(1965) 10 SC CK 0028

Supreme Court of India

Case No: Appeal (civil) 152 of 1965

Punjab Sikh Regular Motor Service, Moudhapara	APPELLANT
Vs	
The Regional Transport Authority, Raipur and Another	RESPONDENT

Date of Decision: Oct. 15, 1965

Acts Referred:

- Motor Vehicles Act, 1939 - Section 63
- Central Provinces and Berar Motor Vehicles Rules, 1942 - Rule 62, 63

Citation: AIR 1966 SC 1318 : (1966) MPLJ 836 : (1966) 2 SCR 221

Hon'ble Judges: P. B. Gajendragadkar, C.J; Y. V. Chandrachud, J; M. Hidayatullah, J; K. N. Wanchoo, J

Bench: Full Bench

Final Decision: dismissed

Judgement

Ramaswami, J.

On August 7, 1963 the Regional Transport Authority, Bilaspur granted to the Punjab Sikh Regular Motor Service, (hereinafter called the appellant), renewal of a stage carriage permit for an inter-regional route - Saraipalli to Sarangarh - in the State of Madhya Pradesh. The permit was valid upto August 5, 1963 and by the order of renewal dated August 7, 1963 the permit was renewed for a period of three years. On September 13, 1963 the appellant applied to the Regional Transport Authority, Raipur for renewal of the grant of counter signature on the renewed permit. Respondent no. 2 objected to the renewal of the grant of counter-signature on the ground that the application of the appellant dated September 13, 1963 was barred by time. The Regional Transport Authority, Raipur held that the application for renewal of the grant of counter signature was not made within the time prescribed by rule 62 of the Central Provinces and Berar

Motor Vehicles Rules but it took the view that the application for renewal had been filed within six weeks of the date of the passing of the order of renewal of the permit by the Regional Transport Authority, Bilaspur and therefore the application for the renewal of the grant of counter signature could not be rejected on the ground that it was time barred. The Regional Transport Authority, Raipur accordingly granted the renewal of the counter-signature on the permit by its order dated February 24, 1964. Respondent no. 2 thereafter applied to the High Court of Madhya Pradesh under Art. 226 of the Constitution of India for a writ quashing the order dated February 24, 1964 passed by the Regional Transport Authority, Raipur. The High Court took the view that an application for renewal of the grant of counter-signature must be made within the period prescribed by s. 58(2) of the Motor Vehicles Act and the appellant having failed to apply within that period, the application of the appellant for renewal of the counter-signature on the permit was barred and the Regional Transport Authority, Raipur had no jurisdiction to countersign the permit renewed by the Regional Transport Authority, Bilaspur. The High Court accordingly quashed the order dated February 24, 1964 passed by the Regional Transport Authority, Raipur. This appeal is brought by the appellant with a certificate granted by the High Court under Art. 133(1)(c) of the Constitution.

2. It is advisable at this stage to refer to the material provisions of the Motor Vehicles Act (Act 4 of 1939) which have a bearing on the validity of the order of the Regional Transport Authority, Raipur dated February 24, 1964. Section 45 of the Motor Vehicles Act provides that every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. By the proviso to s. 45 it is enacted that where it is proposed to use the vehicles or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies. Section 47 sets out the procedure of the Regional Transport Authority in considering applications for stage carriage permits and prescribes the matters which may be taken into account by that officer in granting or rejecting the applications for stage carriage permits. Section 48 provides that subject to the provision of s. 47, a Regional Transport Authority may, on an application made to it, grant a stage carriage permit, in accordance with the application or with such modifications as it deems fit, valid for a specified route or routes or a specified area. Section 57 prescribes the procedure in "applying for and granting permits". It is provided by sub-s. (2) of s. 57 that an application for a stage carriage permit or a public carrier''s permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints a date for the receipt of such applications, on such date. Section 58(1) provides that a stage carriage permit or a contract carriage permit other than a temporary permit shall be effective without renewal for such period not less than three years and more than five years, as the Regional Transport Authority may specify in the permit. Sub-section (2) enacts that a permit may be renewed on an application made and disposed of as if it were an application for a permit, provided that the application for the renewal of a permit shall the made (a) in the case of a stage carriage permit or a

public carrier"s permit, not less than sixty days before the date of its expiry, and (b) in any other case, not less than thirty days before the date of its expiry. By sub-s. (3) the Authority is, notwithstanding anything contained in the first proviso to sub-s. (2), authorised to entertain an application for the renewal of a permit after the last date specified in the said proviso, if the application is made not more than fifteen days after the said last date. Section 63 deals with inter-regional and inter-state permits. The material parts of that section are :

"(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region, shall not be valid in any other region, unless the permit has been countersigned, by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned :

Provided .....

