

(1961) 08 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 349 of 1960

The S.H. Motor Transport Co.

APPELLANT

Vs

The Regional Transport Authority and Another

RESPONDENT

Date of Decision : 21-08-1961

Acts Referred:

Central Provinces and Berar Motor Vehicles Rules, 1942 — Rule 61
Motor Vehicles Act, 1939 — Section 43(1), 45, 57, 58, 63(3)
States Reorganisation Act, 1956 — Section 110, 121

Citation : AIR 1962 MP 59 : (1962) 7 MPLJ 65 : (1962) MPLJ 65

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen and A.H. Saifi, for the Appellant; H.L. Khaskalam, for the Respondent

Final Decision : Allowed

Judgement

Pandey, J.

This order shall also govern the Prathat Transport Company (Private) Limited v. The Regional Transport Authority, Bhopal, M. V. no. 67 of 1961, Shri Balwant Regular Motor; Service v. The Regional Transport Authority, Bhopal, M.P. No. 68 of 1961, Messrs. Sajandas and Jivandrai Company v. The Regional Transport Authority, Bhopal M.P, No. 78 of 1961, The Berar Regular Motor Service, Achalput v. The Regional Transport Authority? Bhupal, M. P. No. 79 of 1961, and The Shriram Bus Service (India) Private Ltd. v. The Regional Transport Authority, Indore, M- P. no. 152 of 19.61.

These petitions are directed against certain orders passed by the Transport Authorities of the new State of Madhya Pradesh. They were heard together because the common question involved in all these cases is whether the Regional Transport Authorities of Bhopal and Indore, as constituted after the commencement at the States Reorganisation Act, 1956, were bound to entertain applications for the renewal of permits granted before its commencement by the

Regional Transport Authorities at Nagpur and Amravati for certain routes which formerly lay wholly in the old State of Madhya Pradesh but which after such commencement became inter-State routes lying partly in the Bombay State (now the State of Maharashtra) and partly in the new State of Madhya Pradesh.

The facts of these cases may be briefly stated : Miscellaneous Petition No. 349 of 1960 : The petitioner held three stage carriage permits granted by the Regional Transport Authority, Nagpur, two (being permits Nos. 11/51 and 12/53) for the Nagpur-Itarsi via Pandhurna route and one for the Nagpur-Betul via Pandhurna route. After the formation of the new State of Madhya Pradesh, the Regional Transport Authority, Bhopal, was constituted and it countersigned these permits on 12th April 1958. The petitioner applied in due time to the Regional Transport Authority, Nagpur, for the renewal of the permit No. 12/53 expiring on 31st March, 1960. It was intimated that, since under a reciprocal agreement between the two concerned States, the inter-State route was allotted to the new State of Madhya Pradesh, it should apply for renewal to the Regional Transport Authority concerned of that State. Accordingly, the petitioner applied for the renewal of that permit and also for a fresh grant to the Regional Transport Authority, Bhopal. It was intimated by the Secretary of that Authority by a telegram dated 23rd February, 1960, that its application was filed. Even before that, on 13th February 1960, that Authority had invited fresh applications for the grant of a permit for that route. The petitioner appealed against the so-called order dated 23 February, 1960, but the State Transport Appellate Authority dismissed it on 19th March, 1960, holding that, while the petitioner's application for a fresh permit had to be dealt with and disposed of on merits, its application for renewal could not obviously be considered after the reciprocal agreement between the two States took effect. In regard to the petitioner's applications for the renewal of the other two permits, the Secretary of the Regional Transport Authority, Bhopal, intimated to it by communications dated 6th October, 1960, and 26/31 October, 1960, that they were filed because they were not maintainable under Rule 61 (a) of the Central Provinces and Berar Motor Vehicles Rules, 1942. On 21 November, 1960, the Regional Transport Authority ratified this action of the Secretary,

Miscellaneous Petition No. 67 of 1961: The petitioner held three stage carriage permits granted by the Regional Transport Authority, Amravati, for the Anjangaon-Betul, Paratwada-Betul and Paratwada-Bhainsdehi routes. After the formation of the new State of Madhya Pradesh and in circumstances similar to those present in Miscellaneous Petition No. 349 of 1960, the petitioner applied for the renewal of the permits to the Regional Transport Authority, Bhopal. In each case, the petitioner was intimated by a communication dated 8/9 February, 1961, that the application could not lie because the route had been assigned to the new State of Madhya Pradesh and that the petitioner could, if it so desired, apply for a fresh permit and take a chance.

