

(1955) 10 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 619 of 1955

Sri. B.K. Agarwal

APPELLANT

Vs

Regional Transport Authority, Kumaon Region and Another

RESPONDENT

Date of Decision : 10-10-1955

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Motor Vehicles Act, 1988 — Section 60, 71, 90
Uttar Pradesh General Clauses Act, 1904 — Section 16
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Motor Vehicles Act, 1988 — Section 60, 71, 90
Uttar Pradesh General Clauses Act, 1904 — Section 16
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Motor Vehicles Act, 1988 — Section 60, 71, 90
Uttar Pradesh General Clauses Act, 1904 — Section 16

Citation : (1956) 26 AWR 821

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.L. Chaturvedi, J.—This is a petition Under Article 226 of the Constitution.

2. The Petitioner was granted a Private Carrier Permit in respect of his vehicle No. U.P.D. 64 on 20-10-1953, for a period of three years. In the beginning of the year 1955, the Petitioner was suspected of committing a number of irregularities and notices were issued to the Petitioner to show cause why action should not be taken against him u/s 60 of the Motor Vehicles Act. One notice was issued on 28-3-1955, another on 12-5-1955, third on 16-5-1955 and the 4th notice on 29-6-1955. The Petitioner submitted explanations to the charges contained in those notices and a meeting of the Regional Transport Authority was held on 11-7- 1955. On this date a resolution was passed by the authority saying that it has considered the four charges framed against the Petitioner and his replies to

those charges. At the end of the resolution it said that the Transport Authority was convinced that in all these cases there was a prima facie case made out against the Petitioner but the Transport Authority decided to give fuller opportunity to the Petitioner to explain charge No. 3 and the authority wanted to make further enquiries into charges Nos. 1 and 4. The resolution then proceeds, "Meanwhile it was resolved that the permit be suspended till the permit-holder has explained his case and the R.T.A. takes a final decision on it." The Petitioner did not file an appeal against this order as he came to know that the appellate authority, namely, the State Transport Authority was not functioning at that time, and it was not expected to meet till about the middle of August. He filed the present petition on 21-7-1955. The prayers contained in the petition are that a writ of certiorari be issued quashing the resolution of the Regional Transport Authority dated 11-7-1955, and a writ of mandamus be issued ordering that authority not to give effect to the said resolution.

3. The learned Counsel for the Petitioner has urged that the charges against the Petitioner have not yet been fully enquired into and there is no power conferred by the In Indian Motor Vehicles Act, on the Regional Transport Authority, to suspend a permit before coming to a conclusion that the permit-holder is guilty of the commission of the acts mentioned in Section 60. It is argued that all the four charges are still pending enquiry and the Transport Authority has not arrived at any final conclusion as regards the guilt of the Petitioner and, under the circumstances, it was not open to that authority to pass an order suspending the Petitioner's permit. The learned Junior Standing Council has controverted this proposition and he has further contended that on a proper reading of the resolution dated 11-7-1955, it should be held that the Petitioner has been convicted for the commission of the acts mentioned in charge No. 2 and the order of suspension is for the commission of those acts. He has further contended that the Regional Transport Authority had power to cancel a permit permanently, and this includes the power to suspend it for a shorter period. He has urged that the Petitioner should have filed an appeal against the resolution of the Regional Transport Authority and he had thus another remedy open to him which he has failed to avail himself of. He also contended that u/s 21 of the General Clauses Act also, the Regional Transport Authority had the power to pass an order suspending the Petitioner's permit.

4. Before coming to the main point that arises for decision, I may dispose of the argument of the learned Counsel for the State that the order of suspension passed against the Petitioner is not an order pending enquiry but suspension has been ordered as a punishment for misconduct for the commission of the acts mentioned in charge No. 2. The resolution itself nowhere says that the Regional Transport Authority had held that the Petitioner was proved to be guilty of charge No. 2, and in an earlier portion of the resolution it actually says, "The R.T.A. was convinced that in all these cases there was a prima facie case....". This shows that the authority was of opinion that with respect to all the charges a prima facie case had been made out. It is true that it is said in the resolution that the

Petitioner is given a further opportunity of giving his explanation to charge No. 3 and that the authority itself was inclined to make further enquiries into charges Nos. 1 and 4. No such statement is made with respect to charge No. 2 but it appears that the authority contemplated to decide all these charges at one and the same time and as regards charges Nos. 3 and 4 further enquiries were to be held. The last sentence of the resolution is to the effect that the permit was being suspended "meanwhile" till the Petitioner had explained the case and the Transport Authority had taken a final decision into the matter. This, I think, makes it clear that final decision has not been taken with respect to any charge. The argument of the learned Counsel for the State that the suspension order has been passed with respect to charge No. 2, does not appear to be correct. If this contention were correct one would expect the Transport Authority to mention some period for which the suspension was to remain in force as far as charge No. 2 was concerned. No such period has been given and it is said that the permit will remain suspended till the final decision of the matter.

5. The next question that arises is whether such a power is implied in the provisions of Section 60. Learned Counsel for the State referred to a passage in Crawford on Statutory Construction at page 266 in Para. 168. In this passage the learned author has said that a power may be read in a statute by necessary implication but he goes on to say that mere desirability of the existence of the power or even of the probability of their existence could not lead to an inference that the powers are necessarily implied in the wording of the statute. I have, therefore, to see whether there is by necessary implication in the statute any power to suspend a permit pending enquiry. From what I have said above it would appear that the statute only permits suspension or cancellation for the commission of proved acts, and this being the position it is not possible to infer from the wordings of the section that there is by necessary implication any power to suspend a permit pending enquiry. It may be desirable that such power should exist in the Transport Authority but no such power can be read by necessary implication.

