

(2010) 06 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5316 of 2009

Ambala Bus Syndicate Private Limited	Vs	APPELLANT
State Transport Authority and Others		RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Chhattisgarh Motor Vehicles Rules, 1990 — Rule 185, 57
Motor Vehicles Act, 1939 — Section 52 , 58
Motor Vehicles Act, 1988 — Section 100, 98 , 99
Punjab Reorganisation Act, 1966 — Section 68, 74, 88(4), 88(5), 88(6)

Citation : (2010) 159 PLR 624

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The petition is at the instance of a private limited Company engaged in the business of providing stage carriage services to the travelling public and operates with its head office at Ropar. The writ petition is for issuance of a writ in the nature of certiorari to set aside the order passed by the State Transport Authority on March 30, 2009, whereby it had refused to countersign the permits held by the petitioner under a reciprocal agreement dated 04.06.2008 and for issuance of a direction to the respondents not to obstruct the stage carriage operations.

2. The basis of the claim of the petitioner is that the permits had been originally issued in the years 1954-1966 by the then transport authorities of the composite State of Punjab that presently includes the Union Territory of Chandigarh and the State of Hary-ana and permits were renewed from time to time. The Punjab Reorganization Act of 1966 recognized through Section 74 that permit granted by the State or a Regional Transport Authority in the existing State of Punjab shall, if such permit was issued before the appointed day namely 01.11.1966, be valid and effective in any area to which the permit was previously valid, subject to the provisions of the Motor Vehicles Act, but without having to be countersigned by

any State or Regional Transport Authority for the purpose of validating it for an use within such area. In so far as Section 74 directed that the permit was to be valid subject to the provisions of the Motor Vehicles Act, 1939, the governing relevant provision of Section 58 of the Act enjoined that a stage carriage permit other than a temporary permit shall be effective without renewal for a period not less than three years and not more than five years as the Regional Transport Authority may specify in the permit. The State therefore contended that these permits which were issued between the period 1954-1966 could be valid only for a period of not less than three years and not more than five years and, therefore, could have been valid only upto 01.11.1971. The stand of the State was, therefore, that the provisions of Section 74 of the Punjab Reorganization Act did not allow the permits to remain effective in perpetuity as the matter regarding grant/renewal of permits is covered under the Motor Vehicles Act/ Rules. Therefore, any permit which was renewed by the Punjab Authorities allowing the operation of buses in the Union Territory of Chandigarh area after the expiry period was illegal and without competence since the Motor Vehicles Act empowers the State Governments to control the transport only within their territorial jurisdiction.

3. The Chandigarh Administration claimed that Sections 98-100 of the Motor Vehicles Act, 1988 (the 1939 Act has stood repealed by the 1988 Act), empowered the State Administration to frame a scheme which it did through its notification dated 14.10.1998. Under the scheme, the operation of stage carriage services in the Union Territory of Chandigarh was retained to Chandigarh Transport Undertaking to the complete exclusion of others. The exception however was made only to A/C buses through a notification dated 19.11.2001 while amending the scheme of 1998. It further provided that the non-AC buses of private operators could not be plied within U.T., Chandigarh. On a claim by the Administration that the buses operated by the petitioner were all non-A/C buses, it was the stand of the Administration that the operation of the transport vehicles on inter-State routes could only be allowed as per inter-State agreement between the concerned States as per the provisions of Motor Vehicles Act of 1988. There is a reciprocal agreement signed between the State of Punjab and U.T., Chandigarh on 4th June, 2008 and notified by the Chandigarh Administration on 9th June, 2008, which provided through para 5 of the terms and conditions that non-A/C buses of private operators having permits issued before 01.11.1966 could be allowed after verification of the original permits and counter signatures, provided that such permits could be countersigned only if they fall within the scope and terms of Section 74 of the Punjab Reorganization Act of 1966. The permits, in question, could not be countersigned and consequently, the buses of the petitioner could not be allowed to ply in U.T., Chandigarh. It is this order of the 1st respondent that is put in challenge before this Court.

