
(1965) 04 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1813 of 1960

Mohd. Intizar Ahmad

APPELLANT

Vs

State Transport Authority and Others

RESPONDENT

Date of Decision : 21-04-1965

Acts Referred:

Motor Vehicles Act, 1939 — Section 58, 60(3), 64A

Citation : AIR 1966 All 383

Hon'ble Judges : S.N. Dwivedi, J

Bench : Single Bench

Advocate : B.N. Katju, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Dwivedi, J.—The petitioner challenges the order of the State Transport Authority, Lucknow. The order suspends his permit for a stage carriage for a period of two months.

2. The petitioner operates his stage carriage on Budaun-Bilsa-Sahaswan route. On October 20, 1959, the Regional Transport Officer checked his vehicle on the route and detected several violations of the law. On October 20, 1959 he passed an order suspending forthwith the petitioner's permit and asking him to show cause why the permit should not be cancelled. The petitioner submitted his explanation. Thereafter his case came up for consideration before the Regional Transport Authority, Bareilly. After hearing him the Regional Transport Authority passed a composite order on November 25, 1959. The Regional Transport Authority suspended his permit for two months: in lieu of suspension he was asked to pay a sum of Rs. 500 on or before December 10, 1959, failing which the order of suspension would come into operation. He deposited the said amount. In April, 1960 the State Transport Authority suo motu sent for the record of his case in exercise of its power u/s 64-A of the Motor Vehicles Act (hereinafter called the Act). He was heard by the State Transport Authority. After hearing him the State Transport Authority set aside the order of the Regional Transport Authority and

passed an order suspending his permit for two months. It also made a direction that the amount of Rs. 500 should be refunded to him.

3. Before the Regional Transport Authority the main charge against the petitioner was that on October 16, 1959, his vehicle was carrying 114 passengers. The permitted seating capacity of the vehicle was 60. So the vehicle was carrying 54 more passengers than its lawful seating capacity. Twenty of the passengers were sitting on the bus-top. These facts are not disputed by the petitioner. Obviously he has committed a dangerous breach of the transport law. His vehicle was carrying 20 passengers on the bus-stop at grave risk to their life and personal security. The State Transport Authority believed that the Regional Transport Authority improperly overlooked the magnitude of the breach and wrongly made an order under Sub-section (3) of Section 60 of the Act for compounding the breach on payment of Rs. 500 by the petitioner. Accordingly the State Transport Authority set aside the order of the Regional Transport Authority and suspended the petitioner's permit for two months.

4. Counsel for the petitioner has argued that no revision lay u/s 64A from the order of the Regional Transport Authority. A revision lies to the State Transport Authority u/s 64A from an order of the Regional Transport Authority from which no appeal lies. It is submitted that an appeal lay against that part of the order of the Regional Transport Authority which suspended the petitioner's permit for two months.

5. It is true that an appeal lay from that part of the order of the Regional Transport Authority which suspended his permit for two months. But as already stated, the order of the Regional Transport Authority is a composite Order. It consists of two parts: (1) It suspended the petitioner's permit for two months; (2) in the alternative, it directs him to pay a sum of Rs. 500 in lieu of suspension. While an appeal lay against the first part, no appeal lay against the second part.

6. In the circumstances of the case the second part was in substance the real order. As he had paid Rs. 500 as required by the second part, the first part became inoperative. Since no appeal lay against the second part, the State Transport Authority could interfere with it in revision.

7. The second argument is that u/s 64-A the State Transport Authority may interfere with an order of the Regional Transport Authority if the order is improper or illegal. The order of the Regional Transport Authority can not be characterised as illegal. It was, it is maintained, also not improper. I do not agree. Looking to the gravity of the breach of the transport law there can hardly be a difference of opinion about the propriety of the sentence. It was not a fit case where the Regional Transport Authority should have acted under Sub-section (3) of Section 60. It should not have compounded the breach. Sub-section (3) has been added to Section 60 by the amending Act of 1956. Before the amending Act the Regional Transport Authority was constrained to cancel or

suspend a permit for even a minor breach of the transport law. It seems to me that Sub-section (3) was added to Section 60 to enable the Regional Transport Authority to compound the breach if it were of a minor nature.

8. It is then argued that an inadequate penalty does not make an order improper within the meaning of that word in Section 64-A. This argument also cannot be accepted. An order may be improper for various reasons. For instance, it may be improper on facts. It can also be improper on account of inadequacy of sentence.

