

(2011) 04 OHC CK 0031

In the Orissa High Court

Case No : Writ Petition (C) No. 19728 of 2010

Subodh Ku. Bhuyan

APPELLANT

Vs

Chairman, State Transport Authority and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 72, 80(2), 87
Orissa Motor Vehicles Rules, 1993 — Rule 41, 75

Citation : (2011) 04 OHC CK 0031

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.N. Mahapatra, J.—This writ petition has been filed for quashing the order dated 26.08.2010 (Annexure-1) and temporary permit dated 31.08.2010 (Annexure-2) passed/issued by the Secretary, State Transport Authority, Orissa, Cuttack (for short, Secretary, STA") to O.P. No. 3 in respect of the vehicle bearing registration No. OR-22-C-7297 on the ground that the order/permit passed/issued by the Secretary, STA is illegal, without jurisdiction/authority and consequently void.

2. The Petitioner's case is that he is a stage carriage operator operating his bus OR-01L-6215 on the interstate route Puri to Contai and back. His another bus bearing registration No. OR-01Q-2975 operates on the inter-State route Puri to Haldia and back. Both the buses of the Petitioner operate on the strength of successive temporary permit granted by the S.T.A. and there is no complaint from any quarter against him. As per the timing allotted to the Petitioner's services, OR-01L-6215 departs Cuttack at 19.55 hours and OR-01Q-2975 departs Cuttack at 20.20 hours. The Petitioner has been operating his service with these set of timings since more than 10 years. Opposite party No. 3-Goutam Kumar Sarangi availed first temporary permit on the inter-State route Bhubaneswar to Haldia and back in respect of his vehicle No. OR-22-B-1557 on 25.01.2008 which was valid from 27.01.2008 to 24.5.2008. The departure timing of his bus at Cuttack was 20.00 hours. Since the timing allotted to opposite party No. 3 at 20.00 hours at Cuttack was in between the two services of the Petitioner i.e.

between 19.55 hours and 20.20 hours, the Petitioner filed an objection before opposite party No. 2-Secretary, S.T.A., Orissa and the latter vide his order dated 11.3.2008 passed an order for issuance of notice for cancellation of the temporary permit issued to opposite party No. 3 on 25.01.2008. Thereafter opposite party No. 3 took N.O.C. and did not apply for any permit after 24.5.2008. After a lapse of 11/2 years, opposite party No. 3 again applied for temporary permit in respect of another vehicle No. OR-22-C-7297 on the said route Bhubaneswar to Haldia in the vacancy of OR-22-B-1557 to which the Petitioner objected. However, opp. party No. 3 managed to obtain the temporary permit by suppression of the objection and changed the Cuttack departure timing from 20.00 hours to 20.10 hours. Thus, opposite party No. 3 obtained temporary permit just 10 minutes before the timing allotted to the Petitioner. The Petitioner again filed objection which was registered as Misc. Case No. 17 of 2009. After hearing the parties, the Chairman, S.T.A. vide his order dated 19.12.2009 directed opposite party No. 3 to avail the last available time slot after the Petitioner from both sides. Accordingly, office order was issued with revised timings of services of opposite party No. 3 on 19.03.2010. Opposite party No. 3 challenged the said order dated 19.12.2009 in M.V. Revision No. 3 of 2010 before the State Transport Appellate Tribunal (in short, "S.T.A.T."). Subsequently, on 13.05.2010 opposite party No. 3 withdrew the revision petition and filed a petition before opposite party No. 1 to grant temporary permit with revised timing and the latter on 20.05.2010 granted temporary permit for 119 days to opposite party No. 3 on the inter-State route Bhubaneswar to Haldia with Cuttack departure at 20.00 hours by reviewing its own order dated 19.12.2009. The Petitioner challenged the review order of opposite party No. 1 dated 20.05.2010 before this Court in W.P.(C) No. 11716 of 2010, but withdrew the same on 22.7.2010 to avail alternative remedy by way of appeal. Thereafter the Petitioner filed M.V. Appeal No. 6 of 2010 before S.T.A.T. After hearing learned Counsel for the parties vide its order dated 12.10.2010 the S.T.A.T. quashed the said review order dated 20.5.2010. Further case of the Petitioner is that during pendency of M.V. Appeal No. 6 of 2010 before the Tribunal, opposite party No. 3 applied for subsequent temporary permit on the said inter-State route Bhubaneswar to Haldia on 23.8.2010 before the Secretary S.T.A., who vide his order dated 26.8.2010 granted temporary permit to opposite party No. 3 for 119 days to be effective from 8.10.2010 till 3.2.2011. Being aggrieved by the said order dated 26.8.2010 passed by opposite party No. 2, the Petitioner has filed this writ petition.

