

RAJASTHAN HIGH COURT

Deva Ram

Vs.

State of Rajasthan

C.W.P. No. 7022 of 2003

(Prakash Tatia, J.)

29.07.2005

ORDER

Prakash Tatia, J.

1. Heard learned counsel for the parties.

2 The brief facts of the case are that the petitioner submitted an application for grant of inter-regional permit under Section 70 (1) read with Section 80 of the Motor Vehicles Act, 1988 (for short "the Act of 1988") on 11-9-2002 for the route between Loonkaransar and Karansar. At that time, no route was opened by the State Government from Loonkaransar to Karansar for which the petitioner sought permit by his application dated 10-10-2002. However, the District Transport Officer, Bikaner proposed for opening of the same route Loonkaransar to Karansar vide his proposal dated 19-2-2002, therefore, the application of the petitioner for the route was after the proposal sent by the District Transport Officer for opening the said route. The State Government opened the route vide notification dated 28-9-2002. The petitioner's application though filed before opening of the route was considered by the Regional Transport Authority (RTA) and permit was granted to the petitioner for the said route on 31-12-2003. The respondent No. 4 Sawai Singh preferred a revision petition before the State Transport Appellate Authority (STAT) against the order of RTA dated 19-10-2003. In revision two grounds were taken by the respondent No. 4. One was that the petitioner's vehicle was under-model. That ground was rejected by the revisional authority. The second ground for challenge was that the petitioner submitted application for grant of permit before opening of route by the State Government, therefore, that application, being pre-mature, could not have been considered for grant of permit for a route which came into existence only subsequent to filing of the

application by the petitioner. On that ground, the respondent No. 4 succeeded and the STAT by the impugned order dated 12-11-2003 cancelled the permit of the petitioner's vehicle.

3. According to learned counsel for the petitioner, as per the provisions of law which were in force before coming into force of the Act of 1988, the procedure for grant of stage carriage permit was given in Sections 46 to 48 of the Motor Vehicles Act, 1939 (for short "the Act of 1939") and for contract carriage permit, procedure is given in Section 57 of the Act of 1939. As per Section 57 (2) of the Act of 1939, an application for stage carriage permit or a public carrier's permit could be made not less than six weeks before the date on which the applicant desired that the permit shall take effect or in a case where the Regional Transport Authority appoints the date for receipt of the application, then on such dates. On receipt of said application, the RTA is required to complete the formalities as required by the clauses made under Section 57 of the Act of 1939. According to learned counsel for the petitioner, under the provisions of the Act of 1939, there were restrictions and permits were not available just on asking for permit as is the position after coming into force of the Motor Vehicles Act, 1988. According to learned counsel for the petitioner, the Act of 1988 has radically changed the entire scheme of grant of permit for transport vehicle. Now anyone can obtain permit for any route and permit can be granted that too for asking and there is no limit on number of permit for any route. Therefore, it is immaterial when application for obtaining permit was submitted, when there was tough competition in the trade and permits for a route were limited, than Hon'ble Supreme Court held that transparency is required in procedure for granting permits. Now there is no chance of corruption and any number of permits can be granted for any route.

4. Learned counsel for the petitioner vehemently submitted that the change made by the Act of 1988 was considered by the Hon'ble Apex Court in the case of *Mithilesh Garg, etc. etc. v. Union of India and others etc. reported* ¹ in The Hon'ble Apex Court clearly held that the Parliament in its wisdom has completely defaced the features referred in the Act of 1939 and Sections 47 and 57 of the old Act has been completely done away with by this Act of 1989. The Hon'ble Apex Court further held that there is no similar provision to that of Sections 47 and 57 under the new Act. The Hon'ble Apex Court further noticed the purpose for bringing the Act of 1988 and held that the object is to regularize the grant of permits which provides that the transporter shall ordinarily not refuse to grant an application for permit made at any time under the Act

of 1988. In view of the above radical change in the law and looking to the aims and objects of repealing the Act of 1939 and enacting the Act of 1988, it is clear that the intention of Parliament was to review the grant of permit so as to provide better facility of transportation to the public at large and for that purpose, now after enactment of the Act of 1988, any number of persons can apply for grant of permit and may obtain permits for plying the vehicles on the route. There shall be no limit for the vehicles. Therefore, according to learned counsel for the petitioner, now no other can have grievance for awarding permit for plying a vehicle on route as the other can also obtain permit for plying the vehicle on the route.

5. Learned counsel for the petitioner further vehemently submitted that the Act of 1939 has been repealed by the Act of 1988 and as per Section 217, all provisions of the old Act has been repealed which includes the procedure as provided under Sections 47 and 57 of the Act of 1939 and any provision which is inconsistent with the new Act of 1988 cannot survive nor can govern the field now. When the Act has been repealed to allow all persons to obtain permit for any route then putting a restriction of submitting an application at or by or after a particular date will be an unreasonable restriction and that too shall be contrary to the specific words used in sub-sections (1) and (2) of Section 80 in which the words "at any time" has been used. There is no reason for limiting these words by interpretation when the words are unambiguously clear and also makes the intention of Legislature clear.

