ALLAHABAD HIGH COURT

Khalil-ul-Rahman Khan

Vs.

State Transport Appellate Tribunal

Civil Misc. Writ Nos. 1060 and 1061 of 1962
(A.P. Srivastava, J.)

28.08.1962

ORDER

A.P. Srivastava, J.

1. These are two connected petitions under Article 226 of the Constitution. The parties are identical and the petitions relate to the same order passed by the State Transport Appellate Tribunal, Lucknow. It will, therefore, be convenient to deal with them together.

2. The petitioner Sri Khalil-ul-Rahman Khan had been granted a stage carriage permit No. 421-A on Aligarh-Pahasu route on 25-3-1957. The permit was for a period of three years and the vehicle covered by it was No. UPB 1694. On 25-11-1957, the petitioner was allowed to replace vehicle No. UPB 1694 with vehicle No. UPB 1305. On the 7-8-1958 by an agreement of that date between the petitioner and the third respondent Sri Hazari Lal it was provided that for a consideration of Rs. 2,500/- the petitioner had sold the one-fourth share in the permit he held in favour of the third respondent and for a consideration of Rs. 2000/- he had sold to the third respondent one-fourth share in the vehicle No. UPB 1305 which was at that time covered by the permit. The agreement further provided in its 8th clause :-

> "That in case any replacement is made against this bus, the parties shall have the same share in the replaced bus as they have in this bus and they shall continue to be so in all subsequent replacements."

3. No permission for the transfer of the one-fourth share of the permit was, however,

obtained before the agreement was entered into, from the Transport Authorities concerned as required by section 59 (1) of the Motor Vehicles Act. On 17-11-1958 the petitioner was allowed to replace vehicle No. UPB 1305 with the vehicle No. UPA 4438. On 7-2-1959, Hazari Lal respondent No. 3 filed an objection against the order of replacement passed on the 17-11-1958. The ground he put forward was that the petitioner had sold to him one-fourth share in the permit and also in the stage carriage No. UPA 4438. When this alleged transfer came to the notice of Regional Transport Authority it issued a notice on 25-2-1959, under section 60 of the Motor Vehicles Act to the petitioner requiring him to show cause why his permit should not be cancelled. The petitioner showed cause. In spite of the objection filed by the third respondent to the replacement of the earlier vehicle by vehicle No. UPA 4438 the Regional Transport Authority permitted the replacement in March, 1959. After getting the explanation of the petitioner in respect of the notice issued to him under section 50 of the Motor Vehicles Act the Regional Transport Authority on 14/15-5-59 ordered that as he had contravened condition No. 17 of the permit issued to him by selling one-fourth share of the permit his permit was being cancelled. It was, however provided that if he paid Rs. 1000/-by way of compounding fee the order of cancellation would not be given effect to. This order was communicated to the petitioner on 25-5-1959. Against this order the petitioner preferred an appeal to the Transport Appellate Tribunal, on 26-5-1959 and also made a conditional deposit of the compounding fee of Rs. 1000/-. The third respondent had also in the meantime filed an application on the 4-5-1959 paying that one-fourth share of the permit be transferred in his favour and his name be entered in the permit as the owner of that share. This application was opposed by the petitioner and was rejected by the Regional Transport Authority on 11-8-1959. Against that order the third respondent also preferred an appeal to the State Transport Appellate Tribunal. In this way, two appeals came up before the State Transport Appellate Tribunal, one by the petitioner against the order cancelling his permit and the other by the third respondent against the order refusing to enter his name in respect of the permit as the owner of the one-fourth share. Both these appeals were heard and considered by the State Transport Appellate Tribunal and by a joint order dated 29-12-1961. The appeal of the petitioner was dismissed. The order cancelling his permit and also the order directing the payment of Rs. 1000/-as compounding fee were upheld. The appeal of the third respondent was allowed. The agreement on which he relied was recognized and it was directed that his name shall be entered in the permit to the extent of his one-fourth share.

