
(1956) 07 AHC CK 0003
In the Allahabad High Court
Case No : Civil Misc. Writ No. 968 of 1955

Garhwal Resins Ltd.

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 25-07-1956

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Motor Vehicles Act, 1988 — Section 47, 47(1)(a), 48, 55, 56

Citation : (1956) 26 AWR 604

Hon'ble Judges : G. Mehrotra, J

Bench : Single Bench

Advocate : R.S Pathak and S.K. Verma, for the Appellant;

Final Decision : Allowed

Judgement

G. Mehrotra, J.—This is a petition which has been filed by Garhwal Resins Ltd. under Article 226 of the Constitution praying for a writ of certiorari quashing the orders of the Regional Transport Authority dated the 23rd, 24th and 25th of August, 1954 and of the State Transport Authority dated 17-6-1955. It is further prayed that a writ of mandamus be issued directing the Regional Transport Authority, Meerut to consider the Petitioner's application for the renewal of its permits in accordance with law.

2. The Petitioner is a private limited company registered under the Indian Companies Act with its registered office at Rishikesh, district Dehra Dun. Briefly the facts set out in the affidavit filed in support of the petition are that one Natha. Singh Kashyap entered into a contract of lease with the Tehri-Garhwal State under which he took on lease certain forests in the Uttar Kashi Forest Division and Yamuna-To is Forest Division for the purpose of extracting resin. The leases were executed in the end of 1918 for five years and ten years respectively. The present applicant company was incorporated in the year 1949. Natha Singh Kashyap became one of its directors and the contract was transferred to the company. In order to carry out the contract two temporary

permits for public carriers for plying on the route Muni-ki-Reti to Tehri were granted to the Petitioner company by the Tehri-Garhwal State. On 1-8-1949 the Tehri-Garhwal State merged into the Dominion of India and thereafter the Motor Vehicles Act became applicable to the territory of Tehri-Garhwal and the Petitioner company then applied to the Regional Transport Authority, Meerut, for four permanent permits for public carriers. On 15-11-1950 the Conservator of Forests also addressed a letter to the Regional Transport Authority suggesting that the Petitioner company should be granted two public earner permits in the Yamuna-Tons Division and two in the Uttar Kashi Division, without any condition of restricting their use to the transport of forest produce only. In the meeting of the Regional Transport Authority, Meerut, held on 3-4-1951 it was decided that the Petitioner company should be granted four permits valid for three years u/s 57 of the Motor Vehicles Act. The resolution passed at the meeting runs as follows:

On down journey they will bring forest produce and on up journey can carry public goods.

3. The Forest Department had pointed out to the Regional Transport Authority that on up journey the vehicles will have to go empty which will mean a loss to the contractor. It was therefore in the interest of the public that they should be allowed permits without any restriction. In pursuance of the resolution of the Transport Authority necessary permits were issued to the Petitioner which were valid for three years and were to expire on 4-1-1954. The permits were for plying public carriers on the Rishikesh-Tehri Dha-ram route. Sometime before the expiry of those permits, as required under the Motor Vehicles Act, the Petitioner applied for renewal of its permits. On 27-5-1954 the Petitioner company received a letter from the Secretary, Regional Transport Authority, Meerut, that as the resin contract had expired the Petitioner was to show cause why the said permit should not be renewed. The Petitioner made a reply to this letter on 30-6-1954 contending that there was no such restriction placed on the permits granted earlier to it. By a letter dated 28-9-1954 the Petitioner company was informed by the Secretary, Regional Transport Authority, that the authority by a resolution rejected the Petitioner's application for renewal of its permits. A copy of the resolution was forwarded along with this letter to the applicant Company. Thereafter the Petitioner went up in appeal to the State Transport Authority, Lucknow, against this order of the Regional Transport Authority which was rejected on 17-6-1955 and the appellate authority held that as the permits were given on the recommendation of the Forest Department and as the purpose for which the permits were granted had come to an end the renewal was rightly refused by the Transport Authority.