6. Apart from the above aim and objects, even the specific provision of law as provided under sub-sections (1) and (2) of Section 80, an application of permit of any kind can be submitted at any time and the Legislature in their wisdom specifically enacted sub-sections (1) and (2) with specific words "at any time" in both the sub-sections with intention that all applications submitted at any time can be considered for grant of permit. Therefore, grant of permit for petitioner's vehicle on his application submitted before route was approved and opened by the State cannot be treated to be illegal or in violation of any law.

7. Learned counsel for the petitioner, on the basis of the above arguments, submits that the judgement of the Hon'ble Apex Court delivered in the case of *R. Obliswami Naidu v. Addl. State Transport Appellate Tribunal, Madras and others reported* ² in laying down that the application for permit submitted before the opening of the route is not competent is no more applicable in the cases where a permit is sought under the Act of

1988. It is also submitted that the above decision was given in a case for grant of permit for inter-State route and that was not the case relating to stage carriage permit. According to learned counsel for the petitioner, therefore, the State Road Transport Appellate Tribunal, Jaipur by relying upon the judgment of Hon'ble Apex Court in the case of R. Obliswami Naidu (*supra*) wrongly rejected the petitioner's permit on the sole ground that the petitioner's application was filed prior to the opening of the route by the State.

8. Learned counsel for the respondents contesting the issue seriously submitted that as per sub-clause (ca) of sub-section (3) of Section 68, the State is required to open a route for stage carriages and thereafter only an application for the grant of permit under Section 70 can be filed and the application filed prior to opening of route cannot be considered as an application seeking grant of permit for a route. According to learned counsel for the respondents, the existence of route is sine-qua-non for a valid application for grant of permit.

9. Learned counsel for the respondents further submits that the Hon'ble Apex Court in the case of *Ashwani Kumar and another v. Regional Transport Authority, Bikaner and another reported* ³ in unequivocally held that the existence of an inter-State route is a condition precedent for exercise of power under Section 80 (1) of the Act of 1988. The same view has been taken by the Division Bench of this Court in *Radhey Shyam v. State of Rajasthan and others*, ⁴ In Radhey Shyam's case (*supra*), an application was submitted a day prior to the opening of the route by the State Government and that was considered as premature and the rejection of the permit of such applicant was upheld by the Division Bench by confirming the view taken by the learned single Judge of this Court.

10. I have considered the submissions of learned counsel for the parties and perused the relevant provisions of law.

11. The root question involved in this case is whether an application for grant of permit for a route, which has not yet been opened by the State Government, is valid application after coming into force of the Act of 1988 as by the Act of 1988, policy for grant of permits under the Motor Vehicles Act has been liberalized and permit for routes can be granted without limitation of number for route in question. The next question arises is whether sub-sections (1) and (2) of Section 80 providing no initial period by which the application for grant of permit under the Act of 1988 can be

submitted which provides that the application for permit of any kind may be made "at any time".

12 The argument submitted by the learned counsel for the petitioner on the face of it is quite attractive but in fact is not so. It is true that law for grant of transport permit has changed by the Act of 188. Restrictions against grant of permit under the Act of 1988 have been relaxed to the extent of virtual removal in some matters but at the same time requirement of permit for transport vehicle is still there. Argument has been advanced by the learned counsel for the petitioner as though if any starting point of time for submitting application for grant of permit will be fixed, it will affect the liberalization policy in the matter of transport permits. The proper procedure makes the things certain and transparent. If the view advanced by the learned counsel for the petitioner is accepted that a person may apply for permit at any time, then he can apply at any time several years before the route is opened. Learned counsel for the petitioner vehemently submitted that if law permits such a situation then the authorities are bound to accept the applications for the route for which the Government yet has not decided to open the route. Meaning thereby, the transport authorities will have to keep a complete record under the assumption that in future, may be years after, the State Government may open a route, then said application will have to be considered by the transport authority. This procedure can lead to chaos and confusion only. The procedure can and should be workable procedure.

13. Otherwise also, if relevant provisions of the Act for 1988 are looked into, it is difficult to hold that application for transport permit can be filed before start is opened by the State. Section 68 (3) (ca) of the Act of 1988 shows that the Government is required to formulate the routes for plying stage carriages. Any one can apply for the permit by submitting application. As per the Section 70 (1) (a) application for stage carriages permit requires disclosure of the route or routes or the area or areas to which the application relates. Therefore, for a valid application for grant of permit, there must be a route in existence for which the applicant has applied. Section 70 (1) (f) further provides that the application shall further provides that the application shall contain the particulars which may be prescribed for the purpose. Therefore, unless one knows what are the particulars prescribed by the State Government to be included in the application, how one can apply for the permit? In the present case it appears from the route opening order of the State Government (Annex.1) itself that the State Government declared the route from Loonkaransar to Karansar as 33 km. as "A"

category route and 41 km. as "C" Category route and thereafter, declared the route to be "C" Category route for stage carriages. Unless these facts are known how one can submit his appropriate application for the route.

