

(1978) 05 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1658 of 1977

Daib Dayal Tewari and Another

APPELLANT

Vs

Chairman, South Bihar Regional Transport Authority and
Another

RESPONDENT

Date of Decision : 18-05-1978

Acts Referred:

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

Citation : AIR 1979 Patna 1 : (1978) 26 BLJR 738 : (1979) PLJR 7

Hon'ble Judges : K.B.N. Singh, C.J;B.S. Sinha, J

Bench : Division Bench

Advocate : Basudeva Prasad, Amla Kant Choudhury and Chotey Lal Narain Singh, for the Appellant; H.K. Thakur, Standing Counsel No. 3 and R.S. Pradhan, Jr. Counsel and Sriram Chandra Pandey, for the Respondent

Final Decision : Dismissed

Judgement

K.B.N. Singh, C.J.—The petitioners in this writ petition have prayed for quashing an order dated the 1st Sept. 1977 (Annexure 5), passed by respondent No. 1 granting temporary stage carriage permit for the route Sinhaghat-Arrah-Buxar-Itarhi-Dhansol to respondent No. 2 as also for cancelling the permit (Annexure 7) issued to the said respondent in pursuance of the order aforesaid.

2. The petitioners are bus owners carrying on business of transport by hire operating on permanent stage carriage permits on the route Berhampur-Buxar-Kochas. According to the petitioners, on the 15th Sept. 1976, respondent No. 2 filed an application in the prescribed form, for grant of temporary stage carriage permit for the route Sinhaghat-Dhansol via Arrah, Behea Chowk, Ber-hampur and Buxar, without, however, mentioning in column 4 of the application form, the purpose for which the temporary permit was required. Respondent No. 1, without prior notice to the existing operators on the route and thus depriving them of the opportunity of making representation against the prayer of respondent No. 2 for grant of temporary permit, by his order dated the 7th Oct. 1976 (Annexure 2)

granted temporary permit to respondent No. 2. It may be mentioned here that Annexure 2 shows that one Shri Ramji Prasad Singh, M.L.A. had recommended for issue of permit in public interest which, according to the petitioners, disclosed merely public need of permanent character and not temporary need within the meaning of Section 62(c) of the Motor Vehicles Act (hereinafter to be referred to as "the Act"). According to the petitioners, even in face of the order (Annexure 2) respondent No. 2 failed to place the bus on the route within 24 hours which he did after more than six months which clearly indicates that there was no temporary need. Respondent No. 1, however, condoned this delay of respondent No. 2 and validated the temporary permit up to 2nd Sept. 1977. On the 25th Aug. 1977, respondent No. 2 filed another application (Annexure 3) for further grant of temporary permit on the route in question, without mentioning, this time also, in the application form, that there was temporary need.

Petitioner No. 1 and two other persons namely Sri Satrugan Singh and Shrimati Savitri Devi filed objection to the said application suo motu. The objection petition of petitioner No. 1 is Annexure 4 to the writ application, and it is stated therein, inter alia, that as applications for grant of permanent permit on the said route were pending, the application for grant of temporary permit should not be entertained and that there is no temporary need for which temporary permit is required.

3. A counter-affidavit has been filed on behalf of respondent No. 2, denying the assertions made by the petitioner, that there was no temporary need for a temporary stage carriage permit for the route in question.

4. Two supplementary affidavits have also been filed on behalf of the petitioners by which some more documents (Annexures "8 to 10") have been filed. In the second supplementary affidavit, the petitioners have also prayed for quashing a subsequent order dated the 31st Dec. 1977 (Annexure "10"), passed by respondent No. 1, granting a fresh temporary permit to respondent No. 2, for the said route for a period of four months with effect from the 3rd Jan., 1978, as also for cancelling the permit (Annexure "11"), issued thereunder,

5. Mr. Basudeva Prasad, learned counsel appearing on behalf of the petitioners, has submitted that neither in the first application for grant of temporary permit (Annexure "1"), nor in the second application for grant of the temporary permit for the second time (Annexure "3"), respondent No. 2 mentioned the temporary need. The successive orders granting temporary permits (Annexures "2" and "5", respectively) also do not show the existence of the temporary need, and, therefore, the grant on both the occasions of temporary permits, being contrary to Section 62 of the Act, are invalid. "

6. Portions of Section 62 of the Act, relevant for the purpose of this application, may usefully be quoted:--

"(1) A Regional Transport Authority may, without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any

case to exceed four months, to authorise the use of a transport vehicle temporarily.

