

(1966) 03 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 76 of 1966

Raipur Transport Co. Private Ltd.

APPELLANT

Vs

Regional Transport Authority and Others

RESPONDENT

Date of Decision : 02-03-1966

Acts Referred:

Motor Vehicles Act, 1939 — Section 62

Citation : AIR 1967 MP 141 : (1966) 11 MPLJ 605

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; K.A. Chitale and V.S. Dabir, for the Respondent

Final Decision : Allowed

Judgement

Pandey, J.

This petition under Articles 226 and 227 of the Constitution is mainly directed against-

(i) an order dated 3 January 1966 whereby the Regional Transport Authority, Jabalpur, granted to the Madhya Pradesh State Road Transport Corporation (respondent 3) a temporary stage carriage permit for the Jabalpur-Raipur route till 22 March 1966;

and

(ii) an order dated 27 January 1966 by which the Regional Transport Authority, Raipur, countersigned it subject to modification in regard to the time of departure from Raipur.

The facts which gave rise to this petition may be shortly stated. The Jabalpur-Raipur route is covered by the Scheme No 33 which, having been duly approved and notified u/s 68D of the Motor Vehicles Act, 1939, will commence to operate from 23 March 1966 Even so, the respondent 3 applied for a temporary stage

carriage permit for the route. On 3 January 1966, the Regional Transport Authority, Jabalpur, passed on that application, which was not published, the following brief order:

"The route is included in nationalisation scheme No. 33 to commence from 23rd March. It is finalised scheme. There is also a need to start this service to facilitate direct connection between Raipur-Jabalpur. A temporary permit till 22nd March 1966 be granted to Madhya Pradesh State Road Transport Corporation accordingly"

The Secretary, Regional Transport Authority, Jabalpur, transmitted a copy of this order with provisional timings to the Regional Transport Authority, Raipur, and stated in the forwarding note that the inter-regional permit was valid subject to-

- (i) counter-signature by the Regional Transport Authority, Raipur, and
- (ii) proper adjustment of timings, if objected to by the existing operators. Thereupon, on 5 January 1966, the respondent 3 applied to the Regional Transport Authority, Raipur, for grant of counter-signature. On coming to know of that application, the petitioner, who is an existing operator providing transport services on the major portion of the route, objected to the grant of counter-signature on several grounds. The Regional Transport Authority, Raipur, fixed 25 January 1966 for hearing the objection and intimated to the petitioner accordingly by a notice dated 13 January, 1966.

The Regional Transport Authority, Raipur, was however absent from Raipur on 25 January 1966 and the petitioner was not given any opportunity to be heard in support of its objection. On 27 January 1966, that Authority passed the following order:

"This permit is countersigned subject to the modification in the time of departure from Raipur at 9.30 a.m. and increasing the halt at Simga by five minutes. The other timings will be affected upto Bemetara and the Regional Transport Authority, Jabalpur, may fix suitable modifications in the timings of the onward journey upto Jabalpur."

The petitioner has challenged the orders passed by the two Regional Transport Authorities on the following grounds:

- (i) There was in this case no particular temporary need. It is not covered by the rule laid down by the Supreme Court in *The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur*, .
- (ii) The Regional Transport Authority, Raipur, counter-signed the permit without following the procedure prescribed by Section 63(3) of the Act.
- (iii) Since there was a scheme approved and notified u/s 68-D of the Act which covered this particular route, the respondent 3 was not entitled to apply for, or obtain, any stage carriage permit for the route

Shri K.A. Chitale, who appeared for the respondent 3, endeavoured to meet each of the three grounds urged in support of this petition. Having heard the counsel, we have reached the conclusion that this petition must be allowed on the first ground. The temporary stage carriage permit was sought to be justified on the ground that it was granted to meet a particular temporary need and was thus covered by Clause (c) of Section 62 of the Act. For the view that there was, in the circumstances of this case, a particular temporary need, reliance was placed on the decision of the Supreme Court in *The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur*, .

