

(1996) 05 AHC CK 0008

In the Allahabad High Court

Case No : C.M.W.P. No. 14924 of 1996 and 5 Writ Petitions

Smt. Rampati Jaiswal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1939 — Section 42, 42(1)

Motor Vehicles Act, 1988 — Section 192, 2, 2(38), 207, 39

Citation : AIR 1997 All 170

Hon'ble Judges : M. Katju, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : H.K. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—By this common judgment, we dispose of all the above-mentioned writ petitions.

2. The facts involved in the instant petitions are eye-openers and reveal as to what extent the process of Court is abused by litigants to distort the law. This is a unique example where the relief has been sought in contravention of the statutory provisions. On behalf of the Petitioners, submissions have been made only on the basis of a loophole in the statutory provisions without realising that the Parliament had plugged the said loophole more than two and a half decades ago.

3. In Writ Petition No. 14924 of 1996, Petitioner is holding permanent stage carriage permit No. 451/RTA/96 on Allahabad - Kunda route and plying vehicle No. UGH 673, in Writ Petition No. 14925 of 1996 Petitioner is holding permanent stage carriage permit No. 1447/RTA/96 on Pratapgarh-Kunda route and plying vehicle No. UGH 786, in Writ Petition No. 15232 of 1996 Petitioner is holding permanent stage carriage permit No. 1450/RTA/96 on Allahabad-Kunda route and plying vehicle No. U.P. 42A-6782 and in Writ Petition No. 15235 of 1996

Petitioner is holding permanent stage carriage permit No. 1446/RTA/96 on Pratapgarh-Kunda route and plying vehicle No. UGV 322.

4. The facts of all the writ petitions are identical and the Writ Petition No. 14924 of 1996 Smt. Rampati Jaiswal v. State of U.P. and Ors. is taken to be a leading case for disposing of all the above-mentioned writ petitions.

5. Petitioner was granted a stage carriage permit on non-notified route known as Allahabad to Kunda, via Nawabganj, Dahiyawa, Basuganj Chauraha and Petitioner is plying her vehicle on the said route. It appears that she entered into an agreement with M/s Raja Ram Singh and Sons (filling station), Lalgopalganj, District Allahabad, which is 15 kms. away from Nawabganj, a town on the route of the Petitioner. Thus under the pretext of taking diesel, the vehicle of the Petitioner goes out of the route 15 kms. up and 15 kms. down. Petitioner is plying her vehicle daily 30 kms. off the route on which she had been granted permit under the provisions of the Motor Vehicles Act, 1988 (hereinafter called the Act). The route of the Petitioner originates from Allahabad and ends at Kunda and there is no scarcity of diesel, service stations for washing and cleaning or garage for repairing the vehicle either at Allahabad or at Kunda. Lalgopalganj is comparatively a smaller town and does not provide sufficient facilities except having the filling station.

6. The Petitioner is seeking relief that the transport of the police authorities be restrained from checking or interfering with the plying of the vehicle when it goes off the route to Lalgopalganj.

7. Section 66 of the Act reads as under:

66. Necessity for permits. --(1) "No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used....

(emphasis added)

(2) * * * * *

(3) The provisions of Sub-section (1) shall not apply:

(a) * * * * *

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

* * * *

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

8. Section 66 speaks of transport vehicle and public place, etc. The aforesaid terms have been defined u/s 2 of the Act and the relevant definitions are as under:

(34) "Public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right to access and includes any place or stand at which passengers are picked up or set down by a stage carriage;

(35) "Public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi-cab, a motor cab, contract carriage, and stage carriage;

(47) "transport vehicle" means a public service vehicle, a good carriage, an educational institution bus or a private service vehicle.

9. On the basis of the aforesaid definitions, it is clear that the Petitioner is holding the permit for transport vehicle which is a public service vehicle and being plied on public places. There is no dispute regarding the proposition of law that the Petitioner can ply her vehicle only on the route on which she has been granted permit. Route has been defined in Section 2(38) which means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another.

10. The sole contention of the Petitioner is that plying the vehicle 30 kms. every day off the route cannot be said to be in contravention of any statutory provision, particularly when the petitioner is not carrying any passenger in the vehicle and at the most, the Respondents can check the vehicle and if they found any passenger in the vehicle, they can take appropriate action against the Petitioner in view of the provisions of Section 86 of the Act which provides for cancellation and suspension of permit if the vehicle is being plied in breach of the condition of permit or the vehicle is used in any manner not authorised by the permit, etc. The aforesaid contention of the learned Counsel for the Petitioner is untenable and misconceived.