6. The next question that arises is whether a power to grant and cancel a permit necessarily implies a power to suspend it also pending enquiry into charges. No authority on the point has been cited before me but reliance has been placed on certain cases which dealt with other statutes. The case of *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, was a case where the District Board had passed a resolution dismissing the Secretary of the Board and subsequently it passed another resolution suspending the Secretary. The necessity for his second resolution arose from the fact that the resolution dismissing the Secretary was not to come into operation till 30 day after the date of the resolution and if the Secretary filed an appeal within this period, till the appeal was decided by the State Government. A question arose whether the District Board had power to pass this resolution suspending the Secretary pending orders passed by the State Government in appeal. The matter went up to the Supreme Court, and their Lordships observed:

The Defendants were a Board created by statute and were invested with powers which of necessity had to be found within the four corners of the statute itself. The powers of dismissal and suspension given to the Board are defined and circumscribed by the provisions of Sections 71 and 90 of the Act and have to be called out from the express provisions of those sections. When express powers have been given to the Board under the terms of these sections it would not be legitimate to have resort to general or implied powers under the law of master and servant or u/s 16 of the UP General Clauses Act.

7. It is true that this case was under a different statute but the principle laid down in the passage quoted above helps the Petitioner in his contention that no power of suspension pending enquiry should be held to exist in the Transport Authority. Like the District Board, the Transport Authority is also a creation of the statute. I have already held that in this statute there is no power of passing an order of suspension of a permit pending enquiry. The other case in which a similar question arose is the case of *Seshadevi Ayyangar v. Nataraja Ayyangar* ILR 21 Mad. 179. The question that arose for consideration in this case was whether a person who held the position of a trustee could be suspended by the committee of management. This committee had been conferred all the powers which previously vested in the Board of Revenue and those powers were sovereign powers of the State. Shephard, J. was of opinion that the power to suspend pending enquiry did not subsist in the committee. The other learned Judge took a different view. He was of opinion that the committee had the power to suspend the trustee pending enquiry because the case was parallel to the case of master and servant. He proceeded:

It must be remembered that the powers of the committee are derived from the supreme or sovereign power of Government and there can be little doubt that the Government were free to suspend a recalcitrant trustee (sic) pending further action....

The matter was then referred to the third Judge, and it came up before the learned Chief Justice, and the view of the learned Chief Justice was that power of suspension of the committee was subject to the same conditions as the power of dismissal. It could suspend a trustee after making due enquiries and calling for the explanation of the trustee but not otherwise. In that case the suspension was held to be illegal as enquiry had not been made into the charges against the trustee, and no explanation had been asked for from the trustee. This case also supports the contention of the learned Counsel for the Petitioner as it means that there could be no suspension pending enquiry; though it could be by way of punishment.

8. The learned Counsel for the Petitioner drew my attention to certain cases in which it has been held that a District Judge has no power to suspend a legal practitioner u/s 14 of the Legal Practitioners' Act. I do not think these cases can be of any help in deciding the point under consideration because a District Judge has no right to cancel a legal practitioner's licence to practise. He can make

enquiries and report the matter to the High Court, and it is only this Court which could take disciplinary action.

9. Learned Counsel for the Respondents also referred to Section 21 of the Central General Clauses Act. Section 21 says "Where, by any Central Act or Resolution, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued". I do not think this section has anything to do with the power of issuing permits under the Motor Vehicles Act. If an authority has power to issue notifications, orders, or rules it can also add to, amend, vary or rescind that but that has nothing to do with the powers of suspending a permit pending enquiry.

10. For the reasons that I have given above, I have come to the conclusion that the power to suspend a permit pending enquiry cannot be said to be implied in the power to cancel or suspend the licence by way of punishment. As far as the statute is concerned, Section 60 of the Motor Vehicles Act only provides for cancellation or suspension as a punishment and not otherwise. This suspension of the Petitioner's licence pending inquiry must, therefore, be held to be illegal.

11. As regards the plea that the Petitioner had another remedy of appeal open to him, I do not think, I can give effect to it. It is a fundamental right of the Petitioner to carry on his trade, and if any illegal bar is imposed upon this right, it is open to this Court to pass suitable orders even where an alternative remedy of filing an appeal was open to the Petitioner. In this case there is the further fact that the Petitioner was aggrieved against the order of suspension, and the position was that the appellate authority was not functioning at that time and was not expected to function at least for a month more. Even if he had filed an appeal, he could not have obtained any interim order because no appellate authority was functioning, with the result that the Petitioner would have suffered irreparable loss in the matter of his business. In the circumstances, I think the other remedy was not an adequate and effective remedy.

12. The result is that this petition is allowed. A writ of mandamus shall issue to the Respondent No. 1 directing the Respondent not to give effect to the resolution passed by it on 11-7-1955, in so far that the resolution directs suspension of the Petitioner's permit pending further orders. It would be open to the Transport Authority to hear and decide the matter at an early date and to pass suitable orders in the case. The Petitioners will be entitled to his costs from Respondent No. 1.