

(1958) 10 AHC CK 0020

In the Allahabad High Court

Case No : Special Appeal No. 30 of 1957

On difference of opinion between J. K. TANDON AND B. N.
NIGAM, JJ. (Full Bench)

APPELLANT

Vs

On difference of opinion between J. K. TANDON AND B. N.
NIGAM, JJ. (Full Bench)

RESPONDENT

Date of Decision : 28-10-1958

Acts Referred:

Motor Vehicles Act, 1939 — Section 46, 57, 57(2)
Uttar Pradesh Motor Vehicles Rules, 1940 — Rule 50

Citation : (1958) 10 AHC CK 0020

Hon'ble Judges : R.N.GURTU, J

Final Decision : Allowed

Judgement

R. N. Gurtu, J.

1. The following points have been referred to me upon a difference of opinion between my brother Tandon and my brother Nigam.

(1) Does the provision in Section 57(2) of the Motor Vehicles Act, 1939, that "an application for a stage carriage permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect" require that that date shall be stated in the application or otherwise ?

2. If the answer to the first question be in the affirmative, is the requirement of stating the date mandatory or merely directory ?

3. Is an application which does not mention the date not an application complying with the requirements of the first alternative mentioned in Section 57(2) of the Motor Vehicles Act (Act IV of 1939) ?

2. The reference of these points has been made under the following circumstances. A petition under Article 226 of the Constitution of India was made by Tara Singh seeking the issue of a writ of certiorari for quashing an order passed by the State Transport Authority Tribunal, U.P. dated 1361955. It appears

that a new route for running stage carriages was decided upon by the authorities in the year 1950. According to the petitioner this new route was created in October, 1950, but in the counteraffidavit

it was suggested that this new route was decided upon on 27/28th November, 1950.

On 13/8/1951 the petitioner made an application for a permit for running a stage carriage on this new route. That application was put up for objections in accordance with the procedure prescribed on 25/8/1951. Before final orders could be passed on that application the Regional Transport Authority on 3/9/1951 issued a notification inviting applications for three vacancies of stage carriage permits on this new route. The last date fixed for the receipt of such applications was 18/9/1951.

The petitioner did not make any application in response to this notification. Other persons applied. The Regional Transport Authority considered all the applications including the application of the petitioner which he had made on 13/8/1951 and one permit was granted to the petitioner on the basis of his aforesaid application which, as already pointed out, was made prior to the notification and as far back as 13/8/1951 when the petitioner had come to know of the sanctioning of the new route.

Thereupon an appeal was filed by one of the other applicants for a permit before the State Transport Authority Tribunal, and the State Transport Authority Tribunal on such appeal set aside the order of the Regional Transport Authority granting a permit for a stage carriage to the petitioner on the basis of his application dated 13/8/1951 on the ground that the said application had not been presented after the issue of the notification above referred to inviting applications and that, therefore, the said application of 13/8/1951 was not a valid application and the Regional Transport Authority had no power to grant a permit to the petitioner.

In consequence of the order of the State Transport Authority Tribunal aforesaid the present writ petition was filed. It came up for hearing before a learned single Judge and then a special appeal came up before a Bench consisting of my brethren Tandon and Nigam. The question that arose before them was whether the application dated 13/8/1951 was an application made in accordance with Section 57(2), Part I, of the Motor Vehicles Act, 1939.

My learned brother Tandon was of the view that it was a proper application whereas my learned brother Nigam took a contrary view. In consequence I have now to decide whether the application dated 13/8/1951 was a valid application according to Section 57(2), Part I of the Motor Vehicles Act. No one now argues that it was an application under Part II of Section 57(2).

3. I may point out that there is no dispute that if the application aforesaid is a valid application under Section 57(2) Part I then it is an application which had to be considered by the Regional Transport Authority.

4. Whether or not the application of 1381951 is a valid application under Part II of Section 57(2) has got to be decided having regard to the terms of Section 57(2) of the Motor Vehicles Act, 1939. I will now quote SubSections (1) and (2) of Section 57 of the Motor Vehicles Act. They are as follows :

"(1) An application for a contract carriage permit or a private carriers permit may be made at any time.

"(2) An application for a stage carriage permit or a public earners permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates."

The rest of the section is not material for the purpose of the point of issue.

5. It will appear from a reading of Section 57(2) that it contemplates two categories of applications. The first part of the section deals with an application for a stage carriage permit or a public carriers permit to be made not less than six weeks before the date on which it is desired that the permit shall take effect.

The second part of SubSection (2) deals with an application which is to be made after the Regional Transport Authority has appointed dates for the receipt of applications. This is as already indicated nobodys case now that the application in question dated 1381951, was made under the second part of SubSection (2). It was admittedly made under the first part of SubSection (2) because it was made before the notification of a date inviting applications. The point of difference between my brethren is as to whether in the application which the petitioner made on 1381951 he should have expressly mentioned the date from which he desired that the permit for which he had applied should be effective or should operate. My brother Tandon is of the view that neither SubSection (2) of Section 57 of the Motor Vehicles Act nor the rules framed under the authority of Section 68 of the said Act demand that the applicant should state the date from which he wishes the permit applied for to operate or to be effective.

