

(2011) 04 P&H CK 0180
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1098 of 2010

Chandigarh Administration

APPELLANT

Vs

Ambala Bus Syndicate Pvt. Ltd.

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Motor Vehicles Act, 1939 — Section 58, 63, 66
Motor Vehicles Act, 1988 — Section 100(2), 100(3), 102, 104, 108
Punjab Reorganisation Act, 1966 — Section 74

Citation : (2011) 04 P&H CK 0180

Hon'ble Judges : Ranjan Gogoi, C.J; Augustine George Masih, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Augustine George Masih, J.—This appeal has been preferred impugning the judgment dated 29.6.2010 passed by the learned Single Judge vide which order dated 30.3.2009 passed by the Secretary Transport-cum-Chairman, State Transport Authority, U.T., Chandigarh, refusing to counter-sign the permits issued by the Regional Transport Authority, Patiala, in favour of the Respondent-Ambala Bus Syndicate (P) Ltd., Ropar (hereinafter referred to as the Company) was set aside and a direction was issued to it to consider within eight weeks the claim of the Company for counter-signatures in accordance with law and the Company was permitted to ply their non-air conditioned buses after securing the renewal of permits in the manner contemplated by law.

2. Counsel for the Appellant submits that the learned Single Judge has misread Section 74 of the Punjab Reorganization Act, 1966 (hereinafter referred to as Reorganization Act) which provides for a temporary arrangement for validation of a permit granted by the State or a Regional Transport Authority in the existing State of Punjab on reorganization immediately before the appointed day i.e. 1.11.1966 so as to continue to be valid and effective in that area subject to the provisions of the Act as for the time being in force in that area and the counter-

signing of such permit shall not be necessary for the purpose of validating it for use in such area notwithstanding anything contained in Section 63 of the Motor Vehicles Act, 1939 (for short "1939 Act). Counsel while admitting that original permits in question were issued between the years 1954-1966 by the then State Authorities of the composite State of Punjab contends that this section only provides for validation of the permits for the unexpired period of the said permit without being countersigned for the purpose of validating it for use. Even if the provisions of Section 74 of the Reorganization Act are stretched to the maximum limit of period of validity of a permit, the permits issued in the year 1966 would be valid only up to 1971 as according to the 1939 Act, the maximum life of a permit is five years without renewal. As per the provisions of Section 66 of the 1939 Act, after 1971 the permits even after renewal by the Punjab State Authorities, were required to be counter-signed by the State Transport Authority or the Regional Transport Authority of Union Territory of Chandigarh which has never been done. The operation of the buses of the Respondent-Company were, therefore, illegal after 1.11.1971.

3. He further contends that even as per the Reciprocal Agreement dated 04.06.2008, which is between the Union Territory of Chandigarh and the State of Punjab u/s 88(5) of the 1988 Act, the permission for operation of stage carriage permits issued prior to 1966 were to be counter-signed in the case of non-air conditioned buses of the private operators only after verification of original permits provided they fell within the Scheme and in terms of Section 74 of the Reorganization Act and under the 1988 Act. As per the provisions of the 1988 Act, he contends that provisions of Chapter VI of the Act under which the Scheme has been framed has an over-riding effect on the provisions of Chapter v. of the 1988 Act or in any other law for the time being in force or any instrument having effect by virtue of any such law. The Scheme framed u/s 99 of the 1988 Act once published is law, it operates against everyone unless it is modified or cancelled by the State. He submits that even if there is a provision providing for the counter-signatures of the permits issued prior to the coming into force of the Reorganization Act, the same has to be in consonance with the 1988 Act and the Scheme framed there under.

