
(2014) 10 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 9400-9404/2014

Kumari Avanee and Others

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 36(5), 68(5), 80, 84, 86

Citation : (2015) 1 WLN 523

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Satish Khandelwal, Advocates for the Appellant; V.D. Ghatala, Addl. G.C, Advocates for the Respondent

Judgement

Alok Sharma, J.—All these petitions relate to cancellation of permit issued by the Secretary, Regional Transport Authority for plying buses on a regional route. The facts of S.B. Civil Writ Petition No. 9400/2014 (Kumari Avani Vs. State Transport Appellate Tribunal & Anr.) are taken as the lead case. The petitioner was granted a permit for a regional route to ply her bus bearing Registration No.RJ-13-PA-7627 on Sriganganagar Sangariya route. The permit was valid till 20.10.2015. In a purported inspection by the Transport Inspector, it was allegedly found that the petitioner was not plying the bus in issue on the route for which permit had been granted to her. Thereupon a report appears to have been made to the District Transport Officer. The District Transport Officer in turn forwarded the report with his recommendation to the Regional Transport Authority vide his letter dt. 11.04.2014. Thereupon a notice was issued by the Secretary, Regional Transport Authority to the permit holder on or about 02.06.2014 alleging that as the petitioner was not plying the vehicle in issue on the route for which permit was granted, she should show cause as to why the permit should not be cancelled in terms of its power under Sec. 86(1) of the Motor Vehicles Act, 1988 (hereinafter "the Act of 1988"). The petitioner was required to file her reply by 17.06.2014.

2. The petitioner filed her reply to the show cause notice alleging that the very foundation of the Inspector's report with regard to non-plying of the vehicle in issue under the permit was absolutely vague and make believe. It was stated that for one the inspection was not carried out on any complaint made and further that the date of inspection or the time/s on which the said inspection was made was not indicated in the show cause notice. It was submitted that the purported report of the Inspector with regard to non-plying of the vehicle in issue, in spite of grant of permit evidently was without a proper inquiry having been conducted as neither the statements at least the vendors at the bus stops in the course of the route between Sriganganagar to Sangariya were taken, nor was the statement of any passenger aggrieved of the alleged non-plying of the vehicle recorded. It was further submitted that even otherwise no copy of the Inspector's report was submitted along with the show cause notice. It was stated that it appeared that the entire proceedings against the petitioner were based on mere conjectures and surmises as in fact the petitioner was indeed plying the vehicle on the route for which permit was granted and paying the road tax and special road tax as leviable on the bus in issue.

3. However vide order dt. 24.06.2014, passed by the Secretary, RTA, the petitioner's defence to the show cause notice was negated and the permit cancelled.

4. The petitioner thereupon took her remedy by way of an appeal before the State Transport Appellate Authority. But owing to the said Authority being non-functional for lack of quorum the petitioner has approached this Court under Article 226 of the Constitution of India.

5. The facts detailed hereinabove with regard to the petitioner's defence to the show cause notice alleging non-plying of the bus in issue on the permit granted for Sriganganagar Sangariya route have been reiterated by the counsel for the petitioner. It has been submitted that aside of the conclusions of the Secretary, Regional Transport Authority under the impugned order dt. 24.06.2014 being wholly perverse as they were on speculative grounds, the cancellation of the permit was without jurisdiction and in any event an abuse of discretion vested in the authority.

6. First on the issue of jurisdiction of the Secretary, RTA lacking in jurisdiction to cancel the permit, counsel for the petitioner submitted that under Sec. 80 read with 86 of the Act of 1988, the RTA has the power to cancel a permit. And where the said power is delegated under Sec. 68(5) of the 1988 Act, the delegatee cannot act beyond the delegation strictly construed. It was submitted that in the instant case the power delegated to the Secretary RTA under Resolution No. 2/2008 dt. 17.4.2008 was to issue notice under Sec. 86 to the holder of the permit but the power to cancel the permit was not as was allegedly done by him under the impugned order dt. 24.6.2014. Counsel for the respondent has contested the submission. He submitted that the Secretary RTA was delegated the powers of the RTA under resolution dt. 17-4-2008 in all their manifestations

and thus had the power to order cancellation of the permit as he did on 24.6.2014.

