
(1994) 09 OHC CK 0036
In the Orissa High Court
Case No : O.J.C. No. 4340 of 1991

Janardan Panda

APPELLANT

Vs

Regional Transport Authority, Puri and Others

RESPONDENT

Date of Decision : 16-09-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 71(4), 87

Citation : AIR 1995 Ori 143 : (1994) 78 CLT 994 : (1994) 2 OLR 553

Hon'ble Judges : R.K. Patra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : S.R. Das, for the Appellant; Standing Counsel (Transport), for the Respondent

Judgement

G.B. Patnaik, J.—The question that arises for consideration in this writ application is whether while limiting the grant of stage-carriage permits to any individual to "five" under Sub-section (4) of Section 71 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"), the temporary permits granted to such individual u/s 87 of the Act can also be taken into account.

2. The Transport Commissioner-cum-Chairman, State Transport Authority, has issued a Circular to all the Regional Transport Officers on 22-8-1991, annexed as An-nexure-1, indicating therein the procedure to be adopted while applications for stage-carriage permits are disposed of and it has been further indicated therein that when an applicant approaches the registering authority for a letter before applying for a temporary permit to the S.T.A., the registering authority should issue the letter indicating the number of permits, temporary or permanent, held by him in order to compute the total number of stage-carriage permits held by, him in his name or in the name of other persons. It is this direction from the Transport Commissioner under Annexure-1 which is being challenged by the petitioner who is a fleet owner of stage-carriages. Though in the writ application, the constitutional validity of Sub-sections (4) and (5) of Section 71 of the Act had been challenged, but Mr. Das appearing for the

petitioner at the time of hearing did not press the said contention and limited his arguments on the question as already posed.

3. The stand of the Department in its return filed to this Court as well as in the arguments advanced by the learned Standing Counsel is that Sub-section (4) of Section 71 puts an embargo on the power of the R.T.A. to grant more than five stage-carriage permits to any individual, and on a literal interpretation to the aforesaid provision being given, it is susceptible of the only conclusion that an individual should not have more than five stage-carriage permits, whether permanent or temporary and, therefore, there is no infirmity with the Circular issued by the Transport Commissioner under Annexure-1. According to the learned Standing Counsel, the expression "permit" has been defined in Section 2(31) to mean, "a permit issued by a State or Regional Transport Authority" and the expression "stage-carriage" has been defined in Section 2(4) to mean, "a motor vehicle constructed or adapted to carry more than 6 passengers excluding the Driver for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for stages of the journey". In this view of the matter, grant of a temporary permit in respect of a stage-carriage also is a stage-carriage permit and the same has to be computed while determining the ceiling under Sub-section (4) of Section 71 and there is no rhyme or reason to exclude the temporary permits granted u/s 87 from the purview of computation.

4. In order to test the correctness of the rival submissions, it would be necessary to examine some provisions of the Act itself and their interpretation in accordance with the rules of interpretation of statutes. It may be noticed at this stage that under the Motor Vehicles Act, 1939, there was no such limitation in respect of grant of stage-carriage permits to any individual is contained in Subsection (4) of Section 71, the corresponding provision under the 1939 Act being Section 47. Under the Act, motor vehicles have been classified into the following categories, namely, contract carriage, as defined in Section 2(7); goods carriage, as defined in Section 2(14) and stage-carriage, as defined in Section 2(40). The expression "permit" has been defined in Section 2(31) to mean, "a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under the Act authorising the use of a motor vehicle as a transport vehicle." "Transport vehicle" has been defined in Section 2(47) to mean, "a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle." "Public service vehicle" has been defined in Section 2(35) to mean, "any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motor-cab, contract carriage, and stage carriage". "Private service vehicle" has been defined in Section 2(33) to mean, "a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward, but does not include a motor vehicle used for public purposes". Chapter V contains provisions