(a) for the conveyance of passengers on special occasions, such as to and from fairs and religious gatherings; or,

(b) for the purpose of seasonal business; or,

(c) to meet a particular temporary need; or,

(d) pending decision on an application for the renewal of a permit; and may attach to any such permit any condition he thinks fit:

Provided that a temporary permit under this section shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit u/s 46 or Section 54 during the pendency of the application:

Provided further, that a temporary permit under this section shall, in no case, be granted more than once in respect of any route or area specified in an application for renewal of a permit during the pendency of such application for renewal,"

It is a settled law that the existence of temporary need under any of the four clauses of Sub-section (1) of Section 62, is the condition precedent for the grant of a temporary permit, as laid down in *B.K. Mukerjee Vs. Chairman, East Bihar Regional Transport Authority and Another*, and *Andhra Pradesh State Road Transport Corporation v. K. Venkataramireddy*, 1971 (3) SCC 803 . The order granting temporary permit on the first occasion, dated the 7th Oct. 1976 (Annexure "2"), in pursuance of which the temporary permit was actually granted on the 2nd May, 1977, after condoning the delay, having already expired, it is no longer necessary to quash that order. Besides that, the order makes a mention about a letter of Shree Ramji Singh, M.L.A., about the existence of a public need, which has been relied upon in the order (Annexure "2"). Mr. Basudeva Prasad has urged that the letter of Shree Ramji Singh was indicative of a permanent need and not of a temporary need. It is not necessary to go into this question at all, inasmuch as the existence of a permanent need does not exclude the existence of a temporary need. Both can co-exist, vide the decision of the Supreme Court in the case of *The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur*, . The permit granted in pursuance of the second order (Annexure "5") dated the 1st. Sep. 1977, has also spent its force. While the said permit was being granted, petitioner No. 1, as already stated, and some other operators, suo motu filed objections, which were considered. The said order, therefore, also does not call for any interference. Had it not been for the grant of a third temporary permit, (Annexure "11"), as per order dated the 31st Dec. 1977 (Annexure "10"), which was in force when the case was taken up for hearing, the writ application would have ordinarily been dismissed as having become infructuous, as contended by learned Counsel appearing on behalf of the Respondents, Besides that, Mr.

Basudeva Prasad has raised a legal question which may have a bearing on grant of successive temporary permits, and has pressed for deciding that question.

7. Mr. Prasad has urged that in view of the first proviso to Section 62, as quoted above, no temporary permit could be granted for the route in question, when applications for grant of a permanent permit were pending consideration, and has relied on the objections filed by petitioner No. 1 on the 24th Dec. 1977 (Annexure "9") to the grant of the temporary permit for the third time, in support of his submission.

8. In Annexure "9", it has been stated that the whole route from Sinha Ghat to Itarhi has been divided into three sections and on all the sections permanent vacancies have been advertised in the Bihar Gazette and applications for regular permit on the route have been received and are pending consideration, which fact attracts the first proviso to Section 62 of the Act. The three sections, according to learned counsel, are (1) Sinha Ghat to Arrah (2) Arrah to Buxar and (3) Buxar to Itarhi. Learned counsel has further submitted that Dhansoi is only six miles from Itarhi, in respect of which temporary permits on the first and second occasions were granted, and Sisondhi is three miles from Dhansoi, and, in order to get over the bar of Section 62 of the Act, respondent No. 2, in his last application (Annexure "12"), applied for grant of a temporary permit for the route Sinha Ghat to Sisondhi. The primary question, therefore, for consideration is whether any application for permanent permit for "the route" or "area" in question was pending at the time the temporary permit was granted to respondent No. 2, even assuming that the addition of Dhansoi or Sisondhi in the application was a camouflage to get over the bar u/s 58, as that question will arise for consideration after the first point is established.

9. The expression "area" has been defined as follows in Section 2(1) of the Act:

" "Area" in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision specify by notification in the official gazette." Section 2(28A) of the Act, defines "route", as follows:--

" "Route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another."

No notification relevant in this regard has been brought to our notice. Mr. Basudeva Prasad, relying on a decision of the Supreme Court in the case of Dosa Satyanarayanamurthy etc. Vs. The Andhra Pradesh State Road Transport Corporation, , has submitted that "area" may include the three routes notified. The observations relied upon are as follows (at page 93):--

"There is no inherent inconsistency between an "area" and a "route". The proposed route is also an area limited to the route proposed. The scheme may as well propose to operate a transport service in respect of a new route from point A to point B and that route would certainly be an area within the meaning of

Section 68C."

