

(1957) 05 AHC CK 0013

In the Allahabad High Court

Case No : Civil Misc. Application No. 71 of 1955

Brij Bhusan Pandey

APPELLANT

Vs

State Transport Authority, Lucknow and Another

RESPONDENT

Date of Decision : 07-05-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 3
Motor Vehicles Act, 1939 — Section 58, 60

Citation : AIR 1958 All 30

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : A.J. Fanthome, for the Appellant; B.K. Dhaon and B.N. Roy, for the Respondent

Final Decision : Allowed

Judgement

V.D. Bhargava, J.—This is a petition under Article 226 of the Constitution filed by one Brij Bhushan Pande against the Transport Authority, U. P. and the Regional Transport Authority in the Gorakhpur Region.

2. The facts of the case are that the petitioner has been plying a stage carriage since 1942 on the Ballia Bansdith-Manior Sisota route. As was the custom from the year 1940 (sic) he was given a temporary permit for three years at a time. After the decision of the Full Bench case, Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others, the petitioner also made an application for renewal of his permit.

His allegation is that from the year 1942 till 5th December 1950 there has been no conviction against him. From the 5th December 1950 to the 4th December 1953 he plied his bus on the above route and he was never convicted of any offence under the Motor Vehicles Act nor any strictures were passed by any court against him and there were no adverse endorsements on the permit or on the licence. He applied for the renewal of the permit on the 12th October 1953 which

was duly published in the Government gazette u/s 57. Sub-clause (3) of the Motor Vehicles Act. No objections were filed against the applicant either by any of the persons operating motor vehicles within that area or by the police.

But there was a list of six convictions against the petitioner which was before the Regional Transport Authority and, as it transpires, that list was given by the Superintendent of police. When that list of challans was given to the petitioner, he tried to search them out and found that those challans really were not against him at all. In spite of that fact the Regional Transport Authority by its order dated 29th December 1953 refused to renew the permit of the petitioner. There was an appeal against that order to the State Transport Authority. That appeal was dismissed on 9th April 1955. Aggrieved with that decision of the Regional Transport Authority and that of the State Transport Authority the petitioner has come to this Court with this writ petition.

3. It has been urged in the counter affidavit and this fact has substantially been admitted by the opposite party that really these convictions were non-existent at the time the order was passed or were, in fact, incorrect.

4. The first date of Checking is said to be 6-9-51, and it is said that it was a case of over loading u/s 112 of the Motor Vehicles Act. In the notice served on the petitioner it was shown that he was fined Rs. 30/- on 9-1-53. The Regional Transport Authority had rejected the petition on 29-12-53. Before that there was an appeal which had been decided against that conviction and in that appeal the petitioner was acquitted. Therefore it cannot be said that there was any conviction as regards this checking against the petitioner.

5. The second challan against him is said to have been on account of the checking dated 7-1-1952. That was against a case of over loading u/s 112 of the Motor Vehicles Act against the driver and it was said that the applicant had been fined Rs. 20/- on 12-5-52. There is a categorical denial in the petition that the petitioner was ever challaned on that day or convicted as alleged. The counter affidavit does not assert that there has been such a conviction. There is an evasive answer to this paragraph.

It has been alleged therein that the list sent by the Superintendent of Police shows that there was a challan of vehicle No. UGP 135 which resulted in a conviction. If there really had been a conviction of the petitioner or his driver about his bus I should have expected a certified copy of the judgment or at least the number of the case and the date of the decision; and in the circumstances there can be no other inference but that there has been no conviction against the petitioner on that date.

6. There were three other challans which were mentioned in Annexure "A". They were of 11-5-53, 8-7-53 and 4-7-53. It was mentioned therein that the trials were pending. If the trials had been pending no inference adverse to the applicant could have been drawn. It is only when a person is convicted that he can be held to be guilty. But during the pendency of a trial it cannot be said that

the man was guilty and his licence was liable to be cancelled. Howsoever grave suspicions may be they would not amount to proof and, unless it is fully established that there has been a conviction, it is not open to the Regional Transport Authority to refuse to renew a permit on that score.

