

(1952) 03 RAJ CK 0002

Rajasthan High Court (Jaipur Bench)

Case No: Writ Petition No. 129 of 1951

Shiv Narain

APPELLANT

Vs

Regional Transport Authority,
Jaipur Region, Jaipur and
Another

RESPONDENT

Date of Decision: March 20, 1952

Acts Referred:

- Constitution of India, 1950 - Article 226
- Motor Vehicles Act, 1939 - Section 57, 57(1), 57(3), 64
- Rajasthan Motor Vehicles Taxation Rules, 1951 - Rule 81

Citation: AIR 1953 Raj 1 : (1952) RLW 323

Hon'ble Judges: Sharma, J; Ranawat, J

Bench: Division Bench

Advocate: B.B. Sharma and D.M. Bhandari, for the Appellant; R.A. Gupta, Government Advocate and R.K. Rastogi, for Opposite Party No. 2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ranawat, J.

This is an application under Article 226 of the Constitution of India.

2. The case of the petitioner is as follows. The petitioner, Shiv Narain Agarwal, was a share-holder of the Dholpur Motor Transport Association, and under the name of the Association, he had a permit to ply a bus No. M. U. D. H. 113 on the Dholpur-Agra route up to the 31st of January 1952. Subsequently that permit was cancelled on account of the bad condition of the motor bus No. M. U. D. H. 113. The petitioner then applied for substituting a new bus in place of the old bus M. U. D. H. 113, and a new permit which was valid upto 80th of November 1951, was granted to him for Bus No. M. U. D. H. 296, which was subsequently numbered as R. J. D. 51.

In the meantime, the Motor Vehicles Act (Act IV of 1939) was adapted in Rajasthan by the Rajasthan Motor Vehicles Act (Adaption) Ordinance No. XIV of 1950) on the 24th of January 1950. A notification was then issued by the Regional Transport Authority of Jaipur, which was published in the Gazette of 19th May 1951, by which the existing motor operators in Jaipur region were asked to file their petitions for permits to ply buses before the 30th of May 1951, and other persons were also invited to file their petitions for permits to ply buses, but no date was specified in their case. The petitioner, it is said, filed his application, in response to the aforesaid notification, the office of the Regional Transport Authority After that a second notification was issued by the Rajasthan State Transport Authority which was published in the Gazette of 7th July 1951, and by this notification applications were invited for plying buses on certain specified routes in which Dholpur-Agra route was also mentioned.

The petitioner, as he had already filed an application in response to the previous notification, did not think it necessary to file a fresh petition under the new notification and certain other persons lodged their petitions for permits to ply buses on the Dholpur-Agra route. The Regional Transport Authority, after publishing the petitions, which were filed under the second Notification relating to the Dholpur-Agra route, granted six permits to certain persons, whose names have been specified in the petition and out of whom the Dholpur Co-operative Transport and Multipurposes Union Limited, Dholpur, has been impleaded as one of the parties. No action, it is said, was taken on the petition filed by the petitioner for a permit to ply his bus No. R.J.D. 51. As in accordance with an understanding between the State of Uttar Pradesh and Rajasthan only six permits can be granted by the Regional Transport Authority of Jaipur for plying buses on the Dholpur-Agra route, there was left no chance for the issue of a permit in favour of the petitioner. The petitioner further stated that in spite of his repeated requests, no action was taken by the Regional Transport Authority to dispose of his application. He, therefore, had no alternative but to come to this court. He prays that an appropriate writ or direction may be issued to the Regional Transport Authority to publish, and to take proceedings according to law on his application, as required by Section 57(3) of the Motor Vehicles Act.

