
(1980) 10 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1649 of 1980

Kulwant Singh

APPELLANT

Vs

Regional Transport Authority Udaipur Region and Others

RESPONDENT

Date of Decision : 24-10-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1980) WLN 398

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—In this writ petition the petitioner Shri Kulwant Singh is seeking to challenge the resolution dated 21-5-80 passed by the Regional Transport Authority, Udaipur (hereinafter referred to as the R.T.A) where by a temporary permit was sanctioned to three persons, including Shri Biharilal respondent no 2, on the Udaipur to Pratapgarh route via Dibari gate, Meetha Neem, Bhatewar Kharoda and Boinder.

2. The petitioner holds a non-temporary permit on the aforesaid route. The permit that was originally granted to the petitioner was on the Udaipur Pratapgarh route via Debatigate, Daroli, Bhatewar, Kharoda and Blander On account of the schemes for nationalisation of motor transport on the Udaipur Bhatwara route and the Udaipur Ajmer route notified u/s 68 D of the Motor Vehicles Act, the route of the petitioner was curtailed and the portion from Uiaipur to Bhatawar was excluded with effect from 20.h October, 1975 Subsequently the petitioner was granted extension of the rout from Bhatewar in Udaipur by in alternative route via Kheroda, Meetha Neem and Debari Gate. The scope fixed for the route is eight permits with five return services Respondent No. 2 had submitted an application fir grant of a temporary permit on the aforesaid route. The said application of respondent No. 2 was listed in the agenda for the meeting of the RTA fixed for 10-4-80, but on that day it could not

be considered and it was adjourned to be considered at the meeting of the RTA to be held at Jaipur on 28-4-80. The application of the respondent No. 2 was considered by the RTA on 21-5-80 and the RTA by its resolution dated 21-5-80 granted a temporary permit in favour of respondent No. 2. In pursuance of the said resolution the RTA, respondent No. 2 secured a temporary permit on 10th July, 1980. Being aggrieved by the aforesaid grant of temporary permit in favour of respondent No. 2, the petitioner has filed this writ petition.

3. It may be observed that during the pendency of this writ petition, the RTA, by its resolution dated Sept. 11/12, 1980 has granted three more temporary permits on the aforesaid route to Radhakishan, Mangilal and Dalip Kumar; and Dalip Kumar has been issued a temporary permit in pursuance of the said resolution.

4. In the writ petition, the petitioner has challenged the resolution of the RTA granting a temporary permit in favour of respondent No. 2 on the ground that there was no urgent temporary need justifying the grant of a temporary permit. Respondent No. 2 has entered a caveat and has opposed the writ petition.

5. Shri R. R. Vyas, the learned Counsel for respondent No. 2 has raised the following preliminary objections with regard to the maintainability of the writ petition:

1. The petitioner was aware of the fact that the petitioner had applied for a temporary permit on the route and then the said application of respondent No. 2 was fixed for consideration before the RTA on 10-4-80 and that the petitioner even though he had knowledge of the fact that the respondent No. 2 has applied for a temporary permit on the route did not raise any objection against the grant of a temporary permit to respondent No. 2 before the RTA. The petitioner could not be permitted to challenge the resolution of the RTA granting a temporary permit to respondent No. 2 in this writ petition under Article 226 of the Constitution.

2. An alternative remedy of revision u/s 64 A of the Motor Vehicles Act, was available to the petitioner, and the petitioner having failed to invoke the said alternative remedy, could not be permitted to invoke the jurisdiction of this Court under Article 226 of the Constitution.

3. The petitioner has not challenged the temporary permits which have been issued in favour of Radha Kishan, Mangi Lal and Dalip Kumar by the RTA vide its resolution dated 11/12th Sept, 1980 and since the petitioner as well as the aforesaid three persons to whom temporary permits have been granted are to ply the vehicles against the quota of two return services the petitioner cannot be said to be a person aggrieved by the grant of the temporary permit in favour of the respondent No. 2 in as much as even if the temporary permit granted in favour of respondent No. 2 is quashed the other three persons who have been granted temporary permits would be able to ply their vehicles so as to provide two return services on the route of the petitioner.