4. The present petition has been filed challenging the order of the Regional Transport Authority and of the State Transport Authority mainly on the ground that the permits granted in the year 1951 to the applicant company were not conditional and the Transport Authorities could not refuse the renewal of the

permits on the ground outside the purview of Section 55 of the Motor Vehicles Act. In this petition the State of Uttar Pradesh, the Regional Transport Authority and the State Transport Authority were impleaded as opposite parties. Notices were issued to the opposite parties and a counter-affidavit is filed on behalf of the State. Thereafter an application was filed on behalf of one Sri Shiv Prasad Painuli proprietor of the Garhwal Supply Agency, Rishikesh, and the Tehri Garhwal Motor Owners Corporation Limited, Rishikesh, praying that they be permitted to oppose the writ petition as they were interested in the subject-matter of the dispute. Notices were issued on this application to the parties and an order was passed directing that Sri Shiv Prasad Painuli and the Tehri-Garhwal Motor Owners Corporation Ltd. be permitted to be impleaded as opposite parties but the Petitioner company was given right to argue at the time of hearing that they had no locus standi to oppose the petition. A counter affidavit was also filed to the main petition on behalf of Sri Shiv Prasad Painuli and the Tehri-Garhwal Motor Owners Corporation Ltd. On the date of hearing it was urged on behalf of the Petitioner company that Sri Shiv Prasad Painuli and the Tehri-Garhwal Motor Owners Corporation Ltd. had no locus standi to oppose the petition and to be impleaded as opposite parties to these proceedings. They were no party to the proceedings before the Regional Transport Authority or the State Transport Authority and consequently they could not be allowed to oppose the writ petition. On consideration of the affidavits filed by the parties on this question I allowed Sri Shiv Prasad Painuli and the Tehri Garhwal Motor Owners Corporation Limited to oppose the petition under Chapter XXXII, Rule 5 of the Rules of this Court, and a counter-affidavit filed on their behalf was taken on the record.

5. The petition has been opposed by Shiv Prasad Painuli and the Tehri-Garhwal Motor Owners Corporation Limited also who have now been impleaded as opposite parties Nos. 4 and 5 to the petition. The main contention of the applicant company is that when the permits were granted in the year 1951 no conditions were imposed on the right of the Petitioner company to ply its public carriers on the route and it was not open to the Regional Transport Authority to refuse to renew the permits on the grounds which are outside the scope of Section 55 of the Motor Vehicles Act. Certain objections in the nature of preliminary objections were raised by the counsel for the opposite parties Nos. 4 and 5 It was strenuously argued by Sri Dhawan that the Petitioner has suppressed certain material facts and consequently is not entitled to any relief under Article 226 of the Constitution. It was further urged by him that the Petitioner having obtained the permits on the representation that he had to carry out the contract of extracting resin from the forests cannot now take advantage of the provisions of the Motor Vehicles Act and claim a right of renewal of its permits although the purpose for which it had been granted the permits had come to an end. The petition is not bona fide and no relief should be granted to the Petitioner under Article 226 of the Constitution. It was further urged by the opposite parties that the Petitioner could not claim a renewal of its permits as a matter of right. It was a privilege granted to him under certain circumstances

and as such he could not get any relief under Article 226 of the Constitution as the existence of a right is the foundation for the grant of the relief under the said Article. It was also contended that the permits which were granted to the Petitioner company in the year 1951 were irregular as proper procedure was not followed at the time of the grant and as such the Petitioner is not entitled to ask for the renewal of irregular permits.

6. Lastly, it was contended that even if it is held that the Petitioner is entitled to relief no mandamus should be granted to the Petitioner as such a relief will be infructuous. If any direction is issued to the Regional Transport Authority to consider the application of the Petitioner for renewal according to law it is likely to be rejected again on the ground that the previous permits granted to the Petitioner were irregular.

