
(1968) 01 MAD CK 0038
In the Madras High Court

S.K. Yusuf Sheriff and Others

APPELLANT

Vs

The Regional Transport Authority and Others

RESPONDENT

Date of Decision : 10-01-1968

Acts Referred:

Motor Vehicles Act, 1988 — Section 62

Citation : (1969) 2 MLJ 264

Hon'ble Judges : M. Natesan, J

Bench : Division Bench

Judgement

M. Natesan, J.—In these writ petitions the propriety of the Regional Transport Authority granting temporary permits u/s 62 of the Motor Vehicles Act to the Madras State Transport Department pending applications for renewal of the regular permits by private operators in preference to their claim for temporary permits pending renewal of their permits, is called in question. Typical of the circumstances in which these applications come up, we may refer to the facts in W.P. No. 2892 of 1967.

2. The petitioner in W.P. No. 2892 of 1967 whose permit on the route Madras to Vengal was to expire on 1st October, 1967, applied on 5th May, 1967, for renewal of his permit. When the application for renewal was pending, the nationalisation scheme in relation to the route was published on 18th July, 1967, obviously awaiting finalisation of the nationalisation scheme, the renewal application was placed in cold storage and the petitioner came up to this Court with applications--one for a writ of mandamus directing consideration of his renewal application by the concerned Regional Transport Authority on the merits and another for a writ of prohibition restraining further proceedings pursuant to the proposed scheme whose validity was impugned. This Court, on the applications for interim orders, stayed only the effect of publication of the scheme, on representation having been made that the scheme had received the approval of the Government. In the circumstances, the petitioner applied for temporary permit pending disposal of the application for renewal, and at the

same time, the Director, Madras State Transport Department, also applied for the grant of temporary permit. The Regional Transport Authority, in the view that this Court had only stayed the effect of publication of the scheme and the only result of such stay was that the State Transport Department was not pendentc life entitled to a pucca permit u/s 68-F (1) of the Motor Vehicles Act, preferred the State Transport Department to the private operator, the petitioner herein, for the issue of a temporary permit. The petitioner in the circumstance-; seeks to have the order granting a temporary permit to the State Transport Department quashed. In W.P. No. 2906 the" petitioner rushed to this Court before the actual grant of a temporary permit to the State Transport Department praying for the issue of a writ of prohibition or any appropriate order or direction. But it transpires that on the very day the rule nisi was issued, that is, on 5th October, 1967, a temporary permit had been issued to the State Transport Department. Having regard to the circumstances in which a temporary permit had been granted to the State Department in W.P. No. 2892 of 1967, we, on 6th October, 1967, interdicted the State Transport Department from plying its bus on the concerned route on the temporary permit, and, considering the numerous applications that were coming before us in view of the proposed nationalisation scheme, suggested to the Advocate-General to examine the feasibility of arriving at some convention in regard to running of buses on the routes which would be affected pending disposal of the writ petitions questioning the validity of the scheme.

3. The petitioner in W.P. No. 2906 of 1967 has come out with an application to commit the Regional Transport Authority and the Director of State Transport, Madras for contempt. Having examined the counter-affidavit filed by the Regional Transport Authority, we see no 100m for proceedings in contempt. The order in question granting the temporary permit to the State Transport Department, it is stated was passed on the forenoon of 5th October, 1967 and sent by registered post to the petitioner herein before knowledge of the general directions issued by this Court. The petitioner's permit was to expire on 5th October, 1967, and his renewal application u/s 57 was notified for 8th September, 1967 or after the date. No hearing date having been fixed, the petitioner on 29th September, 1967, applied for the grant of a temporary permit. On the very date the State Transport Department also applied for the grant of a temporary permit. In the circumstances while there is room for comment that the Regional Transport Authority has exhibited an alacrity not generally noticed in taking up and disposing of the temporary permit application, keeping pending the renewal application, we cannot find contempt of any particular order of this Court.

4. The petitioner in W.P. No. 3260 of 1967 has come up to this Court with reference to his application for renewal of permit which was expiring on 10th August, 1967, with several applications--an application for mandamus to the Regional Transport Authority to dispose of his renewal application at an early date, an application for prohibiting the Regional Transport Authority from taking into consideration the proposed scheme u/s 68-C, and an application for

certiorari to quash the order of the Regional Transport Authority refusing the application of the petitioner for renewal of permit. As his application for temporary permit was made to give way before the application of the State Transport Department for a temporary permit to itself, he has come with the above Writ Petition No. 3260 of 1967 for quashing the order of the Regional Transport Authority issuing a temporary permit to the State Transport Department. The only ground on which the temporary permit has been issued to the State Transport Department is that the route is to be taken over by the State and the scheme has already been published. Reference is also made to the policy of the Government to nationalise transport.

