

(1971) 04 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 2

Mohamed Hanif and Others

APPELLANT

Vs

Mannalal Shivkumar and Another

RESPONDENT

Date of Decision : 15-04-1971

Acts Referred:

Motor Vehicles Act, 1988 — Section 57

Citation : (1971) WLN 13

Hon'ble Judges : Jagat Narayan, C.J.;J.P. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jagat Narayan, C.J.—These are corseted special appeals by 8 persons against an order of a learned Single Judge passed in S.B. Civil Writ petition No. 7.48 of 1967. By its order 9 permit were granted on the Jhunjhurnu-Sardarshahar route which was newly opened by the Regional Transport Authority, Bikaner, at its meeting held on 28th, 29th and 30th September, 1967. The fining of the learned Single Judge was that the writ petitioners Mannalal Shiv Kumar had also filed an application for a fresh permit on this route on 21-11-66 which was not even published by the Regional Transport Authority All the 9 permits were cancelled and case was remanded to the Regional Transport Authority for a fresh consideration of all pending applications including the application of the petitioners for grant of permits on the new route. Eight of these 9 persons have filed the two special appeals.

2. Five permits were granted on the Jhunjhunu-Ghuru route 3 by the Regional Transport Authority, Jaipur and 2 by the Regional Transport Authority, Jaipur, granted permits to (1) Shiv Onkar alias Kumar (2) M/s. Mannalal Shiv Kumar and Habib Khan. The Regional Transport Authority Bikaner, granted permits to Vishwi Nath and Anr. Twenty four miles of the route lay in Jaipur region and 8 miles in Bikaner region.

3. The petitioners applied to the Regional Transport Authority Jaipur, for extension of their above route to Sardarshahar. The proposed extension was of 44 miles and lay in Bikaner region. The application for extension was published on 31-3-66 (annexure L), Vehicle "No RJP 564 being plied by the petitioners on this route. This application came up for consideration before the Regional Transport Authority Jaipur on 26-11-66. It was noted that the major portion of the extended route lay in Bikaner region and that u/s 57 an, application for extension of route was to be treated as an application for a new permit. The case was kept pending for ascertaining the actual mileage lying in each region. It is not disputed by the parties that the Regional Transport Authority, Jaipur, could not have extended the permit to Sardarshahar.

4. The petitioners then sent an application on 15-3-65 by post. A copy of this application was not produced before the learned single Judge and was filed before us. We see no reason to doubt its genuineness. We accepted it as there was some doubt as to whether (his application was for extension of the route by the Bikaner Regional Transport Authority or only for countersignatures by it. In this application it was stated that the petitioners prayed for an extension of the route upto Sardarshahar. They did not know as to which Regional Transport Authority was competent to grant the extension. They requested that the two Regional Transport Authorities should decide which of them is competent to grant the extension & that one Regional Transport Authority should grant the extension and the other Regional Transport Authority should counter-sign it. An extract of this application was published on 13-2-66 (annexure 2). In the top portion of this notification the application was described as one for extension of the route from Churu to Sardarshahar. In the bottom portion it was described as an application for counter-signatures.

5. On behalf of the appellants a copy of the resolution of the Regional Transport Authority, Bikaner, dated 25-5-66 (exhibit 4) was filed before the learned Single Judge which he did not think it necessary to take on record. We have treated it as being on record. The order runs as follows:

Grant of counter-signatures of stage carriage permit on Jhunajhun-Churu route.

It is admitted that extension has neither been granted by this authority nor the authority of Jaipur Region and that being so no question arises for counter-signatures. The application therefore, is rejected.

6. The names of the applicants are not mentioned in the order and it is not known whether it was ever communicated to them. The case of the appellants is that application (annexure 2) was rejected by this order. As we have already pointed out above, the application was not merely for countersignatures and therefore this was rota disposal of it even if it is accepted that this is the order passed on application annexure 2.

