

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 16th OF AUGUST, 2024

WRIT PETITION NO. 22950 of 2024

CHANDRADEEP KUMAR VAISHYA

Vs.

STATE OF MADHYA PRADESH & ORS.

APPEARANCE:

Shri Arvind Dudawat – Senior Advocate with Shri Anshuman Dudawat – Advocate for the petitioner.

Shri M.S. Jadon and Shri Sohith Mishra – Government Advocates for respondents No.1&2/State.

Shri M.P.S. Raghuvanshi – Senior Advocate with Shri Himanshu Sharma – Advocate for respondent No.3.

ORDER

1. The present petition under Article 226 of the Constitution is preferred by the petitioner seeking following reliefs:

“(i) Issuing a writ of certiorari or any suitable writ or order or direction for quashing the impugned order dated- 16.07.2024 (Annexure-P/1) passed by respondent no.2, with further direction to respondent no. 2 to grant temporary permit on the route in question to the petitioner.

(ii) Issuing a writ of certiorari or any suitable writ or order or direction for quashing the impugned order dated 29.12.2023 (Annexure-P/18) passed by respondent no. 2, with further direction to respondent no. 2 that impugned

order dated- 29.12.2023 (Annexure-P/18) shall not come in a way to grant temporary permit on the route in question to the petitioner.

(iii) Passing any other order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) Cost of the petition may also be awarded to the petitioner.”

2. Precisely stated facts of the case are that petitioner is a bus operator. Route in question is between Ambikapur to Bedan which is a inter-state route having distance of 175 Kms. out of which 23 km. falls within Madhya Pradesh and 152 in Chhattisgarh. As per reciprocal agreement entered between two States, one permit of two trips is reserved for Madhya Pradesh nominee.
3. It appears from the pleadings that petitioner was granted temporary permit TPN0.86/ST/2022 for the period 08-11-2022 to 31-12-2022. However, State Transport Authority (STA), Chhattisgarh did not countersign the said permit, therefore, petitioner approached this Court by way of writ petition bearing No.27555/2022 which was disposed of vide order dated 07-12-2022 and direction was given to the STA, Chhattisgarh to decide the application. Till then petitioner was permitted to ply his vehicle. Again petitioner applied for temporary permit for the period 01-09-2023 to 31-12-2023 which

was granted by respondent No.2 on 28-08-2023. However, countersignature from STA Chhattisgarh delayed, prompting the petitioner to file writ petition No.23701/2023 in which order dated 23-09-2023 was passed directing the STA, Chhattisgarh to decide the application. Subsequently, STA, Chhattisgarh rejected the countersignature application of the petitioner on 06-10-2023. As submitted by the petitioner, he promptly surrendered his temporary permit on 18-10-2023 (although this fact was denied by respondent No.3).

4. On 15-12-2023, a show cause notice under Section 86 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the MV Act”) was issued to the petitioner, alleging operation of the vehicle despite rejection of the countersignature. Petitioner replied and clarified the position. However, Secretary, STA Madhya Pradesh, at Gwalior cancelled the permit on 29-12-2023.
5. It further appears that petitioner and respondent No.3 filed applications for temporary permit before the STA, Madhya Pradesh, for the period 01-03-2024 to 30-04-2024. Same were decided vide order dated 07-03-2024 by which application of respondent No.3 for temporary permit was allowed and that of petitioner was rejected.
6. Being aggrieved by that order, petitioner filed writ petition

No.9987/2024. Said writ petition was disposed of vide order dated 29-04-2024 because in that petition, present petitioner informed the Court that temporary permit already ended on 30-04-2024, therefore, he did not press the petition in that regard. However, made a prayer that in future whenever an application for grant of temporary permit is filed on behalf of petitioner (which had already been filed on 24-02-2024), same be considered on its own merits without getting influenced by the earlier orders of rejection dated 29-12-2023 and 07-03-2024. The Coordinate Bench of this Court considered the prayer and disposed of the petition with the direction for consideration as referred above. Thereafter, applications for temporary permit of the parties were considered and vide order dated 16-07-2024 (Annexure P/1), Secretary, STA, Madhya Pradesh rejected the application filed by the petitioner and temporary permit was granted to respondent No.3 herein. Therefore, petitioner is before this Court.

