is the real party in the controversy and the authorities while adjudicating upon the claims of the rival parties have to take the decision keeping in view the overriding interest of the travelling public. The considerations as enumerated in Sub-section (1) of Section 47 including the representations referred to therein are the guiding factors even when temporary permit is being granted u/s 62 of the Act. See *Shiv Charan Das Sharma Vs. Regional Transport Authority and Others*, . There is no reason as to why the same considerations should not operate while granting a temporary permit u/s 68F(1C).

6. Chapter IVA of the Act, in which Section 68F (1C) falls, is not a self contained one. If that was so there was no necessity for the Legislature to keep Section 68B on the statute book. This provision gives an overriding effect to the provisions contained in Chap. IVA over the provisions contained in Chap. IV, wherein Section 47 falls, only in a situation where there is a conflict or repugnancy between the provisions contained in the two chapters. To put it differently, the provisions as contained in Chap. IVA will override those contained in Chapter IV when the provisions of the two chapters cannot co-exist. So far as the applicability of the provisions as contained in Sub-section (1) of Section 47 is concerned, there is neither any conflict nor any repugnancy between them and the provisions to be found in Section 68F (1C).

7. Recently Section 68F(1C) came up for consideration before the Supreme Court in the case of Smt. Praveen Ansari and Others Vs. State Transport Appellate Tribunal, Lucknow and Others, . It was observed : --

".....The correct approach would be that keeping in view the strength of vehicles fixed by the competent authority, the authority should first examine application for number of temporary permits made by the Corporation, if the Corporation has made application for temporary permits covering all the vacancies the matter ends there. But if the corporation does not apply for all the permits but only for some, the inescapable conclusion is that for the remaining strength the Corporation has made no application for the temporary permits and Section 68F(1C) would be squarely attracted. In that event the State Transport Authority or the R.T.A. as the case may be will have to examine the applications for temporary permits made by persons other than the Corporation and if they are found to be competent, eligible and qualified they may have to be granted permits for the benefit of the large travelling public. That is why power to increase strength of fleet operating on the route is conferred and has to be exercised in public interest meaning transport facility to travelling public."

8. A statutory duty is cast upon the competent authority to grant temporary permits u/s 68F(1C) to competent, eligible and qualified persons. In order to discharge this obligation it is implicit that the Transport Authority should have a wide field of selection. Furthermore, for performing the aforesaid task effectively the Transport Authority should have the benefit of having the representations referred to in Section 47 before it. The scheme of the Act is that even while acting u/s 68F(1C) the Transport Authority is exercising a quasi-judicial power. Its actions have to be not only in conformity with the principles of natural justice but it has also to demonstrate that it is free from jobbery and nepotism. Its actions have to instill a feeling of justice and fair play in all concerned. These obligations or duties create corresponding rights in certain quarters which are recognised by the statute itself. Therefore, it is implicit in Section 68F(1C) that the Transport Authority should invite applications for the grant of temporary permits after giving due publicity so that proper candidates for permits may enter the areas. Further, the publicity that the Transport Authority is proposing to

grant a permit or permits will afford an opportunity to the various categories of persons enumerated in Section 47 to make their representations.

9. The aforementioned statutory duties or obligations of the Transport Authority create a corresponding right in a person to make an application for the grant of a temporary permit and get it considered in accordance with law. Therefore, an intending applicant for a permit should be given a reasonable or a fair opportunity for making such an application.

10. Article 19(1)(g) of the Constitution guarantees to a citizen the right to practise a profession or to carry on any occupation, trade or business. The trade or business of running passenger transport vehicles is not a tree one. It is regulated by law, namely, the provisions contained in the Act. The provisions of the Act have imposed certain restrictions on the right to carry on trade or business and these restrictions have been recognised as reasonable. Section 68F(ID) is one of such restrictions. It is now well settled that the right to carry on transport business is a fundamental one and subject to reasonable restrictions. See *Raman and Raman Ltd. Vs. The State of Madras and Others*, . The Constitution does not guarantee a permit either permanent or temporary to a citizen but it does guarantee the limited right to a citizen of making an application for grant of permit for being disposed of in accordance with law. In other words, the Constitution recognises that a citizen should be given an opportunity of entering the trade or business of transporting passengers. This limited right of the petitioner has been violated by the Transport Authority by its impugned order dt. April 5, 7 and 8.

