

(1969) 08 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 702 of 1969

Shiba Prasad Sahoo

APPELLANT

Vs

State Transport Authority

RESPONDENT

Date of Decision : 27-08-1969

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(2)
Orissa Motor Vehicles Rules, 1993 — Rule 52E, 54, 57

Citation : AIR 1970 Ori 72 : (1969) 35 CLT 1247

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J

Bench : Division Bench

Advocate : S.C. Parija and N.C. Mohanty, for the Appellant; D.P. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—There are two Inter-State stage carriage routes (1) Sambalpur to Ranchi, and (2) Rourkela to Ranchi, on which the State Transport Service had been operating their buses. The petitioner came to know that the State Transport Service was about to withdraw from the said routes and therefore, made two separate applications to the State Transport Authority, opposite party before us, for grant of stage carriage permits to him on the said two routes. These applications were received in the office of the Secretary, State Transport Authority, on 17-3-69. On 22-3-69, the State Transport Authority decided to fill up the routes by invitation of applications and on 26-4-69, advertisements in terms of Section 57 of the Motor Vehicles Act (hereinafter to be referred to as the Act) were published inviting applications from intending operators on or before 15-5-69. After the applications were received, they were duly notified on 27-5-69, u/s 57 (3) of the Act fixing 30-6-69 as the last date for receipt of objections.

The petitioner found that his applications referred to above had not been notified and therefore, made a request to the Secretary of the State Transport Authority

to notify his applications. The petitioner was informed by the Secretary on 15-7-69 to the effect that he had already been informed earlier that he should apply afresh after the routes were advertised and as he had not applied as directed, he could not claim his applications to be notified.

2. The petitioner has thereupon come before us in this application under Articles 226 and 227 of the Constitution challenging the action of the opposite party in refusing to notify his applications, and wants us to issue a writ to quash the notifications of the other applications u/s 57 (3) of the Act and for a direction that his applications may be notified and disposed of in accordance with law.

3. The opposite party in its counter affidavit has stated that on 17-3-69 the two applications from the petitioner had been received, but by then there was no vacancy on the routes and as such the Secretary of the State Transport Authority, in exercise of powers under Rule 54 of the Orissa Motor Vehicles Rules, declined to accept the said applications and the petitioner was duly informed a few days thereafter that he should apply afresh when applications are invited, and his applications received on 17-3-69 were filed in the office of the State Transport Authority. The petitioner did not apply in terms of the directions and therefore there were no applications pending consideration before the State Transport Authority, which could be asked to be notified u/s 57 (3) of the Act. It is also contended that the applications of the petitioner did not come within the purview of Section 57 (2) of the Act, and as such are not entitled to any consideration.

4. Section 57 of the Act lays down the procedure in applying for and granting permits. Sub-sections (2) and (3) of that section, which are material for our present purpose, may be extracted below:

"(2) An application for a stage carriage permit or public carrier's 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, or such dates.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations, received will be considered."

Sub-section (2) clearly contemplates two alternatives. The intending operator can apply for a stage carriage permit at any time at least six weeks before he desires the permit to be effective, or he may apply within the time prescribed by the Transport Authority for making such applications in a case where applications are called for. Mr. Parija appearing for the petitioner contends that the

petitioner's applications are covered within the first alternative referred to above, while Mr. Mohapatra for the Transport Authority argues that the petitioner's applications are (not?) in accord with either of the alternatives, and as such cannot be deemed to be applications u/s 57 (2) of the Act. Mr. Mohapatra contends that no date was indicated in the applications made by the petitioner as to with effect from which the permits, if granted, were to be effective, and therefore the first alternative does not cover these applications. Admittedly, there was no invitation of applications by the State Transport Authority by 17-3-69.

5. Mr. Parija has invited our attention to the statutory form prescribed for applying for a permit u/s 57 (2) of the Act. On a reference to the said application form, we do not find any provision therein to specify the date with effect from which a permit is to be effective. We are of the view that the incorporation of six weeks in Section 57 (2) with reference to the first alternative is made only to ensure sufficient time for the Transport Authority to satisfy the procedural requirements which are conditions precedent for grant of a permit and for no other purpose. Non-mention of the date does not invalidate the application, and an application without specification of the date continues, nevertheless, to be an application u/s 57 (2) of the Act. We find support for this view of ours in *Tara Singh Vs. State Transport Authority, Tribunal, U.P. and Others*, , where Gurtu J. on difference between two Hon"ble Judges of the said Court, said,

"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 carrier's 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 Sub-section (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 u/s 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.

