

(2024) 12 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No.6578 Of 2024

Anand Moudgil

APPELLANT

Vs

State Transport Authority & Another

RESPONDENT

Date of Decision : 02-12-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 68, 68(3)(c)(ca), 72(1), 80, 80(1), 80(2)
Himachal Pradesh Motor Vehicles Rules, 1999 — Rule 57, 60

Citation : (2024) 12 SHI CK 0013

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Rajan Kahol

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Precisely the grouse of the petitioner, as has been raised in the petition at hand and further canvassed by Mr. Anand Moudgil, petitioner in person, who has joined the proceedings through video-conferencing, is that Secretary, State Transport Authority, Himachal Pradesh, had no competence and jurisdiction to decide the application filed by the petitioner herein for Stage Carriage Permit (Annexure P-1), rather such prayer was required to be considered and decided by the State Transport Authority, as provided under Section 68 of the Motor Vehicles Act, 1988, (hereinafter, 'the Act').

2. While making this Court peruse provisions contained under Section 68 and Section 80 of the Act, petitioner in person vehemently argued that once it is not in dispute that State Transport Authority stands constituted and there is no time limit fixed for making an application for permit of any kind, there was no occasion, if any, for Secretary, State Transport Authority to reject the prayer made on behalf of the petitioner for grant of Stage Carriage Permit. While making this Court peruse reply filed by respondents No.1 & 2, petitioner in

person further argued that there is no denial, if any, on the part of the respondents with regard to constitution of State Transport Authority, rather, attempt has been made to defeat the claim of the petitioner on the ground that application for Stage Carriage Permit was filed without there being advertisement issued by the State of Himachal Pradesh, which otherwise was not required. He further submitted that though it has been claimed on behalf of the respondents that on account of agreement entered inter se State of Himachal Pradesh and State of Uttarakhand, no new route shall be granted to a private Stage carriage operator in the interstate route or in the corridor routes, but such decision, if any, could only be taken by the State Transport Authority, but definitely not by the Secretary, State Transport Authority.

3. While refuting the aforesaid submission made on behalf of petitioner in person, Mr. Rajan Kahol, learned Additional Advocate General while making this Court peruse reply filed on behalf of respondents No.1 & 2, beside making submission with regard to non-issuance of advertisement as well as agreement inter se State of Uttarakhand and State of Himachal Pradesh, further argued that since no route ever came to be notified by the State of Himachal Pradesh in terms of Section 68(3)(c)(ca) of the Act, there was otherwise no occasion, if any, for State Transport Authority to consider the prayer made on behalf of the petitioner for grant of Stage Carriage Permit.

4. Having heard learned Additional Advocate General and petitioner in person and perused material available on record vis-a-vis reasoning assigned in the impugned order dated 27.06.2024 passed by Secretary, State Transport Authority (Annexure P-5), this Court finds merit in the submission of petitioner in person that prayer, if any, made on behalf of the petitioner for grant of Stage Carriage Permit could not have been considered and decided by Secretary, State Transport Authority, rather such prayer, if any, could only be considered and decided by the State Transport Authority, constituted in terms of Section 68 of the Act. Since there is no dispute inter se parties that Section 68 of the Act provides for constitution of State Transport Authority, which has been further empowered under Section 80 of the Act to consider prayer, if any, made for Stage Carriage Permit, there appears to be no reason for this Court to reproduce aforesaid provision of law.

5. It is also not in dispute that State Transport Authority stands constituted vide Notification dated 29.05.2023 issued by the Governor of Himachal Pradesh in exercise of power conferred upon him under Section 68 of the Act and in continuation of aforesaid Notification, another Notification dated 06.06.2023 has also been issued, wherein Government has been empowered to nominate non-official members of the State Transport Authority, Himachal Pradesh.

6. Reply filed on behalf of respondents No.1 & 2, if read in entirety, clearly reveals that there is no dispute that order dated 27.06.2024 (Annexure P-5) whereby prayer made on behalf of the petitioner came to be rejected, was never passed by State Transport Authority, rather, Secretary, State Transport Authority

having taken note of the fact that application at the behest of petitioner has been filed without there being advertisement issued by the Government of Himachal Pradesh, proceeded to reject the same mainly on the ground that there is an agreement inter se State of Himachal Pradesh and State of Uttarakhand that no new route can be granted to private Stage carriage operator in the interstate or in the corridor routes. Though no specific ground with regard to grant of route permit by State of Himachal Pradesh in terms of Section 68(3)(c)(ca) of the Act has been taken in the order impugned in the instant proceedings, but once it is not in dispute that competent authority to consider the prayer, if any, for grant of Stage Carriage Permit is State Transport Authority, no order in that regard could have been issued by the Secretary, State Transport Authority. Whether for the reasons stated in the impugned order 27.06.2024, prayer made on behalf of the petitioner could be considered and rejected is a question to be decided by the State Transport Authority. Jurisdiction vested in State Transport Authority could not be exercised by the Secretary, rather after receipt of application, if any, he was under obligation to place the same before State Transport Authority to consider and decide the same in terms of various provisions contained in the Act.

7. Though at this stage, it vehemently came to be argued by Mr. Rajan Kahol, learned Additional Advocate General that since no application was ever called for by the State Transport Authority for grant of Stage Carriage Permit, there was no reason to consider such prayer, but having perused provision contained under Section 80 of the Act, this Court is not in agreement with the aforesaid submission of Mr. Rajan Kahol, learned Additional Advocate General for the reason that Section 80(1) of the Act itself provides that an application for a permit of any kind may be made at any time.

8. Consequently, in view of the above, present petition is allowed. Annexure P-5 dated 27.06.2024 is quashed and set-aside. Respondent No.1-State Transport Authority is directed to consider the application of the petitioner for grant of Stage Carriage Permit, afresh, within four weeks' from the date of this order.

9. Needless to say, afore authority while doing the needful in terms of directions contained in terms of instant order shall do the needful strictly in terms of prescribed procedure contemplated under Section 72(1) read with Section 80(2) of the Act, read with Rule 57 & 60 of Himachal Pradesh Motor Vehicles Rules, 1999, as well as law laid down in cases titled Mithilesh Garg Vs. Union of India, 1992 (1) SCC 168, Pancham Chand Vs. State of Himachal Pradesh, 2008 (7) SCC 117, State of U.P. Vs. Singhara Singh, AIR 1964 SC 358. Since matter is hanging fire for long, this Court hopes and trusts that appropriate decision shall be taken by the competent authority, expeditiously, preferably within a period of four weeks, by affording due opportunity of being heard to the petitioner as well as other stakeholders. Liberty is reserved to the petitioner to file appropriate proceedings in the appropriate Court of law, if he still remains aggrieved.

Pending applications, if any, also stand disposed of.