
(1976) 05 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 204 of 1976

Jubilee Highways Transport Company (P) Ltd. and Another	APPELLANT
Vs	
State Transport Appellate Tribunal and Others	RESPONDENT

Date of Decision : 17-05-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 47, 57, 62

Citation : AIR 1977 HP 30 : (1976) 5 ILR HP 416

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : Luxmi Grover and D.P. Sud, for the Appellant; A.G. and Ramesh Chand, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—The petitioners are Private Limited Companies carrying on business as transport operators on different routes, some of which fall within the territorial limits of the State of Himachal Pradesh. While operating on those routes, the petitioners cover a portion of three other routes, Chobin-Dhangu, Naura-Dhangu and Kangra-Dhangu.

2. It appears that the State Government has under contemplation a scheme for entrusting the operation of transport services generally over all routes in Himachal Pradesh to the State Transport undertaking and pending the finalisation and enforcement of that scheme of "nationalisation" (as it appears to be popularly described) it does not grant regular permits to private operators but merely temporary permits issued from time to time. In the grant of such temporary permits it follows the procedure prescribed u/s 57 of the Motor Vehicles Act, 1939,

3. On April 23, 1975, the Regional Transport Authority, Dharamshala granted what were described as "ad hoc permits" to Messrs. Prem Bus Service for the three routes mentioned above. The Regional Transport Authority also invited

applications for the grant of three permits on the aforesaid routes in accordance with the procedure provided in Section 57 of the Act. The petitioners and other operators sent in their applications. In its meeting held on November 29, 1975, the Regional Transport Authority granted a temporary stage carriage permit to the petitioner, Jubilee Highways Transport Company Private Limited, for the Chobin-Dhangu road, and a temporary stage carriage permit to the petitioner, New Chiniot Transport Company Private Limited, for each of the routes Kangra-Dhangu and Naura-Dhangu. All three permits were to be effective from the date of expiry of the "ad hoc permits" granted in favour of Messrs. Prem Bus Service. Those permits were expiring on December 31, 1975, January 2, 1976 and January 3, 1976, Messrs. Prem Service appealed against the grant of the three permits to the petitioners. On January 6, 1976 the State Transport Appellate Tribunal set aside the order granting the permits and directed the Regional Transport Authority to consider afresh the applications for permits. Almost simultaneously, on January 7, 1976 temporary permits in respect of the aforesaid routes were granted for a period of one month to Messrs Prem Bus Service. The petitioners appealed. The Appellate Tribunal dismissed the appeals on February 3, 1976 on the ground that the appeals were incompetent. The petitioners now pray for certiorari against the orders dated January 6, 1976 and February 3, 1976 of the Appellate Tribunal.

4. It is not disputed that the temporary permits granted to Messrs Prem Bus Service on the three routes mentioned above have expired, and learned counsel for the petitioners states that he does not press for relief against the order dated February 3, 1976. I am, therefore, concerned with petitioners' challenge to the order dated January 6, 1976 alone.

5. The respondents have raised three preliminary objections. The first is that the writ petition is bad for misjoinder of parties inasmuch as the two Transport Companies should have filed separate writ petitions. It is pointed out that two separate appeals were filed by them before the Appellate Tribunal and a writ petition should have been filed separately against the order passed in each appeal. On a perusal of the Tribunal's orders disposing of the appeals, it appears that the orders are identical. In the circumstances, common questions arise in both cases and although strictly speaking two separate writ petitions should have been filed, having regard to the identical nature of the questions raised the objection is at best a technical one. It is, therefore, overruled.

6. The second preliminary objection is that the petitioners were granted temporary stage carriage permits by the Regional Transport Authority and the impugned order of the Tribunal quashing that grant does not entitle the petitioners to maintain a writ petition, as no operator has a right to a temporary permit. As to that, the position plainly is that the petitioners were granted temporary permits and if they have been deprived of those temporary permits by an invalid order of the Tribunal, they are entitled to question that order. There can be no dispute that even a temporary permit confers certain rights on the

permit-holder, and an infraction of those rights contrary to law entitles the permit holder to seek relief. The respondents rely on Mahabir Prasad Sharma v. The State Transport AIR 1971 AH 317 but that is a case where a learned single Judge of the Allahabad High Court had directed the grant of a temporary permit, and it was held by a Full Bench, on appeal, that he had no jurisdiction to do so. It has no relevance here. The second objection is, therefore, also rejected,

7. The third preliminary objection is that the petitioners should be denied relief as they have mis-stated the facts in the writ petition. I am not satisfied that the petitioners have been guilty of mis-stating any material fact. The third preliminary objection is rejected.

