(1976) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 4694, 4777 of 1975 and 1824 of 1976

C. Lakshman Reddi APPELLANT

Vs

The State Transport Authority, Andhra Pradesh and Another RESPONDENT

Date of Decision : 20-12-1976

Acts Referred:

Motor Vehicles Act, 1939 — Section 58(4), 62(1)

Citation : AIR 1977 AP 299

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : A.S.C. Bose and E.P.K. Sikhamani, for the Appellant; Government Pleader for Transport, for the Respondent

Judgement

1. In these three Writ Petitions a common question arises whether the petitioners can be asked to pay the difference of tax and penalty sought to be levied on the Stage Carriages, on the ground that the petitioners were not having valid permits on the date on which their vehicles were checked by the Transport Authorities. It is common ground in all these writ petitions that the petitioners'' permits had expired and that they had applied for the renewal of the permits within the time prescribed. For instance in W. P. No. 4777 of 1975 the permit expired on 25-7-1975 and the petitioner had applied for renewal on 18-2-1975. While that application for renewal was pending, the vehicle was checked on 21-8-1975 and it was found proceeding from Bandameedipalli to Anantapur. The Regional Transport Officer, Anantapur issued the impugned notice dated 15-9-1975 calling upon the petitioner to pay the difference of tax of Rs. 1,351-25 and the penalty of Rs. 2,702-50 for the quarter ending 30-9-1975, on the ground that the vehicle was plying without permit.

2. The petitioner now contends that this demand notice is not valid because his permit was renewed subsequently with effect from the date of the expiry of the original permit and therefore, the vehicle must be deemed to have had a valid permit on the date on which it was checked.

3. Sri E. P. K. Sikhamani learned counsel for the petitioner, submits that u/s 58(4) of the Motor Vehicles Act (hereinafter called the Act) where a permit has been renewed under the said Section after the expiry of the period, such renewal shall have effect from the date of expiry and when once the permit has been renewed it will be effective from the date of the expiry of which case the vehicle must be deemed to have been run with a valid permit from the date of the expiry of the original permit. Therefore, the vehicle cannot be said to have been plied without a valid permit and the levy of penalty is not warranted.

4. The learned Government Pleader contends that once the permit had expired, the vehicle cannot be plied and u/s 62(d) of the Act the operator can only ply on a temporary permit granted by the concerned authority and in the absence of such a temporary permit, the vehicle cannot be said to be having a valid permit even though subsequently renewal was granted u/s 58(4).

5. In order to appreciate these contentions it is necessary to read the provisions of Sub-section (2), (3) and (4) of Section 58 of the Act.

"58. DURATION AND RENEWAL OF PERMITS :

(1) ....

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit.

Provided that the application for the renewal of a permit shall be made, -

(a) in the case of the stage carriage permit or a public carrier''s permit, not less than one hundred and twenty days before the date of its expiry; and

(b) in any other case, not less than sixty days before the date of its expiry;

Provided further, that, other conditions being equal an application for renewal shall be given preference over new applications for permits.

(3) Notwithstanding anything contained in the First proviso to Sub-section (2), the Regional Transport Authority may entertain an application for the renewal of a permit after the last date specified in the said proviso for the making of such an application, if the application is made not more than fifteen days after the said last date and is accompanied by the prescribed fee.

(4) Where a permit has been renewed under this Section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under Clause (d) of Section 62, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded."

It is clear from the aforesaid Section that the application for renewal has to be made u/s 58(2) in the case of a stage carriage not less than 120 days before the date of its expiry. Under the proviso to Section 58(2) applications for renewal shall be given preference over new applications for permits. Under Sub-section

(3) of Section 58 the applications for renewal can be entertained by the Regional Transport Authority even after the last date specified under the proviso to Sub-section (2) of Section 58, if the application is made not more than fifteen days after the last date and is accompanied by the prescribed fee. Under Sub-section (4) where a permit has been renewed under that Section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry. That means the renewal granted subsequent to the expiry of the permit will have retrospective effect from the date of expiry of the permit. Further, Sub-section (4) provides that the renewal shall have effect from the date of expiry of the permit whether or not permit has been granted u/s 62(1)(d) and if a permit has been granted, the fee paid has to been granted, the fee paid has to be refunded. From the provisions of Sub-section (4) it is clear that once the renewal has been granted, it has retrospective effect and if the vehicle is run on a temporary permit, the fee paid in respect of such temporary permit is liable to be refunded. So once renewal has been granted, it has retrospective effect from the date of expiry of the permit and the vehicle must be deemed to be having a valid permit from the date of expiry of the permit. If so, it follows that the vehicle must be deemed to have been run on a valid permit after the expiry of the permit though the renewal was granted subsequently.

6. The learned Government Pleader contends that by giving such retrospective effect, the provisions of Section 62(1)(d) which provide for grant of a temporary permit pending decision on an application for the renewal of the permit will be rendered nugatory. But I am unable to agree with this contention. In a case where an operator applied for the renewal of a permit, it is open to him either to apply for a temporary permit u/s 62(1)(d) pending disposal of the application for renewal of the permit or he may also run the vehicle in anticipation of the renewal of the permit. Of course, in a case where the permit has not been renewed, the operator will take the risk of having to pay the maximum tax and also penalty. But if the permit has been renewed, it will take effect from the date of the expiry of the original permit and it cannot be said that the vehicle was run without a valid permit. The words "such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under Clause (d) of Section 62(1)" occurring in Sub-section (4) of Section 58 make it clear that even in a case where the vehicle was run without a temporary permit, the renewal shall have effect from the date of expiry of the permit.

7. For the foregoing reasons the demand made by the respondent for payment of the penalty appears to be illegal and without jurisdiction.

8. In W. P. Nos. 4694 of 1975 and 1824 of 1976 the petitioners challenge the tax and penalty sought to be levied on the petitioners'' vehicles on the ground that the vehicles did not have valid permits, though admittedly permits were renewed subsequently. As I have held in W. P. No. 4777/75 that where a permit has been renewed it shall have statutorily retrospective effect from the date of expiry of

the permit, the vehicle must be deemed to have been plied with a valid permit even prior to the grant of the renewal. The demands made in these Writ Petitions for payment of tax and penalty are therefore illegal and without jurisdiction.

9. For the foregoing reasons, the Writ Petitions are allowed and the impugned orders quashed. The petitioners will have costs. Advocate''s fee Rs. 100/- in each.

The tax if any paid by the petitioner in W. P. No. 1824 of 1976 will be refunded to the petitioner.

10. Petitions allowed.

