

(1962) 09 GAU CK 0004

Gauhati High Court

Case No: Civil Rule No. 280 of 1962

Sudhir Kumar Barua

APPELLANT

Vs

State Transport
(Appellate) Authority
and Others

RESPONDENT

Date of Decision: Sept. 18, 1962

Acts Referred:

- Constitution of India, 1950 - Article 226
- Motor Vehicles Act, 1988 - Section 46, 49, 54, 62

Hon'ble Judges: Mehrotra, C.J; S.K. Dutta, J

Bench: Division Bench

Advocate: N.M. Lahiri, for the Appellant; M.C. Pathak, Jr. Govt. Advocate for Opposite Parties Nos. 1 to 4 and J.P. Bhattacharjee, for Opposite Parties Nos. 6 to 9, for the Respondent

Final Decision: Dismissed

Judgement

Mehrotra, C.J.

This rule arises" out of a petition under Article 226 of the Constitution of India.

2. The facts necessary for disposal of the case are that on the expiry of periodic contract carriage permits on the 31st March 1961, the Secretary, Regional Transport Authority Dhubri Region, issued notification inviting applications for the grant of contract carriage permits. A number of persons applied for the grant of the permit. Opposite party No. 6 also applied for renewal of the. permit. The Regional Transport Authority after considering all the applications granted permits to opposite party Nos. 6 to 9 and rejected the application of the Petitioner. The Petitioner went up in appeal against the order granting permit to Opposite party Nos. 6 to 9. The appeal was heard by the State Transport (Appellate) Authority and the Appellate Authority affirmed the order passed by the Regional Transport Authority. Against that order a

petition under Article 226 of the Constitution had been filed before this Court. This Court held that there was no proper hearing of the application for the grant of permit by the Regional Transport Authority and the entire procedure followed by the Regional Transport Authority was illegal. The order granting permits to opposite party Nos. 6 to 9 thus in effect was set aside and the case sent back to the Regional Transport Authority, to act according to law in considering the various applications for grant of permit.

As this Court had set aside the order granting permit to Opposite party Nos. 6 to 9, their permits were cancelled and they were asked to surrender their permits. They surrendered their permits. But the Regional Transport Authority granted temporary permits to them for four months and after the expiry of four months, they were renewed for a further period of two months. The present Petitioner applied for grant of a temporary v. permit but his application, was rejected. Thereafter the present petition has been filed in this Court for a writ of mandamus directing cancellation of "the temporary- permits granted by the Regional Transport Authority to Opposite Party Nos. 6 to 9. In effect it is for a writ of mandamus directing the Regional Transport Authority not to give effect to the temporary permits which were granted to opposite party N03. 6 to 9 during the pendency of the proceeding for grant of periodic contract carriage permit.

3. A number of preliminary points including maintainability of the present petition have been raised by the Counsel for the opposite party. It is firstly contended that even the period of two months will expire or may have expired today and under the circumstance this Court will not grant any relief of mandamus to the present Petitioner. The relief of mandamus will be ineffective and in fructuous. Under the circumstances this Court should not exercise its discretion under Article 226 of the Constitution. It is also contended that the Petitioner had no right to the grant of temporary permits and if his application for grant of temporary permit has been refused, it gives no right to the Petitioner to approach this Court under Article 226 of the constitution and ask for a relief of mandamus particularly when the period of the permit granted to the Opposite party Nos. 6 to 9 has expired. The next contention is that the temporary permits were granted to other persons also and not only to opposite party Nos. 6 to 9 and unless all, the other persons, to whom temporary permits had been granted, are impleaded as parties to these proceedings, the order passed by this Court will not be effective and it will bring about inconsistent orders, inasmuch as the permits granted to others will remain operative while the permits granted to " Opposite party Nos. 6 to 9 will be cancelled. No relief of mandamus should, therefore, be granted under these circumstances.

