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**(1982) 04 AP CK 0002**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No. 9638 of 1981

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| K. Prakasham | | APPELLANT |
| | Vs | |
| Secretary, Regional Transport Authority and Another | | RESPONDENT |

**Date of Decision:** April 16, 1982

**Acts Referred:**

- Motor Vehicles Act, 1939 - Section 47, 57(2), 57(3), 57(4), 57(5)

**Citation:** AIR 1982 AP 322

**Hon'ble Judges:** Rama Rao, J

**Bench:** Single Bench

**Advocate:** Ramakoti, Govt. Pleader, for the Appellant; M.V. Ramana Reddy, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

1. This is a petition for quashing the order of the 1st respondent in Memo No. 4291/A1/81 dated 19-12-1981 relating to the rejection of the petitioner''s application for the grant of temporary permit on the route Srikakulam to Budhithi viz Narasannapeta by issue of a writ of Certiorari or any other appropriate writ, order or direction after calling for the concerned records.

2. The essential facts may be stated: The petitioner is the owner of idle stage carriage bearing No. A. D. P. 1683 and has been plying the said vehicle as and when temporary permits are granted. The petitioner applied for a permit for the route Srikakulam to Budhithi via Narasannapeta and pending the consideration of the permit an application for grant of a temporary permit was also made and the same was granted from 14-8-1981 to 13-12-1981. As the temporary permit expired on 13-12-1981, another application for temporary permit was filed pending the grant of pucca permit. The temporary permit was

applied for a period of four months from 19-12-1981 but the respondent rejected the temporary permit on the ground that 1st proviso to S. 62 (1) of the Motor Vehicles Act prohibits the grant of temporary permit pending the consideration of the grant of pucca permit. As the necessity for providing transport facilities on the route is felt and as the finalisation of grant of pucca permit is not yet done the temporary permit for the second time should have been granted by the respondents under S. 62(c) of the Act.

3. One G. Govindarajulu who impleaded himself as a party respondent to this writ petition stated that he has been plying two stage carriages A. P. S. 1681 and A. P. P. 6715 on the route Srimukhalingam to Srikakulam via Budithi. Narasannapeta since a long time. The route granted to the petitioner covers a major portion of this new route and there are adequate facilities for the travelling public on this route and the grant of a temporary permit is contrary to the provisions of S. 62 of the Act. The Secretary, Regional Transport Authority invited applications for the grant of one pucca stage carriage permit on the route in question fixing 10-9-1981 as the last date for receipt of the applications. As many as 40 applicants including the writ petitioner filed applications within the prescribed time and they were notified under S. 57 (3) on 9-12-1981. The last date for filing representations was 5-1-1982. The applications for grant of a pucca permit will be considered on or after 20-1-1982 by the Regional Transport Authority. It is further stated that the refusal to grant temporary permit by Regional Transport Authority is correct during the pendency of application for pucca permit and the failure to avail the alternate remedy under S. 64 of the Motor Vehicles Act is fatal to the writ petition.

4. The Secretary Regional Transport Authority filed a counter-affidavit stating that the R. T. A. Srikakulam at its meeting held on 17-7-1981 in supplementary item No. 6 approved the proposal for opening of the new route from Srikakulam to Badhithi via Narasannnapeta and in order to provide immediate transport facilities a temporary permit was issued to Sri K. Prakasam of Srikakulam in respect of his bus ADP 1683 from 14-8-1981 to 13-12-1981. The applications were invited under S.57 (2) of the Act for the grant of pucca permit on the said route and the notification was given under Sec. 57(3) of the Act and the subject relating to the grant of a pucca stage carriage permit on the above route is coming up before the R. T. A"s meeting scheduled to be held on 27-2-1982. The application of the petitioner for grant of temporary permit for a further period of four months from 19-12-1981 was rejected in view of the prohibition contained in first proviso to Sec. 62(1) of the Motor Vehicles Act in view of the pendency of the applications for the grant of pucca stage carriage permits. Pursuant to the directions in W. P. M. P. No. 13782/81 (and) in W. P. No. 9638/81 dated 23-12-1981 a temporary permit was issued to the petitioner to ply on the route for a period of four months from 25-12-1981 to 24-4-1982 or till the issue of a pucca permit on the route whichever is earlier. It is further stated that as the temporary permit has already been issued to the writ petitioner and as the subject relating to the grant of pucca permit is also coming up before the R. T. A. very shortly on 27-2-1982, no further orders on the writ petition are called for. To complete the resume of facts, the meeting of the Regional Transport Authority is not yet held and it is stated that it

will be held shortly.