7. In my opinion there is no force in any of these preliminary objections raised by the opposite parties. No material suppression has been pointed out by the opposite parties which would (sic) the Petitioner to get any relief under Article 226 of the Constitution. It is not necessary to refer to the law on this point. The law is well settled that if the Petitioner makes certain material suppression of facts in his petition and on the strength of such suppression he obtains an interim order he is disentitled to any relief under Article 226 of the Constitution. But, as I have already pointed out, no material misrepresentation of facts or suppression of facts has been pointed out by the opposite parties. It was contended by the opposite parties that the Petitioner obtained the permits on the representation that it had to carry out the contract of extracting resin. In the present petition it has not been suppressed by the Petitioner that in the year 1951 it obtained the permits on the recommendation of the Forest Department that it was necessary for the Petitioner to have four permits in order to carry out the terms of the contract. In the petition itself it has been pointed out that in spite of the fact that the previous permits were granted on the recommendation of the Forest Department the Petitioner in law is entitled to the renewal of its permits. It cannot therefore be said that there is any misrepresentation of facts in the present petition on that point. Even at the time when the previous permits were obtained it was a fact that the Petitioner had to carry out the contract of extracting resin therefore at that time there was no misrepresentation of any fact.

8. The other fact which has been pointed out by the opposite parties is that in the petition it was mentioned that the District Magistrate had also written to the Transport Authorities that the transport facility on the route was not adequate and the demand for the public carriers was greater than the number actually plying on the area on 28-12-1954. But the fact is that subsequently on 1-7-1955 the District Magistrate had written to the Transport Authorities that on reconsideration of the circumstances the District Magistrate had come to the conclusion that adequate number of stage carriages were running on that route and the Petitioner had deliberately suppressed the second letter sent by the District Magistrate on 1-7-1955. That a letter was sent subsequently by the

District Magistrate on 1-7-1955 is not denied by the Petitioner but it does not appear that the fact was known to the Petitioner at the time of the petition and that he deliberately suppressed that. Apart from it the question whether the public carriers which are plying on the route are sufficient for the public need has not at all been considered by the Regional Transport Authority in refusing the renewal of the permits and consequently for the purposes of the present petition this matter is not relevant.

9. As regards the second contention of the opposite parties the case of the Petitioner is not that it is trying to enforce its right to get the renewal of the permits but its contention is that it has a fundamental right to carry on business of plying public carriers. The Legislature has placed certain restrictions on the rights of a person to carry on business of plying public carriers under the Motor Vehicles Act and the restrictions may be justified in law but the Petitioner can challenge the order passed by a quasi-judicial body on the ground that it is not in accordance with the provisions of the Motor Vehicles Act. What the Petitioner is claiming is a relief by means of a writ of certiorari for quashing the order passed by the Regional Transport Authority and if it succeeds in establishing that the order goes beyond the provisions of Section 55 it is entitled to a relief under Article 226. The petition therefore cannot be rejected on the ground that the company is seeking to enforce a privilege.

10. It was argued by the opposite parties that ordinarily a person may have a fundamental right to carry on business and if he applies for a permit in accordance with the provisions of the Motor Vehicles Act the Transport Authority will have no right to refuse to grant it. But in the present case the right which the company possessed to ply its buses was not an unfettered right but was a conditional one. It was permitted in the past to ply its public carriers as it had to carry out a certain contract. It was therefore a conditional right which it possessed to carry on business. Although no conditions may have been incorporated in the permit itself the right which the Petitioner possessed was itself a conditional right and the company therefore could not be allowed to enforce by means of a writ petition an absolute right to carry on business although the right which it possessed was a conditional one. In my opinion there is no substance in this argument either of the opposite parties. The right which the Petitioner claimed or had been enjoying was not a conditional one. In view of the provisions of the Motor Vehicles Act it could not ply its buses unless it had obtained a permit and one of the reasons why the permits were granted to it was that it had to discharge a certain contract but to my mind that does not make the right to ply its buses conditional. This argument appears to be attractive on the face of it but on a closer examination it has no substance. A particular privilege may be granted to a person because of a certain circumstance but that does not make the right to carry on business a conditional one.

