

(2013) 10 MP CK 0036
In the Madhya Pradesh High Court
Case No : Writ Petition No. 17413 of 2013

Arvind Shrivastava

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0036

Hon'ble Judges : Rajendra Menon, J; R.S. Jha, J

Bench : Division Bench

Advocate : Brajesh Dubey, for the Appellant; K.S. Wadhwa, Additional Advocate General for the State, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties on the question of admission. Petitioner, a Bus Operator and resident of Sagar, has filed this writ petition challenging the order-dated 18.7.2013, passed by the State Transport Appellate Tribunal, Gwalior rejecting an appeal filed by the petitioner in the matter of granting permit on the route Narsinghpur to Nagpur. Petitioner's application for grant of permit has been rejected on 18.6.2012 by the State Transport Appellate Tribunal, Gwalior and the appeal was filed challenging this order. Permit in question has been granted to respondent No. 3 Shri Prashant Raj.

2. On the basis of an inter-state agreement entered into between the State of Madhya Pradesh and the State of Maharashtra, two inter-state permits with two trips, to and fro daily, is available on the route Narsinghpur to Nagpur. Initially the vehicle in the said route was being plied by MP State Transport Corporation, an agreement was entered into between the petitioner and the MP State Road Transport Corporation and a lease was granted to him, for plying the vehicle on the said route on the basis of the authority granted by the Corporation. Finally, a temporary permit was granted to the petitioner. However, in the year 2012 when proceedings were initiated for grant of permanent permit on the route in question, records indicate that seeking permit on the route in question 23

applications were filed. One application was filed by the petitioner, another application was filed by respondent No. 3 Shri Prashant Raj, son of Shri Ramswaroop Raj; third application was filed by Smt. Gayatri Devi Shrivastava, wife of Shri Ramswaroop Shrivastava - petitioner's mother. The Transport Authority evaluated the claim and granted permit to Smt. Gayatri Devi Shrivastava and to respondent No. 3 Shri Prashant Raj. Petitioner preferred an appeal challenging the grant made only to respondent No. 3, he did not challenge the grant made in favour of his mother Smt. Gayatri Devi Shrivastava. The appeal having been dismissed, this writ petition has been filed.

3. Shri Brajesh Dubey, learned counsel for the petitioner, submitted that the application of the petitioner is rejected only on the ground that if permit is granted to him then a monopoly in favour of petitioner's family would be created, this is not permissible and, therefore, the application is rejected. It was submitted that the petitioner is plying the vehicle in this route since 2006, he was having a temporary permit; and, in the absence of any statutory provision prohibiting grant of two permits to the same family, action taken is unsustainable.

4. Placing reliance on a judgment rendered by a Division Bench of this Court in LPA No. 4/1995 (Gulshan Transport Vs. Urmila Malviya); and, a judgment of the Orissa High Court in the case of Samuel Pani Vs. Ramesh Chandra Mallick and Others, , learned counsel argued that the petitioner is an experienced operator on the route and there is nothing in the Motor Vehicles Act or the Rules framed thereunder prohibiting grant of two permits to members of the same family, rejection of petitioner's application was not called for. It was submitted that without taking note of the law laid down in the two cases, as referred to hereinabove, the learned appellate Tribunal has rejected the application/appeal, which is nothing but an illegality committed by the appellate authority that warrants interference into the matter.

5. Shri K.S. Wadhwa, learned Additional Advocate General, refuted the aforesaid and pointed out that the State Government has issued a policy which prohibits creation of a monopoly in favour of a single transporter. This according to Shri Wadhwa is not in public interest. That apart, the State Government has also taken a policy decision to ensure that new transporters, particularly those belonging to the reserved category, are encouraged and as respondent No. 3 is a scheduled caste candidate, who is operating the bus on the said route after purchasing a vehicle on loan, preference has been given to him; and, one of the permit on the same route is given to petitioner's mother. It was submitted by Shri Wadhwa that in doing so, neither the State nor the appellate authority has committed any error which warrants interference. It was submitted by him that the discretion exercised by the authority is reasonable and the same does not call for any interference.

6. We have heard learned counsel for the parties at length and perused the records.

7. On going through the records, it is seen that the route in question is an inter-state route and two permits with two trips, to and fro daily, are available to be granted. More than 23 applications were submitted and the application of the petitioner that of his mother ? Smt. Gayatri Devi Shrivastava, and respondent No. 3 Shri Prashant Raj, were taken up for consideration. Petitioner's mother Smt. Gayatri Devi Shrivastava has sought for the permit, giving particulars of a vehicle which is a Model of the year 2012, the vehicle is in very good condition and preference has been given to her in the matter of giving permit after comparing the claim of the petitioner with that of his mother. As far as respondent No. 3 is concerned, it is found that he is a scheduled caste member, he is a new operator and taking note of the policy of the State Government, permit has been granted to him. It is also found that the State Government as a policy has prohibited creation of monopoly in a particular route and encouragement to new operators/transporters, particularly those belonging to the reserved category, is warranted as per the policy of the State. Taking note of all these factors, the impugned action is taken.

8. Except for contending that there is nothing in the Motor Vehicles Act or the Rules framed thereunder, which prohibits grant of two permits to the same family, no statutory rule, regulation or provision is brought to our notice which prohibits the State Government from enforcing the policy as is indicated in the order passed. The State Government in the interest of the public using the transport facility and with a view to give benefit to new transporters and to avoid creation of monopoly has initiated the policy. A policy decision taken by the State Government cannot be interfered with by this Court until and unless violation of the statutory rules, regulations or constitutional provision in framing such a policy is brought to our notice. Nothing of this sort is brought to our notice.

9. It is also surprising that petitioner submitted an application and when his case was compared with that of his mother Smt. Gayatri Devi Shrivastava and rejected, he filed an appeal challenging the refusal of his grant, but while doing so did not challenge the grant made to Smt. Gayatri Devi Shrivastava and only challenged the grant made to respondent No. 3. This aspect has been taken note of by the learned appellate Tribunal and the appellate Tribunal found that this conduct of the petitioner itself shows that he wants to create a monopoly for his family and when the State Transport Authority has refused permit to him after comparing his case with Smt. Gayatri Devi Shrivastava, the conduct of the petitioner in not challenging the grant made to his mother clearly shows that he is only interested in getting both the permits for his family. This would create monopoly and, therefore, his appeal is rejected.

10. In doing so, we are of the considered view that the authorities have not committed any error which warrants interference by us in this writ petition under Article 227 of the Constitution. A reasonable decision taken by the Statutory authorities in the interest of the public at large, based on a reasonable policy cannot be interfered with by this Court on the grounds canvassed. The petitioner,

as held by the appellate Tribunal, wants both the permits for his own family and create a monopoly. However, as respondent No. 3 is also given permit to encourage new operators/transporters and to ensure more participation by new operators/transporters, particularly those belonging to the reserve category, we see no reason to interfere into the matter.

11. The judgments relied upon by Shri Dubey are also not applicable in the present case. In the case of Samuel Pani (supra), the case pertained to matter based on experience gained by the operator/transporter, which is not an issue in the present case. Similarly, in the case of Urmila Malviya (supra) also, only the criteria for evaluating the eligibility conditions is laid down and it no way helps the petitioner in challenging the impugned action. Accordingly, in the facts and circumstances of the case, finding the authorities to have acted reasonably in the matter of grant of permit, no case is made for interference. The petition is accordingly dismissed.