

(1952) 12 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 540 of 1952

Khandari Babu

APPELLANT

Vs

Regional Transport Authority, Udaipur Region, Udaipur and
Another

RESPONDENT

Date of Decision : 15-12-1952

Acts Referred:

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

Citation : AIR 1954 Raj 78 : (1953) RLW 440

Hon'ble Judges : Ranawat, J; Dave, J

Bench : Division Bench

Advocate : B.S. Sharma and N.L. Jain, R.A. Gupta, for the Appellant; R.K. Rastogi, for (Opposite Party No. 2), for the Respondent

Final Decision : Dismissed

Judgement

Ranawat, J.—This is a petition under Article 226 of the Constitution of India by one Khandari Babu, son of Kilu Mal, of Kotah city, against the Regional Transport Authority, Udaipur Region, and Messrs. Ratan Singh Awat Ram.

2. Briefly the case of the petitioner is that he owns bus No. RJL 529, and holds a permit for plying it on Kotah-Deikhara-Khanpur route in Kotah and Jhalawar districts granted to him by the Regional Transport Authority, Udaipur Region, that the petitioner, after getting his permit for plying stage carriage, spent about Rs. 1200/- in the repairing of the route in order to make it motorable, that the Regional Transport Authority Udaipur Region, in complete disregard of the provisions of Section 62, Motor Vehicles Act, on 3-10-1952 granted a temporary permit to Messrs. Ratan Singh Awat Ram, who are opposite party No. 2, which is to remain valid up to 31-12-1952, that the temporary permit of opposite party No. 2 is practically for the same route as that of the petitioner's permit, that the petitioner has been put to a considerable loss on account of the grant of temporary permit in favour of the opposite party No. 2, and that the order of the

Regional Transport Authority granting a temporary permit in disregard of the provisions of Section 62, Motor Vehicles Act, is illegal. The petitioner prays that an appropriate writ or direction be issued setting aside the temporary permit issued by the opposite party No. 1, and restraining the opposite party No. 2 from plying the bus on Kotah-Khanpur route.

3. A reply has been filed on behalf of the Regional Transport Authority, and it is admitted that the petitioner holds a valid permit for plying his bus on Kotah-Deikhhera-Khanpur route. It is further stated that a temporary permit was granted to the opposite party No. 2 in order to meet the necessity of the public at large, as one bus was not considered sufficient to meet the need of the traffic on the route covered by the permit of the petitioner. The action of the Regional Transport Authority in this behalf was based on the recommendation of the Gram Panchayats of that locality, e.g., Dhulet, Kanwas and Awa, and of one of the non-official members of the Regional Transport Authority. At the time the question of issuing temporary permit was considered by the Regional Transport Authority, the petitioner was also present, and he had opposed the proposed, action. Necessary steps for the grant of a non-temporary permit were taken, and in the meantime, in order to give relief to the travelling public, a temporary permit was issued. The action of the Regional Transport Authority in so acting was within the scope of their powers. The Regional Transport Authority, in order to further safeguard the interests of the petitioner, imposed restrictions on the temporary permit that the opposite party No. 2 would make only one trip per day, and would start his bus after the petitioner's bus had left the station. By these conditions the opposite party No. 2 was made to carry only such passengers as could not, travel by the bus of the petitioner. The petitioner, if he had felt aggrieved from the order of the Regional Transport Authority, should have gone in appeal, and as other remedy was open to him, he is not entitled to any relief under Article 226 of the Constitution of India. It is also stated in the reply that the petitioner came to court after much delay.

4. The reply of Messrs. Ratan Singh Awat Ram, opposite party No. 2 is almost on the same lines as that of the Regional Transport Authority,

5. The learned counsel of the petitioner in his arguments has vehemently urged that there was no particular temporary need in the meaning of Section 62, Indian Motor Vehicles Act, to entitle the Regional Transport Authority to issue a temporary permit in favour of the opposite party No. 2 on the route which was covered by the permit of the petitioner. In support of this argument, -- Sri Rama Vilas Service, Limited Vs. The Road Traffic Board, -- " Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others, and --"Shah Transport Co., Chhindwara v. The State of Madhya Pradesh" AIR 1952 Nag 353 , have been cited. In reply the opposite party has put reliance on an un-reported judgment of the Assam High Court in -- "Chandi Prosad v. Regional Transport Authority, Gauhati", since reported in Chandi Prosad Vs. The Regional Transport Authority and Others, a copy of which has been produced by the opposite party No. 2.

6. It may be noted that the Regional Transport Authority, while exercising its powers of issuing temporary as well as non-temporary permits is a quasi judicial Authority, and if that Authority acts without jurisdiction or refuses to act when it has got jurisdiction under the law, or acts illegally or with material irregularity, a writ of "certiorari" may lie against it.

