

New Samundri Transport Co. (P) Ltd vs State Of Punjab & Others on 9 October, 1975

Equivalent citations: 1976 AIR 57, 1976 SCR (2) 218, AIR 1976 SUPREME COURT 57, 1976 2 SCJ 273, 1976 2 SCR 218, 1975 UJ (SC) 908, 1976 (1) SCC 757, 1976 TAC 67

Author: P.K. Goswami

Bench: P.K. Goswami, A. Alagiriswami, N.L. Untwalia

PETITIONER:

NEW SAMUNDRI TRANSPORT CO. (P) LTD.

Vs.

RESPONDENT:

STATE OF PUNJAB & OTHERS

DATE OF JUDGMENT 09/10/1975

BENCH:

GOSWAMI, P.K.

BENCH:

GOSWAMI, P.K.

ALAGIRISWAMI, A.

UNTWALIA, N.L.

CITATION:

1976 AIR 57 1976 SCR (2) 218

1976 SCC (1) 757

CITATOR INFO :

F 1978 SC 434 (5)

R 1984 SC1622 (142,198)

ACT:

Motor Vehicles Act, 1939-S. 60(1)-Scope of.

HEADNOTE:

Section 60 of the Motor Vehicles Act, 1939 empowers the State Transport Authority to cancel or suspend a permit granted by it under certain circumstances. The proviso to the section states that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.

On receipt of reports and complaints regarding the

appellant, the State Transport Commissioner issued a show cause notice to it without specifying therein the nature of complaints. Action was taken for cancellation of the permits. The High Court summarily dismissed the writ petition of the appellant filed under Art. 226 of the Constitution against the order of the State Transport Appellate Tribunal.

Allowing the appeal to this Court,

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HELD: (1) The High Court was not right in not interfering with the order of the authority cancelling the permits. A manifestly wrong procedure in a departmental action of this nature is obvious on the face of the notice resulting in violation of the principles of natural justice. [221D; 220A]

(2) The proposed penal action has to be particularised with reference to each permit detailing the particular conditions for breach of which action is sought to be taken. Proviso to s. 60(1) which requires mandatory compliance is nothing short of a reasonable opportunity to the permit-holder to furnish his explanation. Unless the breaches of conditions or other allegations are particularised with reference to each permit in the show cause notice such notice is clearly invalid and no action can be taken under such a notice. [220G; 221D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 879 of 1975.

Appeal by special leave from the Judgment and order dated the 4th November, 1974 of the Punjab and Haryana High Court in Civil Writ No. 4346 of 1974.

Hardyal Hardy, S. K. Mehta, K. B. Nagaraja, P. N. Puri, M. Qamaruddin and K. Khanna, for the appellant.

O. P. Sharma, for respondent No. 1.

Luxmi Grover and S. S. Jauhar, for respondent No. 3. The Judgment of the Court was delivered by GOSWAMI, J.-This appeal by special leave is against the judgment of the Punjab and Haryana High Court summarily dismissing a writ application under article 226 of the Constitution against the order of the State Transport Appellate Tribunal, Punjab.

The appellant is a private limited company carrying on transport business over a long period. The company was granted 33 stage carriage permits for various routes. It had a sanctioned fleet of 35 transport vehicles. On receipt of several reports and complaints from various sources, the State Transport Commissioner issued the following show cause notice to the appellant on March 28,

1974:-

"Regd. A.D. From:

S. Balinder Singh, IAS, State Transport Commissioner, Punjab.

To The Managing Director, New Samundri Transport Company (P) Ltd., Ferozepur.

No. 455/JFI(2) dated Chandigarh the 28th March, 1974.

Subject: Departmental Action.

Memorandum A list of prosecutions launched against your company by the Operational Staff is forwarded herewith. The offences committed are of a very serious nature. Your company is also short of fleet of fit vehicles. A copy of the joint report of the Secretary, Regional Transport Authority, Jullundur and Motor Vehicles Inspector, Jullundur relating to the condition of buses of your company is also enclosed. Due to the shortage of fit vehicles against the sanctioned fleet of 35 buses, number of services are being missed whereby the public is being put to a great inconvenience. You are, therefore, required to show cause as to why departmental action by way of suspension/cancellation of stage carriage permits under section 60 of the Motor Vehicles Act, 1939, should not be taken against your Company. Reply should be sent to this office within 10 days of the receipt of this notice failing which it will be presumed that you have nothing to say. State Transport Commissioner Punjab".

The appellant says that an explanation was posted to the Commissioner within time under certificate of posting. According to the Commissioner it was not received. The District Judge, who is the State Transport Appellate Tribunal, observed in his order that-

"some mischief appears to have been committed in the office of the respondent with regard to the reply which was sent under postal certificate".

We will, however, proceed on the assumption that no explanation was sent by the appellant to the Commissioner. Even so a manifestly wrong procedure in a departmental action of this nature is obvious on the face of the above notice resulting in violation of the principles of natural justice.

The notice was issued under section 60 of the Motor Vehicles Act, 1939 (briefly the Act) which may be quoted:

60(1)"The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit-

(a) on the breach of any condition specified in sub-

section (3) of section 59, or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to own the vehicle or vehicles covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or

(e) if the holder of the permit, not being a private carrier's permit, fails without reasonable cause to use the vehicle or vehicles for the purposes for which the permit was granted; or

(f) if the holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation".

Sub-section (3) of section 60 provides for composition of breach of certain conditions. Section 59(3) contains the conditions laid down for every permit. The target of section 60 is the permit that has been issued breach of conditions of which is the subject matter of action under it except in cases covered by section 60(1) (d) and (f). It is true that for each permit the permit-holder is responsible and he is the person who has to submit the explanation. The proposed penal action has to be particularised with reference to each permit detailing the particular conditions for breach of which action is sought to be taken in connection with a particular permit. This is the minimum requirement of section 60.

What we find in this case is a kind of bald notice making no reference to any particular permit for cancellation or suspension of which action has been taken. It is as if all the 33 permits were going to be suspended or cancelled. It is clear that after receipt of the various reports the Commissioner did not apply his mind to scrutinise the same for the purpose of taking appropriate legal action against any specific permit under section 60 of the Act. On the other hand taking the reports as they were, which may as well have been general allegations against the permit- holder, immediately action was taken for suspension or cancellation of all the permits. From the list of prosecutions we find only 15 vehicles are involved and most of the cases are of overloading. Some of the cases relate to non-accompaniment with the vehicles of registration certificates and other documents. In some cases, against certain vehicles, the time schedule was not kept and certain trips were missed. We are not at all on the merits of these prosecutions.

What is important in a departmental action of this type for violation of conditions of permit is that it must relate to the particular permits appertaining to concerned vehicles. It is of utmost importance that charges are made with reference to each permit in clear terms in order to enable the permit-holder to furnish his explanation. Proviso to section 60(1) which requires mandatory compliance is nothing short of a reasonable opportunity to the permit- holder to furnish his

explanation. Unless, therefore, the breaches of conditions or other allegations are particularised with reference to each permit in the show cause notice, such notice is clearly invalid and no action can be taken under such a notice. This is exactly what has happened in this case resulting in violation of the principles of natural justice ingrained in the proviso to section 60(1) of the Act. The High Court, therefore, was not right in not interfering with the order of the authorities cancelling the permits.

In the result the appeal is allowed. The order of the High Court as well as the orders of the State Transport Appellate Tribunal and the Commissioner are set aside. We will, however, make no order as to costs.

P.B.R.

Appeal allowed.