
(2000) 08 MP CK 0082
In the Madhya Pradesh High Court
Case No : Writ Petition No.1174 of 2000

Hridyanand Tiwari

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Motor Vehicles Act, 1939 — Section 68

Motor Vehicles Act, 1988 — Section 2(38), 87, 87(1), 88(1), 88(5)

Citation : AIR 2001 MP 17 : (2001) 1 JLJ 30 : (2001) 3 MPHT 34 : (2001) 1 MPLJ 466

Hon'ble Judges : Mr. S.P. Srivastava, J

Bench : Single Bench

Advocate : Shri J.P. Gupta and Mr. Anoop Nigam, for the Appellant; Shri Arvind Dudawat, Shri K.N. Gupta, Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the petitioner as well as the learned Government Advocate representing the respondent Nos. 1 to 3 and also the learned counsel representing the respondent Nos. 4 and 5, who have filed the counter-affidavit/return in opposition to the writ petition.

Since the petitioner and the contesting respondent Nos. 4 and 5 have already exchanged their affidavits this writ petition is being disposed of at this stage taking into consideration the facts and circumstances brought on record especially in view of the request of the counsel for the parties that as the period for which the temporary permit had been granted to the petitioner by Rajya Parivahan Pradhikaran, is going to expire on 31-8-2000 and the application for fresh temporary permit has been rejected under the revisional order this matter may be disposed of expeditiously.

The petitioner feels aggrieved by the order passed by the Stale Transport

Appellate Tribunal dated 28-6-2000 where under the revision filed by the present respondent Nos. 4 and 5 challenging the order of the State Transport Authority, Madhya Pradesh, granting a temporary permit, referred to hereinabove, has been set aside.

The facts in brief, shorn of details and necessary for the disposal of this writ petition lie in a narrow compass. The petitioner had been granted a temporary inter-State permit for the period 21-3-2000 to 30-4-2000 u/s 87(1)(c) of the Motor Vehicles Act for plying the stage-carriage on the inter-State route Baikunthpur to Ranchi taking into consideration the convenience of the general public subject to certain conditions which included a condition for getting the permit counter-signed by the competent Transport Authority of the State of Bihar.

The petitioner had moved an application u/s 87 of the Motor Vehicles Act for a fresh temporary permit asserting that the temporary need continued to subsist. The route for which the temporary permit had been sought for was disclosed to be Baikunthpur to Ranchi via Shrinagar, Kuledi, Surajpur, Vishrampur, Latori, Datimangod, Ambikapur, Rajpur, Balrampur, Ramanujganj, Godramana, Garhwa-road, Parwamod, Daltonganj. It may be noticed that the temporary permit which had been granted earlier to the petitioner for the inter-State route-- Baikunthpur to Ranchi was via Latori, Ambikapur, Rajpur, Balrampur, Ramanujganj, Godermana, Garhwa-town, Garhwa- road, Station, Parwamod, Daltonganj, Manika, Latihar, Chandva and Kudu.

The State Transport Authority, Madhya Pradesh, the respondent No. 3, vide the order dated 29-4-2000 holding that the temporary permit sought for was for the same route and with the same time-schedule for which the petitioner had been granted a temporary permit earlier which was valid upto 30-4-2000 and that the competent Transport Authority of the State of Bihar had counter-signed the earlier permit and further that the route for which the temporary permit was applied for was the route which stood sanctioned under the reciprocal agreement, granted the application coming to the conclusion that taking into consideration the season, marriages, summer-vacation and the season for kharif harvesting and further the rush of the passengers on account of re-opening of the schools and colleges in the month of July and further the festival of Ganga-Dashehara, Akhateej, Janmashtami, Rakshabandhan etc., which were special festivals and led to increase of passengers on the route in question the need in respect whereof could be satisfied and the continuity of the regulated transport could be maintained only by grant of a temporary permit, granted the impugned temporary permit to the petitioner on the same terms and conditions on which the earlier temporary permit had been granted directing that the objections to the grant of permit be posted for hearing on 6-5-2000 and the temporary permit will be subject to final order passed on that date.

The aforesaid order dated 29-4-2000 was challenged by respondent Nos. 4 and 5 by means of a revision before the M.P. State Transport Appellate , Tribunal, the respondent No. 2. The respondent No. 2 vide its aforesaid order came to the

conclusion that the finding of the State Transport Authority, respondent No. 3 that the temporary permit which had been sought for was for the route which was the subject matter of the reciprocal agreement was incorrect. The aforesaid finding was set aside by the Revising Authority on the ground that the route Ranchi to Baikunthpur via Ramanujganj, Ambikapur, which was the subject matter of the reciprocal agreement between the State of Madhya Pradesh and the State of Bihar had a total distance of 396 kms., out of which a portion covering 188 kms. fell within the State of Madhya Pradesh and the remaining portion covering 208 kms. of the route fell within the State of Bihar, but the route for which the temporary permit was sought for covered an area of 452 kms. In this view of the matter according to the Revising Authority the route for which the temporary permit had been sought for could not be taken to be the route which was the subject matter of the reciprocal agreement. The Revising Authority, however, was further of the view that a portion of the route for which the temporary permit had been sought for overlapped with a notified route. The distance of the overlapping portion of the notified route, it was observed, could not be demonstrated to be less than 25 kms. as there was no certificate to this effect.

