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**N. K. S.**

*Before M. M. Punchhi, J.*

LAXMI BUS SERVICE (REGD.)—*Petitioner.*

*versus*

THE STATE TRANSPORT APPELLATE TRIBUNAL, PUNJAB  
AND OTHERS,—*Respondents.*

Civil Writ Petition No. 515 of 1983

December 12, 1983

*Motor Vehicles Act (IV of 1939)—Sections 57(2) and 62—  
Temporary permits under section 62—Granting authority choosing*

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(4) A.I.R. 1983 S. C. 1098.

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*to follow procedure under section 57(2) by fixing time limit for receipt of applications—Applications received beyond the time fixed—Whether could be considered for the grant of permits—Representations at the stage of section 57(3)—Whether could assume the form of competing applications.*

*Held*, that when for the grant of stage carriage permit the notice conveys time for the receipt of applications for granting permit, then an application, received beyond the fixed time, cannot be considered, for there is no provision to extend the time allotted. Though it is true that strict rule of limitation as visualised therein is not applicable to the case of grant of temporary permits under section 62 of the Motor Vehicles Act, 1939, but when the authority exercises the option to follow the procedure as laid down in section 57(2) in inviting applications time-bound, then it has no option but to stick unwaveringly to that time schedule. In that situation, the Regional Transport authority would be perfectly right in not considering the claim of an applicant whose application for the grant of temporary permit was beyond the time fixed and the Appellate Tribunal in granting a permit to such an applicant would be committing a jurisdictional error capable of being corrected in proceedings under Articles 226/227 of the Constitution of India. Permitting it as valid would tend to be discriminatory if it is left to the Regional Transport Authority or the Appellate Authority, as the case may be, to condone delay in a particular case and not in the other. The vice of discrimination in procedural rights have to be avoided at all costs.

(Para 7).

*Held*, that the purpose of providing an opportunity of making a representation and a hearing when considering the grant of temporary permit is nothing but an opportunity to object to the grant of permit to a claiming party, but those representations cannot assume the form of competing applications

(Para 6).

*Petition under Articles 226/227 of the Constitution of India, praying that the petition be accepted, records of the case sent for and*

- (1) *a writ in the nature of certiorari issued quashing the impugned order (Annexure P-3) in so far as it modified the order, passed by respondent No. 2;*
- (2) *any other suitable writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the case;*

- (3) *service of notice of motion dispensed with since the petitioner is still continuing to operate two return trips on the route in question and the respondents are likely to stop the operation of one of these trips.*
- (4) *filing of original /certified copies of Annexures P-1 to P-3 dispensed with.*
- (5) *operation of the impugned order (Annexure P-3) stayed till the writ petition is finally disposed of by this Hon'ble Court; and*
- (6) *costs awarded to the petitioner.*

N. K. Sodhi, Advocate, for the Petitioner.

R. P. Bhatia, Advocate, for A.G. (Punjab), Baldev Kapoor, Advocate, for respondent 3.

#### JUDGMENT

M. M. Punchhi, J. (Oral) :

(1) The petitioner M/s. Laxmi Bus Service is aggrieved against the appellate order of the State Transport Appellate Tribunal, Punjab, Chandigarh, whereby the appeal of the 3rd respondent M/s Dhuri Bus Service was allowed having the effect of retrieving one stage carriage permit with one return trip from the petitioner, and being granted to the said respondent, by upsetting the orders of the State Transport Commissioner, who had in the first instance, granted one stage carriage with two return trips to the petitioner.

(2) The challenge of the petitioner is mainly based on the question of limitation. The question of limitation being a question of jurisdiction at the stage of the initial cause, has been invoked by the petitioner to oust the claim of respondent No. 3. It is averred that,—*vide* Notice Annexure P-1, the Regional Transport Authority had in order to meet an immediate demand, invited applications for the grant of three temporary permits with one daily return trip by 31st May, 1979. Undisputably, the petitioner applied for the purpose within time but respondent No. 3 made an application beyond time. Marshalling the claim of the petitioner vis-a-vis other operators, one temporary permit with two return trips was granted by the Regional Transport Authority to the petitioner,—*vide*

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Order Annexure P-2. The appeal of respondent No. 3 before the State Transport Appellate Tribunal was allowed,—vide Order Annexure P-3 on 19th January, 1983, at a stage when the temporary route permit stood exhausted by efflux of time. Suggestedly, the petitioner was working on the basis of another order. But still, the order of the Regional Transport Authority was up-set mainly on the ground that strict rules of limitation were not applicable being a case of grant of temporary permit and the application for the grant thereof could even be entertained at the stage of arguments, the primary object being public interest which remained paramount till the grant of the permit. Additionally, the Appellate tribunal took the view that both the contending parties shall share the permit by having one return trip each.

(3) In the return filed by the contesting respondent, the factual position is not seriously disputed; rather it is conceded that the application made by it was beyond limitation. It has at the same time been clarified that to begin with notice Annexure P-1 pertained to the grant of three temporary permits but at the time of considering the need, in public interest, those were raised to five permits. And so far as the one granted to the petitioner was concerned, it was to have two return trips. It has further been asserted that the grant of temporary permit with one return trip to the respondent by the Appellate Tribunal was in exercise of the same power as that of the Regional Transport Authority, for conceptionally the Tribunal considered the temporary need as if existing on the date of the grant of the original permit.

