

The Samarth Transport Co. (P) Ltd.

Vs

The Regional Transport Authority, Nagpur and Others

Petition No. 67/1960

(CJI B.P. Sinha, J.L. Kapur, P.B. Gajendragadkar, K. Subha Rao, K.N. Wanchoo JJ)

08.09.1960

JUDGMENT

SUBBA RAO J. –

This is a petition under Art. 32 of the Constitution to quash the order of the first respondent dated April 28, 1960, and the scheme dated April 20, 1960, and to direct the first respondent to deal with the application of the petitioner for renewal of its permit in accordance with law.

The petitioner was doing business of motor transport in Bombay State for over 20 years. It had four permanent stage carriage permits granted some years ago and renewed from time to time to ply buses on the following routes :

#(i) Yeotmal - Umerkhed ... 2 return trips.(ii) Yeotmal - Pusad ... 4 return trips.##

The term of the latest permits expired on December 31, 1959. About four month prior to the expiry of the permits the petitioner applied on August 24, 1959, for the renewal of the permits under s. 58(2) of the Motor Vehicles Act, 1939 (Act IV of 1939), (hereinafter called the Act). On October 29, 1959, the State Transport Department published its proposed scheme for the nationalization of the road transport services in respect of an area which included the routes of the petitioner. On November 29, 1959, the petitioner wrote a letter to their Secretary, the Regional Transport Authority, Nagpur, asking him why its application for renewal of the stage carriage permits had not been published as required by s. 57 of the Act. It also expressed its apprehension that the application was not published by the Regional Transport Authority with a view to assist the State Transport Department in ousting it from the said routes and that the Authority was creating a situation in order to force the petitioner to accept temporary permits under s. 62(d) of the Act. The Secretary, the Regional Transport Authority, by his letter dated November 11, 1959, replied to the effect that the application for renewal had been published on November 8, 1959, and that the said application would be considered before the expiry date and that no question of issuing temporary permits would arise. On November 19, 1959, the Assistant Manager of the State Transport Department on behalf of the State Transport Department filed applications before the Regional Transport Authority for issue of permits to it in respect of the said two routes among others. It was mentioned therein that as per the notification published in the Bombay Government Gazette dated October 29, 1959, the Provincial Transport Services proposed to take over the aforesaid routes from January 1, 1960. The Provincial Transport Services also filed objections against the renewal of the permits in favour of the petitioner. On December 10, 1959, the said applications were published in the Gazette and it was notified therein that representations, if any, should be submitted on or before December 15, 1959, and that the said objections along with the applications for permits would be considered in a

meeting to be held by the Regional Transport Authority in the month of December, 1959, at Nagpur or at a later date which may be notified in due course. On December 21, 1959, the Secretary of the Regional Transport Authority intimated to the petitioner that in the meeting of the Regional Transport Authority scheduled to be held on December 31, 1959, it would not be possible to consider its applications for renewal due to "heavy agenda". It was also suggested to it to apply for the grant of temporary permits pending renewal in good time so that they could be issued before the due date. The petitioner on the same date replied to that letter wherein it pointed out that "the heavy agenda mentioned in your letter is, we hold, a design to cover your attempt to advance the cause of the Provincial Transport Services, (U.G.O.), Nagpur". Without prejudice to its rights the petitioner applied for temporary permits as directed by the Authority. On December 29, 1959, temporary permits were issued for one month from January 1, 1960, and thereafter they were extended for another month and made available upto March 31, 1960. The next meeting of the Regional Transport Authority scheduled to be held on February 5, 1960, was adjourned to February 24, 1960, and on January 22, 1960, the Chief Minister of Bombay issued notices to the petitioner and others that objections to the proposed scheme would be heard on February 24, 1960; but on the said date the applications were not disposed of on the ground that the matter was sub judice in the High Court of Bombay. On March 17, 1960, the Provincial Transport Services filed a fresh application before the Regional Transport Authority under Ch. IV A of the Act for the grant of permits for Plying buses on the routes mentioned therein. It was also brought to the notice of the Regional Transport Authority that the Provincial Transport Services desired to operate the routes in question from May 1, 1960, or any other date as may be fixed by the Regional Transport Authority. Presumably, the second application was filed as the earlier application was filed not under Ch. IV but under Ch. IV A of the Act on the basis of the proposed scheme. On March 31, 1960, the Regional Transport Authority met again, but the application for renewal of permits filed by the petitioner were not taken up for consideration. It is suggested that as 30 day had not expired from the date of the filing of the applications by the Provincial Transport Services the petitioner's applications could not be taken up for consideration. On April 14, 1960, the Chief Minister of Bombay heard the objections and on April 19, 1960, the scheme with modifications was duly approved by the Government and published on April 20, 1960. The approved scheme covered only the routes in respect of which only temporary permits were issued and excluded the routes in regard to which pucca permits were issued. The approved scheme included the petitioner's routes. On April 20, 1960, the applications were again adjourned to April 29, 1960. On April 26, 1960, the petitioner moved this Court under Art. 32 of the Constitution and on April 28, 1960, the petition was dismissed as premature. On the same day even though the Regional Transport Authority was informed that this Court was moved by the petitioner its renewal applications were rejected on the ground that the scheme was approved by the government. The present petition was filed on April 29, 1960, for the aforesaid reliefs.