5. Learned Counsel for the petitioners contends that in the grant of a temporary permit u/s 62 as against an application for a temporary permit pending the application for renewal, the Regional Transport Authority should not give preference to the State Transport Department which has only a proposal to take up the route under a nationalisation scheme. It is pointed out that Section 68-F comes into operation after a scheme has become an approved one and the route a " notified route " and then only permits could be issued to the State Transport Undertaking on the State Transport Undertaking applying in the manner specified in Chapter IV. In the case under consideration there was no approved scheme for the State Transport Undertaking to intervene and claim a permit as of course. Counsel submits that when an application for temporary permit falls directly u/s 62-A (d) (local amendment), it is incumbent on the Regional Transport Authority to grant the temporary permit to the applicant for renewal, pending decision on his application for renewal of permit. The material part of Section 62 relevant for our purpose runs thus:

A Regional Transport Authority may, without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorize the use of a transport vehicle temporarily

(a) ...

(b) ...

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit or

Provided that a temporary permit under this section shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit u/s 46 or Section 54 during the pendency of the application;

Provided further that a temporary permit under this section shall, in no case, be granted more than once in respect of any route or area specified in an application for renewal of a permit during the pendency of such application for renewal.

Emphasis is laid by Counsel on the first proviso that no temporary permit should

be granted in respect of any route or area specified in an application for the grant of a new permit during the pendency of the application, in support of his contention that pending decision on an application for renewal of permit a temporary permit should normally be granted to the applicant for renewal. The State Transport Department, when it comes on the scene under the proposed scheme, is coming with an application for a new permit and therefore, it is said, the State Transport Department should not be given any preference as against an operator who had applied for renewal. Learned Counsel would distinguish the decision of the Supreme Court in *The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur*, as a case where only the scope and interpretation of Section 62 (c) of the Motor Vehicles Act was involved. In that case the Supreme Court disagreed with the view of the Madhya Pradesh High Court, that a temporary permit cannot be granted for any route when there is a permanent need for transport facilities on that route and it has been decided to invite applications for that purpose. The case before the Supreme Court was not a case of grant of a temporary permit pending an application for renewal. Counsel submits that while the State may, like any other person, enter into competition with private operators, it could claim exclusive right only when there is an approved scheme and a notified route. "Our attention is drawn to the observations of the Supreme Court in *Capital Multi-purpose Co-operative Society Bhopal and Others Vs. The State of M.P. and Others*, where it is remarked:

Secondly it would be unusual for the State Transport Undertaking to be running transport vehicles on individual routes before it produces a scheme for nationalisation of the type provided for in Chapter IV-A, though it may be conceded that this may not be quite impossible....

6. Counsel for the petitioners submits that the Regional Transport Authority who happens to be the District Collector and head of the District in this case has abdicated his position as a quasi-judicial Tribunal under the Act and allowed himself to be guided by policy decisions of the Government wholly irrelevant and extraneous to the issues under consideration before him, whether it be in the matter of grant of renewal or grant of temporary permits. It is said, that this is not a stray case where it could be said that exigencies of other work and heavy executive functions have stood in the way of speedy disposal of the renewal applications. It is submitted that the innumerable cases which have come up before this Court would show a deliberate attitude on the part of the Regional Transport Authority to defer consideration of the renewal applications and going contrary to law to grant temporary permits to the State. The draft scheme of nationalisation was being attacked as void at the very outset and notwithstanding, it is said, the Regional Transport Authority was aiding the State Government in securing temporary permits. An operator of stage carriage has to apply under the Act for renewal of his permit not less than 60 days before the date of expiry and in this case well in advance applications have been made for renewal. An applicant for renewal of permit has a pre-emptive right under the

Act and though the Act does not prescribe any time-limit for disposal of applications for renewal of permits, it is apparent from the several provisions of the Act that the applications should be disposed of ordinarily before expiry of the period of the permit. In case of unavoidable delay, an application should be disposed of within a reasonable time thereafter, as while providing for temporary permits pending applications for renewal of permits, there is a provision that a temporary permit shall not be given more than once and the time-limit of four months is fixed for a temporary permit. The State Transport, Undertaking is entitled as of right to the grant of a stage carriage permit in respect of a notified route, on the Transport Undertaking in pursuance of an approved scheme applying for a permit in the manner specified in Chapter IV--but Counsel for the existing operators remark why a quasi-judicial tribunal like the Regional Transport Authority should show undue solicitude to the undertaking--but that is what is revealed by their proceedings.

