

(1958) 12 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 681 of 1958

New Kerala Bus Transport

APPELLANT

Vs

Regional Transport Authority, Cannanore and Others

RESPONDENT

Date of Decision : 23-12-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 62, 64

Citation : AIR 1959 Ker 398

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : V.K. Krishna Menon, C.S. Padmanabha Iyer and M. Narayana Menon, for the Appellant; Govt. Pleader, for 1st Respondent, K.S. Sebastian, for 2nd Respondent, P.G. Balakrishna Menon and V. Bhaskaran Nambiar for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

T.K. Joseph, J.—This is a petition under Article 220 of the Constitution for the issue of a writ of certiorari or other appropriate writ or order quashing the order Ext. P. 1 dated 29-9-1958 of the 1st respondent, the Regional Transport Authority, Cannanore, granting temporary permits to Respondents 2 and 3.

2. The petitioner's case is that the 1st respondent has called for applications for a pucca permit for a stage carriage along the Cannanore-Mambaram via Chala route covering a distance of 11 miles. After hearing all the applicants a permit was granted to one T.T. Narayanan by order dated 31-10-1957. The petitioner preferred an appeal from the said order to the State Transport Appellate Tribunal, Trichur and the same is now pending disposal. On the application of the petitioner the Appellate Tribunal stayed the operation of the order granting permit to T.T. Narayanan.

The 1st respondent then received applications from respondents 2 and 3 for temporary permits on the same route and the applications were granted by order

Ext. P. 1 dated 29-9-1958. A temporary permit to run a bus till the disposal of the appeal or for a period of 4 months, whichever expires first, was granted to each of the respondents and it is this order which is sought to be quashed. The petitioner's case is that the order is without jurisdiction and is liable to be quashed.

The main grounds relied on by the petitioner are that there was no temporary need as distinguished from a permanent need, that the 1st respondent had no jurisdiction to grant a temporary permit during the pendency of the appeal from the order granting pucca permit and that the order is bad inasmuch as it does not state reasons for the grant. He therefore prays for the issue of a writ or order as stated above.

3. Respondents 2 and 3 opposed the petition. The 3rd respondent has filed a counter affidavit denying the alleged infirmities in the order and contending that the 1st respondent had jurisdiction to grant the same. It is also contended that the original petition is not maintainable as the petitioner has not cared to pursue the remedy provided by Section 64(a) of the Motor Vehicles Act, before moving this court under Article 226.

4. The preliminary objection raised by Respondents 2 and 3 may be considered. This is based on Section 64(a) of the Motor Vehicles Act which is as follows :

"The State Transport Authority may either on its own motion or on an application made to it call for the records of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal the State Transport Authority may pass such order in relation to the case as it deems fit."

It is contended by the respondents that the petitioner should have moved the State Transport Authority for redress before approaching this court for the exercise of its extraordinary jurisdiction. The existence of the remedy provided by Section 64(a) is thus pleaded as a bar to this petition. I may in this connection refer to the decision of the Supreme Court in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, where the validity of the order passed under the Motor Vehicles Act was in question.

It was pointed out that there was the regular hierarchy of administrative bodies established to deal with the regulation of transport by means of Motor Vehicles and that there was a complete and precise scheme for regulating the issue of permits providing what matters are to be taken into consideration as relevant and prescribing appeals and revisions from subordinate bodies to higher authorities.

The Supreme Court held that where remedies for the redress of grievances or the correction of errors were provided in the Statute itself it was to these remedies that resort must generally be had. The latest decision of the Supreme

Court on this point is the *The State of Uttar Pradesh Vs. Mohammad Nooh*, On the question whether a writ of certiorari should issue when other remedies are open it was held :

"On the authorities referred to above it appears to us that there may conceivably be cases -- and the instant case is in point -- where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what *ex facie* was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the Original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whoso glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

The issue of a writ of certiorari is discretionary and the existence of another remedy may be taken into consideration in the exercise of discretion. The petitioner has no case that a revision before the State Transport Authority would have been ineffective. I do not consider this a fit case for exercising the discretion in favour of the petitioner as circumstances such as are mentioned in *The State of Uttar Pradesh Vs. Mohammad Nooh*, do not exist in this case. This will be clear from what is stated below.

5. The grant of temporary permits is regulated by Section 62 of the Motor Vehicles Act which enables the Regional Transport Authority to grant temporary permits (a) for the convenience of passengers on special occasions such as to and from fairs and religious gatherings or (b) for the purpose of a seasonal business or (c) to meet a particular temporary need or (d) pending decision on an application for renewal of a permit. It is argued on behalf of the petitioner that though there was actually need for additional stage carriages on the route; such need was not of a temporary nature as seen from the fact that the 1st respondent decided to give pucca permit to operate a stage carriage on the route. This shows that the need was of a permanent nature and the fact that an additional Stage Carriage could not be put on the route on account of the order of stay passed by the Appellate Tribunal cannot convert such permanent need to

one of a temporary nature. This position has been upheld by decisions of this Court as well as other courts but it is unnecessary to refer to the decisions cited on the point as the position was not controverted. However the respondents rely on an amendment to Section 62 by Act 20 of 1988, Madras which introduced a sub-clause as Sub-clause (d) which is in these terms :

"In such circumstances as may, in the opinion of such authority, justify the grant of such permit."

It may be stated that Clause (d) as it appears in the Central Act was added by a Central enactment on a later date. Section 62 as it is now in force in the State of Madras thus has really 5 clauses of which two are numbered as (d) by reason of State and Central enactments. This case is one from the Malabar area and it is governed by Section 62 as amended by Act 20 of 1948 (Madras). According to the Madras amendment a temporary permit cant be granted in such circumstances as may in the pinion of the Regional Transport Authority, Justify the grant of such permit. This sub-clause is not hedged in by conditions as the earlier ones and all that is required is that the Authority should be satisfied of the necessity to put an additional Stage carriage on the route.

It is conceded by the petitioner that the Stage carriage plying on the route could not cope with the traffic and that there was need for providing additional facilities. The pucca permit granted could not be availed of on account of the order of stay issued by the appellate authority. The duration of the permit viz. till the disposal of the appeal or 4 months whichever should expire first, shows that the 1st Respondent was satisfied that there should be additional facilities for the convenience of the public during the said period. This in my opinion justified the grant of a temporary permit under Sub-clause (d).

6. It is however necessary to consider two points raised by learned counsel for the petitioner. The first was that Sub-clause (d) could be availed of only on some ground analogous to those in Sub-clauses (a) to (c). There is nothing in Sub-clause (d) which supports this argument. Another was that the 1st Respondent could not issue a temporary permit during the pendency of the appeal from the order granting pucca permit.

This argument is based on the second proviso to Section 62 which prohibits such grant during the pendency of an application for a permit u/s 46 or Section 54. It is argued that the application should be deemed pending in view of the appeal from the order granting the permit. There is at least one reported decision of this court holding that the pendency of the application should be before the Regional Transport Authority and not in appeal before the appellate Authority, if the proviso is to come into operation. See M.A. Mohamed Vs. Regional Transport Authority, Trichur, I am in agreement with this view and the argument of the petitioner cannot therefore be accepted. The petition must therefore fail as the petitioner has no case on the merits either.

7. In the result, the Original Petition is dismissed with costs including Counsel's

fee of Rs. 100/- to each of the respondents.