7. It is the submission of learned senior counsel appearing for the petitioner that the impugned order suffers from malafide, arbitrariness and colourable exercise of power. According to him, application was for the period 01-05-2024 to 30-06-2024 and the application was filed by respondent No.3 on 29-04-2024. Matter

was argued on 13-06-2024. However respondent No.3 filed another application on 26-06-2024 (after hearing completed on 13-06-2024) when matter was reserved for orders. A fresh application dated 26-06-2024 was filed by respondent No.3 for the period 01-07-2024 to 31-08-2024 but copy of the said application was never given to the petitioner. Therefore, petitioner had no opportunity to argue over this application. Similarly, at the time of hearing on 13-06-2024 since the said application dated 26-06-2024 was not on record, therefore, petitioner had no inkling about the said prospective application. However respondent No.3 entertained the application and impugned order has been passed on 16-07-2024, therefore, approach is arbitrary, discriminatory and unreasonable.

8. It is further submitted that over vehicle No.MP17 P-1155 tax dues existed at the time of hearing. This dues were cleared by respondent No.3 on 05-07-2024 before passing of the impugned order, therefore, at the time of presentation of application for temporary permit and at the time of hearing, tax dues stood against respondent No.3, however, time was given to him to settle the dues and when he settled the dues on 05-07-2024 then impugned order has been passed by STA, Madhya Pradesh on 16-07-2024 and granted temporary permit to respondent No.3 till 31-08-2024. This

constitutes arbitrary and colourable exercise of power. He replied upon the judgment of Division Bench of this Court in the case of **Ramsewak Sharma Vs. The State of Madhya Pradesh, 2014 (IV) MPJR 65.**

9. It is further submitted that ground for rejection of petitioner's application is that petitioner has not complied certain mandatory requirements like type of vehicle, arrangement of facilities to be made into it etc. However, on earlier occasion same STA on the same vehicle given temporary permit for which petitioner referred Annexure P/3-A which is a certificate dated 10-11-2023 issued by RTO, Singrauli. Earlier same authority approved the same bus with all accessories and now tried to discriminate by adopting different yardstick.
10. Learned senior counsel also raised the point that tax dues of respondent No.3's vehicle as well as vehicle of respondent No.3's wife Smt. Kalpana are existing and therefore, same is hit by rule 72(3) of the M.P. Motor Vehicles Rules, 1994 (hereinafter referred to as "the Rules of 1994").
11. Looking to the nature of allegations raised by petitioner, this Court directed the Government Advocate to file affidavit of Secretary, STA, Madhya Pradesh about the allegations levelled by the

petitioner. In pursuance thereof, H.K. Singh, RTO, Gwalior/In-charge Secretary, STA, Madhya Pradesh from the office of Transport Commissioner filed his affidavit dated 15-08-2024. According to the contents of affidavit filed by In-charge, Secretary STA, Madhya Pradesh earlier temporary permit was granted to respondent No.3 vide order dated 07-03-2024 upto the period 30-04-2024 which was challenged by the petitioner before this Court by way of writ petition bearing No.9987/2024. Said writ petition was disposed of vide order dated 29-04-2024. Thereafter, fresh applications were received and parties were given due opportunity of hearing on 13-06-2024 and written statements were also received from the parties.

12. Period of application for grant of temporary permit of respondent No.3 was till 30-06-2024, therefore, in continuation of the same application, another application was submitted by respondent No.3 on 26-06-2024 at the same time table and same vehicle for the period of 01-07-2024 to 31-08-2024, therefore, impugned order has been passed.
13. Learned counsel for respondent No.3 opposed the prayer made by the petitioner. Answering respondent raised certain allegations of misrepresentation/concealment of facts qua petitioner. According to learned senior counsel appearing for respondent No.3, petitioner

cannot challenge the order dated 29-12-2023 as it is barred by the doctrine of *res judicata*. Earlier petitioner filed writ petition No.9987/2024 in which petitioner himself requested before the Court and did not press for setting aside of order dated 29-12-2023, therefore he accepted the said order. Now he cannot challenge the said order again.

