NAGPUR HIGH COURT

Shah Transport Co

Vs

State of M.P

Misc. Petn. No. 1751 of 1951

(Sinha, C.J. and Mudholkar, J.)

18.04.1952

JUDGMENT

Sinha, C.J.

1. This petition and Miscellaneous Petition No. 1757 of 1951 have been made under Article 226 of the Constitution. In both these petitions, the petitioners are Motor Transport Companies and their grievance is that the permits which they held for running their buses along certain routes were improperly refused to be renewed by the Regional Transport Authority, Nagpur. They had preferred appeals to the Appellate Tribunal against the decision of the Regional Transport Authority, but their appeals were rejected.

2. Under Article 226 of the Constitution, a High Court is empowered to issue directions, orders or writs for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. The words "any other purpose" have been interpreted by this Court and by several other High Courts in India to mean 'a legal right'. Therefore, before this Court can issue directions, orders or writs, it must be satisfied that a fundamental right or any other legal right of the petitioners has been infringed.

3. The fundamental right which the petitioners assert in these cases is that of carrying on their business of motor transport. They assert that this right has been guaranteed by sub-Clause (g) of Clause (1) of Article 19. They also assert that certain orders passed by the Regional Transport Authority are discriminatory and are thus in contravention of Article 14 of the Constitution. Finally, they say that as each of them held a permit for running buses along particular routes, each of them had a right under Section 58 (2) of the Motor Vehicles Act to have his permits renewed.

4. In order to appreciate the significance of the claim made on behalf of the petitioners, it is necessary to recite certain facts. Each of the petitioners was granted a temporary permit by the Regional Transport Authority on 16-4-1949 to run one return trip daily on the Pandhurna-Sausar route. These permits were effective from 28-4-1949 to 27-8-1949. The petitioners applied for the periodical renewal of these permits and the permits were renewed for a period of four months.

After that each of those permits was renewed from time to time for a period of two months up to 27-9-1950. On 27-9-1950 they were renewed for a period of one month only. We may mention that though the permits issued to the petitioners are styled as temporary permits, petitioners assert that they are not temporary permits as defined in Section 62 of the Motor Vehicles Act and that they must be regarded as regular permits for short periods. This assertion of the petitioners is denied by the respondents. It is necessary to examine this assertion in connection with the argument advanced on behalf of the petitioners to the effect that they have a legal right to have the permits renewed.

5. Instead of renewing the permits granted to the petitioners, the Regional Transport Authority granted a permit to the respondent No. 4, Abdul Rashid Khan, to ply his buses on the routes on which the petitioners held permits till 27-10-1950. This person used to ply his buses till sometime before this date on the Chhindwara Multai Route. As that route was 'nationalised', that is, was made over to the Central Provinces Transport Services in which the State Government of Madhya Pradesh is financially interested, provision was made for him on the route held by the petitioners. This was done in pursuance of the provisions of Section 58-A read with Section 43 of the Motor Vehicles Act which enable the State Government to direct the Regional Transport Authority to grant a stage carriage permit to a 'displaced operator' (that is, a person whose permit has been cancelled because the route on which he held the permit had been nationalised). According to the petitioners, the respondent No. 4 was not a displaced operator on the date on which he was granted a permit to ply his buses till 27-10-1950 and was thus not entitled to be granted a permit on the routes held by them. It may also be mentioned that according to the notification issued by the State Transport Authority a person who held a permit from a date prior to 21-11-1946 was to be classed as 'old operator' and a person who was granted a permit after that date was to be classed as 'new operator'. In pursuance of this notification, it was decided that dislodged operators should be provided for on the routes held by new operators after cancelling or refusing to renew the permits held by them. This policy based as it is on the classification of operators into 'new operators' and 'old operators' is characterized by the petitioners as discriminatory and as being in contravention of Article 14 of the Constitution.

6. Though the petitioners have alleged in their petitions that their fundamental right guaranteed under article 19 (1) (g) of the Constitution is violated, no argument was advanced in support of it. All that the learned counsel for the petitioners did was to refer us to that particular provision of the Constitution. We may point out that this provision is subject to Clause (6) of Article 19 which runs thus :

> "Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to -
> (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
> (ii) the carrying on by the State, or by a Corporation-owned or controlled by the State, of

any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

As has been pointed out in *'Moti Lal V. Uttar Pradesh Government'*[1], the right of the public in a highway is merely to pass and repass and that such a right can be restricted. Further, according to the decision, the words "reasonable restrictions" in Article 19 (6) are wide enough to include total stoppage of the use of the highway if it was found to be necessary in the public interest. We are in respectful agreement with the view taken in that case. We are clearly of opinion that the State has a right under article 19 (6) to regulate or prohibit business of plying buses on public highways in public interest. Under Section 43 read with Sections 58 and 58-A of the Motor Vehicles Act it is open to the State Government to place restrictions on the plying of public buses, to confine the use of public highways for running public buses to only such persons as have been granted permits under the Motor Vehicles Act and to cancel or refuse to renew permits held by an operator or a class of operators. These provisions have been clearly saved by Clause 6 of Article 19 of the Constitution. In our opinion, therefore, the refusal of the Regional Transport Authority to renew the permits of the petitioners does not violate a fundamental right of the petitioners inasmuch as the right given by Article 19 (1) (g) is clearly subject to Clause (6) of Article 19 of the Constitution.

