

ANDHRA PRADESH HIGH COURT

G. Shaikh Shavalli

Vs.

Secy, R.T.A

W.P. No.1811 of 1951

(P.A. Choudary, J.)

10.06.1982

ORDER

P.A. Choudary, J.

1. The four petitioners, some of Anantapur and others of Kurnool, have joined together and filed this writ petition under Article 226 of the Constitution praying that a Writ of Mandamus may be issued compelling the Secretary, Regional Transport Authority, Anantapur and the Secretary, Regional Transport Authority, Kurnool to issue special permits to the petitioners under Section 63(6) of the Motor Vehicles Act, (hereinafter referred to as the "Act") enabling them to run their buses empty from Uravakonda and Meddikera and other places in Anantapur and Kurnool District up to some unspecified places in other States of Karnataka, Tamil Nadu and Maharashtra to pick up passengers of these States contracted to be carried to places of tourism and pilgrimage as per the permits and to set down those passengers at the respective places where they are picked up and to come back to their respective places in Anantapur and Kurnool Districts empty.

2. Surely we have come to this pass where the litigants can ask under Article 226 of the Constitution for anything.

3. In support of this writ petition, no material facts had been stated that would disclose any cause of action, probably because the petitioners thought that they need disclose no cause for this action. This writ petition is clearly an example of an action without cause which cannot exist in the world of legal action. The petitioners say in para 4 of the writ petition, "I submit that the respondents, who were issuing the special permits from the beginning are refusing now to receive the applications for issue of such permits by stating orally that they will not issue special permits under Section 63(6) of the Act if the vehicles are to go empty from the places in Anantapur and Kurnool Districts to any place in other States to pick up a party in other States to complete the journey and to set down it at the place where the party is picked up in other States and to come back empty from that place to its place in Anantapur District." The writ petition did not state in any of its parts either the name or the identity of the officer who said so or the name or the identity of the persons to whom it was said or when. The writ petition did not say that any application for the grant of special permits under Section 63(6) of the Act had been made and if

made to whom they were made, and what happened to such applications. This is clearly symptomatic of the falling standards of writ litigation. It is needless to say that failure to plead those material facts would amount in law to a serious failure on the part of the petitioners to state their cause of action. And without a cause of action being borne in some part of it though not on its forehead, no writ petition under Article 226 of the Constitution, as that Article stands today, can be entertained, for Article 226, Clause (2) does speak of "the cause of action wholly or in part (arising) for the exercise of such power". The implication of Article 226 is that for the exercise of powers by a High Court under Article 226 cause of action must have arisen. Whether the cause of action has arisen or not can only be known by pleadings. In the state of the pleading the petitioners made in the writ petition it should be taken that no cause of action was stated. The legal consequences of such a failure to plead a cause of action are no relief not even a declaratory relief can be granted by this Court. The petitioners ask for a writ of mandamus directing the transport authorities to grant them special permits as and when applied for. A special permit even so requires the name of the place and the names of the contracted parties to be stated. In other words, a special permit would require a statement of minimum details. As no such details were given in the writ petition no relief can be granted to the petitioners.

4. It is true that *qua* timet actions are a recognized category of legal remedies even under Article 226 of the Constitution and a writ can arguably issue from this court to prevent the occurring of imminent legal injury. But this case cannot be brought even under that category, because no details of the time of trip etcetera were stated in the writ petition.

5. Under Article 226 of the Constitution this court should normally speaking proceed to exercise writ jurisdiction only where the authorities subordinate to this court have either acted illegally or without jurisdiction either by a positive act of refusal or even by a negative act of omission. But in special circumstances, this court can act to prevent the inflicting of legal injury particularly when the citizen seeks to be relieved from the burdens of an illegal or unconstitutional law. In the case of a complaint against an executive action, normally complaint should follow breach. In such a case, both the positive act of refusal and the negative act of omission both of the executive should be relatable specifically to the writ petitioners. No court under Article 226 of the Constitution could be led to act on a fancy of its imagination that the executive would invariably act contrary to law and on the basis of that mental conjecture be asked to direct the transport authorities to grant special permits to the petitioners as and when applied for with details as to the time and place of trips. Such a course of action would not be in conformity with the general principles of administration of justice which is based on separation of powers. For this reason alone this writ petition should be dismissed summarily.

6. The argument of the learned counsel to the effect that the writ petition need not show any cause of action so long as the counter-affidavit filed later on by the respondents admits that special permits were not being granted, cannot be accepted. To the question whether a writ petition disclosed any cause of action or not, the answer has to be found in the initiating document. Such a question has to be decided exclusively with reference to the averments made in the writ petition and wholly without reference to the counter- affidavit. It is a threshold question and it should be decided at the beginning and not at the end. As I said above, the writ petitioners never stated that they had made any application or applications to the appropriate authority or authorities. Nor did they say that those applications were rejected by the authorities, either by action or inaction. In view of these facts I think it would be just to hold that this writ

petition should be dismissed on the ground that disclosed no cause of action.

