

(1985) 07 KAR CK 0045

In the Karnataka High Court

Case No : W.P. No. 130/85 and connected cases

Jeeva Transport Corporation Ltd. and Others

APPELLANT

Vs

Karnataka State Transport Appellate Tribunal

RESPONDENT

Date of Decision : 11-07-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 62(2)

Citation : (1985) 2 KarLJ 440

Hon'ble Judges : K. A. Swami, J

Judgement

1. In Writ Petition Nos. 19589/84 and 130/85 temporary permit granted to one T.P. Boriah on the route Mysore to Coimbatore for the period ending on 31-3-1985 is challenged. As the period for which the temporary permit was granted has already expired, these two petitions have become infructuous.

2. Accordingly, the same are liable to be dismissed as having become infructuous.

3. As far as the remaining Writ Petitions are concerned, the petitioners therein have sought for quashing the temporary permit granted to the aforesaid Sri T.P. Boriah by the Karnataka State Transport Authority (hereinafter referred to as the KSTA) from 1-4-1985 to 31-7-1985 in its resolution No. STA 5/TP. 70/83 dated 4-3-1985 on the very route Mysore to Coimbatore.

4. The facts necessary for the purpose of appreciating the contentions raised by both the sides are as follows:

Sri T.P. Boraiah, is granted a pucca Stage Carriage permit on the route Mysore to Madurai in No. P. St P. 1/76-77. The length of the route is 277 miles. Out of 277 miles, 65 miles lie in the State of Karnataka and 211 miles lie in Tamil Nadu. As T.P. Boriah is a resident of Karnataka, he has filed the application before the KSTA which has granted the pucca stage Carriage permit under the aforesaid No. P. St. P. 1/76-77. This permit was valid upto 17-6-1984. Subsequently, it has been renewed upto 17-6-1989.

5. The proceeding to obtain counter signature to the aforesaid pucca permit was

initiated before the State Transport Authority, Tamil Nadu. It has refused to grant the counter signature, Sri T.P. Boriah has filed CRP. No. 1871/1983 in the High Court of Madras challenging the order refusing to grant the counter signature, and that proceeding is still pending. Pending disposal of the C.R.P. the High Court of Madras has passed the following interim order:

"Since the revision petition is pending disposal, no direction as prayed for by the petitioner can be issued to the 1st respondent to counter-sign temporary permit granted by the State Transport Authority, Bangalore. On the other hand, the prayer of the petitioner can be satisfied by giving the following directions.

The 1st respondent will consider the question of counter-signing the permit with respect to the needs of the travelling public on making such enquiry on that behalf as is necessary and if he is satisfied on that aspect he may grant a temporary permit to the petitioner on condition the petitioner pays tax under Tamilnadu Act 13/1984 as per the directions already given by this Court in C.M: P. No. 6119/1983.

6. Thereafter, Sri T.P. Boriah, obtained the temporary Permit up to 30-11-1984, pursuant to the direction, issued by the KSTAT in Appeal No. 619/1984 on 29th August 1984. The operative portion of the order passed by the KSTAT is as follows:

"Appeal is allowed, impugned endorsement of the first respondent is set aside and first respondent is directed to grant a temporary permit to the appellant u/s. 62(1)(c) of the MV Act, 1939 on the route Mysore to Coimbatore and back via TN Pura, Chamarajnagar and Sathyamangala for performing the single trips with one vehicle bearing No. MEY. 4613 for the remaining period upto 30-11-1984 or till he commences operation of services under the Pucca permit whichever is earlier by imposing a condition on the appellant that he shall not operate the service under the temporary permit upto State Border unless it is countersigned by the STA of Tamil Nadu."

