

(1957) 01 OHC CK 0008

In the Orissa High Court

Case No : O.J.C. No's. 448 and 452 of 1956

New Orissa Transport Company Private Ltd.

APPELLANT

Vs

Regional Transport Authority and Another

RESPONDENT

Date of Decision : 31-01-1957

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 58, 58(2)
Orissa Motor Vehicles (Amendment) Act, 1948 — Section 1(3)

Citation : AIR 1957 Ori 121 : (1957) 23 CLT 134

Hon'ble Judges : Narasimham, C.J;Das, J

Bench : Division Bench

Advocate : H. Mohapatra and R.N. Misra, for the Appellant; Adv.-General, for the Respondent

Judgement

Narasimham, C.J.—The petitioner is a private motor transport company which was formerly plying stage carriage vehicles on the Raj Athgarh-Narasinghpur route. The Regional Transport Authority, Cuttack, refused to renew its permit and granted the same to the State Transport Authority of Orissa, over the said route. These two petitions have been filed against this order and they are dealt with in one judgment.

2. The facts which are either admitted, or are clear from the affidavits filed by the parties, may be shortly stated as follows:

Eight permits of the petitioner for the aforesaid route were . renewed for a period of three years. The permits expired on the 30th September, 1956. On the 24th July, 1956 the petitioner made an application to the Regional Transport Authority, Cuttack, accompanied by the prescribed fee, for renewal of the permits for a further period of three years from 1st October; 1956 u/s 58 (2) of the Indian Motor Vehicles Act. On the 9th September, 1956, however, the Assistant Transport Manager, Meramundali, presumably acting on behalf of the State Transport Authority, applied for eight permits for plying stage carriages on the same route.

These were all considered, by the Regional Transport Authority at a meeting held on the 30th September 1956, and that Authority held that thirty days notice for inviting objections as required by Section 57 (3) of the Motor Vehicles Act had not been given and therefore deferred passing any final orders on those applications, but by way of an interim arrangement granted a temporary permit valid from 1-10-56 to 15-11-56 to the petitioner. The Authority further directed that due publication of renewal applications should be given as required by law. On 2-10-56 the State Transport Authority filed a fresh application for eight permits on the same route and that application was also duly published and objections invited.

On the 5th November, 1956 the Regional Transport Authority met to consider (1) the original application dated 27-7-56 of the petitioner; (2) the application by the State Transport Authority dated 2-10-56 and (3) the objections filed by several persons against the grant of permits either to the one or to the other. The Authority finally decided as follows:

"Both the State Transport Authority and the private company have applied for the same route. Each has objected to the other's application. A number of petitions have been received for and against both the applications. After considering these papers this authority decided to give preference to the State Transport Authority u/s 47 (1) (g) of the Motor Vehicles Act. Ordered accordingly."

Against this order the petitioner filed an application under Articles 226 and 227 of the Constitution which is O. J. C. No. 448 of 1958 . It also appears that he filed an appeal to the Chairman, State Transport Authority. While the writ application was pending in the High Court the State Transport Authority surrendered all their permits realising that there were some irregularities in the grant of permits to them. Then, the Collector as Chairman of the Regional Transport Authority, granted temporary permits to the State Transport Authority. O. J. C. 452 was filed against this order and also against the consequential order prohibiting the petitioners from plying on the said route.

3. Before discussing the various questions raised, I may summarise the relevant law relating to motor vehicles in Orissa. The Indian Motor Vehicles Act, 1939 (Act IV of 1939) (hereinafter referred to as the parent Act) has been in force from 1939. Section 47 of the Act specifies various matters which the Regional Transport Authority shall "have regard to" in deciding to grant, or refuse to grant, a stage carriage permit. Section 57 (3) says that all applications for stage carriage permits shall be duly published and objections invited within thirty days from the date of such publication.

These should be considered at a meeting of the Authority where all interested parties shall be heard either in person or by a duly authorised representative. Section 58 (1) says that a permit shall be effective without renewal for such period not less than three years and not more than five years, as the Regional Authority may in its discretion specify in the permit. Section 58 (2) may however

be quoted.

"A permit may be renewed on an application made and disposed of as if it were an application for a permit: Provided that other conditions being equal, an application for renewal shall be given preference over a new application for permit."

