
(1974) 03 OHC CK 0013
In the Orissa High Court
Case No : O.J.C. No. 161 of 1972

State Transport Authority

APPELLANT

Vs

Banamali Dalabehera and Another

RESPONDENT

Date of Decision : 05-03-1974

Acts Referred:

Motor Vehicles Act, 1939 — Section 64

Citation : AIR 1975 Ori 58

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : Advocate General and Standing Counsel Transport, for the Appellant;
Ranjit Mohanty and S.C. Parija, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Misra, J.—The State Transport Authority of Orissa has come before this Court for quashing of an interim order .passed by the State Transport Appellate Tribunal (opp. party No. 2) during the pendency of an appeal by the opp. party No. 1 against rejection of an application for a temporary stage carriage permit to him. Under Chapter IV-A of the Motor Vehicles Act of 1939 (hereinafter referred to as the Act) schemes of nationalisation have been framed and the routes Cuttack-Kakatpur and Cuttack-Nayahat overlapped the nationalised routes covered by the schemes. There are some old permit holders on some of these overlapping routes. Rule 65-C of the Orissa Motor Vehicles Rules. 1940 (hereinafter to be referred as the Rules) provides :--

"The Regional Transport Authority may attach to a permit for a stage carriage or a contract carriage the condition that a Motor Vehicle in order to operate under such a permit shall not be more than 10 years" old from its year of manufacture."

The State Transport Authority adopted a resolution to enforce the said Rule in respect of permits granted by it. The opposite party No. 1 obtained temporary stage carriage permits from the State Transport Authority and the last of such

permits held by him expired on 7-1-1972. On 10th of January. 1972, he made a fresh application for a temporary permit for three months and finding the vehicle of the opp. Party No. 1 to be more than 10 years" old from its year of manufacture, the application was rejected. On 13th of January. 1972. the State Transport Service applied for two temporary permits and offered two new vehicles to be put on the routes. Two temporary permits were decided to be given to it. The opposite party No. 1 filed motor vehicle appeal No. 2 of 1972 before the opposite party No. 2 and obtained an ex parte order of stay on 17-1-1972. The opposite party No. 2 directed as follows :--

"In this view of the matter it is ordered that interim stay may be issued with the following directions :--

(1) The S. T. A. should grant the appellant (O. P. No. 1) temporary permit for the vehicle in question till further orders.

(2) The S. T. A. should immediately cancel the temporary permits granted to the respondent No. 2 S. T. S. (not a party before us) for the route in question.

(3) The S. T. A. should desist from filling up the vacancies till the disposal of the appeal.

(4) The S. T. S. be directed not to ply any vehicle under the temporary permits granted by the S. T. A.

It is further ordered that notices be issued to the two respondents S. T. A. and S. T. S. (D. T M.) Cuttack, to show cause why the ad-interim stay may not be made absolute by 4-2-1972....."

The State Transport Authority applied on 18-1-1972 to the opposite party No. 2 to rescind or alter the aforesaid direction passed ex parte (vide Annexure-3) and on 21-2-1972 after hearing parties, the opposite party No. 2 passed the impugned order (Annexure-4). That day after hearing parties, "the Appellate Tribunal found fault with the State Transport Authority in not having given effect to the interim order and directed :--

"In this view of the matter the S. T. A. is immediately directed to carry out the interim order after which only the question of vacating or not the interim stay order will be taken up at 3.30 P. M. today for which the learned Standing Counsel has promised to give information one way or the other."

Later, at 3.30 P. M., the Tribunal noticed that there was substantial compliance of the ad-interim order of stay and proceeded to dispose of the stay matter. The Tribunal observed that the question of stay was in two parts-- (i) staying the operation of the order of S. T. A. refusing the temporary permit; and (ii) direction to the State Transport Service to stop plying the buses on the route in question. So far as the first aspect was concerned, the Tribunal upheld the interim order and required the State Transport Authority to issue a temporary permit to the opposite party No. 1, but vacated the injunction against the State Transport

Service from plying on the routes. In its own words the Appellate Tribunal modified the order to the following extent:

"To recapitulate my modified directions are :--

(1) The direction to the S. T. A. to grant temporary permit to the appellant (opp. party No. 1) is made absolute till the disposal of the appeal and the S. T. A has already taken steps in this regard.

(2) Direction to the S. T. S. (D. T. M.) Cuttack to stop the buses is vacated on the condition mentioned above.

