
(1976) 08 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1097 of 1976

Jaswant Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-08-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 51, 60, 74
Rajasthan Motor Vehicles Taxation Rules, 1951 — Rule 230

Citation : AIR 1977 Raj 42 : (1976) RLW 394 : (1976) 9 WLN 410

Hon'ble Judges : Rajinder Sachar, J

Bench : Single Bench

Advocate : B.L. Purohit, for the Appellant; H.N. Galla, Dy. Govt. Advocate and R.N. Munshi, for the Respondent

Final Decision : Dismissed

Judgement

Rajinder Sachar, J.—This is a petition under Article 226 of the Constitution challenging the imposition of a ban issued under Rule 230 of the Rajasthan Motor Vehicles Rules, 1951 (to be called the rules) on plying the tempos between Sanganeri Gate to Khasa Kothi, via Mirza Ismail Road. Jaipur City, by the Regional Transport Authority respondent No. 3. The same has to be effective from 1-7-1976.

2. The petitioner holds a contract carriage permit issued by the Regional Transport Authority, Jaipur Region which is valid upto 31-3-1979. In this permit the route area mentioned is the Municipal limits of Jaipur City. It may be noted that the banned portion viz., Sanganeri Gate to Khasa Kothi falls within the municipal limits of Jaipur. As the petitioner is aggrieved against the said decision by the Regional Transport Authority he has moved this court in the present writ petition.

3. Section 74 of the Act empowers the State Government or any authority authorised in this behalf by the State Government if satisfied that it is necessary

in the interest of public safety or convenience to prohibit or restrict as may be specified in the notification the driving of motor vehicles or any specified class of Motor Vehicles or the use of trailers either generally in a specified area or on a specified area or on a specified road. The State Government by virtue of Section 91 of the Act has framed Rule 230 which provides that a Regional Transport Authority shall have the power subject to the control of State Transport Authority to prohibit or restrict the use of Motor Vehicles generally of a particular class in a specified area or in respect of any road, provided that no such limits or restrictions shall be imposed without the concurrence of State Transport Authority.

4. The respondents seek to justify their action by invoking Section 74 to their aid. It appears that sometime in May, 1976 the Secretary, Regional Transport Authority put up a note to the Member, Regional Transport Authority in which he stated that it had been observed that tempos plying in Jaipur City instead of proving a facility for the passengers between Jaipur Railway Station to Sanganeri Gate have instead proved harmful that traffic has increased very much on M. I. Road, Station Road and that the plying of tempos is very inconvenient for fast moving traffic and that it has become essential and is in the interest of public that the plying of tempos be stopped on this road. He also noted that it had been seen that in spite of having been proceeded against for violation of the Rules, habituated as they are, the tempos are over-loaded which makes for the possibility of accidents and that the persons travelling in these overloaded tempos suffer great inconvenience, and that because of Government Offices between Jaipur Railway Station to Sanganeri Gate it was therefore, necessary and was in the interest of public convenience and of need of traffic that the tempos in Jaipur City be stopped from operating between Khasa Kothi to Sanganeri Gate. The Member Tribunal on this noted that this was a correct suggestion and that the concurrence may be obtained. Thereupon the matter was referred to the State Transport Authority which gave its concurrence and thereafter the impugned notification was issued, and published in the Rajasthan Gazette, D/- 15-6-1976.

5. Section 51 of the Motor Vehicles Act 1939 (hereinafter to be called "the Act") provides the procedure for grant of contract carriage permits. Sub-Clause (viii) of Sub-section (2) of Section M permits the Regional Transport Authority, after giving notice of not less than one month to vary the condition of a permit. Section 60 (1) (a) (b) permits the Transport Authority which granted the permit to cancel the permit or suspend it for such period as it thinks fit on the breach of any of the conditions contained in the permit or if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit; proviso however lays down that no permit shall be cancelled unless an opportunity has been given to the holder of a permit to furnish his explanation. Sub-section (1-A) of Section 60 permits the authority which granted the permit after giving the holder an opportunity to furnish an explanation to reduce either permanently or for such period as it thinks fit the number of vehicles or the route

or area covered by the permit on any of the grounds mentioned in Sub-section (1) of Section 60. The significance of reference to these sections by Mr. Purohit, the learned counsel for the petitioner is that if the authorities felt that the tempos are over-loading or are using it as a stage carriage which amounts to a breach of conditions of the permit it was open to them to issue notice to the petitioners and proceed against him either u/s 51 or Section 60 by varying the conditions of permit or by cancelling it for the breach of the permit. Mr. Purohit contended that if proceedings u/s 74 of the Act were to be allowed to be taken on the same grounds on which proceedings can be taken u/s 51 and Section 60, this will mean that the latter sections will become superfluous and this will be against the settled principle of interpretation as laid down in *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, that the rule of harmonious construction requires that no such provision or a section in statute should be considered as surplus or to have become nugatory by reference to some other sections. So stated the proposition is unexceptionable. But the impugned action is not being taken against the petitioner on the grounds mentioned in Section 51 or Section 60. This is because the permit of the petitioner continues to be valid for the Municipal limits of Jaipur City and all that has happened is that so long as the impugned order remains in force, the plying of the tempos between Sanganeri Gate to Khasa Kothi has been prohibited. That there is an obviously understandable difference in action taken for variation in the conditions of a permit u/s 51 of the Act or of a cancellation of permit u/s 60 of the Act, and the effect of the impugned action u/s 74 of the Act becomes immediately clear by assuming that if at any time the Government was of the opinion that it was not necessary to continue the impugned ban the immediate result will be that the petitioner whose permit continues to be valid for the municipal limits of Jaipur City will be entitled to operate. This clearly shows that there has been no variation of the conditions of permit or the cancellation of the same and therefore invoking of Section 51 or Section 60 is inapposite.

