
(1971) 08 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2380 of 1971

The Punjab Transport Co-operative Society Ltd.	APPELLANT
Vs	
The State Transport Commissioner, Punjab, Chandigarh and Another	RESPONDENT

Date of Decision : 31-08-1971

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 62
Punjab Motor Vehicles Rules, 1940 — Rule 4. 64 A, 4. 64 A(1), 4. 64 A(2)

Citation : AIR 1972 P&H 167

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Judgement

1.This order will dispose of two connected petitions, that is, C. Ws. 2046 of 1970 and 2380 of 1971. The petitioner, which is also a co-operative society, engaged in the business of carrying passengers in its motor vehicles, has been operating its service on the Amritsar-Bhatinda route since 1963, under a permit granted by respondent No. 1, the State Transport Commissioner, Punjab. This permit authorised the petitioner to operate half return trip every day on the aforementioned route. A similar permit had been granted to Messrs Sandhu Roadways since 1963. In 1967, applications for regular permit on the said route were submitted by the petitioner as well as various other parties including Sandhu Roadways. One regular permit each with half return trip daily was granted to the petitioner-society as well as to the Sandhu Roadways in October, 1967. Some other persons (not respondent No. 2) were also granted permits on the same route. What, however, happened was that Sandhu Roadways was not able to take out the permit granted to it as it could not produce any road-worthy vehicles. On petitioner's application for being granted the permit originally given to Sandhu Roadways, respondent No. 1 acceded to that request and granted a temporary permit for four months from March 30, 1968 to the petitioner on the condition that if at any time during the period of the validity of the said temporary permit the Sandhu Roadways produced the vehicles with valid

certificate of fitness, the said Roadways would be entitled to the permit to ply half return trip on the route in question, according to the directions which had been issued by this Court, and the temporary permit granted to the petitioner would lapse with effect from that day.

The petitioner operated the said permit from March 30, 1968 to July 6, 1968, as Sandhu Roadways produced vehicles with valid certificates of fitness on the last mentioned date. After the expiry of the period of that permit, Sandhu Roadways again failed to produce vehicles with valid certificates of fitness and the petitioner society was again granted a temporary permit to ply on the route in question vide order of respondent No. 1 dated November 4, 1969 (copy Annexure "A"). Thereafter, the permit in question (the one originally granted to Sandhu Roadways) was granted on temporary basis to the petitioner in succession till the last such permit which expired on June 30, 1970. On July 1, 1970, that permit was granted to respondent No. 2 which is also a transport co-operative society. This is said to have been done without affording any opportunity of being heard to the petitioner and in spite of the fact that the Secretary, Regional Transport Authority, Jullundur recommended the petitioner's case for the grant of that permit.

The validity of the order dated July 1, 1970 was challenged by the petitioner in C. W. 2046 of 1970. Operation of the order impugned in that case was stayed by the learned Vacation Judge on July 7, 1970, in so far as the order concerned the petitioner. While admitting the writ petition on July 31, 1970, the Motion Bench continued the operation of the stay order. In the resultant position neither respondent No. 2 nor the petitioner operated the temporary permit granted on July 1, 1970, till it automatically expired on November 1, 1970. Mr. J. S. Wasu. the learned senior counsel for the petitioner, states that C. W. 2046 of 1970, has in these circumstances become infructuous and is, therefore, not being pressed and may be dismissed.

2. On May 13, 1971, a temporary permit was granted in favour of respondent No. 2 on the route in question without giving any notice to the petitioner and without affording the petitioner any opportunity of being heard in opposition to the proposed grant or in favour of possible claim for the permit which could be made by the petitioner. Annexure "B" to the writ petition is a copy of the order dated May 13, 1971, which is being impugned in C. W. 2380 of 1971. The only ground on which this petition has been pressed before me is that since the petitioner was an existing operator on the route in question, he was a person interested in the route permit and there being no extraordinary urgency about the matter the impugned quasi-judicial order granting the temporary permit has been passed in violation of the principles of natural justice as it has been passed without affording the petitioner, who was likely to be affected prejudicially by the order, any opportunity of being heard.

He has placed reliance in this connection on the answer returned by a Full Bench of this Court in The Regional Transport Authority, Patiala and Another Vs.

Gurbachan Singh, to the question whether it is or it is not necessary to give notice of the proposed grant of a temporary permit, as a matter of law, to all persons interested in the grant of permit u/s 47 of the Motor Vehicles Act, 1939. While returning the answer to the above question in the negative, the Full Bench held that though the statutory law does not require any notice to be issued to any party before granting a temporary permit u/s 62 of the Act, it does not preclude or forbid the Transport Authority from issuing a notice or considering the representations, if any, which are made by the interested parties. It was held that considering the fact that the proceedings relating to the grant of a permit are of quasi-judicial character and the same must be conducted in consonance with the rules of natural justice, which rules are not excluded by Section 62, in cases where the temporary need is not immediate or of a pressing urgent nature and there is time to hear the person already providing transport facilities along or near the route or area for which the temporary permit is intended to issue it is not only expedient but proper that a notice should be issued to such persons as to afford them an opportunity of making representations and a hearing for the consideration thereof before the temporary permit is granted. In the instant case, the previous permit, the validity of which has been questioned in C. W. 2046 of 1970, had come to an end on November 1, 1970. No temporary permit in lieu thereof was granted till the impugned order was passed on May 13, 1971. This shows that the need for granting the impugned permit was not of a pressing urgent nature or such a temporary need which would have been rendered illusory or meaningless, if opportunity of being heard had been granted to the petitioner. No affidavit has been filed by respondent No. 2 suggesting any such urgency.