6. I think that at this stage it would be advisable for me to quote Section 46 of the Motor Vehicles Act, 1939. It runs as follows :

"46. An application for a permit to use a motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall contain the following particulars, namely :

(a) the type and seating capacity of the vehicle in respect of which the application is made;

(b) the route or routes on which or the area within which it is intended to use the vehicle;

(c) the timetable, if any, of the service to be provided; and

(d) such other matters as may be prescribed."

The word "prescribed" has been defined by Section 2(21) of the Act and means "prescribed by rules made under this Act."

Then I may quote Rule 50 of the Motor Vehicles Rules 1940 as framed :

"50. Application for permits Forms of (a) Every application for a permit in respect of a transport vehicle or a private stage carriage shall be in one of the following Forms that is to say

(1) in respect of a particular stage carriage in Form PSt. PA,

.....

and shall be addressed to the Secretary of the Authority at the regular office of the Authority.

(b) In granting any permit the Regional Transport Authority shall have power to modify the terms of the application in a reasonable degree and in such a case the application shall be deemed to be an application for the permit in the form granted."

Thereafter I would like to point out that Form P. St. P.A. drawn up under Rule 50(a)(i) of the U.P. Motor Vehicles Rules, 1940, and published by the Government of Uttar Pradesh in 1957 does not show that the date from which a permit is to be effective has to be entered anywhere in that Form.

7. The relevant sections and rules now having been set out it remains for me to consider whether either the relevant sections or the relevant rule or the relevant form demand that a specific date from which the permit is to be effective is required to be specified in the application for a permit desired under the 1st part of Section 57(2).

It will be apparent from a consideration of the material provisions herein before quoted that there is no express provision requiring the specification, of a date. The argument, however, which has been advanced before me is that the language of Section 57(2), first part, which is to the effect that an application for a stage carriage permit or a public carriers permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, clearly demands, that the date when the permit shall take effect should be specifically mentioned.

On the other hand, the contention is that the six weeks period mentioned in SubSection (2), first part, has been mentioned in order to make it clear that no right to receive a permit will in any case accrue to an applicant until six weeks have expired from the date of his application. It seems to me that there is substance in the latter contention. Moreover, it seems to me that when a person avails himself of such a provision as is contained in Section 57(2), first part, and applies for a permit then, in the absence of anything to the contrary in his application, it must be presumed that he is desirous of obtaining a permit which would take effect on the expiry of six weeks from the date of his application. For

if such a person desired that his permit should take effect at some remoter period beyond six weeks it is likely that he would mention it and in view of Section 57(2) he could not mention a date from which the permit should be effective which was within six weeks of the making of the application for he would have no such right.

In my view, therefore, having regard to the fact that neither in the rules nor in the form framed nor in Section 46 of the Motor Vehicles Act is it indicated that there should be a specific mention of the date from which it is desired that the permit should take effect, in the absence of specification of any date, it should be assumed that the applicant desires the permit to be effective on the expiry of the six weeks period indicated in Section 57(2), first part of the Act. One is entitled to presume that if a person has made an application under Section 57(2) of the Act and has not specified the date when he desires the permit to take effect then he is clearly intending that the permit to be granted to him should take effect at the end of the period of six weeks from the date of his application.

8. Therefore, in my view, the application dated 1381951, was not an invalid application merely because there was no express specification of the date therein. There is a clear specification by implication.

9. I would accordingly answer question No. 1 referred to me in the affirmative. In consequence question No. 2 does not need an answer. In regard to the third question my view is that an application which does not mention the date is still an application which complies with the requirements of Section 57(2), first part.

10. I would like to add here that although SubSection (2) of Section 57 has not been broken up in two parts by the Act yet, I have constantly referred to it as if it was in two parts for the sake of convenience because the section clearly deals with two different situations, (1) where an application is made after a certain notified date and (2) when it is made without a date having been notified.

11. I accordingly direct that my answers be returned to the Bench concerned.

12. BY THE COURT (J.K. Tandon and B.N. Nigam, JJ.)

12a. Upon a difference of opinion having arisen between us we formulated certain points for investing the opinion of a third Judge which has now been received. In view of the opinion received the application under Section 57(2) of the Motor Vehicles Act was a valid application. The appeal is accordingly allowed and the order of the learned Single Judge is set aside and as a result the order of the State Transport Authority dated 1361955 is quashed. The State Transport Authority is further directed to readmit the appeal and to dispose it in accordance with law. The appellant will get his costs from the respondents.

Appeal allowed.