8. Turning to the merits of the case, it is clear that the permits granted to the petitioners by the Regional Transport Authority in its meeting of November 29, 1975 are temporary permits. They were granted after the procedure prescribed by Section 57 of the Act had been followed. Applications were invited, they were published for objections, the objections were considered and thereafter the permits were granted. The only objector was the Himachal Pradesh Road Transport Corporation, which filed objections to all the applications. A perusal of the impugned order shows that the Appellate Tribunal has taken a curious view of the facts, and has drawn even more curious conclusions. It has observed that the Regional Transport Authority adopted the procedure for the grant of regular permits, and from that it infers that the applications submitted by the motor operators must be deemed to have been made for regular permits and, therefore, the Regional Transport Authority must be understood to have granted regular permits. This conclusion has been reinforced by the observation that none of the conditions enumerated in Section 62 of the Act can be said to have existed. The Appellate Tribunal quashed the grant of the permits and directed the Regional Transport Authority to pass fresh orders on the applications.

9. Now, it is apparent that in the circumstances then prevailing the Regional Transport Authority could not have granted regular permits to private operators. Only temporary permits were being granted. The return to the writ petition filed on behalf of respondents Nos. 1, 2 and 3 concedes that stage carriage permits were being issued on a temporary basis for all private operators as a matter of policy. The Appellate Tribunal has said that because the procedure prescribed by Section 57 of the Act was followed, that indicates that the proceeding related to the grant of regular permits. I am unable to agree. Section 62 of the Act provides:

"Section 62. Temporary Permits.--(1) A Regional Transport Authority may without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily-

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

- (b) for the purposes of a seasonal business, or
 - (c) to meet a particular temporary need, or
 - (d) pending decision on an application for the renewal of a permit;
- and may attach to any such permit any condition it thinks fit:'''

As is apparent from the provisions of Section 62, it leaves it open to the Regional Transport Authority to grant temporary permits without following the procedure laid down in Section 57. It is not obligatory on the Regional Transport Authority to follow that procedure when granting temporary permits, but if it does follow that procedure, the grant will still be of temporary permits. Whether temporary permits have been granted or regular permits will depend not on whether Section 57 has been followed but on other considerations, such as the kind of permits for which applications have been made, the period for which the permits have been granted, and so on. The Appellate Tribunal was, in my opinion, entirely wrong in holding that the Regional Transport Authority issued regular permits.

10. Having come to the conclusion that regular permits have been issued, the Appellate Tribunal declared the issue invalid on the ground that the provisions of Section 47 had not been complied with. I have already said that temporary permits were granted and not regular permits. However, in the grant of temporary permits also it is material that, the Regional Transport Authority should consider the provisions of Section 47 of the Act. That was the view taken by a Full Bench of the Allahabad High Court in *Shiv Charan Das Sharma Vs. Regional Transport Authority and Others*, . Section 47 enumerates the matters which must be kept in mind in considering an application for a stage carriage permit. Section 62 (1) does not lay down that when temporary permits are granted Section 47 does not come into play. Whether it is a regular permit or a temporary permit, Section 47 applies to the grant of both. It applies to the consideration of an application for any kind of stage carriage permit. Now, the Regional Transport Authority, it is clear from the relevant extract of the minutes of its meeting held on November 29, 1975, examined certain relevant considerations before granting the temporary permits. They related to the strength of the fleet of vehicles belonging to the petitioners and the number of permits already held by them. It is not correct to say that Section 47 was ignored by the Regional Transport Authority or that reasons were not given by that body for granting the temporary permits.

11. The Appellate Tribunal has also observed that the conditions set out in Section 62 were not satisfied. The conclusion is at variance with the material on the record. Section 62 envisages the grant of temporary permits in certain specified cases. The permits will be granted if any of the conditions set out in Clauses (a) to (d) are satisfied. One of the conditions justifying the grant of a temporary permit is to meet a particular temporary need. In the instant case, the passenger traffic on the routes mentioned above called for the grant of regular plying by stage carriages. But the scheme of nationalisation was in contemplation

and had not yet been enforced, and all the same the passenger traffic on the routes had to be catered to. A particular temporary need justifying the grant of temporary permits to private operators thus arose. In *The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur*, the Supreme Court laid down that u/s 62 (1) (c) the Regional Transport Authority could grant a temporary permit even though a permanent need existed, the question being determined by the prevailing circumstances. I am of opinion that there was a particular temporary need in respect of the three routes mentioned above which was satisfied by the grant of temporary permit to the petitioners. The Tribunal has observed that "admittedly none of the conditions enumerated u/s 62 of the Act existed in the instant case with respect to any of the three routes". To my mind all the circumstances of the case show that the Appellate Tribunal assumed such an admission without any basis. Learned counsel for the petitioners has categorically stated that there was no such admission by the petitioners, and the facts and circumstances of the case bear him out.

12. I am of opinion that the order dated January 6, 1976 made by the Appellate Tribunal proceeds on a misconception of the law and facts and is, therefore, vitiated.

13. Accordingly, the writ petition is allowed, the order dated January 6, 1976 of the State Transport Appellate Tribunal is quashed. In the circumstances, there is no order as to costs.