Miscellaneous Petition No. 68 of 1961: The petitioner held a stage carriage permit granted by the Regional Transport Authority, Amravati, for the Achalpur-

Betul route. Other facts of this case are similar to those in Miscellaneous Petition No. 67 of 1961.

Miscellaneous Petition No. 78 of 1931: The petitioner held a stage carriage permit granted by the Regional Transport Authority, Amravati, for the Akola-Itarsi route. Other facts of this case are similar to those in Miscellaneous Petition No. 67 of 1961.

Miscellaneous Petition No. 79 of 1981: The petitioner held a stage carriage permit granted by the Regional Transport Authority, Amravati, for the Achalpur-Betul via Bhainsdehi route. Other facts of this case are similar to those in Miscellaneous Petition No. 67 of 1961.

Miscellaneous Petition No. 152 of 1961: The petitioner held a stage carriage permit granted by the Regional Transport Authority, Amravati, for the Dharni-Burhanpur route. In circumstances similar to those in Miscellaneous Petition No. 67 of 1961, the petitioner applied for the renewal of its permit to the Regional Transport Authority, Indore, which however informed it by a communication dated 31st May, 1961, that it had to apply for renewal to the Authority which issued the permit.

In these six cases, the petitioners pray that the orders of the Regional Transport Authorities of Bhopal and Indore be quashed by certiorari. Since those Authorities have also treated the routes involved to have fallen vacant and invited, on that basis, fresh applications for permits, the petitioners request for writs of mandamus or prohibition directing those authorities to forbear from continuing so to do. In the first and the last case, the petitioners have asked for a further writ of mandamus, to require the authorities to entertain and consider their applications for renewal.

Only the first five petitions are contested mainly on two grounds. The first is that, since under the reciprocal agreement between the two States, these routes, were allocated to the new State of Madhya Pradesh, it has become entitled to take over these routes and grant permits for those routes to its own nominees. The second is that, under Rule 61(a) of the Central Provinces and Berar Motor Vehicles Rules, 1942, (hereinafter called the Rules), the petitioners had to apply for the renewal of the permits to the Regional Transport Authorities which issued them.

Having heard the counsel, we are of opinion that these petitions must be allowed. Under the reciprocal agreement dated 1st July, 1958, the State of Madhya Pradesh became entitled to take over 37 inter-State routes, including the routes involved in these cases, from the dates of expiry of the permits or countersignatures of the then existing operators in exchange for another 37 like routes allocated to the Bombay State. This was perhaps based on the principle that if the major portion of an inter-State route lay in one State, that State alone should deal with permits required for it. It is implicit in that agreement that, although the other terminus of that route lies in another State it would

refrain from issuing or renewing permits for the route and would also, under the proviso to Sub-section (3) of Section 63 of the Motor Vehicles Act, 1939 (hereinafter called the Act), merely countersign the permits without following the procedure laid down in Section 57 of the Act. Agreements relating to inter-State routes, like the one here, are implicit in the provisions of Section 43(1) and the proviso to Section 63 (3) of the Act. The learned Government Advocate was unable to point out to us any provision of the Act inconsistent with, and therefore impliedly discountenancing, such agreements. He did, however, refer to Rule 61 (a) of the Rules. As we would show in the sequel, that Rule does not stand in the way of the petitioners. That being so, the agreement should be regarded as one contemplated by the Act and, therefore valid.

As shown, the respondents themselves treat the agreement to be valid and seek to justify, upon its strength and efficacy, their action in treating the routes involved in these cases as vacant. In doing so, they do not perhaps realise that their contention that only the issuing authority can renew the permits in these cases is grounded upon an inconsistent position which would in effect undermine the agreement itself. Under Sub-section (2) of Section 58 of the Act, a permit may be renewed on an application made and disposed of as if it were an application for a permit. This means that for the renewal of a permit, unlike the case of a countersignature or the renewal of a counter-signature required to be given by the Transport Authorities of another State as a result of an agreement between two States, the procedure laid down in Section 57 of the Act cannot be dispensed with. It follows that, in spite of the agreement and indeed contrary to its terms, the authority which originally issued the permits must continue to entertain, consider and, where the interests of the public so require, allow new competing applications in the process of renewal. This would be a direct consequence of the contention commended to us for acceptance.

Under Section 110 of the States Reorganisation Act, 1956, all existing permits continued to remain valid and effective subject to the Provisions of the Act. It is implicit in this provision that the existing permit-holders retained the right to apply for renewal u/s 58 of the Act which could not be taken away or impaired by any subsequent agreement entered into between the two concerned States. When, therefore, one of the two States, was, by an agreement, between them, constituted the sole originating authority for certain inter-State routes, the Transport Authorities of that State had to consider, for granting permits for those routes, all just claims, including the claims of those who were entitled to apply for the renewal of the existing permits, and to grant permits, not necessarily to those applying for renewal but to those who in their opinion were best fitted to serve the general public interest.