By the time that this writ petition was filed in this court those cases had been decided. In the first case of the challan of 11-5-53 it was found that there was no case against the petitioner and he was discharged. So far as the other case D/-8-7-53 is concerned, the petitioner was acquitted in that case and it was only the driver who had been convicted and fined Rs. 15/-. The last case mentioned therein is dated 4-7-53 for overloading and it was mentioned that a departmental action was being taken as regards that conviction. But no papers had been produced before the Regional Transport Authority nor are they on the record before this court. The petitioner has categorically denied any departmental action of this sort against him.

7. The result of the analysis of these different convictions and challans is that at the most there was one conviction u/s 112 of the Motor Vehicles Act of the driver of the petitioner and all other convictions were non-existent or the challans had resulted in acquittal. If there was only one conviction and that too of the driver it was certainly not a case in which any authority would have refused to renew the permit.

8. This case shows how dangerous it is to rely in the matter of convictions purely on the Reports of the Superintendent of Police. The Regional Transport Authority is in the nature of a Quasi-judicial body and in acting as such though it may not be bound by the strict law of evidence or the Code of Civil Procedure, yet it has to have some kind of proof before it can act upon it. In cases of convictions, unless the owners are aware of those convictions and unless these convictions are properly established before the Regional Transport Authority, it would not be proper for it to act merely on the reports of the Superintendent of police.

9. Learned counsel for the Regional Transport Authority has relied on the New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd., , & particularly on the following passage :

"Thus the Motor Vehicles Act and the rules framed thereunder with particular reference to the Regional Transport Authority and the Appellate Authority do not contemplate anything like a regular hearing in a Court of justice. No elaborate procedure has been prescribed as to how the parties interested have to be heard in connection with the question, who is to be granted & stage--carriage permit We have to examine those several precedents relied upon by the High Court to see how far its conclusions are supported by authority.

But before we do that, it has got to be observed that the question whether the rules of natural justice have been observed in a particular case must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the legislature and in that sense the

rules themselves must vary. The Regional Transport Authority is charged with the duty of granting or refusing a stage carriage permit, only to mention the matter with which we are immediately concerned. In that connection the statute requires that authority to have regard to the matter set forth in Section 47"

I am bound by the observations of the Supreme Court and I may respectfully say that this is what I am also holding in this case. It is not necessary to have a "regular" hearing or an "elaborate" procedure. But it does not do away with any hearing or any procedure. Some hearing must be given and some procedure has got to be followed. In my opinion, the Regional Transport Authority will be well advised when it refused to grant a permit on the ground of convictions, to have the actual judgments of those convictions, and give an opportunity to the applicant to explain those convictions.

10. It has been urged on behalf of the petitioner that the Regional Transport Authority and the Appellate Authority in many cases have granted permits to persons who had been convicted for four or five offences, and in this particular case they have discriminated. Decision of each case depends on the facts of that particular case. It may be that in those cases the Authority may have considered the offences to be of a trivial nature or there may be circumstances which may have induced the Authority to grant permit in spite of those convictions.

On that ground alone it cannot be said that the petitioner has in any way been discriminated, If it is open to the authority to exercise its discretion in the matter, this Court cannot interfere on that ground. But in this particular case renewal has been refused mainly on non-existent convictions and challans and there had actually been no conviction of the petitioner. The Regional Transport Authority, therefore, was not justified in refusing to grant the permit.

11. I, accordingly allow this petition, quash the order of the Regional Transport Authority and of the State Transport Authority dated 9-4-1953 and order that a writ of mandamus issue to the Regional Transport Authority, Gorakhpur Region. Gorakhpur to act according to law. The petitioner is entitled to his costs of this writ petition.