7. On 21-11-66 the petitioners filed application, annexure 2-A on the prescribed form applying for grant of new permit, namely for grant of permit on the

Jhunjhunu Churu Sardarshahar route. The vehicle for which the permit was sought was shown as RJP 564". In column 7 one service daily or in rotation was sought. In column No. 16 permit was desired for 3 years or till the validity of the existing permit and the following note was appended:

Urgent Note:

The applicant holds stage carriage permit on Jhunjhunu-Churu route in respect of Bus No. RJP 664 and also applied for extension to RTA, Jaipur upto Sardarshahar and for counter-signatures to RTA Bikaner but due to extension the major portion of the proposed extended route lies in Bikaner region, hence this application.

8. The petitioners relied on this application as one for grant of new permit on the Jhunjhunu-Sardarshahar route and the appellants contended that it was an application for extension of the Jhunjhunu-Churu route upto Sardarshahar. The learned Single Judge held that it was an application for grant of a new permit on Jhunjhunu-Sardarshahar route. The learned Single Judge asked the Secretary of the Regional Transport Authority to file an affidavit to show how this application was dealt with by the Regional Transport Authority. He filed an affidavit which is at page 120 of the paper book along with a letter, annexure "X" issued by the Chairman, Regional Transport Authority and a circulation note annexure "Y" by which according to the Secretary application, annexure 2-A was rejected.

9. Letter, annexure "X" only directed that such applications as are covered by the proviso to Section 57(3) should not be published but should be got dismissed by circulation. It is not disputed on behalf of the appellants that application, annexure 2-A, whether it is treated as an application for a new permit or as an application for extension of the route could not be dismissed by the circulation without publication. The procedure prescribed u/s 57 applies to both, and dismissal of the application by circulation was in violation of natural justice as such application could only be rejected at a public hearing after notice to the applicant.

10. The reason given annexure "Y" for not publishing the application was that temporary permits had been granted between Jaipur and Sardarshahar which had been stayed and permanent permits on the route were about to be issued and so it was not in the public interest to extend the permit of the applicants from Churu to Sardarshahar. The resolution passed by circulation runs as follows:

Unanimously decided that the applications submitted by (1) Shiv Onkar Jangir (2) M/s Mannalal Shiv Kumar and (3) Habib Khan Mistry for extension of their route i.e. Churu-Jhunjhunu upto Sardarshahar be rejected as these extensions will serve no public interest. The applicants may be informed.

11. Section 67(3) provides for summary rejection of an application only on the ground that if a permit is granted the number fixed u/s 47(3) would be exceeded. There was no permit granted till then on Jhunjhunu-Sardarshahar route. Only applications for the grant of permits and for extension were pending

but the route had not yet been opened and its scope has not been fixed.

12. We may mention here that the circulation note was sent on 6. 12.66 and the resolution on it was passed on 29.12.66, During this period the Regional Transport Authority, Bikaner was all the time contemplating granting new permits on the Jhunjhunu-Sardarshahar route. Applications for grant of new permits were being published one after the other. These applications were published on 1-12-66. A meeting of the Regional Transport Authority was fixed for the consideration of these applications, on 28th & 29th Dec. 1966 (Vide annexure 12 at page 125) permits were not granted only because some of the pending applications had not become ripe for consideration. As we have pointed out above, 3 applications were published on 1-12-66 and 30 days time for filing objections had not expired when this meeting was held. In these circumstances it was idle for the Regional Transport Authority, Bikaner to say on the application of the petitioners that it was not in public interest to extend their permit to Sardarshahar as permanent permits were soon to be issued from Jaipur to Sardarshahar. If it was in the public interest to grant permits to the appellants over this route it was equally in public interest to grant either a new permit to the petitioners on this route or to extend their permit upto Sardarshahar, if the application is treated as one for extension. We are therefore fully satisfied that the Transport Authority, Bikaner did not deal fairly with the application, annexure 2-A of the petitioner.

13. On 12-1-67 letter (Ex. 2) was sent by the Regional Transport Authority to the petitioners informing them that their application for extension of Jhunjhunu-Churu route up to Sardarshahar had been rejected. The reason for rejection was not communicated to them as required by Section 57(7) which runs:

When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.