4. The first portion of the order of the Appellate Authority which relates to the cancellation of the petitioner's permit has been challenged by him in Petition No. 1060 of 1962. It is prayed that both, the order of cancellation and the appellate order upholding it, be quashed and the respondents should be required not to give effect to it.

5. The other portion of the order of the appellate authority relating to the entry of the name of the third respondent in the permit in respect of the one-fourth share has been challenged in the connected writ petition No. 1061 of 1962. It is prayed that the order be quashed as without jurisdiction and that by a writ of mandamus the Appellate Authority should be directed not to give effect to the order.

6. In support of the petition No. 1060 of 1962 the main ground urged is that the cancellation has been ordered on ground on which it could not have been ordered under the provisions of the Motor Vehicles Act and is, therefore, liable to be quashed. The second petition is sought to fee supported on the ground that in respect of the transfer of one-fourth share which, has been given effect, to by the State Transport Appellate Tribunal the provisions of Section 59 (1) of the Motor Vehicles Act and of Rule 67 of the Motor Vehicles Rules have not been followed. The alleged transfer had not been permitted at any stage and in any case the transfer of a share of the permit could not be valid without a transfer of a share in the vehicle covered by the permit. As in this case the third respondent neither owned nor possessed the vehicle covered by the permit he could not be entered as the owner of one-fourth share in the permit covering the vehicle.

7. On behalf of the respondents it is urged that both the orders passed by the Appellate Authority are valid and were justified in the circumstances of the case and, therefore, there is no reason why either of them should be quashed.

8. Taking up writ No. 1060 of 1962 first, it has to be seen whether the order cancelling the petitioner's permit was valid in law. In the notice that was issued to the petitioner to show cause why his permit should not be cancelled the only thing mentioned was that it had been brought to the notice of the Authority that he had sold one-fourth share of permit No. 421-A of the vehicle No. UPB 1305 to Sri Hazarilal without the permission of the Regional Transport Authority.
It had not been stated as to which provision of law or which condition of the permit the

petitioner had contravened by making the transfer. However, in the order passed by the Regional Transport Authority it was mentioned that the permit was being cancelled because the petitioner had contravened condition No. 17 of his permit. The original permit has not been filed. A copy of the conditions of the permit has, however, been filed as annexure 1 to the affidavit filed in support of writ petition No. 1060 of 1962. Condition No. 17 as entered in that copy reads :-

> "..... shall observe all the conditions specified in Section 50 of the Motor Vehicles Act, 1939."

In the counter affidavits filed on behalf of the respondents nothing is averred in respect of this condition as it appears in annexure 1 of the petitioner's affidavit. When the case was argued, however, it was urged on behalf of the respondents that the figure '50' in the condition is a typing mistake for '59' and condition No. 17 therefore, refers to the conditions specified in Section 59 of the Motor Vehicles Act, 1939. Learned counsel for the petitioner has shown me a cyclostyled copy attested by the Regional Transport Authority on 7-11-1960 in which also there is a mention of Section 50 of the Motor Vehicles Act in condition No. 17 and Section 59 is not mentioned above.

9. Assuming that annexure 1 is correct and the section mentioned in condition No. 17 is Section 50, a reference to that section will show that it does not relate to conditions of the permit at all. In any case it does not contain any provision according to which the transfer of one-fourth share in the permit can be considered to be a contravention of any of its clauses. If, therefore, condition No. 17 refers to Section 50 of the Motor Vehicles Act the transfer made by the petitioner could not be considered to be a contravention of that condition and if it was not a contravention of that condition the ground on which the permit of the petitioner has been cancelled became untenable. The order of cancellation thus becomes wrong in law.

10. Let us, however, in the alternative accept the suggestion made by the counsel for the respondent and read Section 59 for Section 50 in condition No. 17 of the permit. Section 59 reads as follows:-

> "(1) Save as provided in Section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on

any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorized by the permit.

(2) The holder of a permit may, with the permission of the authority by which the permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit.

