

BOMBAY HIGH COURT

Shree Laxmi Bus Transport Co

Vs.

The Regional Transport Authority

Special Civil Application No. 1309 of 1959

(S.T. Desai and V.S. Desai, JJ.)

11.04.1960

JUDGMENT

V.S. Desai, J.

1. The petitioners are a firm carrying on the business of operating buses in the Rajkot Region. They obtained a permit to operate their buses in 1951 on the routes Palitana to Dhasa via Jamnagar and Liliya to Lathi via Jamnagar, and since then they have been operating their buses along the said routes. The stage carriage permit held by the petitioners was due to expire on or about March 20, 1958, and, therefore, on January 8, 1958, they made an application to the Regional Transport Authority, respondent No. 1, for the renewal of their permit. The Saurashtra State Road Transport Corporation also made an application for operating their buses along the same route. Both the applications were considered together and were decided by the Regional Transport Authority on July 5, 1958. The application of the petitioner was rejected and that of the Saurashtra State Road Transport Corporation was granted and a permit was ordered to be issued to the Saurashtra State Road Transport Corporation for the said routes. The petitioner preferred appeals against the orders in these two applications to respondent No. 2.' While the applications were pending before the Regional Transport Authority and thereafter during the pendency of the appeals before respondent No. 2 temporary permits were issued to the petitioners to operate their buses on the said routes. The appeals were decided by respondent No. 2 on June 24, 1959. In these appeals the order passed by the Regional Transport Authority was set aside and, the petitioners' permit was ordered to be renewed from the date of the expiry of the permit. In pursuance of this order passed in appeal by respondent No. 2, respondent No. 1 informed the petitioners that they would be issued a permit for three years with effect from the date of the expiry of the last permit, that is, from March 20, 1958. The petitioners thereafter represented to respondent No. 1 by their letter dated August 24, 1959, that the direction in the order of respondent No. 2 that the renewal of the permit should be from the date of the expiry of the last permit was illegal and void and that the Regional Transport Authority was bound to issue a

permit for a period of 3 years from the date of the issue of the renewed permit. On the same date the petitioners also sent a similar representation to respondent No. 2 and requested respondent No. 2 to direct the Regional Transport Authority to issue a permit valid for a period of three years from the date of issue of the permit. On September 2, 1959, respondent No. 1 informed the petitioners that their request for the issue of a permit valid for a period of three years from the date of issue could not be considered and that the permit would be renewed from the date of the expiry of the last permit according to the decision of the Appellate Committee of the State Transport Authority, Bombay. respondent No. 2 also by a communication dated September 5, 1959, informed the petitioners that since the case was of a renewal of the permit, the renewal had to be from the date of its expiry, as otherwise it could not be called a case of renewal of the permit. The petitioners were also informed that the decision once taken by the Appellate Committee could not be revised by it. The petitioners have thereafter filed the present Special Civil Application challenging the direction contained in the Appellate orders passed in Appeals Nos. 262 and 267 of 1958 by respondent No. 2 that the petitioners' permit should be renewed from the expiry of the last permit.

2. The substantial contention, which has been raised in the present petition by the petitioners, is that under the provisions of Section 58 of the Motor Vehicles Act, a stage carriage permit other than a temporary permit issued under Section 62 is to be effective without renewal for a period of not less than three years and, therefore, a permit granted on renewal also is to be effective without further renewal for a period of three years from the date on which it is issued. It is, therefore, urged that the period of the renewed permit should in any event be a period of three years commencing from the date of its issue and not from the date of expiry of the original permit. It is pointed out that in the present case the original permit expired on March 20, 1958, while the order granting renewal has been passed on June 24, 1959, and inasmuch as the order granting renewal makes the renewal to take effect for a period of three years not from June 24, 1959, on which date the renewal was granted, but from March 20, 1958, the effective period of the permit on renewal is less than three years, which is contrary to the provisions of Section 58 of the Act. In other words, the contention raised in the present petition is that when a permit is renewed some time after the expiry of the original permit the renewal cannot be made to be effective retrospectively from the date of the expiry of the original permit, if thereby the effective period of the renewed permit after the date of its issue is less than 3 years.

