

(1979) 07 RAJ CK 0027
In the Rajasthan High Court
Case No : Civil Writ Petition No. 856 of 1979

Balkishan

APPELLANT

Vs

State Transport Appellate Tribunal, Rajasthan, Jaipur and
Others

RESPONDENT

Date of Decision : 21-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 62(1), 64(1), 64A

Citation : AIR 1980 Raj 234

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : B.L. Maheshwari and R.N. Munshi, for the Appellant; R.R. Vyas, for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—The petitioner by this writ petition under Article 226 of the Constitution of India seeks to quash the order of the State Transport Appellate Tribunal, Rajasthan, Jaipur (hereinafter referred to as "the STAT") dated 31-5-1979 passed in revision No. 39/79 --Amraram v. The Regional Transport Authority, Jodhpur, and others, whereby four temporary permits granted to the petitioner and two others were cancelled.

2. In order to appreciate the controversy and points in issue, which need determination in the present writ petition, it is necessary to take into consideration some material facts.

3. There is a Nagaur-Khiyala nearly 40 miles long "C" class route in the Jodhpur region. The route was opened by the Regional Transport Authority, Jodhpur (hereinafter referred to as "the RTA") vide its resolution No. 79 dated 29-3-1957 and it granted two stage carriage permits to provide one daily return service. The RTA thereafter revised the scope on the said route from 2:1 to 4:2 vide its order dated 20-12-1968 after taking into consideration the factors mentioned u/s

47(1) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). On a revision by the existing operator, the scope was reduced to 2:2. There was a regular demand for the increase in the number of daily trips and the number of permits. The RTA directed the District Transport Officer, Nagaur, to conduct a survey on the said route and to submit his report and the District Transport Officer, Nagaur, after survey submitted his report recommending the increase in the number of daily return services as also in the increase of number of permits. After taking into account the relevant consideration, the RTA by its resolution dated 3-3-1979 increased the scope to six vehicles and four return services vide Annexure 5.

On 9-3-1979, the present petitioner submitted an application for the grant of temporary stage carriage permit on the aforesaid route, stating in para four of the application that there has been immense increase in the volume of traffic and inadequate number of services are operating on the said route creating a particular temporary need justifying for the grant of immediate temporary permits. It was also stated that the passengers are left behind in huge numbers and after providing only two return services there is left no other alternative arrangements for the passengers to have any service. The route passes through rural area and there is no other rail, road co-ordination. It was also stated that the RTA has increased the scope to six permits and four daily return services. There has been a regular demand for increase in daily trips from M.L.A., Collector, Nagaur and various other factors. Hence, a particular temporary need clearly exists on the route. There were four applications by three applicants for the grant of temporary permits.

On 22-3-1979 the RTA ordered for the grant of temporary permits for four months to the applicant on the circulation note submitted for orders by the Secretary, Regional Transport, Authority, Jodhpur, vide Annexure 7. The permit was issued to the petitioner on 26-3-1979 for a period of four months (Annexure 9). Amraram, respondent No. 3, preferred a revision petition No. 38 of 1979 against the resolution of the RTA dated 3-3-1979 revising the scope on the route and he also preferred revision No. 39 of 1979 against the order of the RTA dated 22-3-1979 granting temporary permits. The STAT in revision No. 38 of 1979 reduced the scope to five permits and four return services vide its order dated 24th May, 1979, (Annexure 11) and by its order dated 31-5-1979 in revision No. 39 of 1979 cancelled the temporary permits and remanded the matter to the RTA to consider the matter afresh. It is in these circumstances the petitioner has approached this Court to seek a remedy under its extraordinary jurisdiction, quashing the order of the STAT.