14. It is further submitted that as per the established practice before Secretary, STA, Madhya Pradesh, an extension application, is considered valid and tenable when filed in continuation of an earlier application whose valid period is nearing expiration. Therefore, without hearing the issue placed on 13-06-2024, no decision had been taken on the application till 26-06-2024, therefore, another application was filed by the answering respondent for extension. Since earlier application was valid till 30-06-2024 and the period was already going to an end, therefore, this extension application was filed.
15. It is further submitted that there was no tax due on the proposed vehicle – MP17 P 5255 of the answering respondent. After hearing, tax dues was cleared by the answering respondent on 05-07-2024 before passing of the impugned order. Therefore, in the light of the judgment passed in the case of **Padam Chand Gupta and another**

Vs. State Transport Authority, 2014 (1) M.P.H.T. 271 (DB), no illegality was committed by respondent No.3 in paying the dues later on. Dues of tax of two other vehicles were also paid.

16. It is further informed that even after grant of temporary permit, said temporary permit has not been countersigned by the STA, Chhattisgarh, therefore, answering respondent has not plied the vehicle on the route in question.
17. As submitted, the vehicle of petitioner failed to comply rule 164 of the Rules of 1994 and rule 125H of the Central Vehicles Rules, 1989 (hereinafter referred to as “the Central Rules, 1989”). Vehicle of petitioner does not have features as required by the authority.
18. By elaborating allegations against the petitioner, it is submitted that despite rejection of countersignature application and cancellation of permit under Section 86 of the MV Act, petitioner did not deposit the permit before granting authority i.e. STA, Madhya Pradesh as per mandatory requirement of rule 86 of Rules of 1994. According to petitioner he deposited cancelled permit on 18-10-2024 before DTO, Singrauli but according to respondent No.3 said permit was deposited on 11-01-2024. However, both the parties referred the fact that they have to approach the authority for temporary permit time and again and permanent permits are not being given by the STA,

Madhya Pradesh for the reasons best known to them.

19. Government Advocate also endorsed this fact and submits that vehicles are being plied with temporary permit only at present. According to counsels appearing for the parties, this creates Bitterness, Uncertainty and Corruption.
20. Heard learned counsel for the parties at length and perused the documents appended thereto.
21. This is a case where petitioner is mainly aggrieved by grant of permit to respondent No.3 till 31-08-2024. It is settled in law that the principle of natural justice includes proper opportunity of hearing, fair play and objectivity while adjudicating the dispute. The STA, Madhya Pradesh under the MV Act and different rules made therein, acts as quasi-judicial authority, therefore, he is holding the post which adjudicates different rights/liabilities of stakeholders and ensures welfare of State Exchequer by ensuring deposit of regular tax dues and other modes of revenue, if any, provided in the relevant statutes. Therefore, he is bound by the principles enunciated by the Apex Court from time to time regarding adherence to the principle of Natural Justice.
22. Originally there were said to be only two principles of natural justice:
(1) the rule against bias and (2) the right to be heard (*audi alteram*

partem). However, subsequently, as noted in **A.K. Kraipak & Ors. Vs. Union of India & Ors., (1969) 2 SCC 262** and **K.I. Shephard and others Vs. Union of India and others (1987) 4 SCC 431**, some more rules came to be added to the rules of natural justice, e.g. the requirement to give reasons vide **S.N. Mukherjee Vs. Union of India, (1990) 4 SCC 594**. In **Mrs. Maneka Gandhi Vs. Union of India and another, (1978) 1 SCC 248** (vide paras 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

23. The Hon'ble Apex Court in historic decision, **A.K. Kraipak & Ors. (supra)** has pointed out that the concept of quasi-judicial power has been undergoing radical change and such dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Later on, in other celebrated judgment of **Mrs. Maneka Gandhi (supra)** and **Mohinder Singh Gill and another Vs. Chief Election Commissioner, New Delhi and others, (1978) 1 SCC 405** the Apex Court has expanded

and explained the scope of natural justice. Therefore, administrative authorities are duty bound to assign reasons and to ensure fair play while deciding the case either functioning as quasi-judicial authority or as administrative authority.