7. Thereafter, there was another temporary permit granted from 1-12-1984 to 31-12-1984. As pointed out earlier, it is challenged in Writ Petition Nos. 19589/84 and 130/1985. Subsequently, by the impugned order dated 4-3-1985 in No. STA. 5/TP. 70/83 the temporary permit in question is granted to Sri T.P. Boriah for the period from 1-4-1985. to 31-7-1985. The reasons assigned by the KSTA for granting the temporary permit are as follows:

"The earlier temporary permit granted and issued up to 31-3-1985 in respect of the above route has been assailed before the Hon"ble High Court of Karnataka in a writ petition No. 19589/84 by one Smt. T. Vengulakshmi of Kollegal. The Hon"ble High Court of Judicature at Madras by its order dated 7-2-1985 in W.M.P. 1495/85 in W.P. No. 845/85 directed the S.T.A. Madras to permit him to run the service from Mysore to Coimbatore up to 31-3-1985 or till the service under pucca permit resumes services pending further orders on the petition. Accordingly, the S.T.A. Madras, in endorsement No. R. No. 11751/E4/85, dated

18-2-1985 has countersigned the temporary permit up to 31-3-85. The Hon'ble High Court of Karnataka in W.P. No. 19589/84 dated 19-2-1985 has also vacated the stay order granted on 21-12-1984, 4-1-1985 and 31-1-1985 permitting the permit holder to operate the service. Therefore, the consideration of the request of the objectors is not felt necessary at this stage in view of the very fact that both the Stage High Courts have permitted him to operate the present service. The successive temporary permit if refused will be contrary to the orders of the Hon'ble High Courts in the aforesaid writ petitions.

In the circumstances, therefore, I proceed to consider the application for a successive temporary permit and pass the following order:

ORDER No. STA. 5/TP. 70/83 dated 4-3-1985

In exercise of powers under section 62 of the Motor vehicles Act, 1939, I, the Secretary, Karnataka State Transport Authority, Bangalore, do hereby grant temporary permit for a period of four months from 1-4-1985 to 31-7-1985 or till the regular service under substantive permit on the route: MYSORE TO MADURAI resumes service whichever is earlier subject to countersignature by the S.T.A. Madras on double point tax subject to usual conditions attached to the permit."

8. It is contended on behalf of the petitioners that the reasons assigned by the Karnataka State Transport Authority for granting temporary permit in question do not fall under Section 62 of the Motor Vehicles Act (hereinafter referred to as the Act); that the grant of temporary permit in succession amounts to abuse of power by the authority; that once pucca permit is renewed upto 17-6-1989, there is no scope for granting a temporary permit, that the pucca permit that has been granted to Sri T.P. Boriah, is in respect of the route Mysore to Madurai; that even if there is an obstacle in obtaining counter signature to the pucca permit and such a situation even it is construed to fall under sub. S. (2) of Section 62 of the Act, the temporary permit can at the most be granted in respect of the route which is covered by the pucca permit and not in respect of the portion of the route which becomes a quite different route.

9. On the contrary, it is contended by Sri C.S. Shanthamallappa, learned Counsel appearing for the grantee Sri T.P. Boriah, that the permit that has been granted is a stage carriage permit which means there is a need in respect of the stages covered by the route, therefore, the temporary permit can be granted in respect of the portion of the route which is covered by the pucca permit, that Counter signing Authority as per Section 62(2) of the Act, has power to curtail the route while counter signing the permit therefore, it is permissible to grant temporary permit in respect of a portion of the route covered, by the pucca permit. It is also contended that the need that has been found to exist on the route Mysore to Madurai for the purpose of granting a pucca stage carriage permit also proves the existence of need between any two stages of the route; that such a need falls under Sec. 62(1)(c) of the Act, as the pucca stage carriage permit cannot be operated and thereby it brings the case within the ambit of the pronouncement

of the Supreme Court in *The Madhya Pradesh State Road Transport Corporation, Bairagath, Bhopal (M.P.) v. B.P. Upadhyaya, Regional Transport Authority, Raipur & ors.* reported in-AIR 1966 SC 156. Hence it is submitted that the grant of temporary permit on the route Mysore to Coimbatore which forms a portion of the route Mysore to Madurai is valid; that the petitioners are not aggrieved persons because they are not affected.

10. Having regard to the aforesaid contentions, the main point that arises for consideration is as to whether pending consideration of the application for grant of counter-signature to the pucca permit granted on the route Mysore to Madurai, a temporary permit under Sec. 62(2) of the Act, on a portion of the route i.e., Mysore to Coimbatore can be granted.

11.1) Before considering this point, I will dispose of the other contentions urged in the case.