The main contention of learned counsel, Mr. A. V. Viswanatha Sastri, for the petitioner, is that the Regional Transport Authority was actuated by mala fides in the disposal of the applications for renewal of the permits, and that though under the provisions of the Act it had no alternative but to renew the permits of the petitioner it adjourned the matter from time to time with an evil design to enable the Government to approve the scheme. In that situation, he contends, the proper praise is to set aside the order of the Regional Transport Authority and direct it to dispose of the petitioner's applications for renewal of permits as on the date when they were filed.

To appreciate this argument it is necessary to notice some of the relevant provisions of the Act. Under s. 58 of the Act, "A stage carriage permit or a contract carriage permit ..... shall be effective without renewal for such period, not less than three years and not more than five years', as the Regional Transport Authority may specify in the permit". Clause (2) provided for the renewal of

permits on application made and disposed of as if it were and application for a permit. Section 57 prescribes the procedure in the matter of the disposal of applications for permits. Section 57(1) enables the filing of an application for a permit at any time, and clause (2) of that section says that such an application shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, and, under cl. (3) thereof, on receipt of such an application for permit the Regional Transport Authority shall publish the application in the prescribed manner calling for representations to be made on a date not being less than 30 days from the date of publication. After hearing the said objections and representations, the applications will be disposed of in accordance with the provisions of the Act. Section 62 enables the Regional Transport Authority to grant permits without following the procedure prescribed under s. 57 to be effective for a limited period not in any case to exceed four months, to authorize the use of a transport vehicle temporarily pending decision on an application for the renewal of a permit. The second proviso to that section states that a temporary permit under the said section shall, in no case, be granted more than once in respect of any route or area specified in an application for the renewal of a permit during the pendency of such application for renewal. Section 68F enables the State Transport Undertaking, in pursuance of an approved scheme, to apply in the manner specified in Ch. IV for a stage carriage permit in respect of a notified route and on such an application the Regional Transport Authority shall issue such a permit to the said Undertaking notwithstanding anything contained to the contrary in Ch. IV. Under cl. (2) of that section, for the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority may by order refuse to entertain any application of the renewal of any other permit, to cancel any existing permit or to modify the terms of any existing permit. Section 68G prescribes the principles and method of determining compensation in respect of the permits canceled or modified.

The foregoing provisions, so far relevant to the present enquiry, may be summarized thus : An operator of a stage carriage may apply for renewal of his permit not less than 60 days before the date of its expiry; the said application will be disposed of as if it were an application for a permit and he will be given preferential treatment, the other condition being equal; the Act does not prescribe any outer limit for disposal of the application for renewal of a permit, for its disposal would depend upon the applications filed by others and the time required for complying with the conditions laid down in s. 57; but the requirement that the application shall be filed not less than 60 days before the date of the expiry, the injunction that pending an application for renewal of a permit, temporary permit shall not be given more than once and the time limit of four months for a temporary permit fixed in s. 62 indicate that, though there is no statutory prohibition, the application is expected to be disposed of ordinarily before the term of the permit expired or, in case of unavoidable delay, within a reasonable time thereafter; after a scheme has been approved, if the State Transport Undertaking applies for a permit, the Regional Transport Authority shall issue the permit to it and for the purpose of giving effect to the approved scheme the said Authority is authorized to refuse to entertain an application of renewal of any other permit or cancel or modify any existing permit; if the Regional Transport Authority cancels or modifies a permit, compensation is payable to the operation affected.

In the present case the permits expired on December 31, 1959. The petitioner filed applications for renewal on August 24, 1959, and they were rejected on the ground that there was an approved scheme on April 28, 1960. On December 29, 1959, temporary permits were granted for one month and after the expiry of those permits, another set of temporary permits was issued for another month ending with March 31, 1960. It is true that under the second proviso to s. 62 temporary permits could not have been granted more than once, suit a transgression of that provision by the Regional Transport Authority does not affect the question raised. As the provisions of the Act do not

prescribe any time limit for the disposal of an application for renewal of permits, we cannot hold that the Regional Transport Authority acted without jurisdiction in rejecting the applications some months after the date of the expiry of the terms of the permits. If there was any inordinate delay in the disposal of an application, it was open to the affected party to ask for a mandamus to direct the appropriate Authority to dispose of the petition within a reasonable time. But no such step was taken by the petitioner, though it filed a writ petition in the High Court for other reliefs.

