
(2016) 05 SHI CK 0133
In the High Court Of Himachal Pradesh
Case No : CWP No. 7295 of 2012

Ajay Parihar

APPELLANT

Vs

State of HP

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) sup HimLR 2706

Hon'ble Judges : Mr. Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Mr. A.K. Sharma, Advocate vice Mr. Amandeep Sharma, Advocate, for the Respondent No. 13; Mr. Sunil Mohan Goel, Advocate, for the Respondents Nos. 12 to 16; Ms. Suman Thakur, Advocate, for the Petitioner; Ms. Meenakshi Sharma, Addl. AG, with Mr. J.S. Guler

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J. - Taking advantage of the Permit Raj, the issuance of permits has plummet to that level where the Regional Transport Officers (RTOs) are ruling the roost. It is, therefore, high time that this court must have predominance and preeminence over the action of such authorities.

2. The seriousness of the issue had come before the Hon'ble Supreme Court in Jagdip Singh v. Jagir Chand & anr, (2001) 8 SCC 437. It is apt to reproduce para 2 of the judgment which reads thus:

"2. Despite the legislative intent under the Motor Vehicles Act, 1988 to increase the number of buses on different routes for the convenience and benefit of travelling public, there is reluctance on the part of the authorities to implement the same. Having reached at a saturation point wherein Permit Raj caused lot of inconvenience to the bus operators as well as to the general public to a large extent, the same is sought to be continued. There cannot be any doubt that there can be certain restrictions on the bus operators for providing facilities to the passengers, but when Legislature provides that permit should not, ordinarily,

be refused and has brought about a complete change in the policy of granting permit, it would be unreasonable and unjust on the part of the State Authorities to continue their old practise. Further, in these days of liberalization in all fields, that too when we are talking of globalization, it would be unjust to put fetter on the exercise of fundamental rights of those persons who intend to carry on the business as transport operators." (see <Ã?>Jagdip Singh v. Jagir Chand & anr, (2001) 8 SCC 437). Despite the aforesaid strong observations made by the Hon?ble Supreme Court, more than 1 ? decade ago, the position even today appears to be no better.

3. I have observed so because in the instant case, throwing all procedures to the wind, the Regional Transport Officer, Dharamshala has suo motu received and thereafter granted route permits.

4. The facts are not disputed and may be summarised as follows.

5. The Regional Transport Authority held a meeting on 1st /2nd November, 2011 for which the agenda was fixed on 1.11.2011 itself, though the same was required to be prepared at least 10 day?s prior to the meeting. In this meeting, applications were received suo motu by the Regional Transport Authority from private operators for grant of fresh stage carriage route permits.

6. This fact is not disputed as would be evident from the contents of para 4 of the reply filed on behalf of official respondents, which reads thus:-

"4. That the contents of para 4 of the writ petition are admitted to the extent that the meeting of the Regional Transport Authority, Dharamshala was held on 1.11.2011 and 2.11.2011. It is further submitted that the agenda for the meeting of the Regional Transport Authority for its discussion on the said dates was prepared as per usual procedure followed for the meetings. It is pertinent to mention here that the Supplementary Agenda was prepared at the time of meeting with the consent of the Chairman of the Authority is well within the procedure prescribed for holding meetings."

7. It is further not in dispute that not only the applications for grant of route permit were considered suo motu, but thereafter these permits were also granted in favour of private operators. Therefore, the moot question that arises for consideration is as to whether Regional Transport Authority or any one of its officers was competent to have devised such a procedure which otherwise is not contemplated under the Rules.

8. The procedure regulating the conduct of business of State Transport Authorities and the Regional Transport Authorities is provided under Rule 60 of the Himachal Pradesh Motor Vehicle Rules, 1999 (hereinafter referred to as the ? Rules?) which reads thus:

"60. Procedure for conduct of business

(1) Subject to the provisions of the Act and these rules, the State Transport

Authority or a Regional Transport Authority shall have power to make bye-laws to regulate the conduct of its business and shall likewise have powers to amend such bye ?laws and the business of such authorities shall be conducted accordingly under the directions of the Chairman of the respective authority.

(2) The Secretary concerned of the authority referred to in sub-rule (1) shall issue to each member of the State Transport Authority or a Regional Transport Authority, as the case may be, a copy of the agenda ten day?s before the actual date of the meeting at which it is to be considered.