Coming to the conclusion that the temporary permit sought for was in respect of a route other than the route which was the subject matter of the reciprocal agreement and further a portion of the said route overlapped on the notified route, the Revising Authority holding the grant of temporary permit to be illegal, set aside the order passed by the State Transport Authority dated 29-4-2000.

It may be noticed that the Revising Authority did not upset in any manner the finding of the State Transport Authority about the urgency of the situation and the necessity for the grant of temporary permit to meet the extra requirement of transport facility which had weighed with the State Transport Authority while granting the temporary permit sought for. The Revising Authority further did not in any manner upset the conditions imposed by the State Transport Authority subject to which the temporary permit had been granted which conditions included the condition for getting the temporary permit countersigned by the Competent Authority of the State of Bihar before it could be operated upon.

Alongwith the counter-affidavit/return filed by the respondent Nos. 4 and 5 in opposition to the writ petition, a copy of the Reciprocal Agreement arrived at between the State of Bihar and the State of Madhya Pradesh published on 28th of September, 1979 in the Madhya Pradesh Raj-patra, has been filed. A copy of the notification issued by the Government of Madhya Pradesh u/s 68 of the Motor Vehicles Act, 1939 has also been filed whereunder the Scheme No. 57-M which was to operate from 15th of May, 1973 has been filed which indicates that the State Road Transport Services shall be provided on the Ambikapur-Manendragarh and Ambikapur-Surajpur routes. The portion of this notified route falling between Kaluwa and Vishrampur overlaps the route which is the subject matter of the reciprocal agreement and also overlaps the route for which the temporary permit

has been sought for. A certificate has been filed issued by the Karyapalan Yantri, Lok-Nirman Vibhag, Sambhag No. 1, Ambikapur dated 13-3-2000 which certifies that the distance between Kaluwa and Vishrampur is 18 kins. It may also be noticed that Baikunthpur-Ranchi route which forms part of the reciprocal agreement does not cover that portion of the route for which the temporary permit has been sought for covering the area between Baikunthpur, Kudeli, Shrinagar and Kaluwa and the distance from Vishrampur, Datigamod, Lateri, Ambikapur. Rest of the route is common to that covered by the reciprocal agreement. The aforesaid deviations, however, fall within the State of Madhya Pradesh.

In support of its findings the State Appellate Tribunal has placed reliance upon the observations made by the Apex Court in its decision in the case of Ashwani Kumar and Another Vs. Regional Transport Authority Bikaner and Another, . In the aforesaid case which related to the grant of a permanent Inter-State permit the Hon'ble Apex Court had clarified that the existence of a route is a condition precedent for exercise of the power under sub-section (1) of Section 88 of the Act. It was further indicated that inter-State route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by one State or an authority in the State. The State Governments concerned are supposed to deliberate and decide the routes to be opened as inter-State routes by determining the number of trips each route was to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective which is claimed to be a social welfare legislation. In the aforesaid decision it has been found that no inter-State route was in existence and therefore the authorities under the Act were not justified in granting the permanent permits to the appellants.

It may be noticed further that the Apex Court had specifically mentioned in the decision in the aforesaid case that the grant of inter-State permits with which they were concerned in that case was permissible u/s 88(5) of the Act. Further, it was clarified that the exception contained in Section 88(1) of the Act covered within its ambit the provision contained in Section 88(5) of the Act which regulated the grant of a permanent inter-State permit. However, the provision contained in Section 88(7) of the Act regulating the grant of temporary inter-State permits with the non-obstante clause were not considered and in fact there was no occasion for the same in the facts and circumstances of that case.

In the present case, it is not in dispute that an inter-State route with Baikunthpur and Ranchi as the termini was created under the reciprocal agreement between the respective parties. Section 88(7) of the Motor Vehicles Act clearly stipulates that notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit u/s 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may

be. In its decision in the case of Ashwani Kumar and another (supra) the implications arising u/s 88(7) of the Act had not been considered at all as there was no occasion for the same. In the facts and circumstances of the present case the aforesaid provision stands clearly attracted.