Section 62 empowers the Regional Transport Authority to grant temporary permits without following the elaborate procedure laid down in Section 57 for a period not exceeding four months to meet a particular temporary need. The other sections of the Act are not material for our purpose.

4. In 1947, the Orissa legislature passed the Orissa Motor Vehicles (Regulation of State Carriage and Public Carrier Service) Act, 1947, (Orissa Act XXXVI of 1947) whose main object was to modify the provisions of the parent Act so as to give monopoly of transport service to a joint-stock company in which the Central and Provincial Government (now Union and State Government) shall have a controlling interest. It is admitted, however, that this Act has no application to the present case inasmuch as no notification under Sub-section (i) of Section 4 of that Act has issued.

5. In 1949, the Orissa Legislature passed another Act known as the Orissa Motor Vehicles (Amendment) Act, 1948 (Orissa Act of 1949) by which a new organisation known as the State Transport Service, as distinct from the Joint Stock Company contemplated in Orissa Act XXXVI of 1947 was given statutory recognition by the insertion, of a separate definition clause in the parent Act as follows:

"(29A) "State Transport Service" means service in which an Orissa State has entire or partial financial interest, and which the Provincial Government may, by notification, declare to be a State Transport Service for the purpose of this Act."

In Section 147 (1) of the parent Act also, two new clauses, namely, (g) and (h) were inserted as follows:

"(g) other conditions being equal, In the interest of proper co-ordination of transport facilities, the expediency of giving due" consideration to a State Transport Service;

(h) the necessity for preventing unhealthy competition in any route or routes or area on which the State Transport Service may ply."

In Sub-section (3) of Section 57 also the period of thirty days required for inviting objections before consideration of any application for permit, was reduced to ten days where the application is made by the State Transport Service. The proviso to Section 58 (2) (already quoted) was amended as follows:

"Provided that other conditions being equal an application for renewal shall be given preference over a new application for permits by parties other than a State Transport Service."

The net result of these amendments is that where a State Transport Service competes with a private motor company for grant of permits, the State Transport Service gets preferential treatment inasmuch as (1) where other conditions are equal the State Transport Service may have to be preferred in the interests of proper co-ordination of transport facilities and with a view to prevent unhealthy competition in a route; and (2) though, ordinarily, under the proviso to Sub-section (2) of Section 58 when an application for renewal is made an old permit-holder should be given preference over a new applicant, such preference will not be available if the new applicant is the State Transport Service Itself.

6. Orissa Act I of 1949 underwent the usual adaptations in consequence of which Clause 29 (A) of Section 2 was redrafted to deal with some other matter not material to the present discussion. In 1953, the Orissa Legislature passed the Motor Vehicles (Amendment) Act, 1952 (Orissa Act I of 1953) by which a new Clause 29 (B) was inserted defining State Transport Service as follows:

"State Transport Service" means a service in which the State Government have entire or partial financial interest and which the Government may, by notification, declare to be a State Transport Service for the purpose of this Act."

7. The Regional Transport Authority were under the Impression that the parent Act as modified by Orissa Act I of 1949 and Orissa Act I of 1953 was in force in Cuttack district when they decided to grant permits to the State Transport Authority at their meeting . held on 5-11-56; in fact they made this absolutely clear in their order dated 5-11-56 by saying, that the State Transport Authority should get preference by virtue of Section 47 (1) (g) of the Motor Vehicles Act.

But they seem to have overlooked the fact that the amendment of 1949 was not in force in Cuttack District on 5-11-56. The commencement clause of the amending Act says that Section 1 of the Act shall come into force at once, but the remaining provisions shall come into force in such specified areas as Government may, by notification, from time to time appoint, and different dates may be appointed for different specified areas.

Hence, unless, a notification is issued under Sub-section (3) of Section 1 of the amending Act, the other provisions of that Act such as Clauses (g) and (h) of Section 47 and the amendment to the proviso to Sub-section (2) of Section 58 of that Act would not come into force. The Government of Orissa by Notification No. 8195 T2-M. 108/49 S. T. dated the 6th March, 1950 brought the remaining provisions of the Act into force in the districts of Cuttack, Balasore and Mayurbhanj, But on 30-12-52, by their Notification No. 5210 OTA and R-36/51T, they withdrew the provisions with respect to the district of Cuttack Again, in their Notification No. 5212TA and S-36/51T, dated the 30th November, 1952 they reintroduced the provisions of the Act in the district of Cuttack, in those areas lying north of the Brahmani.