14. Learned counsel for the petitioner admitted that in case, the application will not be proper for the route, the same can be rejected because of the reason that the vehicle models for particular category of route should be in accordance with the Rules. Therefore, unless route is opened and still the transport office will have to accept the applications then the transport office will be required to accept those applications which may on the face of it shall be incompetent.

15. In the light of the above reasoning, sub-sections (1) and (2) of Section 80 of the Act of 1988 cannot read to mean that it permits the applicants to submit their application for grant of permit at any time, even before the opening of the route, If sub-sections (1) and (2) of Section 80 are read with Section 70 (1) (a), it clearly means that an application for permit of any kind may be made at any time but after the opening of the route and not before that.

16. So far as the judgment of the Hon'ble Apex Court in the case of R. Obliswami Naidu (supra) is concerned, the Hon'ble Supreme Court held that the application submitted before the opening of the route can be rejected under Section 48 (1). The Hon'ble Supreme Court considered apart from the provisions of Sections 47 and 57, that if a contrary view is taken, "it will throw open the doors for manipulations and nepotism and there may be possibility of the personality of the applicant influencing the decision of R.T.A. on the question of need for a stage carriage permit in the route and thereby public interest which should be the main consideration while taking a decision under Section 47 (3) may suffer. If the view of R.T.A. is accepted, an operator who happens to apply for the route first will be in a commanding position". It may be true that any one can apply for the permit on a route and may get the permit on asking after coming into force of the Act of 1988 as held by the Hon'ble Apex Court in the case of Mithilesh Kumar (supra), still the reason given in the judgment of R. Obliswami Naidu (supra), as mentioned above, have not lost its importance.

17. The judgments of Ashwani Kumar's case (supra) as well as Radhey Shyam's case (supra) cannot be applied. Learned counsel for the petitioner submitted that a contention was raised in Mithilesh Garg's case (supra) that there cannot be different

yardsticks for inter region, intra region and inter-State permits, upon which the Hon'ble Apex Court held that these three categories of permit seekers cannot be considered to be belonging to same class, therefore, according to learned counsel for the petitioner, the stage carriage permit seekers themselves are class and there are separate provisions for grant of stage carriage permits than the provisions which have been made for grant of permit for inter-State permits and are distinct cannot be applied to the cases of stage carriage permits. Therefore, in the light of the restrictions which can be put for inter region, intra region and inter-State permits can justify for submitting application from a particular date for the said permits but for inter region permits when it is free for all and no prejudice can be caused to any other because of submitting application prior to the declaring route by the State Government, then no one can have any grievance nor the above judgments can be applied in the facts of this case.

18. I am unable to accept the view advanced by learned counsel for the petitioner in view of the fact firstly that the interpretation advanced by the learned counsel for the petitioner of Section 80 (1) and (2) if read with Section 70 (1) (a), makes it clear that the application can be for the route in existence and not for the proposed route or the route which is under contemplation only and secondly, because of the reason that the interpretation as suggested by the learned counsel for the petitioner will lead to only chaos whereas by holding that the application for permit can be submitted only after the route is open will make the procedure known to all. It will guide the applicant properly and there will be transparency and it will avoid unnecessary useless and futile working on the applications which on the face of it are not maintainable. It further will prompt the right person to apply for the route. The process of keeping the applications for grant of permit in anticipation of opening of routes several years after or even decades after, is not a workable procedure. Therefore also, the law is required to be interpreted so that the procedural law makes a procedure to do the work and cannot be interpreted so as to result into making the procedure a heavy burden.

19. In view of the above discussion, it is held that the application submitted prior to the opening of the route is incompetent and premature application.

20. Learned counsel for the petitioner, in the alternative, submitted that even it was a procedural mistake then also, the petition-er's application could not have been rejected for grant of permit and the aggrieved party could also have obtained the permit for the same route. This argument also has no substance in view of the fact that the

petitioner's permit has already been cancelled by the appellate authority and it has been held that the petitioner's application for grant of permit was immature, therefore, the order of the authority below is legal, it cannot be reversed on this ground, further as disclosed by learned counsel for the petitioner, changes have been made for the routes by amendment in the Rules, therefore also, I do not find any merit in this writ petition.

21. Accordingly, this writ petition is hereby dismissed.
Petition dismissed.

Cases Referred.

1. AIR 1992 SC 443
2. AIR 1969 SC 1130
3. AIR 1999 SC 3888
4. (DB Civil special Appeal No. 17/2004) decided on 13-5- 2004 AIR 2004 Raj 300