11. The last point, as I have already mentioned, argued by the opposite parties was that any relief granted to the Petitioner will be infructuous inasmuch as even

if the application is sent back for reconsideration it is likely to be rejected on the ground that the previous permits were irregular, has no substance. The main contention of the Petitioner is that the order passed by the Regional Transport Authority should be quashed as it is based on the grounds which are extraneous to Section 55 of the Motor Vehicles Act. The Regional Transport Authority have based their decision entirely on the ground that the contract had come to an end and not on the ground that the previous permits were irregular. Whether those permits were regular or irregular has not been gone into by the proper authority, and when the matter goes back to the Regional Transport Authority the Regional Transport Authority will have to go into that question if it is raised by any of the parties. This Court will not usurp the jurisdiction of the Regional Transport Authority to determine the question whether the previous permits granted were valid in law or not. In this connection reliance was placed by the Petitioner on the case of *K. Muthuvadivelu v. Regional Transport Officer* AIR 1956 Mad 143. In that case the permit the renewal of which was sought had been declared to be invalid by a competent Court subsequent to the grant and it was held by the Madras High Court that though for certain purposes the renewed permit may be treated as a fresh permit the validity of the renewed permit depends upon the validity of the original permit. If for any reason subsequent to the grant of the original permit it is eventually decided by a competent tribunal that it was wrongly granted the result would be as if no permit had ever been granted at all and thus there could be no renewal of such a non-existent permit. The facts of that case were entirely different. In the present case no competent Court has so far held that the permits granted in the year 1951 to the applicant were invalid in law.

12. Coming now to the merits of the case it is necessary to refer to some of the provisions of the Motor Vehicles Act. Section 55 of the Motor Vehicles Act reads as follows:

A Regional Transport Authority shall, in deciding whether to grant or refuse a public carrier's permit, have regard to the following matters, namely:

- (a) the interests of the public generally;
- (b) the advantages to the public of the service to be provided and the convenience afforded to the public by the provision of such service;
- (c) the adequacy of existing road transport services for the carriage of goods upon the routes or within the area to be served and the effect upon those services of the service proposed;
- (d) the benefit to any particular locality or localities likely to be afforded by the service;
- (e) the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair; and
- (f) the condition of the roads included in the proposed routes or area;

and shall also take into consideration any representations made by persons already providing road transport facilities along or near to the proposed route or routes or by any local authority within whose jurisdiction any part of the proposed route or routes lies.

13. Section 57 provides for the procedure for the grant of any permit. Section 58 provides that a permit other than a temporary permit issued u/s 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit. Sub-section (2) of Section 58 further provides that a permit may be renewed on an application made and disposed of as if it were an application for a permit, provided that, other conditions being equal, an application for renewal shall be given preference over new applications for permits. The effect of Section 58 therefore is that an application for renewal is for all purposes to be treated as a fresh application for grant of a permit and the considerations which the Transport Authority has to take into consideration in granting or refusing a permit as provided for u/s 55 have also got to be taken into consideration when considering an application for renewal, with this additional qualification that all things being equal a preference is to be given to an application for renewal over a new application for permits. The matters which have got to be considered in granting or refusing a permit are enumerated in Clauses (a) to (f) of Section 55 and to my mind it is not open to a Regional Transport Authority to go beyond the conditions laid down in Section 55, Clauses (a) to (f), and refuse permit on a ground which is wholly outside the scope of Clauses (a) to (f) of Section 55. The conditions enumerated u/s 55 are in the nature of restrictions placed on the fundamental right of a citizen to carry on transport business and the restrictions have got to be justified under Sub-clause (6) of Article 19 of the Constitution. All the clauses in Section 55 deal with the interests of the public generally and relate to matters which are of interest and advantage to the travelling public and if Section 55 is so interpreted as to give a wide discretion to the executive authority to grant or refuse permits in an arbitrary manner the section will infringe the fundamental right and would not be justified under Sub-section (6) of Article 19 of the Constitution. The section therefore has to be interpreted so as to lay down the limits on the powers of the Regional Transport Authority in granting or refusing permits. It was contended by the opposite parties that Clauses (a) to (f) of Section 56 are not exhaustive. It may be that they are not exhaustive in the sense that the Transport Authorities may have regard to considerations other than those expressly laid down in Clauses (a) to (f) of Section 55, but the considerations should not be such as to be wholly unconnected with the conditions laid down in Clauses (a) to (f) of Section 55. Reliance was placed by the opposite parties on the case of *Ramayya v. State of Madras* AIR 1952 Mad. 200, for the proposition that Section 47 is not exhaustive. Particular reliance is placed on the following observation of the learned Judges:

