
(2009) 11 AHC CK 0287
In the Allahabad High Court

Bramh Singh and Another	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 86, 86(5)

Citation : (2010) 1 AWC 969

Hon'ble Judges : R.K. Agrawal, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Jayashree Tiwari, J.—The present writ petition has been filed by the petitioners Bramh Singh and Kunwar Pal Singh against the State of U.P. through Principal Secretary, Transport, U.P., Lucknow and Regional Transport Authority, Saharanpur Region, Saharanpur through its Secretary/Regional Transport Officer, Saharanpur.

2. In short, the contention of the petitioners are that there is a Muzaffarnagar-Khatauli Mawana route. In district Muzaffarnagar under the jurisdiction of the Regional Transport Authority for the purpose of grant or renewal of permits and other connected matters. Petitioner is having two stage carriage permits No. P.st.p. 3146 and P.st.p. 3266 for the route and is holding the permanent stage carriage permit for the route, being permit No. P.st.p, 3147 and in accordance with the said permit, petitioners are entitled to hold journey from Muzaffarnagar within the limits of Nagar Palika.

3. The District Magistrate vide order dated 18/19.4.1998 restrained the entry of the vehicles on the route alongwith other routes within the Municipal limits of Muzaffarnagar. Against the said order, petitioner preferred a Writ Petition No. 15912 of 1998 and the operation of the alleged order of District Magistrate was stayed. After the aforesaid interim order passed by this Hon'ble Court, the petitioners and other operators of the route continued to operate the vehicles on the entire route but very soon the obstacles were started in the operation of the

vehicle to and from Muzaffarnagar.

4. Since the vehicle had become uneconomical as a result, petitioner surrendered his registration certificate of those vehicles in the office of R.T.A., Saharanpur. The City Magistrate, Muzaffarnagar ordered vide order dated 29.3.2003, the vehicles of the route to pass through the bypass and restrained the vehicles from entering within the limits of the city as a result of which considering the loss, the registration certificates were not obtained back by the operators. The Regional Transport Authority in its meeting dated 15.10.2004, passed a resolution and proposed to impose a penalty for not getting the registration certificate back and in the aforesaid resolution, it was decided that the delay upto one year could be condoned by realizing the penalty proposed in this resolution. It, however, further resolved that in case the registration certificate is so surrendered or not obtained back then the matter shall be taken up in the meeting of R.T.A., a copy of the said resolution is annexed as Annexure-1 to the writ petition. Against the order of City Magistrate a number of representations were made by the petitioner and other operators and hence a meeting dated 14.9.2004 was fixed in the office of City Magistrate. Intimation of the said meeting was given to the petitioner vide letter dated 9.9.2004 which was issued from the office of R.T.A.

5. It is submitted that under the resolution dated 15.9.2004 the proposed penalty rates were very excessive as a result, the R.T.A. took a lenient view on the application of petitioners in 2008. In between the renewal of the petitioners' permit fell due and the petitioners submitted the application before the Secretary R.T.A. for renewal and endorsement thereof, copy of the application is annexed as Annexure-2 to the writ petition.

6. In the meeting held on 27.12.2008 it was found that Item No. 5 of the said resolution that reasons for surrendering the permits and registration certificate operating under the said permits were bona fide and it was resolved that the endorsement be made of the vehicles after charging the fees fixed by the R.T.A. copy of the resolution is annexed as Annexure-3 to the writ petition. Despite the resolution dated 27.12.2008, R.T.A. is not coming forward in endorsing the said permit and consequently the petitioners filed a C.M.W.P. No. 39286 of 2009 for a writ of mandamus commanding the respondents to endorse the above mentioned permit of the petitioners, copy of the order passed in the aforesaid writ petition is annexed as Annexure-4, in which it was directed that the R.T.A. to consider and decide the representation filed by the petitioner.

7. Petitioners have procured later model vehicles and were seeking the endorsement of these vehicles in their permits but despite the resolution dated 27.12.2008, the office of R.T.A. is demanding the penalty for 12 months on the basis of the resolution of the R.T.A. dated 15.10.2004. As per resolution made in the meeting of R.T.A. dated 27.12.2008 it is unjustified and improper to charge penalty for the period in which" the permits of petitioners were surrendered and the resolution dated 27.12.2008 is thus, patently illegal and bad in law and deserves to be quashed.

8. Petitioners approached personally to the Secretary R.T.A. in the same connection but despite the best efforts of the petitioners, the respondents did not take any active and reasonable action in the matter and inordinate delay is being caused by the respondents in making the endorsement.

