

(2000) 09 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 2936 of 2000

Natwar Transport Company

APPELLANT

Vs

Transport Commissioner and Others

RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 87(1), 88, 89, 89(2)

Citation : (2001) 1 BomCR 696 : (2000) 4 MhLj 457

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : C.G. Madkholkar and K.V. Deshmukh, for the Appellant; A.G.P. for the Respondents 1 and 3, for the Respondent

Judgement

A.M. Khanwilkar, J.—Rule.

Rule made returnable forthwith by consent.

Heard both sides.

In spite of notice and even after an opportunity for filing reply was granted to the respondents on the last occasion, no reply has been filed so far. The averments in the writ petition have, therefore, remained uncontroverted.

2. The only question that arises in this writ petition is whether the Joint Transport Commissioner was right in rejecting the petitioner's application for issuing temporary permit to operate on Nagpur-Bhopal route for a period between 21st July, 2000 to 31st October, 2000. The Joint Transport Commissioner, while rejecting the said application, vide order dated August 8, 2000, preferred by the petitioner, observed thus :

"In light of the above background the present application for issue of Temporary permit for a period 21-7-2000 to 31-10-2000 is being considered now perusal of the application shows that the main intention of the applicant is for issue of Temporary Permit pending grant of counter signature by State Transport

Authority, Madhya Pradesh. The applicant has not produced any documentary evidence to establish his claim for the same under any of the clauses mentioned in section 87(1) of Motor Vehicles Act, 1988. Neither has this authority received any request or complaints from any person/Association etc. regarding non-availability of services on the said route nor there being any urgent temporary need for issue of Temporary Permits. Perusal of the petition filed before the Hon"ble High Court, Nagpur in Writ Petition No. 2099/2000 also shows that the petitioner has laid stress and emphasis on the issue of Temporary Permit pending countersignature on the substantive permit by State Transport Authority, Madhya Pradesh and not on the merits of temporary need. It is also seen that the main aim of the applicants was for grant of a substantive stage carriage permit on the inter-State route Nagpur-Bhopal for which he has been agitating and going to the courts. The said request having been acceded to, he now should have no demand for Temporary Permits. The role of this State Transport Authority having been completed he should now pursue the matter with State Transport Authority, Madhya Pradesh, Gwalior for obtaining countersignature u/s 88(4) of the Motor Vehicles Act, 1988 instead of making frivolous demand. It is also observed that there is no provision in the Motor Vehicles Act, and rules made thereunder for issue of temporary permit once a substantive permit has been issued for the same route. Hence it is concluded that the temporary permit as applied for cannot be issued. Hence the order".

3. It is not in dispute that the Secretary of the State Transport Authority, Maharashtra State, Mumbai, has already agreed in principle that buses should be operated on the route between Nagpur and Bhopal. Resolution has been passed to that effect by the State Transport Authority on 3rd June, 2000. That resolution reads thus :

"Item No. 2 :

To consider the application in the prescribed form P.S.S.A. dated 11-4-2000 along with covering letter from M/s. Natwar Transport Co. for grant of stage carriage permit on the inter State route, Nagpur-Bhopal on double point taxation.

The State Transport Authority took up this item for consideration. The authority perused the agenda note on the item and resolved to grant of substantive stage carriage permit valid for 5 years from the date of its issue for operation of one return trip daily on the inter-State route Nagpur-Bhopal subject to double point taxation and usual conditions and grant of counter signature by the State Transport Authority, Madhya Pradesh for the portion of the route lying in Madhya Pradesh State. Operator shall not operate even a partial service upto borders of Maharashtra State till countersignature is not obtained by him.

It is further decided to allow three months period from the date of receipt of the sanction order to produce vehicles and lift permit, failing which sanction would lapse automatically."