The observations of the Supreme Court, relied upon, were made for countering the argument that a scheme u/s 68C of the Act could be made only in relation to a pre-existing route. In the light of the definition of "route", as quoted above, admittedly, no application for grant of a permanent stage carriage permit from one terminus Sinha Ghat to the other terminus Itarhi or vice versa, was pending before the authorities. As already mentioned, three applications for the grant of permanent permits in respect of the aforesaid route, treating it as three distinct routes, were pending. Therefore, even if "area" is treated as synonymous with "route", it is of no assistance to Mr. Prasad. The whole idea behind prohibition to grant a temporary permit for a route or an area in respect of which an application for grant of a permanent permit was pending was for expeditious disposal of the application for grant of the permanent permit, leaving no option for the authorities to delay it by taking subterfuge of grant of temporary permits. The condition precedent for grant of temporary permits for a maximum period of four months, being temporary need, which obviously must mean public interest, it could not have been the intention of the Legislature that even in cases where different routes have been notified, though they may be interlinked, no temporary permit could be granted in respect thereof. The fact that such a power could be misused by repeated grant of temporary permits will not entitle us to put a construction obviously not intended by the Legislature. There being no existing application for the grant of a permanent permit for the route Sinha Ghat to Itarhi, the bar contained in the first proviso to Section 62 of the Act, in my considered opinion, is not attracted. It is, therefore, not necessary to consider the question, whether inclusion of a distance of 6 miles from Itarhi to Dhansoi and another distance of 3 miles from Dhansoi to Sisondha in the third temporary permit was genuinely or mala fide made.

10. Another contention raised by Mr. Basudeva Prasad is that while issuing a temporary permit, principles of natural justice demanded that the other operators working on the route should be noticed. He has relied on a single Judge decision of the Calcutta High Court in the case of Shri Krishnagopal Dutta Vs. Regional Transport Authority, Burdwan and Others, that although Section 57 has been excluded in case of grant of a temporary permit u/s 62, but not Section 47 of the Act, and, therefore, calling for objections from the operators working on the route or part thereof was essential. The above decision overlooks the scheme of the Act from which it is manifest that if publication of the application u/s 57 is excluded, the application of the provisions of Section 47 of the Act are also automatically excluded. The following observations from the decision of the Supreme Court in the case of Jayaram Motor Service v. Rajaratnam (1967) 2 SCWR 857 may usefully be quoted:

"The scheme of Section 47 is that when a person makes an application under Sections 45 and 46 the authority first considers it u/s 47(1) in the light of the matters set out therein and also the representations, if any, made by the persons

mentioned therein. The authority then fixes u/s 47(3), having regard to the matters mentioned in Section 47(1), the number of stage carriages for which permits may be granted in the region or on any specified route within such region. Having fixed the limit, the authority publishes u/s 57(3) the application with a notice of the date before which representations in connection therewith may be submitted and the date on which such application and representations would be considered."

It was also held therein-

"Therefore, Section 47 envisages two stages of the enquiry: (i) the fixing of the number of permits u/s 47(3) and (ii) the consideration thereafter of the application for grant of a permit and the representations, if any, by the persons mentioned in Section 47(1)."

The actual grant being made u/s 48 of the Act Section 62 is a self-contained provision, dealing with the grant of temporary permits for limited periods in public interest. Public need and public interest being the basis of such a grant under conditions specified, calling for objections, which would delay the grant of temporary permits, in cases of urgent and immediate needs, does not admit of extension of the principles of natural justice in cases of such a grant. The principles of natural justice cannot be extended to such cases where, in effect, their application would defeat the very object for which the particular provision has been made. The Calcutta decision (Shri Krishnagopal Dutta Vs. Regional Transport Authority, Burdwan and Others, , with great respects to the learned Judge, does not seem to lay down the law correctly,

The question, however, is academic, so far as the present petitioners are concerned, inasmuch as one of them filed objections, which were taken into consideration by the authority while granting the temporary permit. Both the petitioners are brothers and holders of a permanent stage carriage permit on a portion of the route in question. In spite of the fact that the principle of natural justice does not apply, it is only just and proper that the objections, if any, that are filed with regard to the grant of temporary permits, should be considered while considering the applications for grant of temporary permits. That will help the authorities in coming to a correct decision about the genuineness of the public need. The authorities should also take into account as to whether the inclusion of a few miles in respect of a route for which an application for grant of a permanent permit is pending, is genuine one or is just to get over the bar of the first proviso to Section 62 of the Act. Where authorities are obliged to grant successive temporary permits to meet the public needs, in such a situation, it is also obligatory on their part to consider the question of issuing permanent permits in respect of such routes.

11. In the result, there is no merit in this application and it is accordingly dismissed, but, in the circumstances of the case, I shall make no order as to costs.

B.S. Sinha, J.

I agree.