4. There are two principal grounds for attack against the order of the STAT raised by Shri Maheshwari, learned counsel for the petitioner. Besides those two principal grounds, which I shall be dealing hereafter elaborately, one more contention has been advanced to this effect that the order of the RTA granting temporary permits was appealable and revision against that order was

incompetent by the respondent Amraram, In my opinion this contention is absolutely devoid of any substance. It may be stated that the order of the RTA would have been appealable u/s 64(1)(f) of the Act when the grant of permit would have been opposed by the respondent No. 3. The temporary permits were granted on the circulation note of the Secretary. The respondent No. 2 had no opportunity to raise any objection against the grant of temporary permits. He filed objection only for revising the scope or strength on the route and no objections were submitted against the grant of temporary permits. Order u/s 64 (1) (f) of the Act is appealable when a person providing transport facilities, has opposed the grant of a permit and not otherwise. Thus, this contention is overruled.

5. The other two principal contentions advanced, are, --

(1) The STAT was wrong in holding that the RTA did not apply its mind to the facts of the case and that it granted temporary permits in disregard of the requirements of Section 62 (1) (c) of the Act. The RTA granted temporary permits after taking into account all relevant considerations regarding the existence of particular temporary need.

(2) The STAT failed to exercise its Jurisdiction u/s 64A of the Act to consider the question of grant of temporary permits when there was sufficient material on record and the STAT has seriously erred in not considering the material on record, its sufficiency or otherwise. Thus, it failed to exercise its judicial discretion properly.

6. As regards the first contention, Shri Maheshwari vehemently submitted that the RTA had in its view the application of the petitioner making explicit mention of the most inadequate transport service on the route creating a particular need justifying grant of immediate temporary permits. The circulation note of the Secretary also refers to the order dated 3-3-1979 whereby the scope on the route was revised to 6:4. In the said order the position of the traffic on the route was thoroughly considered, which makes out a case of particular temporary need for more services on the route. He also urged that both the revisions were heard together by the STAT, but orders were pronounced on two different dates. In its order dated 24-5-1979, in revision No. 38 of 1979, the learned STAT considered the necessity of the travelling public on the basis of the reports of overloading and challans and letter of the Collector, Nagaur, and observed that these factors speak eloquently about the inadequacy of the transport service on the route. A large number of documents showing the occasional checkings of the buses were produced to show that the buses were carrying the passengers more than their sitting capacity and at times the passengers were sitting on the roof. He urged that it cannot be conceived that the RTA did not consider the particular temporary need and granted temporary permits in disregard of the requirements of Section 62 (1) (c) of the Act.

It may be that existence of vacancy may not constitute a particular need, but in

the present case, according to Shri Maheshwari, apart from existing three vacancies case of particular need was made out on the basis of the material on record. Simply because the order of the RTA does not state specifically the reasons for the grant of temporary permits and a finding regarding the existence of particular temporary need, the order of the RTA is not rendered void and without jurisdiction and it cannot be said that the RTA did not apply its mind regarding the requirements of Section 62 (1) (c) of the Act. The learned counsel urged that Section 62 does not require recording of the reasons in the order itself and necessary material can be placed before the Court to show that there was necessity for the grant of temporary permits. In this connection reliance has been placed by Shri Maheshwari on the observations made in *Turabuddin Haji Niaz Ahmad and Others Vs. The Commissioner, Meerut Division, Meerut and Others*, and *Andhra Pradesh State Road Transport Corporation v. K. Venkataramireddy* 1970 UJ (SC) 408 It was also urged that this Court too has relied upon the above Allahabad case in *Bherulal Vs. The State Transport Appellate Tribunal, Rajasthan, Jaipur and Others*, Reliance has also been placed on the *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Sagar and Another*, for the proposition that temporary need can exist even where there is permanent need.

7. Shri Vyas, on the other hand, emphatically contended that the RTA while acting u/s 62 is required to function quasi-judicially and while granting temporary permits must record its reasons and findings on the matters enumerated in Section 62 (1) justifying the grant of temporary permits. In the absence of such a speaking and reasoned order with a clear finding as to the existence of particular temporary need, the order is bad in law and is void and without jurisdiction. This Court has consistently expressed its clear opinion that where the order granting temporary permits does not satisfy the requirements of Section 62 (1) (c) showing the application of mind by the RTA and recording a clear finding on particular temporary need, the order is unsustainable. Shri Vyas submitted that the learned STAT after considering the case law of this court has correctly reached a conclusion that the order of the RTA does not show application of judicial mind and the order has been passed without recording any reasons and any finding as to the existence of particular temporary need. He referred to the cases *Shrikishan Sayardevi Vs. The State Transport Appellate Tribunal and Others*, *Gafoor Vs. Regional Transport Authority, Jaipur Region and Others*, *Vijayasingh Kalyansingh v R.T.A. Jaipur* 1976 WLN (UC) 453 *Mohan Lal v. The Regional Transport Authority, Jodhpur* 1976 WLN (UC) 39 He also referred to an unreported judgment of this court in *S.B. Civil Writ Petition No. 179 of 1976 -- Mangilal v. The Regional Transport Authority, Udaipur* (decided on February 18, 1976). He further made his submissions by reference to the observations made by their Lordships of the Supreme Court in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*,