(3) Save in the case of the hearing of an objection to the grant of a stage carriage permit or of a goods carriages permit or a contract carriage permit, the State Transport Authority or a Regional Transport Authority as the case may be ; may decide any matter without holding a meeting by the majority of the votes of members, recorded in writing, and sent to the Secretary concerned (hereinafter this method to be referred as "procedure by circulation?").

(4) In the procedure by circulation, the secretary of the authority concerned shall send to each member such particulars of the matters as may be reasonably necessary in order to enable the member to arrive at the decision and shall specify the date by which the votes of the members to be received in the office of the concerned authority. Upon receipt of the votes of the members as aforesaid, the secretary concerned shall lay the papers before the chairman, who shall record the decision by endorsement on the application for grant of a permit according to the votes received and the vote or votes 39 cast by him. The record of the votes cast shall be kept by the secretary and shall not be available for inspection by any person save by a member, at a regularly constituted meeting of the concerned authority. No decision shall be made upon procedure by circulation before the date by which the votes of the members are required to reach the office of the authority, or not less than one third of the members of the authority by notice in writing to the secretary, demand that the matter be referred to a meeting of the authority.

(5) The number of votes, excluding the Chairman?s second or casting vote necessary for a decision to be taken upon procedure by circulation shall not be less than the number necessary to constitute a quorum.

(6) Nothing in this rule shall prevent a State Transport Authority or a Regional Transport Authority to decide upon procedure by circulation any matter which has been considered at a meeting.

(7) When a matter is decided by votes of the members present at a meeting of the State Transport Authority or a Regional Transport Authority no person other than a member shall be entitled to be present and no record of the voting shall be kept save of the number of votes cast on either side. Provided that when any matter is decided by the exercise of second or casting vote of the Chairman, the fact shall be recorded.

(8) In case the non-official members of the State Transport Authority or a Regional Transport Authority differ on any matter en-block from the official members, the matter shall be referred for decision to the Government in the case of State Transport Authority and to the State Transport Authority in the case of a Regional Transport Authority.

Section 96 (2) (1)

9. It is evident from a bare perusal of sub rule (2) of Rule 60 that the Secretary concerned of the authority shall issue to each member of the Regional Transport Authority a copy of the agenda ten days before the actual date of the meeting at which it is to be considered and thereafter further procedure regarding the mode and manner in which the business is to be conducted has been contemplated.

10. It is more than settled that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed or not at all. More than eighty years back, the Hon^{ble} Privy Council in *Nazir Ahmad v. King Emperor*, (AIR 1936, PC 253) held that where a power is given to do a certain thing in a certain way, the things must be done in that way or not at all and this has been approved and further expanded by the Hon^{ble} Supreme Court in catena of judgments (Refer: *Rao Shiv Bahadur Singh & anr v. State of Vindh-P*, AIR 1954, SC 322; *Deep Chand v. State of Rajasthan*, AIR 1961, SC 1527; *State of Uttar Pradesh v. Singhara Singh & ors*, AIR 1964, SC 358; *Chandra Kishore Jha v. Mahavir Prasad*, 1999(8) SCC 266; *Dhananjaya Reddy v. State of Karnataka*, 2001 (4), SCC 9; *State of Jharkhand & ors v. Ambay Cements and anr*, (2005) 1, SCC 368; *Gujarat Urja Vikas Nigam Limited v. Essar Power Limited*, 2008 (4), SCC 755; *Zuari Cement Ltd v. Regional Director, ESIC, Hyderabad & ors*, AIR 2015, SC 2764; and *Uddar Gagan Properties Ltd v. Sant Singh & ors*, Civil Appeal No.5072 of 2016 decided on 13th May, 2016).

11. Unfortunately these principles have been violated in wholesome in the case in hand, whereby Regional Transport Authority has arbitrarily indulged in dolling out route permits. Such flagrant abuse and misuse of power cannot be countenanced. As a matter of fact, the Regional Transport Authority was not even conferred or even vested with any discretionary power and was thus required to have strictly adhered to the procedure as prescribed in the Rules.

12. Therefore, when an action is taken in furtherance of explicit power given by a statute, the legitimacy of invoking such power shall depend entirely upon the extent of achieving net and objective for which the statute enables the exercise of such power.

13. It is more than settled that law cannot be administered with an evil eye or with an unequal hand or for an oblique or unworthy performance and the arms of this court will be long enough to reach out and strike down such a view with a heavy hand.