9. It has also been urged that as no order is really made under Sub-section (3) of Section 60 the second part of the order of the Regional Transport Authority under that provision was not revisable u/s 64-A. Section 64-A provides for a revision from an "order" of the Regional Transport Authority. There is little doubt that if the second part of the order of the Regional Transport Authority is in its true character not an "order", then it could not be set aside in the proceeding u/s 64-A.

10. Counsel for the petitioner has submitted that the resolution of the Regional Transport Authority in accordance with Sub-section (3) of Section 60 really records an agreement between it and the petitioner. As it is based on their agreement, it cannot be called an "order". The argument is apparently built upon the expressions "agrees to pay a certain sum of money" and "recover from the holder of the permit the sum of money agreed upon" in Sub-section (3) of Section 60. Sub-section (3) materially provides:

"Where a permit is liable to be cancelled or suspended and the Transport Authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or to suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, the Transport Authority may, instead of cancelling or suspending the permit, recover from the holder of the permit the sum of money agreed upon."

Let us analyse Sub-section (3).

11. The final step taken under Sub-section (3) involves several antecedent steps. Firstly, the Transport Authority has to take a decision that it would not be necessary or expedient to cancel or suspend the permit in the circumstances of a particular case; secondly, after taking that decision it has to determine what amount should the offending permit-holder pay in lieu of the impending cancellation or suspension of his permit; thirdly, after the second decision the Transport Authority has to ask the offending permit-holder to pay the said amount in lieu of the impending cancellation or suspension of his permit; fourthly, then the offending permit-holder has to make up his mind whether he would pay the said amount; fifthly, if he agrees to pay the amount asked for, then the Transport Authority takes the final decision that his permit should neither be cancelled nor suspended but he should pay the said amount. The first, second, third and fifth steps are, in my opinion orders within the contemplation of Section 64-A. I have no doubt in my mind that they are decisions. The word

"order" u/s 64-A means, I think, a decision.

12. I find it difficult to project the idea of a contract or agreement to the provisions of Sub-section (3) of Section 60. Sub-section (8) does not deal with individual rights or obligations. It is part of a section which is designed to safeguard public interest and security. It would not be proper to import the concept of a contract or agreement in the domain of public interest and public security. The mere use of the words "agrees" and "agreed upon" in Sub-section (3) cannot, without more, lead to the inference that a decision under that sub-section is based on an agreement of the parties.

13. Let us see whether the analogy of a contract or agreement can fit it with the design of Sub-section (3) of Section 60. In the formation of a contract or agreement there is first an offer of a promise by one party, and then there is acceptance of the promise by the second party. As soon as the second party accepts the offer of the first party, there springs up a contract or agreement between them. After its acceptance the first party cannot withdraw his offer. Now under Sub-section (3) the Transport Authority would make an offer to the offending permit-holder that if he agrees to pay a definite amount, the Authority would forbear from cancelling or suspending his permit, the permit-holder accepts the offer. There would then emerge a firm contract or agreement between them. On the acceptance of the offer by the permit-holder the Transport Authority could not withdraw the offer. If we apply the analogy of a contract or agreement to a proceeding under Sub-section (3), the Transport Authority would be incapable of withdrawing the offer once it is accepted by the permit-holder, even though on the second thought it may be satisfied that it was in the circumstances of the case necessary or expedient to cancel or suspend his permit. After acceptance of its offer it would be helpless to withdraw it even if it is satisfied that it was necessary or expedient to cancel or suspend the permit in the public interest and for reasons of public security. This analysis convinces me that the analogy of a contract or agreement cannot be projected to a proceeding under Sub-section (3) as Section 60 is designed to safeguard public interest and public security. It is designed to prevent danger to life and personal security of the passengers travelling in a stage carriage. Public interest is too unruly to be disciplined under the wooden yoke of contract

14. The petitioner's permit was renewed for 3 years on March, 24, 1957. The breach occurred in the present case during the life of the 1957 permit. That permit expired in March, 1960, and the petitioner got a renewal on May 30, 1960. The last argument is that the order of the State Transport Authority cannot operate on the permit renewed on May 30, 1960 for it is a new permit. I cannot agree. The permit is the old one. A renewed permit is not a new permit. There is a renewal of the old permit. The old permit continues to operate on its renewal from time to time.

15. For the reasons already discussed I am of opinion that this petition should be dismissed. Accordingly it is dismissed with costs.