5. The learned counsel for the petitioner contended that the first proviso to the Sec. 62(1) is not a bar to the grant of temporary permit till the pucca permit is granted and in view of the public need the pucca permit was proposed and as such pending the actual grant of pucca permit the transport facilities should be provided and therefore the grant of temporary permit is imminent and necessary and does not contravene the provisions of Sec. 62(1) of the Act in any manner.

6. The learned Government Pleader contended that the temporary permit was granted pursuant to the orders of this court in W. P. M. P. No. 13782/81 and the petitioner is actually plying the bus on the route and the meeting would be held shortly for processing the applications and finalisation of the grant of pucca permit and the rejection of the grant of temporary permits by the Regional Transport Authority is in consonance with the first proviso to S.62(1) of the Act. The learned counsel for the 2nd respondent who has been impleaded as party-respondent by an order dated 19-2-1982 in W. P. M. P. No. 370/82 contended that there is no public need for the grant of a temporary permit at all a several buses are plying and as the 2nd respondent is plying the buses covering a major portion of this route, no inconvenience will be caused to the public and the rejection of the grant of temporary permit of the R. T. A. is wholly justified in view of the bar contained in the proviso to Sec. 62(1) of the Motor Vehicles Act.

7. The learned counsel for the petitioner initially contended that the 2nd respondent has no locus standing to participate in the writ proceedings as he is not an aggrieved party or an interested party and he cannot project public interest litigation as well. It is amplified that the 2nd respondent is plying the bus on a different route though it covers the major portion of this route and the move of the 2nd respondent by way of several petitions and writ petitions that there is no necessity for the grant of pucca or temporary permit on this route appears to have been inspired by selfish considerations and to oust others from plying on the proposed route. The issue of locus standing need not be considered in this writ petition as the 1st respondent Regional Transport Authority passed the impugned order and is participating in the writ petition. Therefore any contention on behalf of the 2nd respondent is only to sustain the order passed by the 1st respondent and the contentions are only supplemental.

8. To appreciate the rival contentions it is necessary to have a close-up of Sec. 62 of the M. V. Act, the pivotal provision for the purpose of this writ petition:-

"Temporary permits:- A Regional Transport Authority may, without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months to authorise the use of a transport vehicle temporarily:-

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decisions on an application for the renewal of a permit:

and may attach to any such permit any condition it thinks fit:

Provided that a temporary permit under this section shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit under S. 46 or S. 54 during the pendency of the application:

Provided further that a temporary permit under this section shall, in no case, be granted more than once in respect of any route or area specified in an application for the renewal of a permit during the pendency of such application for renewal".

The learned counsel for the petitioner heavily relied upon a decision of the Supreme Court in The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur, . The facts in this decision may be recapitulated. On Nov. 27. 1962 applications were inviting for a permit for running a town bus service in Raipur. On Feb. 20, 1963 it was decided by the Regional Transport Authority to grant a permit to Madhya Pradesh Transport Co., (Pvt.) Limited, Raipur, but however buses of the required specifications were not produced and therefore the order granting the permit was revoked. Shortly thereafter the Regional Transport Authority granted a temporary permit to the appellant for a period of two months and again by order dated 25-11-1964 the Regional Transport Authority granted another temporary permit for a month. In the write petition the Madhya Pradesh High Court quashed the order of the R. T. A. holding that the permit cannot be granted for any route when there is permanent need for providing transport facilities on that route and it has been decided to invite applications for that purpose. On appeal the Supreme Court held that Sec. 62(c) of the Act authorises the Regional Transport Authority to grant temporary permit to meet a particular temporary need and this clause should not be given any special or restricted meaning and two kinds of needs viz, temporary need as well as the permanent need may co-exist on a particular route and it has to be considered in the circumstances of the case whether there was a particular temporary need and the action of granting temporary permit on the basis of a particular temporary need cannot be challenged as legally invalid. It is also significant that the Supreme Court cautioned that the Regional Transport Authority, however, cannot abuse its power by going on granting temporary permits in quick succession and not take speedy action for completing the procedure under S. 57 of the M. V. Act. It is profitable to extract the observations:-

