
(2003) 09 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6942 of 2003

Balwinder Singh	Vs	APPELLANT
The State Transport Appellate Tribunal and Another		RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 80(2)

Citation : (2004) 1 ACC 594 : (2004) 136 PLR 98 : (2003) 4 RCR(Civil) 717

Hon'ble Judges : S.S. Saron, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Balvir Singh Gill, for the Appellant; Rita Kohli, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Whether the application made by the petitioner for grant of mini bus permit could be rejected by invoking Clause (7-A) of the scheme published by the Government of Punjab vide notification dated 21.10.1997 is the question which arises for determination in this petition filed for quashing order dated 14.8.1997 passed by the State Transport Commissioner, Punjab (respondent No. 2) and order dated 14.11.2002 passed by State Transport Appellate Tribunal, Punjab (for short, the Tribunal).

2. The petitioner submitted an application dated 8.4.1996 for grant of one regular mini bus permit to operate four return trips daily on Moda Churia via Fatehpur, Churkani, Jhunir, Fatta, Tibbi, Kotra route. After some time, he filed CWP No. 10171 of 1996 with the complaint that his application was not being considered and decided. The same was disposed of by a Division Bench of this Court on 17.7.1996 with the direction that the concerned authority shall decide the petitioner's application within a period of eight months.

3. In compliance of the Court's order, respondent No. 2 considered the petitioners application in the meeting held on 11.6.1997 and rejected the same

on the ground that the length of the route for which permit had been sought exceeds 25 KMs.

4. Dis-satisfied with the order passed by respondent No. 2, the petitioner filed an appeal u/s 89 of the Motor Vehicles Act, 1988 (for short, "the Act"). The Tribunal upheld the rejection of the petitioner's application and dismissed the appeal by observing that mini bus permit cannot be granted on a route exceeding 25 KMs.

5. Sh. Balvir Singh Giri relied on the judgments of the Supreme Court in Jagdip Singh Vs. Jagir Chand and Another, and Subhash Chander and Another Vs. State Transport Appellate Tribunal and Others, and argued that the rejection of the petitioner's application by respondent No. 2 on the ground that the route for which permit was sought exceeds 25 KMs. should be declared as vitiated by an error of law in view of the judgment of the Supreme Court in Subhash Chander's case (supra). He argued that Clause (7-A) of notification dated 21.10.1997 will be deemed to have been nullified with retrospective effect and the provisions contained therein could not have been relied upon by the Tribunal for upholding the order passed by respondent No. 2.

Learned Deputy Advocate General fairly conceded that in view of the judgment of the Supreme Court in Jagdip Singh case (supra) and Subhash Chander's case (supra) she is not in a position to support the impugned orders.

6. We have carefully examined the impugned orders and have gone through the judgments of the Supreme Court relied upon by the learned counsel for the petitioner. In our opinion, rejection of the petitioner's application by respondent No. 2 on the ground that mini bus permit could not be granted on a route exceeding 25 KMs. and dismissal of the appeal filed by him against the order passed by respondent No. 2 are liable to be nullified in view of the judgments of the Supreme Court in Jagdip Singh case (supra) and Subhash Chander's case (supra). In Jagdip Singh's case (supra), the Supreme Court held:-

"Relevant clause is Clause (7-A) and it nowhere reveals that it is in conformity with Section 99 of the Act. u/s 99 of the Act, if the state transport undertaking is to operate on a particular route, then only the scheme could be made applicable. The aforesaid scheme does not provide that the routes mentioned in Clause (7-A) are to be covered and operated completely or partially by the state transport undertaking. In such cases, Section 80(2) would be applicable as u/s 99, the state government is not empowered to provide that only a few private operators would operate on a particular route/routes and the regional transport cannot ordinarily refuse to grant an application for permit of any kind made at any time under the Act." In Subhash Chander's case (supra), the Supreme Court declared that Clause (7-A) is inconsistent with Section 99 of the Act. Para 11 of the judgment of Subhash Chander's case (supra) reads as under:-

"Clause (7-A) quoted above nowhere provides that state transport undertaking was to operate on the said routes. As stated above, the state government is empowered to frame the scheme only in cases where the state transport

undertaking is to operate particular class of service in relation to any area or a route of a portion thereof. But if the transport undertaking is not to operate the said routes, then there is no question of framing any scheme. Further, the main purpose of the scheme should be to provide an efficient, adequate, economical and properly co-ordinates road transport service in public interest. The scheme cannot be vague reserving some routes on the assumption that in future, state transport undertaking would operate upon such routes. On the contrary, under the Act, the State government is required to formulate a proposal regarding the scheme giving particulars of (a) nature of services proposed to be rendered; (b) the area or route proposed to be covered along with other relevant particulars respecting thereof. Under the scheme also, dominant purpose should be public interest and not to have permit raj through back door otherwise whole purpose of Sub-section (2) of Section 80 would be frustrated. Hence, reading Clauses 7 and 7A together also, it would not mean that there was any contemplation by the state transport undertaking for operating on the routes linking one village with another village or a town or a municipality in between the aforesaid two villages or a route linking a village with block headquarters or a municipality or city. Hence, as stated in Jagdip Singh's case (supra), Clause 7-A was not in conformity with Section 99 of the Act. Hence, there is no substance in the contention raised by the learned counsel for the respondents-privileged mini-bus operators."

7. By applying the ratio of the above noted judgments of the Supreme Court to the facts of this case, we allow the writ petition and quash Annexures PI and P2. The Regional Transport Authority concerned is directed to grant permit to the petitioner to operate mini bus with four return trips daily on Moda-Churia via Fatehpur, Churkani, Jhunir, Fatta, Tibbi, Kotra route. The needful be done within one month from the date of submission of certified copy of this order.

Sd/- S.S. Saron, J.