9. Heard.

10. In this connection, we have gone through the contents of the resolution dated 27.12.2008 which states that in the item No. 5 the notes of the Secretary were seen and three routes (1) Khatauli Jansath Meerapur, (2) Saharanpur Shakumbhari Devi via Kaluwala and (3) Muzaffarnagar Mawana route. The applications of the licence holders for endorsement were examined, the licence holders have shown sufficient reasons for not endorsing the vehicles, hence it was resolved that after obtaining the fee previously decided by the Tribunal, the decided fee from the licence holders, the order for endorsement be made on the principle priorly decided in resolution dated 15.4.2004 which is Annexure-1 to the writ petition. It has been resolved that after hearing and consideration the Tribunal opined that the Prashaman Shulk of Meerut and Saharanpur be enhanced and that of district Ghaziabad be reduced and a uniform Prashaman Shulk be fixed under the policy. It was decided that for all areas under the zone of the Tribunals, there shall be one uniform policy in the matters of vehicles which were kept without permit u/s 86 of the Motor Vehicles Act, 1988.

11. According to the resolved policy, there are cases pending for the penalty or for reducing the same are pending. During consideration, the advocates argued that all the three districts Meerut, Ghaziabad and Saharanpur are under the same zone of Commissioner. Considering the tariff in the rates of the fees in the three districts of same zone. It was resolved that a similar penalty be fixed. According to the uniform policy and with this view, this policy has been resolved for endorsement for permit for such vehicles which are without permit and it was resolved that within three months from the removal of the vehicle licence holders were exempted and for a period exceeding three months upto 8 months Rs. 500 per month was fixed as the penal fee and beyond a period of 8 months to 1 year, Rs. 2,000 per month was fixed and after expiry of one year, it was resolved that notice be given to the licence holders and thereafter, consideration be made for suspending or cancelling his licence.

12. A perusal of the annexure shows that no specific hearing was given to the petitioner before lodging this resolved policy and as such there appears to be apparently violation of principles of natural justice because penal fee is proposed to be imposed against him for endorsement without affording any opportunity of hearing to him in respect of the same.

13. Learned Counsel for the petitioner relied on the decision given in Civil Misc. Writ Petition No. 1177 of 2006 in which Division Bench of this Hon"ble Court has held as follows:

The bare perusal of the Sub-section (5) of Section 86 of the M.V. Act clearly

provides that the compounding fee cannot be imposed suo motu or unilaterally by the authorities concerned and before imposing compounding fee it is necessary that the permit holder should agree to pay certain sum of money in lieu of cancellation or suspension of the permit and then only the compounding fee can be levied, therefore it is necessary that before imposing any compounding fee, an opportunity is required to be given to the permit holder to offer his explanation. In the present case this opportunity has also not been given to the petitioners before imposing any compounding fee. The record of the case clearly shows that principle of natural justice has been violated and no opportunity has been given to the petitioners before imposing the compounding fee. It is settled principle of law that principle of natural justice should be complied with by the authority giving decision if it visits civil consequences.

From the aforesaid discussions, it follows that no such condition in pursuance to Sub-clause (xxiv) of sub-section (2) of Section 72 of the M.V. Act can be imposed nor any. compounding fee can be charged u/s 86(1)(e) and Sub-section (5) of Section 86 of the M.V. Act from the holder of the public service vehicle permit for keeping its vehicle out of use for more than four months in a year.

In Writ Petition Nos. 1812 of 2006 and 1760 of 2006 it has been stated that the petitioners are not being permitted to replace their vehicles, covered by the permit, by any other vehicle of the same nature. It is suffice to say that it is open to the petitioners to approach the concerned authority who will pass necessary orders in the matter in accordance with law, and keeping in view the provisions of Section 86 of the M.V. Act, 1988.

In view of the aforesaid discussions, the circular dated 19.7.2000 filed as Annexure-4 to the writ petition issued by the Commissioner Transport and further recovery proceedings pursuant to the impugned circular dated 19.7.2000 cannot be sustained in law and are hereby quashed. Consequently, the impugned order dated 19.5.2006, passed by the respondent No. 2 on the basis of the impugned circular is also quashed. The respondents are directed to pass afresh orders on the applications of the petitioners for renewal of their permits in accordance with law ignoring the aforementioned circular dated 19.7.2000.

In the result, the writ petition is accordingly allowed subject to the above observations.

14. Thus, in accordance with the decision as has come out in the aforesaid Division Bench judgment, it is clear that without affording an opportunity to the petitioners no penalty or any compounding fee can be imposed upon them in pursuance of the resolutions dated 27.12.2008 and 15.4.2004, hence petition is allowed and respondents are directed to take a final decision on the application of petitioners in accordance with law after affording opportunity of hearing to them within a period of one month from the date of receipt of a certified copy of this order.

15. The writ petition stands disposed of.