
(2018) 08 P&H CK 0168

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No.1168 of 2017 (O&M)

Balwinder Kaur and another

APPELLANT

Vs

State Transport Appellate Tribunal Punjab and others

RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

Citation : (2018) 08 P&H CK 0168

Hon'ble Judges : MAHESH GROVER, J; MAHABIR SINGH SINDHU, J

Bench : Division Bench

Advocate : Raj Kaushik

Final Decision : Dismissed

Judgement

After hearing learned counsel for the applicant and going through the contents of the application, delay of 115 days in re-filing the appeal is hereby

condoned. CM stands allowed.

Main case We propose to reproduce the operative part of order of the learned Single Judge:-

â??A perusal of the record would go on to show that the petitioner is a beneficiary of order of transfer of permit on 11.5.2011 (Annexure P/5) issued

by the State Transport Commissioner, Punjab from one M/s Saini Transport Company whose proprietor was Chanan Singh who had died on 12.7.2008

which would be clear from the death certificate (Annexure R- 4/1). It is not disputed that vide order dated 25.5.2004 (Annexure P/1), four persons

were given one stage carriage permit on Mohali-Hoshiarpur route with one return trip and M/s Saini Transport Company was one of the beneficiaries.

It is case of the petitioner itself that vide agreement dated 25.7.2006 (Annexure P/2) and the power of attorney (Annexure P/3) in favour of Iqbal

Singh along with affidavit (Annexure P/4) permit had been transferred for all practical purposes to the petitioner and on the basis of which the transfer was accordingly allowed vide order dated 11.5.2011 (Annexure P/5).

It is apparent that respondent nos. 4 and 5 had also raised objections on 1.2.2011 (Annexure R-4/3) in pursuance of publication issued in the Motor

Transport Gazette on 1.2.2011 itself. The order whereby transfer of permit had taken place would also go on to show that in the said order it was

mentioned that there was no response to the notice and no representation had been received from any quarter within the stipulated period. It is thus

apparent that even the transfer as such was on account of presence of Iqbal Singh, power of attorney which had been given by Chanan Singh who

had expired three years earlier. This fact was not brought to the notice of the State Transport Commissioner, Punjab and even objections had been

filed which were not taken into consideration.

Though counsel for the petitioner submits that the objections were not on record yet he has also relied upon the same to submit that the appeal would

be time barred because the said respondents had constructive knowledge from the date of filing of objections. So these are necessarily questions

which should be decided by the State Transport Commissioner, Punjab.

It is further the case of the petitioner that the appeal was decided without issuing him notice since the original permit holder had already died.

In such circumstances, this Court is of the opinion that the show cause notice dated 31.12.2013 (Annexure P/8) prima-facie had rightly been issued as

such and the matter has been sought to be reopened. As per the stand of the State due to pendency of the writ petition, the same has not been acted

upon. It is not disputed that there is some substance in the argument of counsel for the petitioner that it should have been heard at that point of time

since transfer of permit had already taken place in its favour on 11.5.2011 (Annexure P/5). Therefore, the order of the Tribunal would adversely

affect the petitioner.

Resultantly, this Court is of the opinion that the order of the Tribunal dated 12.10.2012 (Annexure P/7) is liable to be set aside and is accordingly

quashed. The State Transport Commissioner, Punjab will, however, act upon the notice dated 31.12.2013 (Annexure P/8) in accordance with law. It

will be open to the petitioner to reply to the same and show that it is entitled to

continue with the permit transferred in its favour on the basis of agreement which had been entered into in spite of the death of the original permit holder. It would also be appropriate for the said authority to call upon respondents no.4 and 5 who can if so desire object to the transfer.

Resultantly, the present writ petition is partly allowed.â??

Evidently, the permit in question was not allotted in accordance with law. Learned Single Judge took notice of the facts and directed that the matter be remitted back to the State Transport Commissioner for decision afresh after hearing all the affected parties and considering their objections.

This order of the learned Single Judge was passed on 16.9.2016 and the learned counsel for the appellants after wasting the time of the Court for

atleast half an hour has now conceded that pursuant thereto an order has been passed and he has placed it on record by way of CM no.3390-LPA of

2018.

Once the order of the learned Single Judge has been executed and fresh order passed, the appellants would have remedy to impugn the same in the

event of any dis-satisfaction. The appeal obviously has been rendered infructuous as the directions of the learned Single Judge stand complied with.

Instead of straightway bringing this fact to the notice of this

Court, learned counsel for the appellants has been stubbornly arguing the matter resulting in sheer wastage of the time of the Court. Consequently,

instant appeal is hereby dismissed with costs of Rs.10,000/- which shall be deposited in the account of Punjab and Haryana High Court Employees

Welfare Association within a period of one month from the date of receipt of certified copy of this order.