Section 47 is not exhaustive. Though the authority has no jurisdiction to issue or

refuse a permit without taking the matters mentioned therein into consideration, the section does not in terms exclude from the consideration other matters germane to the question to be decided. If it is possible for the Regional Transport Authority to take certain matters into consideration, there is nothing that prevents the Government from considering them for the first time in revision.

14. This case to my mind does not lay down that it is open to the Transport Authorities to take into consideration matters which are wholly unconnected with Clauses (a) to (f) of Section 55. It cannot be said that the ground that the previous permit were granted as the Petitioner had to discharge certain obligations under a contract is "germane" to the question of granting or refusing the renewal at this stage.

15. In the case of the Full Bench decision of *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, it was held by this Court that a R.T. Authority in issuing permits acts as a quasi-judicial body and in dealing with the applications for permits has to bring to bear an independent and impartial mind of its own and act in accordance with the provisions of Sections 47 and 48 of the Motor Vehicles Act. u/s 47(1)(a) the Regional Transport Authority has to take into consideration the interests of the public generally. As the Regional Transport Authority is mainly concerned with the interests of the travelling public it must primarily be concerned with the interests of the travelling public. It was further observed at p. 264 of the report by the learned Chief Justice as follows:

There can be no doubt that the Provincial and the Regional Transport Authorities have to determine the question whether a permit should or should not be issued in accordance with the provisions of the Motor Vehicles Act and the Rules made thereunder. Any reason, which is not a valid reason under the provisions of the Motor Vehicles Act, cannot be taken by them into consideration. And the matters they must consider before issuing or refusing to issue a permit are set out in the Motor Vehicles Act and the Rules made thereunder.

16. It must be borne in mind that the provisions of Section 47 are similar to those of Section 55. The Full Bench therefore in my opinion has laid down that in granting or refusing permits the Regional Transport Authority cannot travel beyond the scope of Section 55 and grant or refuse permit on the grounds which are invalid under the said provisions.

17. It was contended by the opposite parties that Section 55 in terms authorises the Regional Transport Authority to take into consideration the matters enumerated in Clauses (a) to (f) and also any representation made by person already providing road transport facilities, along or near to the proposed route or routes or by any local authority within whose jurisdiction any part of the proposed route or routes lies. The representation, according to the opposite parties, is to be considered in addition to the conditions enumerated in Clauses (a) to (f) of Section 55. It was further contended by the opposite parties that an

