

(1956) 11 AHC CK 0024

Allahabad High Court

Case No: Special Appeal No. 133 of 1956

Pal Sing

APPELLANT

Vs

State Transport Authority
Tribunal and Others

RESPONDENT

Date of Decision: Nov. 28, 1956

Acts Referred:

- Motor Vehicles Act, 1939 - Section 47, 57(3), 58(2), 64

Citation: AIR 1957 All 254

Hon'ble Judges: Desai, J; Beg, J

Bench: Division Bench

Advocate: Chail Behari Lal Saxena, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Desai, J.

This is an appeal from a judgment of our brother M. L. Chaturvedi rejecting the appellant's petition for a writ of certiorari to quash an order dated .March, 5/6, 1954 passed by the State Transport Authority U. P. respondent No. 1 on appeal and a writ of mandamus directing the Regional Transport Authority, Kanpur, to decide the appellant's application dated March 1 and 2, 1954, for renewal of two permanent permits granted to him and directing it to renew the permits in preference to issuing fresh permits to others.

2. The permits in dispute are for the route Tirwa-Debiapur. The Regional Transport Authority decided to open this route for the first time in 1951 and invited applications for permits. The appellant applied for two permits and one Shyam Sunder also applied for one permit. The applications of the appellant were published in the gazette as required u/s 57(3) of the Motor Vehicles Act (Act No. IV of 1939) on 28-4-1951 while the application of Shyam Sunder was published in the

gazette on 17-3-1951. These applications were considered by the Regional Transport Authority at a meeting held by it on May 16/17, 1951 and it granted two permits to the appellant and one permit to Shyam Sunder, the permits being valid for three years.

Somebody filed appeals against the orders of the Regional Transport Authority granting permits to the appellant and Shyam Sunder and they were disposed of by the State Transport Authority U. P. While the appeals were pending the appellant on March 1/2, 1954 applied for renewal of the two permits because their term was about to expire and Shyam Sunder also applied for renewal of his permit. Both the appeals were disposed of by the State Transport Authority on 5/6-3-1954. They were dismissed but the permits were held to have been illegally granted on the ground that the applications were considered by the Regional Transport Authority within 30 days of the dates on which they were published. u/s 57(3) of the Motor Vehicles Act, an application must be considered by the Regional Transport Authority on a date at least 30 days from the date on which it is published. The applications of the appellant were undoubtedly considered and allowed by the Regional Transport Authority within 30 days of the date on which they were published in the gazette but not that of Shyam Sunder.

The State Transport Authority probably was mis-informed that Shyam Sunder's application also was considered within 30 days from the date of its publication. Since the term of the permits was about to expire the State Transport Authority decided not to disturb operation of the permits notwithstanding their being illegally granted and directed the Regional Transport Authority not to renew them automatically but to invite fresh applications after informing the applicants and consider them in strict conformity with the provisions of Section 57(3).

This is the order that the appellant challenges in this writ petition. On the basis of this order the Regional Transport Authority on 1-7-1954 dismissed the appellant's applications for renewal of his permits dated March 1/2-1954. It also dismissed the application of Shyam Sunder for renewal of his permit. The appellant and Shyam Sunder applied for fresh permits also for the same route but on May 19/21, 1955 they were dismissed by the Regional Transport Authority on the ground that it had abolished the route Tirwa-Debipur, and was not going to issue any permits for it. An appeal from the dismissal of that application is pending before the State Transport Authority and we are not concerned with it.

3. The appellant through this writ petition wants the direction issued by the State Transport Authority in its order of March 5/6, 1954 regarding non-renewal of the permits of the appellant and inviting fresh applications, to be quashed. He further wants the Regional Transport Authority to be ordered to redecide the appellant's applications for renewal of the permits and to grant them.

4. Our learned brother dismissed the petition. He held that the permits were illegally granted to the appellant on 17-5-1951 because the period of 30 days had not expired since the publication of the applications, that being illegal that could not be re-newed and that the Regional Transport Authority was fully justified in refusing to renew them on that ground. He upheld the order of the State Transport Authority about the invalidity of the permits and did not see anything wrong in the direction issued by it.

5. Coming to the order of the State Transport Authority we find it an eminently just order; if anything, it was in favour of the appellant. The provision that an application should be fixed for consideration on a date not less than 30 days from its publication in the gazette is a mandatory provision and goes to the root of the jurisdiction of the Regional Transport Authority which has no power whatsoever to dispose of an application within 30 days of its publication in the gazette.

Undoubtedly the applications of the appellant were allowed within 30 days and this was illegal. The State Transport Authority would have been fully justified in holding that the permits were null and void with effect from 5/6-3-54 and requiring the appellant to give up plying his stage Carriages on the route. But instead of doing so it showed some favour to him by allowing him to continue plying the Stage Carriages for the remaining term because it was a matter of only a couple of months.