Under Section 62, Indian Motor Vehicles Act, a Regional Transport Authority has been given discretion to grant temporary permits, if the conditions therein specified are satisfied. Clause (c) of Section 62, it is admitted by both the sides, is relevant for the purposes of this case. Clauses (a) and (b) of the said section do not apply to it. Clause (c) of Section 62 is that a temporary permit might be issued to meet a particular temporary need. Whether in a given case there is a particular temporary need or not is for the Regional Transport Authority to decide, and this court would not interfere unless the decision of that Authority is mala fide, or is in utter disregard of the provisions of law. In this connection the observations of his Lordship Chandrasekhara Aiyar J. in-- Veerappa Pillai Vs. Raman and Raman Ltd. and Others, may be quoted with advantage:

"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court; of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made."

x x x x "The Motor Vehicles Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of a permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account. The Regional Transport Authority and the Provincial Transport Authority are entrusted u/s 42 with this power. They may be described as administrative bodies exercising quasi-judicial functions in the matter of the grant of permits."

x x x x "Thus we have before us a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into consideration as relevant, and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had. As observed already, the issue or refusal of permits is solely within the discretion of the transport authorities and it is not a matter of right."

7. Coming to the facts of the present case, we would like to note that it was for the Regional Transport Authority to decide whether there was a particular temporary need to enable it to issue a temporary permit under the provisions of Section 62, Motor Vehicles Act. This Court would not sit as a Court of appeal over the judgment of the Regional Transport Authority given in exercise of its discretion u/s 62, Motor Vehicles Act.

Lengthy arguments were addressed to us on the point whether in the present case there was or was not a particular temporary need within the meaning of Section 62 of the said Act, but we do not think it necessary to enter into this question. The judgment of the Regional Transport Authority on this point may or may not be correct in the opinion of this Court, but this Court would not be entitled to interfere simply because this Court may take a different view from the one adopted by the Regional Transport Authority. The Regional Transport Authority, in the present case, did consider the matter, and did decide whether there was or was not a particular temporary need. It has not been agitated by the petitioner that the exercise of jurisdiction, in the present case, by the Regional Transport Authority was mala fide.

The only point urged is that the Regional Transport Authority disregarded the conditions specified in Section 62 in issuing a temporary permit.

A temporary permit had been issued, it is said, for a permanent need, and there being no particular temporary need, the Authority had no jurisdiction to grant such a permit u/s 62 of the said Act. We may note that the Authority did apply its mind to the provisions of Section 62 in determining whether there was a particular temporary need or not, and it came to the conclusion that, under the circumstances of the case, there was such a need.

We may in passing refer to the observations of Gentle C. J. in-- "AIR 1843 Mad 400 (A)" which has been followed in *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, which have been stressed by the learned counsel of the petitioner. Those observations are, as it appears from the judgment, obiter dicta. In that Madras case the Regional Transport Authority did not apply its mind to the question of grant of permits, but acted in pursuance of the directions of the Government. Under the law, the Regional Transport Authority had to exercise its own discretion, and it could not refuse to exercise its discretion which was given to it under the law simply because of certain directions of the Government. That was, therefore, a case of refusal to exercise a jurisdiction and of making a misuse of the provisions of Section 62 to circumvent the procedure provided for the grant of non-temporary permits. The facts in the present case are much different, and that decision would not apply to the circumstances of this case. Nevertheless the observations of Gentle C.J. do appear on the subject as to what is a particular temporary need. Those observations have been dissented from in the case of *Chandi Prosad Vs. The Regional Transport Authority and Others*, by Thadani C. J. and Deka J. of the Assam High Court. We would not like to express our opinion on this point, as in

the present case we are satisfied that the Regional Transport Authority had exercised its discretion under the law, and did not disregard the provisions of Section 62.

A permanent need may also, under certain given circumstances, give rise to the existence of a particular temporary need. For instance, if a particular bus, which is to run on a particular route at given times, goes out of order, and has either to be repaired or replaced, then during that interval the need may be a particular temporary need, even though that need is simply to keep the continuous permanent need fulfilled. Similarly, there may be increase of traffic on a particular route, and the authority may take steps to grant non-temporary permits for the plying of more vehicles as stage carriages on that route, and in the meantime, if the need is considered immediate, take action to issue temporary permits, for a period not exceeding four months. The need in such a case may be non-temporary need, but till arrangement can be made to meet it, action may be called for to meet the temporary exigency of increase in traffic. Till suitable arrangements are made for grant of non-temporary permits, the arrangement for issue of temporary permits would be to meet a temporary need, and it would also be particular, because that particular want shall be met by grant of such temporary permits which it is not possible to meet by non-temporary permits.

8. We are, therefore, of opinion that there is no case for interference in the order of grant of temporary permit to opposite party No. 2 in the present case.

9. The application of the petitioner is, there fore, dismissed with costs. The counsel's fee is fixed at Rs. 50/-.