objection had been filed on behalf of the Tehri Garhwal Motor Owners Corporation Limited to the application for the grant of permits made by the Petitioner and in that objection it was specifically mentioned that the previous permits to the applicant had been granted on the condition that it had to fulfil certain obligations under the contract. The Petitioner therefore on the termination of the contract was not entitled to the renewal of its permits. As this objection was raised in the representation made by the opposite parties it was open to the Regional Transport Authority to take it into consideration in addition to the grounds mentioned in Clauses (a) to (f) and as the Regional Transport Authority did take into consideration that objection and accepted it and rejected the Petitioner's application it cannot be said that it acted in violation of the provisions of Section 55. It was controverted by the Petitioner that any objection had been raised on behalf of the opposite parties before the Regional Transport Authorities But it is not necessary for me to go into that question of fact in the view which I take of the provisions of Section 55. Even assuming that the Regional Transport Authority was bound u/s 55 to consider the representation made by the opposite parties and that in the present case in fact a representation had been made by the opposite parties and considered by the Regional Transport Authority any ground which went beyond the scope of Clauses (a) to (f) of Section 55 taken by the opposite parties in their representation could not be a valid ground for granting or refusing a permit. Section 55 does provide for a representation by the person who also is plying his buses in the locality or any local body but it does not lay down that the Regional Transport Authority is to accept the representation made by such a person or a local body even though based on grounds which are not connected with the grounds enumerated in Clauses (a) to (t) of Section 55. Section 55, Clause (c) provides that one of the matters which has to be considered is the adequacy of the existing road transport services for the carriage of goods upon the routes or within the area to be served and the effect upon those services of the service proposed and it is in connection with this matter that any representation made by persons already providing road transport facilities or the local body within whose jurisdiction any part of the proposed route lies will be relevant. To my mind the scheme of Section 55 appears to be that any representation connected with matters mentioned in Clause (c) of Section 55 can be made by a person providing a road transport facility in the locality or any local body, and it is open to the Regional Transport Authority to take such a representation into consideration. But that does not give power to the Regional Transport Authority to act arbitrarily upon any representation made by such a person or a local authority and to travel outside the ambit of the provisions of Clauses (a) to (f) of Section 55 or any considerations which are wholly unconnected with the purpose for which the Transport Authorities have been given power to grant or refuse permits. It has been conceded by the opposite parties that if the Transport Authority when granting or refusing permits acts as a quasi-judicial body any decision arrived at by the Regional Transport Authority is liable to be interfered with by this Court by means of a writ of certiorari. It is not necessary to point out that a writ of

certiorari can also be issued on the ground that the inferior tribunal has committed an error of law on the face of the record.

18. The Standing Counsel adopted the arguments raised by the opposite parties Nos. 4 and 5 but he further contended that the permits which were granted to the Petitioner in the year 1951 were of permanent permits but they were temporary permits within the meaning of Section 62 of the Motor Vehicles Act. Section 62 of the Act provides as follows:

A Regional Transport Authority may at its discretion, and 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 a seasonal business, or

(c) to meet particular temporary need, and may attach to any such permit any condition it thinks fit.

19. It contemplates permits for temporary purposes and it is for a limited period not exceeding four months. Rules provide for the procedure for the grant of a temporary permit. There is a specified form for such a permit. The permits therefore granted to the Petitioner in the year 1951 cannot be regarded as temporary permits u/s 62. Apart from this the ground on which the renewal has been refused is not that the original permits which were granted to the Petitioner were temporary permits u/s 62 of the Act. In fact the counsel for the opposite parties Nos. 4 and 5, has also urged a similar argument but in a different manner. His contention was that the permits which were granted to the Petitioner in the year 1951 were neither permanent permits nor temporary permits u/s 62 but they were invalid permits or conditional permits which could not be renewed. I have already dealt with that point and it is needless to point out again that apart from the correctness of this argument the decision of the Regional Transport Authority is not based on any of these grounds and it is not open for me to go into that question at this stage.

20. I therefore, allow this petition with costs, against opposite parties 1 to 3 and quash the orders of the Regional Transport Authority and of the State Transport Authority rejecting the application of the Petitioner for the renewal of its permits and further direct opposite party No. 3, Regional Transport Authority, Meerut Division, to consider the application of the Petitioner for renewal of its permits in accordance with law.