
(1972) 08 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 1591 of 1972

J.S. Prakash

APPELLANT

Vs

The Secretary, Regional Transport Authority, Bangalore-2

RESPONDENT

Date of Decision : 10-08-1972

Acts Referred:

Motor Vehicles Act, 1939 — Section 59 (3), 60, 60 (1)

Citation : AIR 1973 Kar 140 : AIR 1972 Kar 140 : (1972) 2 MysLJ 470

Hon'ble Judges : H.B. Datar, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : P.K. Shyamsundar, for the Appellant; R.N. Byara Reddy, General, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner is a contract carriage operator. He holds a permit for his vehicle bearing Registration No. MYA 2499. Under the said permit, he is entitled to operate his service throughout the State of Mysore. It was issued in the year 1962 and has been renewed by the Regional Transport Authority, Bangalore from time to time.

2. The Secretary of the Regional Transport Authority Bangalore, to whom the powers u/s 60 of the Motor Vehicles Act, 1939, hereinafter called "the Act", have been delegated, passed an order on 13-7-1972 (Exhibit A) suspending petitioner's contract carriage permit for a period of 30 days to take effect from the date of service of the order, which states that the petitioner has plied his vehicle on 4-7-1972 from Kolar to Bangalore when it was checked by the Sub-Inspector of Police, Flying Squad "C" Central Range, Bangalore and it was found that the vehicle had picked up passengers enroute and had also picked up individual passengers in contravention of the terms of the permit granted to the petitioner.

3. On 18-7-1972 the petitioner filed the above writ petition praying for quashing

the order of the respondent dated 13-7-1972 and other reliefs.

4. The grievance of the petitioner is that the impugned order is bad in law as it was passed without affording an opportunity to the petitioner to furnish his explanation and therefore made in contravention of the rules of natural justice.

5. The respondent filed a counter-affidavit in which it is contended that Section 60 of the Act authorises the suspension of a permit subject to the limitations indicated in the said section without giving the permit holder an opportunity to furnish his explanation and that inasmuch as the suspension of the permit was ordered in the manner authorised by the statute, the action taken is not open to challenge on the ground that the petitioner has not been given an opportunity to furnish his explanation.

6. That no show cause notice was issued to the petitioner to furnish his explanation and he was not heard in the matter before imposing the penalty of suspension of the permit is undisputed by the respondent.

7. The question is whether the respondent is bound to observe the rules of natural justice by issue of a show cause notice affording an opportunity to the petitioner to furnish his explanation before ordering the suspension of the permit.

8. Sub-section (1) of Section 60 of the Act which is the material provision reads thus:

"60 Cancellation and suspension of permits.

(1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit--

(a) on the breach of any conditions specified in Sub-section (3) of Section 59 or of any condition contained in the permit; or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner riot authorised by the permit, or

(c) if the holder of the permit ceases to own the vehicle or vehicles covered by the permit; or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation; or

(e) if the holder of the permit, not being a private carrier's permit, fails without reasonable cause to use the vehicles for the purposes for which the permit was granted; or

(f) if the holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation."

9. The argument of the learned Advocate-General appearing for the respondent

was that since the proviso to Sub-section (1) of Section 60 prohibits the cancellation of a permit without affording an opportunity to the holder of the permit to furnish his explanation, it has to be implied that the Legislature impliedly authorised the imposition of the penalty of suspension without affording an opportunity to the holder of the permit to furnish his explanation.

10. The statute does not make it obligatory on the part of the Regional Transport Authority to afford an opportunity to the permit holder to furnish his explanation before suspending the permit. But, at the same time the section also does not state that the permit holder need not be afforded an opportunity to furnish his explanation nor does the section lay down any other procedure to be followed by the Regional Transport Authority. The order of suspension of a permit u/s 60 is a final order subject to the right of appeal. Being an appealable order, it has to give reasons for coming to the conclusion that the permit holder has committed breach of any condition contained in the permit. Further Sub-section (3) of Section 60 empowers the Regional Transport Authority in the cases falling under clause (a) and clause (b) or clause (c) of Sub-section (1) of Section 60 to compound the offence. The permit holder may be willing to compound the offence. The Regional Transport Authority has to give reasons if it decides not to compound the offences.

11. For the respondent to succeed, it must be seen from the language of the statute that the right to offer explanation in proceedings u/s 60 (1) is excluded.

12. It has always been insisted that in order to exclude or limit the application of the general rules of natural justice it must be done clearly and expressly. Lord Wilberforce in *Wiseman v. Borneman* 1971 AC 297 (H. L.) at p. 318 quoted with approval the following passage from the judgment of Dixon, C. J. and Webb, J., in *Commissioner of Police v. Tanos* (1958) 98 CLR 383:

"Such an intention is not to be assumed nor is it to be spelled out from indirect references, uncertain inferences or equivocal considerations. The intention must satisfactorily appear from express words of plain intendment."

Under our system of jurisprudence the conception of natural justice should at all stages guide those who discharge quasi-judicial functions. That concept is an essential part of the philosophy of the Rule of Law under our Constitution. What are the requirements of the rules of natural justice have been stated by Lord Tucker in *Russell v. Duke of Norfolk* (1959) 1 All ER 109. He said at page 118:

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter which is being dealt with and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case." The essence of the rules

of natural justice is that it ensures fair play before the rights of the party are adversely affected by an order to be made by a statutory authority. The legislature is presumed not to intend that any tribunal created under an Act should act unfairly. We must remember that procedure is not a matter of secondary importance. It is only by procedural fairness that drastic governmental powers are rendered tolerable. Justice Jackson of the United States Supreme Court in *Shaughnessy V. United States* (1953) 345 US 206 said:--

"Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied." He went on to say:

"that it might be preferable to live under Russian law applied by common law procedure than under the common law enforced by Russian procedures."

13. In *Kanti Lal Babulal Vs. H.C. Patel*, , Hegde, J., said:

"Under our jurisprudence no one can be penalised without a proper enquiry. Penalising a person without an enquiry is abhorrent to our sense of justice. It is a violation of the principles of natural justice, which we value so much."

14. No decision which supports the contention of the learned Advocate-General has been brought to our notice. The learned counsel for the petitioner cited a decision of the Travancore-Cochin High Court in *Balagangadharan v. Central Road Traffic Board* AIR 1957 Trav Co 141 wherein it has been held that although the proviso to Section 60 (1) cannot apply where the permits have not been cancelled but only suspended, yet rules of natural justice require that a person should be given a fair opportunity to state his case before he is punished.

15. There was not such an urgency as to require the suspension of fee permit without giving an opportunity to the permit holder to give his explanation. The police reports on the basis of which the respondent ordered suspension was made on 4-7-1972 and the respondent made the order on 13-7-1972. Even if the matter were urgent, a short notice could have been given to the petitioner and after receiving his explanation the order could have been made. In our judgment since the legislature has not expressly excluded the application of the rules of natural justice in cases not coming within the proviso to Sub-section (1) of Section 60, the respondent is required to observe the rules of natural justice by affording an opportunity to the permit holder to give his explanation. In that view, the impugned order is liable to be quashed.

16. It is not necessary to deal with the rest of the contentions raised by the petitioner in his pleadings since this writ petition can be disposed of on the above short ground. Accordingly, we allow this writ petition and quash the impugned order (Exhibit A) reserving liberty to the respondent to take proceedings in accordance with law and in the light of this order. No costs.