3. The application is resisted by the opponents and in the affidavit, which has been filed on their behalf by the Secretary of the State Transport Authority who is also a member of respondent No. 2, various defences have been raised. The defences which are relevant for the purpose of the contentions urged on behalf of the petitioners and which are pressed before us on behalf of respondent No. 2 are firstly that the petitioners have no right in law to the renewal of a permit for any particular period under the relevant provisions contained in Section 58 of the Motor Vehicles Act and, secondly, the renewal of a permit can always be from the date of the expiry of the original permit. It is contended, that the renewal is a continuation of the permit previously

granted, and even if it is held that the period of not less than three years and not more than five years specified in Section 58 is applicable not only to the fresh permits but also to the renewed permits, all that the section requires is that the continuation of the original permit under the renewal should be for a period of not less than three years and not more than five years. Since in the present case by the order of renewal passed, the original permit is continued for a period of three years from the date of its expiry, the order passed is in conformity with the provisions of section 58 and is perfectly legal and proper. It is denied that Section 58 does not permit the renewal to be made with retrospective effect.

4. Before dealing with the rival contentions, which are raised before us, it will be desirable to refer to some of the relevant provisions of Chap. IV of the Motor Vehicles Act, which deals with the control of transport vehicles in which term is included a stage carriage, with which we are concerned in the present case.

5. Section 42 makes it obligatory for a person, who wants to operate a stage carriage in a public place, to have a permit and prohibits the use of the vehicle except in accordance with the conditions of the permit. Under Section 44 are constituted the State and the Regional Transport Authorities, who have to exercise and discharge the powers and functions conferred by or under Chap. IV on such Authorities. Section 45 deals with the making of the application for a permit and Section 46 sets out the particulars, which the application is required to contain. Section 47 sets out the matters to which the authority shall have regard in considering the application for a stage carriage permit. Then we have Section 48, which empowers the Regional Transport Authority to refuse a permit or grant it in accordance with the application with such modifications as it deems fit. The section also provides that a permit shall not be granted in respect of a route or area not specified in the application and that the permit granted shall be expressed to be valid only for a specified route or for a specified area. The section then lays down the several conditions which the Authority may attach to the permit granted. The next relevant section is Section 57, which lays down the procedure in applying for and granting of permits. Then we come to Section 58, with which we are principally concerned in this case. Under Sub-section (1)(a) of this section it is provided that a stage carriage permit other than a temporary permit issued under Section 62 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. Sub-section (2) states that a permit may be renewed on an application made and disposed of as if it were an application for a permit, subject to the proviso that in the case of a stage carriage permit, an application for the renewal of the permit shall be made not less than sixty days from the date of its expiry. It is also provided that other conditions being equal an application for renewal shall be given preference over new applications for permits. Under Sub-section (3) it is provided that notwithstanding anything contained in the proviso to Sub-section (2), an application for the renewal of a permit may be entertained after the last date specified in the proviso for the making of the application, if the application is made not more than fifteen days after the said last date and is accompanied by the prescribed fee.

6. Sub-section (3) of Section 59 provides that the conditions which are specified in that Sub-section will be the conditions of every permit. Under Section 59A, every permit other than a temporary permit issued under Section 62 is required to consist of two parts, namely, Part A and Part B. Part A is required to be complete in itself and is to contain all the necessary particulars of the permit and the conditions attached thereto, and Part B is to be a summary of the permit containing such particulars as may be prescribed. It is provided that where a permit covers one or more vehicles, the permit-holder will be issued as many copies of Part B as there are vehicles authorized by the permit to be in operation at any one time.