11.2) The aforesaid facts are not in dispute. The pucca permit is granted to T.P. Boriah on the route Mysore to Madurai. The permit also issued to him. But, this permit is not complete unless it is counter-signed by the S.T.A., Tamil Nadu. No doubt, the STA, Tamil Nadu has rejected the application. But, the matter is pending before the High Court of Madras in C.R.P. No. 1871 of 1983. Thus, it is a case which falls squarely under sub-sec. (2) of Sec. 62 of the Act. No doubt, it is contended on behalf of the petitioners that the pucca permit has already been issued and there is no order passed either by the State Transport Authority, Tamil Nadu or by the High Court of Madras restraining the grantee from operating the service or restraining the counter-signing authority from counter signing. Therefore, it is contended that the case does not fall under sub-sec. (2) of sec 62 of the Act. It is not possible to accept this contention. The restraint may take place in many forms. It need not be in express terms restraining the authority from issuing the permit or restraining from countersigning or restraining the grantee from operating the service. What is required to be seen is the resultant effect of the situation obtaining in the case as a result of pendency of the proceeding for counter-signing and the orders passed thereon in the light of the provision of law governing the subject. In the instant case, as it is already pointed out, the permit is issued to T.P. Boriah on the route Mysore to Madurai. The counter-signing authority has refused to counter-sign and the matter is pending before the High Court of Madras. The effect of refusal to countersign and the pendency of the proceeding before the High Court of Madras is that the petitioner is prevented or restrained from operating the services on the route pursuant to the pucca-permit as it is not permissible for him to operate the service until the permit is counter-signed. Of course it will be quite different if the order refusing to counter-sign is not challenged and it is allowed to assume finality. In that event, there is no scope for applying sub-sec. (2) of Sec. 62 of the Act. Therefore, the case squarely falls under sub-sec. (2) of Sec. 62 of the Act. Consequently, the contention of the petitioners that the reasons assigned by the KSTA do not fall under Sec. 62(2) of the Act, cannot at all be accepted.

11.2) The contention is that the KSTA has granted temporary permit to Sri T.P. Boriah one after another in succession; therefore it amounts to abuse of power. Whether the authority has abused the power or not, depends upon the facts and circumstances of each case. When there is a bar for operating the service on the basis of the pucca permit issued to Sri T.P. Boriah on the route Mysore to Madurai, because the proceeding for obtaining counter-signature is still pending and such a situation as held by me falls under sub-sec. (2) of Sec. 62 of the Act; it is not possible to hold that the KSTA by granting temporary permits in succession has abused its power because the circumstance under which a temporary permit under sub-sec. (2) of Sec. 62 of the Act, can be granted continues to exist. Therefore, the exercise of power by the KSTA in granting temporary permit one after another cannot be considered to be a fraudulent exercise of power. Therefore, it is not possible to hold that it has abused the power.

12. It is contended that since pucca permit has been renewed upto 17-6-1989, there is no scope for granting the temporary permit. On the basis of renewal of the pucca permit on the route Mysore to Madurai, the service cannot be operated unless it is counter-signed. As long as counter-signature is not granted and the proceeding pertaining to it is pending, temporary permit on the route covered by the pucca permit can be granted under sub-sec. (2) of Sec 62 of the Act.

13. The contention that the petitioners are not at all aggrieved persons as they are not affected, cannot be sustained because it is not in dispute that the petitioners are operating on the route from the opposite direction. Therefore, they have the locus standi to challenge the validity of the temporary permit granted to Sri T.P. Boriah.

14.1) I will now take up the main point for consideration. It is contended by Sri C.S. Shanthamallappa, learned Counsel for the Grantee-Sri T.P. Boriah, that Mysore to Coimbatore forms part of the longer route i.e., Mysore to Madurai in respect of which pucca permit is granted to Sri T.P. Boriah; therefore temporary permit granted to him on a portion of the route i.e., Mysore to Coimbatore falls either under sub-clause (c) of sub-section (1) or sub-section (2) of Sec. 62 of the Act.