7. Learned Counsel prays that in the circumstances while quashing the orders already passed, it is desirable that this Court gives directions in the matter of disposal of the renewal applications to the Regional Transport Authority to exclude from all consideration the proposed nationalisation scheme. The draft scheme has been struck down as void and in the circumstances it is submitted that there is nothing but a policy decision of the Government for nationalisation of the route. As it is, it is urged that for an approved scheme to come into existence and the route in question to be a notified route, it will take a good deal of time. Whatever might have been the position earlier before the draft scheme was struck down, to-day it cannot be said that there is any scheme in the offing. Learned Counsel quite properly drew out attention to the conflict of views on the question whether a contemplated scheme by a State Transport Undertaking is a matter that could be had regard to by the Regional Transport Authority in considering an application for stage carriage permit under Clause (a) or (c) of Section 47 (1), between. *Malik Ram and Others Vs. Regional Transport Authority Jaipur and Others*, and *Karigowda v. Regional Transport Authority AIR 1962 Mys. 27*. The Mysore High Court has taken the view that a State Transport Undertaking can validly ask the Regional Transport Authority to refuse the renewal of permits held by private operators only if there is in force an approved scheme. But a single Judge of the Rajasthan High Court is of the view that the Transport Authorities are quite competent to take into consideration u/s 47 (1) (c) while dealing with applications for permits or renewal of permits any scheme prepared or contemplated by a State Transport Undertaking. The learned Judge of the Rajasthan High Court also remarks that on the question, many elements have to be considered for arriving at a judicial verdict--the stage of the scheme, the nature and the traffic requirements of the route and the availability of other transport services--and it cannot therefore be accepted that the pendency of a scheme for nationalisation cannot be considered u/s 47 (1) (c) on account of the use of the words "near future" in that section. In our view, it is unnecessary to go deeper into the matter and consider what are all the matters the Authorities

could take into consideration. As it is, the orders granting temporary permits are rested solely on the assumed validity of the scheme which had received the approval of the Government and subsequently published. We have in *Sanjeevi Naidu v. Madras State Transport and Anr.* W.P. No. 2303 of 1967, struck down the draft scheme itself as void. The grant of temporary permits based upon the scheme cannot therefore be maintained. The scheme for the present even in proposal form is non est. The effect of having struck down the scheme is to revive all renewal applications which might have been dismissed on the basis of the scheme and the Authorities would have to consider those applications on the merits, as also applications that might be made for temporary permits pending decision on the renewal applications.

8. We do not say that the applications for renewal must be automatically ordered. It is a matter for the Regional Transport Authority to decide having regard to the provisions of the Motor Vehicles Act. The applications, it is needless to point out, have to be disposed of as if they are applications for permits, the applicants being given preferential treatment or pre-emptive right recognised in their favour, the other conditions being equal. Equally with regard to the grant of temporary permits, it is for the Regional Transport Authority to consider as to who are in law entitled to the same having regard to the circumstances subsisting at the time of consideration of the matter.

9. The petitioner in W.P. No. 3285 of 1967 prays for a writ of mandamus or any other appropriate writ directing the Regional Transport Authority to renew the petitioner's permit in respect of his stage carriage plying on the route Tuticorin to Udangudi. The permit for the vehicle was to expire on 8th July, 1967, and the petitioner applied in advance on 25th April, 1967, for renewal. The petitioner was granted a temporary permit u/s 62 of the Act valid till 31st October, 1967. The complaint of the petitioner is that notwithstanding the fact that an application for renewal had been made in April, 1967 and the temporary permit would expire on 31st October, 1967, no steps were taken by the Regional Transport Authority for notifying the application and passing orders thereon for renewal in accordance with law. It is brought out that a scheme for nationalisation had been published u/s 68-C of the Act on 12th July, 1967. It is said that the petitioner's manager met the Secretary, Regional Transport Authority, on 23rd October, 1967 and the Secretary stated:

Let us wait till 30th October, 1967 to see if any orders came from the Government to him in this regard.

There is no counter-affidavit denying this. The petitioner charges, that deliberately the Regional Transport Authority was postponing the grant of renewal of permits, as the route was intended to be taken over by the Government under the nationalisation scheme. Instructions from the Government to the Regional Transport Authority in this regard are inferred by the petitioner. As pointed out earlier, we cannot grant any mandamus directing renewal. The matter is in the discretion of the concerned Regional Transport

Authority, a quasi-judicial Tribunal, who has to take into account all the relevant aspects of the matter as provided for in the Motor Vehicles Act before deciding one way or other. It is needless to reiterate what has been repeatedly pointed out by the Supreme Court and this Court, that irrelevant considerations and having regard to Governmental instructions that could fetter the freedom of a quasi-judicial authority in determining a matter on its own merits according to laws, would vitiate a determination.

