
(1968) 05 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Special Appeal No. 23 of 1967

Automobile Transport Rajasthan (P) Ltd., Ajmer

APPELLANT

Vs

The Regional Transport Authority, Jaipur and Others

RESPONDENT

Date of Decision : 01-05-1968

Acts Referred:

Motor Vehicles Act, 1939 — Section 59(2), 60(1)

Citation : AIR 1968 Raj 334 : (1968) RLW 571

Hon'ble Judges : G.M. Mehta, J;D.M. Bhandari, J

Bench : Division Bench

Advocate : D.P. Gupta, for the Appellant; B.L. Maheshwari, for the Respondent

Final Decision : Allowed

Judgement

Bhandari, J.—This is a special appeal against the judgment dated 29th March, 1967, of Jagat Narayan J. quashing the order of the Regional Transport Authority, Jaipur, by which it allowed the replacement of the bus RJZ 203 by another bus of 1958 model on payment of Rs. 250 as composition fee. The learned single Judge further remanded the case to the Regional Transport Authority for reconsideration after issuing notice u/s 60(1)(c) of the Motor Vehicles Act, hereinafter called the Act. This order was passed by the learned single Judge on the writ petition filed by Messrs. Ganesh Bus Service, Beawar, under Article 226 of the Constitution. It had a stage carriage permit from Beawar to Pisangan route. The appellant in this appeal who was the contesting party in the writ petition had also a non-temporary stage carriage permit No. B. P. 1157 on the same route and this permit was valid upto 7th February, 1965. Bus No. RJZ 203 was covered by this permit. It is not in dispute that the appellant sold its bus to Shri Hastimal on 26th December, 1963. In the writ petition filed by Messrs. Ganesh Bus Service, respondent No. 3 in this appeal, it was contended that the said Hastimal obtained a non-temporary stage carriage permit from the Regional Transport Authority Jodhpur on Nagaur Khatu route on 27th December, 1963, which was valid upto 26th December, 1966, and bus No. RJZ 203 was covered by

that permit also. Shri Hastimal obtained a renewal of his permit on 16th August, 1966. and the same bus is covered by that route permit.

2. The appellant applied for renewal of its permit on 6th December, 1964, which was published in the Rajasthan Gazette. No objection was filed by respondent No. 3 to this application and the renewal of the permit was granted on 29th May, 1965. On 19th August, 1966 the appellant applied for replacement of bus RJZ 203 by another bus No. RJZ 2311. It may be mentioned here that before this date it had applied twice for replacement of its bus but no action was taken on its application. The application of the appellant for replacement was disposed of on 8th September, 1966, and it was ordered that entries be made in the permit on payment of Rs. 250 as composition fee for sale of the bus without sanction. In pursuance of this order, entries were made in the permit on 17th September, 1966.

3. Respondent No. 3 in its writ petition challenged the order of renewal dated 29th May, 1965, and also the order dated 8th September, 1966, on various grounds. Notice of the Writ petition was given to the appellant and to other parties to the writ petition. The learned single Judge held that so far as the renewal of the permit concerned, no objection could be taken by respondent No. 3 as no objection was filed when the application for renewal was published. But so far as the order of compounding was concerned, it was held to be without jurisdiction as in the opinion of the learned Judge the case of the appellant fell under Clause (c) of Section 60(1) of the Act. The learned Judge further observed as follows:

"When during the proceedings for replacement it came to the notice of the Regional Transport Authority that the respondent had ceased to own the vehicle covered by the permit it was its bounden duty to start proceedings u/s 80(1) for cancellation or suspension of the permit. It, however, did not do so as it was under the erroneous impression that it could compound the offence....."

The learned Judge, therefore, quashed the order of the Regional Transport Authority allowing replacement on payment of Rs. 250 as compounding fee and the case was remanded to the Regional Transport Authority for reconsideration after issuing notice u/s 60(1)(c).

4. This appeal has been filed by the appellant, who as already mentioned was respondent No. 3 to the writ petition and no appeal has been filed by Messrs. Ganesh Bus Service, Beawar, petitioner. The result is that the view taken by Jagat Narayan J. that the renewal of the permit could not be objected to has become final.

5. The only question to be determined in this appeal is whether the order of replacement of the bus passed by the Regional Transport Authority was proper.

6. The order of replacement is passed u/s 59(2) of the Act which runs as follows:

"The holder of a permit may, with the permission of the authority by which the

permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit."

At this stage, we may also refer to the following provisions of Section 60:

""60. Cancellation and suspension of permits :--

(1) The transport authority which granted a permit may cancel the Permit or may suspend it for such period as it thinks fit --

(a)

(b)

(c) if the holder of the permit ceases to own the vehicle or vehicles covered by the permit; or

(2)

(3) Where a permit is liable to be cancelled or suspended under Clause (a) or Clause (b) or Clause (e) of Sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then notwithstanding anything contained in Sub-section (1), the transport authority may, instead of the cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon."