14.2) Sub-section (2) of Sec. 62 of the Act, is intended to meet the special situations as setout in the said provision. Sub-sec. (2) of Sec. 62 reads thus:

"(2) Notwithstanding anything contained in sub-section (1), a temporary permit may be granted thereunder in respect of any route or area where- (i) no permit could be issued under section 48 or 51 or section 54 in respect of that route or area by reason of an order of a court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained; or (ii) as a result of the suspension by a court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit

in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension:

Provided that the number of transport vehicles in respect of which the temporary permit is so granted shall not exceed the number of vehicles in respect of which the issue of a permit has been restrained or as the case may be, the permit has been suspended." (Emphasis Supplied)

From the aforesaid provisions, it follows that sub-section (2) of Section 62 of the Act is independent of sub-section (1) thereof. The provisions contained in sub-section (1) of Sec. 62 do not at all affect the provisions of sub-sec. (2). The power under sub-sec. (2) is exercisable notwithstanding anything contained in sub-sec. (1) provided the circumstances stated in sub-sec. (2) exist. Sub-section (2) meets two situations:

(i) If, by reason of the order of a Court or other competent authority restraining issue of permit on the route, it is not possible to issue the permit under Sec. 48 or Sec. 51 or Sec. 54 of the Act, a temporary permit may be issued on the route for a period not exceeding the period for which the issue of the permit has been restrained. In the earlier portion of this order, I have also construed this provision as enabling the transport authority to issue a temporary permit on the route covered by the pucca permit, where by reason of the pendency of the proceeding for counter-signature, the grantee of the pucca permit is not in a position to operate the service on the route. It has also been pointed out that such a situation impliedly amounts to restraining the grantee of the permit from operating the service because unless the permit which is required to be counter-signed is not counter-signed, the grantee will not be in a position to operate the service.

(ii) A temporary permit may also be granted in respect of the route covered by the pucca permit where the pucca permit is suspended by a court or other competent authority and there is no transport vehicle of the same class with a valid permit in respect of the route or area or there is no adequate number of such vehicle in respect of that route or area for the period not exceeding the period of suspension. In either case, grant of temporary permit shall not exceed the number of vehicles in respect of which issue of permit has been restrained or as the case may be, the permit has been suspended.

It is very pertinent to notice that through out sub-sec. (2) of Sec. 62 of the Act, emphasis is on the route or area in respect of which the issue of pucca permit is either restrained or the pucca permit is suspended. This emphasis is indicated above by me by underlining the relevant words in sub-sec. (2) of Sec. 62 of the Act, which is reproduced in the beginning of this paragraph. Thus, the emphasis through out is that the temporary permit issued under sub-sec. (2) of Sec. 62 of the Act must relate to the route or area, which is covered by the pucca permit. Therefore, it is not possible to hold that it is permissible to grant a temporary

permit under sub-sec. (2) of Sec. 62 of the Act, on a portion of the route covered by the pucca permit even though the portion of the route may form part of the longer route covered by the pucca permit, as in the instant case. Undoubtedly, the route Mysore to Madurai is not the same as Mysore to Coimbatore. May be that the starting point of both the routes is same i.e., Mysore, but the terminal point of both the routes is different. In one case it is Madurai and in another case it is Coimbatore. The contention of Sri C.S. Shanthamallappa, learned Counsel for the grantee, that under sub-section (2) of Sec. 63 of the Act, the counter-signing authority has power to curtail the route and vary the conditions of the permit; therefore, a temporary permit can also be granted for a shorter route pending disposal of the application for grant of counter-signature. It is not possible to accept this contention. That there is such a power vested in the counter-signing authority under sub-sec. (2) of Sec. 63 of the Act, cannot be disputed. But, it has no relevance to the authority exercising the power under sub-sec. (2) of Sec. 62 of the Act. The power of the transport authority to issue temporary permit under sub-sec. (2) of Sec. 62 of the Act, is governed by the provisions contained in sub-sec. (2) of Sec. 62 of the Act, and not by the provisions contained in sub-sec. (2) of Section 63 of the Act. In other words, sub-sec. (2) of Sec. 63 of the Act, has nothing to do with sub-sec. (2) of Sec. 62 of the Act. Therefore, it is not possible to hold that pending disposal of the application for counter-signature to the permit granted on the route Mysore to Madurai it is permissible to grant a temporary permit on a portion of the route from Mysore to Coimbatore under sub-sec. (2) of Sec. 62 of the Act.

