

1962

October, 81.

GANDHARA TRANSPORT CO. LTD.,

v.

THE STATE OF PUNJAB. AND OTHERS

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR,
K. N. WANCHOO, K. C. DAS GUPTA and
J. C. SHAH, JJ.)

Stage Carriage—Temporary permit—Application for renewal—Grant of regular permit—Validity—Motor Vehicles Act, 1939 (4 of 1939), 1947, 57, 58, 62.

By an order of the Minister in charge of the Transport Department, Punjab State, a temporary permit was granted to M for plying vehicles on the route indicated in the permit. When the period of the temporary permit expired M applied to the Regional Transport Authority for renewal of the permit. The Regional Transport Authority issued a notice inviting objections "regarding the further renewal of the permits for a period of three years on regular basis in favour of M." The appellants and others filed objections but M was granted a regular permit for a period of three years. On appeal, the Provincial Transport Controller quashed the order on the ground that M had merely applied for renewal of the temporary permit, that the procedure adopted for granting a permit to M did not conform to the provisions of the law and that, therefore, the order renewing a temporary permit and making it a permit to ply a stage carriage for three years was invalid. But the order of the Transport Controller was set aside by the Secretary, Transport Department. The appellants then moved the High Court of Punjab by a petition under Art. 226 of the Constitution of India for quashing the order of the Secretary, but the High Court rejected the application on the view that for adjudicating on the merits of the claims for and against the grant of the permit the authorities under the Motor Vehicles Act were the proper authorities.

Held, that the order of the Regional Transport Authority granting a regular permit to M was unlawful as it was vitiated by grave errors of procedure. The Transport Authority (1) had entertained an application for a renewal of a temporary permit which was not contemplated by any provision of the Motor Vehicles Act, 1939, (2) had invited objections to the application as one for renewal for three years on regular basis, thereby misleading parties desiring to enter into competition, and

(3) had failed to apply its mind to matters which had to be considered under s. 47 of the Act.

Held, further, that the order passed by the High Court should be set aside and the order of the Transport Authority declared unlawful, though the period of the regular permit had expired in the meantime, because otherwise when making fresh applications for permit, M would be getting the benefit of the proviso to s. 58 (2), which was available only to those having lawful permits.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 200 of 1962.

Appeal from the judgment and order dated March 15, 1960, of the Punjab High Court, Chandigarh, in Civil Writ No. 315 of 1960.

Bishan Narain, Daya Swarup Nehra and Naunit Lal, for the appellant.

K. L. Gosain, S. K. Mehta and K. L. Mehta, for respondent No. 3.

1962. October 31. The Judgment of the Court was delivered by

SHAH, J.—By order dated October 23, 1956, the Regional Transport Authority, Patiala, granted a permit to one Manohar Singh for plying a stage carriage on the Bhatinda Khera (Via Bajekhanna)-Jaitu-Kot-Kapura route which was about 55 miles long. This route covered 35 miles of the Bhatinda-Kot-Kapura-Faridkot route for which the appellants, M/s. Gandhara Transport Co. Ltd., held permits for plying their vehicles. In appeal against the order passed by the Regional Transport Authority, the appellate authority cancelled the permit in favour of Manohar Singh, but the order of the Appellate Authority was set aside by the Minister in-charge of the Transport Department, Punjab State, in revision, and it was directed that a fresh temporary permit be granted to Manohar Singh for plying vehicles on the route for which he had been given a permit. The appellants then preferred a petition under Art. 226

1962

Gandhara Transport Co., Ltd.

v.
State of Punjab

Shah, J.

1962

*Gandhara Transport
Co., Ltd.*

v.

*State of Punjab**Shah, J.*

of the Constitution before the High Court of Punjab, challenging the validity of the order passed by the Minister. Before this writ petition could be heard the period of the temporary permit expired and Manohar Singh applied to the Regional Transport Authority for renewal of the permit. The Regional Transport Authority issued on April 16, 1958, a notice inviting objections "regarding the further renewal of the permits for a period of three years on regular basis" in favour of Manohar Singh on the Bhatinda-Khera (via Bajekhanna)---Jaitu-Kot-Kapura. The appellants and others filed objections to the "renewal of the permits for three years on regular basis". The regional Transport Authority posted the objections for hearing on July 30, 1958. In the mean time the appellants applied to the High Court of Punjab for an interim order directing the Regional Transport Authority to stay pronouncement of the order on the application submitted by Manohar Singh till the disposal of their petition in the High Court. By order dated July 29, 1958, the High Court rejected the application observing that it was open to the appellants to move the Regional Transport Authority to postpone announcement of its order on the application of Manohar Singh. The Regional Transport Authority declined to postpone announcement of its orders and on August 1, 1958, directed that a regular permit for three years be granted to Manohar Singh for the route notified. On August 7, 1958, the writ petition of the appellants was heard by the High Court and it was dismissed. The High Court observed that by the petition before it the issue of a Temporary permit in favour of Manohar Singh alone was challenged and the period for which the permit was issued having expired, it was not possible for the Court to grant any relief to the appellants, and the remedy of the appellants against the order of the Regional Transport Authority granting fresh permit lay before the Transport Authorities under the Motor