6. It must be appreciated that Sections 51 and 60 fall in Chapter IV dealing with control of Motor Vehicle whereas Chapter VI of the Act (where Section 74 is to be found) deals with an entirely different aspect of control of traffic. Thus those two Chapters deal with different eventualities and it is impermissible to seek to mix the action taken under Chapter VI by seeking to judge it by referring to Chapter IV of the Act.

7. The next contention of Mr. Purohit is that the reasons mentioned in the impugned order of over-loading and of the tempos being used as stage carriage are outside the ambit of Section 74 and as the action is taken on subjective satisfaction of the authorities this amounts to taking into account irrelevant consideration and the impugned order therefore, suffers from an infirmity and invokes the principle laid down in *Zora Singh*, to his aid. I cannot agree. It is no doubt true that in the note prepared by the Secretary, R. T. A. a reference is found to the mention of the fact of cases of overloading and of the tempos being used as stage carriage, but a broad and liberal reading of the note will clearly

show that stress has been on the fact that it was in the interest of the convenience of public that this portion of the road be prohibited for plying by tempos because it was a road for fast moving traffic and also the convenience of the public require that tempos be so prohibited. Section 74 permits the authority to pass the order if it is satisfied that it is necessary in the interest of public safety or convenience that an order be passed. In the reply filed by the respondents it is stated that because of many offices of the Government located nearabout Mirza Ismail Road from Sanganeri Gate to Khasa Kothi there is very heavy traffic on this Road and the tempos which are running on this road have been often found to be running at a very fast speed endangering human life. The tempos are also stated to have been found to be overloaded and at many occasions persons have been found travelling on foot board and that they do not stop at the stops but would stop their vehicle at any point or place on the road from where they can pick up passengers. It was further found that in spite of legal action being taken against the permit holders of these tempos they did not care to observe the various provisions of the rules and continued to over-load their vehicles endangering human life and that it was in these circumstances that the Secretary, R. T. A., proposed to impose ban on plying of tempos from Sanganeri Gate to Khasa Kothi which proposal was ultimately accepted by the Member, R. T. A. and was also approved by the State Transport Authority. Mr. Purohit referred me to his rejoinder in which it has been stated that in the list which was attached with the note of the Secretary, R. T. A., recommending the ban did not give the correct facts. It is stressed that even accepting the list as it is it shows cases of three tempos namely of Serial Nos. 22, 23, 40 for having been challenged for having violated the conditions of the permit or for over-loading. Mr. Purohit contended that there is no tempo bearing the number at Serial No. 40 and that the tempo at serial No. 22 has not been plying for one year and that regarding another tempo mentioned at item No. 23 there had been no challan against it since 1972. Mr. Purohit's purpose in referring me to this factual data was to persuade me to hold that there were no facts existing on the basis of which a ban could have been imposed by respondent. One difficulty in examining this aspect is that this matter was not urged in the petition (the reason for that Mr. Purohit urges is that the list was not available when the petition was filed and therefore, he mentioned it in the rejoinder) so that the respondents could have given a proper reply. But even if one was to accept all these all that it may mean is that some of the data given in the list does not exactly tally. But what was essentially to be seen is as to what were the basic reasons for which the action was taken by the R. T. A. Reference to the impugned order shows that the mention of challans of the various tempos was a background material and not the reason for imposing the ban. The real reason mentioned in the impugned order was the fact of fast moving traffic, the congestion on the road and the coming up of the various Government buildings and the non-advisability of permitting for tempos plying on this route. It was definitely the opinion of the respondents as is clear from the note that because of the danger to life from rashly moving tempos and the heavy traffic on the road it