8. I have given my serious and anxious consideration to the contentions advanced before me by both the sides. It may be stated that Section 62

empowers the RTA to grant permits for a limited period not exceeding four months authorising the use of a transport vehicle temporarily without following the procedure laid down in Section 57, in the four situations enumerated in clauses (a) to (d) of Sub-section (1) of Section 62 of the Act. Clause (c) of Sub-section (1) of Section 62 is in respect of the situation of existence of a particular temporary need. While exercising the powers u/s 62, it cannot be denied that the RTA is required to function in a quasi-judicial manner. The observations made by their Lordships of the Supreme Court in *The Siemens Engineering and Manufacturing Co. of India Ltd v. The Union of India* (supra) are pertinent. It was observed that

"it is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons.

The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in the proper spirit and mere pretence of compliance with it would not satisfy the requirement of law".

9. If the order of the RTA is perused, it is evident that it does not record any reasons nor any finding as to the existence of a particular temporary need. It is a one line order, at the end of the circulation note to the effect "Temporary permits for 4 months granted to the four applicants." The question which emerges for consideration is that whether such an order fulfils the requirements of law and can it be taken that the RTA after examining the relevant material was satisfied regarding the existence of a particular temporary need and thereafter passed the order granting temporary permits? It is true that the circulation note of the Secretary makes a mention in Clause 4 relating to scope that the scope is 6:4 vide order dated 3-3-1979 and he further makes mention of the nature of the buses of each applicant, The buses of the other applicants were below model and the bus of the petitioner was not so and further the circulation note states that the applicants Jagdish Singh and Jai Singh were permit holders on Nagaur Didwana route and their permits were valid up to 30-6-1977. Thereafter their renewal applications were rejected and at present all the four buses were lying idle and not covered by any permit. The Secretary in his circulation note did not mention the purpose for which the applicants had sought temporary permits. He has not recommended nor made any note with regard to the considerations on the basis of which temporary permits could be issued. No such material has been placed before me on the basis of which it can be said that after examining the same the RTA formed an opinion about the existence of a particular temporary need, in the form of any noting by the RTA or expression of such an opinion in any other form. It may be that the RTA in its mental process might have formed such an opinion, but nothing has come on record which may manifest its opinion, though there may be sufficient material justifying the finding regarding the

existence of a particular temporary need, but the same cannot be read into the order of the RTA, as a result whereof temporary permits were ordered to be granted.

10. In *Andhra Pradesh State Road Transport Corporation v. K. Venkataramireddy* 1970 UJ (SC) 408 (supra) their Lordships of the Supreme Court, no doubt, made observations that an effort was made by the learned counsel to look for any document which would fulfil the requirement of a valid application u/s 62, but nothing could be shown to indicate the purpose for which the appellant asked for the grant of a temporary permit. These observations were made while their Lordships were considering that the application for grant of permit did not state any purpose for which the stage carriage permit was required. Had any document been shown, the purpose for which the permit is required, could be gathered. In my humble opinion, from the observations of their Lordships it cannot be taken that recording of reasons or giving of any findings by the RTA regarding purposes for which temporary permit may be granted is dispensed with. The observations came to be given while considering for what purpose the application was submitted.