(2) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may likewise vary any condition attached to the permit by the authority, by which the permit was granted.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits :

Provided....."

3. Section 68(1) confers authority upon the State Government to make rules for the purpose of carrying into effect the provisions of Ch. IV of the Act.

4. A stage carriage permit granted by a Regional Transport Authority therefore remains effective without renewal for a period of not less than three years and not more than five years as the authority may specify in the permit. A person desiring to obtain renewal of the permit must, in the case of a stage carriage permit, make an application not less than sixty days before the date of its expiry, and the Authority has to deal with the application for the renewal as if it were an application for a permit. The procedure for obtaining renewal is assimilated to the procedure prescribed for an application for a first permit, but in order that there is no interruption in the transport service the Legislature has provided that the application for renewal shall be made not less than sixty days before the date of its expiry, it being assumed that the authority would be able, in the interval, to publish the application, and to hear objections to the grant of renewal. Except as may be otherwise prescribed, an interregional permit by a Regional Transport Authority in any region, is not valid unless the permit is countersigned by the Regional Transport Authority of that other region. The provisions of Ch. IV relating to the grant, revocation and suspension of

permits apply to the grant, revocation and suspension of countersignatures of permits.

5. The High Court has held, in the present case, that an application for renewal of counter-signature has also to be made not less than sixty days before the date of its expiry and if no such application is made, the Regional Transport Authority has no power to countersign the permit, and upon that ground the High Court has quashed the order of the Regional Transport Authority, Raipur dated February 24, 1964, granting countersignature of the permit. It was argued on behalf of the appellant that the period of limitation prescribed by s. 58 of the Motor Vehicles Act cannot be applied to an application for countersignature of a renewed permit. It was submitted that the question of counter signature cannot arise unless and until the permit was first renewed and therefore it was erroneous to say that an application for counter signature should be made even before the permit was renewed and within the time prescribed by s. 58. The contrary view was put forward on behalf of respondent no. 2. It was contended that in the case of an inter-regional route, the counter signature of the Regional Transport Authority concerned was essential for the validity and confirmation of the grant made by the Regional Transport Authority having jurisdiction to grant a permit for the inter-regional route. It was pointed out that under s. 63(3) of the Motor Vehicles Act the provisions of Ch. IV relating to grant, revocation and suspension of permits apply to the grant, revocation and suspension of counter signatures of permits and therefore the provisions of Sections 57 and 58 about the making of an application for the grant of a permit, the time within which it must be made and the procedure that must be followed, apply equally in the matter of the grant of countersignatures and that as s. 58 laid down that an application for renewal of a permit must be made, in the case of a stage carriage permit, not less than sixty days before the date of its expiry, it necessarily followed that an application for counter signature of the renewed permit for inter-regional route had to be made to the Regional Transport Authority concerned within sixty days before the date of the expiry of the permit.

6. We do not think it is necessary to express any opinion on the contentions advanced by the parties on this aspect of the case, for we are of the view that on a proper construction of the rules made by the State Government in regard to the grant of permits and counter signatures of inter-regional permits the Regional Transport Authority, Raipur was not competent to renew the countersignature on the permit for the inter-regional route granted by the Regional Transport Authority, Bilaspur in the present case. Under the Motor Vehicles Act, 1939 the Central Provinces and Berar Motor Vehicles Rules, 1940 were made by the appropriate authority and it is the admitted position that these rules were at the material time in operation in the two regions - Bilaspur and Raipur in the State of Madhya Pradesh with which we are concerned. By r. 61 it is provided :

"(a) Application for the renewal of a permit shall be made, in writing to the Regional Transport Authority by which the permit was issued not less than two months, in the case of a stage carriage permit or a public carrier"s permit, and not less than one month in other cases, before the expiry of the permit, and shall be accompanied by Part A of the

permit. The application shall state the period for which the renewal is desired and shall be accompanied by the fee prescribed in rule 55.

