
(2016) 02 RAJ CK 0126

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 1781 and 5507/2003

Brijmohan and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Constitution of India, 1950 — Article 141
Motor Vehicles Act, 1988 — Section 88, Section 88(5)

Citation : (2016) 3 WLN 24 : (2016) 1 WLN 503

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : B.L. Maheshwari, Sr. Advocate assisted by R.K. Rathi, for the Appellant; S.R. Paliwal, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—1. These writ petitions have been filed by the petitioners aggrieved against the order dated 22.03.2003 passed by the State Transport Appellate Tribunal, Jaipur ("the STAT"), by which, the applications of the petitioners for the grant of renewal of permit on Hanumangarh-Hisar Inter-State Route has been rejected; seeking a direction to the Regional Transport Authority, Bikaner ("the RTA") to grant renewal of the petitioners' permit on Hanumangarh-Hisar for a period of five years; declare that the permit of the petitioners is saved under Sub-clause (iv) of Clause 4 of the Inter-State Agreement and permit granted to respondent No. 4 be declared void ab initio and nonest.

2. It is, inter alia, submitted in the writ petition that in the year 1981 and 1983, the State of Rajasthan and Haryana entered into a Reciprocal Transport Agreement for the operation of Passenger Transport Services, which included Hanumangarh-Hisar Inter-State Route running in the length of 167 kms. out of which 29 kms. lying in the State of Rajasthan and agreed that daily two single services would be operated by two Buses by nominee of Rajasthan.

3. The RTA after Survey Report considered the petitioners' applications and

granted permit on 30.05.1996, which permit was valid upto 07.07.2001 and the Competent Authority in the State of Haryana counter signed the same to be valid upto the duration of the permit.

4. On 05.04.1997, both the States entered into a Reciprocal Transport Agreement and prepared a proposal to fix the number of permits, which were proposed to be granted and counter signed in respect of each route or area and the same was published in the Gazette. The final Agreement came to be entered into between the two States on 09.07.1997, which was published in the Gazette on 14.07.1997, wherein, the RTA granted two permits and rejected the petitioners' renewal application.

5. Feeling aggrieved, the petitioner filed appeal before the STAT, which appeals were dismissed on 20.03.2003.

6. It was submitted by learned counsel for the petitioner - Brijmohan that the proposed draft (Annex.-6), which was published under the provisions of Section 88(5) of the Motor Vehicles Act, 1988 ("the Act"), indicated Hanumangarh-Hisar Route, however, the final Agreement (Annex.-7), changed the same to Hanumangarh-Hisar via Surewala, which is wholly contrary to the proposal and the same was, therefore, contrary to the provisions of Section 88(5) of the Act. It was submitted that the petitioner was already granted permit for Hanumangarh-Hisar Inter-State Route and on account of indicating the route different from the proposed route in the final Agreement, the application of the petitioner was wrongly rejected by the RTA and the same was wrongly upheld by the STAT, inasmuch as, the petitioner's permit was saved under Clause-4(iv) of the Agreement.

7. Reliance was placed on Sri Lakshmi Saraswathy Motor Service Firm Gudiyatham v. The State of Tamil Nadu & Ors. : , AIR 1991 Madras 133 and G.V. Satheesha Reddy & Anr. v. The State of Karnataka & Ors. : , 2011 (3) AIR Kar R 650.

8. Learned counsel for the respondent No. 4 at the outset submitted that the petitioner had already challenged the validity of the final Agreement dated 09.07.1997 by filing S.B. Civil Writ Petition No. 3583/1997 and the said writ petition alongwith three other writ petitions were dismissed by this Court on 14.10.1997, thus, the petitioner has no right to file and maintain this writ petition.

9. Besides the above, it was submitted that petitioner had raised the objections regarding the Hanumangarh-Hisar via Surewala route, which objections were rejected by the RTA on 22.07.2000, which was not challenged. Whereafter, the renewal application of the petitioner was rightly rejected by the RTA. It is also submitted that permit of the respondent cannot be challenged based on the existing permit as the petitioner was not holding any valid permit on the existing route.

10. Learned counsel for the petitioner - Brijmohan in response to the objection about maintainability of the writ petition submitted that the decision dated 14.10.1997 while dismissing S.B. Civil Writ Petition No. 3583/1997 was rendered without any argument and without reference to the crucial words of the proposal entered into between the two States and that a decision, which is not expressed and is not founded on reasons without consideration of the issue cannot be deemed to be a law declared to have binding effect as contemplated by Article 141 of the Constitution of India.

11. Learned counsel for the petitioner - Sita Ram adopted the arguments of learned counsel for the petitioner - Brijmohan and further submitted that as the petitioner - Sita Ram had earlier not approached this Court, the disability, if any, attached to the petitioner Brijmohan cannot operate against the petitioner.

12. Learned counsel for the respondents-State submitted that irrespective of the fact as to whether the petitioner has been a party to the earlier litigation challenging the validity of the Agreement dated 09.07.1997 or not, once the Agreement has been held to be valid by this Court while deciding S.B. Civil Writ Petition No. 3583/1997 : Brijmohan v. State of Rajasthan & Anr. and other connected writ petitions, rejecting the challenge to the said Agreement, there is no reason to take a different view qua the said final Agreement.

13. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

14. Based on the submissions made by learned counsel for the parties regarding maintainability of the writ petition filed by Brijmohan on account of dismissal of S.B. Civil Writ Petition No. 3583/1997, the record of S.B. Civil Writ Petition No. 3583/1997 was requisitioned.

15. A perusal of the said record reveals that in the said writ petition, which was filed by the petitioner, the following reliefs were sought:-

"(a) the final reciprocal transport agreement which is published in the official gazette dated 9.7.97 and the local paper Rajasthan Patrika by the State of Rajasthan and in the official gazette of the State of Haryana and local paper may kindly be altered/modified/corrected from 2 to 1 in so far as the number of permit fixed in respect of the impugned Hanumangarh-Hissar interstate route is conferred;

(b) the respondents may kindly be restrained from granting/countersigned any stage carriage permit on the impugned Hanumangarh to Hissar interstate route;

(c) the impugned gazette notification/local papers concerning the impugned Hanumangarh-Hissar route and which have been issued by the respondents and in which the final agreement has been published describing the route as Hanumangarh-Hissar via Surewala be kindly ordered to be modified/corrected and directed to be described and created for all purposes to be "Hanumangarh-Hissar via Shergarh-Elnabad" and directed further to public final agreement

showing the number of permit fixed at 1 only;

(d) the permit of the petitioner as countersigned under sub-section (1) of Sec.88 may kindly be declared to be effective upto 7.7.2001 so as to Synchronize with the validity of this permit of petitioner; and

(e) any other relief which may kindly be deemed, just and proper in the circumstances of the case may kindly be granted in favour of the petitioner.

(f) costs be allowed to the petitioner."

16. From the perusal of the reliefs claimed in the previously filed writ petition, it is apparent that the petitioner had at the relevant time challenged the final Reciprocal Transport Agreement dated 09.07.1997 on the similar grounds as raised in the present writ petition. Though, in the present writ petition, the order passed on the petitioner's renewal application by the RTA on 05.11.2001 as upheld by STAT by its order dated 22.03.2003 have been challenged, the sole basis of challenge has been alleged invalidity of the final Agreement dated 09.07.1997. The earlier writ petition filed by the petitioner was dismissed by order dated 14.10.1997 alongwith three other writ petitions, inter alia, holding that contention raised by the petitioner that the Agreement entered into is not in accordance with the provisions of Section 88(5) of the Act has no substance.

17. In view of the fact that the petitioner had already challenged the validity of the final Agreement dated 09.07.1997, which challenge was declined by dismissal of the petitioner's writ petition and the sole basis of the present writ petition is alleged invalidity of the Agreement dated 09.07.1997, the plea raised by the petitioner is barred by principles of res judicata/constructive res judicata.

18. The submissions made by learned counsel for the petitioner that the order dated 14.10.1997, does not take into consideration the issues raised by the petitioner is of no consequence as the said order dated 14.10.1997, in absence of any further challenge, has become final and irrespective of the submissions made, is binding on the petitioner.

19. In fact, the order dated 14.10.1997 was challenged by one of the petitioners as alongwith the petitioner's writ petition, three other writ petitions were also dismissed by the said order and in Nirmal Kumar v. State of Rajasthan & Ors.: D.B. Civil Special Appeal No. 1268/1997, decided on 25.05.2000, on the submissions made by learned counsel for the State that the applications for renewal would be considered in accordance with law strictly in terms of the Agreement dated 09.07.1997, the appeal was dismissed as infructuous, meaning thereby that the order dated 14.10.1997 passed by the learned Single Judge became final. In view of the above, no case for interference is made out.

20. So far as the writ petition filed by Sitaram is concerned, a perusal of the judgment of his Court in Nirmal Kumar v. State of Rajasthan & Ors. : S.B. Civil Writ Petition No. 3112/1997, decided on 14.10.1997 would reveal that this Court noticed the submissions of counsel for the petitioners that the final Agreement is

contrary to provisions of Section 88(5) of the Act and the two State Authorities have no jurisdiction to enter into an Agreement contrary to the proposal, the number of permits cannot be increased as the right of the petitioner to raise the objection on such enhanced number of permit is denied and considering the submissions made by counsel for the parties, this Court held as under:-

"A proposal become final only when a final shape is given to it and final shape is by way of an agreement in which proposal can be varied either way and as such contention which has been raised by the learned counsel for the petitioner that the agreement entered into is not in accordance with the provisions of Sec.88(5) of the Act of 1988 has no substance. The writ petitions are accordingly dismissed."

21. As already noticed hereinbefore, Special Appeal against the order dated 14.10.1997 was filed being Nirmal Kumar v. State of Rajasthan & Ors.: D.B. Civil Special Appeal No. 1268/1997, decided on 25.05.2000, wherein based on the submissions made by learned counsel for the State that a final Agreement has already come into existence and the pending renewal applications would be considered in accordance with law strictly in terms of the Agreement, the Special Appeal was dismissed as having become infructuous.

22. In view of the fact that validity of final Agreement dated 09.07.1997 has already been adjudicated, no case is made out in the present writ petition filed by Sitaram for this Court to take a contrary view from the said judgment after a passage of almost 19 years from the date of Agreement.

23. In view of the above discussion, the writ petitions are dismissed. No order as to costs.