7. Section 60 deals with the cancellation and suspension of permits. Under-section 62 provision is made for the issue of temporary permits. We are not concerned with all the cases in which temporary permits are issued except the case where a temporary permit is issued pending decision on an application for the renewal of the permit. Under Section 62 power is given to the Regional Transport Authority to issue a temporary permit to be effective for a limited period not exceeding four months, pending the decision on an application for the renewal of a permit and it is provided that the Authority may attach to such temporary permit any condition which it thinks fit. There are two provisos to this section. The first proviso states 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; and the second proviso lays down 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.

8. In support of the contentions which Mr. Hegde has urged, he has argued in the first place that a permit granted on a renewal is a fresh permit and not a continuation of the original permit. Mr. Hegde in this connection has argued that under Section 58(2) an application for renewal has to be made and disposed of as if it were an application for a fresh permit. In other words, the application for renewal must contain the particulars as required under Section 46. In dealing with and disposing of the application, the Authority must have regard to the provisions of Sections 47 and 48 and it must follow the procedure as provided in Section 57. Renewal of a permit is not as of right and for all intents and purposes, the case of a renewal has to be dealt with in exactly the same manner as that of a fresh permit with the only difference that the person asking for a renewal may be preferred when all other things are equal. Mr. Hegde points out, and it is not denied by the other side, that the Authority is entitled to vary or modify the conditions of the original permit and to add new conditions and terms to the new permit as it may deem fit at the time of granting the permit on renewal. Mr. Hegde has further pointed out that the provisions of Section 62, which allow the grant of a temporary permit pending the disposal of the application for renewal also indicate that the Legislature intended that the permit granted on renewal should be regarded as a fresh permit and not a continuation of the old permit. Mr. Hegde argues that there is no provision in the Act or in the Rules made under the Act in this State for the continuation of the original permit pending the disposal of the application for renewal. On the

expiry of the period of the original permit even where the permit-holder has applied for a renewal, he cannot operate his vehicles unless he has obtained a temporary permit and when he gets a temporary permit, which can be only once and that too for a maximum period of four months, the operation of his vehicles will have to be in accordance with the terms and conditions of the temporary permit, which may be very different from those of the original permit. Prima facie there is force in these contentions but we have not found it necessary to discuss them in detail because the point appears to have been concluded against Mr. Hegde by a decision of the Supreme Court in *V.C.K. Bus Service Ltd. v. The Regional Transport, Coimbatore*¹ In that case the permit granted was challenged and while the proceedings challenging the grant of the permit were going on the period of the permit had expired and on an application made for renewal the permit was renewed. The proceedings relating to the challenge of the original permit resulted in setting aside the grant of the original permit and the question arose as to whether on the setting aside of the original permit the permit granted on renewal also stood automatically set aside and did not continue to subsist for the period for which it was renewed. It was contended in that case that the permit granted on

¹[1057] S.C.R. 663

renewal was a fresh and independent permit and the fact that the old permit was set aside did not affect the rights under the permit granted on renewal. In support of that contention nearly all the arguments which are now raised before us by Mr. Hegde were urged before their Lordships of the Supreme Court. The contention, however, was negatived and it was held that a renewal is a continuation of the permit previously granted and, therefore, when the grant of the original permit is set aside by higher Authorities, the renewal thereof also stands automatically set aside and does not continue to subsist for the period for which it was renewed. Mr. Hegde's argument, therefore, that a permit granted on renewal is a fresh and independent permit and not a continuation of the original permit cannot be accepted.