The contention of the Petitioner is that as he has challenged the validity of the order passed granting temporary permits and as he was also an applicant for the grant of a temporary permit, he has got a locus standi to approach this Court under Article 226 of the Constitution and this Court in any case should decide whether the order

passed by the Regional Transport Authority granting temporary permits was or was not valid. If no mandamus can be granted the Court may refuse the relief of mandamus but the Petitioner is entitled to be heard and to have a decision by this Court on the merits of the petition. It is also contended by the Petitioner that it is not merely for a relief of mandamus but for cancellation of the order passed by the Regional Transport Authority and if this order is illegal Court will not refrain from exercising its powers under Article 226 of the Constitution.

4. As we are of opinion that no relief can be granted to the Petitioner of mandamus directing the opposite party concerned to refrain from giving effect to the temporary permits granted inasmuch as the temporary permits are expiring today, it is not necessary to go into the other question to whether the petition should fail for want of impleading the other permit holders. But, at the same time, we do think that this by itself does not disentitle the Petitioner to a decision by this Court whether the order complained of was legal or not. There is no bar under Article 226 of the Constitution to consider the question of legality of the order and direct the opposite party concerned not to give effect to that order. The fact that the order has already spent itself is a valid ground for refusing such a mandamus. In the circumstances we decide to go into the question as to whether the order granting temporary permits is valid or not even though we do not propose to grant any relief to the Petitioner directing the Opposite party concerned not to give effect to the permits granted to the Opposite party No. 6 to 9.

5. The contention of the Petitioner on the merits of the case is two fold. It is firstly contended that the power to grant or refuse permit has been given to the Regional Transport Authority and the Regional Transport Authority itself has to exercise its discretion in the matter. In the present case the Regional Transport Authority has not applied its own mind to the merits of the various applications and has acted on the orders passed/ by the State Transport Authority and thus the order granting temporary permits is invalid as it has not been passed by the Regional Transport Authority, an authority competent to pass such an order. It is further contended that u/s 62 of the Motor Vehicles Act and the second proviso to Section 62 of the Act, a temporary permit cannot be granted twice when an application for renewal of permit for a particular route is pending. The power to grant in the circumstances a temporary permit is limited to the maximum period of four months and that too only one temporary permit can be granted. The entire object of limiting the power of the Regional Transport Authority to the grant of temporary permit during the pendency of any application for renewal of the periodic permit is to expedite the entire matter.

It is in the interest of the public as well as efficient administration of the Department that these authorities, when they are called upon to pass administrative orders affecting the rights of the people, should expedite the matter and it should be realised that in such matters the earliest step should be taken to dispose of the

application to avoid inconvenience to the public. Some time is bound to be taken in disposing of an application for renewal and thus the Legislature realising that during that period the public may suffer have provided for the grant of temporary permits for a period of four months. This Clause (d) of Section 62 was enacted in the year 1955 with a view to avoid merits of the petition it is also contended by the was enacted in the year 1995 with a view to avoid inconvenience to the public during the period when 1 application ion for renewal of the periodic permit pending disposal. The authorities thus should vigilant and more active and should dispose of the matter as soon as possible The Opposite explanation for the delay in the matter. We are not in this case called upon to go into the question as to whether the delay was or was not justified in the circumstances of the case inasmuch as there is no relief claimed for a mandamus directing the opposite party concern-fed to consider the application for renewal or the grant of a permit.

These arguments were advanced only in aid of the interpretation of Section 62 of the Motor Vehicles Act and we think that there is a very good reason for the Legislature to limit the period of temporary permit which the authorities have been empowered to grant during the pendency of renewal of the periodic permit. Mr. Bhattacharjee, who appears for the opposite party Nos. 6 to 9, has very strenuously contended that the proviso to Section 62 of the Motor Vehicles Act will not be attracted in the present case. His contention is three-fold. He has firstly contended that the proviso, if at all, applies to grant of a temporary permit only in favour of the applicant who has applied for renewal and not to others who have independently applied for the grant of a temporary permit. He has secondly contended that the proviso does not debar the Regional Transport Authority from granting temporary permits if the conditions laid down in Clauses (a) to (c) or any one of them are, fulfilled. In the present case, there was a temporary need and the Regional Transport Authority had ample jurisdiction to grant a temporary permit under Clause (c) of Section 62.