(3) The direction to the S. T. A. not to fill up further vacancies stands.

(4) The direction to the S. T. A. to cancel the temporary permit of the S. T. S. is vacated....."

2. This writ application was filed on 20th of March. 1972. Learned Standing Counsel for the Transport Department pressed for stay of grant of the permit to the opposite party No. 1, but we declined to do so as in our view that would amount to allowing the application of the State Transport Authority without hearing the permit holders. In the meantime the entire appeal has been disposed of and the interim order regarding stay has. therefore, either merged in the final order or has lapsed. Mr. Parija for the opp. party No. 1. therefore, raised a preliminary point about the maintainability of this application in view of the changed situation and reminded us that an academic question may not be permitted to be agitated in a proceeding of this type.

3. We have no doubts in our mind that the impugned order has ceased to exist and. therefore. even if we are of the view that the order was bad and deserved to be quashed, in the changed situation, it is not necessary to issue a writ to quash it as the defective order has in the circumstances lapsed. We. however, think it our duty to point out to the Appellate Tribunal that the procedure adopted by it in dealing with such matters is clearly contrary to the judicial process and the practice of the Courts. Under the Motor Vehicles Act, the maximum life that a temporary permit can have is four months. The operator (opposite iparty No. 1) had approached the appellate authority against rejection of his application for a temporary stage carriage permit. Whether he would be entitled to a grant of a permit or not depended upon the ultimate decision. Without hearing the permit granting authority, a mandatory direction to grant a permit could not have been given. It is quite possible that the appellate authority on hearing parties may ultimately have dismissed the appeal by upholding the order of the State Transport Authority. Until the stage of hearing came, parties were heard, all the materials were looked into and a judicial determination was available to be reached that a permit should be directed to be granted, on hearing one side, the relief that ultimately may have -been given in the appeal could not have been given. That apart, the direction by the Appellate Tribunal really amounted to allowing the appeal instantaneously and gave rise to an unfortunate situation,

namely, benefiting the opposite party No. 1 (appellant before the Tribunal) without deciding whether the rejection of the application for grant of a temporary permit was good or bad. Judicial practice does not countenance such a situation.

4. The State Transport Authority on realisation of the fact that there was demand for public conveyance on the route had granted two temporary permits to the State Transport Service. It is too well known that the convenience of the travelling public is the real consideration in the matter of providing transport service. The Appellate Authority had no material before it which could provide an adequate guideline when the ex parte direction of stav was granted. It should not have lumped to the conclusion that the State Transport Authority must withdraw the permits and the State Transport Service must stand restrained from running its buses. Public convenience does not seem to have entered into consideration of the appellate authority while the ex parte order was made. It is true, the operator also deserves protection in law but when balance of convenience has to be judged in the matter of making of temporary arrangement pending the appeal, the greater good of society -- the travelling public at large -- should first be taken into account and without ensuring adequacy of provision for transport facility, steps should not have been taken to have the vehicles withdrawn from the routes.

5. As already indicated on the 17th of January. 1972. the ex parte interim order was made. Without loss of time on the following day the Transport Authority brought the difficulties before the appellate authority for its judicial consideration. We see no justification as to why without hearing the parties and deciding as to whether the terms of the ex parte interim order required alteration or rescission, the Appellate Authority insisted upon enforcement of the terms of the ex parte order as a condition precedent to considering alteration. The grievance made by the State Transport Authority was both in law and on facts and if the appellate authority had applied its judicial mind at that stage, the situation could have been well appreciated that the ex parte interim order was not appropriate. Instead of doing that the appellate authority first tried to give effect to the ex parte order which the Transport Authority was complaining to have been bad.

6. There may be cases where against a recalcitrant litigation the attitude of the Appellate Tribunal would be justified. But on the facts of the case, the Transport Authority's attitude was not vitiated and it had genuine grievances to place before the Appellate Authority. The promptitude with which the application for re-consideration had been made, the grounds for alteration as had been advanced and the like, were features present in the case which should have led the, judicial mind of the Appellate Authority to be aroused for pointed consideration of the grievances and it is unfortunate that the Appellate Authority still insisted upon fulfilment of the terms of the ex parte order.

7. As we have already stated, this application has got to be dismissed because it has become infructuous. Yet, we thought it appropriate to indicate our views so

that similar unfortunate situations may not recur. No costs.

B.K. Ray, J.

8. I agree.