The permits had been declared to be invalid and ceased to be operative but only the appellant had been allowed to ply his stage Carriages tempo rarely . The powers of the State Transport Authority in disposing of an appeal made to it u/s 64 of the Motor Vehicles Act are not defined any where and there is nothing illegal or even improper in the direction issued by it to the Regional Transport Authority.

If it had cancelled the permits, as it could with full justification it would not have been necessary for it to issue any direction because the Regional Transport Authority would have been obliged to invite fresh applications for permits for the route; but since it allowed the appellant to go on plying his Stage Carriages on the route it felt the necessity of cautioning the Regional Transport Authority that this licence granted to the appellant should not be taken to mean that the permits were valid and renewable and that he could apply for renewal instead of for fresh permits.

Under Section 58 (2) a permit may be renewed on an application made and disposed of as if it were an application for a permit. The matters to be taken into consideration by a Regional Transport Authority when deciding whether to grant or refuse a permit for a Stage Carriage are enumerated in Section 47. It is provided in Section 58 that other conditions being equal, an application for renewal shall be given preference over applications for permits.

It was in order to prevent the Regional Transport Authority from thinking that the appellant was entitled to this preference that the State Transport Authority directed that he was not and placed him on the same footing as a fresh applicant which he would have undoubtedly been if the permits had been expressly cancelled. Our learned brother very properly held that there was nothing in the order of the State Transport Authority to which any exception could be taken by the appellant and that no case was made out for its being quashed.

6. The Regional Transport Authority rejected the applications for renewal but no certiorari has been sought against the order rejecting them. So long as it stands no mandamus can be issued because the applications for renewal are no longer pending before it and it cannot be compelled to pass contradictory orders. The orders passed by it on the applications also are correct. The appellant was not entitled at all to renewal because the permits granted to him were illegal and could not be renewed. Section 58 (2) contemplates that the permit sought to be renewed was validly granted, and remains operative till the last date of its term.

The Act provided for appeals from permits illegally granted and the appellate authority is expected to cancel them. Once a permit is cancelled no question can possibly arise of its renewal; nothing that does not exist can be renewed. The effect of the order of the State Transport Authority was only this that the appellant was permitted to ply his State Carriages upto the date of the expiry of the permits though they were invalid; it did not make them valid upto the date of their expiry and so they were not entitled to renewal. The appellant could apply for a fresh permit and this right was expressly reserved to him by the State Transport Authority (and he has exercised that right though unsuccessfully).

The matters mentioned in Section 47 are to be considered only when a Regional Transport Authority has to decide whether to renew a permit, that is, a permit that was granted validly. When a person applies for renewal of a permit which was invalid, the Regional Transport Authority is competent to dismiss it straightway on that ground. Shyam Sunder also filed a writ petition and it was disposed of by our brother Gopalji Mehrotra, (Vide Shyam Sunder Lal v. State of U. P. Misc. Writ No. 83 of 1955 D/-12-7-1955 (All) (A)).

Our learned brother was of the view that a Regional Transport Authority is not competent to dismiss an application for renewal on the ground that the permit was illegally granted. Section 47 refers to matters to be considered when disposing of an application for renewal of a permit; since the legislature did not contemplate an application for renewal of a permit illegally granted it did not provide expressly that such an application must be dismissed. Further section 47 lays down only that certain matters should be taken into consideration; it does not prohibit a Regional Transport Authority from taking other matters into consideration.

In an application for a fresh permit there can possibly arise no question of the illegality of the permit already granted and, therefore, Section 47 could not possibly mention the illegality as one of the matters to be taken into consideration. When an application for renewal is made, the illegality of the permit is undoubtedly a matter to be taken into consideration by the Regional Transport Authority and more so when the State Transport Authority in exercise of its appellate jurisdiction has expressly directed it to do so.

The law on the subject is not exhaustively contained in section 47; any direction given by the State Transport Authority in its appellate Jurisdiction is also to be complied with by the Regional Transport Authority. If the State Transport Authority has jurisdiction to pass an order, it must be complied with by the Regional Transport Authority. Therefore our learned brother Gopalji Mehrotra was not correct when he observed that an application for renewal cannot be dismissed except on any of the grounds mentioned in section 47, and that "when a permit had been granted to the petitioner the renewal application cannot be refused on the ground that the original permit itself was illegal".

7. We find that the Regional Transport Authority was bound to dismiss the applications of the appellant for renewal on the ground that no question of renewal arose and that it was also bound by the direction issued by the State Transport Authority to dismiss them. No mandamus could therefore be issued against it. The appeal is dismissed.