3. Mr. H.P. Mohanty, learned Counsel for the Petitioner submits that the impugned order dated 26.8.2010 passed by opposite party No. 2 is prima facie illegal and without jurisdiction. The Secretary, S.T.A. is not empowered under the statute to grant timing in respect of inter-State services and therefore, the grant of permit and timing to the services of opposite party No. 3 is beyond his power and competence. Placing reliance on Section 72 read with Section 80(2) of the M.V. Act, 1988, Mr. Mohanty vehemently argued that it is only the S.T.A. who has

power to grant permit and assign timings. The S.T.A. constituted u/s 68 cannot also delegate its powers and functions to any member of the authority constituted by the Government for the reason that a delegate cannot re-delegate the power. Therefore, the order dated 26.8.2010 under Annexure-1 and temporary permit and order dated 31.8.2010 under Annexure-2 are null and void and liable to be quashed. Alternatively, it was argued that even if the S.T.A. is empowered to delegate its power to Chairman or Secretary under Rule 41 of the O.M.V. Rules, then also opposite party No. 2-Secretary, S.T.A. is not conferred with powers to grant permit on inter-State route and S.T.A. is only empowered to grant permit on inter-regional routes. The action of opposite party No. 2 speaks itself the mala fide intention for granting the permit on 31.8.2010 in favour of opposite party No. 3 for the period from 8.10.2010 to 03.02.2011 while the current permit was subsisting till 7.10.2010 and the S.T.A.T. fixed the date of hearing to 5.10.2010. The grant of successive temporary permit to opposite party No. 3 is contrary to Section 87 of the M.V. Act.

4. Learned Counsel appearing for opposite party Nos. 1 & 2 supports the impugned order passed by the Secretary, S.T.A.

5. On the rival contentions raised by the parties, the following questions fall for consideration by this Court.

(i) Whether the Secretary, S.T.A. is competent to pass order/permit under Annexures-1 and 2 granting temporary permit to opposite party No. 3 on inter-State routes?

(ii) What order?

6. At this juncture, it is felt necessary to refer to the order of this Court dated 04.08.2010 passed in W.P.(C). No. 11320 of 2010. The relevant portion of the said order is quoted below.

...the authority for grant of permit including assigning timing vests with the S.T.A. u/s 72 read with Section 80(2) of the Act which expressly confers power upon only the State Transport Authority. Sub-section (2) of Section 80 does not state that the State Transport Authority constituted by the State Government u/s 68(1) shall delegate its power to its Member-Secretary under Rule 41 on the basis of Section 68(5). In this view of the matter, Section 68(5) and Rule 41 cannot be pressed into service unless the provisions of Section 80(2) is suitably amended. The R.T.A. or S.T.A. constituted u/s 68 cannot also re-delegate power to any member of the authority constituted by the State Government for the reasons that a delegate cannot re-delegate its power. Therefore, assigning the timings in exercise of power under Rule 75 on the basis of the permit issued in favour of the Petitioner by the Secretary is without jurisdiction. Therefore, it is nullity in the eye of law and is liable to be quashed. On this ground itself the impugned order is accordingly quashed and the writ petition is allowed.

However, we are told that the above said order of this Court is challenged before

the Apex Court and the same is stayed.

7. In course of hearing, it was brought to our notice that S.T.A. in its 193rd meeting held on 12.11.1992 in the office chamber of the Transport Commissioner-cum-Chairman, S.T.A., Orissa delegated certain powers in favour of Chairman, S.T.A. As per Clause (vii) of Item No. 4(A) power has been delegated to Chairman, STA to grant temporary permits up to a period of four months in respect of stage carriage, where the route is interstate one. Sub-clause (ix) of the said Item No. 4(A) delegates power to approve the timing of arrival and departure of stage carriage plying on intra-State routes.

8. Since the aforesaid order of this Court dated 04.08.2010 is stayed till that Civil Appeal is disposed of by the Apex Court, the Chairman, STA may exercise the power to grant temporary permit in respect of stage carriage where the route is an interstate route.

9. In the fact situation, the matter is remitted to the Chairman, STA with a direction to give opportunity to the Petitioner and the private opp. party and pass order in accordance with law within a period of four weeks from today. Till then the existing timings allotted to the Petitioner vide order dated 19.12.2009 passed in Misc. Case No. 17 of 2009 shall be in force. Liberty is given to both parties to raise all the legal and factual contentions before the Chairman, STA who shall examine the same and pass a reasoned order.

10. With the above observation, the writ petition is disposed of.