"We should of course make it clear that the Regional Transport Authority cannot abuse its power and go on granting temporary permits in quick succession and not take speedy action for completing the procedure under S. 57 of the Motor Vehicles Act. If upon the facts of any particular case it appears that the Regional Transport Authority is so abusing

its powers its action is liable to be corrected by grant of a writ, but where such abuse of power is not alleged or shown the mere fact that the Regional Transport Authority has granted a temporary permit for a second time and the total duration of the two periods is more than 4 months, would not invalidate the second permit."

The Supreme Court also held that the temporary permit can be granted for a period exceeding four months if the temporary need persists in the following words:

"The Section means that at any one time the Regional Transport Authority is not permitted to issue to any person a temporary permit for a period exceeding 4 months, but if the temporary need persists, as, for example where the formalities under S. 57 are not completed within a period of 4 months, it would, in our opinion, be permissible for the Regional Transport Authority to grant a second temporary permit in order to meet the temporary need".

9. The two principles that emerge from the decision of the Supreme Court are that the temporary need and permanent need can be contemporaneous and there is no prohibition against grant of temporary permit till the formalities under S. 57 are completed. The completion of formalities culminate in actual grant of permit. The formalities under S. 57 comprise filing applications, facilitating inspection, submitting representations as provided in sub-secs. (2), (3) and (4). These are preliminary steps before the actual decision is taken by R. T. A. for grant of permit. The meeting of R. T. A. envisaged under sub-sec. (5) and the actual grant of permit under S. 48 are follow-up actions to the steps taken under sub-secs. (2), (3) and (4).

10. Both the proviso make an inroad into the power of the Regional Transport Authority to grant temporary permit. The first proviso cuts out the power to grant temporary permit pending the application for grant of a new permit and the second proviso licenses the issue of temporary permit at a time only pending the application S. 47 is beset with multifarious modalities and guidelines for the grant of pucca permit and the objective assessment and decision making process are involved. The subjective satisfaction looms large under S. 62 relating to grant of temporary permit, S. 47 is dispensed with in the course of the grant of temporary permit under S. 62. But however S. 62 is circumscribed by rigorous conditions as circulated (enumerated?) in the proviso, the main objective being to give temporary phase to the reign of S. 62 and according to proviso, the flag of temporary permit cannot be hoisted during the pendency of application for new permit. The learned counsel for the respondents contended that the entire gamut of proceedings beginning from filing application to the actual grant of application are within the purview of the expression "pending the application for new permit". Usually when permanent need is surveyed and grant of pucca permit is tentatively decided the necessity for grant of temporary permit arises for a short period. The grant of temporary permit is generally forerunner to grant of pucca permit as temporary permit is granted to meet the exigencies of immediate necessity. To avoid recurrence of temporary permits the restrictions in the proviso are visualised. It is not infrequent that the applications may be defective or the

time schedule involved in the procedural aspects is not adhered to in which event the consideration for grant of permit may not mature or delayed considerably. Further the temporary need subsists till permanent arrangement is made and if the grant of temporary permit is precluded from the stage when the pucca permit is conceived by filing applications etc., there is hardly any occasion for granting temporary permit. The proximity of pendency of application is when R. T. A. is actually seized of the matter by hearing as contemplated under S. 57(5) of the Act. The vulnerable period is from the date of hearing by R. T. A. to actual date of grant of permit. The observation of the Supreme Court that "Till the formalities are over under S. 57" relates to the preliminary steps of filing applications and representations etc. The pendency of the application should be identified with the stage at which R. T. A. is actually seized of the matter when the subject is posted for hearing.

