

(1954) 07 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ No. 75 of 1954

General Motor Bus Service, Tonk and another	APPELLANT
Vs	
Regional Transport Authority, Jaipur and others	RESPONDENT

Date of Decision : 28-07-1954

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1955 Raj 14 : (1955) RLW 469

Hon'ble Judges : Sharma, J;Bapna, J

Bench : Division Bench

Advocate : N.L. Jain, for the Appellant; C.B. Bhargava, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bapna, J.—This is a petition under Article 226 of the Constitution.

2. The petitioners General Motor Bus Service, Tonk, and Dwarka Dass Banomal were allowed to run five buses and one bus respectively on the Tonk-Niwai route by Resolution No. 121 (9) of the Regional Transport Authority, Jaipur dated the 23rd Sept. 1952. By the same resolution Mohandas and Govt. Transport Service Tonk, were allowed to run one and four buses respectively on the same route (Ex. S/1). The permits granted under this resolution were directed to be valid up to 30-9-1954.

On 28-11-1952, the Regional Transport Authority asked for applications for various routes including route No. 15 Jaipur Tonk. It was mentioned in the advertisement that the existing operators on the routes advertised who had been granted regular permits by the Regional Transport Authority need not apply. The Regional Transport Authority also reserved the right to amend or cancel any route and to limit the number of permits on any route.

The two petitioners and respondent No. 3 Manager, Government Transport Service Tonk, made applications for being permitted to ply buses on this route.

Respondent No. 3 wanted to ply four buses. The petitioner General Motor Bus Service wanted to ply four buses and Dwarkadas Banomal wanted to ply one bus. These applicants contended that they had already been plying their buses on Tonk-Niwai route, and they should be given preference over other applicants. The same argument was made by operators on the route from Jaipur to Niwai on the allegation that the destination of Tonk was only an extension of the previous route.

The Regional Transport Authority by resolution No. 343 of 1953 dated the 5th/6th August 1953 did not accept these contentions, for they said that Niwai was a railway station and required a separate service. The Regional Transport Authority allowed 41 buses to ply from Jaipur to Tonk, including three buses of the General Motor Bus Service, one of Dwarkadas Banomal and four of Government Transport Service, Tonk.

It was further resolved that the General Motor Bus Service, Dwarkadas Banomal, Mohandas and Government Transport Service, Tonk; should surrender their (existing) permits of Tonk Niwai route for three, one, one and four buses respectively before they obtain permits for Jaipur-Tonk route for equal number of buses as sanctioned.

3. It is contended by learned counsel for the petitioners that in this manner the General Motor Bus Service was permitted to continue to ply two buses between Niwai and Tonk and the second petitioner Dwarkadas Banomal, who had in the meanwhile been granted permits for 2 more buses on Tonk-Niwai route, was permitted to continue to ply two buses between Niwai and Tonk. The Regional Transport Authority fixed the number of buses which were to ply between Niwai and Tonk at four by the same resolution.

4. The grievance of the petitioners is that the Manager, Government Transport Service continued to ply two buses on the Tonk-Niwai route without authority and on seeking information from the Regional Transport Officer it transpired that the Manager, Government Transport Service, Tonk, had obtained an order provisionally on 19-10-1953 to ply two buses on Niwai-Tonk route. It was alleged that no permits were however obtained by the Manager, Government Transport Service, for any of the vehicles and the running of two buses on the Tonk-Niwai route was unauthorised and contrary to law and had been causing considerable logs to the petitioners.

It was stated that the petitioners approached the Regional Transport Authority but they declined to take city action in the matter and they were, therefore, compelled to approach this Court for redress. It was prayed that the Regional Transport Authority, Jaipur and the State of Rajasthan, respondents Nos. 1 and 2, be directed to call upon Respondent No. 3 Manager, Government Transport Service, Tonk, not to ply two motor buses on Tonk-Niwai route and the Regional Transport Authority be directed not to issue permits to Respondent No. 3 and to cancel the provisional permits granted to him.

5. The respondents contended that the resolution of 23-9-1952, permitted the Manager, Government Transport Service to ply four buses between Niwai and Tonk up to a period ending with 30-9-1954. It was argued that the resolution of the 5/6th August, 1953, gave an option to the Government Transport Service to ply buses on the Jaipur Tonk route and in that case only they were to surrender their permits previously granted to them for Tonk-Niwai route. The Manager, Government Transport Service, however, felt content with running his buses on the Tonk-Niwai route, and therefore, obtained the order dated the 19th October 1953 for plying two buses on Tonk-Niwai route. The permits even for Tonk-Niwai route were not obtained in view of sub-s. (3) of S. 42, which exempted Government owned buses from the necessity of obtaining a permit. It was stated that the permits had since been obtained during the pendency of this petition in June, 1954.