11. The scheme of the Act does not countenance the receipt of applications even for temporary permits by the competent authority in a secret manner or through the back door. In the instant case we have seen that the Transport Authority resolved that the respondents 3, 4 and 5 should continue to get temporary permits at an interval of every four months. This decision has clearly denied not only to the petitioner but to others the limited statutory right of making an application for the grant of a temporary permit. The petitioner, therefore, suffered a legal injury when the Transport Authority took the impugned decision and, accordingly, acquired sufficient interest to maintain a revision before the Tribunal. He suffered a legal grievance when he was deprived of his right to make an application and compete as against the respondents 3, 4 and 5, He, therefore, was entitled to be considered as a person aggrieved j and the Tribunal patently erred in holding otherwise.

112. No doubt, the petitioner challenged the legality of two different orders of different dates by means of single revision. Section 64A gives a discretion to the Tribunal to call for the record of a case in which an order has been passed and pass such order as it thinks fit. This can be done either at the instance of a party who has a legal grievance or by the Tribunal suo motu. Once the machinery as envisaged in Section 64A has been set into motion at the instance of a party, it becomes the duty of the Tribunal to look into the matter. The record of the case

was before the Tribunal and in that record there were two orders. It was in the discretion of the Tribunal, keeping in view the interest of justice, to interfere with either both the orders or with one of the orders or with none of them. It was equally open to it to have given to the petitioner an option to press for the setting aside of either of the two orders. It, in my opinion, committed a patent error in rejecting the revision outright on the mere ground that two orders had been impugned in it.

13. Now arrives the stage of granting an appropriate relief to the petitioner. I have already held that the Transport Authority acted illegally in passing the order dt. April 5, 7 and 8 without giving any opportunity to the petitioner and others to make an application or applications for temporary permits. In these circumstances, no useful purpose will be served in remanding the matter to the Tribunal for the rehearing of the revision application. I consider it appropriate in the interest of justice that the order of the Transport Authority dt. April 5, 7 and 8, 1982, in so far as it directs its secretary to continue to issue temporary permits to the respondents 3, 5 and 6 on the route after interval of every four months, should be quashed. The Transport Authority shall invite applications for the grant of three temporary permits after giving due and proper publicity to the same. It shall thereafter consider the applications on merits and select the best three candidates. It shall also record its reasons, though in brief, for making a particular selection or selections and for rejecting the other applications. However, it is made clear that if the Corporation chooses to make applications u/s 68F(1A) for the three permits, then the question of permits being granted u/s 68F(1C) would not arise. Lest the interest of the travelling public may not suffer, the respondents 3, 4 and 5 shall be permitted to operate their vehicles till the Transport Authority takes a fresh decision in the light of the directions given by me.

14. It appears that the Tribunal disposed of by a common order the Revision No. 143 of 1982 preferred by the petitioner, along with other revisions, namely, Revisions No. 124 of 1981 and 142 of 1982. The revisions No. 124 of 1981 and 142 of 1982 were preferred by the existing operators against the decision of the Transport Authority that there was need for the three additional stage carnages on the route. They also challenged the grant of the permits to the respondents 3, 4 and 5. I make it clear that this judgment is confined to the order of the Transport Authority that in future its Secretary will continue to issue temporary permits to the respondents 3, 4 and 5 at an interval of every four months. I also make it clear that I am not expressing any opinion on the findings recorded by the Tribunal in Revisions No. 124 of 1981 and 142 of 1982 in the impugned order.

15. This petition succeeds and is allowed. The order dt. 4th Nov., 1982 passed by the Tribunal in Revision No. 143 of 1982 alone is quashed. The order dt. April 5, 7 and 8, 1982 passed by the Transport Authority in so far as it directs its Secretary to continue to grant temporary permits to the respondents 3, 4 and 5 on the route at an interval of every four months is also quashed. The Transport

Authority shall now grant temporary permits in the route in accordance with law and in the light of the observations made above. The parties are directed to bear their own costs.