7. The next question is whether the policy of making provisions for dislodged operators on the routes held by new operators is in contravention of Article 14 of the Constitution. No doubt, Article 14 does provide that the State shall not deny to any person equality before the law or the equal protection of the laws; but it has been accepted by this Court and by other High Courts in India as well as by the Supreme Court that it does not prevent the State from making a reasonable classification. It is, however, said that the classification made by the State Transport Authority is arbitrary because there is no good reason why those who were not the holders of permits before 21st November 1946 should be regarded as new operators. In our opinion, there was a very good reason for fixing that as the relevant date, because the policy of nationalization came into force from that date. It seems to us, therefore, that the classification is perfectly reasonable and the policy of the State Transport Authority in providing for dislodged operators on the routes held by new operators is not discriminatory. Thus, in our opinion, no fundamental right of the petitioners has been infringed.

8. The question then remains as to whether any other legal right of the petitioners has been infringed. The permits held by them are clearly marked "Temporary Permits". No doubt, one of the petitioners had actually applied for a regular permit, but even then only a temporary permit was issued to him. It is, however, argued that though the permits are marked as temporary, they cannot be regarded as temporary within the meaning of the term as used in the Motor Vehicles Act. In this connection we were referred to Section 62 (1) of the Act. The heading of the Section is 'Temporary Permits' and it runs thus :

"62 (1). A Regional Transport Authority may at its discretion, and 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 authorize the use of a transport vehicle temporarily - (a) for the conveyance of passengers on special occasions such as to and from f AIR s and religious gatherings, or

(b) for the purposes of a seasonal business, or (c) to meet a particular temporary need, and may attach to any such permit any condition it thinks fit."

9. The permits in question do not quite obviously fall under Clauses (a) and (b) and the question is whether they fall under Clause (c). The learned counsel for the petitioners refers us to two decisions of this Court and says that the permits issued in circumstances similar to those present here cannot be regarded as temporary permits. The first of these decisions is '*The Rajnandgaon Transport Co. V. The Appellate Authority Of State Transport Authority*'[2], That is a decision of a single Judge where it was said that if it is not alleged that the permit was sought for any of the purposes specified in Section 62 (1) it cannot be regarded as a temporary permit merely because the duration is of four months only. The second decision is of a Division Bench of this Court reported as '*New Motor Transport Co. V. R. T. Authority*'[3], In that ease a permit was granted for a period of four months after full enquiry prescribed by Section 57 and the learned Judges held that such a permit cannot be regarded as temporary. In pur opinion, the latter decision is distinguishable because in the present cases no enquiry as prescribed by Section 57 was made before granting permits to the petitioners. The first mentioned case is, however, relevant because no enquiry under Section 57 was made. In that case also, as here, there was nothing to indicate whether the permit was issued for any of the purposes set out in Section 62 (1). It is not suggested that the permits were granted for any of the purposes set out in Clauses (a) and (b) of the Section, but it is said that there was a temporary need for providing a motor transport along those routes and therefore those permits were issued. A temporary need to fall within clause (c) must be 'a particular need' and it has not been shown what particular need existed for meeting which the permits were issued. We are, therefore, clear that the permits in question cannot be classified as temporary permits.

10. The question then remains is whether these permits can be regarded as permanent permits. Now it is clear from the provisions of the Act itself that a particular procedure has to be followed in dealing with applications for the grant of permanent permits. It is common ground that such procedure was not adopted in these cases. So the permits in question cannot be regarded as regular permits either. On the other hand, what we find is that the Regional Transport Authority granted what can best be described as irregular permits to the petitioners, that is, permits for the grant of which there is no express provision in the Motor Vehicles Act. Indeed, the Regional Transport Authority has committed an error in granting such permits but that error does not entitle the holder of the permits to claim renewal of the permits under Section 58 (2) of the Motor Vehicles Act. We are. therefore, of the opinion that no legal right of the petitioners has been infringed.

11. In the circumstances, both the petitions fail and are dismissed. We make no order as to costs because we think that these petitions were occasioned by the erroneous procedure followed by the Regional Transport Authority.

Petitions dismissed.

Cases Referred.

[1] AIR 1951 All 257 (Fb)
[2] Misc. Petn. No. 38 of 1951 (Nag)

[3] AIR 1952 Nag111