Madan Singh Vs Regional Transport Authority, Jullundur and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 12, 1969

Acts Referred: Constitution of India, 1950 â€" Article 226

Hon'ble Judges: Prem Chand Jain, J

Bench: Single Bench

Advocate: Laxmi Grover and Mr. H.S. Sawhney, for the Appellant; B.S. Dhillon, for the Respondent No. 1 and Mr. J.S. Wasu, for the Respondents No. 2 and 3, for the Respondent

Final Decision: Allowed

Judgement

P.C. Jain, J.
Madan Singh has filed this petition under Articles 226 and 227 of the Constitution of India, for the issuance of an approprite

writ, order or direction, quashing the order of the Regional Transport Authority, Jullundur, dated 24th July 1969 (copy Annexure "A" to the

petition).

2. Briefly the facts as alleged in the petition are that the Petitioner is carrying on the business of passenger transport on the authority of permit No.

195/MCR/64 in respect of his tempo No. PND-1178, issued by the Regional Transport Authority, Jullundur, on regular basis, for a distance of

seven miles from Goraya to Phagwara, in the year 1964. It is further stated that in the year 1969, the State Transport Authority Punjab, issued

instructions to the Regional Transport Authority that permit should not be issued to tempo rickshaws for operation on the G.T. Road or where the

local bus of the Punjab Roodways is operating Between Goraya and Phagwara a local bus of the Punjab Roadways is operating and one more

tempo owned by Ved Parkash is also operating. Without specifying any date, it is further alleged that one Nirmal Singh made an application for the

grant of the contract carriage permit on Goraya-Phagwara-barapind route but the same was rejected on the ground that local bus of the Punjab

Roadways was likely to operate and issuing of contract carriage permit was against the policy of the Government. Now the Regional Transport

Authority has granted one contract carriage permit each in favour of Respondents Nos. 2 and 3 for Goraya-Phagwara-Barapind and Goraya-

Phagwara respectively by its order dated 24th July, 1969 (copy Annexure "A" to the petition). It is this order of the Regional Transport Authority,

the legality of which has been challenged by the Petitioner on the grounds stated in the petition.

3. In the return filed by Shri Amar Singh Grover, Secretary, Regional Transport Authority, the material allegations made in the petition have been

controverted.

4. Mr. Laxmi Grover, learned Counsel for the Petitioner, contended that the impugned order of the Regional Transport Authority, dated 24th July,

1969, was illegal and contrary to the principles of natural justice as permits were granted to Respondents 2 and 3 without issuing any proper

notice. According to the learned Counsel, this act of Respondent No. 1 was prejudicial to the Petitioner"s right and he had no other remedy but to

invoke the powers of this Court under Articles 226 and 227 of the Constitution of India. On the other hand it was contended by the learned

Advocate General as well as Mr. Wasu, learned Counsel for Respondents 2 to 3, that the permits were issued in accordance with law, and the

Petitioner was not entitled to question the correctness of the impugned order as no objection was raised by him before the appriopate authority.

5. After hearing the learned Counsel for the parties, I am of the view that there is considerable force in the contention of the learned Counsel for

the Petitioner. There is no dispute that this petition relates to the case of a contract curriage and no other. Section 50 of the Motor Vehicles Act,

1939, with which we are concerned, prescribes the procedure which the Regional Transport Authority has to follow in considering applications for

contract carriage permits and is in the following terms:-

50. Procedure of Regional Transport Authority in considering application for contract carriage permit -A Regional Transport Authority shall, in

considering an application for a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or

desirable in the public interest; and shall also take into consideration any representations which may then be made or which may previously have

been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region to the effect

that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any

area within the region.

6. The question that arises for consideration in this case is as to whether in a case of contract carriage permit, a notice has to be given to any of the

persons upon whom a right to make representation has been granted under that section. From the plain reading of the section it is clear that no

express provision has been laid down for giving notice to interested parties or to the persons upon whom a right to make representation has been

granted. All the same, there is no escape from the conclusion that giving of some kind of notice is implied. In the section itself it is provided that the

Regional Transport Authority ""shall also take into consideration any representation which may then be made."" This, in my view, clearly

contemplates the giving of notice to the interested parties and to make them aware of the making of application for the grant of a new permit.