11. In *Turabuddin Haji Niaz Ahmad and Others Vs. The Commissioner, Meerut Division, Meerut and Others, K.N. Singh, J.*, no doubt, observed that Section 62 does not require recording of reasons in the order itself and necessary material in support of the order can be placed before the court to show that there was necessity for the grant of temporary permit. However, it may be stated that the facts of the case did not warrant these observations, as the Secretary in his order granting the temporary permit referred to the resolution of the RTA wherein it had come to the conclusion that there was need of the travelling public and in order to meet that need temporary permits were granted. The RTA was, therefore, satisfied as to the existence of a particular temporary need. In the present case the order of the RTA does not refer to its earlier resolution. On the basis of the scope mentioned vide order dated 3-3-1979, it cannot be taken that the order revising the scope became part and parcel of the order granting temporary permits" and considerations which weighed, while revising the scope, weighed with the RTA while passing the order granting temporary permits. It may be stated that while revising the scope 50 per cent of the buses were added as reserve. While considering the question of a particular temporary need, this factor may or may not have any bearing.

12. In *Bherulal Vs. The State Transport Appellate Tribunal, Rajasthan, Jaipur and Others, Sachar, J.*, did not place reliance on the above observation of K. N, Singh, J. The Allahabad case was relied upon on the point that issue of a temporary permit by the RTA to meet the requirements of the travelling public is a good reason for the exercise of the powers u/s 62 (1) (c) of the Act. In *Bherulal's* case (supra) there was a firm finding that the requirement of the travelling public requires the grant of a temporary permit and it cannot be said that the RTA could not have come to this conclusion. Thus, *Bherulal's* case, that way does not

support the contention of the learned counsel for the petitioner,

13. I need not examine each decision referred to by Shri Vyas in detail. If, one looks to the ratio of the cases cited by Shri Vyas, it could be obvious that the RTA is required to record a clear and firm finding that a particular temporary need exists on the route, which alone can justify the grant of temporary permit. It is true that where interests of the travelling public are involved the matter should be viewed in a practical manner, as observed by Sachar, J., in Bherulal's case (supra) but from that it cannot be taken that the RTA need not fulfil the requirements of Section 62 (1) in its order. The order must exhibit the application of judicial mind. It is true that an elaborate order may not be recorded, but it must show that the requirements of Section 62 (1) were present in the mind of the RTA and those considerations weighed with the RTA while granting temporary permit. In the present case no reasons have been assigned and no finding has been recorded necessitating the grant of temporary permit. Such an order, in my opinion, is no order in the eye of the law and the requirements of Section 62 (1) (c) cannot be said to have been fulfilled. The learned Tribunal was perfectly justified in holding that the order granting temporary permits is without jurisdiction, as it does not show the application of mind by the RTA regarding the requirements of Section 62 (1) (c) of the Act.

14. The learned counsel for the petitioner further vehemently contended that on facts existence of a particular temporary need was never disputed by respondent No. 3 at any stage and on that basis grant of temporary permit should be sustained and the STAT was wrong in not considering it. Shri Vyas on the other hand, submitted that when the grant itself is not legal, it was not necessary to go into the question of fact and it was open to the respondent to challenge the legality of grant. I find force in the contention of Shri Vyas. As considered above grant was not justified in law and it was open to respondent No. 3 to challenge the same.

15. Coming to the second contention of the learned counsel for the petitioner I may state that the learned STAT, while conceding that it had jurisdiction and authority to examine the question of existence of a particular temporary need on the material on record and decide whether temporary permits should be granted or not, observed that it depends not merely on the application of the applicants for temporary permits, but for arriving at a conclusion there should be sufficient material available on record so as to see as to what is the temporary need of the travelling public and what facilities are required for the same. The learned STAT without examining the material on record proceeded to observe that there is not enough material for it to come to any finding about the existence of temporary need. It may be stated that it was no way of dealing with the question. Whatever material was there on the record that material ought to have been examined, when it was placed before it and after considering that material, if it would have found that the material is insufficient, it could have proceeded to send the matter back to the RTA. Simply recording, without discussing the material on record,

that there is not enough material, was not called for. Besides the contents of the application showing the existence of a particular need it had before it all those circumstances which were taken into consideration while determining the question of scope on the route. In its order dated 24-5-1979 the Tribunal observed that the factor of overloading, the challans and the letter of the Collector spoke eloquently about the inadequacy of the transport service on the route. Besides, that, the petitioner also presented receipts of Rajasthan passengers and goods tax. As stated the STAT failed to consider the material on record and simply mentioned that there is not enough material and disposed of the question, stating that the matters are such which require a detailed consideration and without full particulars being available, judicial discretion cannot be properly exercised. In such a state, I find force in the contention of the learned counsel for the petitioner.

