

(1961) 10 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 306 of 1961

Navyug Motor Service (P) Ltd.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-10-1961

Acts Referred:

Motor Vehicles Act, 1939 — Section 46, 54, 57, 57(8), 62

Citation : AIR 1962 P&H 532

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Judgement

(1) This writ petition raises tow points. In so far as the first point is concerned, for the reasons given in Mool Chand v. The Regional Transport Authority, Patiala Civil Writ No. 303 of 1961 (Punj) 1 do not think it is possible for this Court to go into the controversy for quashing the order of granting temporary permits for a period of two months in Feburary 1961.

(2) In so far as the second point is concerned, the contention raised by Shri Sodhi is that the petitioner Company (Navyug Motor Service (P) Limited) had made an application on 21st September 1959 to the Regional Transport Authority, Patiala, praying that the number of trips of the petitioner-Company be increased. I may here mention that the petitioner-Company carries on transport business as its only business under the name and style of Navyug Motor Service (P) Limited with its Head Office at Charkhi Dadri in the District of Mohindergarh. It operates passenger bus service at Dadri Loharu Route holding one stage carriage regular permit granted under the motor Vehicles Act with one daily return trip on a distance of about 36 miles, more than half of which is a kacha route. The other transport operator on this route also operates passenger bus service with two permits and two permits and two daily return trips.

(3) The petitioner Company"s application dated the 21st September 1959, according to the allegations contained in the petition, is entered at serial no. 10228 in the Receipt Register of the Regional Transport Authority, Patiala but the

same has not yet been disposed of according to law. The Petitioner Company has not even been informed as to why that application has not been dealt with.

(4) The Illaqa Badhra Transport Co-operative Society limited, respondent No. 3, is holding one permit for Dadri Dubbal-Dhhan Route and probably (such is the allegation made in the petition) one more permit for Dadri-Lad Route, but the Society has also been making efforts for some time past to get stage carriage permits sanctioned to it for the route operated by the petitioner Company. It is averred that every kind of political influence was used, but for absence of any merit in its claim the respondent-Society apprehended that perhaps it would not be able to get a regular permit. By misuse of political influence, according to the petitioner's averment, Shri Attar Singh, M. L. A., has been instrumental in preventing the proper disposal, according to law, of the petitioner's application by the Regional Transport Authority. It is then stated that the Chairmen, Regional Transport Authority, has granted two temporary permits to respondent No. 3 (the Illaqa Badhra Transport Co-operative Society Limited) without stating any reasons for the grant. The order granting the Temporary permits has been attached to the writ petition as Annexure "A"

(5) On behalf of the petitioner the attack against the impugned order (Annexure "A") is confined to sections 57(8) and 62, first proviso, of the Motor Vehicles Act. Section 57(8) is in the following terms:

Procedure in applying for and granting permits.

"57 (1) xxx xxx

(8) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of services above the specified maximum or in the case of a contract carriage permit or a public carrier's permit 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."

Section 62 reads thus:

"Temporary Permits.

62. "A Regional Transport Authority may without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily-

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

- (b) for the purposes of a seasonal business, or
- (c) to meet a particular temporary need, or
- (d) pending decision on an application for the renewal of a permit;

and may attach to any such permit any condition it thinks fit:

Provided that a temporary permit under this section shall in no case, be granted in respect of any route or area specified in a application for the grant of a new permit u/s 46 or Section 54 during the pendency at the application:

Provided further a temporary permit under this section shall, in no case, be granted more than once in respect of any route or area specified in an application for the renewal of a permit during the pendency of such application for renewal."

It is contended that the petitioner's application dated the 21st September 1959 for the increase in the number of trips should in accordance with section 57(8) have been treated and an application for the grant of a new permit. So treated, the provisions contained in the Motor Vehicles Act relating to the procedure to be adopted in considering such applications should have been adopted. It is submitted that respondents Nos. 1 and 2 should be directed by means of a mandamus or other similar direction or orders to perform their statutory duty imposed by the Motor Vehicles Act and dispose of the application in accordance with law. Emphasis is laid on the first proviso to Section 62 which lays down that a temporary permit can in no case be granted in respect of any route or area specified in an application for the grant of a new permit u/s 46 or Section 54 during the pendency of the application. It is contended that by virtue of Section 57(8) the petitioner's application should be treated to be an application u/s 46, for there is no other provision under which it can in pursuance of the fiction created by section 57(8) be considered to have been filed.

(6) On behalf of respondents 1 and 2 Shri Mehra has contended that the aforesaid proviso to Section 62 merely refers to applications for the grant of a new permit under Sections 46 54, and that it does not refer to applications which may, by virtue of section 57(8) be treated as applications for the grant of a new permit.

(7) The case is certainly of first impression but carrying the deeming provision contained in Section 57(8) and the fiction created by it to its logical conclusion, the application for increasing the number of services, when treated as an application for the grant of a new permit, must be treated for all essential and practical purposes to be an application u/s 46.