4. The learned Counsel appearing on behalf of the petitioner points out that the competent authority has been extending the validity of the permits periodically

from the year 1971 after following due procedure which included the publication of the contents of the application. Since Chandigarh was the capital of both the States of Punjab and Haryana, the buses of the State Transport Undertaking of Punjab as well as of Haryana operated on the inter-State routes terminating or passing through Chandigarh without countersignatures. Similarly, even the buses of Chandigarh Transport Undertaking (CTU) continued operating in Punjab territory on the basis of stage carriage permits granted by the State Transport Undertaking, Union Territory, Chandigarh without countersignatures since 01.11.1966.

5. It is urged on behalf of the petitioner that CTU itself was maintaining a fleet of 412 buses out of which 90 were on the city routes and remaining on inter-State routes without countersignatures and thus, the other States including the State of Punjab had a genuine grievance against the U.T., Chandigarh and it had been requesting the Administration to settle the disputes amicably and execute a reciprocal agreement as envisaged u/s 88 (5) and (6) of the Act. Keeping in view the interest of the travelling public and to provide improved air conditioned bus service, the State of Punjab modified its scheme which had originally framed in the year 1990 through a later notification dated 21.10.1997 providing for grant of stage carriage permits for air conditioned buses from District Headquarters and important towns in the State of Punjab to the Union Territory of Chandigarh. The Union Territory, Chandigarh itself had framed a scheme under Chapter VI of the Motor Vehicles Act and published in the official gazette dated 14.10.1998 that originally provided an exclusivity of operation within the Union Territory with transport service being provided only by CTU. The modified scheme in 2001 provided the grant of inter-state stage carriage permits to certain classes and it is, therefore, necessary to reproduce the same:

1. The stage carriage permit may also be granted to a private operator for operation of air conditioned buses from Union Territory, Chandigarh to District Headquarters and important towns in the State of Punjab and their return.

2. A private operator may be granted permit for operation of air conditioned buses from the District Headquarter and important towns in the State of Punjab to the Union Territory of Chandigarh on the basis of reciprocal agreement after charging the fees/taxes as fixed by the State Transport Authority, Chandigarh for countersignatures of such permits, u/s 88(5) of the Motor Vehicles Act, 1988 by fixing the number of such stage carriage permits to the air conditioned buses.

6. After the introduction of the modified scheme, the non-AC buses were being repeatedly obstructed from entering the Inter State Bus Terminal (ISBT) at Sector 17, Chandigarh and a writ petition appears to have been filed in Civil Writ Petition No. 4073 of 2001. In the writ petition, the U.T., Chandigarh took a stand that the buses of the petitioner-Company in respect of which permits had been issued before 01.11.1966 were allowed to operate from ISBT, Sector 17, Chandigarh. Only permits that were issued subsequently without any countersignatures from the competent authority had no legal sanctity and the

operation of only those buses without valid permits became illegal. Notwithstanding the specific stand of the Chandigarh Administration relating to the operation of the buses for which permits had been granted before 01.11.1966 when the harassment persisted through the Chandigarh Transport Workers' Union, the petitioner again filed Civil Writ Petition No. 8525 of 2008 when the Court directed the petitioner to produce the original stage carriage permits for inspection by the State Transport Authority and as per the direction, all the original stage carriage permits appear to have been produced before the Secretary, State Transport Authority Undertaking on 02.06.2008. They were all verified and endorsement to that effect was made to the Secretary, State Transport Undertaking on 25.08.2008. The requirement after reciprocal agreements with regard to the operation of the stage carriages of inter-State routes was covered under clause 5(i) which is reproduced as under:

5(i) Reciprocal agreement with regard to operations of stage carriage on inter-state routes between U.T., Chandigarh and Punjab shall be as per Annexure A, B, C&D.