7. The matter does not rest here, as the next question that arises for determination is the method by which such notice should be given. The manner

of giving notice could be found out from the rules framed under the Act but admittedly no such rules have been framed. In the circumstances, I

should think that any rational and reasonable method may be adopted by the Regional Transport Authority of giving notice. The learned Counsel

for the Petitioner also conceded that no particular form of notice was necessary and the Regional Transport Authority could evolve its own method

of giving notice to the interested persons. The view I am taking is fully supported by the Division Bench decision of the Madhya Pradesh High

Court in Madhya Pradesh Trans-pore Co. (Private) Ltd. Raipur v. Regional Transport Authority, Raipur 1964 M.P.L.J 280 and the following

observations of their Lordships may be read with advantage:

Now on a careful perusal of Section 50 of the Act it is clear that the Regional Transport Authority must also take into consideration ""any

represention"" made by the persons and authorities named in that section. It is true that the procedure prescribed for the publication of an

application for stage-carriage permit u/s 57(3) of the Act is not applicable to an application for a contract carriage permit made u/s 50. But the

wording of Clause (6) of Section 57 makes it abundantly clear that a representation can be made by persons or authorities referred to in Section

50 to the effect that the number of contract carriage for which permits have already been granted in any region or any area is sufficient for or in

excess of the needs of the region or the area. Whenever such a representation is made, the Regional Transport Authority may take any such steps

as it considers appropriate for its hearing in the presence of persons likely to be affected thereby. The combined effect of Sections 50 and 57(b) of

the Act is that representations can be made and such representations must be considered. It, therefore, cannot be doubted that these provisions

necessarily contemplate a notice to be given to the persons and authorities named in Section 50. It is implicit in the language of Section 50 read

with Section 57(6) of the Act that before an application u/s 49 can be allowed notice must be given to (1) all persons already holding contract

carriage permits in the region, (2) all local authorities in the region and (3) the police authority in the region In the absence of any particular

procedure or method by which such notice should be given, it is open to the Regional Transport Authority to adopt any ordinary or rational

method of giving a notice. That would be sufficient. But it cannot be said that as there is no procedure prescribed, no notice need at all be given

even to the holders of contract carriage permits in that region. It is patent enough that such persons may legitimately be expected to make

representations as there is a likelihood of their being adversely affected. See Bejoy Krishna v. R.T.A. Calcutta, 6 C W. N. 590. We think that this

view alone accords with the cardinal rule of natural justice that no order should be passed to the prejudice of a person without giving him an

opportunity of being heard.

8. After reaching this conclusion, I proceed to deal with the facts of the case in hand. As averred in the return and on which there is no dispute,

agenda of the meeting in which the permits were to be granted, was published in the various transport papers and this in the ordinary course would

have been a sufficient notice to the interested persons. But if we look at the notice which was actually published, we find that it is absolutely vague

and meaningless and does not convey any sense. The notice was in Urdu and its English translation is in the following terms:

35. To confirm the proceedings of the issuance of the temporary permits in respect of tempo rickshaws by the order of the Chairman and to

consider the issuance of regular permits.

9. I am reproducing the actual notice in Roman scripts also in order to avoid any mis-interpretation, which is in the following terms: -

Chairman sahib ke hukam mutelqa tempo rickshaw ke arzi permit ke ajra ki karwai ki tasdiq karna aur permit pucce taur par ajra karne par ghaur.

The above mentioned notice does not give any particulars of the persons who made applications for the grant of regular permits or the route for

which the applications were made. The notice also does not show whether applications were made for the renewal of the temporary permits or for

the grant of new permits The purpose of giving notice is to intimate or make an announcement or give information of a fact to the interested parties.

From the plain reading of the notice published, it is well nigh impossible to hold that it is a proper notice. It was impossible for the Petitioner or any

other interested person to have imagined that an application for the grant of a new permit had been made by Respondents 2 and 3 on the routes on

which the Petitioner was already plying his tempo. In these circumstances the only irresistible conclusion that can be arrived at is that the notice

published in the transport newspapers was not a proper notice and the impugned order is liable to be quashed on this short ground.

10. It was contended by the learned Counsel for the Respondents that no relief should be granted to the Petitioner as he has failed to avail of the

alternate remedy of revision available to him under the Act. In the view I have taken on the merits of the case, I am not disposed to dismiss the

petition on this ground especially in the circumstances that the alternate remdy is not efficacious as admittedly revisional authority holds its sittings

after a long intererval of two to three months.

11. For the reasons recorded above this petition is allowed with costs and the impugned order of the Regional Transport Authority, Respondent

No- 1, dated 24th July, 1969 (Annexure "A" to the petition) is quashed. Counsel fee Rs. 100/-.