It need not be stressed that Section 60 of the Act makes provisions for cancellation and suspension of permits in the circumstances mentioned in Sub-section (1) of that section. No proceedings were taken against the appellant either for the cancellation or suspension of its permit by the Regional Transport Authority. It may, however, be taken that the appellant itself volunteered to pay Rs. 250 as compounding fee when it prayed for replacement of its bus. The learned single Judge has pointed out that the Regional Transport Authority could not have acted u/s 60(3) as in this case the holder of the permit ceased to own the vehicle as mentioned in Section 60(1)(c). This is of course correct. But the learned single Judge has directed the Regional Transport Authority to take action against the appellant u/s 60(1).

7. Now u/s 60(1) it is not mandatory on the part of the transport authority to cancel or suspend a permit in cases referred from (a) to (f) in that subsection. It is only discretionary. It cannot be said that it was the bounden-duty of the Regional Transport Authority to take action u/s 60(1) if by saying so it meant that such duty was mandatory.

When it is discretionary for the transport authority to take action or not, the matter should have been left to it and a direction of this Court on a writ petition in which such a prayer was not made is, in our humble opinion, not a proper direction. This does not mean that the Regional Transport Authority concerned

has not the right to take action u/s 60(1) against the appellant if it thinks proper. We may in this connection refer to the following observations contained in the judgment of Subba Ran C. J in Gopal Krishna Motor Transport Co. Ltd. Vijaiwada v. Secy. Regional Transport Authority AIR 1957 AP 882:

""Section 60(1) does not impose an auto matic duty on the part of the Transport Authority to suspend or cancel a permit, if its condition is broken. It confers on them a duty to exercise discretion having regard to the facts of each case. Circumstances may be visualised when the Transport Authority may, in the exercise of discretion, excuse a transgression in a particular case if, in their opinion, there are valid reasons for doing so."

8. The main question, however, in this appeal is whether the order of replacement of the bus was rightly set aside by the learned single Judge. For this the provision contained in Section 59(2) is to be examined. It is contended by respondent No. 3 that the Regional Transport Authority could not have granted replacement as at the time the replacement was ordered, the appellant owned no vehicle which could be said to be covered by the permit. It had also sold bus RJZ 203 on 26th December, 1963. Learned counsel for the appellant has, however, argued that even when the permit-holder had ceased to be owner of the vehicle which was initially covered by the permit issued to it, the replacement could be ordered as it was only seeking to replace the vehicle which was covered by the permit. The argument is that suppose the vehicle of a permit-holder is burnt or is drowned, then he ceases to own any vehicle for the time being. Yet it will not be proper construction of Section 59(2) to hold that he cannot get that vehicle replaced and therefore, the expression "covered by the permit" cannot be construed as meaning that the permit-holder must own the bus on the date when he is applying for replacing it. In our opinion, this contention must be accepted.

9. The words "any vehicle covered by the permit" mean any vehicle mentioned in the permit. If a valid permit is subsisting, then even if the vehicle mentioned in that permit is lost or otherwise parted with, it cannot be said that no replacement can be ordered against the vehicle mentioned in the permit. Take another example. Suppose a holder of permit ceases to own a vehicle as he has sold it and an action is taken u/s 60(1) against such permit-holder by the transport authority concerned and his permit is suspended for some time, Such permit-holder applies after the period of his suspension that he may be allowed replacement of his old bus and so he takes action u/s 59(2). Can it be said that in these circumstances he will not be entitled to replacement as a matter of law? In a way he has ceased to be the owner of the vehicle "covered by the permit" if this expression is construed as meaning that the permit-holder should own the bus on the date of replacement. But still in our view, he may be granted replacement .

Otherwise it will mean that his permit is cancelled which power the transport authority concerned did not think it proper to exercise when considering whether

his permit should be cancelled or suspended and his permit was only suspended and not cancelled.

10. The result is that on the reading of Sub-section (2) of Section 59, it cannot be said that the Regional Transport Authority, Jaipur, had absolutely no power to order replacement in favour of the appellant. The order of replacement of the bus was, of course, subject to a condition, which the appellant fulfilled. We are not concerned with the condition, but we cannot hold that the order of replacement was illegal so as to be quashed by a writ of this Court. In this view of the matter, the order passed by the learned single Judge quashing the replacement, if we may say so with respect, does not appear to be proper.

11. The result is that the appeal is allowed, the judgment dated 29th March, 1967, is set aside and the writ petition is dismissed. Nothing contained in the judgment debars the Regional Transport Authority from taking any action if it thinks proper u/s 60(1) against the appellant.

12. No order as to costs.