7. Even otherwise, I do not think that a Writ of Mandamus can be issued as prayed for. The prayer in the writ petition is that these four petitioners should be granted special permits under Section 63(6) of the Act by the transport authorities of this State enabling them to take their buses empty into the outside States and to pick up passengers there and transport them to the end of their voyage and empty them back at their starting points in those States, and drive the buses back to the places within this State empty. I do not think that granting of such a special permit is within the competence of any Regional Transport Authority of this State acting under Section 63(3) of the Act, Section 63(6) of the Act reads thus :-

"Notwithstanding anything contained in sub-section(1), but subject to any rules that may be made under this Act, the Regional Transport Authority of any one region may, for the convenience of the public grant a special permit in relation to a public service vehicle for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State, without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be."

Section 63(6) of the Act does not enact any new law basically varying the statutory purposes of the Act relating to the grant of permits for the running of transport vehicle. An examination of Section 63(6) would show that what was contemplated to be granted under that section is a permit to run a contract carriage. Under Section 2, Clause(3) a "contract carriage" is defined to mean a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole from one point to another point without setting down along the line of route passengers not included in the contract. The concept of contract carriage is introduced in the Act to subserve the needs of group travel. When a group of people travel together by a transport vehicle, the contract carriage does the job. But all the same the purpose behind granting a contract carriage permit is to cater to the needs of the genuine travelling public as the purpose of the other provisions of the Act generally is. The provisions of the Act therefore authorize the Regional Transport Authorities to grant these contract carriage permits to enable group travel to be conducted within their respective regions. For this purpose of the Act, the State is divided into various regions. Either in granting or refusing contract carriage permits the Act requires the transport authorities to keep the needs of the travelling public in view. In other words, a transport authority would be acting illegally in granting any permit for mere asking and without being satisfied of the existence of a genuine transport need. As a transport authority located, say at Anantapur, or Kurnool cannot have any assessment made of the travelling needs of the public situated in places like Bangalore or Mercara, it should be held that it is beyond the capacity of these transport authorities to be satisfied about the existence of the travelling needs in far off places outside the State. Further it could never have been within the contemplation of the Act that the Regional Transport Authority of Anantapur or Kurnool should

assess the travelling needs of the people of Bangalore or Merhara. The travelling needs of those far of places can only be assessed and that by the local Regional Transport Authorities of those places. As the granting of a contract carriage permit by the Regional Transport Authority is not merely a mathematical function of receiving of an application from an owner of a transport vehicle and as the satisfaction of the Regional Transport Authority concerned about the existence of a travelling need of the public in a particular locality is a condition precedent for the grant of a special or general transport permit, it follows, that these contract carriage permits can only be granted by the appropriate transport authorities situated in the places of their use and not by a transport authority like the Regional Transport Authority of Anantapur or Kurnool. The latter can act only in relation to the travelling needs of the public living in their travelling regions. In other words, the Regional Transport Authority, Anantapur, can grant a contract carriage permit to a group of marriage party or tourist party starting from Anantapur or within its area. Before Section 63(6) of the Act was amended the law required countersignature of the transport authority within whose Jurisdiction the permit might be used to a transport permit granted by the outside Regional Transport Authority. Now, the amended Section 63(6) of the Act says, that where the people living in a travelling region want to travel in a group to outside the State or outside the region, the Regional Transport Authority of the former region on its own satisfaction can grant a special permit which can be availed of by the travelling group of his region without any necessity of obtaining a countersignature of the outside Regional Transport Authority as earlier required by Section 63(1) of the Act. Beyond that law never went. The petitioners in this case ask for a special permit to be granted to them to subserve the needs not of the travelling public of this region nor of this State, but of those living in far off places and in far off lands of other States. The Regional Transport Authorities of this State are legally incompetent to grant such permits p> because they are not charged by the Act to look after the travelling needs of the public living outside their region. Clearly they are not in a position to assess the genuine, travelling needs of the public living in those far off lands. Without any proper assessment of such need being made, no Regional Transport Authority is empowered by Section 63(6) or any other section of the Act to grant any contract. carriage permit. Any attempt on the part of these Regional Transport Authorities to make any such assessment would immediately put them on collision of authority with the Regional Transport Authority in those States. The prayer of the petitioners for the grant of such a permit therefore, cannot be acceded to by any Regional Transport Authority of our State. In view of the above, I hold that the writ petitioners are not entitled to any relief in this writ petition.

8. Sri Venkataramana relied upon the circulars in support of his contention that the transport authorities of this Stats themselves have understood Section 63(6) of the Act as meaning to authorize the Regional Transport Authority to grant special permits as prayed for by his clients. This is clearly no argument. It is well-known rule of law that such circulars cannot constitute the material for interpretation of a provision of an Act made by the Parliament. Parliamentary laws do not depend for their enunciation of meaning and purpose on the executive circulars.

9. It is also argued by Sri Venkataramana that a special permit under Section 63(6) of the Act is different from a contract carriage permit. I do not think that this argument can be right. But even assuming that such a permit is different in some unimportant respects with a contract carriage permit, I am certain that no argument can be built on that difference to upset the conclusion I reached above. The question which has to be considered is why did the Parliament make Section 63(R) of the Act dispensing with the requirement of the countersignature of a transport authority in another State. Is it to enable the transport authority of one State to run these transport vehicles

in another State meeting the needs of the travelling public of other States? I clearly think not.

10. In the above circumstances, I dismiss this writ petition with costs. Advocate's fee Rs. 300.

11. I also direct the office to collect one separate court-fee from each one of the writ petitioners.
Petition dismissed.