7. Considered the respective submissions. It is well settled that a delegatee cannot exercise powers beyond that delegated. A bare look at the resolution No. 2/2008 dt. 17.4.2008 shows that under clause 2 thereof the power delegated by the RTA was only to issue notice under Sec. 86 of the Act of 1988 and perform ministerial acts on his behalf. The Secretary, RTA could also cancel a permit when sought by the permit holder himself, as provided for under clause 3 of the resolution No. 2/2008 dt. 17.4.2008. But the power to cancel a permit on alleged breach of its conditions and denial thereof i.e. on a contest has not been delegated to the Secretary, RTA. The order of delegation has to be strictly and literally construed without consideration of any implied delegation or conclusions of delegation based on conjectures and surmises founded upon assumption or logic. I would thus hold that the Secretary RTA as the delegatee of the RTA under resolution No. 2/2008 dt. 17-4-2008 could have only issued notice of cancellation and had no power to cancel the permit. For this on receipt of reply to the notice issued by him, the Secretary RTA was to refer the matter to the RTA for consideration and to pass orders of cancellation or otherwise thereon in his discretion lawfully exercised. The impugned order of cancellation dt. 24-6-2014 liable to be set aside on this ground alone.

8. It would however be in place to address the other issues agitated as the matter was heard as length--It has been submitted by counsel for the petitioner in the alternative that in terms of Section 86(5) of the Act of 1988, the competent authority even while finding breach of any conditions specified in Section 84 or any of the conditions of the permit has the discretion to not necessarily cancel or suspend the permit, but instead inquire of the permit holder whether he agrees to pay a certain sum of money in lieu of the cancellation/suspension. Counsel submits that thereupon on the holder agreeing to pay an agreed sum, notwithstanding anything contained in Section 86(1) of the Act of 1988, the Transport Authority can instead of cancelling or suspending the permit recover from the holder of the permit the sum of money agreed upon as penalty for breach found. It has been submitted that in this state of law it was incumbent upon the Secretary, Regional Transport Authority before passing the order dt. 24.06.2014 to take into consideration the overall circumstances of the case such as the fact that the petitioner had paid all road tax and special road tax, that there was no complaint with regard to the petitioner's non-plying the bus on the route for which the permit was granted and the fact that the report of the Transport Inspector on which the entire proceedings were initiated, was vague and without material particulars and inquired of the permit holder whether he was agreeable to pay a certain sum of money in lieu of cancellation. Thereafter on agreement, eschewed cancellation of the permit and instead recovered the agreed sum of money in lieu. Counsel submits that this not having been done and the discretion of the Secretary having been arbitrarily exercised without regard to the statutory mandate, the order dt. 24.06.2014 is liable to be quashed

and set aside also on this ground.

9. Counsel for the respondents-RTA has submitted that non-plying of the bus by the petitioner on the basis of permit granted to her on Sriganganagar Sangariya route was contrary to the interest and convenience of the travelling public. In terms of Section 86(1)(e) of the Act of 1988 the Secretary, Regional Transport Authority as delegatee of the RTA was well within his power to cancel the permit. It was submitted that the role of the Regional Transport Authority under the Act of 1988 is inter alia regulatory in nature and where the permits are misused or used not for the purpose of ferrying the public from one point to another, but as an instrument of strategy to maximize the petitioner's business at minimal cost on payment of permit fee, road tax and special road tax, the competent authority had rightly cancelled the petitioner's permit in issue. Counsel further submitted that in the event the petitioner were to make an application to the competent authority under the provision of Section 86(5) of the Act of 1988 agreeing to pay a sum of money in lieu of cancellation of her permit, the said application would be considered and disposed of in accordance with law.

10. Cancellation of permit under Sec. 86(1) of the Act of 1988 is the ultimate penalty for breach of the conditions of the permit. To my mind in these circumstances, the show cause notice for cancellation of permit and thereafter the order of cancellation should be founded upon the substantial evidence of breach of conditions of permit perusal of the show cause notice dt. 02.06.2014 and the impugned order dt. 24.06.2014 indicates that the case set up against the petitioner with regard to the non-plying of her bus on the route for which permit was issued (Sriganganagar-Sangariya) was quite vague and without material particulars. No reference to any complaint against the petitioner was adverted to, no communication from Regional Transport Authority to the petitioner cautioning her of the alleged non-plying of the vehicle in issue has been relied upon, no statement of any witnesses in support of the allegation of the vehicle was not being plied recorded. The entire proceedings against the petitioner appear to have commenced on the ipse dixit of the Transport Inspector as endorsed by the District Transport Officer. The case of the petitioner in the reply to the show cause notice stating that she was prejudiced in her defence for reason of lack of material particulars/specifics and that she was paying road tax and special road tax for the bus No. RJ-13-PA-7627 indicative of the bus being plied on the route in issue was overlooked without as much as any reason therefor. It is trite that the principles of natural justice entail not only hearing of the noticee likely to be prejudiced by the State's action but also the necessity of passing a reasoned order based on the consideration of the defence of the noticee. The impugned order dt. 24.06.2014 is based on the mere ipse dixit of the Secretary, Regional Transport Authority circumventing the defence of the petitioner to the show cause notice for cancellation of her permit. The said order thus liable to be quashed and set aside also on this ground.