providing for control of transport vehicles and Section 66 prohibits user of a motor vehicle as a transport vehicle in any public place without a permit for the same. Section 70 provides for making an application for a permit in respect of a stage carriage and Section 71 provides the procedure which the Regional Transport Authority shall adopt, while considering an application for stage carriage permit and Sub-section (1) of Section 71 clearly stipulates that the Regional Transport Authority while considering an application for a stage carriage permit shall have regard to the object of the Act. Section 80 is the procedure prescribed under the Act is applying for and granting permits. Section 87 is the power of the permit-granting-authority to grant temporary permits subject to a maximum period of four months in any of the contingencies mentioned in clauses (a) to (d) of Sub-section (1) of Section 87 without following the procedure laid down in Section 80. The foundation for exercising jurisdiction u/s 87 is the existence of the circumstances mentioned in Clauses (a) to (d) of Sub-section (1) of the said section and, therefore, neither the procedure laid down in Section 80, nor the considerations to be regarded by the Regional Transport Authorities contained in Section 71 can be imported into Section 87 of the Act. Whether temporary need exists requiring a temporary permit to be issued is for the authority empowered u/s 87 of the Act to determine. Temporary permits granted u/s 87 of the Act by the R.T.A. being a permit which can be granted for a maximum period of four months and only when the conditions prescribed in Clauses (a) to (d) of Sub-section (1) of Section 87 are satisfied and that also the permit-granting-authority is not required to follow the procedure laid down in Section 80, constitute a class or category of permits by themselves and, therefore, such permits cannot be taken into account while the limitation provided in Sub-section (4) of Section 71 of the Act is considered. Section 71 is the procedure to be followed by the R.T.A. while considering an application for stage-carriage permit and Section 80 lays down the procedure in applying for and grant of permits. Since Section 87 itself provides that a Regional Transport Authority and the State "Transport Authority may without following the procedure laid down in Section 80 grant permit, the necessary conclusion would be that while deciding and implementing the limitation provided for in Sub-section (4) of Section 71, the number of temporary permits which an applicant has, need not be taken into account. In other words, the limitation provided for in Sub-section (4) of Section 71 is in respect of permanent stage carriage permits in the hand of the applicant and does not permit within its sweep "temporary permits" which an applicant might be possessing at the relevant point of time.

5. Learned Standing Counsel for the Department in course of his arguments contended that the rule of interpretation that phrases and sentences of a statute are to be understood in their natural, ordinary or popular and grammatical meaning must be applied and, therefore, there is no justification for giving any other meaning to the expression "permit" in Sub-section (4) of Section 71. But the normal rule of interpretation of statute itself provides that the grammatical

and popular meaning need not be adhered to if the objects of the statute suggest a different meaning. If a literal meaning to the expression "permit" in Sub-section (4) of Section 71 is given, then such a construction would prevent the manifest intention of the Legislature from being carried out. In deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included and the policy underlying the statute assume relevance and become material. As Halsbury has observed, the words should be construed in the light of their context rather than what may be either strict etymological sense or their popular meaning apart from that context. The obvious object of Sub-section (4) of Section 71 of the Act is not to confer monopoly on the hand of one individual operator in respect of stage-carriage permits in his hand. To avoid that monopoly, temporary permits which an operator might be having because of the contingencies provided in Clauses (a) to (d) of Sub-section (1) of Section 87 cannot be taken into account and it is not possible for us to accept the contention of the learned Standing Counsel for the Department that the expression "permit" in Sub-section (4) of Section 71 must be given a literal meaning.

This question came up for consideration before a Bench of the Madhya Pradesh High Court in the case of Sushil Madan Bairagi Vs. The State Transport Appellate Tribunal and Others, , and their Lordships after analysing the provisions of Sections 71 and 87 of the Act came to the conclusion:

"To conclude, we are of the view that considering the fact that a temporary permit is not a species or a kind of stage-carriage permit and also the object underlying the provision of ceiling contained in Section 71(4), a temporary permit should not be taken into account while computing the number of stage carriage permits for which ceiling is fixed in Section 71(4) of the Act."

In our considered opinion, the aforesaid decision correctly interprets the provision of Sub-section (4) of Section 71 of the Act. In this view of the matter, the direction of the Transport Commissioner in Annexure-1 to the effect that the R.T. A. should issue a letter indicating the number of permits, temporary or permanent, held by the applicant from the R.T.A. in order to compute the total number of stage-carriage permits held by the applicant in his name or in the name of other persons, is unsustainable and must be held to be contrary to Section 71(4) of the Act. We further hold that while computing the ceiling provided in Sub-section (4) of Section 71 of the Act, temporary permits in favour of an applicant cannot be taken into account.

6. The writ application is accordingly allowed. There will, however, be no order as to costs.

R.K. Patra, J.

7. I agree.