
(2019) 03 UK CK 0074

In the Uttarakhand High Court

Case No : Writ Petition (M Of S) No. 1789 Of 2015

Balbir Singh Bisht

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Citation : (2019) 03 UK CK 0074

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Tejas Agarwal, Daves Ghildiyal, Sachin, Ashish Joshi

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J

The present writ petition has been filed by the petitioner for the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari calling for the records and quash the impugned show cause notice dated 25.06.2015, (Annexure No. 7 to the writ petition) issued by the respondent authorities.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent authorities to permit the petitioner to operate bus on Saharanpur-Dehradun route, as per the agreement entered between the petitioner and respondents.

(iii) Any other order or direction, which this Hon'ble High Court may deem fit and proper in the facts and circumstances of the case.

(iv) Award cost of the petition to the petitioner."

2. The brief facts of the case are that the respondent entered into the contract with the petitioner on 31.10.2012 and consequent thereto, an agreement was executed between the petitioner and the respondent, by virtue of which he was granted permission to ply the bus on the route of Dehradun-Saharanpur-

Dehradun. As per the terms of the contract dated 31.10.2012 , the same was to operate for a period from 31.10.2012 till 31.10.2017, i.e. for a period of five years. There had been various personal difficulties which has been argued by the counsel for the petitioner which was being faced by the petitioners due to which he was not able to operate the bus for the period of contract for which show cause notice was issued to him, which he has earlier challenged the same in the writ petition being Writ Petition No. 1853 of 2014 'Balbir Singh Bisht vs. State of Uttarakhand & Others'. This Court while entertaining the writ petition has stayed the effect and operation of the notice which intended to terminate the contract executed in favour of the petitioner. However, during the intervening period the petitioner yet again could not operate the bus which in accordance with the pleadings raised in the writ petition was on account of the ailment of his wife, who was a chronic sugar patient, and had a diabetic foot, which required consisted medical treatment.

3. On account of the aforesaid short coming and difficulties which was faced by the petitioner, coupled with the fact that at times the vehicle was to be sent for maintenance purposes also there was a disruption in the continuous plying of bus in terms of the contract dated 31.10.2012. For the aforesaid reasons, the petitioner was proceeded with a show cause notice on 25.06.2015 calling upon the petitioner to explain the reasons as to why the bus was not being plied on the routes in question for which the contract was executed in his favour on 31.10.2012.

4. It is the case of the petitioner that he had submitted his reply to the show cause on 30.06.2015, but without considering the same and without passing any orders on the same the respondents were creating his hurdles in operating the bus of the petitioner on the route in question. Hence, he filed the present writ petition.

5. When this writ petition was taken up initially on 21.07.2015, while calling for a counter affidavit an interim order was granted to the effect "Meanwhile, in the peculiar facts and circumstances of the case, I direct that till further orders, petitioner shall be permitted to run his bus with Uttarakhand Parivahan under the agreement". As the consequence of which falls from the interim order dated 21.07.2015 would be that there could not have been any disruption caused by the respondent in permitting the petitioner to ply his bus under the interim order dated 21.07.2015, it is argued that he was not allowed to ply the bus despite interim order but any how admittedly during the pendency of the writ petition the tenure of the contract has otherwise also come to an end of 30.10.2017. As a matter of fact, it could be said that no lis survives as of now because of the cessation of period for which licence was granted. In response to it, learned counsel for the petitioner has drawn attention of this Court to clause-15 of the contract which reads as under:

"II. Period of the Contract

15- The term of this Agreement would be of 5 years but the same can be extended by another period of one year by mutual consent of the parties. The period of Agreement would start from the date of execution of the Agreement and the date of Agreement will be considered as the date of commencement of the agreement."

6. As per the said condition 15 of the contract it provided that despite of the expiry of the period for which the same was entered into, it provided that the terms of the contract could be extended further beyond the specified period subject to the mutual consent between the parties. He during the course of argument submitted that the reply which he has extended in pursuance to the impugned show cause notice dated 25.06.2015, under challenge in the present writ petition, his reply to it dated 30.06.2015, may be directed to be considered in the light of the provisions contained under clause-15 of the agreement dated 31.10.2012.

7. Without expressing any opinion on merit of the matter and exclusively considering the hardship which was being faced by the petitioner, the respondents are directed to consider the reply dated 30.06.2015 extended by the petitioner in reply to the show cause notice dated 25.06.2015, as well as reasonably considering the petitioner's application for extension of the terms of the contract in the light of the provisions contained under clause-15 of the agreement and pass a speaking order within a period of two months from today. Till the decision is taken on the said application for extension, the petitioner would be permitted to ply the bus in terms of the interim order dated 21.07.2015.

8. Subject to the above observation, writ petition stands disposed of.