The Tribunal has drawn support from the aforesaid decision for its view that in case any inter-State route is not in existence on the basis of reciprocal agreement. In that event it would be improper to issue permits on such an inter-State route. The State Appellate Tribunal had further expressed the view that since in the present case there existed an inter-State route under the reciprocal agreement which was different from the route in question, it would be illegal to grant any temporary permit for the said route.

The learned counsel for the petitioner has strenuously urged that in view of the provisions contained in Section 88(7) of the Motor Vehicles Act, 1988 there could be no impediment in the grant of a temporary permit even though there was in existence an inter-State route under any reciprocal agreement between the two States. It was further contended that the provisions contained in Sections 88(1) and 88(7) of the Motor Vehicles Act contemplate granting of permanent and temporary permits with the concurrence of the State Transport Authority of the other State, providing different procedures and since in the present case the temporary permit granted earlier had been operated upon only after obtaining concurrence of the other State and even the temporary permit in dispute which had been granted was made subject to the condition that it will not be valid unless the concurrence of the State Transport Authority of the other State is obtained, there could be no occasion for any interference by the State Appellate Tribunal while exercising the revisional jurisdiction.

As has already been noticed hereinabove, the route for which the temporary permit had been granted to the petitioner was the route Baikunthpur to Ranchi via Latori, Ambikapur, etc. The temporary permit which had been granted vide the order dated 29-4-2000 was for the route Baikunthpur to Ranchi via Shrinagar, Kuledi, Surajpur, Vishrampur, Latori, etc. However, the route covered by the reciprocal agreement is Ranchi-Baikunthpur via Ramanujganj, Ambikapur.

From a perusal of the copy of the reciprocal agreement, it is apparent that it covered ten routes out of which the routes Ambikapur-Dal-tonganji via Ramanujganj and Ranchi-Ambikapur via Ramanujganj and Ambikapur-Garwar road via Ramanujganj overlapped to various extents. For all the ten routes, it had been agreed that permits for a total of 200 public carrier vehicles shall be counter-signed by the State Transport Authority of either State on the recommendation of the State Transport Authority/Regional Transport Authority concerned of the reciprocating State. Such counter-signatures were to be granted for plying the vehicles on all National and State Highways with a deviation upto 30 kms. except on prohibited routes. The reciprocal agreement also provided for the issuance of temporary permit for contract carriages/ omnibus as per need without prior concurrence by each State for specified

purposes. The temporary permit as per need could also be issued by a Transport Authority of one State for a specified route connecting the specified terminals without prior concurrence of the Transport Authority of the reciprocating State. However, the validity of such temporary permits could not exceed a period of fifteen days and such permits were to remain subject to further conditions as specified.

It may be noticed that the aforesaid provision and the purposes cannot be taken to be exhaustive. Further, there is nothing in the reciprocal agreement which may lead to the inference that the grant of temporary permits for other purposes was prohibited. In any case, the reciprocal agreement could not by any stretch of imagination override, supercede or nullify the statutory provision contained in Section 88(7) of the Act with the non-obstante clause enabling the concerned authority to grant a temporary permit on a inter-State route subject to the conditions stipulated therein.

The expression "route" has been defined u/s 2(38) of the Motor Vehicles Act. It has to have two terminals. Considering the definition, it is obvious that if one of the termini is different, it constitutes a different route, although the line of the travel to be traversed might be common to both the routes.

In the present case, what is apparent is that although the termini of the route Baikunthpur to Ranchi for which the temporary permit has been issued and the termini of the route covered by the reciprocal agreement are the same, yet in view of the deviations covering Baikunthpur, Kuledi, Shrinagar and Vishrampur, Daltonganj, Ambikapur, the distance of the route covered by the reciprocal agreement and the route for which the temporary permit had been granted stands varied. As noticed by the Tribunal, the distance covered by the route Baikunthpur to Ranchi as provided under the reciprocal agreement is of 396 kms. while the distance of the route for which the temporary permit has been granted having the same termini comes to 452 kms. The deviations however as already indicated earlier fall within the State of Madhya Pradesh.

The Tribunal in the aforesaid circumstances had come to the conclusion that in spite of the termini being the same the route for which the temporary permit has been granted has to be taken as a different route and could not be taken to be the same route which was contemplated under the reciprocal agreement.

It may be noticed at this stage that under the reciprocal agreement plying of the vehicles on all National and State Highways with a deviation upto 30 kms. except on prohibited routes was made permissible. The deviation in the present case was pointed out by the Tribunal in its impugned judgment was of 56 kms.