3. On behalf of the Regional Transport Authority a reply was filed, and it was admitted that the petitioner filed an application in response to the first notification, but it was denied that the petitioner made any demand for publication of his petition as required by Section 57 of the Motor Vehicles Act. It was also said that the petition was pending the consideration of the Regional Transport Authority, and would be disposed of in due course. As the plea of the petitioner is that his application has been impliedly rejected by the Regional Transport Authority, when six permits had been issued to others, the petitioner should have recourse to his right of appeal u/s 64 rather than come to this court under Article 226 of the Constitution of India. A further objection was taken that at the time the applications

of other persons were published and considered by the Regional Transport Authority relating to the matter of granting a permit for a stage carriage on the Dholpur-Agra route, it was open to the petitioner to come forward and to place his objections, if any, before the Authority. The petitioner failed to file any objections, and impliedly it should be taken for granted that he waived his right for a permit on that route. The petition, it was also said, contained wrong facts, and the petitioner did not come to Court with clean hands.

4. The Dholpur-Co-operative Transport and Multipurposes Union Limited, Dholpur, (hereinafter to be referred to as opposite party No. 2) also filed a reply stating that the second notification, which was issued by the State Transport Authority superseded the first Notification issued by the Regional Transport Authority, and the petitioner, when he did not file an application in response to the second Notification, had no claim whatsoever for grant of a permit to ply a state carriage on the Dholpur-Agra route.

5. The only point which has been pressed on behalf of the petitioner by his learned counsel is that the Regional Transport Authority was bound, under the provisions of Section 57(3) of the Motor Vehicles Act, to publish his application, and to proceed further as provided by the said section and it failed to do so.

Section 57(3) of the Motor Vehicles Act lays down as follows:

"On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered."

6. The reply of the Regional Transport Authority is that the application is pending consideration, and in due course action will be taken as required by Section 57 of the Motor Vehicles Act. Mr. Ram Avtar, who appeared for the Regional Transport Authority, however, admitted that the Authority was slack in dealing with the application of the petitioner, but he stressed that the petition was being considered and that it had not been rejected. It is mandatory u/s 57(3) that an application which is presented as required by Sub-section (1) of that Section should be published, and the method of publication has been laid down in Rule 81 of the Rajasthan Motor Vehicles Rules, 1951. The petition was filed with the Regional Transport Authority on the 30th of May 1951, and since then no action has been taken by the Regional Transport Authority. The application for a writ was moved on the 27th of November 1951, that is, about six months after the filing of the first application before the Regional Transport Authority. u/s 57(3), no time has been prescribed for the publication of the applications, which means that publication shall be done within

reasonable time. Six months cannot be held to be reasonable time under the circumstances of this case, specially in view of the fact that the other applications, which were invited subsequently have been dealt with as required by the law. The petitioner did suffer, on account of the delay in the office of the Regional Transport Authority. In our opinion, the Regional Transport Authority has by sitting over the application without taking any steps conducted itself in such a way as cannot be considered to be in accordance with law.

7. Mr. Rastogi has urged that the second notification, which was published by the State Transport Authority on the 7th of July, 1951, superseded the previous notification, which had been published by the Regional Transport Authority of Jaipur, and since the petitioner did not make any application in response to the second notification, his case could not have been considered by the Authority for grant of a permit. The plea taken by the Regional Transport Authority is not in accord with the argument put forth by Mr. Rastogi. The case of the Regional Transport Authority is that the second notification did not supersede the first. The argument of Mr. Rastogi, therefore, has no force. Moreover, in the first notification, no date was fixed for inviting applications from all concerned. The only date which was fixed was meant for the petitions of the existing motor operators within the region of Jaipur. By the second notification, a date was fixed for all concerned, and applications were invited for plying stage carriages on specified routes. The two notifications, therefore, were for different purposes, and it cannot be regarded that the second notification had the intention to supersede the first one.

Mr. Rastogi has also referred to a third notification, which was published by the Regional Transport Authority in the Gazette of the 18th of August 1951, in which it was specifically stated that all those applicants, who had previously applied, should also send in their applications again. This notification does not relate to the Dholpur-Agra route, and it is, therefore, not relevant for the purposes of this case. This argument, which has been based on the third notification was addressed to the court for the first time at the time of hearing. No mention of it was made in the reply of Mr. Rastogi's client. However, there appears to be no relevance of the third notification as regards the facts of this case are concerned. No stand is being taken by the Regional Transport Authority on the basis of the second or third notification, and their case, as has already been discussed above, is that the application of the petitioner is still pending the consideration of the Authority.