(4) Learned counsel for the petitioner has raised three questions:—

- (i) That the 3rd respondent filed the application beyond limitation.
- (ii) That for the grant of permit, the Tribunal has not taken into consideration 'public interest' at the time of the allowance of the appeal and other requisites as spelled out in *Patiala Bus (Sirhind) Pvt. Ltd. v. State Transport Appellate Tribunal, Punjab and others*, (1); and

- (iii) That the Tribunal ignored the patent fact that on the date of its decision, the temporary permit stood expired, making it incumbent on the Tribunal to dismiss the appeal as infructuous.

For the view I am going to take on question No. (i), there is no need to discuss the remaining two questions. And on question No. (i) the argument of the learned counsel for the petitioner has proceeded on these lines:

(5) It is vehemently contended on behalf of the petitioner that under section 62 of the Motor Vehicles Act, 1939 (for short 'The Act') whereunder temporary permits are granted, it is not incumbent on the Regional Transport Authority either to invite applications or to fix a time for the purpose. In the same strain it is asserted that in case the Regional Transport Authority chooses to invite applications, it may opt to adopt the procedure as prescribed in section 57 of the Act. And in that event, having once chosen to employ the procedure as prescribed in section 57 of the Act, it has no option but to carry it out to its logical end and not to deviate therefrom. Applying these principles, it was asserted that when applications were invited,—*vide* Annexure P-1 and the time was fixed for the receipt of the applications, obviously the procedure adopted was that of section 57(2) of the Act. In such a situation, the Regional Transport Authority could not have treated every application, whether received before or after the time fixed as validly received. Undisputably, in the instant case, the application of respondent No. 3 was received by the Regional Transport Authority beyond time. In reply thereto, learned counsel for the respondent relying on *The Regional Transport Authority and others v. Gurbachan Singh* (2), a Full Bench decision of this Court has pointed out in the context of section 57(3) of the Act that the law does not require any notice to be issued to any party before granting a temporary permit but this Court ruled that where the temporary need is not immediate or of a pressing urgent nature and there is time to hear the persons already providing transport facilities along or near the route or area for which the temporary permit is intended to issue, it is not only expedient but proper that a notice should be issued to such persons so as to afford them an opportunity of making representations and a hearing for the consideration, thereof. He contends

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that at that stage the grant of a temporary permit to the 3rd respondent could be considered.

(6) As is plain from the ratio of the aforesaid Full Bench decision, it has no applicability to the stage of section 57(2) of the Act. The purpose of providing an opportunity of making a representation and a hearing when considering the grant of temporary permit is nothing but an opportunity to object to the grant of permit to a claiming party, but those representation cannot assume the form of competing applications. Keeping that in view, there was no representation by respondent No. 3 as such preferred at the stage of section 57(3) of the Act. The application made by respondent No. 3 was only an attempt to claim a temporary permit by availing of the opportunity at section 57(2) stage, though belatedly. Thus to say that under the garb of availing the opportunity of making representation at the stage of section 57(3), the 3rd respondent could assert and contend to be granted a temporary permit, would be violative of the principles laid down by the Supreme Court in *R. Obliswami Naidu v. Additional State Transport Appellate Tribunal, Madras and others*, (3), I have taken such a view in *(Janta Express Bus Service v. The State Transport Appellate Tribunal)* (4).

(7) To revert back to the main question of limitation, it may be noticed that three High Courts in *M/s Pradeep Roadways Sangaria v. State Transport Appellate Tribunal, Rajasthan, Jaipur and others* (5), *Manjeri Public Conveyance Manjeri P.O. v. Secretary, Regional Transport Authority Malarpuram and others*, (6), and *Damineni Sangayya and another v. State of Andhra Pradesh and others* (7), have in the context of section 57(2) of the Act taken the view that when for the grant of stage carriage permit the notice conveys time for the receipt of applications for granting permit, then an application, received beyond the fixed time cannot be considered for there is no provision to extend the time allotted. Though it is true that strict rule of limitation as visualised therein is not applicable to the case of grant of temporary permits under section 62 of the

(3) AIR 1969, S.C. 1130.

(4) C.W. 4459 of 79, decided on 8th December, 1983.

(5) A.I.R. 1978, Raj. 156.

(6) A.I.R. 177 Kerala 64.

(7) A.I.R. 1962, Andhra Pradesh 462.

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Act, but when the authority exercises the option to follow the procedure as laid down in section 57(2) in inviting applications time-bound, then it has no option but to stick unwaveringly to that time schedule. In that situation, the Regional Transport Authority herein was quite right in not considering the claim of respondent No. 3 for the grant of temporary permit and the Appellate Tribunal in granting the permit to respondent No. 3 on consideration of its application committed a jurisdictional error capable of being corrected in proceedings under Articles 226/227 of the Constitution of India. Permitting it as valid would tend to be discriminatory if it is left to the Regional Transport Authority or the Appellate Authority, as the case may be, to condone delay in a particular case and not in the other. The vice of discrimination in procedural rights have to be avoided at all costs. Thus in my considered view, the Tribunal fell into an error, it being apparent on the face of the record, in considering the application of the 3rd respondent by taking the view that an application for the grant of temporary permit could have been taken by the Regional Transport Authority even at the arguments stage. That aspect did not arise in the instant case, the authority having chosen in the first instance to follow a time bound procedure. Thus the order of the Tribunal deserves to be quashed and is hereby so done, by allowing the writ petition.

(8) For the foregoing reasons, this petition succeeds but without any order as to costs.

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N. K. S.