11. In *State of U.P. Vs. Abdul Latif and Another*, and *In Re: T.V. Moidu and Another*, it was held by the High Courts of Allahabad and Madras that if a vehicle is taken off the route without carrying any passenger, it does not violate the conditions of permit. As a large number of operators started plying their vehicles off the route on the pretext of repairing or service or for filling the diesel, etc., the Motor Vehicle Act, 1939 (hereinafter called the Act of 1939) was amended by the Parliament by Act No. 56 of 1969, which was enforced with effect from 2.3.1970 and by the said amendment, the words "whether or not such vehicle is actually carrying any passenger or goods" were inserted in Section 42 of the said Act of 1939. The amendment was necessary to plug the loophole and to overcome the interpretation given by the High Courts to Section 42 of the said Act of 1939, but after the commencement of the amendment Act, 1969, it was not permissible for any person to ply the vehicle off the route even

without carrying any passengers.

12. Section 66(1) of the Act has been taken verbatim from Section 42(1) of the said Act of 1939 and as there is no difference whatsoever in the two corresponding provisions, it is not permissible to contend that if a vehicle is taken off the route, even if empty unless it falls within the exception given in Section 66(3) of the Act, it does not commit an offence and will not violate the provisions of the Act. We are of the considered opinion that Section 66 makes it clear that the owner cannot ply the vehicle off the route even if it is not actually carrying any passenger as Section 66 enjoins upon the permit holder to ply his vehicle in strict adherence to and observation of the conditions attached to the permit. Thus, if a vehicle is found whether stationary or moving at a place which does not fall on the route. it will be in contravention of the statutory provisions of the Act unless it falls under exceptions provided in Section 56(3) of the Act, and this contravention amounts to plying the vehicle contrary to the condition attached to permit itself and thus it will be liable to be cancelled or suspended under the provisions of Section 86 of the Act and action can be taken against the permit holder under the provisions of Section 192 of the Act. which provides that if any person drives a motor vehicle in contravention of the provisions of Section 39 or without the permit as required by Section 66(1) or in contravention of any conditions of such permit relating to the route on which the vehicle is authorised to be plying shall be punishable for the first offence with fine which may extend to Rs. 2,000 and for any second or subsequent offences with imprisonment which may extend to Rs. 3,000 or with both.

13. In *The State of Uttar Pradesh Vs. Bansraj*, , the Apex Court has observed as under:

Section 42 is headed "necessity for permits". The language of the section employs prohibitive or negative words and therefore its legislative intent is that the statute is mandatory. The negative words convey a forbidding of the doing of the Act prohibited and from the use by the legislature of the words "no owner of a transport vehicle shall use or permit the use...in Section 42(1) a total prohibition against user of the vehicle except in accordance with the conditions of the permit is indicated. Further the words "authorizing the use of the vehicle in that place in the manner in which the vehicle is being used" have reference to the transport vehicle itself and not to the owner that is to say Section 42(1) does not only prohibit the owner from using the transport vehicle contrary to the conditions of the permit but there is an express provision in the section that the permit authorises the use of the vehicle in the place and in the manner it is being used, and that it is to be used in accordance with the conditions of the permit. Thus construed, Section 42(1) contemplates not only prohibition against the user by the owner of the vehicle or his permitting its user in a manner contrary to the conditions of the permit but it also contemplates that the vehicle itself shall be used in the manner authorised by the permit. The prohibition, therefore, is not merely against the use contrary to the conditions of the permit of the vehicle

itself.

The same view was taken by the Apex Court in *State of Mysore Vs. Syed Ibrahim*, .

14. Thus, It is clear that the statute provides mandatorily that the vehicle covered by the permit must be used in the manner authorised by the permit and if it is being piled in contravention of any conditions attached to the permit, the permit holder or user of the vehicle is liable to be punished under the provisions of Section 192 of the Act.