10. But we deem it necessary to make certain observations, as in the course of hearing of these applications we felt that some of the Officers functioning as Regional Transport Authorities may be under a grave misconception of their duties and obligations. The language of Section 43-A is unfortunately not happy and a very clear concept of the distinct character of their functions as quasi-judicial tribunals and executive officers is called for, for them to keep within the bounds of Section 43-A (1). The private operators cannot be charged with being unduly apprehensive when they said in several of the cases before us that these Authorities were postponing the consideration of their renewal applications to enable the Government to come forward with an approved scheme and deprive the operators of even compensation. The petition, C.M.P. No. 13865 of 1967, an application for committing the Secretary of Regional Transport Authority and the Regional Transport Authority, Madras, for contempt, has been taken out by the petitioner in W.P. No. 2724 of 1967. On that writ petition we directed, that as expeditiously as practicable the Regional Transport Authority should take up the applications for renewal and temporary permits, and pass suitable orders thereon, as it was pointed out that the matter was of some urgency and every day's delay might occasion loss, to the parties. The order in the Writ Petition was passed on 18th October, 1967. It is stated for the petitioner in his affidavit that immediately he applied to the Secretary, Regional Transport Authority, Chingleput, for a temporary permit, as his vehicle would have to stop plying from 20th October, 1967, on the expiry of the permanent permit. The affidavit sets out a tale of procrastination from day-to-day till on 25th October, 1967, when he was served with a notice issued by the third respondent, the Regional Transport Authority, Madras, that public hearing would be held on 9th November, 1967 to consider the petitioner's application for renewal and also the application for the grant of a temporary permit on the route pending orders on the application for renewal of the stage carriage permit. There are certain other averments in the affidavit which we do not consider necessary to investigate. The fact remains that notwithstanding the urgency of the situation and the direction of this Court for expeditious disposal when an application for a temporary permit could be disposed of without much formality, the applications for renewal of the permit and for the grant of a temporary permit were directed to be taken together on a particular day. The Secretary to the Regional Transport Authority, in his affidavit, would state that there is no irregularity in law to post the two applications, one for renewal and another for the grant of temporary permit, pending consideration together for hearing. It is not the legality of the thing that is in question; it is the

spirit that a lay man may reasonably surmise as behind the procedure. While on the facts placed before us we do not see any case for contempt, we feel it necessary to emphasise that a statutory Tribunal should discharge its functions in a manner which would evoke the confidence of the public and not give room for any inference of bias. Where despatch and promptitude are required in the discharge of quasi-judicial functions by the Regional Transport Authority,, if there should be unreasonable delay and postponement, a comment having regard to the context, that it was not mere delay but evasion occasioned by supine submission to other agencies of the Government may not always be ignored as baseless. And when the delay is in respect of a matter which this Court has directed speedy disposal, things may take a grave turn. Men's allegiance for law would be fundamentally shaken if there is legitimate room for suspicion that the delay is motivated, and conduct reasonably giving rise to such suspicion is a most fatal and dangerous obstruction to justice. Needless to say that such conduct may in a given case amount to contempt of Court.

11. In the very nature of things in a modern State a number of Governmental Authorities and Agencies have to be invested with quasi-judicial functions, particularly when special expertise and despatch are called for. Normally Officers high up in the hierarchy who by their position and qualification could evoke faith and confidence for independent judgment, are alone invested with such powers. Here the District Collector, the executive head of the District,, generally functions as Regional Transport Authority and the public are entitled to expect the Officer when functioning as a Statutory Tribunal under the Act to be fully conscious of the quasi-judicial character of the duties he has to discharge and the unbiased mind he has to bring thereon. We trust that the highest traditions usually associated with this office would be continued to be maintained and the general equipment and position of the officers would enable them to see and maintain the dichotomy in their functions. As pointed out by the Supreme Court in *The Samarth Transport Co. (P) Ltd. Vs. The Regional Transport Authority, Nagpur and Others*, , a Statutory Tribunal is expected to discharge its functions fairly and without bias even in a case where the interests of the Government are involved.

12. In W.P. Nos. 2892, 2906 and 3260 of 1967 the orders granting temporary permits to the State Transport Department are hereby quashed. It will be for the Regional Transport Authority to take such action in the matter as may be necessary for putting on stage carriages to ply on the concerned routes temporarily till the vehicles are put on the routes permanently. W.P. No. 5285 of 1965 is dismissed in the light of the observations made herein. C.M.P. Nos. 12503 and 13865 of 1967 for contempt are dismissed. There will be no order as to costs in any of the petitions.