
(1989) 12 AHC CK 0023
In the Allahabad High Court

Shiv Shanker Dixit

APPELLANT

Vs

Secretary Regional Transport Authority and Others

RESPONDENT

Date of Decision : 15-12-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(38), 68D(3)

Citation : (1990) 2 ACC 331

Hon'ble Judges : V.N. Khare, J;R.K. Gulati, J

Bench : Division Bench

Judgement

V.N. Khare, J.—The petitioner held a temporary stage carriage permit on a notified route. On its being cancelled the petitioner has come up before this Court by means of petition under Article 226 of the Constitution.

2. For the purpose of Motor Vehicles Act there is a route known as Babarpur ? Dibiapur - Dinwamau - Sahayal there in after referred to as shorter notified route. The streets of 9 Kms. From Dinwamau to Sahayal is a non-notified route. The route was notified u/s 68-D(3) of the Motor Vehicles Act in pursuance of a notification published in the Gazette dated 5th September, 1970. The portion of this route from Dibiapur to Dinwamau also forms part of another notified route known as Snergarh Ghat - Auraiya Dibiapur-Tirwa thereafter referred to as "longer notified route. As a result of coming into force of the scheme for the said route four permits of the existing operators were cancelled. Subsequently U.P. legislature passed an Act know as U.P Act No. 27 of 1976 (U.P Motor Vehicles (special provision) Act, 1976). Section 5 of the Act provided that an operator who held a permit on the notified route on the relevant date could be granted authorisation by the competent Authority constituted under the Act to ply on the notified route on payment of Administrative, operational and control charges to the U.P. State Road Transport Corporation. However, the State Transport Authority granted three permits on the route in question. Against the aforesaid grant of permit the U.P. Road Transport Corporation filed an appeal before the State Transport Appellate Tribunal but the same was rejected. The Corporation

filed a writ petition in this Court but the same was also dismissed as it was the view of this Court that an operator who held a permit on commencement of this Act was entitled to have an authorisation certificate under the Act. The corporation thereafter filed a Civil Appeal No. 1367 of 1982 before the Supreme Court of India. The Supreme Court of India by its judgment dated 7th October, 1988 allowed the appeal of the Corporation and set aside the grant of permit on the ground that no one is entitled to authorisation to ply the vehicle except only those who held permits prior to the enforcement of the notified scheme on the route in question. However, the Supreme Court in its operative portion of the judgment directed that the respondents in the appeal would continue to ply their vehicles on shorter notified route till 31st October, 1988 subject to their paying requisite taxes. The Supreme Court further directed that the Corporation shall put additional buses on the route in question with effect from 1.11.1988 to meet the demand of the travelling public who will be affected prejudicially by the stoppage of the buses which were being operated by the respondents in the said appeal. The Corporation is said to have given an application to the Regional Transport Authority Kanpur on 20th September, 1989 for grant of four permits on Auraiya Babarpur via Dibiapur route and for 12 permits at Auraiya-Tirwa via Bela and these routes overlap the route in question namely Babarpur-Dibiapur-Dinwama (shorter notified route). According to the counter affidavit filed by the Corporation the Regional Transport Authority for the reason best known to them did not grant any permit to the Corporation in respect of above routes.

3. On 7th November, 1989 the petitioner along with one Abdul Hamid filed a writ petition in this Court alleging that since the Corporation has not made any application for grant of permit on the shorter notified route the permit could be granted to the private operators in view of the need of the travelling public. The said writ petition was disposed of on the same day by this Court with a direction that the Regional Transport Authority shall first determine whether the Corporation has made any application for grant of permanent permit and if not the Regional Transport Authority shall grant temporary permit to the petitioner till the Corporation is not granted permits. It appears that the Regional Transport Authority taking a view that the Corporation has not applied for the permit and, therefore, granted temporary permit to the petitioner on shorter notified route on 31st August, 1989 for four months on this condition that this permit shall cease to effect its permits are granted to the Corporation on the route. The Corporation again submitted an application for grant of four permits on the notified route Babarpur-Tirwa via Dibiapur-Dinwama and another reminder was sent with regard to the application made by the Corporation on 27-9-1984 along with application on 20th September, 1989 for issuing four additional permits to the Corporation. As a result of which the permits were granted to the Corporation and temporary permit of the petitioner was cancelled by the order dated 11.11.89 and that is why the petitioner has come before this Court.