Vehicles Act. The high Court observed "it is possible that the fact, that Manohar Singh was the holder of a temporary permit may have influenced the Regional Transport Authority in granting him a permanent permit, but it is open to the petitioner-Companies to agitate that matter before the Appellate and the Revisional Authorities in proper proceedings and if no relief is given by the aforesaid authorities then this Court can be approached under article 226 of the Constitution, if proper grounds exist for invoking its extraordinary powers under the aforesaid Article.

x x x x The mere fact that respondent No. 4 (Manohar Singh) held a temporary permit is not the only ground on which the permanent permit has to be granted to him. While granting the permanent permit the authorities have to follow the provisions of the statute and take into consideration the various matters that are provided for by the Motor Vehicles Act".

The appellants then appealed against the order of the Regional Transport Authority. The Provincial Transport Controller, Punjab, by his order dated May 29, 1959, quashed the order of the Regional Transport Authority, because in his view Manohar Singh had merely applied for renewal of his temporary permit, and that before the Regional Transport Authority there was no application for a regular permit and that the procedure adopted for granting a permit to Manohar Singh, did not conform to the provisions of the law and therefore the order renewing a temporary permit and making it a permit to ply a stage carriage for three years was invalid. The Provincial Transport Controller directed "that the question of allotment of permits may, if necessary, be taken up afresh after the requisite formalities are observed." But the order of the Transport Controller was set aside by the Secretary, Transport Department, State of Punjab, in exercise of revisional authority

1962
*Gandhara Transport
 Co., Ltd.*
 v.
State of Punjab
Shah, J.

1962

Gandhara Transport
Co., Ltd.

v.
State of Punjab

Shah, J.

under s. 64(h) of the Motor Vehicles Act as amended by Punjab Act 28 of 1948.

The appellants then moved the High Court of Punjab by a petition under Art. 226 of the Constitution for quashing the order of the Secretary, Transport Department, on the pleas, *inter alia*, that the order passed by the Secretary was illegal because it ignored the 'effect of the temporary permit which was the basis on which the permanent permit was granted' to Manohar Singh, that the Secretary had failed to note that the Regional Transport Authority had not invited applications from the public for granting permits for the route and had merely notified the application for renewal of the permit of the third respondent and that the Act contained no provision for renewal of a temporary permit into a regular permit. The High Court rejected this application. In the view of the High Court "every possible argument" was advanced before the Regional Transport Authority and was considered by that authority, and that for adjudicating on the merits of the claims for and against the grant of the permit the authorities under the Motor Vehicles Act were 'the proper authorities.'

Section 62 of the Motor Vehicles Act, 1939, empowers the Regional Transport Authority to grant without following the procedure laid down in s. 57 of the Act and subject to such conditions as it thinks fit to impose, permits to be effective for a limited period (not in any case exceeding four months) authorising the use of a transport vehicle—(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or (b) for the purpose of a seasonal business, or (c) to meet a particular need, or (d) pending decision of an application for the renewal of a permit. By the amendment made by Act 100 of 1956 two restrictions were placed on this power (i) that the temporary

permit 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 and (ii) that the temporary permit 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. Permits under s. 62 are undoubtedly intended to meet temporary needs of the nature specified in the section, and the formalities which are prescribed by s. 57 of the Act are not required to be followed before such permits are granted. It appears that it was the practice followed in the State of Punjab to issue all permits for plying stage carriages as temporary permits, and not to issue regular permits at all under s. 57 of the Act. This is pointed out in its order by the Regional Transport Authority in this case, and on that point there is no dispute.

