

KERALA HIGH COURT

K. Balagangadharan

Vs.

Regional Transport Board

O.P. No. 384 of 1957

(Koshi, C.J. and M.S. Menon, J.)

03.12.1957

JUDGMENT

M. S. Menon, J.

1. The petitioner questions the validity of four temporary permits issued by the 1st respondent (Secretary, Regional Transport Board, Quilon) to the 2nd respondent (Director, State Transport, Department, Trivandrum) under Section 62 (c) of the Motor Vehicles Act, 1939. Two of the permits are in respect of the route, Chenganoore - Alleppy, and the other two are in respect of the route, Thiruvella - Alleppy.
2. The circumstances under which the four temporary permits were issued to the 2nd respondent are detailed by him as follows in his affidavit dated the 23rd October 1957:

"The Revenue District of Alleppey started functioning as from 17-8-1957 under Notification No. B. 2-1670/57/RD dated 13-8-1957. The Taluks of Thiruvella and Chenganoore among others which originally formed part of the District of Quilon were included in the Alleppey District as under the aforesaid notification. There was, in consequence, a large demand from the public of these Taluks that direct transport facilities be afforded to them so as to enable them to get to the headquarters of the District for transacting various businesses. There was no through bus services connecting Alleppey on the one side and Chenganoore and Thiruvella on the other. The grant of pucca permanent permits necessarily takes time. About four or five months will be required for the authorities to get through all the formalities prescribed by the Statute before pucca permits are granted. Much the same time will be necessary for the finalization of a scheme as under Chapter IV-A of the Motor Vehicles Act, 1956. In the circumstances and to meet the particular temporary need that could not otherwise be met, the State Transport Department applied to the 1st respondent for temporary permits under Section 62 of the Statute. The said application was made on 3-9-1957. In the covering letter which was sent along with the application for the temporary permits, mention was made by this

respondent that steps were being taken for the submission of a scheme to the Government as per Chapter IV-A of the Statute. The scheme was actually submitted to the Government on 26-9-1957 and is still pending with the Government. It is submitted that in the circumstances the 1st respondent was well within jurisdiction in issuing temporary permits to the 2nd respondent. The situation arising out of the said aforesaid circumstances is such as to create a need which is both particular and temporary. It is obvious that until either permanent pucca permits are issued or the scheme under Chapter IV-A is finalized the needs of the public could not be met otherwise than by the issue of temporary permits".

3. Section 62. Motor Vehicles Act, 1939 (as amended up-to-date) is in the following terms:

"A Regional Transport Authority may without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily-

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit; and may attach to any such permit any condition it thinks fit:

Provided that a temporary permit under this section shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit under Section 46 or Section 54 during the pendency of the application;

Provided further that a temporary permit under this 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".

It is common ground that clauses (a), (b) and (d) are not attracted and that the only question for consideration is whether the circumstances which induced the grant of the permits spell "a particular temporary need" within the meaning of clause (c) of Section 62.

4. In *Sri Rama Vilas Service Ltd. v. Road Traffic Board Madras*¹, instead of granting the renewal of certain permits issued temporary permits to the owner on the ground that the Government intended to put their own buses on the road and those buses were not immediately available. Gentle C.J., (with whom Bell, J. agreed) said:

"Although a finding upon the grant of the temporary permits to the appellant is not necessary for the purpose of the present appeal, nevertheless, a few words upon that matter are not out of place. The sole authority for grant of such permits is Section 62 and only when a circumstance, therein specified, exists and for not longer than four months. No attempt was made to justify the grant

¹ AIR 1948 Mad 400

by virtue of els. (a) and (b) of the section but it was argued that clause (c) has application. That clause enables a temporary permit to be granted "to meet a particular temporary need". It was suggested that the "particular temporary need" was the non-availability of the Government buses at the date when the appellant's three years permits expired on 1-5-1957 and that need was met by granting a temporary permit for the appellant's buses to ply for hire during the period preceding the date when the Government hoped to obtain its vehicles and put them into use. There was not a particular temporary need within the meaning of the Act which empowered the grant of temporary permits."

These observations were quoted with approval in *Motilal v. Uttar Pradesh Govt*².

5. The same reasoning appears to be the basis of *State Transport Authority Bhopal v. S. A. J. M. Service*³ wherein Mathur, J. C, said:

"In the present case the permits are not to be issued for conveyance of passengers on special occasions, nor for purposes of a seasonal business. It cannot also be said that the permits are to be issued to meet a particular temporary need. When the additional passenger buses are to regularly ply on the two routes, it can rightly be inferred that the need proved to the satisfaction of the State Transport Authority was of a permanent nature and not a temporary one. In these circumstances, the order of the trial court for the issue of temporary permits only was in direct contravention of Section 62 of the Motor Vehicles Act. Such an illegal order cannot be maintained and will be liable to be set aside".

6. In *Kunja Menon v. R. T. B. Trichur*⁴, the issue of a permit granted by the Regional Transport Board, Trichur, was stayed by the Road Traffic Board, Trivandrum, pending the disposal of an appeal filed before them and a temporary permit was issued in respect of that route by the Regional Transport Board, Trichur. The Court said:

"That there is a permanent need as far as the travelling public is concerned is admitted and is evident from the grant of the state carriage permit to respondent 2 which is now under appeal. The issue of an order staying proceedings pending the disposal of that appeal cannot convert that 'permanent need' into a 'temporary need' within the meaning of Section 62(c), Motor Vehicles Act, 1939. The Meed will continue to be 'permanent' even though its satisfaction has been postponed by the appellate authority in its discretion to the termination of the appeal."

7. Various other decisions were cited before us *State Transport Co. v. State of M. P*⁵., *Chandi Prasad v. Regional Transport Authority*⁶, *Kotah Transport Authority v. Regional Transport Authority*⁷, *Khandari Babu v. Regional Transport Authority Udaipur Region, Udaipur*⁸; *Jairamdas v. Regional Transport Authority*⁹, and *Parmeshwar v. Regional Transport Officer*¹⁰;

² AIR 1951 All 257 (FB)

⁴ AIR 1957 Trav Coc 255

⁶ AIR 1953 Ass74

³ AIR 195C Bho 49

⁵ AIR 1952 Nag 353

⁷ AIR 1954 Raj 33

⁸ AIR AIR 1954 Raj 78

⁹ AIR 1957 Raj162

¹⁰1957 All LJ 818

(J). As we are in entire agreement with the observations in AIR 1948 Madras 400 and AIR 1957

Travencore Cochin 225, and are quite satisfied that the circumstances quoted in paragraph 2 of the 2nd respondent's affidavit dated the 23rd October 1957 do not spell a temporary need within the meaning of Section 62 (c) of the Motor Vehicles Act, 1939, we consider it unnecessary to discuss those decisions in this judgment.

8. In the light of what is stated above the petition has to be allowed and the four temporary permits issued by the 1st respondent to the 2nd have to be quashed and we order accordingly. No costs.

Petition allowed.