

(1967) 01 OHC CK 0015

In the Orissa High Court

Case No : O.J.C. No"s. 176 and 245 of 1966

Limai Charan Panigrahi and Another

APPELLANT

Vs

M. Ram Chandra Rao and Others

RESPONDENT

Date of Decision : 17-01-1967

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(3)
Orissa Motor Vehicles Rules, 1993 — Rule 55

Citation : AIR 1967 Ori 177 : (1967) 33 CLT 721

Hon'ble Judges : K. Ahmad, C.J;S. Barman, J

Bench : Division Bench

Advocate : R.N. Misra, for the Appellant; S.C. Parija, Ranjit Mohanty and R.K. Kar, for the Respondent

Final Decision : Dismissed

Judgement

Barman, J.—The petitioners in these two writ petitions--two bus owners of Paralakhemedi in the district of Ganjam challenge the orders dated May 24, 1965 and January 10, 1968 of the Regional Transport Authority, Ganjam, granting permanent route permit to M. Ram Chandra Rao, who is opposite party No. 1 in both the writ petitions, for stage carriage on a certain specified route subject to the conditions and on the timings as mentioned in the said orders; the legality of the said orders is questioned by the petitioners as contrary to principles of natural justice, void and in excess of jurisdiction by reason of non-compliance with Rule 55 of the Orissa Motor Vehicles Rules, 1940 read with Section 47(3) and Section 57(3) of the Motor Vehicles Act (Act IV of 1939) (hereinafter referred to as the Act). The materials fact and circumstances in which the point arose are as stated hereunder.

2. Limai Charan Panigrahi petitioner in O. J. C. No. 176 of 1966 and B. Venkayya petitioner in O. J. C. No. 245 of 1966 are both residents of Paralakhemedi in the district of Ganjam and carry on business of running stage carriage vehicles in the district. In relation to their respective business as bus owners Limai Charan

Panigrahi plies two stage carriage vehicles and B. Venkayya plies one stage carriage vehicle, both on Gumma-Rayagada Via Parlakhemedi route. The said route has a total running distance of 36 miles and the said route lies within the jurisdiction of the Regional Transport Authority, Ganjam.

3. In 1961 one permanent stage carriage permit on the said route was granted to one Sri P. Ghinnaswami for three years and the said Sri Chinnaswami was plying a vehicle on the said route. Ultimately the route in question came to have four vehicles, two belonging to the petitioner Limai Charan Panigrahi, one to the petitioner B. Venkayya and the remaining one to one Sri M.K.D.N.V. Prasad Rao. The Regional Transport Authority considered that four vehicles were sufficient on the said route.

4. On February 25, 1965 opposite party No. 1 M. Ram Chandra Rao applied for a permanent permit on the Rayagada to Machamara via Narayanpuraro route u/s 57(1) of the Act on the submission that there was a vacancy on the same route; the application was accompanied by a forwarding letter addressed to the Secretary of the Regional Transport Authority specifying a timing for the plying of the vehicle under the proposed permit. The said application was directed to be notified on March 8, 1965. The said notification is quoted below :

"XVIII (XI)--24/65-2912/RTA dated 8-3-65. Office of the Chairman, R. T. A. Ganjam, Chatrapur, Dated the

NOTIFICATION.

It is hereby notified that Sri M. Ramachandra Rao of Paralakhemedi has applied to this Authority for the grant of a permanent route permit in respect of the vehicle stage carriage for a period of 3 years to run between the following routes.

(i) Rayagada to Muchamara via Narayanapuram.

The applied application is available for inspection at the office of the R. T. A. Ganjam till 6-4-65. Representations in connection therewith shall be received until the end of 6-4-65. No representation in connection with the above application shall be considered unless it is made in writing and copy thereof is furnished limultaneously to the applicant by the person making such representation.

The application shall be disposed of by the Chairman R. T. A. Ganjam after a date to be fixed later if no objection is received before the appointed date. The R. T. A. Ganjam shall consider the application and representation at a public hearing to be fixed later on.

Sd. Illegible. Secy. R. T. A. Ganjam, Chatrapur.

To

The Notice Board, Collectorate, Ganjam, Chatrapur.

The Taluk Officer, Paralakhemedi.

The Rev. Divl. Officer, Paralakhemedi, for wide publication by affixing on the office Notice Board.

Copy to Officer incharge of Collectorate Press with a request to publish in the next issue of the Orissa Gazette.

True copy".