8. On behalf of the Regional Transport Authority, Mr. Ram Avtar has firstly argued that taking the petitioner on his own stand, he should be deemed to be out of the court because according to him his application had been virtually rejected by the Regional Transport Authority. His remedy u/s 64 was by way of filing an appeal to the State Transport Authority, and the petitioner not having proceeded by way of appeal should not be granted any relief in these proceedings. It may be pointed out that no order was given by the Regional Transport Authority on the application of

the petitioner, and it cannot, under these circumstances, be understood that the application of the petitioner had been rejected by that Authority. Mr. Sharma, who appeared for the petitioner, cited the authority of -- Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others, on this point, in which it has been held as follows:

"Where no order under the Act (Motor Vehicles Act) has been passed or at any rate, no V reasons are given for refusal to grant permanent permits, no question of an appeal u/s 64 arises. In such a case an appeal would not be as satisfactory a remedy, as a writ of mandamus"."

When no order has been given by the Regional Transport Authority, we are not prepared to hold that the application of the petitioner had been rejected. The petitioner cannot file an appeal to the higher authority unless some order is given by the Regional Transport Authority.

In the present case as no order has been given by the (sic) Transport Authority, the argument (sic) by Mr. Ram Avtar cannot be consideration have any force.

9. The next objection taken on behalf of the Regional Transport Authority is that it was open to the petitioner to file his objection at the time the applications of other persons were considered by that Authority for grant of a permit for a stage carriage relating to the Dholpur-Agra route. It is stressed that since the petitioner failed to lodge his objections, it should be taken that he waived his claim for a permit to ply a stage carriage on the Dholpur-Agra route. In support of this argument, paragraph 5 of the affidavit of Mr. Devi Lal Boliya, Secretary to the Regional Transport Authority, Jaipur Region, has been referred to, which says that the petitioner did not file any objections for consideration of the Regional Transport Authority at the time the objections of other persons were considered in response to the second notification. Even supposing that the petitioner failed to lodge any objections at the time other petitions which had been filed in response to the second notification were considered by the Authority, the only effect would be that he would be debarred from challenging the validity of the permits granted to other persons. This cannot, however, stop him from pursuing his own application, which is admitted to be pending before the Regional Transport Authority. This point does not meet the case of the petitioner, and it is no answer to say that since he did not file any objections, he cannot now pursue his application.

10. The third point urged by Mr. Ram Avtar is that the petitioner failed to make a demand from the Regional Transport Authority for getting justice before he came to this court. Unless a demand is made and refused, a person cannot be granted relief by way of a writ of mandamus. In support of this argument -- "Harendranath Sharma v. State of Madhya Bharat", AIR 1950 Madh. B. 46 has been cited. In that case the petitioner, being aggrieved by the order of the Health Minister of the State moved the High Court for a writ of mandamus without first approaching the Health

Minister for a demand of justice and contended that in view of the stubborn attitude of the Health Minister it was meaningless to approach him for justice and that the act of the petitioner in asking the Health Minister to give him an opportunity of being heard by counsel was itself a demand of Justice. These contentions were negated, and it was held that the petitioner having failed to fulfil the essential requirement of a demand of justice the petition for the issue of a writ of mandamus was not maintainable.

Mr. Sharma has invited the attention of this Court to an application of the petitioner of the 22nd of September, 1951, in which a request was made by him for inserting his name in the list of the applications published in the Gazette of the 15th September, 1951. On this application, it appears, no action was taken by the Regional Transport Authority, as the application of the petitioner could not be traced in his office at that time. After this, the petitioner, it is said, did not sit silent, and he sent a telegram on the 24th of November 1951, requesting the Regional Transport Authority to issue a permit for his bus No. R.J.D. 51. No action was taken on this telegram as well. The original application referred to above, and a copy of the telegram are on the record of this case. When no action was taken by the Authority, the petitioner filed this application on the 27th of November 1951. In view of the application of the petitioner of the 22nd September 1951, and his subsequent telegram of the 24th November, 1951, it cannot be said that the petitioner failed to make a demand from the Authority for justice before coming to this court.