The permit granted to Manohar Singh pursuant to the order of the Minister, Transport Department, was a temporary permit. After the expiry of the period of the temporary permit in his favour, Manohar Singh applied not for a regular permit under s. 57, but for *renewal of a temporary permit*. The Act, however, does not contemplate renewal of temporary permits: only regular permits may be renewed under s. 58 of the Act. The Regional Transport Authority invited objections to the application of Manohar Singh 'for renewal of the permit for a period of three years on regular basis', without indicating that Manohar Singh was the holder of a temporary permit. As we have already observed there were on the route specified in the application no regular permits issued under s. 57 and all the permits which were issued by the Authority were temporary permits under s. 62. The Regional Transport Authority had, therefore, for the first time to issue regular permits under s. 57 of the Act and

1962
*Gandhara Transport
 Co., Ltd.*
 v.
State of Punjab
Shah, J.

1962

*Gandhara Transport
Co., Ltd.*

v.

*State of Punjab**Shah, J.*

that authority might well have, before considering applications submitted by holders of temporary permits, invited applications from persons who were interested in applying for permits for the route in question. In considering an application for a permit for a stage carriage normally the Regional Transport Authority has to consider matters set out in clauses (a) to (f) of s. 47 such as the interest of the public generally, the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby, adequacy of other passenger transport services operating or likely to operate in the near future, benefit to any particular locality or localities likely to be afforded by the service, operation by the applicant of other transport services including those in respect of which applications from him for permits are pending and the condition of the roads included in the proposed route or areas. The Regional Transport Authority has also to consider whether the number of stage carriages generally or of any specified type for which permits may be granted should be limited in any specified area or on any specified route within the region. When there is already a transport service maintained on the route in question by operators holding regular permits, the Regional Transport Authority may, having regard to the previous investigations made, proceed on results of enquiries or surveys made in respect of some of the matters detailed in s. 47 but it has still to consider all those matters. Further by virtue of the proviso to sub-s. (2) of s. 58 if other conditions are equal an application for renewal has to be given preference over new applications for permits. Manifestly in dealing with applications for issue of temporary permits, regular permits and renewal of regular permits, different considerations come into play. A temporary permit may be issued to meet purely temporary needs. In considering the issue of regular permits an elaborate procedure has to be followed, including a hearing demanding a judicial consideration

of the claims of the individual applicants *inter se* in the context of the wider interest of the general public ; in considering an application for renewal of a permit, the authority has to afford to an existing operator a preemptive opportunity, if other conditions were equal. As there were no existing operators with regular permits, a detailed enquiry under s. 57 with special attention to the requirements had to be made. But the Regional Transport Authority committed an error at the threshold of his proceeding : it entertained an application which is not contemplated by any provision of the Act, invited objections thereto in terms which were somewhat misleading, thereby preventing other applicants from coming forward to apply, and failed to apply its mind to matters which had to be considered under s. 47 of the Motor Vehicles Act. Therefore by entertaining an application for renewal of a temporary permit and inviting objections against such renewal the Regional Transport Authority entertained an application which was not in law maintainable, and by inviting objections to the application as one for renewal for three years on regular basis in substance misled the parties desiring to enter into competition into desisting from submitting their applications. Its proceedings were, therefore, in our judgment, vitiated on account of grave errors of procedure.

But Mr. Gosain appearing on behalf of the respondents submits that even the period of the regular permit granted to Manohar Singh by the Regional Transport Authority has expired and the Regional Transport Authority has now to consider fresh applications for permits and whatever irregularities may have occurred in the issue of permit in favour of Manohar Singh they cannot now be rectified, and any declaration which this Court may make in regard to the irregularities would be academic. But it is necessary in our judgment to declare the true position in law, so that in the consideration of the fresh applications

1962

Gandhara Transport
Co., Ltd.v.
State of Punjab

Shah, J.

1962

Sandhara Transport
Co., Ltd.

v.

State of Punjab

Shah, J.

the mistakes originally committed may not be repeated. Again by making an order affirming the decision passed by the High Court we would be giving to Manohar Singh a benefit to which he is not lawfully entitled. If the permit which was granted by the Regional Transport Authority on August 1, 1958, was not lawfully granted, Manohar Singh would not be entitled to the benefit of the proviso to sub-s. (2) of s. 58 and his application for permit would have to be one under s. 57 and would have to be considered in competition with other claimants for permits on the route. We do not think, therefore, that the consideration of the objections to the validity of the procedure followed by the Regional Transport Authority has become academic as submitted by Mr. Gosain.

We accordingly set aside the order passed by the High Court and declare that the order of the Regional Transport Authority granting a permit in favour of Manohar Singh was, for reasons already set out, unlawful. The appellant will be entitled to the costs of this appeal.

Appeal allowed.
