
(1965) 09 AHC CK 0034
In the Allahabad High Court
Case No : Writ Petition No. 479 of 1965

Dabal Singh Negi

APPELLANT

Vs

The State Transport Appellate Tribunal and Another

RESPONDENT

Date of Decision : 15-09-1965

Acts Referred:

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

Citation : AIR 1967 All 266

Hon'ble Judges : M.C. Desai, C.J;Lakshmi Prasad, J

Bench : Division Bench

Advocate : A.J. Fanthome and R.S.L. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Desai, C.J.—This writ petition has been argued at considerable length and several contentions have been advanced before us but we find no force in them We are not prepared to accept the statement that no notice of the date on which the petitioner's application for renewal was to be considered was given In any case it is admitted that the petitioner was present when the application was considered by the Regional Transport Authority. Therefore, even if no notice had been given, he has not suffered Then he contends that he had not enough time or opportunity for meeting the charge that there were 11 convictions and prosecutions against him but he has not denied that there were 11 convictions and prosecutions against him He has also not contended that the alleged convictions and prosecutions did not exist

He has not told us what explanation he could possibly offer in respect of the convictions It was open to the Regional Transport Authority to cancel or suspend the permit, u/s 60 before its expiry on the ground of convictions but it does not follow that it could not use the convictions for refusing renewal It was open to it to use the fact of the convictions for refusing renewal even though it had not

taken any steps for cancellation or suspension of the permit u/s 60. The procedure to be followed for suspending or cancelling a licence is not required to be followed for refusing to renew a licence. The petitioner was given a temporary permit in August 1964 But the Regional Transport Authority had not decided till then not to renew the permit; therefore, the grant of the temporary permit did not mean that the application for renewal was not to be rejected.

Section 58 (2) only confers powers upon a Regional Transport Authority to renew a permit and does not make it obligatory upon it to renew it; the word used is "may and not shall". Moreover, the proviso uses the word "shall" suggesting that the word "may" in the main provision is not to have the force of shall". Even if it be said that the provision of Sub-section (2) of Section 58 is mandatory, it is mandatory only to this extent that an application for renewal is to be dealt with as if it were an application for a permit and it is not obligatory to grant an application for a permit. A Regional Transport Authority would be obliged, if at all, only to deal with the application for renewal as if it were an application for a permit, but since it is not obliged to grant every application for permit it follows that it is not obliged to grant every application for renewal.

Section 58 does not lay down the matters that are to be taken into consideration by a Regional Transport Authority when dealing with an application for renewal; it does not lay down in what circumstances an application must be granted or in what circumstances it may be refused. There is, however, Section 47 which lays down the matters to be considered when disposing of an application for a permit and since an application for renewal of a permit is deemed to be an application for a permit it may be said that a Regional Transport Authority when disposing of an application for renewal can or must take into consideration the facts mentioned in Section 47. One of the facts mentioned therein is "the operation by the applicant of other transport services including those in respect of which applications from him for permits are pending". These words are wide enough to include all offences committed by him when operating other transport services including those in respect of which applications by him are pending.

The operation of transport services includes not only breaches committed by him and his servant in operating the transport services but also prosecutions for them. The fact that a prosecution is pending against him in respect of a certain matter may not mean that he is guilty but is certainly a fact which shows how he operated other services. The Regional Transport Authority has mentioned the prosecution for what they are worth; there is nothing to indicate that it has treated the prosecutions as convictions. The petitioner was being prosecuted for certain alleged offences and the Regional Transport Authority has mentioned that fact along with the convictions. There is nothing to show that it has treated that prosecution as convictions. Some convictions were recorded before the present permit was granted; they did not become irrelevant matters on that ground.

The words "operation by the applicant of other transport services" include the offences committed previously also. Merely because the permit was renewed

even after those convictions it does not mean that those convictions were wiped off. It was open to the Regional Transport Authority to take into consideration the cumulative effect of all convictions and prosecutions. It might not have thought that the convictions that had already been recorded before the present permit was granted were sufficient for not granting it, but when some more convictions and prosecutions were added it could come to a different conclusion. Then it was contended that some of the convictions are compounded; under the Code of Criminal Procedure an order of acquittal may have to be passed on composition but it is quite different from saying that the offence was never committed. When the offences were compounded it means that they were committed and this fact that they were committed could be taken into consideration.

2. We are referred to *Pooran Chand v. State Transport Authority*, Special Appeal No. 5 of 1955 (All), decided by a Bench of this Court on 8-5-1957; what was held in that case is that the provision in Section 57 (3) lays down that a date must be fixed and notified for considering an application for a permit and that it must be not less than 30 days from the publication of the application. These provisions may be obligatory, but we are not satisfied that there has been any infringement in the instant case because we are not satisfied that no notice was published at all. Moreover, even if the provisions are obligatory and there has been a breach, certiorari is a matter of discretion and if it is found that no prejudice was caused by the breach the petitioner would not be entitled to certiorari. The petitioner went up in appeal, but he never raised any of these grounds before the appellate authority. He is not entitled to raise them now in this petition.

3. Next we are referred to a statement of Saprú, J. in *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, at p. 302, but it was clearly an obiter dictum. We were then referred to the case of *Rameshwar Dayal v. Regional Transport Authority*. AIR 1958 All 675 in which it was held that when an order is based on a tenable ground as well as an untenable ground a High Court acting under Article 226 must quash the order because it not having an appellate jurisdiction cannot maintain it on account of the tenable ground. It was a case of punishment by suspension of permit and not refusal to renew a permit. Moreover, as we have pointed out earlier, the Regional Transport Authority took into consideration the prosecutions merely for what they were worth; the prosecutions were a fact and it was not shown that it attached to it greater worth than it deserved.

4. There is no force in this writ petition. It is dismissed summarily. Petition dismissed.