The next question is whether the Regional Transport Authority exceeded its power in rejecting the applications, In this context it will be convenient to read the relevant portions of s. 68F, which read :

Section 68F : "(1) Where, in pursuance of an approved scheme, any state transport undertaking applies ..... for a stage carriage permit ..... the Regional Transport Authority shall issue such permit to the State Transport undertaking ....."

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority may, be order, -

(a) refuse to entertain any application for the renewal of any other permit."

Learned counsel for the petitioner contends that s. 68F applies only when an application for permit is made by a State Transport Undertaking in pursuance of an approved scheme and that in the present case as the application was filed by the State Transport Undertaking before the scheme was approved, the provisions of the section were not attracted. It is true that under s. 68F the Regional Transport Authority is bound to issue a permit to a State Transport Undertaking only if it applies in pursuance of an approved scheme. That is why in the present proceedings the Authority did not issue any permit to the State Transport Undertaking; but sub-s. (2) of s. 68F is not conditioned by any such limitation. The Regional Transport Authority is authorized for the purpose of giving effect to an approved scheme to refuse to entertain an application for renewal of any other permit. This power does not depend upon the presentation of an application by the State Transport Undertaking for a permit. This power is exercisable when it is brought to the notice of the Authority that there is an approved scheme and, to give effect to it, the application for renewal cannot be entertained. By the time the application for renewal came to be disposed of, admittedly the scheme had been approved by the Government of Bombay and the routes in question were included into said scheme. Therefore, the Authority was within its rights not to entertain the applications filed by the petitioner. It is contended that the word "entertain" refers to an application filed for the renewal of a permit after the scheme was approved and that the said provision has no relevance to an application for renewal made before that date. The word "entertain" may mean "to receive on file or keep on file", and in that sense the Authority may refuse to keep an application on its file by rejecting it either at the time it is filed or thereafter. It does not connote any time but only describes the scope of the duty under that clause. It can only mean that the Authority cannot dispose of the application on merits but can reject it as not maintainable. Any other meaning given to this word leads to an anomalous position, for even if the approval of a scheme had been brought to the notice of the Regional Transport Authority, it would have to order the renewal of the permit and thereafter it would have to cancel the permit, presumably, on an application filed by the State Transport Undertaking. We do not think that the legislature used the word "entertain" to bring about that result. A wider meaning of the word "entertain" would enable the smooth working of the provisions of the section and we have no reason to accept the narrower meaning suggested by the learned counsel. We, therefore, hold that the Regional Transport Authority had power under s. 68F(2) of the Act in the

circumstances of the case to reject the application filed by the petitioner.

The next contention of the learned counsel is that the scheme suffers from the vice of discrimination inasmuch as, though it excluded the petitioner from operating on the route between Yeotmal and Umerkhed, it allowed others to ply their buses on that route on their way from Akola to Umerkhed or Amravati to Umerkhed. There is no basis for this argument in the affidavit filed by the petitioner in support of the writ petition. We do not think that we are justified in allowing the petitioner to raise the plea for the first time before us. We do not, therefore, allow it to do so.

Lastly it is argued that the Chief minister confirmed the scheme on extraneous considerations not covered by s. 68C of the Act. In paragraph 24 of his order the Chief Minister observed, "On merits, it is quite clear to me that having regard to the resource of the P.T.S. and the amenities that it provides to the public, it is in the public interest that the scheme submitted by the P.T.S., Nagpur, should be approved". Under s. 68C the question that arose for consideration before the Chief Minister was whether the transport services should be run by the State Transport Undertaking to the excluding of the petitioner and whether it was necessary to do so in public interest to provide an efficient, adequate, economical and properly co-ordinated road transport service. The Chief Minister found on the Material placed before him that it was necessary in the public interest that the scheme submitted by the Provincial Transport Services should be approved. In support of his conclusion, he took into consideration that the Provincial Transport Services were in possession of sufficient resources and were in a better position to provide amenities to the public and therefore in public interest they should be given preference over the private operation of buses. We cannot say that the Chief Minister took any extraneous circumstances into consideration in coming to that conclusion.

The record in this case is not indicative of promptitude or efficiency in the matter of discharge of the statutory function by the Regional Transport Authority. The various dated, the reasons given for putting off the disposal of the petitions for renewal from time to time and the timing and the manner or the final disposal are such as may legitimately give rise to the allegation that the Regional Transport Authority was not, to say the least, fair and impractical in the discharge of its duties. A statutory tribunal is expected to discharge its functions fairly and without bias even in a case where the interests of the Government are involved. Considering the facts and circumstances of this case, we cannot say that the complaint of the petitioner that the adjournments were not for the reasons mentioned in the orders but were only to give time to enable the Government to approve the scheme, may not be wholly unjustified.

In the circumstances, though we are dismissing the application, we are not awarding any costs to the respondents.

Petition dismissed.

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