

(1975) 03 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 404 of 1975

Bheru Lal	Vs	APPELLANT
The State Transport Appellate Tribunal and Others		RESPONDENT

Date of Decision : 20-03-1975

Acts Referred:

Motor Vehicles Act, 1939 — Section 45(1)

Citation : (1975) 8 WLN 90

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—This writ application raises an important question viz. whether the first proviso to Sub-section (1) of Section 45 of the Motor Vehicles Act, 1939 (Act No. 4 of 1939) (which will hereinafter be refined to as "the Act"), applies to the case of an application for a temporary permit also. It reads as under:

45 General provision as to applications for permits : (1) Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicles:

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles.

2. The question arises in the following circumstances.

3. There is Shahpura-Kekri route of 40 miles, out of which 16 miles lie in Udaipur region and 24 miles lie in Jaipur region. The petitioner applied for a temporary permit on this route to Regional Transport Authority, Udaipur. The non-petitioner

No. 3 Messrs. Kailash Bus Service, which is the existing operator on this route, opposed the application filed by the petitioner on two grounds viz. (1) that applications for grant of a new permit on the route in question u/s 46 of the Act were pending before the Regional Transport Authority, Jaipur and, therefore, no temporary permit could be granted in respect of this route, and (2) that the Regional Transport Authority, Udaipur has no jurisdiction to entertain the application, as the major portion of the route lies within the region of the Regional Transport Authority, Jaipur. The objections raised by the non-petitioner No. 3 were over-ruled and the Regional Transport Authority Udaipur by its resolution dated 27th November, 1974 (Ex P/1) allowed the petitioner's application and granted temporary permit to him on the route in question for a period of four months commencing from 9th December, 1974 to 8th April, 1975.

4. Aggrieved by the decision of the Regional Transport Authority, Udaipur, the non petitioner No. 3 filed appeal and the State Transport Appellate Tribunal, Rajasthan, Jaipur, by its order dated 10th February, 1975, allowed the appeal and set aside the resolution of the Regional Transport; Authority, Udaipur dated 27ib Nov 1974 holding that it had no jurisdiction to entertain the petitioner's application for grant of a temporary permit on the route in question, as the major portion of the route admittedly lies within the jurisdiction of the Regional Transport Authority, Jaipur. The other ground raised by the non petitioner No. 3 in opposition to the petitioner's application, that two applications for grant of new permits on the route in question were pending u/s 46 of the Act, was, however not decided, as the petitioner was granted the desired relief on the first ground. It is this order of the State Transport Appellate Tribunal, Rajasthan, Jaipur dated 10tb February, 1975 (Ex. P/10), which has been called into question by the petitioner in this writ petition.

5. It has been held by this Court in Aman Khan Vs. Sheo Onkar and Others, that "Section 45 is in the nature of a complete Code so far as the filing of applications over inter regional routes and concerned." It was observed that the obvious purpose underlying the proviso (1) to Sub-section (1) to Section 45 of the Act, therefore, was to remove uncertainty about the forum which had to be approached and it was, therefore, clearly provided as to before which authority an application for a permit on the inter regional route was to be made.

6. Learned Counsel for the petitioner tried to distinguish the aforesaid ruling on the ground that it applies only to applications for non-temporary stage carriage permits and not to applications for temporary stage carriage permits. He has further invited my attention to Section 63(4) of the Act in support of his arguments that a Regional Transport Authority within whose region even a minor portion of the route lies has jurisdiction to issue a temporary permit. Section 63 (4) reads as thus:

63(4) Notwithstanding anything contained in Sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under Clause (a) or Clause (c) of Sub-section (1) of Section 62 to be valid in another region or

State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that State, as the case may be.

7. the argument of the learned Counsel for the petitioner is that by virtue of Section 63 (4) of the Act, the case of grant of a temporary permit is taken out of the purview of the first proviso to Sub-section (1) of Section 45. He has frankly stated that there is no direct authority on the point and that his contention is based solely on the interpretation of Section 83(4).