(3) The following shall be conditions of every permit :-

(a) that the vehicle or vehicles to which the permit relates are at all times to comply with the requirements of Chapter V and the rules made there under;

(b) that the vehicle or vehicles to which the permit relates are not driven at a speed exceeding the speed lawful under this Act;

(c) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under Section 43 are observed in connection with any vehicle or vehicles to which the permit relates;

(d) that the vehicle or vehicles to which the permit relates are not driven in contravention of the provisions of Section 72,

(e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates : and

(f) that the provisions of Chapter VIII so far as they apply to the holder of the permit are observed."

11. The marginal note of the Section contains the words, "General conditions attaching to all permits." On the basis of this marginal note it was urged on behalf of the respondents that the first sub-section of Section 59 which made permission necessary in respect of, the transfers of permits could also be treated as a condition of a permit. Learned counsel for the petitioner on the other hand urged that the marginal note did not exhaustively indicate entire contents of the section and the conditions to which it referred were to be found only in sub-section (3) of the section. The first two sub-sections of the section do not lay down any conditions of the permit at all.

12. Sub-section (3) of Section 59 enumerates the general conditions which must according to law be treated as conditions of every permit. So far as these general conditions are concerned whether they are mentioned in the permit or not the law requires that they should be considered as conditions of the permit. When a permit is granted some other conditions may also be attached to it. Those conditions are mentioned in subsection (3) of Section 48. That sub-section authorizes the Regional

Transport Authority to attach any one or more of the various conditions mentioned in clause (i) to (xxiii) of the sub-section as conditions of the permit. It is, however, not obligatory on the Regional Transport Authority to impose any or all of the conditions mentioned in Section.48. It is in its discretion to impose any one or more of the conditions. There does not appear to be any other section in the Motor Vehicles Act which deals with conditions of a permit, and conditions which are not found in the two provisions already referred to, cannot, therefore, be imposed by the Regional Transport Authority on permit holders. The question, therefore, is whether, what has been laid down in sub-section (1) of Section 59 can also be treated as a condition of the permit. The sub-section has already been quoted above. Even a cursory perusal of it will show that it cannot be read to contain any condition of a permit. What it lays down is a general prohibition for transfers of permits and provides that the transfer can be valid only if made with the permission of the Transport Authority. It further provides that if such a permission is not granted, the transfer of the vehicle itself or any share in it would not confer on the transferee any right to use the vehicle in the manner authorized by the permit. It is, therefore, not possible to accept the contention of the learned counsel for the respondents that sub-section (1) of Section 59 also contains a condition of the permit and a breach of it will entitle the Transport Authority to cancel a permit on its basis. The grounds on which the permit can be cancelled are enumerated exhaustively in Section. 60 of the Motor Vehicles Act. Sub-section (1) of that section enumerates six grounds on which cancellation of a permit can be ordered. The first ground covers the breach of any condition specified in sub-section (3) of Section 59 or any conditions contained in the permit. It is significant that no reference is made in Section 60 to subsection (1) of Section 59. A specific reference is made in that clause to sub-section (3) of Section 59. The submission of the respondents that because the petitioner transferred a share of the permit without the permission of the Authority his permit could be cancelled on that account is, therefore, not acceptable. If the transfer was not made without permission, it was ineffective and the transferee could not take any advantage of it but that could not be made a ground for the cancellation of the permit.

13. The view I am taking on this point receives support from what Mr. Justice Mathur observed in the case of *Rama Shanker Misra v. Regional Transport Authority, Kanpur,* [1] There also a similar contention was raised but was rejected and it was observed :-

"In the end it was contended on behalf of the respondents that a contravention

of the provisions of Section 59 (1) of the Motor Vehicles Act could also be a ground for cancellation of the permit. A perusal of the section will make it clear that sub-section (1) does not form the condition of the permit. The conditions of permit have been enumerated in sub-section (3) and they make no reference to sub-section (1). Consequently, the only meaning which can be assigned to sub-section (1) is that it merely lays down which in the eye of law would be the holder of the permit and can use the vehicle in the manner authorized by the permit. An illegal transfer of the permit is void and is consequently ineffective. Such a transfer will not confer any right in the transferee, and the holder of the permit, namely, the transferor, shall continue to be the permit holder entitled to use the vehicles. In any case, contravention of Section 59 (1) can be no ground to refuse the replacement of vehicles under Rule 63."