4. The learned Counsel for the petitioner relied on the decision of the Apex Court

reported in The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur, to contend that the decision of the Authority was totally on extraneous considerations and not on the basis of the law as enunciated by the Apex Court in the said decision. Emphasis is placed on paragraphs 4 and 5 of the said decision to contend that there is no antithesis between a particular temporary need and a permanent need and it is manifest that these two kinds of need may coexist on a particular route. In other words, it is contended that since the Authority has recognized the permanent need on that route, it was wholly inappropriate on the part of the Joint Transport Commissioner to assume that there was no temporary need existing on the said route. The learned Counsel further contends that the Joint Transport Commissioner has committed an error apparent on the face of record in observing that no documentary evidence was produced by the petitioner in support of his claim for issuance of temporary permit. It is pointed out that the previous writ petition filed by the petitioner in this Court, being Writ Petition No. 2099 of 2000 alongwith its accompaniments were produced before the Authority and said documents, which formed part of the said paper book, would clearly indicate that certificates have been issued, at page 47 to page 55 of this petition, that there was dire need to operate and ply bus service i.e. private service between Nagpur-Bhopal route. The authority has thus clearly overlooked this aspect of the matter and the impugned decision is, therefore, erroneous and cannot be sustained on facts or in law.

5. Learned Counsel for the respondents, on the other hand, argued that alternate and efficacious remedy is available to the petitioner in the form of an appeal before the Tribunal u/s 89 of the Motor Vehicles Act, 1988 (For short, "the Act"). To counter this preliminary objection, the learned Counsel for the petitioner has placed reliance on the averments of paragraph 12 of the writ petition, which reads thus :

"The petitioner is thus constrained to file the present petition as it has no other efficacious remedy. It is true that the remedy of appeal is provided, but looking to the fact that presently there is no regular Chairman appointed to hear and decide the appeal, it is of no avail when a person working subordinate to him is temporarily handling the charge. One such an attempt was made, but without considering the request, with full non-application of mind, an order came to be passed which order was impugned in Writ Petition No. 2099 of 2000. Therefore, this substantive remedy of appeal is of no avail at present to the petitioner, as no regular Chairman has been appointed till today and he has not resumed the charge on the date on which the affidavit is sworn in this petition."

As mentioned above, there is no reply filed to this petition and this averment has remained uncontroverted. The learned Counsel for the petitioner is, therefore, right in contending that since the Tribunal, as contemplated by sub-section (2) of section 89, has not been constituted, there is no alternate and efficacious remedy available to the petitioner. In the circumstances, I am convinced that the

present petition cannot be thrown out on the ground that the alternate remedy is available, as, in my view, no efficacious remedy can be said to be available for want of validly constituted Tribunal, which is competent to adjudicate and decide the appeal, if presented.

6. Coming to the merits of the case, I find that the Joint Transport Commissioner has clearly overlooked the record which was placed before it by the petitioner, particularly the documents at pages 47 to 55 of this paper book. Besides ignoring the said documents, the authority has also not kept in mind the principles enunciated by the Apex Court in the decision of The M.P. State Road Transport Corporation (cited supra). Moreover, the approach of the Commissioner in observing that since the petitioner's request for substantive permit having been acceded to by the authority, the petitioner should pursue the matter with the Madhya Pradesh Authority for obtaining countersignature u/s 88(4) of the Act instead of the request for temporary permit, cannot be countenanced.

In my view, on the basis of record produced before the Commissioner it was obvious that need for temporary permit within the meaning of section 87(1)(c) of the Act was clearly established. Section 87(1) undoubtedly invests power in the Authority to grant temporary permit while awaiting the countersignature of authority of the other State on the proposal for substantive stage carriage permit. It is well settled that power to do an act is coupled with the duty to act when a case for exercise of that power is made out. All these vital matters were obviously not kept in mind by the Joint Transport Commissioner before taking the impugned decision.

7. In the circumstances, there is no other option but to set aside the impugned order passed by the Joint Transport Commissioner and remit the matter back to the Joint Transport Commissioner for reconsideration of the application for grant of Temporary Stage Carriage Permit for the inter-State route Nagpur-Bhopal, as prayed for by the petitioner. The said application be decided within one week from the date of receipt of this order. Needless to observe that the Joint Transport Commissioner shall keep in mind the principles enunciated by the Apex Court as well as consider all the relevant documents and also provide fair opportunity to the petitioner before taking final decision in the matter.

Accordingly, this writ petition succeeds. The order dated 8th August 2000 passed by the Joint Transport Commissioner is set aside and the matter is remanded for fresh consideration on the above terms. Rule made absolute on the above terms. No order as to costs.

Parties to act on the authenticated copy signed by the Sheristedar.