Since the expression "route" has been defined under the Motor Vehicles Act as a line of travel which specifies the Highway, which may be traversed by a motor vehicle between one terminus and another, any alteration made in a manner that it does not alter the numbers of the terminus will not render the route with the alteration keeping the termini to be the same to be a different route. Any extra

trip or partial return trip may sometimes in effect and substance constitute a separate route though on the part of the same Highway or line of travel as contemplated under the original route in case of altering the termini but where no different termini are either contemplated or created the stoppages at the intervening places of the route not constituting a termini will not and cannot result in creating a different route with different termini. The route for which the temporary permit has now been granted cannot be treated to be an independent route other than the original route contemplated under the reciprocal agreement as both the routes had the same termini.

In any view of the matter, taking into consideration the implications arising under the provisions contained in Section 88(7) of the Act, there could be no impediment in permitting the plying of the stage carriage on the same route, that is to say, with the same termini or even with a deviation keeping the termini to be the same if the concerned States agreed to the deviation specially when the reciprocal agreement did not envisage the grant of a temporary permit for meeting out any extra-ordinary situation justifying the grant of a temporary permit for a specified period to meet any exigency for a short duration taking into consideration the convenience of the general public and providing them facility of transportation.

In the present case, the temporary permit had been issued subject to the concurrence of the reciprocating State. In the absence of the concurrence/ counter-signature, this permit could not be operated upon.

It may be noticed that in its decision in the case of Goverdhan Lal Dhawan Vs. State of Bihar and Others, , while considering identical provisions under the Old Act the Apex Court had reiterated the observations made in its earlier decision in the case of Bundelkhand Motor Transport Company, Nowgaon Vs. Behari Lal Chaurasia and Another, , to the effect that even an inter-regional permit when granted is valid for the reasons for which the authority granting the permit has jurisdiction and when it is counter-signed by the Regional Transport Authority of the other region, the permit becomes valid for the entire route.

The contention that the permit has no validity whatever until it is counter-signed by the Regional Transport Authority of the other region was rejected. In the case of Govardhanlal (supra), it was also noticed that in case there is no provision in the Act or in the Rules framed by the State Government requiring the existence of a prior agreement it was difficult to hold that in absence of such a prior agreement between the concerned Transport Authorities an application of a grant of inter-regional permit should not be taken up for consideration by a Regional Transport Authority which has the jurisdiction to grant it observing that if a permit is issued by a Regional Transport Authority and it is not counter-signed by other Regional Transport Authority the permit will not be effective in the other region.

Taking into consideration the scheme underlying the Motor Vehicles Act, 1988

especially the provisions contained in Section 88(7) thereof, the aforesaid observations can be safely extended to the temporary permits granted on inter-State regions. The temporary permit so granted will have to be subject to the concurrence and counter-signature of the State Transport Authority of the other State as the case may be.

It must not be lost sight of that a permanent need as well as a temporary need may co-exist. Since the temporary need can co-exist with a permanent need, it is for the Regional Transport Authority to assess the sufficiency of the material as to the necessity of granting a temporary permit. An application on the ground of public convenience to meet a particular temporary need may be well founded. The order granting temporary permit must show how the temporary need had arisen. It cannot be granted merely for the convenience that may appeal to the granting authority. This power of issuing the temporary permit is not an uncontrolled or unrestricted power. While granting the permit, the interest of the public generally and the advantages flowing from the temporary provision to the public must be borne in mind. Ordinarily, however too frequent temporary permits for the same vehicle on the same route ought not be granted, specially when the provision for permanent permits is already there.

It should further not be lost sight of that it cannot be said that once the number of stage carriage permits between the two States have been exhausted, the concerned Transport Authority of the two States cannot issue/counter-sign fresh temporary permits beyond the said limit till there is a fresh agreement between the two States as it all depends on the exigencies of the situation and it is for meeting out such exigencies that a provision has been made in the Act as stipulated u/s 88(7) thereof, to which a reference has already been made hereinabove.

I must hasten to add that successive grant of temporary permits can be set aside on the proof of abuse of the power while issuing permits. The Regional Transport Authority has to apply its mind even while granting the temporary permits for second or third time to the same extent and it must give cogent reasons for granting the temporary permit.

Taking into consideration the facts and circumstances as indicated hereinabove, the finding returned by the Tribunal in regard to the identity of the route covered by the reciprocal agreement and the route for which the temporary permit has been granted and the finding in regard to the absence of jurisdiction to grant the temporary permit stand vitiated in law.

Since the Tribunal has approached the case from a wrong point of view and has failed to take into consideration the vital aspects going to the root of the matter, it will be appropriate that the matter is considered again in a correct perspective.

In view of what has been indicated hereinabove, this writ petition succeeds in part and quashing the impugned order passed by the Tribunal, the matter is remitted back to it for being decided afresh in accordance with the law and in the

light of the observations made hereinabove.

There shall however be no order as to costs.

Writ Petition partly allowed.