4. Initially in this case Smt. Kusum Kapoor and the U.P. State Road Transport were not impleaded as party in the writ petition but on their applications for

implement as respondents in the writ petition they were impliment as respondents no.2 and 3 respectively counter affidavits filled by them were taken on record.

5. Before the case was taken up for hearing an objection was raised on behalf of the respondents that since the petitioner has not challenged the notice dated 11.10.1989 canceling his permit, which was served on him, this petition is liable to be dismissed on this ground alone. No doubt this objection was taken in the counter affidavit and a copy of notice dated 11.10.1989 was also annexed therewith but no efforts were made by the petitioner to amend the petition by challenging the said notice. In fact in absence of such challenge the petition cannot proceed. However, since we have heard the matter on merits we propose to deal the points raised by the learned Counsel for the petitioner.

6. The first argument of the learned Counsel for the petitioner is that since the Corporation has not applied for grant of permit on the route namely Jabarpur-Dibiapur Dinwanmau-Sahayal route (shorter notified route) and therefore, four vacancies still exist and it is not open to the Regional Transport Authority to cancel the temporary permit of the petitioner. No doubt the Corporation has given an application for grant of permit on the route known as Shergarh Ghat-Auraiya Debiabut-Tirwa and not for Badarpur -Dibiapur - Dinawaman - Sahagal route. It is not disputed that Shergarh Ghat-Auraiya-Debiapur-Tirwa is notified route. It is further not disputed that Babarpur Debiapur Dinwamau shorter notified route is part of Shergarh Ghat-Auraiya-Debiapur-Tiwrwa longer notified route. In fact longer notified route overlaps the shorter notified route. The question now for consideration is if the Corporation has been granted permits on longer notified route which also covers the shorter notified route can it be said that still there are vacancies on shorter notified route and temporary permit can be granted to the private operators. Admittedly there were four vacancies and four permits can be granted on a shorter notified route to the Corporation. The Corporation had applied for four permits against the vacancies of shorter notified route extending upto Auraiya which is part of the, longer notified route. Section 2(38) of the Motor Vehicles Act of 1988 defines route." "Route"" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. Section 103 of the Act provides that where in pursuance of an approved scheme, any State Transport undertaking applies in such a manner as may be prescribed by the State Government in this behalf for a stage carriage permit in respect of notified route the Transport Authority or the Regional Transport Authority as the case may be shall issue permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter v. Section 104 of the Act further provides that where a scheme has been published u/s (3) of Section 100 in respect of any notified area or notified route, the Stale Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in

pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective in the issue of a permit to the State transport undertaking in respect of the area or route. A perusal of the aforesaid provision would show that route means the portion of highway over which a motor vehicle travels from one termini to other termini and a permit granted under the Act is generally for a route mentioned therein which authorises the vehicle to undertake journey from one termini to the other. Route is an essential ingredient of a permit authorising the playing of motor vehicles on a public highway, where longer and shorter routes are notified routes, and the shorter route is a part of longer route and if the Corporation has applied for longer route against the vacancies of the shorter route the permit so granted shall be lawful for the shorter route also. In *Sudhir Sharma Vs. S.T.A. (T) and Others*, this Court held that application for longer route include permit for shorter route also in the present case the Corporation has expressly applied against the vacancies of shorter notified route also. The permit so granted to the Corporation for the longer notified route can be treated permit on shorter route, entitling the Corporation to ply their vehicles on shorter route. In this view of the matter there is no vacancy as alleged by the petitioner on the shorter route and on the grant of permits to the Corporation on the route in question the temporary permit granted to the petitioner ceases to be effective.

7. It was then contended by the learned Counsel for the petitioner that only one application was moved by the Corporation for grant of permits on the route and, therefore, only one permit could have been granted to the Corporation and not four permits. The Corporation in its counter affidavit has stated that they have moved an application for grant of four permits as far back on 27.9.1984 and reminder to that effect was sent on 20th September, 1989. A perusal of the letter dated 20th September, 1989 which is Annexure 4 to the counter affidavit of the Corporation discloses that the application was given for grant of permits for four additional vehicles. In view of this it cannot be said that the application was for grant of only one permit, we accordingly reject the second argument of the learned Counsel for the petitioner.

8. There is no merit in the writ petition.

9. It is accordingly dismissed. The interim order is vacated.