(8) No arguments have been addressed at the Bar Suggesting the purpose of the fiction enacted in sub-section (8) of Section 57 so as to limit its scope in such a way as not to consider an application for the increase in the number of services to be an application u/s 46. Whenever a legal fiction is created by the Legislature

by providing that something is to be treated as other than what it is, one has to see within what bounds and for what purpose it is to be so treated. As at present advised, I have not been able to think of any convincing or even plausible reason why this provision should not be held to be meant to attract the applicability of Section 46, nothing substantial having been urged at the Bar in support of a different view.

(9) Mr. Joginder Singh Wasu, appearing for Respondent No. 3, tried to raise another point by contending that in Section 57(8) the increase in the number of services in order to be covered by this sub-section should be above the specified maximum. It is submitted that in the writ petition it has nowhere been stated that the increase demanded was above the specified maximum.

(10) Now in proceedings for a mandamus, in my opinion, it is the authority, to which a mandamus is to go, which is entitled as of right to contest the petitioner's claim. Respondent No. 3 was certainly entitled to oppose the prayer for a writ of certiorari impeaching the order granting temporary permits to the co-operative society, but in so far as the petitioner desires this Court to direct respondents Nos. 1 and 2 to perform their statutory duty imposed by the provisions of the Motor Vehicles Act, I do not think, strictly speaking, respondents No. 3. can claim any right to oppose that prayer. I, however, permitted the learned counsel for respondent No. 3 also to address arguments because there is no prohibition and no bar imposed on this Court in the matter of hearing arguments from any counsel representing a party to the proceedings before it. It may here be mentioned that in the reply filed by the Advocate-General on behalf of respondent No. 2, it has not been pleaded that the petition filed by the petitioner on 21st September 1959 did not envisage an increase in the number of services above the specified maximum. As a matter of fact, nothing was stated at the Bar as to what is the "specified maximum" as contemplated by Section 57(8) and 62 of the Motor Vehicles Act, but it has nowhere been averred that the petitioner's application was not for increasing the number of services above the specified maximum,. It would not be out of place here to mention that even respondent No. 3 has not raised this plea in its written statement. It has merely pleaded that section 62 of the Motor Vehicles Act gives ample power for the issue of temporary permits as and when needed. Mr. Wasu has submitted that in the absence of an averment in the writ petition that the petitioner has applied for an increase in the number of services above the specified maximum, its application could not be considered to fall u/s 57(8). In my opinion it would hardly be fall to place such a narrow construction on the petition. That the respondents understood that reliance was being placed by the petitioner on the provisions of law as laid down in Sections 57(8) and 62, is clear from reading both the written statements filed by the respondents in this case. Paras 6 and 7 of the written statement filed by respondent No. 2 very clearly show that the Regional Transport Authority was conscious of the provisions which according to the petitioner cover the present controversy. Respondent No. 2, in my view, knew the case he was required by the petitioner to meet and at the Bar

it has not been contended on behalf of the department that this point had not been raised in the writ petition and, therefore, should not be allowed to be argued or that the department was being taken by surprise. It is, therefore, not possible to sustain the contention raised on behalf of respondent No. 3 and to reject the petition on this ground.

(11) On behalf of the petitioners reference has also been made to a Full Bench decision of this Court in the *The Ambala Ex-Servicemen Transport Co-operative Society, Ltd. and Another Vs. The State of Punjab and Others*, for the proposition that power to issue temporary permits u/s 62, Motor Vehicles Act, is not uncontrolled or unrestricted. A Division Bench decision of the Patna High Court in *B.K. Mukerjee Vs. Chairman, East Bihar Regional Transport Authority and Another*, has also been referred to for the view that a temporary permit may be granted only for the reasons contained in section 62 and that those reasons must appear in the order. To the same effect appears to be a decision of the Division Bench of the Mysore High Court in *Sharanappa Basappa v. Secretary, Regional Transport Authority Gulbarga* AIR 1959 Mys 226. In *Sridhar Raj v. Secretary, Regional Transport Authority Kolar* AIR 1959 Mys 120, also a Division Bench held that a temporary permit cannot be granted outside section 62. In the light of the decisions quoted at the Bar and bearing in mind that the right to secure permits under the Motor Vehicles Act is a very valuable right, I am constrained to hold that petitioner's application dated the 21st September, 1959, for the increase of number of trips treated as an application for a new permit called for its disposal as such. It is disputed that where an application calls for disposal as a petition for new permit and has not been so disposed within a reasonable time it justifies a mandamus from this Court, as indeed, it cannot be disputed. In the present proceedings, as already observed, I cannot interfere with the temporary permits granted in February 1961 for a period of two months, with the result, that I am not called upon, and indeed there is no occasion for me, to consider the question whether or not such a temporary permit can be issued in view of the first proviso to section 62. I would, therefore, in the circumstances of the case be disinclined to say anything beyond issuing directions to respondents 1 and 2 treat the petitioner's application dated the 21st September, 1959 as an application for a new permit and to dispose it of in accordance with the law applicable to applications for new permits. Further than this it is unnecessary for me, at this stage in the instant case, to go. As a result I issue the direction mentioned above to respondents Nos. 1 and 2. As the petition succeeds partially, I leave the parties to bear their own costs.

(12) Order accordingly.