
(1974) 07 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 204 of 1973

Regional Transport Authority

APPELLANT

Vs

Purna Chandra Agrawala and Others

RESPONDENT

Date of Decision : 05-07-1974

Acts Referred:

Motor Vehicles Act, 1939 — Section 62, 64

Citation : AIR 1975 Ori 3

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : Standing Counsel Tr, for the Appellant; Y.S.N. Murty and Y.V.R. Murty, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The Regional Transport Authority, Phulbani is the petitioner and this application is directed against the appellate order under Section, 64 or the Motor Vehicles Act (hereinafter referred to as the Act) passed by the opposite party No. 3. The opposite party No. 1, the owner of a stage carriage vehicle more than ten years old by the time an application for a temporary permit in respect of the vehicle was made to the Transport Authority, Sled an appeal before the opposite party No. 3 aggrieved by the rejection of the application by the petitioner Transport Authority on the ground that the stage carriage in respect of which the temporary permit had been asked for was more than ten years old and, therefore, in terms of Rule 65-C of the Orissa Motor Vehicles Rules which the Transport Authority had adopted by resolution sometime in 1971, the stage carriage was not entitled to a temporary permit. Before the appellate authority the learned standing counsel appearing for the petitioner-respondent contended that the appeal had become infructuous because the period in respect of which the temporary permit had been asked for having lapsed the application was no more available for consideration. The preliminary objection to the maintainability of the appeal was overruled. The appellate authority proceeded on the footing

that on account of frequent grant of temporary permits on the route to the vehicle it was almost a quasi-permanent permit and ultimately by its final order had directed the Transport Authority to consider the application afresh and to keep on considering applications for grant of temporary permits for a period of two years on the footing of instructions issued by the State Government in certain other connected matters. It is against this appellate order that this writ application has been filed. The opposite party No. 1 who succeeded before the appellate authority has not entered appearance in spite of notice from this court. The learned standing counsel reiterates the contention raised in the appeal that the appeal itself had become infructuous and it was not competent for the appellate authority to entertain the appeal and issue the impugned directions.

2. A temporary permit u/s 62 of the Act has a life for a maximum period of four months. As the provisions in the statute require, a temporary permit 43 available only for the stated purpose and in that respect is very different from a permanent permit. In the appropriate application prescribed under the rules the period for which the application is made has to be indicated and the two termini have to be fixed. Justification for a temporary permit for, the said period has to be indicated and upon satisfaction of the existence of such purpose the appropriate Transport Authority is clothed with the restriction to grant such a permit. When the opposite party No. 1 applied for the impugned temporary permit, he must have indicated as to why and for what period a temporary permit was being asked for. Obviously with the lapse of the time unless new justification is shown and a fresh application is made on the basis of the application which has lapsed out, no permit is available to be granted. In such circumstances the objection raised by the learned Standing Counsel before the appellate authority was very definite and had to be sustained. There was no justification for the Appellate Tribunal to have taken a different view in the matter. We have no doubts in our mind that the appeal had ceased to be maintainable with the lapse of time and the reasoning advanced by the appellate Tribunal is not sustainable in law.

3. Erroneously enough the appellate Tribunal referred to a decision of the Supreme Court reported in *The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur*, and was of the view that even if the appeal was not maintainable and had to be dismissed it was open to it to indicate guideline. On more than one occasion this Court has indicated to the Appellate Tribunal that it is not a Court of record and its decisions have no precedent value. They would not even bind him in another case much less his successor. Litigating public before him would not be bound by any observation made by him. Therefore it was not at all necessary for the Appellate Tribunal to have referred to the Supreme Court decision and proceeded to indicate guideline for whom one does not know. The Supreme Court stands on a very different position. Apart from its position as the highest forum in the judicial process, under Article 141 of the Constitution its decisions have been declared to be the law of the land and bind one and all in regard to interpretation

of statutes as also the law laid down by it.

4. We are somewhat surprised to find that though the opposite party No. 3 has been functioning as the Appellate Tribunal under the Act for about 3 years now he has indicated in the impugned order that there can be a quasi-permanent permit. The Act provides for two types of permits--permanent and temporary. We have not been able to find out any provision for a quasi-permanent permit. By too frequent grant of temporary permits in respect of one vehicle possibly on the same route there is no quasi permanency in respect of a permit. One cannot overlook the position that too frequent temporary permits for one vehicle on the same route are not to be granted, but if they are granted under peculiar circumstances and the granting authority is able to justify the grant, it does not become quasi-permanent.

5. We have been deprived of the advantage of listening to the argument of the opposite party No. 1 which may have prevailed upon the Appellate Tribunal to pass the impugned order because the opposite party No. 1 has chosen not to enter appearance in the proceeding. The learned counsel for the other opposite party supports the stand of the learned Standing Counsel.

6. We would accordingly quash the impugned order, delete the guideline indicated by the Appellate Tribunal because it is likely to create confusion in the field and hold that the application for the temporary permit was no more to be considered as by lapse of time it had ceased to exist. The writ application succeeds and is allowed. Since the contesting opposite party No. 1 has not entered appearance, we do not propose to pass any orders regarding costs.

Panda, J.

7. I agree.