11. The learned counsel for the 2nd respondent relied upon the decision of this Court in N. Subbayya v. R. T. A., (1969) 2 AnWR.157. The question that came up for consideration is whether the Madras amendment viz. Clause(d) to S. 62 is repugnant to and is in conflict with S. 62(d) of the Central Act and as such it should yield to the Central Act as ordained under Art. 254 of the Constitution. Two contentions were raised viz., that the Madras amendment is repugnant to S. 62(d) of the Central Act and that when once there is an application for the grant of a pucca permit pending the Transport Authority has no jurisdiction to grant temporary permit under the proviso to S. 62(d) of the Act. It is held that the Madras Amendment of S. 62(d) is repugnant to the Central Act. Regarding the second contention it is held as follows:-

"The next question is, when is an application for a pucca permit said to be pending to inhibit the exercise of the power of granting a temporary permit within the meaning of first proviso to Sec. 62(d). Mr. Venkata Reddy fairly concedes that where an application for a pucca permit is pending, the proviso bars the grant of a temporary permit and that Madras clause (d) even if it was valid could not operate. But the question as to what is the residuary power left in the Madras clause (d) does not however arise having regard to our finding that it is void due to its conflict and inconsistency with the Central Act.

We have already stated that the Regional Transport Authority has called for applications for temporary permits before the petitioners" applications for pucca permits were considered or granted. The proviso to Sec. 62(d) prohibits grant of temporary permits in cases where there is an application for a new permit pending under Sec. 46 or 54 of the Act. In other words, an application must be pending for the grant of a pucca permit before the fetter on the power of the Regional Transport Authority becomes effective."

The frontal issue in the decision of this court is with reference to conflict of Madras amendment with Central Act and the issue regarding temporary permit appears to have surfaced in the nature of sidewind. The decision proceeded upon the footing of concession made by the learned Government Pleader that the temporary permit cannot be granted during the pendency of the application for pucca permit. The stage of

proceedings of the application for new permit is not indicated but proceeded in a general way without specification. Having posed the question "when is an application for pucca permit pending to inhibit the exercise of power of granting temporary permit," the issue has not been squarely answered and the stage at which this application stood at the time of granting temporary permit is not precisely indicated. Therefore, this decision is not helpful in solving the issue arising in this writ petition.

12. In Hari Narain Roy Vs. Regional Transport Authority and Another, it is held that the 1st proviso forbids the grant of a temporary permit during the pendency of the application for a regular permit. The stage at which the application stood is not indicated. In Sriram Vs. Regional Transport Authority, Jaipur and Others, the temporary variation was granted by R. T. A during the pendency of an application for varying the condition of the permits on non-temporary basis. The consideration for varying the conditions of the permits on non-temporary basis is equated to that of grant of new permit and same considerations will apply. In this context the scope of the proviso to Sec. 62 is considered. Here again the stage of the proceeding is not indicated. In Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Sagar and Others, some persons applied for grant of new stage carriage permit and the applications after receipt are sent for publication. At that stage temporary permit was granted. It was held by Madhya Pradesh High Court that "during the pendency of the application" has reference to a period of time earlier to the disposal of the application by the authority from the time they are received under Sec. 46. I am not inclined to agree with this decision.

13. But this is not the end-all of this writ petition. In this matter the temporary permit, was granted by the Regional Transport Authority pursuant to the order of this Court in W. P. M. P. No. 13782/81 and it expires by 24-41982. It may not be necessary at this stage to direct the Regional Transport Authority to dispose of the application for temporary permit in the light of this decision and to stop plying the bus in the route for hardly nine days pending fresh consideration. Therefore, the Regional Transport Authority is directed to permit the petitioners to ply the bus in the route till 24-4-1982. It is unfortunate that the meeting of the Regional Transport Authority was not held for the grant of pucca permit in spite of the full realisation that there is an imminent public need in the route and although it was stated in the counteraffidavit that the meeting would be held on 24-2-1982. The postponement of the meeting is prone to provoke two dimension apprehension that the Regional Transport Authority is abusing its power thereby permitting certain operators, who are already plying in the sector, to have full sway, are contributing to the necessity of granting temporary permits. Therefore, the Regional Transport Authority is directed to hold the meeting and process the application for pucca permit forthwith and in any event not exceeding two months from this date.

14. In the result, the writ petition is allowed. No costs, Advocate"s fee Rs.150/-

15. Petition allowed.