14.3) It is next contended that on the route Mysore to Madurai, the need is found to exist and pucca permit has also been issued to Sri T.P. Boriah. The need which is found to exist is not catered to because the pucca permit granted to T.P. Boriah cannot be operated until the counter-signature is granted. Such a situation, it is submitted, falls under sub-clause (c) of sub-sec. (1) of Sec. 62 of the Act; therefore a temporary permit can be granted. There is no doubt that in such a situation, a temporary permit under Section 62(1)(c) of the Act can be granted in respect of the entire route covered by the pucca permit. But the contention is that on the basis of such a situation, it is permissible to grant a temporary permit even in respect of a portion of the route i.e., Mysore to Coimbatore. It is not possible to accept this part of the contention. As it is already pointed out, Mysore to Coimbatore even though it may form part of the longer route Mysore to Madurai, nevertheless it is a different route. Therefore, a temporary permit on the route Mysore to Coimbatore cannot be granted under sub-clause (c) of sub-sec. (1) of Sec. 62 of the Act only on the ground that the pucca permit granted on the longer route Mysore to Madurai is not counter-signed and as such, the grantee is not in a position to operate the service on the route; therefore the existing need is not met. In support of this contention, Sri C.S. Shanthamallappa, learned Counsel for the grantee, has placed reliance on a decision of this Court in *B. Muthaiah & anr. v. Secretary, R.T.A., Shimoga & anr.*, reported in AIR 1972 Mys. 30; and a decision of the Supreme Court in *The*

Madhya Pradesh State Road Transport Corporation v. Regional Transport Authority, Raipur & ors reported in AIR 1966 S.C. 156 It is not possible to hold that the aforesaid decisions support the contention of the learned Counsel. In both the cases, the temporary permits related to the entire route in respect of which the pucca permits were granted. The question that has been raised in the instant case did not arise for consideration in those cases. In view of the definition of the "route" as found in clause (28A) of Sec. 2 of the Act, it is not possible to accept this contention. As per the definition, "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. In the instant case, no doubt one of the termini is common to both the routes, but the other termini of both the routes are different; therefore it is not permissible to grant a temporary permit under sub-clause (c) of sub-sec. (1) of Sec. 62 of the Act, in respect of a portion of the route covered by the pucca permit only on the ground that the service under the pucca permit cannot be operated because of the pendency of the application for counter-signature. Of course, if there is a temporary need falling under subsection (1) of Sec. 62 of the Act, a temporary permit can be granted, but not on the aforesaid ground.

15. It is contended that the permit that has been granted to T.P. Boraiah is a stage carriage permit on the route Mysore to Madurai; therefore, according to the definition of the expression "Stage carriage" it is intended to carry passengers for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for stages of the journey; hence it is submitted that even for a portion of the route covered by a pucca permit, a temporary permit can be issued during the period when the pucca permit cannot be operated. There is no doubt that a stage carriage is intended to carry the passengers between any two stages of the journey or for the whole journey; but the scope and ambit of power of the transport authority to grant temporary permit is not determined by the definition of the expression "stage carriage" but by the provisions contained in Section 62 of the Act. Hence, it is not possible to accept this contention. I shall not be understood to have laid down that no temporary permit under sub-sec. (1) of Sec. 62 of the Act, can be granted either on the entire or a portion of the route in question. It is always permissible to grant a temporary permit either on the entire or a portion of the route in question under sub-sec. (1) of Sec. 62 of the Act, if the temporary need exists dehors the pucca permit in question and the proceeding of countersignature in relation thereto.

16. For the reasons stated above, the main point is answered against the grantee. No other contention is urged

17. For the reasons stated above, the writ petitions 19589 of 1984 and 130 of 1985 are dismissed. Writ petitions 5698, 4157 and 5359 of 1985 are allowed. The temporary permit bearing No. STA. 5/TP/70/83 dated 4-3-1985 granted by the KSTA is hereby quashed. It is made clear that this order shall not be

construed as coming in the way of the grantee to seek fresh temporary permit on the entire or a portion of the route in question, in accordance with sub-sec. (1) of Sec. 62 of the Act, on the basis of temporary need dehors the pucca permit in question and the proceeding of counter-signature in relation thereto.

18. Sri Abdul Khader, learned High Court Government Pleader, is permitted to file his memo of appearance on behalf of the 1st respondent, in six weeks.