8. It may be observed that Section 63 deals with validation of permits for use outside the region in which they are granted. Now if Sub-section (4) of Section 63 is read in this context, it means that a temporary permit issued by the Regional Transport Authority of one region will become valid in another region also provided the Regional Transport Authority of the other region gives its concurrence. But it pre-supposes that the Regional Transport Authority issuing to permit must have jurisdiction and must be competent to issue the same. In my opinion, it does not deal with the competence or jurisdiction of the Regional Transport Authority to issue a temporary permit. That matter has been dealt with in proviso to Sub-section (1) of Section 45 which Regional Authority will be competent to entertain an application for a stage carriage permit when it is proposed to use the vehicle in two or more regions lying within the same State or in different States and I do not see any warrant for holding that the operation of this proviso is restricted only to non-temporary stage carriage permits and not to temporary stage carriage permits.

9. It is important to note that the word used in Section 45 is "a permit". There is nothing in the section to restrict its operation to a upon temporary stage carriage permit only.

10. "Permit" has been defined by Section 2(23) as follows:

"Permit" means the document issued by the Commission or a State or Regional Transport Authority authorizing the use of a transport vehicle as a contract carriage, or stage carriage, or authorizing the owner as a private carrier or public carrier to use such vehicle.

Thus the word "permit" includes both a non-temporary stage carriage permit as well as a temporary stage carriage permit. The heading of Section 45 it mentioned as "General Provision as to applications for permits". Hence, unless there is a mention any where in the section to specific type of permits it would not be unreasonable to include non-temporary stage carriage permits as well as temporary stage carriage permits in the word "permit" where ever it has been used.

11. It is true that in Aman Khan Vs. Sheo Onkar and Others, the Court was dealing with an application u/s 46 of the Act and the case of temporary stage carriage permits was not directly in issue. But, in my opinion, the observations

made in the case to the jurisdiction of Regional Transport Authority to entertain an application for a permit apply with equal force to temporary stage carriage permits also. The previous state of law before Section 45 was amended in its present form was examined and so also the provisions of Section 63 of the Act. Their Lordships were pleased to hold that "this proviso (referring to first proviso to Sub-section (1) of Section 45), therefore, clearly lays down in unmistakable terms the jurisdiction of a Regional Transport Authority in the matter of entertaining applications". I am, therefore, of opinion that the first proviso to Sub-section (1) of Section 45 applies to an application for a temporary stage carriage permit also and, therefore, the application in the present case for a temporary stage carriage permit should have been filed before the Regional Transport Authority, Jaipur within whose region, admittedly, the major portion of the region in question lies and as a necessary corollary the Regional Transport Authority, Udaipur, had no jurisdiction to entertain the application and allow the same.

12. Faced with this position, learned Counsel for the petitioner submitted that the non-temporary stage carriage permit granted to the predecessor in title of the non-petitioner No. 3 in the year 1980 suffers from the same infirmity. I have not examined this aspect of the case. But even assuming the contention of the petitioner in this respect to be correct, two wrongs cannot make one right & I cannot uphold the validity of the permit granted to the petitioner (sic) which, according to me, was without jurisdiction, merely because the non petitioner No. 3 was also able to get a permit in violation of mandatory provisions contained in first proviso to Sub-section (1) of Section 45. The petitioner may, if so advised, take appropriate action in this respect, in case any remedy is open to him.

13. Learned Counsel for the respondents tried to support the impugned order of the State Transport Appellate Tribunal, Rajasthan, Jaipur (Ex. P/10) on the alternate ground not decided by the State Transport Appellate Tribunal viz. that the application did not lie because two applications for grant of new permits on the route in question u/s 46 of the Act were pending. Learned Counsel for the petitioner has tried to refute this contention on the ground that no application was pending before the Regional Transport Authority, Udaipur, but, as a matter of fact, they were pending before the State Transport Authority, Jaipur and there was no vacancy against which a new permit could be granted. I do not consider it necessary to deal with this point and decide it for the reason that decision on the first point is sufficient to uphold the impugned order of State Transport Appellate Tribunal, Rajasthan, Jaipur, dated 10th February, 1975.

14. In the result, this writ petition is dismissed, but without any order as to costs.