Hence, on 5-11-56 the provisions of the amending Act of 1949 were not in force in those areas of Cuttack district which lie south of the Brahmani river, and

admittedly the Raj-Athgarh-Narasinghpur route lies south of that river. Hence, the Regional Transport Authority committed a serious error in assuming that the amending Act was in force on 15-11-56 and in giving preference to the State Transport Authority by applying the provisions of Clause (g) of Sub-section (1) of Section 47. It was only on 14-11-56 that the amending Act was reintroduced throughout the district of Cuttack except the areas lying to the south of Mahanadi by Notification No. 5263 T of that date.

Hence, it is beyond doubt--and it was rightly not challenged by the learned Government Advocate--that the order of the Regional Transport Authority dated 5-11-56 rejecting the application of the petitioner for renewal of their permits and granting a permit to the State Transport Authority cannot be sustained as being based on a wrong view as to what the law was on that date. The petitioner is entitled to have his application for renewal reconsidered on merits by the Regional Transport Authority.

8. The next question is whether the Regional Transport Authority should dispose of the petitioner's application for renewal as the law stood on 5-11-56 or else whether they should take into consideration the amendment to the law brought about by the Government of Orissa, Transport Department Notification No. 5263 T. dated 14-11-56, applying the provisions of Orissa Act I of 1949 to the parent Act. The difference between the two laws is indeed very great. As already pointed out, under the parent Act in its unamended form the petitioner, as the previous permit-holder would be entitled to a preferential treatment by virtue of the proviso to Sub-section (2) of Section 58 of the Motor Vehicles Act.

His was the only application for renewal that was pending consideration by the Transport Authority on 5-11-56 and there was a reasonable chance of his permits being renewed. But when the amending Act of 1949 was brought into force in the Raj Athgarh-Narasinghpur route, the State Transport Authority became entitled to a preferential treatment over all other private agencies, if other conditions were equal. The proviso to Sub-section (2) of Section 58 of the parent Act is expressly made inapplicable where the State Transport Service is the rival applicant.

9. Both sides have addressed us at great length on this question. Mr H. Mohapatra, on behalf of the petitioner, urged that on 5-11-56 the applicant obtained a vested right, as it were, for being preferentially considered for renewal and that right cannot be taken away by the introduction of the amending law in that area on 14-11-56. On the other hand, the Government Advocate contended that even on 5-11-56 the applicant had no vested right of renewal but that the provisions of Section 58 were merely procedural and that it was always within the discretion of the Regional Transport Authority to refuse to grant a permit to the applicant even though he may be the sole applicant.

Hence, according to the Government Advocate, no right accrued to the applicant and when the whole matter is now being sent back to the Regional Transport

Authority for consideration they must consider all the applications in accordance with the law as it stands to-day, that is to say the parent Act as amended by the Amending Act of 1949.

10. The answer to this question would depend on whether the applicant can be said to have had a vested right of renewal on 5-11-56. If he had such a vested right it cannot be taken away by any change in the law made on 14-11-56 because it is well-known that retrospective construction should, never be given to a statute or statutory notification so as to affect such vested rights unless, in the amending law, express provision is made to that effect; or such an effect follows as a necessary intendment. On the other hand, if Section 58 (2) be held not to confer any such vested right but to be only a procedural provision, it is obvious that, the law as amended would govern the disposal of all applications for permits that remained pending after 14-11-56.

11. There is an old decision of the Appellate Tribunal of the Provincial Transport Authority of C.P. & Berar reported in *Prabhat Transport Union; Bhandara v. Mathura Prasad Shrivastava* 1943 Nag LJ 117 (A), where while discussing the relative scope, of Sections 58 and 64 of the parent Act it was pointed out that the provisions of Section 63 for renewal of a permit were procedural. Though the Government Advocate has relied on this decision I would not take it as sufficient authority for deciding the question at issue in this writ application because there is no full discussion of the subject. But a recent decision of the Saurashtra High Court reported in *Jamnagar Motor Transport Union Ltd, v. State of Saurashtra*, (S) AIR 1955 Sau 57 (B), strongly supports the contention raised by the Government Advocate.