6. learned counsel for the petitioners argued, firstly, that even the permission granted by resolution of 23-9-1952, was invalid and in any case had been superseded by the resolution of 6-8-1953, and the second part of the resolution of that date was in the nature of an order to the Govt. Transport Service to surrender their previous permits and the Regional Transport Authority could not grant any permit to respondent No. 3 for running two buses on the Tonk-Niwai" route.

7. As to the first contention, it was contended that the Government Transport Service had not even made any application for Tonk-Niwai route when the applications for various routes were considered by the Regional Transport Authority in September, 1952. Attention was drawn to the Rajasthan Gazette Notification D/-26-7-1952.

Learned Deputy Government Advocate, however, explained that there were two routes for which applications had been submitted by various persons and that while Tonk-Niwai route is mentioned at No. 226, the Niwai-Tonk-Deoli-Jahazpur route is mentioned at No. 168, and the Rajasthan Government Transport Service, Tonk, did make an application for four buses in respect of the Niwai-Tonk-Deoli-Jahazpur route. The Transport Authority did not consider that two separate routes were justified and therefore, it was well within its powers to grant permission to the Rajasthan Government Transport Service along with various other persons on the Tonk-Niwai route.

It is clear that Rule 83 framed under the Rajasthan Motor Vehicles Act permits the Regional Transport Authority to modify the terms of the application in a reasonable degree and in such a case the application is to be deemed to be an application for the permit in the form granted. There was thus, in our opinion, ample power in the Regional Transport Authority to consolidate the two routes which were overlapping up to a certain point and to consider the applications for the two routes as for one and the same route and to grant permit accordingly. The sanctioning of the permits to the Government Transport Service for four buses on the Jaipur-Tonk route in September, 1952, was within the powers

exercisable by the Regional Transport Authority and cannot be questioned.

8. As to the second contention, the resolution of September, 1952, permitted the Government Transport Service to ply four buses between Niwai and Tonk up to 30-9-1954. The Regional Transport Authority had only advertised for Jaipur-Tonk route by its advertisement of November, 1952. The Regional Transport Authority while conceding that Tonk-Niwai route should be kept separate was only prepared to grant permission on the extended route to the previous operators in case they agreed to surrender their permits for Tonk-Niwai route.

The Regional Transport Authority had no power under the law to cancel the permits granted by it except in accordance with S. 60, Motor Vehicles Act, and could only hope that the previous bus operators would of their own accord surrender their previous permits, and even could put it as a condition of grant of new permits on extended route. But the Regional Transport Authority had no power to compel the previous operators including the Government Transport Service to surrender their permits if they did not like to avail of the extended service.

It may be pointed out that the conditions for cancellation or suspension of permits mentioned in S. 60 did not exist and, therefore, the direction given by the second part of the resolution was only of a permissive nature. It is admitted by the petitioners that the Government Transport Service did not at any time attempt to run any bus on the Jaipur-Tonk route under the sanction granted by the resolution of 6-8-1953.

9. It was argued by learned counsel for the petitioners that in any case the Government Transport Service could not run their buses on Tonk-Niwai route without obtaining permits. This contention is correct. As held in - *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, the exemption of the State Government, from obtaining permits allowed under sub-s. (3) of S. 42 of the Motor Vehicles Act is inconsistent with Art. 14 of the Constitution, and is accordingly invalid, and the Manager of the Government Transport Service had to obtain permits for plying Government owned buses.

Learned Government Advocate intimated that the omission to obtain permits was due to the misunderstanding that the exemption granted by S. 42(3) was valid but, in view of the further advice that has been received, the Manager, Government Transport Service, Tonk, has obtained proper permits in June, 1954, in continuation of the sanction which was granted on 23-9-1952. Learned counsel for the petitioners admitted that permits have now been obtained by the Government Bus Service. The Manager, Government Transport Service having now secured a valid permit to run two buses on the Tonk-Niwai route. the petitioners have no right to restrain them from their being plied on hire on the said route.

10. As a result, the petition is dismissed. In view of the fact that the defect as to permits was cured by the respondent No. 3 after the application had been filed,

we make no order as to costs.