5. It is said that the Regional Transport Authority did not take any action u/s 57(2) of the Motor Vehicles Act. The application made by opposite party No. 1 M. Ram Chandra Rao was not notified as required under law. The petitioner's point is that the said notification dated March 8, 1965 did not contain the required particulars nor was it published in the prescribed manner by pasting it on the Notice Board of the State Transport Authority as required by Rule 55. So the petitioners had no opportunity of raising objection to the said application.

6. On May 24, 1965 the Regional Authority granted a permanent permit to opposite party No. 1 M. Ram Chandra Rao for stage carriage on the route between Rayagada to Muchamara via. Narayanpuram. Although the permit was ordered to be granted on May 24, 1965, opposite party No. 1 M. Ram Chandra Rao did not put any vehicle on the route until April, 4, 1966. Therefore the petitioners had no occasion to know about the grant of the said permit to opposite party No. 1 M. Ram Chandra Rao in the aforesaid manner.

7. It is said that without putting the vehicle on the route, opposite party No. 1 M. Ram Chandra Rao made another application to the Regional Transport Authority praying for extension of the said permit upto Parlakhemedi. The said application was ordered to be notified on October 21, 1965 in the same manner as the original application on March 8, 1965. The said notification dated October 21, 1965 is quoted below :--

"524/R. T. O. Office of the Chairman

R. T. A. Ganjam, Chatrapur,

Dated the 21-10-65.

NOTIFICATION

It is hereby notified that Sri M. Ram Chandra Rao of Parlakhemedi in Ganjam District has applied to this authority for the extension of a permanent route permit in respect of the vehicle ORG 1493 stage carriage for a period of 3 years to run between the following routes.

(1) Rayagada to Machamara (via) Narayanpur extension to Parlakhemedi. The applied application is available for inspection at the office of the R. T. A. Ganjam till 22-11-65.

Representations in connection therewith shall be received until the end of 22-11-65. No representation in connection with the above application shall be considered unless it is made in writing and copy thereof is furnished

simultaneously to the applicant by the person making such representation.

The application shall be disposed of by the Chairman, R. T. A. Ganjam after a date to be fixed later if no objection is received before the appointed date. The R. T. A. Ganjam shall consider the application and representation at a public hearing to be fixed later on.

Sd. Illegible 21-10-65 Secy. R. T. A. Ganjam.

To

The Notice Board, Collectorate, Ganjam -Chatrapur.

The Taluk Officer, Parlakhemedi.

The Reyn. Divl. Officer, Parlakhemedi for wide publication by affixing on the office Notice Board.

S. P. Ganjam, Executive Engineer (R and B) Division, Berhampur.

Copy to officer in charge of Collectorate Press with a request to publish in the next issue of the Orissa Gazette."

It is also said that the said application for extension of the route also not having been published as required by law, the petitioners had also no opportunity of raising objection to the same. No objection was received by the Regional Transport Authority by the appointed date November 22, 1965.

8. On January 10, 1966 the Regional Transport Authority granted the extension of existing service from Rayagada to Machamara upto Parlakhemedi a further distance of 9 miles to opposite party No. 1 M. Ram Chandra Rao in view of non-availability of servicing and refueling facilities for the bus on the present portion of the route which is located in the Agency area.

9. The main grounds on which the impugned orders of the Regional Transport Authority are being challenged in these writ petitions are these. That the mandatory procedure laid down in the Motor Vehicles Act read with the rules thereunder has not been complied with; that the action of the Regional Authority is void; that the provisions of Sections 47(8) and 57(3) of the Motor Vehicles Act have not been duly taken into account; that non-compliance with Rule 55 of the Orissa Motor Vehicles Rules made the action of the Regional Authority liable to be quashed as being contrary to the principles of natural justice.

10. It was also submitted on behalf of the petitioners that the notice of the application dated March 8, 1965 was incomplete because the date, time and place of hearing were not mentioned and further no further notice was given of the date which was to be fixed later on as stated in the notice. The petitioners' point is that what Section 57 (3) of the Act envisages is a composite notice publishing therein the application or the substance thereof together with a notice of the date before which representations in connection therewith may be submitted and the date on which and the time and place at which the application

and any representations received will be considered as required by the section; in the present case the notice did not indicate the date, time and place of hearing and thus the notice was incomplete.

11. The question for consideration in these writ petitions is whether Rule 55 of the Orissa Motor Vehicles Rules, 1940 is mandatory or merely regulatory. Rule 55 is this :

"55. Applications--publication of--any matter or notice which has to be published under Sub-section (8) of Section 57 of the Act, shall be published by pasting it or a copy of it for a period of not less than three days in the case of applications by a State Transport Service and for a period of not less than seven days in the case of other applications on the Notice Board of the Authority concerned".