6. In so far as the first objection is concerned, it may be observed that the agenda of the meeting of the R.T.A fixed for 10th April, 1980, is on the record. In the said agenda, the application submitted by the petitioner for renewal of his permit is shown as item No. 2 (5) and the applications for grant of temporary permits on the Udaipur to Pratapgarh via Debari Gate route are shown at item No. 3 (34). Respondent No. 2 in his reply dated 2nd October, 1980 has stated that the petitioner was personally present at the meeting of the R.T.A which was held on 10th April, 1980. The aforesaid allegation has not been controverted by the petitioner. More over, it can reasonably be assumed that the petitioner or his agent would have been present on 10th April, 1980, because the application of the petitioner for renewal of his permit was fixed for consideration before the R.T.A. on that day. It is not possible to accept the contention urged by Shri R.N. Munshi that the petitioner or his agent could not be expected to go through the agenda and that he could not have known about the applications for temporary permit filed by respondent No 2 and other person shown at serial No. 3 (34) of the agenda. The petitioner is an experienced motor operator who has been carrying business in Udaipur region for the last about 15 years. It can reasonably be expected that he could see through the agenda for the purpose of finding out whether any other person had submitted any application for grant of a permit on the route covered by his permit. In my opinion, therefore, it can be assumed that the petitioner had knowledge of the fact that application for grant of temporary permits had been filed before the R.T.A. against the grant of temporary permits on the route and the failure on his part to raise such an objection before the RTA at the time of grant of temporary permits preclude him from challenging the grant in the writ petition under Article 226 of the Constitution. In my view, therefore, the first preliminary objection raised by Shri Vyas must be accepted.

7. In support of his second preliminary objection, Shri Vyas has submitted that the petitioner had applied for the certified copy of the resolution of the R.T.A. dated 21-5-80 and the said copy was issued to the petitioner on 30th July, 1980 and that instead of filing a revision petition before the State Transport Appellate Tribunal u/s 64 A of the Motor Vehicles Act, the petitioner has filed the writ petition in this Court on 9th September, 1980 more than 30 days after obtaining the certified copy of the resolution of the R.T.A. Shri R.N. Munshi, the learned Counsel for the petitioner, had submitted that the period prescribed for filing a revision petition u/s 64 A is 30 days from the date of passing of the order and that in the present case the said period had already expired before 18th July, 1980 when the petitioner applied for the certified copy of the resolution of the R.T.A dated 21st May, 1980. The submission of Shri Munshi is that as the period of limitation for filing the revision petition had expired, the petitioner is entitled to maintain the writ petition.

8. In view of my finding on the first preliminary objection that the petitioner was aware of the fact that application had been submitted by respondent No. 2 for grant of temporary permit before the R.T.A., I am unable to accept the contention of Shri Munshi that the petitioner was not aware of the resolution

dated 21-5-80 passed by the R.T.A with regard to the grant of temporary permit in favour of respondent No. 2 till 18th July, 1980. But even if it be assumed that the petitioner had not knowledge about the resolution of the R.T.A. dated 21-5-80 till the permit was issued in favour of respondent No. 2 on 10th July, 1980 and till respondent started plying his vehicle on the route on 18th July, 1980 the petitioner could have filed the revision petition with a petition for condoning the delay because the second proviso to Section 64 A of the Motor Vehicles Act empowers the STAT to entertain an application for revision after the expiry of period of 30 days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. It was open to the petitioner to satisfy the STAT that delay in filing the revision petition was on account of the fact that he had no knowledge of the resolution of the R.T.A. within the period of 30 days from the order of the passing of the resolution. If the petitioner had approached The Tribunal it would have enquired into the fact whether the petitioner had knowledge of the resolution of the R.T.A. dated 21st, July, 1980 within the period of 30 days from order of the passing of the said Resolution. The petitioner has, however failed to do so. In my opinion, the petitioner cannot be permitted to approach this Court to challenge the resolution of the R.T.A. dated 21-5-80 in the facts and circumstances of the present case.

9. In my view, therefore, the first and second preliminary objections raised by Shri Vyas must be accepted. As I am of the view that the writ petitions are liable to be dismissed on account of the first two preliminary objections; raised by Shri Vyas, I do not consider it necessary to deal with the third preliminary objection raised by him.

10. The writ petition is therefore, dismissed in limine.