9. Before dealing with the further arguments of Mr. Hegde, it may be desirable to dispose of a contention raised by Mr. R.J. Joshi, which also appears to be concluded by a decision of the Supreme Court. That contention of Mr. R.J. Joshi is that Section 58(2), which provides that a permit may be renewed on an application made and disposed of as if it were an application for a permit, only refers to the procedure for granting permits on renewal. The duration, which is provided for under Sub-section (7), is not a matter of procedure and, therefore, it cannot be insisted that a permit granted on renewal must also be for the period as specified in the said Section 58(7). It is argued by Mr. E. J. Joshi that there is no other provision in the Act, which lays down the period for which the renewal should be made and it is, therefore, competent for the Authority to fix any reasonable period for the permit granted on renewal. In *Y.M. Sheriff & Sons v. State Transport Authority*², their Lordships of the Supreme Court have dealt with this contention, and after having considered the relevant provisions of the Act and the arguments raised on either side, they have come to the conclusion that the effect of the provision of Section 58(2) which lays down that an application for renewal shall be made and disposed of as if it were an application is that all incidents which apply to the grant of a permit must also apply to the

grant of a renewal. They have accordingly held that the provisions relating to the duration of a permit under Section 58(7)(a) must also apply to the duration of a renewal and consequently the renewal also must be for a period of not less than 3 years or not more than 5 years as may be specified by the Authority. The contention of Mr. Joshi, therefore, that the provision of Section 58(7) specifying the period does not apply to the permit granted on renewal and the Authority, therefore, is competent to renew it for such reasonable period as it thinks fit, which may be even less than 3 years, cannot be sustained.

10. The controversy, therefore, which is raised before us in the present application, must be decided on the basis that a permit granted on renewal is a continuation of the original permit and that when a permit is renewed the period of the renewal has to be not less than 3 years and not more than 5 years as may be specified by the Authority. On this basis it is argued by Mr. Hegde that even though a permit granted on renewal may be a continuation of the original permit, the effective period of the permit on renewal is only from the date on which it is renewed and since Section 58(7) requires this effective period to be not less than three years, the permit on renewal must have a life of at least three years from the date of its renewal. Mr. Joshi, on the other hand, has argued that since the renewal is the continuation of the original permit, the continuation has to be from the date of the expiry of the original permit and the period, which is provided under Section 58(7), has to run from the date of the expiry of the original permit and not from the date on which the

²[1960] S.C.J. 402

renewal is granted. Mr. Joshi's argument is that when a renewal is granted, the effect is that the original permit is continued beyond the period for which it was granted from the date of expiry of that period onwards to the period for which it is renewed. Mr. Joshi, therefore, says that in the present case the original permit by its renewal is continued for a period of three years from the date of its expiry. Consequently, the order passed by the Authority is in conformity with the provisions of Section 58(7) and Section 58(2) of the Act.

11. In our opinion on a proper interpretation of Section 58 of the Motor Vehicles Act the contention, which is urged before us by Mr. Hegde for the petitioners, must be upheld. As has been held by the Supreme Court in the case of *Y.M. Sheriff & Sons v. State Transport Authority*, the effect of the provisions of Sections 58(7)(a) and 58(2) is that when a renewal is decided to be granted all that applied to the grant of a permit must also apply to the grant of the renewal and consequently the provisions of Section 58(7)(a) which relate to the duration of a permit must also apply to the duration of the renewal. Now the provision as to duration of a permit contained in Section 58(7)(a) is that the permit granted shall be effective for the period specified in the permit. What is meant by saying that the permit shall be effective for the period specified in the permit is that the permit granted will enable the person to whom it is granted to run his buses on the routes or in the area specified in the permit and the permit will govern and regulate his running of the buses during the said period. It is clear, therefore, that the period specified in the permit must commence from the date on which the permit is issued and cannot be made to commence from a

