

(1958) 11 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1482 of 1958

Taini Mal Bhopat Ram

APPELLANT

Vs

State Transport Authority, Lucknow and Others

RESPONDENT

Date of Decision : 26-11-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 60(1), 64A

Citation : AIR 1959 All 495

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : B.N. Katju, for the Appellant; R.S. Pathak and N.D. Pant, Junior Standing Counsel, for the Respondent

Judgement

S.S. Dhavan, J.—This is a petition under Article 226 of the Constitution impugning the legality of certain proceedings initiated by the State Transport Authority, Lucknow, against the petitioner by means of a notice calling upon him to show cause why a permit granted to him by the Regional Transport Authority, Kumaun Region, should not be revised by the State Transport Authority. The facts, as stated in the affidavit supporting the petition, are these. The petitioner firm was sanctioned a private carrier's permit by the Regional Transport Authority, Ku-maun Region by a resolution dated 16-8-1956, In pursuance of this resolution a private carrier's permit was actually issued to the petitioner on 15-10-1956. It appears that the petitioner continued in uninterrupted enjoyment of the rights and privileges under this permit for more than a year. But on 10-2-1958, he received a notice referred to above. The date of the notice is 6-2-1958. The petitioner sent a reply to the notice denying the allegations made in the notice. It is not necessary to give a detailed account of what transpired before the State Transport Authority after the petitioner firm had filed its explanation in response to the notice.

2. Aggrieved by the initiation of the proceedings for the revision of its permit

the petitioner has come to this court under Article 226 of the Constitution.

3. The replication is opposed by the State on whose behalf a counter affidavit has been sworn by the Assistant Transport Commissioner (Administration) Lucknow. It is also opposed by the Ku-maun Motor Owner's Union, which was given special permission to do so, on an application made by it and allowed by the court under Chapter XXII, Rule 5 of the Rules of this Court.

4. The case on behalf of the petitioner Company and on behalf of the respondents was argued with ability respectively by Mr. B. N. Katju. Mr. R. S. Pathak and Mr. N. D. Pant, Mr. B. N. Katju's arguments were these; The State Transport Authority had issued this notice u/s 64-A of the Motor Vehicles Act which came into effect on 16-2-1957. But the order which that authority seeks to revise was passed long before the enactment of the Section. According to Mr. B. N. Katju the new Section gives no power to the State Transport Authority to revise any orders which had been passed and had become final before the date of the commencement of this Section. Mr. B. N. Katju further argued that, even if it is conceded that the revisional power of that Authority extends to orders passed before the passing of the Section, it does not include the power to take fresh evidence and convert itself into a tribunal of original jurisdiction. The State Transport Authority could only look into the record as it is and decide whether the order of the lower tribunal is improper or illegal. Thirdly, he contended that the State Transport Authority could not, in the exercise of this new revisional jurisdiction, issue a notice on the petitioner virtually calling upon it to show cause why the permit should not be revised on the ground that it had been obtained by fraud or mis-representation. He relied on the title of the notice (Annexure "A" to the petitioner's affidavit) which is: "Subject:-- Notice u/s. 60D of the Motor Vehicles Act, 1939". Mr. B.N. Katju also contended that the notice is vague and ambiguous as it does not make clear whether the petitioner is being proceeded against u/s 60D* or u/s 64-A of the Act. Both these Sections are mentioned in the notice, the first in the title and the second in the body of the notice.

5. As stated above, Mr. B. N. Katju's arguments were answered at great length by Messrs Pathak and Pant. But it is necessary for me to cover the entire ground raised at the bar, for I am satisfied, on a reading of this notice, that it is both vague and ambiguous and has in fact misled the petitioner.

On a previous day learned counsel for the state (not Mr. Pant) stated, on a question from me, that he was not in a position to state whether the notice: was meant to be u/s 60-D or u/s 64-A. But he argued that the notice was capable of being interpreted as one u/s 64-A. He conceded that the notice was somewhat unhappily worded, but contended that it was capable of bearing the interpretation that the State Transport Authority had called upon the petitioner to show cause why the permit issued to him should not be revised on the ground that the nature and the extent of the petitioner's business, as revealed from a perusal of the record of the petitioner's case, did not justify the order of the Regional Transport Authority granting the permit. Learned counsel pointed out