11. Aside of the aforesaid Section 36(5) of the Act of 1988 confers discretion on

the Authority which issued the permit to instead levy a penalty of an agreed sum of money in lieu of cancellation ever when breach of conditions of the permit is found. It is well settled that statutory discretion is to be reasonably exercised and the mere conferment of discretion does not necessarily warrant its exercise mechanically more particularly in choosing the more drastic punishment over the less drastic for a breach found. Disproportionate punishment has been held to be arbitrary by the Hon''ble Apex Court. The Hon''ble Apex Court in the case of GRIDCO Limited and Another Vs. Sri Sadananda Doloi and Others, held that a constitutional Court in the exercise of powers under Article 226 of the Constitution of India can interfere with the action of the State or its instrumentality inter alia for reasons of the penalty being visited for an alleged contravention/breach being disproportionate. In Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, the Hon''ble Supreme Court held that when discretion is conferred on a statutory authority, it cannot be arbitrarily exercised.

12. In the context of the enunciation of the aforesaid law by the Hon''ble Supreme Court, a bare look at the impugned order dt. 24.06.2014 would indicate that the overall facts of the case have not been taken into consideration by the Secretary, Regional Transport Authority while cancelling the petitioner's permit. Assuming for the moment, that the petitioner was in breach of conditions of the permit by not plying her vehicle on the route Sriganganagar Sangariya as per the time table determined by the Regional Transport Authority, the fact that there were no complaint with regard to the petitioner not plying the bus in issue on the route for which the permit was granted by the Regional Transport Authority and the fact that the petitioner was paying road tax and special road tax, were all overlooked by the Secretary, Regional Transport Authority while visiting the petitioner with the ultimate punishment of cancellation of her permit for non-plying the bus on the route in issue.

13. In Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, the Hon''ble Supreme Court held that the doctrine of proportionality in the context of punishment would attract when the Court on the analysis of material brought on record comes to the conclusion that the punishment imposed shocks the court's conscious. In Bhagat Ram Vs. State of Himachal Pradesh and Others, the Hon''ble Supreme Court held that punishment must be proportionate to the gravity of an employee's misconduct. The sequitor of the aforesaid proposition is that in case of breach of conditions of a permit granted by the Statutory Authority, where the Statutory Authority has the discretion to cancel the permit or otherwise visit the grantee with the lesser punishment of a monetary burden, it should choose the lesser punishment over the drastic punishment with reference to the nature of the breach and its effect. In the instant case it is not in dispute that the only allegation against the petitioner for whatever its worth was with regard to the non-plying of bus on the route as per the time table fixed by the Regional Transport Authority. The period of non-plying of bus and the extent of breach, the absence of any complainant from amongst travelling public and the vagueness of the Inspector's report were

all facts which ought to have been taken into consideration by the Secretary, Regional Transport Authority. This was not done. In my considered opinion, in the overall facts of the case, there are adequate grounds in the present case to hold that the cancellation of the petitioner's permit for the alleged breach of the condition of the permit in non-plying of the bus as per the time table issued by RTA was disproportionate and excessive. The petitioner ought to have been allowed the opportunity of paying a sum of money as penalty for the breach found. The upshot of the aforesaid discussion is that the petition along with other connected petitions deserves to be allowed. The order of cancellation dt. 24.06.2014 and other similar orders in the connected matters deserve to be quashed and set aside. The matters are remanded to the Regional Transport Authority to consider afresh on the basis of evidence on record both with regard to the alleged breach of conditions of the permit and defence thereto. In the event the RTA finds that the breach alleged is established from the evidence on record, the petitioner permit holders be required to deposit a sum/s of money as penalty for the breach of conditions of the permit in terms of Section 86(5) of the Act of 1988.

Petitions are allowed accordingly.

Stay applications stand disposed of.