

(1975) 10 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1343 of 1975

Gafoor

APPELLANT

Vs

Regional Transport Authority, Jaipur Region and Others

RESPONDENT

Date of Decision : 17-10-1975

Acts Referred:

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

Citation : AIR 1976 Raj 166 : (1975) WLN 700

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Advocate : B.L. Maheshwari, for the Appellant; R.R. Vyas and S.M. Mehta, for the Respondent

Final Decision : Allowed

Judgement

D.P. Gupta, J.—This is a writ petition in the matter of grant of temporary stage carriage permits on Ajmer-Sarwar via Srinagar, Ramsar, Debrele, Barada route (hereinafter referred to as "the route") and it arises in the following circumstances:--

Lalchand, respondent No. 2, was granted a temporary permit on the route by the Regional Transport Authority, Jaipur Region, Jaipur (hereinafter called "the R. T. A.") on June 24, 1975 and a permit was actually issued to him in pursuance of the aforesaid grant on July 3, 1975. But probably he realised that the grant of the aforesaid temporary permit in his favour was not proper and so he surrendered the aforesaid temporary permit granted to him. On July 7, 1975 Lalchand submitted another application for grant of a temporary permit on the route, in which the purpose for which the permit was required was mentioned as "under Section 62 (1) (c) of M. V. Act to meet particular temp, need". An application for grant of a temporary permit on the route was also submitted on July 8, 1975 by respondent No. 3 Mongusingh Dalipsingh, who mentioned the purpose for which the temporary permit was required as "to carry Regular Service". It is not disputed by the parties that on July 7, 1975 the R. T. A. passed

a resolution revising the existing scope of permits on the route from three to five permits and the number of return trips to be performed on the route daily was also increased from two to four return trips per day. The applications for grant of temporary permits submitted by the respondents Nos. 2 and 3 on July 7, and 2, 1975, referred to above, came up for consideration before the R. T. A. on July 8, 1975 and the R. T. A. felt that on account of the increase in the scope of permits on the route there were two existing vacancies and that as no application for grant of non-temporary stage carriage permits on the route was pending for consideration before it and the grant of non-temporary permits were likely to take some time in the publication of notice etc. there was a particular temporary need along with a permanent need on the route. In view of this decision, the R. T. A. went on to consider the merits of the various applications for grant of temporary permits and found that the respondents Nos. 2 and 3 were most suitable and granted them temporary permits on the route, one each, for a period of four months. This resolution of the R. T. A. is Ex. 3 on record. In pursuance of the aforesaid resolution, temporary permits were actually issued by the Secretary, R. T. A. to the respondents Nos. 2 and 3 on July 10, 1975, but in those permits, the purpose for which they were issued was mentioned as "to ply regular service on Ajmer--Sarwar via Ramsar, Dabrela".

2. The petitioner, who is an existing operator of the route, has filed the present writ petition challenging the grant of the aforesaid temporary permits to the respondents Nos. 2 and 3 by the R. T. A. and the contention of Mr. Maheshwari, learned counsel for the petitioner, is that the grant of temporary permits to the two respondents was without jurisdiction as neither a particular temporary need within the meaning of Section 62 of the Motor Vehicles Act (hereinafter referred to as "the Act") has been mentioned in the applications of the respondents Nos. 2 and 3 for the grant of temporary permits, nor the R. T. A. came to such a conclusion, nor any such particular temporary need has been specified in the temporary permits issued to the said respondents by the Secretary, R. T. A., Jaipur. On the other hand, Mr. R. R. Vyas appearing for the respondent No. 2, submitted that the respondent No. 2 filed an application (Annexure R/2/1) on July 7, 1975 before the R. T. A. along with the application form for grant of a temporary permit, wherein he clearly referred to the shortage of vehicles on the route for the services allowed and the need of maintaining the necessary services on the route, which constituted a particular temporary need within the meaning of Section 62 (1) (c) of the Act and on that basis the grant of a temporary permit to the respondent No. 2 was justified. The contention of the learned counsel is that a particular temporary need coexisted along with a permanent need and the grant of temporary permit to the respondent No. 2 by the R. T. A., in these circumstances, could not be held to be unjustified. Mr. Mehta, appearing for respondent No. 3, however, submitted that although the application of the said respondent did not disclose any particular temporary need, yet as the resolution of the R. T. A. granting temporary permits to the respondents Nos. 2 and 3 gave valid reasons for the grant of temporary permits, it was not necessary for the

Court to interfere with the grant of the aforesaid temporary permits to the respondents Nos. 2 and 3. Learned counsel for both the respondents also submitted that there was no question of lack of jurisdiction involved in the present case and the petitioner should have availed of an alternative remedy by filing a revision petition before the State Transport Appellate Tribunal and that the present writ petition should be dismissed on the sole ground that the aforesaid alternative remedy has not been availed of by the petitioner.