(b) The Regional Transport Authority renewing a permit shall call upon the holder to produce part B or Parts A, B thereof, as the case may be, and shall endorse Parts A and B accordingly and shall return them to the holder."

7. By r. 62 Clause (a) it is provided :

"Subject to the provisions of r. 63, application for the renewal of a counter signature on a permit shall be made to the Regional Transport Authority concerned and within the appropriate periods prescribed by Rule 61 and shall, subject to the provisions of sub-rule (b), be accompanied by Part A of the permit. The application shall set forth the period for which the renewal of the counter-signature is required".

8. By r. 63 Clause (a) it is provided :

"The authority by which a permit is renewed may, unless any authority by which the permit has been countersigned (with effect not terminating before the date of expiry of the permit) has by general or special order otherwise directed, likewise renew any countersignature of the permit (by endorsement of the permit in the manner set forth in the appropriate form) and shall, in such case, intimate the renewal to such authority".

9. Rule 61 substantially incorporates the provisions of sub-s. (2) of s. 58 of the Motor Vehicles Act and the proviso thereto, and makes certain incidental provisions. Clause (a) of r. 62 provides that the application for renewal of countersignature of a permit shall be made to the Regional Transport Authority concerned and within the appropriate period prescribed by r. 61 but the provisions of r. 62(a) are subject to the provisions of r. 63(a) which confers power upon the Authority which grants renewal of interregional permit under the first proviso to s. 45 to countersign the permit so as to make it valid for the other region covered by the route. Therefore, even though by s. 63 the power to countersign the permit is entrusted to the Regional Transport Authority of the region in which the remaining part of the route is situate, the effect of r. 63 is that the power to countersign the permit is vested in the Authority which grants the renewal of the permit. The Legislature has by providing in the opening part of sub-s. (1) of s. 63 "except as may be otherwise prescribed" made the provision subject to the rules framed by the state Government under s. 68 of the Motor Vehicles Act. The provisions of r. 63, therefore, must supersede the direction contained in s. 63(1) of the statute and the Regional Transport Authority, Bilaspur was competent in the present case to grant countersignature of the permit even in so far as it related to the Raipur region. On behalf of the appellant attention was drawn to the expression "may" in r. 63. But in the context and the language of the rule the word "may" though permissive in form, must be held to be obligatory. Under r. 63 the power to grant renewal of the countersignature on the permit in the present case is conferred on the Regional Transport Authority, Bilaspur. The

exercise of such power of renewal depends not upon the discretion of the authority but upon the proof of the particular case out of which such power arises. "Enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right" (See Julius v. Bishop of Oxford) 5 A.C. 214. If the Regional Transport Authority, Bilaspur had power to renew the counter-signature on the permit under r. 63, it must be held that the Regional Transport Authority, Raipur had no such power under r. 62 because the latter rule is expressly made subject to the provisions of rule 63, and the power granted to the Regional Transport Authority under s. 62 is taken away by the provision of r. 63. It follows, therefore, that the Regional Transport Authority, Raipur was not competent to renew the counter signature on the permit in the present case and the Regional Transport Authority, Bilaspur was alone competent to renew the countersignature of the permit. We accordingly hold that the order of the Regional Transport Authority, Raipur dated February 24, 1964 granting counter signature of the permit was illegal and ultra vires and was rightly quashed by the High Court by its order dated November 13, 1964.

10. We, therefore, confirm the order of the High Court, but for different reasons. We, however, desire to make it clear that our order does not effect the validity of the permit granted to the appellant by the Regional Transport Authority, Bilaspur in so far as it relates to the route within the limits of Bilaspur region. That is the ratio of the decision of this Court in 268787 in which it was pointed out that inter-regional permit when granted is valid for the region over which the authority granting the permit has jurisdiction even though it is not counter-signed by the proper Regional Transport Authority with regard to the portion of the route outside that region.

11. We accordingly dismiss this appeal. There will be no order as to costs. We desire to express our thanks to Mr. Iyengar who acted as amicus curiae in this case.

12. Appeal dismissed.