14. I shall not, and in the present case, it is not necessary for me to go to the length of saying that the transfer will be void for all purposes. The transfer may be valid and effective for other purposes. What section 59 lays down is that such a transfer without permission will not confer any right on the transferee so far as the use of the vehicle is concerned, and for that purpose the transfer will be ineffective.

15. It, therefore, appears to me that the ground on which the Regional Transport Authority cancelled the petitioner's permit and the ground on which the State Transport Appellate Authority upheld the cancellation was not a valid ground and the order of cancellation being invalid is liable to be quashed. If the order of cancellation is quashed the order providing that on the payment of compounding fee the order shall not be given effect to must fall along with it.

16. The principal question which is raised in the connected petition No. 1061 of 1962 is whether the State Transport Appellate Authority could direct the name of the third respondent to be entered in the petitioner's permit to the extent of one-fourth share on the ground that the said share had been transferred by the petitioner to the third respondent for consideration. Though the petitioner denied having executed the agreement in respect of the transfer of one-fourth share in the permit in favor of the third respondent the agreement having been accepted as valid by the State Transport Appellate Authority for the purposes of this writ petition, we must proceed on the footing that the agreement had been validly executed and that it amounted to a transfer of one-fourth share in the permit and the transfer had been made for consideration.

17. The grounds on which it is urged that this transfer could not be given effect to are these :-

(1) The transfer had not been made with prior permission of the Regional Transport Authority as was required by Section 59 of sub-section (1) and in any case the provisions of Rule 67 of the Motor Vehicles Act had not been observed in respect of it;

(2) By the agreement the petitioner was said to have transferred one-fourth share in the permit and also one-fourth share in the vehicle UPB 1305. That vehicle had however, been ordered to be replaced by another vehicle No. UPA 4438. No share in this latter vehicle had been transferred to the third respondent. At the time when the transfer was being given effect to the third respondent did not, therefore, either own any share in the vehicle covered by the permit or possess any part of it. The contention is that the Motor Vehicles Act does not contemplate a permit being issued or maintained in the name of any person who has no share in the ownership or possession of the vehicle covered by the permit.

(3) The permit had been renewed in favor of the petitioner on the 17-11-1960. The transfer, if any was made, related to the earlier permit and on its basis the third respondent could not be entered as the owner of the one-fourth share in the renewed permit.

18. Sub-section (1) of Section 59 of the Motor Vehicles Act has two portions. According to the first a permit is not to be transferrable without the permission of the Transport Authority which has granted it. According to the second without such permission the transfer of the vehicle shall not confer on the transferee any right to use the vehicle in the manner authorized by the permit. The section does not clearly state whether the permission is to be obtained prior to the date of the transfer or can also be granted retrospectively. There is, therefore, nothing in the section on the basis of which it can be insisted that prior permission is necessary. As permission is required for making the transfer effective it may be said that the transfer shall become effective only when the permission is granted but the language of the subsection does not support the contention that the permission should be obtained before the transfer is made and that permission cannot be granted if the transfer has once been made.