16. As regards the second contention of the learned counsel for the petitioner, Shri Vyas submitted that the STAT had no jurisdiction u/s 64A in the revision petition of the respondent No. 3 to consider the material regarding the existence of a particular temporary need and validate the grant of temporary permits. He urged that u/s 64A Of the Act, if the impugned order is found to be improper and illegal, the STAT may pass such order in relation to the case, as it deems fit in favour of the petitioner before it and not in favour of the respondents before it. I am unable to agree to this contention of the learned counsel. The revisional power conferred on the STAT admits of no such limitation, it is not necessary that appropriate order, which the STAT deems proper to pass, must necessarily be an order in favour of the petitioner before it. It may pass any order which the circumstances and justice of the case may require and if may be an order in favour of the petitioner before it or in favour of the respondents. If there has been any lacuna or defect in the order of the RTA, the same can be made good by the STAT and the order of the RTA may be maintained after rectifying or curing that defect or validating the same.

17. Shri Vyas further contended that in case the order of the Tribunal would be set aside, it would mean the restoration of the order of the RTA, which is patently erroneous. In its extraordinary jurisdiction, this Court, under these circumstances, should not interfere and reliance was placed on the decision *Gani Mohamed v. The State Transport Appellate Tribunal* 1976 Raj LW 201: AIR 1977 NOC 183. I do not find much substance in this contention of Shri Vyas, as well. It would all depend on the facts and circumstances of each case as to whether the extraordinary jurisdiction of this Court should be exercised or not. In the present case the order of the RTA does not record any finding as to the existence of a particular need and does not state any reason for grant of temporary permit, but if there is material on the basis of which a finding can be arrived at, then, in my opinion, the matter can be sent back to the STAT to examine that material and if the matter is sent back to the STAT, it would not mean that illegal order without jurisdiction of the RTA is allowed to prevail. That illegality can be set right by the STAT if it records a finding as to the existence of a particular temporary need and

thereby validate the grant of temporary permits.

18. Mr. Vyas next contended that the petitioner was in collusion with the authorities and the matter was not allowed to be considered in the meeting, so his conduct disentitles him to claim any relief. In this connection it may be pointed out that the allegation of respondent No. 3 is bald and does not stand substantiated. I am not inclined to agree that the petitioner is in any way disentitled to claim any relief on the basis of the alleged conduct, which is not established.

19. It was next contended by Shri Vyas that the order of remand by the STAT was discretionary and more particularly in the circumstance that the scope was reduced by the STAT to 5, whereas the RTA granted four temporary permits. I have already considered above that when there was some material on record, the STAT should have considered that material and it cannot be said that the discretion for remand has been properly exercised without considering the sufficiency or otherwise of the material, It may be stated that looking to the nature of the matter, wherever possible recourse to the order in the nature of remand should not be taken, more particularly when interests of the general public are involved. In the instant case it was only a question of grant of temporary permit. Sufficient time had already elapsed. If material would have been considered the STAT might have reached to some conclusion as to the existence of a particular temporary need and could have also considered the cases of each of the temporary permit holders comparatively. After consideration of the material on record, if conclusion as to the existence of a particular temporary need, could not be reached, the matter could have been referred back to the RTA.

20. In view of what I have discussed above, in my opinion, the order of the STAT cancelling the temporary permits, to the extent of the petitioner, deserves to be set aside.

21. Accordingly, the writ petition is allowed. The impugned order of the STAT cancelling the temporary permit of the petitioner is set aside and the case is sent back to the STAT for considering the matter relating to the grant of temporary permit afresh on the basis of the material on record or such further material which may subsequently come to its notice or placed before it.