14. On behalf of the appellants the same arguments were addressed before us for treating annexure 2-A to be an application for extension as were advanced before the learned Single Judge. We are in agreement with his finding that the application was for a grant of a new permit on Jhunjhunu-Sardarshahar route. Section 57(8) runs as follows:

An application to vary the conditions of any permit, other than temporary permit, by the inclusion of new route or routes or a new area or in the case of a stage carriage permit, by increasing the number of trips above the specified maximum, or by altering the route covered by it in the case of a contract carriage permit or a public carrier's by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit.

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service so provided, without any increase in the number of vehicles.

15. It will be seen that it is not only an application for extension of route, but also an application for increasing the number of trips is to be treated as an application for grant of new permit under this Sub-section. In our opinion, it only means that the procedure prescribed in Section 57 will be followed in granting or refusing the application. The Act does not say that the application for extension of the route is an application for a new permit. It merely says that it shall be treated as an application for the grant of new permit. In actual practice also applications for extension are not made on the prescribed form on which applications for new permits are made. The petitioner did not want to replace their vehicle No. RJP 564 which they were plying on Jhunjhunu Churu route. From their application it is clear that they wanted a permit for the new route in respect of the same vehicle. One can apply for a new permit even if one has not got any vehicle in his possession. We do not see why the petitioners could not have applied for a new permit in respect of vehicle RJP 564 which they were already plying on a part of the route. It is clear from the application that they would stop plying the vehicle on the Jhunjhunu-Sardarshahar Churu route if a permit were granted to them for Jhunjhunu-Sardarshahar route.

16. Nor from the language of the urgent note appended to the application an inference can be drawn that the application was one merely for extension of Jhunjhunu-Churu route upto Sardarshahar. The permit on the Jhunjhunu Churu had been granted to the petitioner by the Regional Transport Authority, Jaipur. It is by no means clear that this permit could be extended to Sardarshahar by the Regional Transport Authority, Bikaner which had not granted the original permit. Normally a permit is extended by a Regional Transport Authority which grants it. Both parties did not dispute that the Regional Transport Authority, Jaipur could not have extended the permit to Sardarshahar.

17. It is true that in column No. 16 the permit on the new route was sought for 3 years or till the expiry of existing permit on the Jhunjhunu-Churu route. On the basis of this entry it cannot be said that the application was not for a fresh permit. An application for extension could not have been made for 3 years. In the note appended to the application the petitioners made it quite clear that they were the existing operators of Jhunjhunu-Churu route on which they were running vehicle RJP 564. The application was on the form prescribed for applying for the grant of a new permit. The prayer for extending the route to Sardarshahar was not made in any column of this application. We accordingly agree with the finding of the learned Single Judge that application annexure 2-A was for the grant of fresh permit.

18. on behalf of the appellants our attention was drawn to application, annexure 6, dated 28-8-67 presented before the Regional Transport Authority, Bikaner, on 29-9-67. This application is signed by Shiv Oakar, one of the petitioners and by 3 others persons Durgadatt, Vishwanath and Habib Mtstry. The prayer made in it was that the application for grant of permits under item No. 2 should be considered after the applications for extension of their permit from Jhunjhunu to

Churu upto Sardarshahar had been considered. The argument is that the petitioners should have drawn the attention of the Regional Transport Authority to their application dated 21-11-66 if it was for a new permit they thought that it was pending. The petitioners will be deemed to know that this application had not been published and could not be considered till it was published. If they had drawn the attention of the Regional Transport Authority to this application it might have postponed the grant of permits to appellants pending publication of their application & might have considered it simultaneously with the applications of the appellants. In these circumstances, it cannot be said that the petitioners were vigilant in prosecuting their application dated 21-11-66. They were therefore not entitled, in our opinion, to get the permits of the appellants cancelled by the learned Single Judge in the circumstances of the present case. In this connection we may refer to the decision in *Lallu Naran v. the Regional Transport Authority, Jaipur* ILR 1970 Raj. 16.

19. We accordingly allow the special appeals and set aside the order of the learned Single Judge so far as the appellants are concerned. In the circumstances of the case, we leave the parties to bear their own costs of these appeals.