24. This is all the more required because respondents are duly in the realm where people thrive on delay, bending of procedures and serving vested interests. In the present factual setup, application for temporary permit was heard on 13-06-2024 and matter was reserved. Thereafter, Secretary, STA Madhya Pradesh, is required to pass the order. He did not pass the order till 26-06-2024. When another application for extension was filed by respondent No.3 by which period of permit was sought to be extended till 31-08-2024, then it was duty of the authority to give opportunity of hearing to the petitioner and other applicants about such applications. Respondent No.3 paid tax dues on 05-07-2024 and thereafter on 16-07-2024 impugned order has been passed in which temporary permit was granted to respondent No.3 till 31-08-2024.
25. Sequence of events as unfolded in the present case does not evoke credence and confidence in the working of Secretary, STA, Madhya Pradesh. When the matter was heard and reserved on 13-06-2024 then two further steps were taken; on 26-06-2024 and another on 05-07-

2024. Procedurally, it may be a regular practice in the office of STA, Madhya Pradesh but suffers from the vice of arbitrariness. Question of tax dues may be considered at the time of consideration of application and from that angle respondent No.3 might have been justified while taking help of mandate of Division Bench of this Court in the case of **Padam Chand Gupta and another (supra)** which is based upon the judgment of Apex Court in the case of **Esskey Roadways (Firm) Vs. Anandhakrishnam Bus Service, AIR 1994 SC 71**. However, rule 72(3) of the Rules of 1994 being considered by another Division Bench of this Court in the case of **Ramsewak Sharma (supra)**. In that discussion, Section 72(3) of the Rules of 1994 is reproduced for ready reference:

“72. Forms of Application For Permits:-

(1) xx xx

(2) xx xx

(3) The application for stage carriage permit or reserved stage carriage permit as required under subsection (1) of Section 70 shall be accompanied by the following documents, namely:

(a) an authentic route map alongwith certified distance between various stages and certificate regarding motorability of the route from the departments which have control over such road;

(b) certificate from Registering Authority containing make,

model and seating capacity of the vehicles owned by the applicant at the time of making the application;

(c) details of the stage carriage and reserved stage carriage permits already held by the applicant;

(d) no dues certificate issued by the Regional Transport Officer concerned;

(e) declaration duly certified by an officer of the Madhya Pradesh State Road Transport Corporation authorised by the Managing Director about the portion and distance of the route covered by any nationalization scheme; and

(f) any other information as may be required by the Transport Authority.”

Emphasis supplied

- 26.** While considering the impact of Section 72(3)(d) of the Rules of 1994, another Division Bench of this Court in the case of **Mohammad Safique Vs. The State Transport Appellate Tribunal and others, order dated 11-02-2014 passed in Writ Petition No.555/2013** held as under:

“A Division Bench of this Court in the case of M.P. State Road Transport Corporation, Gwalior Vs. Ram Prasad Purohit and others, 2001(3) MPLJ 339 has held that the said rule is not mandatory. Under the Rule a no due certificate issued by the Regional Transport Officer concerned is required to be furnished. It has been held that the said rule is not mandatory. Thus, the learned Single Judge has rightly held that it was not essential on the part

of the appellant to submit a certificate alongwith the application for permit. But that does not necessarily mean that the appellant who is in arrears of dues would become entitled for grant of permit. What it means is if the no dues certificate is not accompanied, the application cannot be thrown overboard on the ground of non-compliance of the mandatory requirement but when an issue is raised that a candidate is in arrears, the authority concerned is under obligation to scrutinized the same. Regional Transport Officer had not scrutinized the same. In revision the tribunal scrutinized the same and bestowed consideration. Learned single Judge has referred to Annexure P/7 from which it is noticeable that the appellant was in arrears of dues of taxes, composition fees and interest at the time of consideration of the application. Learned single Judge has 6 WP.2179.2014 Ramsewak Sharma Vs. State of M.P. and others not lent credence to the instance that vehicle was not in use as the relevant documents were not produced before the tribunal.”

27. Therefore, the whole gamut of decision making appears to be tainted with malafide and it appears that time and again Secretary, STA, Madhya Pradesh tried to give undue advantage to respondent No.3 so that he can fill up the lacuna and his application for extension be considered on merits without giving chance to other side to rebut or to place any document in support of their claim against respondent No.3. Whole process appears to be polluted, therefore, deserves to be

set aside.