There, it was pointed out that

"the grant of permit is entirely within the discretion of the Regional Transport Authority and there is neither an absolute right to a permit nor for a renewal thereof."

It was further observed that

"no one has an inherent right to a permit, and a permit cannot be granted even if the applicant satisfied all the prescribed conditions, and even though he may be the sole applicant.,"

With respect, I am inclined to agree with these observations. Section 47 of the parent Act specified various matters which the Regional Transport Authority shall have regard to in granting or refusing to grant permits, and in the first part of Sub-section (2) of Section 58 it is clearly stated that a permit may be renewed on an application. It is true that the word "may" sometimes has the force of "shall" but in the context it does not appear to have an imperative force.

It is also well-settled that the phrase "have regard to" has generally directory effect and not a binding effect (see AIR 1943 164 (Privy Council) and *The State of Bihar Vs. Sir Kameshwar Singh*, . It is only if the Regional Transport Authority

decides on granting permits to private agencies that the question of preferring an old permit-holder as against a new applicant would arise by virtue of the proviso to Sub-section (2) of Section 58, But such a provision would not confer a vested right of renewal in favour of the applicant.

12. Hence, once it is held that the applicant had no vested right of renewal on 5-11-56 there is no reason why the general rule that an application should be disposed of in accordance with the law as it stands on the day on which it is taken up for consideration should not apply.

13. Mr. Mohapatra, however, relied on a decision in *Saghir Ahmad Vs. The State of U.P. and Others*, , in support of his argument that a member of the public has a fundamental right to ply motor vehicles on public roads for the purpose of trade or business and that right which is clearly a vested right, subsisted in favour of the applicant on 5-11-56. I am, however, unable to accept this argument. There it was pointed out (vide paragraph 13 of the judgment) that the fundamental right to ply motor vehicles for hire on a public road is itself circumscribed by the limits imposed by State regulations and that it is only when the law curtails that right beyond the limits permissible by Clause (6) of Article 19 of the Constitution that the question of infringement of the Fundamental Rights arises.

The parent Act was not held unconstitutional and consequently it must be assumed that the restrictions imposed by that Act on the plying of motor vehicles for hire are reasonable restrictions under Article 19(6) of the Constitution. Hence, when the Act expressly says that a motor vehicle can ply only in accordance with the permits issued by the competent authority and when Section 58 (2) of the Act confers discretion on the authority to renew or refuse to renew a permit it is obvious that the fundamental right is made, by a valid law, subject to the discretion of the competent authority to grant or refuse to grant a permit. Until such a permit is granted, the fundamental right must be held to have, been circumscribed by the operation of valid law and no vested right would remain with the applicant after the date of expiry of his old permit.

14. While, therefore, setting aside that portion of the order of the Regional Transport Authority dated 5-11-56 dealing with the refusal to renew the permit of the applicant, I would direct that Authority to reconsider the whole matter and dispose of the same in accordance with the law as it stands to-day bearing in mind the observations contained in this judgment. This disposes of O. J C No 452 of 1956 also. In that application the main grievance of the petitioner was against the grant of a temporary permit to the State Transport Authority. The necessity for the grant of such a temporary permit arose because, as frankly conceded by the Government Advocate, the order granting permanent permits to the State Transport Authority on 5-11-56 was invalid and those permits were rightly surrendered.

It was open to the Transport Authority, in exercise of the power conferred by

Section 62 of the parent Act to grant temporary permits to meet "a particular temporary need"". Pending full consideration of the grant of permanent permits over the route in question in view of the change in the law, it was open to that Authority to grant temporary permits and I see no reason to interfere with that order.

15. O. J. C. No. 452 of 1956 is, therefore, dismissed O. J C 448 of 1956 is allowed to this extent that the order of the Regional Transport Authority dated 5-11-56 dealing with the application of the petitioner for renewal of his permits is set aside and that authority is directed to rehear the same and dispose of it according to law. Both parties will bear their own costs.

Das, J.

16. I agree.