

(1959) 05 AHC CK 0010

Allahabad High Court

Case No: Civil Misc. Writ No. 887 of 1958

Mohi Uddin

APPELLANT

Vs

The Regional Transport
Authority, Rohilkhand
Region and Another

RESPONDENT

Date of Decision: May 5, 1959

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 60
- Constitution of India, 1950 - Article 226
- Motor Vehicles Act, 1939 - Section 58, 58(2), 68, 68(1)

Citation: AIR 1960 All 209

Hon'ble Judges: A.P. Srivastava, J

Bench: Single Bench

Advocate: S.N. Kacker, for the Appellant; K.B. Asthana, Junior Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

A.P. Srivastava, J.

The petitioner had a permit for ply-Ins a stage carriage on the Budaun-Asafpur-Chandausi route in the Rohilkhand region. His permit was valid till the 17th of July 1956. He applied for a renewal of the permit on the 4th of July 1956, but his application was rejected on the ground that he had not complied with Rule 60 of the Motor Vehicle Rules, which required the filing of the application for renewal at least two months before the date on which the permit was to expire. Against the refusal to renew the permit the petitioner went up in appeal but his appeal failed.

The appellate authority held that the petitioner should have complied with Rule 60 and that he had not shown sufficient grounds for not making the application for renewal in accordance with that rule. The petitioner now wants the order of the Regional Transport

Authority dated the 6th of February 1957 rejecting his application for renewal and also the order of the appellate authority dated 7th February 1958 dismissing his appeal to be quashed by a writ of certiorari. He also wants a writ of mandamus to be issued to direct the Regional Transport Authority to forthwith renew his permit. The main ground urged in support of the petition is that Rule 60 of the Motor Vehicles Rules which prescribes that applications for renewal must be made at least two months before the date of the expiry of the previous permit is ultra vires and the authorities could not therefore insist that it should be complied with.

2. The petition is opposed on two grounds. The first is that the rule is intra vires. The second is that in any case the route in respect of which the petitioner had his permit became notified on account of a scheme having been published under which the route was to be worked by the State exclusively the petition has really become in-fructuous and neither of the two reliefs claimed by the petitioner should, therefore, be granted to him.

3. Section 58 of the Motor Vehicles Act as it stood before its amendment by Act 100 of 1956 provided for the renewal of the permits. Subsection (2) of that section said:

"A permit may be renewed on an application made and disposed of $\frac{1}{2}$ as if it were an application for a permit;

Provided that, other conditions being equal, an application for renewal shall be given preference over new applications for permits." Sub-section (1) of Section 68 generally empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Chapter containing Section 58. Sub-section (2) of Section 68 then details some specific subjects on which rules can be framed but it is made clear that that subsection would not in any way prejudice the generality of the power conferred by Sub-section (1).

4. The contention of the petitioner is that the State Government had no power to frame a rule like Rule 60 of the Motor Vehicles Rules as it was not covered by any of the various clauses of Sub-section (2) of Section 68. The argument is that the right to apply for a renewal was a valuable right of the petitioner and he could not be deprived of it by a rule being framed that he should make an application for renewal within a particular period of time when there was no specific provision empowering the State to frame such a rule.

5. It is conceded that rule 60 of the Motor Vehicles Rules cannot fall under any of the clauses of Sub-section (2) of Section 68. It is, however, contended on behalf of the State that the rule is intra vires because it is covered by Sub-section (1) of that section.

6. Sub-section (2) of Section 58 lays down that applications for renewals are to be made and disposed of like applications for permits. That is, however, only a general provision. It is obvious that applications for permits and applications for renewals cannot stand on the same footing in all possible respects. An application for an original permit could be made at any time either on applications being invited or if the applicant wanted to make it of his

own accord. There was no question of providing any limitation for it. Different considerations applied to an application for renewal.

It could be entertained only if it was made at a particular stage. If no specific directions were given in this respect complications were likely to arise. For instance if the period during which the application for renewal was to be made was not specified an application could be made long after the expiry of the previous permit. During the interval permits may have been granted to other persons and their rights may have intervened. To prevent all such contingencies and for effectively carrying out the purpose of Sub-section (2) of Section 58 of the Motor Vehicles Act the State Government could in exercise of the general powers conferred upon it by Sub-section (1) of Section 68 frame a rule like Rule 60 even though it was not covered by any of the specific clauses of Sub-section (2).

7. That the framing of such a rule was necessary is indicated by the fact that the Legislature while amending Section 58 of the Motor Vehicles Act By Act 100 of 1956 incorporated in that section the provision that the application for renewal was to be made within the period as had originally been provided in rule 60. I am, therefore, unable to accept the contention that Rule 60 of the Rules was ultra vires or that it was not authorised by Sub-section (1) of Section 68. The principal ground on which the petitioner's claim is based therefore fails.

8. The other contention of the learned counsel for the State also does not appear to be without force. It is conceded that the route in respect of which the petitioner held a permit has since become a notified route and only State carriages run on it. Chapter IV of the Motor Vehicles Act including Section 58 has become inapplicable.

No permit can now be granted to any one in respect of that route. Nor can any renewals be made. No writ of mandamus can be issued directing the authorities to do anything they are not entitled in law to do. The question whether the petitioner can claim compensation u/s 11 of the V. P. Road Transport Services (Development) Act (No. IX of 1955) is not at present before us.

The discretion of this Court under Article 226 of the Constitution should not ordinarily be exercised simply to enable a petitioner to make a claim for money in other proceedings.

9. The petition cannot, therefore, succeed. It is dismissed with costs.