

(1952) 02 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 114 of 1950

Banamali Dalbehera

APPELLANT

Vs

Chairman, Provincial Transport Authority and Others

RESPONDENT

Date of Decision : 14-02-1952

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 57, 57(7)

Citation : AIR 1953 Ori 235 : (1952) 18 CLT 296

Hon'ble Judges : Jagannadhadas, C.J.;Narasimham, J

Bench : Division Bench

Advocate : B.K. Pal and S.K. Ray, for the Appellant; B. Das, P. Mohanty and S. Mukherji and A.G., for the Respondent

Final Decision : Dismissed

Judgement

Jagannadhadas, C.J.—This is an application for the issue of a writ against the Provincial Authority of Orissa and the Regional Transport Authority of Cuttack District in the following circumstances :

The applicant before us along with opposite party Nos. 3, 4 and 5, viz., Srimati Khirodemani Dasi, Debendra Nath Misra and Narayan Patro, and quite a large number of others, were applicants for permits to ply stage-carriages on the Cuttack-Niali Road. These applications were considered by the Regional Transport Authority, Cuttack, at its meeting held on 3-2-50 and permits were granted to opposite party Nos. 3, 4 and 5 before us. The applications of all others including that of this applicant were rejected. As against this decision of the Regional Transport Authority, he went up in appeal to the Chairman, Provincial Transport Authority. On that appeal, the decision taken by the Regional Transport Authority was affirmed. Hence this application before us for a writ to quash the above orders and for a direction to those authorities to reconsider his application on the ground of certain illegalities.

2. It would appear that on this route, there were originally three buses plying

and that the Regional Transport Authority decided u/s 48, Motor Vehicles Act, to increase the number of stage-carriages on the route from three to six at their meeting held on 17-1-49. A number of applications were accordingly made by various persons for the grant of these additional three permits. They actually came up for consideration before the Regional Transport Authority at its meeting on 3-2-50. Pending the issue of the permanent permits for the additional three buses, temporary permits were issued as follows :

On 21-3-49, two persons, (i) Khirodemani Dasi, and (ii) Mohendra Nath Aich, were given temporary permits. The applicant before us is the transferee of the bus of Mohendranath Aich. He obtained a temporary permit in his own name from 7-11-49. Opposite party No. 4 obtained a temporary permit on 4-1-50 and opposite party No. 5 obtained a temporary permit on 6-1-50. The Regional Transport Authority in the minutes of its meeting held on 3-2-50 relating to permits for the Cuttack-Niali route stated as follows :

"All the applications for stage carriage permits in respect of the three vacancies on the route Cuttack-Niali were considered. The applicants present and the lawyers concerned were heard. It was resolved that permits be given for this route to (1) Srimati Khirodemani Dasi (2) Sri Devendranath Misra (3) Sri Narayan Patro for the following reasons :

(a) These persons are already plying buses on this line on the basis of temporary permits and as such have gained experience of this line,

(b) There has been no complaint against them so far. The mere fact that these persons have temporary permits for this route has not weighed with the R. T. A. in allotting the vacancies to these persons."

3. This decision is attacked on the following grounds :

(i) It violates the mandatory provision of S. 57(7), Motor Vehicles Act, inasmuch as no reasons for the refusal to grant the permit to the applicant have been stated therein;

(ii) The applicant was holding the temporary permit on the route for a longer period than opposite party Nos. 4 and 5, and) therefore, on the very ground No. 1 stated by the Regional Transport Authority for selection, the applicant had a better claim; and

(iii) There were quite a number of other relevant considerations applicable to this applicant as stated in his application for the permit which if duly considered should have weighed with the R. T. A. in his favour in preference to the others, for instance, the fact that he is an old bus owner having large experience, that he is financially able to maintain the vehicle and, therefore, could ensure better service to the travelling public &c.

4. The refusal of a permit without taking these factors into consideration and without assigning any reason is attacked as being illegal. On appeal to the

Provincial Transport Authority, the applicant further urged, in view of the date of publication of the application u/s 57(3) fixing 5-1-50 as the date before which representations were to be submitted, that the grant of temporary permits to opposite party Nos. 4 and 5 was mala fide, i.e. deliberately for the purpose of qualifying them for the grant of permanent permits. It was, in addition, argued in this Court that in view of this date and in view of the fact that the additional buses fixed were only three, the grant of the 4th temporary permit in favour of opposite party No. 5 was invalid and that his alleged experience was not a valid factor for consideration. It would, however, appear from the records before us that one of the three buses for which permanent permits had already been granted, namely, the State Transport Company Bus, was for some reason or other not running for sometime, and hence by the time the 4th temporary permit was issued, there were probably only two of the permanent buses running. There is, therefore, no substance in the contention that the issue of the temporary permit to opposite party No. 5 was invalid. There may be some room for suspicion that the issue of temporary permits to opposite party Nos. 4 and 5 for short periods, i.e., from 4-1-50 to 3-2-50 and from 6-1-50" to 31-1-50 respectively, was meant to afford them some qualification by way of experience and was not bona fide. We have, however, no material before us to find it to be positively so. It would appear from the very application for the temporary permit made by the applicant on 3-11-49 that there was a great demand for the needs of the travelling public and great inconvenience and trouble to the public was being caused for want of sufficient services; and it may be that these two temporary permits were issued owing to the exigencies and needs of the traffic.