was necessary and in the interest of convenience of the public that tempos be prohibited from plying between Sangneri Gate to Khasa Kothi on Mirza Ismail Road. The statute has given the authority authorised by the State Government on being satisfied of the conditions mentioned in Section 74 to pass such an order. Unless therefore, it can be shown that the order has been passed mala fide or on extraneous considerations or on the basis of material on which no reasonable person could have passed such an order the said order is immune from scrutiny by this Court. This court by the very nature of things can obviously not have as full a data or facts before it as the authority so as to come to a conclusion whether it would be in the interest of public safety or convenience that the tempos should or should not be prohibited from operating in the portion between Sangneri Gate to Khasa Kothi. This court is not sitting as a court of appeal over the decision taken u/s 74 of the Act. No facts of malice are alleged in the petition nor any detail given of any extraneous consideration weighing with the authorities in having taken the impugned action. In the absence of such an allegation not to speak of any findings, it is not possible for this Court to interfere with an order which evidently has been passed in its discretion by the respondents. It must be remembered that the State Government has delegated its powers to respondents 2 and 3, who are specialists of dealing with the matters arising out of various facets of control of Motor Vehicle and Traffic. The information possessed by these bodies of the circumstances requiring the prohibition of plying of vehicles on certain road cannot be lightly brushed aside. In reality, unless it is shown that the authorities have acted in manifest disregard of the requirement of the statute or on collateral grounds, it would be a sound exercise of discretion of this court under its extraordinary jurisdiction under Article 226 of the Constitution, to refuse to entertain a challenge to an order passed in the exercise of its discretion by these authorities. Of course if this court was satisfied that the action taken by these authorities though apparently stated to be in the interest of public safety or convenience is for a collateral object or that their satisfaction is illusory or to serve an end not authorised by the statute, this court will not countenance and let stand such an order and will not hesitate, in fact it will be its duty to do so, to quash such an order. This court's self-restraining limitation can only be invoked to let stand bona fide administrative orders, and not orders passed in violation and against the provisions of the very statute which empowers the respondents to act. The core of rule of law which is the foundation of our democratic society cannot permit any member of the executive, however highly placed, to ignore the specific limitations on its power provided under the statute. Rule of law is the foe of absolutism and this court is under a constitutional obligation to uphold the mandate of law. However, as found by me the action of the respondents is within the four corners of the statute and there is therefore, no scope for interfering with its discretion.

8. Mr. Purohit had also sought to urge that respondents Nos. 2 and 3 have not applied their mind, before passing the impugned order. I can't agree. The note by Secretary Regional Transport Authority, had given details and stated that it

was necessary in the interest of public convenience to prohibit plying of tempos on the said road. This proposal was stated to be proper in so many words and assented to by member Regional Transport Authority and State Transport Authority, respondent No. 3. This clearly shows that the reasons mentioned by Secretary Regional Transport Authority were adopted by them when giving their approval and concurrence. This plea therefore, fails.

9. Another argument which Mr. Purohit urged was that Section 74 only permitted the State Government or an Authority authorised in this behalf to take action. In the present case the action has been taken by the Regional Transport Authority and approved by the State Transport Authority and the argument was that there is no authorisation placed on record in favour of State Transport Authority. This plea was not taken in the petition and evidently there was no reply by the respondents. That apart Rule 230 which has been framed u/s 91 of the Act specifies that a Regional Transport Authority shall have the power subject to the control of the State Transport Authority to pass such an order. The provisions of Section 74 are clearly complied with when the rule making authority has by Rule 230 empowered the Regional Transport Authority subject to the control of State Transport Authority to pass such an order. It is not necessary to give an authority by a separate authorisation when the rule itself has provided for such an authorisation. This plea also therefore, fails. Another argument by Mr. Purohit was that rules of natural justice required that the petitioner should have been heard before passing an order by respondents Nos. 2 and 3. I do not agree that in an order u/s 74 of the Act, the rule of natural justice of giving a hearing to the party affected before passing an order can be invoked. The reason is that an order u/s 74 is passed in the exercise of its discretion by the authority, on being satisfied that the eventualities mentioned in that section are satisfied. The only limitation is the restraint in the statute requiring the existence of the conditions precedent before an order can be passed. An order u/s 74 does not affect anybody's civil rights. It is not seeking to punish the petitioner or any other permit holder of the tempos. It has nothing to do with the individual behaviour good or bad of any permit holder. The action is not aimed at any particular permit holder. Action u/s 74 is taken on the authority being satisfied that it is necessary in the interest of public safety or convenience to prohibit the driving of any Motor Vehicle in a specified area or a specified road. In such a case the question of giving of hearing to any person does not arise because the satisfaction has to be of the authority itself. Moreover it is impossible in situations which would normally be arising u/s 74 of the Act to give a hearing to anyone. To take an illustration, if the authority is satisfied that in the interest of public safety or convenience certain portion of heavily congested road should be closed to certain specified vehicles immediately is it seriously suggested that unless a hearing is given to thousands of vehicle owners no order can be passed ? The very anomaly of the illustration shows the unsoundness of the argument requiring a hearing u/s 74 of the Act. Also giving a hearing seems fruitless because there is no charge or blame which any party is to explain to the

authority. Section 74 is not a penalty provision and the question of hearing anyone under this section is not contemplated. Action u/s 74 of the Act is to be taken subjectively and is in the discretion of the authority constituted under the Act, and the effort of Mr. Purohit to bring in the question of hearing and natural justice are totally misconceived and inappropriate.

10. As a result of the above I find no merit in the writ petition and the same is dismissed. There will be no order as to costs.