15. It is well-settled law that writ under Article 226 of the Constitution is maintainable for enforcing the statutory right or when there is a complaint by the Petitioner that there is a breach of statutory duty on the part of the Respondent. Therefore, there must be Judicially enforceable right for the enforcement of which the writ Jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ Jurisdiction at the behest of a person, provided such person satisfies the Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, ; *State of Kerala Vs. Smt. A. Lakshmikutty and others*, ; *Mani Subrat Jain and Others Vs. State of Haryana and Others*, and *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, . In the instant case, Petitioner is violating the mandate of the statutory provisions herself. The Court cannot grant a relief in exercise of its powers under Article 226 of the Constitution, which is in contravention of the statutory provisions.

16. In *Madamanchi Ramappa and Another Vs. Muthalur Bojjappa*, . the Supreme Court has held as under:

What is administered in courts is Justice according to law and consideration of fair play and equity however important they may be, must yield to clear and express provisions of the law.

17. Similarly, in *Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others*, , it has been held by the Supreme Court that "...in construing a statute, equity will not relieve against a public statute of general policy in cases admitted to fall within the statute and it is the duty of the court to give effect to the legislative intent."

18. Thus, equity can supplement to but cannot supplant the statutory provisions. In the instant case, Petitioner cannot claim any equity in her favour.

19. At the cost of repetition, it is mentioned that there is no scarcity of diesel, service station or garage for repairing, etc.. either at Allahabad or at Kunda. The purpose of entering into a contract by the Petitioner with the owner of the petrol pump at Lalgopalganj and plying the vehicle 30 kms. off the route every day is definitely for oblique purposes. By adopting this method and seeking a seal of

approval of this Court for the mis-deeds, the Petitioner is seeking extension/variation of the route which otherwise can be granted under the provisions of Section 80(3) of the Act, which provides for moving an application to vary the conditions of permit by inclusion of a new route or for altering the route of a stage carriage permit. In other words, it provides for moving an application for variation, extension or curtailment of the route and the said application is to be treated as an application for the grant of a new permit.

20. What cannot be done "per directum is not permissible to be done per obliquum" Meaning thereby whatever is prohibited by law to be done directly cannot regally be effected by an indirect and circuitous contrivance and it can be explained by quoting the legal maxim "quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud."

21. The contention of the learned Counsel for the Petitioner is that a Division Bench of this Court in Writ Petition No. 7685 of 1990 Abdul Hakim v. District Magistrate, Pratapgarh, vide its order dated 29.3.1990 passed an interim order directing the Respondents not to stop the vehicle covered by the permit of A.W.C. 87 the Petitioner therein when it goes off the route for purchasing diesel and for repairing.

22. It is further contended that this Court cannot discriminate amongst similarly situated persons and once an interim order has been passed in favour of a permit holder of the other route, this Court cannot refuse to pass a similar interim order to the present Petitioner.

23. In Vinod Trading Company Vs. Union of India (UOI) and Others, and Bir Bajrang Kumar v. State of Bihar and Ors. AIR 1987 SC 1345, the Apex Court has expressed the view that the interim orders should not be contradictory to each other if the facts and circumstances of the cases are identical. Similarly, in Vishnu Traders v. State of Haryana and Ors. 1995 Suppl. (1) SCC 461, the Supreme Court has observed as under:

In the matters of interlocutory orders, principle of binding precedent cannot be said to apply. However, the need for consistency approach and uniformity in the exercise of Judicial discretion respecting similar causes and the desirability to eliminate occasions for grievance of discriminatory treatment require that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is an assurance of consistency, uniformity, predictability and certainty of judicial approach.

24. As the Court has been very much alive of the aforesaid observations made by the Supreme Court, we have summoned the record of the said Writ Petition No. 7685 of 1990, got it listed on 10.5.1996. The prayer in that case had been only to permit the Petitioner to take his vehicle to Pratapgarh for the purpose of repairing. However, interim relief had also been granted to go off the route for filling purposes.

25. The Petitioner in Writ Petition No. 7685 of 1990 is holding the permanent stage carriage permit on the route Jethwara to Lalgopalganj. From the record, it appears that previously the Petitioner was holding a stage carriage permit from Pratapgarh to Manikpur, but subsequently, the route had been nationalised and the permit of the Petitioner had been curtailed from the notified area, though the Petitioner claimed that he was holding an authorisation certificate from the competent authority under the U.P. Motor Vehicles (Special Provisions) Act, 1976 (Act No. 27 of 1976) and he was authorised to ply his vehicle up to Pratapgarh with the restriction that he would not pick up or drop the passengers between Jethwara to Pratapgarh, but the Petitioner has not filed any document to substantiate his averment. Learned Counsel for the Petitioner did not appear even when the list was revised. We have perused the document and decided to dispose of the matter finally.