date prior thereto as for instance from the day on which the application for the permit is made under Section 57(2). As we have seen, stage carriages cannot be operated in a public place save in accordance with a permit (section 42) and the applicant for a permit cannot get a temporary permit during the pendency of his application in view of the first proviso to Section 62. If the period of the permit is made to commence from a date prior to the day on which the permit is issued, it cannot be effective for the period specified in the permit because it will then include a period during which the permit has not enabled the person to whom it is granted to run his buses. Just as the period of the permit cannot be made to commence from a date prior to the issue of the permit, equally so, in our opinion, the period of the renewal also cannot be made to take effect from a date prior to the grant of the renewal. The permit of which the renewal is sought cases to be effective on the day on which the period specified in the permit expires. There is no provision in the Motor Vehicles Act or in the Rules made thereunder in this State, which provide for the continued operation of the permit until the application for the renewal is disposed of. The provisions of Section 62, on the other hand, indicate that if at all the permit-holder wants to continue the running of his buses after the expiry of the period of the permit during the pendency of his application for renewal, he has to apply for a temporary permit and it is only if a temporary permit is granted to him, which can be only once and that too for a maximum period of four months, that he can run his buses during that period and on such conditions as may be attached to that permit by the Regional Transport Authority. It will thus be seen that when an application for renewal of a permit is not disposed of before the date of the expiry of the period specified in the permit, the operation of the buses in accordance with the permit ceases when the period of the permit expires and if the buses are run thereafter during the pendency of the application, they do so not in accordance with the terms and conditions of the permit which is sought to be renewed, but in accordance with and under the terms and conditions of the temporary permit. It is, therefore, clear that a renewal granted subsequent to the date on which the period specified in the permit has expired cannot be made to take effect retrospectively from the date on which the permit has expired because in that case the renewal cannot be effective for the period specified in the renewal inasmuch as it will include an interval during which the renewal has not enabled the person to whom it is granted to run his buses and has not regulated and governed the running of his buses.

12. In the present case the permit, of which renewal was sought, expired on March 20, 1958, and the renewal was decided to be granted on June 24, 1959, for a period of three years from the date of the expiry of the permit i.e. from March 21, 1958, to March 20, 1961. The period of three years which will be specified in the renewal according to this direction will include the interval between March 21, 1958, and June 24, 1959, during which the renewal will not have enabled the petitioner to run his buses nor will it have governed and regulated the running of his buses. In other words, the period specified in the renewal will include an interval during which the renewal cannot be said to have been effective. Since the law provides that the renewal shall be effective for the period specified in the renewal the direction, which has the effect of including in the specified period a part during which the renewal is not effective, will be contrary to law. In our

opinion, therefore, when an application for renewal of a permit is disposed of subsequent to the date on which the period of the permit expires, the period specified in the renewal cannot be made to commence retrospectively from the date of the expiry of the permit sought to be renewed.

13. Mr. R.J. Joshi has urged that the view that we are taking goes counter to the decision of the Supreme Court in *V.C.K. Bus Service Ltd. v. The Regional Transport Authority, Coimbatore*. In that case, to which we have already referred, the view taken was that the renewal was a continuation of the permit previously granted. Mr. Joshi argues that there cannot be a break in the continuity of the original permit and the view that we are taking results in a break in the continuity. In other words, the argument of Mr. Joshi is that the renewal being the continuation of the original permit, the continuation cannot be made from a date subsequent to the expiry of the original permit leaving an interregnum in which the original permit has not continued. We do not think that this argument of Mr. Joshi is sound, nor do we agree with him that the view that we are taking goes counter to the decision of the Supreme Court in the case referred to by him. There is no doubt that a renewal is a continuation of the original permit. What is granted on renewal is not a new permit. It is the same document, which is continued by endorsements thereon subject to such modifications in the terms and conditions as may be provided at the time of the renewal. The terms and conditions of the original permit, subject to such modifications, attach to the renewed permit and any vice which attaches to the original permit also attaches to the renewal permit so that if by reason of such vice the original permit is struck down, the renewal will also be automatically set aside. But we do not think that though a renewal is thus a continuation of the original permit, the continuation cannot be from a date subsequent to the date of expiry of the original permit leaving any interregnum between these two points. It cannot, in our opinion, be said that the renewed permit is not a continuation of the original permit unless the renewal takes effect from the date of expiry of the original permit. That a renewal can be after an interregnum from the date of expiry of the permit renewed and the word "renewal" used by the Legislature does not necessarily mean a continuation without an interregnum, can also be seen on a consideration of the provisions relating to the grant and renewal of the Motor Driving Licence, contained in Sections 10 and 11 of the Motor Vehicles Act. Section 10 provides, so far as it is material in this connection, that a driving license issued or renewed shall be effective without renewal for a period of three years from the date of the issue of the license or as the case may be from the date with effect from which the license is renewed under Section 11. Section 11 provides that where an application for renewal of a license is made, the license will be renewed with effect from the date of its expiry but in cases where the application for renewal is made more than thirty days after the date of its expiry, the driving license will be renewed with effect from the date of the renewal. A renewal of a driving license is not the grant of a fresh license, but a continuation of the old license made by an endorsement on that license and these provisions of Sections 10 and 11 clearly provide that this continuation of the license can be from a date subsequent to the date of the expiry of the original license where application for renewal is made more than thirty days after the expiry of the original license. It follows, therefore, that although