that the notice itself shows that the State Transport Authority had, after a perusal of the record of the petitioner's case, felt that there was a prima facie case that the order granting the permit was improper. It is not necessary for me to decide whether the notice is capable of bearing this interpretation. Perhaps it is. But the real question is whether it is also capable of bearing an alternative interpretation, and whether the petitioner was led to believe and bona fide did believe, that he had been asked to explain why his permit should not be cancelled on the ground that he had obtained it by fraud or mis-representation, I have already referred to the title of this notice which says that it was being sent u/s 60(D). The third paragraph of the notice appears to support the interpretation that the Authority had asked the petitioner to produce evidence at its next sitting to rebut the charge of fraud or mis-representation. The details of the evidence required by the Authority had been specified -- Account books, Stock books, Cash Books, Ledgers, Invoices, Bill Books, Receipt Books and Books containing entries about the payment of sales tax and other accounts maintained by the petitioner in connection with his alleged business. This created, according to Mr. Katju, an impression in the mind of the petitioner that the Authority would take fresh evidence in the proceedings initiated by the notice. The petitioner's advisers, therefore thought that these proceedings could not be in the exercise of revisional jurisdiction u/s 64-A which does not give the Authority any power to call for fresh evidence or convert itself into a tribunal of original jurisdiction. Therefore, the explanation sent by the petitioner, on advice, was in the nature of a defence against the charge of fraud and mis-representation. A copy of the petitioner's explanation is attached as Annexure "B" to the affidavit filed on his behalf. It is a somewhat longish document which contains the following summing up of the petitioner's case at the end of the last paragraph :--

"Thus it will be clear that there was no fraud or mis-representation on our part while obtaining the permit or thereafter."

I am, therefore, of the opinion that the vague and ambiguous language of the notice did in fact lead the petitioner to believe that he was asked to defend himself against the charge of having obtained his permit by fraud or mis-representation.

7. The vagueness and ambiguity in the notice has not been cleared even today. Learned Standing counsel made it quite clear, in spite of repeated questions from me, that he was not prepared to make a statement that the notice was one u/s 64-A in the exercise of its revisional jurisdiction and was not meant to be one u/s 60(D) of the Motor Vehicles Act.

8. The next question is whether the petitioner is entitled to any relief at this stage because he has received a notice which is vague and ambiguous. It was contended on behalf of the State that the petition is premature and that the petitioner should make a representation before the State Transport Authority complaining against the vagueness of the notice and asking for further particulars. There are two answers to this argument. First, there is no reason

why the petitioner should subject himself to the discretionary power of the State Transport Authority which may or may not grant his application for further particulars. If his request is refused, the result may very well be that his permit may be cancelled on the ground that the order of the Regional Transport Authority was improper. I do not see why the petitioner should be exposed to the risk of losing a permit which enables him at present to carry on a trade the right to which is guaranteed as a fundamental right under Article 19 of the Constitution. Secondly, the notice itself makes it compulsory for him to submit an explanation in reply to it. The petitioner has already sent an explanation which appears to have been drafted under the impression that he had to defend himself against the charge of obtaining the permit by fraud and misrepresentation. The State Transport Authority has warned him clearly in the notice that his explanation, together with the other facts, will be considered by it at the next meeting before deciding this case. Under the position, as it stands at present, that Authority has reserved to itself the right to decide the case on the basis of the explanation submitted by the petitioner, whatever be its worth. But, as I have stated above, the petitioner has not really submitted any satisfactory defence against the case that the order of the Regional Transport Authority was improper. So far he has been defending his own conduct and not that of the Authority which granted him, the permit. The result will be that, when the case comes up for decision before the State Transport Authority, there will be no proper explanation by the petitioner before them, assuming that the proceedings are intended to be in the nature of a scrutiny into the propriety of the order of the Regional Transport Authority granting the permit.

9. It was contended that the petitioner is not entitled to any relief at this stage when the proceedings have not concluded. Learned counsel for the State urged that the petitioner should wait until after the passing of any final orders in these proceedings. If the decision is against him and he feels that it is illegal he can come to this court under Article 226 of the Constitution and ask for the quashing of that order. I am not impressed by this argument. I see no reason why the petitioner should not be given relief if he has made out a case that the notice, which has initiated these proceedings, is vague and ambiguous and has placed him under a severe handicap in his defence. The courts, both in England and in this country, have not hesitated to issue a writ of certiorari even in the middle of proceedings in appropriate cases. In *Rex v. Postmaster General* (1928) 1 KB 291 a certificate by a Doctor was quashed though it was given during certain proceedings in which no final order has been passed. Replying to the argument that the court should not issue a writ of certiorari because the certificate in itself affected no right of the petitioner, Lord Hewart CJ. observed as follows:-

"There was a moment in this case when it was argued that the document was of such a kind as not to be proper for the writ of certiorari. But I am satisfied, when I look at the part which a certificate of this nature must play "in the making of any claim for compensation by a post office worker suffering from telegraphists" cramp, that "the certificate of the certifying" surgeon is of the nature of a

judicial act, and is a fit subject for certiorari," He further observed:

