
(1955) 12 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Application No. 96 of 1955

Transport Development Co. Chhatarpur	APPELLANT
Vs	
Nowgaong Bus Association, Nowgaong, and others	RESPONDENT

Date of Decision : 31-12-1955

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 19(6), 226, 227

Citation : (1955) 12 MP CK 0015

Hon'ble Judges : Jagat Narayan, J.C.

Bench : Single Bench

Advocate : Lal Gurprasanna Singh, for the Appellant; Moti Lal Verma, Assistant Government Advocate, for Opposite Parties Nos. 2 and 3, for the Respondent

Judgement

Jagat Narayan, J.C.

1. This is an application under Arts. 226 and 227 of the Constitution by the Transport Development Company Chhatarpur for quashing of the order of the State Transport Authority dated 2-2-1955 and the order of the Transport Appellate Tribunal dated 3-7-1955. The application has been contested on behalf of the respondents. I have heard the parties and have perused the material on record.

2. The applicant was the holder of permit No. 90 of 1949 which entitled him to maintain a daily return service between Chhatarpur and Sathia. His permit expired on 31-12-1954. He applied for a renewal of it on 29-10-1954. His application was rejected by the order of the State Transport Authority dated 2-2-1955 on the ground that the route between Chhatarpur and Sathia was no longer a prescribed route. He preferred an appeal to the Transport Appellate Tribunal which was rejected by their order dated 3-7-1955.

In order to understand the grounds of this order it is necessary to state that before the expiry of the permit of the applicant an agreement had taken place between the Governments of Madhya Pradesh and Vindhya Pradesh authorising

the running of direct buses between Chhatarpur and Sagar. The State of Vindhya Pradesh became entitled to issue permits for two daily trips either way along this route.

The S. T. A. accordingly invited applications for two permits for a single trip each. The applicant applied for both these permits. Sathia lies on the Chhatarpur-Sagar route on the border of Vindhya Pradesh at a distance of 50 miles from Chhatarpur. Sagar is one hundred miles from Chhatarpur.

The applicant also applied for the extension of his Chhatarpur Sathia permit upto Sagar. These applications were disposed of by order dated 29-1-1954 passed by the State Transport Authority. One permit was issued to the applicant and other to respondent 1 under this order.

The applicant preferred an appeal to the Tribunal against that order. While confirming it in their order dated 6-9-1954 the Tribunal observed that the applicant had agreed at the time of the grant of Chhatarpur Sagar permit that he would give up his old permit in case he was allowed a permit for Chhatarpur-Sagar route. The Tribunal in their order dated 3-7-1955 have referred to this observation as one of the grounds for rejecting his appeal.

The applicant stated in para 21 of his affidavit that he never agreed to surrender his permit No. 50 of 1949 either orally or in writing before any authority. Although Shri Purshottam Vishnu Bhanu, Secretary Nowgong Bus Association has controverted the allegation in para 4 of his affidavit, the Secretary to State Transport Authority has admitted in para 22 of his affidavit which runs as follows:

That the contents of para 21 of the affidavit of the petitioner are admitted. That from the copies of his application dated 16-11-1953 and 5-1-1954, 11-2-1953 (copies enclosed in annexure "C") it is clear that the petitioner were more anxious and eager to get a permit for Chhatarpur-Sagar route and not to have permit for Chhatarpur-Sagar route as well as extension of his Chhatarpur Sathia service upto Sagar.

3. The applications referred to above only go to show that the applicant was anxious to get his Chhatarpur Sathia permit extended upto Sagar. That permit was for a daily return trip to Sathia. That means that he wanted a daily return trip to Sagar. If such a permit had been granted to him then of course, his application for renewal would have lost all force. But he was only given a permit for a single trip between Chhatarpur and Sagar. He was thus not estopped from applying for renewal of his Chhatarpur Sathia permit.

