

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

BEFORE

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

ON THE 1st OF AUGUST, 2024

WRIT PETITION No. 18934 of 2024

SHEIKH NAVED

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Ashish Rawat – Advocate for the petitioner.

Shri Anubhav Jain – Government Advocate for the respondents/State.

Shri Brajesh Kumar Dubey – Advocate for respondent No.5.

.....
WITH

WRIT PETITION No. 18936 of 2024

SHEIKH NAVED

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Ashish Rawat – Advocate for the petitioner.

Shri Anubhav Jain – Government Advocate for the respondents/State.

Shri Brajesh Kumar Dubey – Advocate for respondent No.5.

.....
ORDER

By this common order, W.P. No.18934/2024 and W.P. No.18936/2024 shall be decided.

2. W.P. No.18934/2024 has been filed seeking following relief(s):-

“7.1 Allow the petition and issue a writ of certiorari quashing the impugned temporary permit no. 123/STA/24 dated 04.06.2024 issued by the respondent no.2

(Annexure P/5) to the respondent no.5 on his vehicle no.MP44ZB-7488 on the route Bhopal to Kota.

- 7.2 Allow the petition and issue a writ of mandamus restraining the respondent no.2 not to grant further temporary permit to the respondent no.5 on his vehicle no.MP44ZB-7488 on the route Bhopal to Kota and also not to consider application for grant of temporary permits under Section 87 of the Motor Vehicle Act, 1988.
- 7.3 Any other appropriate orders against respondents be issued in favour of the petitioner with cost of the petition.”

3. Whereas, W.P. No.18936/2024 has been filed seeking following relief(s):-

- “7.1 Allow the petition and issue a writ of certiorari quashing the impugned order dated (nil) passed by the respondent no.2 (Annexure P/5) and temporary permit no. 134/STA/24 dated 05.06.2024 issued by the respondent no.2 (Annexure P/6) to the respondent no.5 on his vehicle no.MP44ZB-7588 on the route Bhopal to Kota.
- 7.2 Allow the petition and issue a writ of mandamus restraining the respondent no.2 not to grant further temporary permit to the respondent no.5 on his vehicle no.MP44ZB-7588 on the route Bhopal to Kota and also not to consider application for grant of temporary permits under Section 87 of the Motor Vehicle Act, 1988.
- 7.3 Any other appropriate orders against respondents be issued in favour of the petitioner with cost of the petition.”

4. For the sake of convenience, facts of W.P. No.18934/2024 shall be considered.
5. The present petition has been filed against grant of temporary permit to ply bus No.MP44ZB7488 on Bhopal to Kota route from 03/06/2024 to 31/08/2024.
6. It is submitted by counsel for petitioner that the temporary permit was granted on 03/07/2024, whereas application filed by respondent No.5 for grant of temporary permit which was duly objected by the petitioner was decided at a later stage. By referring to Annexure P/4, it is submitted by counsel for petitioner that on 06/05/2024 it was specifically mentioned that petitioner has raised an objection with regard to the timings. However, it was observed by Secretary, RTA that the objection shall be considered and decided on 12/06/2024 and whatever decision will be taken will be binding on the parties but in view of the convenience of general public, temporary permit is being issued. Thus, it is submitted that the act of issuing temporary permit without deciding the objections is bad in law.
7. *Per contra*, petition is vehemently opposed by counsel for respondent No.5. It is submitted that since the objections raised by petitioner have already been rejected although at a later stage, therefore no illegality was committed by the Secretary, RTA by issuing temporary permit.
8. Heard learned counsel for the parties.
9. Undisputedly, on the day when the temporary permit was granted, objections filed by petitioner were pending and without deciding those objections, temporary permit was granted. It is true that post decisional

hearing can be granted but it can be done only when there is an emergency and it is in the public interest.

10. The Supreme Court in the case of **H.L. Trehan and Others Vs. Union of India and Others** reported in **(1989) 1 SCC 764** has held as under:-

“**12.** It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in *K.I. Shephard v. Union of India* [(1987) 4 SCC 431 : 1987 SCC (L&S) 438]. What happened in that case was that the Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under Section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three banks were excluded from employment and their services were not taken over by the respective transferee banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the court observed as follows: (SCC pp. 448-49, para 16)

“We may now point out that the learned Single Judge for the Kerala High Court had proposed a post-amalgamation

hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could not represent and their case could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.”

13. The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular.”

11. The Supreme Court in the case of **Liberty Oil Mills and Others Vs. Union of India and Others** reported in (1984) 3 SCC 465 has held as under:-

“15. We do not think that it is permissible for us to read clauses 8-A and 8-B in a manner as to create needless conflict and confusion when the two clauses are capable of existing separately, without encroaching upon each other. Contextual construction demands such a construction and we have no hesitation in adopting it. Clause 10 which provides for a reasonable opportunity before action is taken under clause 8-A, does not make similar provision in the case of action under clause 8-B though action under clause 8-A as well as action under clause 8-B are both in the nature of interim orders of temporary duration aimed at preventing further harm and mischief pending investigation into the allegations under clause 8. Does it mean that the principle of natural justice of procedural fairness is to be altogether excluded when action is taken under clause 8-B? We do not think so. We do not think that it is permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the Court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be pre-decisional; it may necessarily have to be post-decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay. If an area is devastated by flood, one cannot wait to issue show-cause notices for requisitioning vehicles to evacuate population. If there is an outbreak of an epidemic, we presume one does not have to issue show-cause notices to requisition beds in hospitals, public or private. In such situations, it may be enough to issue post-decisional notices providing for an opportunity. It may not even be necessary in some situations to issue such notices, but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural

justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad interim orders may always be made ex parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request. There is no violation of a principle of natural justice if an ex parte ad interim order is made unless of course, the statute itself provides for a hearing before the order is made as in clause 8-A. Natural justice will be violated if the authority refuses to consider the request of the aggrieved party for an opportunity to make his representation against the ex parte ad interim orders.”

12. Counsel for petitioner could not point out the urgency in granting temporary permit by not affording pre-decisional hearing.

13. Under these circumstances, this Court is of considered opinion that the act of respondent No.2 in awarding temporary permit without deciding the objections cannot be held to be valid because in absence of any urgency and lack of public interest, no post decisional hearing can be upheld. Furthermore, even otherwise in case of post decisional hearing, every attempt would be made by the concerning Authority to justify its own action.

14. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that the impugned temporary permit granted by Secretary, RTA to ply bus No.MP44ZB7488 on Bhopal to Kota route is hereby **set aside**.

15. Similarly, in W.P. No.18936/2024 temporary permit No.134/STA/24 issued by respondent No.2 in favour of respondent No.5 to ply bus No.MP44ZB7588 on Bhopal to Kota route is also hereby **set aside**.

16. Petition(s) succeeds and is/are hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE

S.M.