28. So far as contention of petitioner about his own entitlement is concerned, that has been taken care of by the impugned order on merits, therefore setting aside of impugned order does not mean that petitioner is entitled for the benefit. His case was considered by the authority and then rejected on merits. However, he is always at liberty to complete the requirements as sought by the statute and then apply for temporary permit which can always be considered by the authority in accordance with law and without being influenced by any earlier proceedings undertaken by the authority.
29. From the discussion made above, one point figures prominently for consideration of this Court is that for some years respondents No.1 and 2 have devised a peculiar mechanism for grant of temporary permits instead of permanent permits. Sometimes those temporary permits for same reasons are granted and sometimes on same reasons, those applications for temporary permit are rejected. Sometimes festivals become important and sometimes ignoring said aspect, applications are rejected. Purpose is to complete the procedure by the authority with their subjectivity and intermittent shifting of grounds for allowing or rejecting the applications for temporary permits. Said approach is breeding Uncertainty, Bitterness and Corruption amongst

stakeholders including transport authorities.

- 30. Chapter -V Control of Transport Vehicles**, deals in different aspect of grant of Stage Carriage Permit/Contract Carriage Permit/Private Vehicle Service Permit, Goods Carriage Permit etc., General Condition and other aspects attached to permit have been discussed including cancellation and suspension. Temporary permit as contemplated in Section 87 of the MV Act is one such contingency under which RTO and STA may without following the procedure laid down in Section 80 of the MV Act grant permit to be effective for a limited period which shall not in any case exceed four months to authorise the use of a transport vehicle temporarily.
- 31.** Said mechanism engrafted for particular contingency like to meet rush of passengers on several occasions, fairs and religious gathering, for the purpose of seasonal business and to meet particular temporary need or pending decision on an application for the renewal of a permit. Here, it appears that Temporary Permits have become norms and regular/permanent permits paled into oblivion. This renders the whole system stinking with Nepotism, Favourism and Corruption. Therefore, the State Government has to look into the matter immediately.
- 32.** It is the duty of the Principal Secretary, Transport Authority as well as

Chief Secretary of the State of Madhya Pradesh to look into such arbitrariness and anomalies crept into the system which is breeding Corruption. Such state of affairs is required to be given importance immediately by taking strong steps in this regard. All the time, the person who is plying the vehicle on temporary permit is under uncertainty whether he would be able to ply the vehicle next month or not and this compels him to surrender to the whims and fancies of the authority. This must be stopped and a mechanism for grant of permanent permit as required on route and as per relevant Rules and Regulations framed under the MV Act be evolved.

33. One important aspect which cannot be overlooked by this Court is plight of the passengers. In the State of Madhya Pradesh, State owned transport facilities (M.P. State Road Transport Corporation) got eclipsed with dissolution of the said Corporation. Now the passengers are at the mercy of transporters either on Contract or Private owned. State of Madhya Pradesh has large geographical span including tribal and remote areas. Temporary Permits some times granted regularly and some times intermittently. In other words, it is not the facility which is regularly available to common people specially of rural area. Therefore, it is imperative that regular/permanent permits be given so that public at large would be benefited for movement from one place

to another. In absence of regular transport services, old aged people and females suffer a lot. State Government as a part of welfare State has to look the whole case from this vantage point also. What is best suited to the welfare of people be done at an early basis.

34. In the conspectus of facts and circumstances of the case, impugned order deserves to be set aside, hence is hereby set aside. According to respondent No.3 he was not plying the vehicle, nonetheless illegal order tainted with malafide and arbitrariness has to go. Secretary, STA, Madhya Pradesh is expected to be cautious in his approach in future.

35. **Petition stands allowed and disposed of in above terms.**

36. Copy of this order be sent to the Chief Secretary, State of Madhya Pradesh and Principal Secretary, Transport Department, Madhya Pradesh for information and for ensuring compliance.

37. Matter be placed under the **caption “Direction” in the month of November, 2024.** Meanwhile, affidavit of Principal Secretary, Transport Department shall be filed about the steps taken in compliance of direction made above.

(ANAND PATHAK)
JUDGE