3. In respect of the aforesaid preliminary objection, Mr. Vyas referred to two decisions of this Court, namely *Girdhari v. Regional Transport Authority* 1970 RLW 465 and *Smt. Shakuntala Devi Vs. Transport Appellate Tribunal, Jaipur and Others*, In the case of *Girdhari* it was laid down by a Division Bench of this Court that the remedy by way of revision u/s 64-A of the Act was a specific legal remedy and the said remedy was fully efficacious. Mr. Maheshwari however, drew my attention to the decision of their Lordships of the Supreme Court in *Andhra Pradesh State Road Transport Corporation v. K. Venkataramreddy* (1970) 2 UJ 408, wherein their Lordships have been pleased to observe:--

"There can be no manner of doubt that in the absence of any purpose or reason for which temporary permits were asked for the Regional Transport Authority should have dismissed the application in limine because a temporary permit can be granted only if the permit is required for the purpose or reasons mentioned from (a) to (d) in Section 62 of the Act. In spite of every effort on the part of the learned counsel for the appellant to look for any document which would fulfil the requirement of a valid application u/s 62 nothing could be shown to us which could indicate the purpose for which the appellant asked for the grant of a temporary permit."

So far as the application of respondent No. 3 Mangusingh Dalipsingh is concerned, there can be no doubt that the said application disclosed no purpose, nor indicated any reason for the grant of a temporary permit, within the meaning of Section 62 of the Act. u/s 62 of the Act, a temporary permit could be granted for the following purposes:--

- (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or
- (b) for the purposes of a seasonal business, or
- (c) to meet a particular temporary need, or
- (d) pending decision on an application for the renewal of a permit.

The purpose for which the permit was desired, as disclosed in the application of the respondent No. 3, which I have already referred to above, was to carry a regular service and it has not been argued before me that the purpose so disclosed was a purpose or reason sufficient for the grant of a temporary permit u/s 62 of the Act. It cannot, therefore, be disputed that there was no valid application u/s 62 of the Act, so far as respondent No. 3 is concerned and as the

R. T. A. proceeded to grant a temporary permit to the said respondent on the basis of the application which was not valid application at all within the meaning of Section 62 of the Act, it had certainly acted without jurisdiction. The grant of a temporary permit to respondent No. 3 on the basis of such an application, must be held to be without jurisdiction. It cannot, therefore, be said that the writ petition is not maintainable on account of the availability of an alternative remedy. The temporary permits granted to the respondents Nos. 2 and 3 are for a short period of four months and such permits are valid only upto November 9, 1975 and in the peculiar circumstances of this case, it would be proper to decide the case on merits as well rather than leave the parties to pursue the ordinary remedy by way of revision, which no doubt should have been normally availed of. Moreover, the existence of an alternative remedy is not a bar to the jurisdiction of this Court and in view of the fact that the matter has been heard fully on merits as well, it would now be proper for this Court, in the circumstances of this case, to decide the same on merits.

4. Now before dealing with the merits of the case, it would be proper to refer to three decisions of this Court which have been referred to by the learned counsel for the parties before me and which have a bearing on the question raised in the present case.

5. The first decision is in the case of Mohammed Yunus v. Regional Transport Authority Civil Writ Petn. No. 1869 of 1970 decided on 26-10-1970 (Raj). In that case the application for grant of a temporary permit mentioned the purpose for which the grant was asked for as "for plying a regular service". The Regional Transport Authority, while granting a temporary permit, proceeded on the assumption that there were vacancies on the recently opened route. It was held by this Court that the reason given by the Regional Transport Authority did not fall within the purview of Section 62 (1) of the Act. It was observed by Hon^{ble} Shinghal J. (now Chief Justice) in the aforesaid case:--

"At any rate, there is nothing in the aforesaid order of the Regional Transport Authority to show that it granted a temporary permit to respondent Alam All Khan for any of the reasons or in any of the circumstances stated in Clause (1) of Sub-section (2) of Section 62 of the Act."

It was observed in that case that mere existence of vacancies on a route did not constitute a particular temporary need within the meaning of Section 62 of the Act

6. In M/s. Shrikishan Sayardevi v. The State Transport Appellate Tribunal, Jaipur Civil Writ Petn. No. 317 of 1975, decided on 5-3-1975 = (reported in Shrikishan Sayardevi Vs. The State Transport Appellate Tribunal and Others, a temporary permit was desired for the purpose of "to carry regular service". Following the decision of this Court in Mohammed Yunus's case, it was held that the purpose of running regular bus service was no purpose within the meaning of any of the clauses of Section 62 (1) of the Act and no temporary permit could be granted by

the Regional Transport Authority on such an application. It was also held that the mere existence of a vacancy on the route could not lead the Regional Transport Authority to the conclusion that there was a particular temporary need and merely because the filling up of a permanent vacancy was likely to take some time, there could be no presumption that a temporary need existed.