In this context the relevant portion of Section 57 (3) referred to in Rule 55 is set out below :

"57. Procedure in applying for and granting permits.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the publication and any representations, received will be considered:

xx xx"

12. In an affidavit filed on behalf of the State Transport Authority it was stated that the application was duly notified and published u/s 57 of the Motor Vehicles Act read with Rule 55 of the Orissa Motor Vehicles Rules; that the application was considered on May 24, 1965, that is, long after the publication of the notification. It was further stated that the notice was published in the Notice Board of the Collectorate which was the notice Board of the Regional Transport Authority as its functions being the M. V. Department of the Collectorate; the Regional Transport Authority has no separate Notice Board. The Chairman of the Regional Transport Authority is also the Collector of the District. Indeed, strictly construed, Rule 55 was not complied with in that there was no publication or the application by pasting it on the Notice Board of the Regional Transport Authority as required by the rule.

13. The question is; will non-compliance of Section 57(8) of the Act read with Rule 53 vitiate the proceeding under which the permit was granted? It is a well-settled general rule that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially as Viscount Maugham enunciated in (1940) 8 ITR 635 (Privy Council) .

This principle is to be applied for deciding whether, in this case, the contravention by the Regional Transport Authority of the provisions of Section 57(3) and Rule 55 amounted to an illegality invalidating its entire proceedings or whether it amounted to a mere irregularity which would not be followed by a total failure of the whole proceedings in the absence of prejudice by way of failure of justice.

14. Considered from this aspect, it seems to us that the provisions of Section 57 (3) requiring the publication of the date time and place of hearing in the same notification, which were disregarded by the Regional Transport: Authority cannot be said to be of that material importance to the subject matter to which they refer as that the legislature could have intended that their non-observation should invariably be followed by a total failure of proceedings. It cannot also be said that the gravity of the contravention by the Regional Transport Authority was such that prejudice will necessarily be implied and imported. The mistake committed by the Regional Transport Authority has in our opinion, to be regarded as a mere unimportant mistake and not one that can be said to be either substantial or vital.

15. Section 57 (3) of the Act read with Rule 55 of the Rules which directs that the applications or their substance, the date for submission of representations and the date, time and place of hearing shall be simultaneously published is a statutory provision enacted with the object of giving to those concerned all the above information on one and the same occasion and as is generally done in one and the same document, so that no inconvenience or confusion should be caused by a plurality of notifications. In the present case, in the publication made by the Regional Transport Authority which was otherwise in accordance with the provisions of the above section, it was stated that the application was available for inspection at the office of the Regional Transport Authority, Ganjam, till April, 6, 1965 and that representations in connection therewith shall be received until the end of April 6, 1965 and that no representation in connection with the above application will be considered unless it is made in writing and copy thereof is furnished simultaneously to the applicant by the person making such representation

It was also stated that the application shall be disposed of by the Chairman, Regional Transport Authority. Ganjam, after a date to be fixed later if no objection is received before the appointed date; that the Regional Transport Authority shall consider the application and representation at a public hearing to be fixed later on What the Regional Transport Authority omitted to do was to announce the date, time and place of hearing. Even so, we do not think that the petitioners have been prejudiced because admittedly no representation by way of objection was filed by either of the petitioners or by anvbody.

16. In the view that we take of Section 57 (3) read with Rule 55 the provisions are only regulatory arid not mandatory This our view is supported by a Division Bench decision of the Mysore High Court in A. Narayana Kamath v State Transport Authority AIR 1960 Mys 33.

17. That apart, it is on record to show that notices received for publication were duly affixed on the Notice Board of the Sub Divisional Officer. Parlakhemedi. The petitioners not having submitted any representation pursuant to the notice, they are not entitled to any hearing as contemplated u/s 57 of the Act There can be no question of hearing the petitioners unless and until they filed representation u/s 57.

18. In the ultimate analysis of the entire position it is clear that the provisions of Section 57 (3) read with Rule 55. are only to regulate the procedure of the Regional Transport Authority in considering applications for stage carriage permits so that they may not be arbitrary. It appears from the relevant records of the proceedings of the Regional Transport Authority that the said orders were passed after due consideration. There is nothing to show that they were passed arbitrarily In any event, the petitioners not havinn filed my representation, it is not open to them to complain that they were prejudiced by the orders.

19. In this view of the case, the petitioners in the writ petitions are not entitled to any relief as prayed for. The writ petitions must therefore fail and they are dismissed. In the circumstances of the rase, all parties to bear their own costs.

Ahmad, C. J.

20. I agree.