the renewal is a continuation of the original license, the continuation has not in every case to be from the date of the expiry of the original license but can also be from a subsequent date. We do not agree with Mr. Joshi's argument that unless the renewal is made effective from the date of the expiry of the original permit it would not be a case of renewal as meaning the continuation of the original permit. The view that we are taking, therefore, does not appear to us to conflict with the decision of the Supreme Court that a renewal' is a continuation of the old licence.

14. The result, therefore, is that the direction complained of in the present case that the renewal shall be retrospective from the date of the expiry of the original permit is in contravention of the provisions of Sections 58(7)(a) and 58(2). It is to be remembered that the Motor Vehicles Act is a regulatory measure regulating and restricting the fundamental right to carry on business guaranteed under Article 19(1)(g) of the Constitution and the right can only be restricted in the manner provided by the provisions of the Act. Since, in our view, the direction complained of in the present case is not in conformity with the provisions of Sections 58(1)(a) and 58(2) of the Motor Vehicles Act, the petitioners have a right to challenge the order containing this direction and have it set aside.

15. The petitioners in the present application have prayed for a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order under Articles 226 and 227 of the Constitution for quashing and setting aside the direction to the effect that the renewal of the permit should take effect from the date of expiry of the original permit. They have also prayed for an issue of a mandamus or any other appropriate writ or direction directing the respondents to issue permit valid for a period of three years from the date of issue.

16. Now, the direction complained of is contained in the order of the State Transport Authority passed on June 24, 1959. By this order the Regional Transport Authority is directed to renew the permit of the petitioners and it is further directed to make the renewal effective from the date of expiry of the permit. The petitioners have complained of only the direction which makes the renewal retrospective. The question is that if we find that the direction complained of is unsustainable, can we only set aside the said direction or will we have to set aside the whole order, which contains the said direction? The question has been considered by the Supreme Court in the case of *Y.M. Sheriff & Sons v. State Transport Authority*, where their Lordships of the Supreme Court after referring to their observations in the case of *T.C. Basappa v. T. Negappa*³, which deal with the very wide powers of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution, have held that it is open to them to sever the illegal part of the order from the part which is legal and quash and set aside that part of the order only. They have also further held that it would also be open to them to direct the Authority by a direction in the nature of a mandamus requiring the Authority to carry out the duty as laid on it by Section 58(7)(a) read with Section 58(2) when it has decided to grant the renewal. Apart from our powers under Article 226, we can also exercise our revisional powers under Article 227 and, therefore, there is no doubt that we can follow the course that was followed by the Supreme

Court in Y. Mahbood Sheriff's case and pass similar orders.

17. We, accordingly, allow the petition and quash that part of the order passed by respondent No. 2 on June 24, 1959, which directed that the renewal should be from the date of the expiry of the original permit, and direct respondent No. 2 to comply with the requirements of the law as laid down in Section 58(7)(a) read with Section 58(2) in the order of renewal made by it in favor of the petitioners on June 24, 1959. The petitioners will be entitled to their costs from the respondents.

Order accordingly.

³(1955) 1 S.C.R. 250