Therefore, in my view, the application dated 18-8-1951, was not invalid application merely because there was no express specification of the date therein. There is a clear specification by implication."

6. We, therefore, hold that the two applications of the petitioner were valid ones and come within the first alternative of Section 57 (2) of the Act as referred to above.

7. It has now to be considered whether the said applications have been validly disposed of or are still pending before the State Transport Authority. It is not disputed by the learned Standing Counsel for the Transport Authority that once applications for permits are made, the Authority has to dispose them of in a manner prescribed by law. He however contends that the intimations given on 11-4-69 and 15-4-69 were the orders of the State Transport Authority by which they were disposed of. As such there are no valid and alive applications which the State Transport Authority has yet to consider. Mr. Mohapatra seeks to place reliance on Rule 54 of the Orissa Motor Vehicles Rules, 1940 in support of the action of the Secretary. Rule 54 may be extracted for convenience:

"54. Refusal to accept applications for permits, power of -- When a Regional Transport Authority has in exercise of its powers under the Act imposed a limit upon the number of permits of any class which may be granted for a specified route or a specified area and has already granted such number of permits of that class the Authority may decline to receive further applications for such permits in respect of any such route or area".

On a plain reading, even if all the conditions indicated therein are satisfied, it is the Transport Authority itself and not the Secretary who is competent to decline to receive applications. It is conceded that the Secretary has not been authorised to act on behalf of the Transport Authority so far as exercise of power under Rule 54 is concerned. But the learned counsel for the Transport Authority seeks

support from Rule 57 and contends that the applications are addressed to the Secretary and under Rule 52-E of aforesaid Rules, he is to scrutinise them and therefore he is competent to refuse to accept them. We find no support for this contention either in Rule 52-E or Rule 57. Both these rules do not provide for the Authority to finally dispose of the applications to inhere in the Secretary, and we find that that power vests only in the Transport Authority itself. Therefore, it follows that the two applications of the petitioner have not been disposed of in accordance with law and must be taken to be pending to be disposed of by the opposite party.

8. The Transport Authority is bound to dispose of the said applications on a legal process. It is not open to it to ignore these two applications, merely because it has subsequently decided to call for applications in respect of the very routes. This aspect of the matter came up for examination before a Division Bench of the Allahabad High Court in *Makhan Lal Vs. State of Uttar Pradesh and Others*, . Sapru J. speaking for the Court said,

"The learned Senior Standing Counsel on behalf of the State has, on the basis of the affidavit filed by the Secretary of the Regional Transport Authority, tried to show that in these cases the Regional Transport Authority has been acting strictly in accordance with law as laid down in the Motor Vehicles Act. The stand taken by him is that under Subsection (2) of Section 57, Motor Vehicles Act, 1939 there can be two alternative dates for the presentation of applications for permits. The first alternative date is a date, at least six weeks prior to the date on which the applicant desires his permit to take effect. The second alternative date is a date which the Regional Transport Authority may fix for the presentation of all such applications. It was contended by the learned Senior Standing Counsel that in this case the Regional Transport Authority acted under the second alternative clause and fixed 15-7-1950, accordingly as the date on which all applications for permits were to be presented. In adopting this course, it appears that the Regional Transport Authority went wrong for two reasons: Firstly, if any one had already presented an application which could be considered to comply with the requirements of the first alternative mentioned in Section 57 (2), Motor Vehicles Act, it was incumbent on the Regional Transport Authority to consider that application and it was not competent for it to ignore that application simply because it subsequently decided to fix a date for the presentation of applications under the second alternative."

9. We however express no views as to whether the applications of the petitioner are otherwise valid in law so as to require disposal on merit in terms of the procedure laid down in Section 57 of the Act. If, upon examination, the State Transport Authority is satisfied that the said applications are otherwise valid and are maintainable, the said applications are bound to be notified and disposed of in accordance with the procedure prescribed under the Act along with other applications for the two routes in question.

10. Mr. Mohapatra for the Transport Authority had raised a preliminary objection

that the present application relating to two separate routes was not maintainable. We find that it is a technical objection. In the facts of the present case, where the parties are the same and the matter in issue is also absolutely similar and on account of inclusion of a dispute relating to two separate applications no confusion has been brought into the case, we do not propose to entertain the technical objection raised by Mr. Mohapatra, and accordingly we have overruled the same.

11. We issue a writ of mandamus commanding the opposite party to treat the applications of the petitioner received on 17-3-69 to be pending before it and direct that the same be disposed of at an early date in accordance with law. The writ application is allowed with costs. Hearing fee of Rs. 100/- (rupees one hundred).

G.K. Misra, C.J.

12. I agree.