In most of the cases permission will naturally be applied for before the transfer is

actually made. That is why in the Rule 67 framed with reference to Section 59 it is provided that a joint application should be made and the Regional Transport Authority may summon the parties to appear before it and then deal with the application for transfer as if it was an application for a permit. If it decides to allow the transfer to be made it has to get parts A and B of the permit surrendered and must make necessary changes in the permit in favor of the transferee. Rule 67 does not, however, appear to deal exhaustively with all the stages at which permission for transfer can be granted or applied for. It lays down the procedure only for those cases where the permission is applied for before the transfer is made and it is proposed that the transfer will be made after the permission is granted. Simply because there is no provision in Rule 67 for granting permission after the transfer or for making an application for permission with retrospective effect it cannot be inferred that such a permission cannot be granted or was not in the contemplation of the framers of the Act. I, therefore, find nothing in the Act or the rules which can justify the contention that a transfer of a permit cannot be made without prior permission and if there is no prior permission the transfer even if made will be of no effect even if permission is granted in respect of it subsequently. Without permission the transfer will certainly not entitle the transferee to use the vehicle in the manner authorized by the permit but once the permission is granted the transfer will become effective and the transferee will have such right to use the vehicle as a transferee. The transfer in favor of the third respondent cannot, therefore, be held to be invalid or ineffective simply because no prior permission was obtained or because the provisions of Rule 67 were not followed. Rule 67 did not apply to the case at all.

19. Learned counsel contends that the Regional Transport Authority cannot force the permit holder to transfer his permit. There is, however, no question of anyone forcing the permit holder to transfer the permit. By the agreement which the petitioner in the present case has executed in favor of the third respondent the transfer has already been made. The agreement was a voluntary agreement. It had not been entered into under the orders of any authority or under any compulsion. What the authority has done is only to permit the transfer with retrospective effect after it had been (sic) and as I have observed earlier there is nothing in Section 59 which could prevent the Authority from doing that.

Another contention raised in this connection is that as the petitioner disputed the execution of the agreement by giving effect to it the Appellate Tribunal must be held to have compelled the petitioner to sell a share in the permit. The fallacy in the

argument is obvious. The Tribunal was called upon to permit a transfer. It became necessary for it to decide first the question of fact whether the agreement had been executed for consideration. It decided the question in favor of the respondent and did not accept the petitioner's case on the point. The decision of a disputed question of fact can never be treated as an order compelling the petitioner to sell a share in the permit. After deciding that the sale had been made the Tribunal granted permission in respect of it and decided that it should be given effect to.

20. It is also urged that in the present case the Regional Transport Authority did not permit the transfer. In its appellate order too the Appellate Authority has not expressly granted the necessary permission. That is correct, but the order under Section 59 (1) being appealable the Appellate Authority had all the powers which the Regional Transport Authority had in respect of the matter and could pass the same orders in its appellate jurisdiction, as the Regional Transport Authority could pass in the exercise of its own jurisdiction. By recognizing the transfer in favor of the third respondent and directing his name to be entered in the permit in respect of the one fourth share along with one of the permit holders the Appellate Authority must be held to have permitted the transfer by necessary implication. Had it not done so, it would not have given effect to the transfer in any manner.

21. The argument that the name of the third respondent could not be directed to be entered in the permit because he did not own or possess any share in the vehicle covered by the permit can be answered in two ways : In the first place a reference to the various provisions of the Motor Vehicles Act will show that for a permit holder in respect of a stage carriage it is not necessary that he should have any interest proprietary or possessory in the vehicle itself. The word permit has been defined in clause (20) of Section 2 of the Act in these words :-

> " "Permit" means the document issued by (the commission or) a (State) or Regional Transport Authority authorizing the use of a transport vehicle as a contract carriage or a stage carriage or authorizing the owner as a private carrier or public carrier to use such vehicle."

22. It will be noticed that in this definition so far as a contract carriage or a stage carriage is concerned there is no reference to ownership or possession. In respect of such a vehicle a permit is a document issued by the proper authority authorizing the

use of the vehicle. The vehicle may belong to the person who is authorized to use it or may not belong to him. The definition does not even require the person to whom the document is issued to be in the possession of the vehicle in any particular manner. Of course in order to use the vehicle he will have to be in control of it and that control may in most cases amount to possession. Had it been made a condition of the grant of a permit that the permit holder should either own or possess the vehicle the purpose of the definition would have been necessarily narrowed down and greatly restricted. It is not difficult to conceive of cases where it may be necessary to grant permits in respect of the vehicles not belonging to the permit holder and not in his proprietary possession. For instance, a person borrows a certain vehicle on certain terms and wants a permit to ply it himself or through his agent or servant, there is no reason why he should not be entitled to get a permit in order to use the vehicle as a stage carriage.