We would now consider the second ground. Although Section 58 of the Act does not specify the Regional Transport Authority to whom an application for the renewal of a permit may be made, it is obvious that "normally it should be made to the authority which issued the permit. This principle is embodied in Rule

61 (a) of the Rules which reads as follows:-

"(a). Application for the renewal of a permit shall be made, in writing to the Regional Transport Authority by which the permit was issued not less than two months, in the case of a stage carriage permit or a public carrier's permit, and not less than one month in other cases, before the expiry of the permit, and shall be accompanied by Part A of the permit. The application shall state the period for which the renewal is desired and shall be accompanied by the fee prescribed in Rule 55"".

However, if the Rule is interpreted and given effect to literally, permits issued by a Regional Transport Authority like the Regional Transport Authority, Amravati, which is abolished as a result of reconstitution of such Authorities, cannot be renewed at all. Again, if a revenue district forming a Part of the region of a reconstituted or newly constituted Regional Transport Authority was formerly in another region, the permit previously issued by the Regional Transport Authority of that other region must, according to this Rule, continue to be renewed by it. This would be contrary to the principle underlying Sections 45, 48, 57 and 58 of the Act to the effect that a Regional Transport Authority must control the issue of permits for all routes lying wholly within its jurisdiction. We need not elaborate the point further because it is impliedly accepted in paragraph 11 of the return that a successor Regional Transport Authority is competent to renew a permit issued by its predecessor.

It would further appear that the Rule did not postulate the changes which were subsequently brought about by the reorganisation of States, one of them being that many routes, which formerly lay wholly within one State became inter-State, routes. So far as inter-State routes are concerned, it is permissible u/s 121 of the States Reorganisation Act, 1956, to modify the language of the Rule with a view to making it applicable to the changed circumstances created by that Act. In our opinion, the Rule should be construed, if necessary, by modifying its language to provide for these abnormal cases also. The expression "The Regional Transport Authority by which the permit was issued", when so construed, would include "The Regional Transport Authority which, is authorised to issue the permit"". We also think that the Regional Transport Authority, which is by an inter-State agreement constituted the sole granting authority for all permits for an inter-State route, is within the Rule thus construed.

Even if we accept that the power of a Regional Transport Authority to renew a Permit granted by it cannot be taken away by an inter-State agreement like the one here, we are of the view "that, even apart from and independently of that agreement, the applications for renewal in these cases could not have been simply filed in limine. u/s 45 of the Act, an application for permit for an inter-State route has to be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of Business. In view of this provision, the Regional Transport Authorities at Bhopal and Indore must deal with all applications for permits for inter-State routes, which are made by persons

residing or having their principal place of business in the regions under their territorial jurisdiction. Since in such cases these Authorities are the granting authorities, they have to consider under Rule 61 (a) the applications for renewal of permits for the inter-State routes. In the cases before us, each petitioner claims that it has its principal place of business within the territorial jurisdiction of one of the two authorities. These claims were not investigated and we can neither say that they are well founded nor can we proceed on that basis. It is, however, obvious that the Authorities had to ascertain and decide whether, on the basis of these claims, they were entitled to apply to them for renewal. Furthermore, these Authorities admittedly countersigned their permits for the inter-State, routes and thereby validated them u/s 63 of the Act for operation within the areas under their jurisdiction. Under the circumstances, the applications for the renewal of the permits could only mean those made for renewal of the countersignatures under Rule 62 of the Rules and should have been so treated. The fact that the permits had not been renewed by the granting Authorities did not stand in the way of such consideration because it is implicit in Rule 62 (b) that applications for the renewal of the countersignatures could be made even before the renewal of the permits by the granting authorities. In view of these considerations, the orders impugned before us cannot be sustained.

These petitions succeed and are allowed. The orders passed by the Secretary, Regional Transport Authority, Bhopal, and those passed by the Regional Transport Authority, Bhopal, and the Regional Transport Authority, Indore, and the one dated 19th March, 1980, passed by the State Transport Appellate Authority are quashed. The two Regional Transport Authorities are directed to consider and dispose of the applications for renewal in accordance with law and also to forbear from treating the routes as vacant or taking any proceedings on that basis. In Miscellaneous Petition No. 79 of 1961, the parties shall bear their own costs. In other cases, the petitioners shall have their costs. In all cases, the security amount shall be refunded. Hearing fee in each case Rs. 75/-.