7. Then in the case of Jagdish Prasad v. State Transport Appellate Tribunal Civil Writ Petn. No. 980 of 1975 decided on 24-7-1975 (Raj) it was held by Hon"ble Joshi J. that merely making a mention in the application for grant of a temporary permit that such a permit was sought for a temporary need u/s 62 (1) (c) of the Act was not sufficient for constituting a particular temporary need. It was observed in the aforesaid case:--

"No particulars of temporary need have been given by the aforesaid respondents. The purpose shown is nothing but vague without specifying the particular temporary need which is postulated u/s 62 (1) (c) of the Act. The words "to meet a particular temporary need" occurring in Section 62 (1) (c) have great significance. A particular temporary need implies a specific need for which temporary permit is asked for."

It was further observed in that case:--

"But at the same time it is obligatory for the applicant to specify the temporary need by giving necessary particulars so as to bring his case u/s 62 (1) (c) of the Act by placing all materials necessary for invoking powers u/s 62 (1) (c) of the Act."

8. Now the facts of the present case would have to be examined in the light of the aforesaid decisions. So far as the case of Mangusingh Dalipsingh is concerned, I have already observed above that his application for grant of a temporary permit disclosed the purpose for which the permit was required as "to carry regular service" and as held in the case of Mohammed Yunus and M/s. Shrikishan Sayardevi, it is no purpose within the meaning of Section 62 (1) of the Act. As a matter of fact, such an application should have been dismissed in limine as observed by their Lordships of the Supreme Court in the Andhra Pradesh Road Transport Corporation case (1970) 2 U. J. 408 and the R. T. A. acted wholly without jurisdiction in granting a permit on the basis of such an application, which did not disclose a proper or lawful purpose or reason for the grant of a temporary permit in accordance with the provisions of Section 62 (1) of the Act. In respect of respondent Lalchand it may be observed that his application for grant of a temporary permit mentioned the reason or purpose for which the permit was required as "under Section 62 (1) (c) of M. V. Act to meet particular temp, need and obviously that also does not meet the requirements of the provisions of law as has been laid down by this Court in Jagdish Prasad's case. However, Mr. Vyas relied upon the application (Annexure R 2/1), which is said to have been submitted by the respondent No. 2 along with the application form for grant of a temporary permit and in that application it was disclosed that

there was shortage of vehicles on the route for the services allowed. Thus it was suggested that there was a particular temporary need to maintain the necessary services on the route. But from the order of the R. T. A. (Annexure-3) it does not appear to be the ground for which temporary permits were granted on the route by the said Authority. The R. T. A. has not taken into consideration the question of shortage of vehicles for the purpose of maintaining the existing services on the route. As a matter of fact, the reason given by the R. T. A. is that the scope of permits on the route has been revised and two vacancies exist on the route on account of the revision of limit of permits and the filling of permanent vacancies was likely to take some time. As held by this Court repeatedly that merely because vacancies were caused on account of revision of limit of permits on a route and the filling of such vacancies was likely to take some time it could not be held to be a particular temporary need, unless the R. T. A. also came to the conclusion that the existing vehicles were insufficient to meet the current needs of the travelling public. There is no doubt that a temporary need may co-exist with a permanent need, but the mere repetition of this phrase by the R. T. A. cannot be held to be sufficient for the purpose of justifying the grant of temporary permits on the route u/s 62 (1) (c) of the Act to the two respondents, unless a further finding was also recorded by the concerned Authority that such a temporary need did actually exist on the route in question. Learned counsel for the respondents placed reliance upon the decision of this Court in *Jairamdas Vs. Regional Transport Authority and Others*, However, in that case there was a shortage of necessary number of vehicles to maintain the existing services on that route and it appears that a non-temporary permit of the petitioner in that case was cancelled earlier on account of his failure to produce a vehicle of the requisite model and in the vacancy thus created in the existing number of permits, a temporary permit was granted.

9. In *Jagdish Prasad's* case it was observed that in *Jairamdas Vs. Regional Transport Authority and Others*, the existence of a temporary need was established and on that ground the aforesaid case was distinguished. In the present case, I do not find that the Regional Transport Authority has come to a definite conclusion that the existence of a particular temporary need within the meaning of Section 62 (1) (c) of the Act was established. Merely because a temporary need may co-exist with a permanent need, it could not lead to the conclusion that whenever there is a permanent need a temporary need should always be presumed to exist as well. There can be no such presumption in law, but facts must be ascertained by the R. T. A. and reasons must be given by that Authority, if it came to the conclusion that a particular temporary need did also exist along with the permanent need. Merely because filling of permanent vacancies, which were caused not on account of cancellation of existing permits or the discontinuance of existing services, but on account of the increase in the limit of permits on the route, was likely to take some time, it cannot be the basis for holding that a particular temporary need existed. In these circumstances, I am of the view that the grant of temporary permits to the respondents Nos. 2

and 3 was not justified and the conclusion of the R. T. A. that because the scope of permits on the route has been increased and two more permanent permits will have to be granted and, therefore, a particular temporary need existed is merely based on conjecture and not on facts placed before and considered by that Authority.

10. In the result the writ petition is allowed. The order of the Regional Transport Authority, Jaipur dated July 8, 1975 is quashed and the impugned permits granted to the respondents Nos. 2 and 3 are set aside. However, in the circumstances of the case, the parties are left to bear their own costs.