14. The Regional Transport Authority, more particularly, the Regional Transport Officer could not have abused his/their power and trust under the camouflage of performance of their public duty and thereby in an arbitrary and illegal manner allotted route permits, that too by receiving suo motu applications in utter disregard and gross violation of the procedure contemplated under the Rules.

15. It needs to be reiterated that public offices, both big and small, are sacred trusts. Such offices are meant for use and not abuse and in case repositories of such offices surpass the rule, then the law is not that powerless and would step in to quash such arbitrary orders.

16. Respondent No.4, being a creation of statute, is admittedly a State within the meaning of Article 12 of the Constitution of India and cannot, therefore, act like a private individual, who is free to act in a manner whatsoever he likes, unless it is interdicted or prohibited by law. It is settled that the State and its instrumentalities have to act strictly within the four corners of law and all its activities are Government by Rules, regulations and instructions. It is more than settled that whenever a statutory authority is required to do a thing in a particular manner, then the same must be done in that manner or not at all.

17. In *Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & ors*, (1997) Vol 1 SCC 35, the Hon^{ble} Supreme Court observed as under:

"13. All purposes or actions for which moral responsibility can be attached are actions performed by individual persons composing the Department. All Government actions, therefore, means actions performed by individual person to further the objectives set down in the Constitution, the laws and the administrative policies to develop democratic traditions. Social and economic democracy are set down in the Preamble, Part III and Part IV of the Constitution. The intention behind the Government actions and purposes is to further the public welfare and the national interest. Public good is synonymous to protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

14. The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when in pursuit of a private satisfaction, as distinguished from public interest, he has done something which he ought not to have done. The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same.

15. In the Encyclopedia of Democracy by Seymour Martin Lipset, Vol. 1, page 310, in the Chapter "Corruption", it is stated that corruption is an abuse of public resources for private gain.

The occasions for political corruption increases when control On the activity of public administrators are fragile and the division of power between political actors and the public bureaucrats, as well as between the Government and the middle man, is Unclear, It is difficult to discover and punish cases of corruption. Research has shown that political corruption tends to be more widespread in authoritarian or totalitarian regimes and when public opinion and the press are unable to denounce corruption. Corruption develops because of con-fusion about the borders between State and society and between traditional and modern values. It can be expected to grow during phases of transition. Corruption should disappear in modern stable democratic societies. In-stead, it is growing. Since State intervention in economic and social life has increased the occasions for political corruption, new technologies have increased the cost of electoral campaigns and the professionalisation of political careers has increased the number of those who have to make a living from politics rather than living for politics.

Corruption has not disappeared. Corruption has dangerous consequences for politics. Al-though political corruption is more widespread in non-democratic regimes, it is particularly dangerous for democracy because" it undermines two of the major principles on which democracies are based; the equality of citizens" rights and the transparency of the political decision-making process; Bribes open the way for access to the State for those who are willing to pay and can afford the price. The situation may leave non-corrupt citizens with the belief that one "counts" only if one has the right personal contacts with those who hold power. Because of its illegal nature, corruption increases the range of public decision that are made in secrecy: It was suggested that internal controls on public bureaucracies through administrative controls and accounting procedures as well as ombudsman systems for public complaints, are remedies to control political corruption.

The rules of Code of Conduct for political executives, public servants and private entrepreneurs, emphasising merit and regulated system of appointment in state bureaucracy and Stimulating pride in public service, would generate remedies for political corruption."

18. From the discussion above, it is manifest that the entire procedure as adopted by the respondents stands vitiated on account of not following the mandatory procedure as prescribed under the Rules. Absence of power apart, such exercise of the respondents is fraught with danger of being activated by extraneous considerations. The action of the respondents, to say the least, is totally arbitrary.

19. In ordinary circumstances, this court would have cancelled all the route

permits, but since petitioner too supposedly is a beneficiary of such grant in the past (as observed earlier by this court vide its order dated 15.11.2012), this court instead directs respondent No.4 to re-invite the applications for grant of route permits strictly as per procedure prescribed under the Rules within a period of four weeks from today. Till that time, arrangement as continuing as on date shall be continued.

20. No other point urged.

21. With these observations, petition is disposed of in the aforesaid terms, leaving the parties to bear their costs. Let a copy of this order be sent to the Chief Secretary, Government of Himachal Pradesh for onwards circulation to State Transport Authority as also all the Regional Transport Authorities and to ensure that henceforth all the route permits are granted strictly in accordance with law.