It will thus be seen that one of the grounds of decision of the Tribunal was based on a misapprehension about a material fact. It may be mentioned here that the State Transport Authority did not say in their order that the applicant had agreed to give up his old permit. The judgment of this Court in Misc. Writ Applns. Nos. 148 and 149 of 3954 D/- 20-1-1955 (Vin Pra) (A) did not deal with the question as to whether or not the Chhatarpur-Sathia permit of the applicant should be

renewed.

All that was observed in the judgment concerning this permit was that it had expired on 31-12-1954 and that as no fresh permit had been issued no direction could be given in respect of it. The question of grant of fresh permits for Chhatarpur-Sagar route was an independent question and the decision of the State Transport Authority and the Transport Appellate Tribunal with regard to it was upheld.

The Tribunal did not meet the contention of the applicant that the renewal of the Chhatarpur Sathia permit should not be refused on the ground that it was notified as a prescribed route by the State Transport Authority.

4. Section 46, Motor Vehicles Act, authorizes any one to apply for grant of a permit to use a motor vehicle as a stage carriage along any route. Section 57 provides the procedure for disposing of such an application.

Section 47 lays down what matters the transport authority shall consider in granting or refusing to grant a stage carriage permit. No application can be disposed of by the Transport Authority without applying its mind to the matters enumerated in S. 47. It was held in "Saghir Ahmad v. State of U.P.", 1954 SC 728 (AIR V41) (B).

Within the limits imposed by State regulations any member of the public can ply motor vehicle on a public road. To that extent he can also carry on the business of transporting passengers with the aid of the vehicles. It is to this carrying on of the trade or business that the guarantee in Art. 19(1)(g) is attracted and a citizen can legitimately complain if any legislation takes away or curtails that right any more than is permissible under clause (6) of that Article.

5. The only relevant consideration in Art. 19(6) is whether the restriction is a reasonable one and is in the interest of the general public (see "C. S. S. Motor Service v. State of Madras", 1953 Mad 279 (AIR V40) (C)). It will thus not be proper to refuse a permit on the ground that there is no need for extension of service.

What has to be decided is whether the grant would be for the benefit of the general public and not whether it is injurious to the interests of the existing operators. For the same reason the Transport Authority cannot take into consideration that the existing operators are running other services which are not remunerative and they cannot grant permits to them with a view to compensate for those remunerative services. This will be clearly opposed to Art. 19(6).

6. The order of the State Transport Authority D/- 2-2-1955 is bad as it was passed without taking into consideration the matters referred to in S. 47. It is nowhere mentioned in the Motor Vehicles Act that permits can be issued only for such routes as are prescribed by the Transport Authority. Section 48(a) authorises the Transport Authority to limit the number of the stage carriages on any specified route.

But when a fresh application for a permit is received, the Authority is bound to apply its mind once again to matters referred to in S. 47 before disposing of the application. It must consider afresh whether or not it would be in public interest to grant the permit applied for.

7. It was observed in "Moti Lal v. Government of the State of U.P.", 1951 All 257 (AIR V38) (FB)

Now a perusal of Ss. 47 and 48 clearly shows that the statutory body empowered in the Act to grant or refuse permits has been directed to consider matters mentioned in cls. (a) to (f) of S. 47(1). The words "shall have regard to the following matters" are mandatory.

Said Lord Cairns in "Julius v. Bishop of Oxford", (1880) 5 AC 214 (225) (E):

Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise; that power ought to be exercised and the Court will require it to be exercised.

8. In "Queen v. Cotham", (1898) 1 QB 802 (F) Wills J. observed:

When it appears that they (Justices) have taken into consideration matters which are absolutely outside the ambit of their jurisdiction and absolutely apart from the matters which by law ought to be taken into consideration, then they have not heard and determined according to law.

9. I accordingly allow the application and set aside the order of the State Transport Authority dated 2-2-1955 and the order of the Transport Appellate Tribunal dated 3-7-1955.

The application for renewal of the Chhatarpur Sathia permit should be considered afresh in the light of matters referred in S. 47, Motor Vehicles Act, at a public hearing as required under S. 57 of the Act. The judgment in the Madras case referred to above deals exhaustively with different relevant considerations to which the Authority should apply its mind before granting or refusing to grant a permit.