Lastly he has contended that there is no bar to the power of the Regional Transport Authority to grant temporary permits in cases where a contract carriage permit is sought for. The limitation under the proviso to Clause (d) is only applicable to the cases where there is renewal of a stage carriage permit. This argument is sought to be supported on the language of the first proviso and the various sections of the Motor Vehicles Act from which it is contended that the clear purpose underlying the scheme of the Act is to grant permit to an individual and thus there can be no reason for debarring the grant of a temporary permit to people other than those who have applied for renewal of periodic permit; nor can there be any reason for debarring the Regional Transport Authority from granting permit on grounds mentioned in Clauses (a) to (c) and if those grounds exist also to grant temporary permit of the contract carriage permit. We do not think that this contention is correct. The language of the proviso is to purring very clear. It debars the grant of temporary permit twice over in all cases where an application for renewal of a

permit in respect of a particular route is pending.

6. It is next contended that the contract carriage permit is to be granted u/s 49 of the Act and the first proviso Only expressly deals with cases where a fresh permit is applied for u/s 46 or Section 54. Section 46 deals with the applications for grant of stage carriage permits. Section 54 deals with cases for grant of public carriers permit. The Legislature has omitted from the first proviso the cases of application for grant of contract carriage permit u/s 49 We do not think that the first proviso overrides the second proviso. If it is a case of an application for grant of a new permit either u/s 46 or 54, the first proviso will be attracted. If it is a case of renewal, the second proviso will ordinarily be attracted and unless there is something in the language of the second proviso which prohibits the Regional Transport Authority from granting a temporary permit to the applicants alone and there is no bar to the grant of temporary permits to others, we do not think that the first proviso affects the language of the second proviso. The scope and ambit of the two pre visds is different and independent and if it is a case where an application for renewal of a permit for a particular route is pending then no temporary permit can be granted beyond four months or twice over. The two clauses are independent and they operate on different circumstances.

7. It is next contended that the grant of a permit under those circumstances was for a temporary need and the permit could be granted under Clause (c) of Section 62 of the Motor Vehicles Act. Reliance is placed on the Division Bench case of this Court [Chandi Prosad Vs. The Regional Transport Authority and Others](#), The observations in this case no doubt support the contention of the opposite party that where an application for renewal of a permit is pending and the public suffers for want of the vehicle, it is a temporary need. But in our opinion the authority of this decision has been to a very great extent weakened by the addition of Clause (d) to Section 62. Clause (c) deals with the general case of temporary need and Clause (d) deals with a specific case. Where an application for renewal of a permit is pending and where there is an express provision it always excludes a general provision, and when there is a specific provision for grant of a temporary permit when an application for renewal of a permit is pending, the general clause will not be attracted.

The question can be viewed from another point of view. When the Legislature in spite of Clause (c) enacted Clause (d) to Section 62, the intention was to take away the case where temporary permit is to be given when application for temporary permit is made, out of the purview of Clause (c). If such cases are also covered by Clause (c), then there was no necessity of enacting Clause (d). Even if the argument of the opposite party is accepted that both the, clauses may be operative, still if Clause (d) it attracted the proviso will automatically be attracted. . Merely because there is overlapping of different clauses it does not mean that in case of Clause (d) the proviso w not be attracted. In any view of the matter the temporary permit granted for. two months in the circumstances of the case was not legal. But as we

have already stated that the period has already expired or is going to expire today, no useful purpose will be served by granting the mandamus to the Petitioner directing the opposite party concerned not to give effect to the temporary permits. With these observations the petition is rejected but we make no order as to costs.

S.K. Dutta, J.

8. I agree.