Mr. Sukhdev Khanna, the learned counsel for respondent No. 1 submitted that a return had been filed by the State on August 20, 1971. On enquiry being made from the office, it has transpired that an affidavit of the Secretary Regional Transport Authority, Jullundur, sworn on August 26, 1971 has been filed in the office with covering letter dated August 30, 1971. Strictly speaking, the said return cannot be taken into consideration as it was not filed at least two days before the returnable date and no advance copy of it has been served on the counsel for the petitioner till today. Even in that affidavit, however, no ground of such urgency as would justify making an exception to the rule referred to in the aforementioned judgment has been made out. Mr. Bhagirath Dass states that I should take into account for deciding this case (C. W. 2380 of 1971) the written statement filed by respondent No. 2 and by the State in C. W. 2046 of 1970. Merely because, the two petitions are being disposed of in one judgment, the written statement filed in one cannot be read in the other. Since C. W. 2046 of 1970 has not been pressed and no arguments have been advanced therein, I am unable to consider the contents of the second-respondent's return in that case for deciding the subsequent petition. Moreover the affidavit in reply to C. W. 2046 of 1970 was concerned with and could deal only with the question of necessity at the time of issuing the earlier temporary permit in July, 1970, and

not with the urgency of the situation in May, 1971.

3. It has been stated that no fresh permit has been granted to respondent No. 2 but simply alternative arrangements for operation of services on the route, in question have been made under Rule 4. 64 A(2) of the Punjab Motor Vehicles Rules, 1940, in view of public convenience as the Sandhu Roadways had not been running its service for the last two years. The learned State counsel has not been able to point out to any such rule as is referred to in the return and in the impugned order. Even Mr. Bhagirath Dass, the learned counsel for respondent No. 2 states that he has not been able to lay hands on any such rule. Mr. J. S. Wasu, the learned senior counsel for the petitioner, has, however, stated that such a rule is in existence and the same reads as below:--

"4. 64 A(1) If the holder of a Stage carriage permit is at any time tenable to ply his vehicle for any cause whatsoever in accordance with the time table approved by the Regional Transport Authority he shall forthwith send an intimation about the same to the Regional Transport Authority by which the permit was issued as well as to the nearest Deputy Commissioner or the Sub-Divisional Officer.

(2) On receipt of a report under sub-rule (1) the Regional Transport Authority may make such alternate arrangements as it may think fit."

It has not been shown if the Sandhu Roadways had sent any intimation about its inability to ply their vehicles on the basis of the regular stage carriage permit which had been granted to them in October, 1967. It has been stated orally before me that the said permit was for three years. If that is correct, the permit had expired in October, 1970 and Sandhu Roadways could not be said to be holding any stage carriage permit against which the company was unable to ply its vehicles. On this basis, it was sought to be argued that Rule 4. 64-A has no application to the case. Since this point was not taken up in the writ petition and the respondent had not had an opportunity to deal with the same even in its belated return, I do not consider it proper to decide the same.

4. Mr. Bhagirath Dass has stated that it may not be understood by respondent No. 1 that if the question of grant of permit on the route in question is considered after due notice to the interested persons, the petitioner has in any way been held to have a better claim than respondent No. 2. No such thing is intended to be conveyed by me. Who, out of the parties before me or any other persons operating on the route, has a better claim is a matter to be decided by the competent authority in accordance with law. The temporary permit impugned in the subsequent writ petition is to expire on September 13, 1971. No stay order was granted to the petitioner during the pendency of this petition. Mr. Bhagirath Dass submits that though I may quash the impugned order on the grounds referred above, I may allow his client to operate the permit for the original duration of the permit. Adopting such a course would amount to directing the second respondent to run a service without permit. Once the permit is quashed, it is not possible for this Court to state that notwithstanding the

annulment of the order under which the permit was granted, the operator shall still be permitted to operate on the basis of the quashed permit. I am, therefore, unable to accede to this request.

5. For the foregoing reasons, this petition (C. W. 2380 of 1971) is allowed and impugned order of respondent No. 1 dated May 13, 1971, directing the grant of a temporary permit to respondent No. 2 for four months is quashed. In the circumstances of the case, no order is made as to costs. C. W. 2046 of 1970 is dismissed as infructuous without any order as to costs.

6. Petition allowed.