5. The substantial points, however, that have been raised before us, are (i) that the refusal of permit to the applicant and the preference shown to the other three is arbitrary and is based on a wilful abstention from considering the relevant factors which were in favour of the applicant and which were in fact Placed before the Regional Transport Authority; and (ii) that the order is illegal inasmuch as the authority did not state the reasons for the refusal which they were bound to do u/s 57(7), Motor Vehicles Act. The order of the Provincial Transport Authority also is attacked on the ground that while it noticed that the provisions of Section 57(7) had been violated, it brushed it aside as being 3 technical one and it committed the same error of not noticing the better claims that the applicant had over other grantees. There can be no doubt that this Court can interfere and issue a writ against statutory Tribunals like the Regional Transport Authority and the Provincial Transport Authority if it is shown that their decision disclose a violation of the provisions of the Act and are proved to be arbitrary.

6. In the present case, the orders of the Regional Transport Authority and of the Provincial Transport Authority do not disclose any serious consideration of the merits of the applicant's claim. The minutes of the Regional Transport Authority, in so far as they relate to the present question, show inconsistency. In the first resolution, it is said that the grantees were given permits, because they have

gained experience on the basis of temporary permits. In the next breath, it is stated that the mere fact that these persons have temporary permits for this route has not weighed with them and what else weighed is not stated. The Provincial Transport Authority, as the appellate authority, says : "As regards past experience, the applicants are as good or as bad as any of the persons who have been granted the route permits". This can only indicate that no attempt has been made to apply the mind seriously to weigh as between the respective claims of the rival applicants. Thus there is very considerable room for the criticism that neither the Regional Transport Authority nor the appellate Provincial Transport Authority have discharged their statutory duties in this behalf responsibly and with due care and consideration.

It would also appear prima facie that Section 67(7) has been violated. That sub-section says: "When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal." The minutes of the Regional Transport Authority dated 3-2-50 do not disclose any reason for the rejection of the petitioner's application. It is suggested that this sub-section has no reference to the minutes and that no obligation is cast to record all the reasons for the rejection of a hundred possible applicants in the minutes and that what all the sub-section contemplates is a communication of the reasons for refusal to each rejected applicant by some person competent to speak on behalf of the Regional Transport Authority. Assuming, without deciding, that this is correct, it has not been shown to us that even this has been done, Section 57(7) therefore appears to have been violated. For the foregoing reasons, it does appear that the rejection of the petitioner's application is prima facie arbitrary.

7. We refrain, however, from pronouncing any such positive opinion and giving effect to it, because our attention has been drawn to a letter of the Chairman, Regional Transport Authority, dated, 18-4-50, to the Secretary, Provincial Transport Authority which is in the record. That letter states as follows :

"The case of Sri Banamali Dalbehera (the present petitioner) who has a number of vehicles on other routes likewise was not also considered to be a better case than the cases of Sri Devendranath Misra and Sri Narayan Patro, who produced two new vehicles and the Regional Transport Authority unanimously decided to grant them permits."

It has been pointed out to us that by virtue of Section 64 of the Act, the original authority gets an opportunity to be heard on an appeal to the prescribed authority and that this letter by the Chairman of the Regional Transport Authority to the Secretary, Provincial Transport Authority, is in exercise of this opportunity. It looks probable. It is, therefore, a relevant material for our consideration. In the face of that letter, we cannot positively find that the rejection is arbitrary, inspite of there being ample reasons to say so, as already noticed. Learned counsel for the applicant urged that this letter dated 18-4-50 is an after-thought to cover up the lacuna of the minutes dated 3-2-50 and the violation of Section

57(7). In an appropriate case, we might have considered the permissibility and feasibility of allowing the applicant an opportunity for making out that what is stated in the letter dated 18-4-50, is an after-thought. In view, however, of the long lapse of time of over two years by now since the permits have been issued to the opposite parties, and in view of the possible dislocation to public essential services that our interference at this stage might cause, we decline to grant any such opportunity.

8. We accordingly dismiss the application but without costs. We trust j however, that the authorities concerned will give adequate consideration to the claims of the applicant and deal with the same at an appropriate time without giving scope for the attacks that have been made against their orders in this application.

Narasimham, J.

9. I agree.