"The argument which has been urged against this rule on this point is that even though it be assumed that Colonel Prynne's so-called certificate is a mere nothing, nevertheless Mrs. Carmichael is not damnified, because she can appeal to the medical referee as if there had been a refusal to give a certificate. I do not think that is the true view. This section, in my opinion, assumes that one of two things has happened: either that there has been a refusal to give a certificate, in which case the medical referee starts with a clean sheet, or that if there has been a certificate granted it has been a certificate granted by some one who was authorised to grant it. I do not think that it was contemplated at all that the judgment of the medical referee should in the smallest degree be fettered or influenced by a certificate given by a wholly unauthorised person, and I do not think that Mrs. Carmichael would be in the same position before the medical referee as that in which she would have been if there had been a refusal on the part of the proper officer to give her any certificate at all. This certificate, made as it is, if it is not correct, may very well have a misleading effect. I do not think, therefore, that the argument that the beneficial remedy of appeal is open is at all fatal to the applicant for this rule."

10. In the case of *Rex v. Boycott* (1939) 2 K.B. 651 a certificate as to the mental deficiency of a boy was quashed even though it did not affect any right of the petitioner and could only be made the basis of further proceedings against him. In issuing the writ quashing this certificate Lord Hewart, C.J. observed as follows:-

"In my opinion, on the facts of this case, this certificate of October 5, 1938, created in the way in which we know that it was created, purported to be and to look like the decision of a quasi judicial authority, and I think that similar considerations apply to the two documents, one also dated October 5, and the other dated October 10, which it is contended (and I think rightly contended) and to be regarded as part and parcel of one and the same transaction. I think that these three documents do come within the range of the jurisdiction of this Court in certiorari."

11. This Court, too, has not hesitated to issue writ of certiorari quashing a notice served on a member of a Municipal Board asking him to show cause why his membership should not be terminated. The ground for issuing the writ in such cases was that the notice was vague or that it made out no case under the statute empowering the Government to take action against the member.

12. In the present case the petitioner is entitled, under the very Section which vests the State Transport Authority with the power to revise the order granting him a permit, to a reasonable opportunity of being heard before his permit is revised. The language and contents of the notice are vital to him, as they are intended to disclose the charge against him. But if the notice itself is vague and ambiguous, the petitioner will be under a handicap throughout these proceedings

and will not have a reasonable opportunity of being heard in defence.

13. It was held by this court in *Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others*, that a man must not be deprived of his property or of his right to carry on his business without being given an opportunity of being heard. In that case the petitioner's license to sell cotton cloth was not renewed without giving him any opportunity to explain the allegations which were made against him. In quashing the offending order Mootham, J. reviewed the case law and observed as follows :

"I think these cases are. as I have said authority for the salutary principle that a man must not be deprived of his property without being given the opportunity of being heard. But does a man's property stand to this respect on a special and exclusive footing? I cannot see in principle why that should be so. The loss of a man's right to carry on his business may be no less serious in its consequences than the loss of his property; and under the Constitution the right to hold property and the right to carry on a business are equally fundamental rights possessed by every citizen. If there be authority --as I think there is, founded upon the plainest principles of justice -- that in the absence of statutory provisions to the contrary) a man be not deprived of his property without being heard, I can see no reason why that principle should not be applied to the protection of another fundamental right, namely the right to carry on business."

The principles enunciated by Mootham, J. fully apply to the facts of this case. It is sought to de-privé the petitioner of his right to carry on his trade. The statute which gives the power to the State Transport Authority does not dispense with the obligation to hear the petitioner. On the contrary the proviso to Section 64-A expressly enjoins that no order should be passed under this Section prejudicially to any person without giving him a reasonable opportunity of being heard. The notice which has been served on him does not properly disclose the case against him. Therefore, whatever shape the proceedings may take in the future, the petitioner will be under a handicap throughout and be in the position of a man fighting a danger of which he is not fully conversant.

14. I, therefore, hold that the vague and ambiguous language of the notice is in violation of the second proviso to Section 64-A. I am also of the opinion that the proceedings initiated by this notice should be quashed,

15. I, therefore, direct the issue of a writ restraining the State Transport Authority from continuing the proceeding initiated against the petitioner by its notice No. 383/266 (A) STA/57 dated 6-2-1958, (Annexure "A" of the affidavit supporting the petition.).

16. I would like to make it quite clear that the issue of this writ does not preclude the State Transport Authority from initiating fresh proceedings against him after a proper notice according to law. In the circumstances of this case there will be no order as to costs.

17. This is an application on behalf of the Kumaun Motor Owners" Union for permission to appear and be heard, in opposition to this petition.

18. There are eight connected writ petitions. In one of them, petition No. 1485 of 1958, the application of the present applicants was allowed after hearing both the parties.

19. A similar order shall govern this application which is allowed.