In our opinion, that case lends no assistance to the respondent 3. The Supreme Court observed there as follows:

"On behalf of the appellant it was contended, in the first place, that there was a particular temporary need for the provision of transport facilities and the High Court was erroneous in taking the view that whenever there was a permanent need, there could be no temporary need and so temporary permit could not be granted u/s 62 (c) of the Motor Vehicles Act. In our opinion, the argument put forward by the learned Solicitor-General on behalf of the appellant is well founded and must be accepted as correct. It appears from the order of the Regional Transport Authority that after the regular permit granted to respondent No. 3 was cancelled there was a shortage of necessary number of transport vehicles on the route and the Regional Transport Authority thought it fit to provide for this temporary need until regular operations were introduced and regular permits were granted after following the procedure prescribed u/s 57 of the Motor Vehicles Act. Section 62 (c) of the Motor Vehicles Act states that the Regional Transport Authority may grant a temporary permit to meet a particular temporary need and we see no reason why this clause should be given any special or restricted meaning. There is no antithesis between a particular temporary need and a permanent need and it is manifest that these two kinds of need may co-exist on a particular route. If, therefore, the Regional Transport Authority considered that, in the circumstances of the case, there was a particular temporary need, and granted a temporary permit to the appellant, the action of the Regional Transport Authority cannot be challenged as legally invalid. Reference may be made in this connection to Section 62 (d) which contemplates that temporary permits may be granted to authorise the use of a transport vehicle temporarily pending decision on an application for the renewal of a permit. This sub-section, therefore, contemplates that there may exist a temporary need for transport facilities on a particular route even in case of permanent need for such facilities. We are accordingly of opinion that the Regional Transport Authority was right as a matter of law in granting a temporary permit to the appellant u/s 62 (c) of the Motor Vehicles Act in the circumstances of this case and the view expressed by the High Court is not correct."

Contrary to the view taken earlier by various High Courts, including this Court, the rule laid down by the Supreme Court is that there may exist a temporary

need for transport facilities on a particular route even in case of permanent need for such facilities. The Supreme Court has indicated with reference to the facts of the case it was considering and of two other cases which it approved, how such temporary need may arise. In the case before the Supreme Court, there was, consequent upon cancellation of a regular permit, a shortage of the necessary number of transport vehicles and this temporary need had to be provided until regular operations could be introduced in the usual manner. In *Jairamdas Vs. Regional Transport Authority and Others*, , the existing transport services were insufficient to meet the traffic and having decided to increase the number of regular buses plying on the route, the Regional Transport Authority granted a temporary permit to meet this need till the introduction of regular services after going through the necessary formalities. In *Chandi Prosad Vs. The Regional Transport Authority and Others*, , the petitioner's permits had expired, there was time for commencement of the scheme of nationalisation and it was necessary to provide for the interregnum. It will be readily seen that, in all these cases, transport services had been in operation on the route and the need was felt either because of increase of traffic or because of shortage or want of necessary number of vehicles in consequence of cancellation or expiry of permits.

In *The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur*, the Supreme Court has not laid down that wherever there is a permanent need, then, without more, it must be presumed that a particular temporary need also exists. The Regional Transport Authority, Jabalpur, which passed the impugned order dated 3 January 1966, did not apply its mind to the question whether, prior to 23 March 1966, there was any temporary need to provide for the route transport facilities in the sense accepted by the Supreme Court.

In regard to this, all that Shri Chitale was able to say before us was that the need was indicated by the fact that the route was included in an approved scheme and that since it had to be provided for and satisfied as quickly as possible, it was a particular temporary need. We are unable to accept this contention which implies that, whenever there is a permanent need, it must be presumed, because of the implied duty to satisfy it as quickly as possible, that a temporary need also simultaneously comes into existence and the Regional Transport Authority will be justified in every such case to begin with the grant of a temporary permit. We are unable to extend the meaning of the expression "a particular temporary need" beyond what has been indicated by the Supreme Court in *The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur*, , particularly when we are aware that it easily lends itself to abuse in the form of promotion of nepotism and favouritism. In our opinion, there was, in the facts and circumstances of the case before us, no particular temporary need and the Regional Transport Authority, Jabalpur, could not have granted a temporary permit to the respondent 3.

In the view we have taken of the first ground, it is not necessary for us to

express our opinion on the other grounds urged before us. The petition succeeds on the first ground and is allowed. The orders dated 3 January 1966 and 27 January 1966 are, quashed. The respondent 3 shall bear its own costs and pay those incurred by the petitioner to whom the security amount shall be refunded- Hearing fee Rs. 100/-.