11. Fourthly, it has been said on behalf of the Regional Transport Authority that the petitioner is guilty of suppressing and mis-stating certain facts in his application. A person, who comes to this court for a writ under Article 226 of the Constitution of India should come with clean hands, and unless it is so, he can-not claim the benefit of the provisions of Article 226 of the Constitution. Reference is invited in this connection to paragraphs 8 and 9 of the petition, which run as follows:

"8. That the petitioner's original permit being valid upto 31st January 1952, it could not be legally cancelled except u/s 60 of Motor Vehicles Act and that too after giving an opportunity to the petitioner to show cause but neither there was any ground as contemplated by Section 60 nor any opportunity was given to the petitioner. The petitioner was further never informed of the decision of Rule T.A. on his representation dated 22-9-51.

9. That the permit in favour of the petitioner being valid upto 31st January, 1952, the respondent had no jurisdiction to grant during its pendency temporary permit for the Bus which was replaced by the order of competent authority. Further the grant of temporary permits was without jurisdiction being not in accordance with Motor Vehicles Act the Bus in question shall be considered to be plying under the original permit and as such the respondent had no jurisdiction to cancel a valid permit under the circumstances of the case and it is specially so in view of the fact that no notice was given to the petitioner before passing an order which impliedly cancelled the

permit for the petitioner's Bus."

12. The case of the petitioner was that his original permit was valid upto the 31st January 1952, and the action of the Regional Transport Authority in cancelling his permit and in not allowing his bus to ply was illegal. It appears that even though the first permit issued to the petitioner was valid upto the 31st of January, 1952, it was for Bus No. M. U. D. H. 113. During the continuance of this period the condition of Bus No. 113 becomes such as it was considered unfit to be on the road. The permit of that Bus was, therefore suspended, and the Dholpur Motor Transport Association was asked to put the vehicle in proper condition. The petitioner then moved for replacing that Bus with another Bus, and a new permit was granted to him in lieu thereof for Bus No. M. U. D. H. 296, which was subsequently registered as No. R. J. D. 51. The second permit was issued only upto the 30th of November 1951. As the second permit was a new permit, it cannot be said that it was to be governed by the conditions contained in the first permit, and the interpretation put upon the second permit by the petitioner appears to be not well founded. The petitioner has, however, in his application placed all the facts relating to the issue of the first permit and that of the second permit on the record of the case. He has also placed on the record all the documents relating to the grant of the two permits. Under these circumstances, it would not be proper to say that the petitioner suppressed any facts or deliberately did something to misguide the court. What he did was to interpret the terms of the second permit on the understanding that the terms of the first permit were applicable to it. He was obviously wrong in so doing, but it can hardly be said that he kept back any facts from the court or placed any wrong facts on the record of the case. In the matter of interpretation and argument, there is room for honest difference of opinion. In the present case, however, the logic of the argument of the petitioner was obviously wrong. No doubt an interim stay order was granted to him on his allegations in this behalf, but when the opposite party was heard, the absurdity of the argument of the petitioner was brought out, and the stay order was vacated. We are of the opinion that this application cannot be dismissed on the ground that the petitioner suppressed certain facts or deliberately made any misstatements in his petition.

13. The petitioner has also prayed that the permits issued to six persons for plying stage carriage on Dholpur-Agra route should be cancelled. But as he did not file any objection at the time the applications of those persons were considered by the Regional Transport Authority, he cannot now claim that their permits should be cancelled. If his rights were affected by the granting of those permits, he should have approached the proper authority u/s 57 (3). The prayer of the petitioner in this behalf cannot, therefore, be considered by this Court.

14. The only relief to which the petitioner is entitled is for publication of his application in the Gazette, as prescribed in Section 57(3). This application is, therefore, partially allowed, and a writ in the nature of mandamus is ordered to

issue to the Regional Transport Authority, Jaipur, directing it to publish the application of the petitioner, dated 29th of May 1951, and to hear and determine it in accordance with law. Under the circumstances of this case, there will be no order as to costs.