The routes mentioned in Annexures A, B, C & D shall always mean the shortest direct route connecting the two terminals lying in the two states through the places mentioned therein. Any discrepancy discovered later in the name or length of route shown in the said annexure shall promptly be corrected through correspondence between the reciprocating States/UT and shall not be treated as any modification of the agreement. The air conditioned and non air conditioned buses owned and operated by the STU's of both the State/UT shall only be allowed subject to the counter signatures. Integral Air Conditioned Buses of the private operator shall be allowed on the routes covered in annexure D to this agreement subject to countersignatures, provided that permits for such buses shall not be extended beyond Chandigarh except in Punjab area. Non-air conditioned buses of the private operators Waving permit issued before 01.11.1966 may be allowed after verification of the original permits and counter signature provided that such permits shall be countersigned only if they fall within the scope and terms of Section 74 of the Punjab Reorganisation Act, 1966 and provisions of the Motor Vehicles Act, "1988.

It is the contention of the petitioner that the stage carriage operations by the petitioner has been included in Annexure "C" and duly accounted for in the share of the Punjab operators. As against Punjab operators who have been permitted to operate 14930.5 kms in the Union Territory, Chandigarh, the CTU has been permitted to operate 29562 kms in the territories of Punjab. Air conditioned buses of the private operators covered under Annexure D were allowed, subject to counter signatures provided that permits for such buses would not be extended beyond Chandigarh except in Punjab area. Non-air conditioned buses of the private operators having permits issued before 01.11.1966 were also to be allowed after verification of the original permits and counter signatures, provided that such permits should be countersigned if they fall within the scope and terms

of Section 74 of the Punjab Reorganization Act of 1966.

7. We have already noticed that all the inter-State routes on which regular stage carriage permits were granted in favour of the petitioner prior to 01.11.1966 and which were renewed from time to time had been included in Annexure-C to the reciprocal agreement published on 04.06.2008. The writ petition in Civil Writ Petition No. 8525 of 2008 had also been disposed of with a direction that the State Transport Authority, Chandigarh would be at liberty to take a decision on merits if an application for countersignature had been submitted before him but the plea was rejected on the ground that the petitioner did not qualify for the benefit of the scope u/s 74 of the Punjab Reorganization Act of 1966. Counsel for the petitioner states that the powers of the State Transport Authority for grant of permits or for grant of countersignatures are of quasi judicial nature and it could be exercised by a multi member body constituted u/s 68 of the Act. The members of the Committee; Home Secretary as Chairman, Inspector General of Police, UT, Chandigarh and the Deputy Commissioner, UT, Chandigarh and the Secretary of the State Transport Authority. As per Rule 57 of the Chandigarh Motor Vehicles Rules of 1990, three members constituted a quorum and by pointing out that the impugned order had been passed only by the Chairman without reference to other members of the Committee, the petitioner states that the impugned order passed by the Chairman alone was without jurisdiction. It is the contention of the petitioner that under Chapter V of the Act that contain provisions of revocation and suspension of permits and reading Section 88(4) with proviso to Section 80(1) of the Act, the Regional Transport Authority could refuse an application only by a reasoned decision, after issuing notice to the permit holder. The Chandigarh Administration supports its stand through its written statement by contending that the renewal of stage carriage permits of the petitioner by the State Transport Authority after the period 01.11.1966 could not override the scheme issued by the Chandigarh Administration in exercise of its powers u/s 99-100 of the Motor Vehicles Act. It is further contended that non-air conditioned buses by private operators having permits issued before 01.11.1966 would be allowed after verification and provided that such permits could be countersigned only if they fall within the scope and terms of Section 74 of the Punjab Reorganization Act of 1966 and the provisions of Motor Vehicles Act of 1988.

8. The interpretation that is read into this clause by the State is that stage carriage permits were valid only for a period of 5 years and the mere renewal by the State Transport Authority after 1971 did not make these permits valid in the territorial jurisdiction of another State contrary to the carriage scheme framed by the Chandigarh Administration. It is not comprehensible from the contentions of the respondents as to how it could be contended that the petitioner would not fall within the operation of the Section 74 of the Punjab Reorganization Act. Admittedly, the petitioner is claiming his countersignatures only for the routes permits which were issued before 01.11.1966. Periodical extension had been granted after the year 1971 only by treating the routes permits as falling within

