

(1966) 01 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 23 of 1966

Surguja Raigarh Roadways (P) Ltd.

APPELLANT

Vs

Regional Transport Authority and Others

RESPONDENT

Date of Decision : 31-01-1966

Acts Referred:

Motor Vehicles Act, 1939 — Section 46, 54, 62

Citation : AIR 1967 MP 5 : (1966) 11 MPLJ 376

Hon'ble Judges : R.J. Bhawe, J; K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; R.K. Tankha, for the Respondent

Final Decision : Allowed

Judgement

Pandey, J.

This is a petition under Articles 226 and 227 of the Constitution to call up and quash by certiorari-

(i) an order dated 29th November 1966 whereby the Regional Transport Authority, Bilaspur (respondent 1) decided to grant to Durga Motor Service (respondent 2) a temporary permit for the Ambikapur-Ramanujganj route;

and

(ii) the temporary permit issued in pursuance of the aforesaid order.

The facts giving rise to this petition are these. The petitioner and other operators held several permits for the Ambikapur-Ramanujganj route. One such permit was granted to me Janta Transport Co-operative Society Ltd. but, upon its expiry, it was not renewed. The Regional Transport Authority, Bilaspur, therefore invited applications for granting instead a new permit. Several persons, including the Durga Motor Service (respondent 2), applied for the permit. It transpired that, on 21 November 1965, the Secretary, Regional Transport Authority, Bilaspur

(respondent 3), recorded a note to the effect that only two of the seven services operating on, or covering, the route Ambikapur-Ramanujganj were operating regularly and that, on account of the irregular operation of the other services, the travelling public was "facing difficulties". The Secretary, however, made it clear that applications had been invited, and had already been filed, for a new permit for the route in place of the one which was formerly held by the Janta Transport Co-operative Society Ltd.

On the basis of this note, the Regional Transport Authority, Bilaspur, passed on 29th November 1965 the impugned order which is reproduced below:

"From the facts mentioned in the note of the Secretary dated 21-11-65, it is clear that a temporary curtailment in the transport facilities available to the travelling public on the Ambikapur-Ramanujganj route has taken place. While the Secretary must immediately move by issuing show cause notices against the operators who are reported to be irregular in the maintenance of their permits on this route, the matter about introducing additional trips on this route on a regular basis for which orders declaring scope and inviting applications have already been issued, must be expedited. It is learnt that there is great movement on this route in the present open weather and there is also considerable activity connected with the refugee camps which have come up at points on this route in the recent past.

In these special circumstances, a particular need of a temporary nature have clearly arisen which would warrant issue of a temporary permit to provide additional transport facilities for sometime if least. If the applicant Durga Motor Service is in a position and desirous of undertaking operations for a period of four months, a temporary permit for this period needs to be sanctioned in their favour."

The petitioner, who is an existing operator on the route, has called in question this order on the ground that, in view of the first proviso to Section 62 of the Motor Vehicles Act, 1939, no temporary permit could be granted in respect of any route specified in an application for the grant of a new permit so long as that application remains pending.

Having heard the counsel, we have formed the opinion that this application must be allowed. The learned counsel for the respondent 2 does not contest the position that, when an application for a new permit is pending in respect of any route, the first proviso enacts that no temporary permit can be granted in respect of that route. Even apart from the concession, the position is not in doubt and is indeed settled by numerous decided cases of this Court one of which is *Shree Ram Khanna v. Ramgopal* Misc. Petn. No. 53 of 1961 D/-28-4-1961 (MP).

It is, however, urged that the first proviso should be restricted in its application to the "vacancy" to fill which applications for a new permit have been made and should not be construed as embracing within its ambit a particular temporary

need arising, at in this case, independently of such vacancy on account of irregular operation of other existing permits granted for the same route. The first Proviso, reads:

"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 40 or Section 54 during the pendency of the application:"

It is not possible to read the plain language of this proviso in the sense contended for because what is clearly prohibited is the grant of a temporary permit "in respect of any route or area specified in an application for the grant of a new permit" and not merely one which may be given for the vacancy to fill which that application has been made. In our opinion, the proviso has been enacted to prevent nepotism and undue favour to one of the competing claimants to the disadvantage of others. So, in *Hari Narain Rao v. Regional Transport Authority, North Bihar, Muzaffarpur* ILR Pat 281 : (AIR 1950 Pat 248) the Patna High Court observed:

"It is not unlikely that in the absence of such restriction, although several persons might have put in applications for permanent permits, one of them might be undoubtedly favoured by the authority and given temporary permits from time to time and to the detriment of other applicants. This will prevent expeditious disposal of the applications and cause unnecessary prejudice to the other applicants."

We must not place upon the first proviso a construction, not warranted by the words therein employed, which will promote nepotism and favouritism. In our opinion, the impugned order is one the making of which is prohibited by that proviso and it cannot, therefore, be sustained.

In the view we have taken, this petition succeeds and is allowed. The order dated 39th November 1966 and the temporary permit granted to the respondent 2 are quashed. The respondent 2 is directed to bear its own costs and pay those incurred by the petitioner to whom the security amount shall be refunded. Hearing fee Rs. 100/-.