

(1963) 04 GAU CK 0007

In the Gauhati High Court

Case No : Civil Rule No's. 230, 239 and 245 of 1962

Mvi. Surman All Laskar and Others

APPELLANT

Vs

State Transport Appellate Authority and Others

RESPONDENT

Date of Decision : 05-04-1963

Acts Referred:

Motor Vehicles Act, 1988 — Section 58, 62

Citation : AIR 1963 Guw 182

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : S.K. Ghose and A.M. Mazumdar, in R. No. 230, N.M. Lahiri, in R. No. 239 and J.C. Medhi, in R. No. 245, for the Appellant; D. Chaudhury, Jr. Govt. Advocate in R. No. 230, K.P. Bhattacharjee in R. No. 239, A.M. Mazumdar in R. No. 245 and M.C. Pathak, Jr. Govt. Advocate in R. Nos. 230, 239 and 245, for the Respondent

Judgement

G. Mehrotra, C.J.—These three rules are disposed of by one common judgment. Briefly the facts are that the Petitioners who are citizens of India held permits to ply their buses till 31st March 1961, They applied for the renewal of their permits. As the meeting of the Transport Authority could not be held, the Transport Authority granted temporary permits to the Petitioners to ply their buses. At the first instance the temporary permits were granted till June 1961. Thereafter time was further extended and third time was granted up to 31st December 1961. Before the term of the last temporary permits expired, on the 14th December 1961 "the Regional Transport Authority held its meeting and it was decided that the permits of the Petitioners should be cancelled. Thereafter permits were granted to the opposite parties to the cases. The Petitioners have challenged the order of the Regional Transport Authority by which their temporary permits were cancelled and permits were granted to the opposite parties.

2. Three points have been urged by the Petitioners. It is firstly urged by them that in June 1961 when the Petitioners were granted temporary permits for a

further period, the authorities had no jurisdiction to grant a temporary permit and thus the temporary permits granted to them should be deemed in the eye of law to be permanent permits, and valid for a period of three years. The order of cancellation is thus illegal and no fresh permits could be granted to the opposite parties if there were no vacancies. The second contention is that even if the temporary permits granted in June 1961 cannot be treated to be permanent permits, the order was to issue renewed permits for a period of two months. The renewal u/s 58 of the Motor Vehicles Act must be for three years and thus the order of June 1961 was an illegal order to the extent that it provided a period of renewal less than the statutory period of three years u/s 58. A mandamus should be issued directing the authorities to correct the temporary permits granted in June 1961 and make them valid for a period of three years as provided for u/s 58. lastly it is contended that if the resolution of the 14th December 1961 only amounts to the cancellation of the temporary permits granted to the Petitioners which were due to expire by the end of December 1961, the applications filed by the Petitioners for renewal of their permanent permits in March 1961, still remain undisposed of and a direction should be Issued to the authorities to consider the applications on merits.

3. So far as the first contention is concerned, we see no substance in it. The permits purport to be temporary permits. Even though Section 62 lays down that when a temporary permit is granted due to the fact that the application for grant of permanent permit is pending, it can be granted only once and in view of the provisions of Section 62 the second grant of the temporary permit will be illegal but none the less the permit being a temporary permit, cannot be deemed to be a permanent permit simply because Section 58 requires that renewal can only be for three years. With regard to the second point raised by the Petitioners the real hurdle is that even after the order of June 1961, the Petitioners accepted the temporary permits which expired on the 31st December 1961 and thus they cannot now at this stage ask for a mandamus directing the authorities not to give effect to the order and to incorporate on the temporary permits granted in June 1961 a period of three years. As regards the last point, in our opinion the order cancelling the Petitioners' permits can only relate to temporary permits and not to permanent permits. There were no existing permanent permits till then in favour of the Petitioners which could be cancelled. Nor the grounds on which the cancellation has been done relate to the period when the permanent permits are operative. On the 14th December 1961 the temporary permits granted to the Petitioners were in operation and thus the cancellation order must relate to the temporary permits. There is no dispute about this. The counsel for the State has contended that though the order has used the word "cancelled" but when the order as a whole is read it appears that the Regional Transport Authority not only cancelled temporary permits of the Petitioners but also considered the grant of permits to Petitioners by way of renewal or- to other persons. The whole matter was considered and after consideration the Regional Transport Authority came to the conclusion that the Petitioners were not suitable

for the renewal of the permits and thus their renewal was refused and fresh permits in the vacancies were granted to the Respondents.

We have seen the order and in our opinion the order shows that the authorities did not consider the applications of the Petitioner for renewal on their merits. The authorities after having considered the matter were of the opinion that the Petitioners were as if disqualified for renewal and their applications for renewal could not be considered at all. This in our opinion, the authorities are not justified in doing. Even if the temporary permits of the Petitioners were cancelled, the Petitioners were entitled to the consideration of their applications for renewal of the permits. The order of cancellation of the temporary permits for practical purposes has no value because the period of the temporary permits itself expired by 31st December 1961 and thus that matter was absolutely irrelevant for considering the merits of the applications of the Petitioners for the renewal of their permanent permits. On the reading of the order it appears that the Regional Transport Authority had not applied its mind to the applications of the Petitioners for renewal. It is true that the Appellate order is based on the interpretation of the order of the Regional Transport Authority and the State Transport Authority appears to be of opinion that the Regional Transport Authority considered the entire matter and refused renewal to the Petitioners. We on the plain reading of the order are not inclined to accept the said interpretation put by the Appellate Authority on the order of the Regional Transport Authority. In our opinion, therefore, the order of the Regional Transport Authority must be quashed and a direction should be issued to the Regional Transport Authority to consider the applications of the Petitioner for renewal of their permits along with the other applications for grant of the permits for the route. The parties will bear their own costs.

S.K. Dutta, J.

4. I agree.