26. The Petitioner's case has been that the police authorities interfere with the plying of his vehicle if the Petitioner takes his vehicle to Pratapgarh for the purpose of taking the diesel and for repairing purpose, even if, the Petitioner takes his vehicle to Pratapgarh without carrying any passengers. This Court, vide interim order dated 29.3.1990 restrained the authorities concerned to interfere if the Petitioner takes his empty vehicle to Pratapgarh.

27. There is another aspect of the matter. As the interim order passed in Writ Petition No. 7685 of 1990 is in contravention of the statutory provisions so far as permission to go off the route for purchasing diesel is concerned, we cannot pass the same order.

28. In *Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc.*, the Supreme Court observed as under:

To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.

29. The instant writ petition, as we have explained above, has been filed to obtain in substance the variation/extension of the route.

30. In *S.P. Chengalvaraya Naidu v. Jagannath and Ors.* AIR 1994 (1) SC 1, the Supreme Court observed as under:

The courts of law are meant for imparting of Justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood has no right to approach the Court.

31. In the case of *Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another*, the Supreme Court has observed as under:

A Court of equity, when exercising its equitable Jurisdiction under Article 226 of the Constitution of India, must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do Justice by promotion of good faith, as far as it lies within their power. Equity is always known to prevent the law from crafty evasions and subtilities invented to evade law.

32. Similarly, in the case of State of Maharashtra and Others Vs. Prabhu, , the Supreme Court has observed as under:

It is responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for the sake of Justice and refusing to interfere where it is against the social interest and public good.

33. It is settled law that when a person approaches the court of equity in exercise of its extra-ordinary Jurisdiction under Article 226 of the Constitution of India, he should approach the Court not only with clean hands but with clean mind, clean heart and with clean objectives. There is no need to cite any authority for this but the reference may be made to the cases of The Ramjas Foundation and Others Vs. Union of India and Others, ; G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, and K.R. Srinivas Vs. R.M. Premchand and Others, .

34. In Grindlays Bank Limited Vs. Income Tax Officer, Calcutta and Others, , the Supreme Court has held that when the High Court is exercising its power under Article 226 of the Constitution, the interest of Justice requires that any undeserved or unfair advantage gained by a party invoking the Jurisdiction of the Court must be neutralised. It has further been held that institution of litigation by the same party should not be permitted to confer an unfair advantage on the party responsible for it. The same view has been expressed by the Supreme Court in Ram Krishna Verma and Others Vs. State of U.P. and Others, .

35. The present Petitioners are taking the advantage by plying the vehicle in contravention of the statutory provisions. They have themselves extended/ varied their respective routes and started plying their vehicles on the extended/ varied portion of the routes and are committing the offences by violating the terms and conditions of their respective permit every day.

36. Thus, in view of the above, all the writ petitions are dismissed with costs which is quantified at Rs. 5,000 in each petition and as it is the admitted case of the Petitioners that they are plying their vehicles every day in contravention of the statutory provisions of the Act, we direct the Respondent No. 3, the Regional Transport Officer, Allahabad to check the vehicles of the Petitioners regularly and if they violate the conditions of permit, then to issue them show cause notice u/s 86 of the Act as to why their permits should not be cancelled or suspended and to punish them under the provisions of Section 192 of the Act. We further direct the Respondent No. 3 to recover the costs of Rs. 5,000 from each Petitioner within a period of six weeks from today and deposit the same in this Court. We further direct the Deputy Superintendents of Police, Allahabad and Pratapgarh,

who have been authorised to exercise the powers u/s 207 of the Act to seize the vehicles of the Petitioners if their vehicles are found with or without passengers stationary or moving in places not covered by their respective permits or any part of the notified (nationalised) route.

A certified copy of this judgment shall be sent to the Senior Superintendent of Police, Allahabad and Superintendent of Police, Pratapgarh and the Regional Transport Officer, Allahabad within a period of one week from today by the office for compliance of the judgment and order in letter and spirit.