23. A reference was, however, made to clause (c) of sub-section (1) of Section 60 of the Act and on the basis of that clause it was urged that it assumed that the permit holder should be the owner of the vehicle. That clause provides for one of the contingencies in which a permit can be cancelled. According to it it is permissible for the Transport Authority to cancel a permit if the holder of it ceases to own the vehicle covered by the permit. It is only a permissive clause and the Transport Authority has only been given a discretion to cancel the permit in that contingency. It may, or may not cancel it, even if the holder of the permit ceases to own the vehicle covered by it. But it is by no means necessary that clause (c) should be applicable to the case of every permit holder. There may be permit holders who own the vehicle covered by the permit and there may be permit holders who do not own the vehicle. This clause appears to apply only to the former case and not to the latter. On its basis, therefore, it cannot be held to be a requirement of the Act that in each case the person in whose favor a permit has been issued should necessarily be the owner of the vehicle covered by it. Learned counsel pointed out that prior to the passing of Act 100 of 1956 the word used in clause (c) was "possess" and now it is 'own'. This, however, makes no difference to the argument that this clause does not require the ownership of the vehicle to vest in the person to whom the permit is given. The change only shows that though formerly a permit could be cancelled on the ground that the permit holder had lost possession over the vehicle it cannot be cancelled now on that ground. Now, it may be cancelled only if it is proved that the permit holder has lost the owner ship of the vehicle. On the basis of this change, therefore, it is not possible to contend that in every case it is necessary that the permit holder should own the vehicle or a share in it.

24. The other answer to the petitioner's argument is to be, found in the agreement that was executed on 7-8-1958 between the petitioner and the third respondent. As has already been pointed out that agreement clearly provided that the third respondent will have the same share i. e., one-fourth in the replaced bus in case there was a replacement and that that will continue to be so in all subsequent replacements. Some doubt may be entertained as to whether on the basis of this clause in the agreement the third respondent could actually claim any interest in a bus which did not exist at the time of the agreement but the clause clearly confers on the respondent the right as a co-permit holder to the use and usufruct of the bus which was covered by the permit at the time of the agreement and also of all buses which in future replaced that bus. On the basis of such an agreement the third respondent could claim a sufficient interest in the replaced bus to entitle him to take advantage of the permit and to be treated as a co-permit holder.

25. There remains the third contention of the petitioner that on account of the permit having been renewed in 1960 the agreement must be held to have come to an end and on the basis of the agreement the third respondent could not be directed to be entered as a co-permit holder in respect of the renewed permit. The contention overlooks that the renewed permit is really a continuation of the former permit and must be held to have been granted to the petitioner only because he held the earlier permit. If, therefore, the agreement was binding in respect of the earlier permit there is no reason why it should be deemed to have come to an end simply because the permit was renewed particularly when there was no provision in the agreement that it will come to an end with the particular permit which was in force at the time of the agreement.

26. The order of the State Transport Appellate Authority permitting the transfer in favor of the third respondent recognizing him to be the owner of one-fourth share in the permit on the basis of the transfer and directing him to be entered as a co-permit holder with one-fourth share does not, therefore, appear to be invalid on any ground. The second petition No. 1061 of 1961 must, therefore, fail.

27. In the result, petition No. 1060 of 1962 is allowed. The order cancelling the petitioner's permit is quashed and the respondents Nos. 1 and 2 are directed not to give effect to it. The other petition No. 1061 of 1962 is dismissed. As success has been

divided there will be no order as to costs in respect of either of the two petitions. The stay order if any, is discharged.

Order accordingly.

Cases Referred.

1. AIR 1960 All 247