Section 74 of the Act. By the interpretation which is now placed by the respondents to exclude the petitioner, even a special category carved out to save the permits issued before 01.11.1966 are excluded. This interpretation is clearly wrong. It completely eclipses the fact of 2001 modified scheme and takes it back to render operational the 1998 scheme which allowed for an exclusive right only to the Chandigarh Transport Undertaking to operate the inter-State Transport buses. The 2001 modification not only provided for AC bus operators to apply for inter-State permits but also to non-AC bus operators, who held permits prior to 01.11.1966 and to whom the provisions of Section 74 of the Punjab Reorganization Act applied. It must be remembered that Section 74 itself applied only to permits that had been issued before 01.11.1966 and it was irrelevant that the said provisions read with Section 52 of the 1939 Act provided for the applicability only for a period of 5 years. There had been periodical extension of permits and that saved for the petitioner its right to claim the applicability of Section 74 of the Punjab Reorganization Act and consequently, also the right to claim countersignatures for operation of their interstate permits. The learned Counsel appearing on behalf of the petitioner relied on a judgment of the Hon'ble Supreme Court in *V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore*, that set out the law with reference to the effect of renewal of permits. The Hon'ble Supreme Court, while making reference to the 1939 Act had held that a renewal is a continuation of the original permit when such renewal is granted. Reading the renewal of permit with the expression "permit" itself u/s 2(2) along with Rule 185, the effect would be thus,

If an application for the renewal of a permit has been made in accordance with these rules and the prescribed fee paid by the prescribed date, the permit shall continue to be effective until orders are passed on the application or until the expiry of three months from the date of receipt of the application whichever is earlier. If orders on the application are not passed within three months from the date of receipt of the application, the permit-holder shall be entitled to have the permit renewed by the Transport Authority for the period specified in the application or for one year whichever is less and the Transport Authority shall call upon the permit-holder to produce the registration certificate or certificates and Part B or Parts A and B of the permit, as the case may be, and endorse the renewal in Parts A and B of the permit. accordingly and return them to the permit holder. Under this rule, when an application for renewal is made, the permit already granted is to be in force until an order is passed thereon, and what is more important, if no order is passed within three months, the permit becomes automatically renewed for the period mentioned in the rule. This goes a long way to support the contention of the respondents that on the scheme of the Act, renewal is a continuation of the original permit. It should also be mentioned that the rules provide for different forms for an application for fresh permit and one for renewal, and the fee to be paid along with those applications is also different. A reading of the relevant provisions of the Act and of the rules leads indubitably to the conclusion that a renewal is a continuation of the permit

previously granted. The fact that the grant of renewal is not a matter of course, or that it is open to the authorities to impose fresh conditions at the time of renewal does not, when the permit is in fact renewed, alter its character as a renewal.

9. The Hon''ble Supreme Court held that renewal of a permit has the same effect as a fresh permit. The Hon''ble Supreme Court was considering the effect of cancellation of an original permit when a renewal had been granted subsequently and its ramification for the validity of such renewal. The Court held that there was no obstacle to imply a condition that renewal would stand cancelled if the right to the original permit was itself ineffective. This judgment has no direct application to the case but in so far as the applicability of the Punjab Reorganization Act is concerned, it leaves no doubt that when a renewal of a permit was done periodically, it was done on a recognition of applicability of Section 74 to the petitioner as a person, who was holding the route permits prior to 01.11.1966 before the State was re-organized and when the permit was granted to run within the State, it became an inter-State operation by granting an exclusive Union Territory status to Chandigarh. The only issue was that while Section 74 originally provided for an exclusion for application for countersignatures but subject to the provision of the Motor Vehicles Act by the application of the Act, such countersignature was necessary when a scheme was formulated Till such scheme came into operation, Section 74 itself provided for periodical extension of permits. The moment the scheme came into force, the only additional requirement was the necessity to apply for countersignature which for inter-State permits granted before 01.11.1966, respondent is bound to issue.

10. Under the circumstances, the writ petition is allowed and the impugned order (Annexure P-14) is quashed. There shall be direction to the 1st respondent to consider within 8 weeks the petitioner's claim for countersignatures in accordance with law and the petitioner shall be permitted to ply his non-AC buses after securing the renewal of permits in the manner contemplated by law.