4. Counsel submits that after the coming into force of the Motor Vehicles Act, 1988 (hereinafter referred to as "the 1988 Act") vide which the 1939 Act stood repealed, the Chandigarh Administration framed a Scheme on 14.10.1998 u/s 99 read with Section 100(2) of the 1988 Act called the Chandigarh Stage Carriage Permits Scheme of 1998 (hereinafter referred to as "1998 Scheme") under which the Stage Carriage operation of transport buses in the Union Territory of Chandigarh was only allowed to the Chandigarh Transport Undertaking to the complete exclusion of private persons or agencies. The said Scheme was amended vide notification dated 19.11.2001 wherein State Carriage Permit could be granted to the private operators for operation of air conditioned buses. As the language of Section 74 of the Reorganization Act itself suggests that it was subject to the Motor Vehicles Act which was in force at that time in the area of

reorganization, the Respondent-Company could not operate in the Union Territory of Chandigarh after the coming into force of the 1998 Scheme as stage carriage permit could not be issued to the non-air conditioned buses and, therefore, vide order dated 30.3.2009, the Appellant had rightly refused to counter-sign the permits issued to the Respondent-Company. On this basis, he prays for the acceptance of the appeal and setting aside of the impugned judgment passed by the learned Single Judge.

5. Per contra, counsel for the Respondent-company submits that renewal of the permit was done periodically by the Competent Authority of the State of Punjab on a recognition of applicability of Section 74 of the Reorganization Act. Even under the Reciprocal Agreement dated 04.06.2008 which was entered into between the State of Punjab and the Chandigarh Administration, the right of the Respondent-Company which is plying non-air conditioned buses having permits issued before 1.11.1966 has been recognized. If that had not been the case, there was no need of inclusion of such permits in the Reciprocal Agreement. His further submission is that the Scheme dated 9.8.1990 framed by the State of Punjab also provides that the routes operated by the private operators which became inter-State routes as a result of reorganization of the State of Punjab in the year 1966, shall not be affected by the Scheme and all through, this right of permit holders of pre-reorganization of the State of Punjab have been recognized. Referring to the reply filed by the Union Territory of Chandigarh in an earlier writ petition preferred by the Company i.e. C.W.P. No. 4073 of 2001, he submits that the Union Territory had taken a stand in Court that the permits which had been issued before 1.11.1966 i.e. reorganization of the State of Punjab, were being allowed to operate from ISBT, Sector 17, Chandigarh and permits issued subsequently without any counter-signatures from the competent Authority, hold no legal sanctity and the operation of such buses was illegal. The Reciprocal Agreement does not violate any Scheme but recognizes the right of the Petitioners u/s 74 of the Reorganization Act. He supports the judgment passed by the learned Single Judge and prays for dismissal of the appeal.

6. We have heard learned Counsel for the parties and have gone through the records of the case.

7. The facts are not in dispute in this case wherein it is admitted that the permits in question possessed by the Respondent-Company were issued by the Competent Authority of the then existing State of Punjab prior to the reorganization. It is also not in dispute that the appointed day under the Reorganization Act is 1.11.1966 and from the said date, these permits became inter-State permits. Section 74 of the Reorganization Act is the foundation and basis on which Respondent-Company is claiming its right for counter-signatures of the permits issued to them prior to 1.11.1966 by the Competent-Authority of the State of Punjab. Reference to this Section would be essential, thus, at this stage. Section 74 of the Act reads as follows:

74. Temporary provisions as to continuance of certain existing road transport

permits.-(1) Notwithstanding anything contained in Section 63 of the Motor Vehicles Act, 1939, a permit granted by the State or a Regional Transport Authority in the existing State of Punjab shall, if such permit was, immediately before the appointed day, valid and effective in any area therein, be deemed to continue to be valid and effective in that area after that day subject to the provisions of that Act as for the time being in force in that area and it shall not be necessary for any such permit to be countersigned by any State or Regional Transport Authority for the purpose of validating it for use in such area:

xxxxx xxxxxx xxxxxx

(2) xxxxx xxxxxx xxxxxx

8. The heading of the Section itself suggests that it was a temporary arrangement which was made as to continuance of certain existing road transport permits. This Section was carved out as an exception to Section 63 of the 1939 Act, which is *pari materia* to Section 66 of the 1988 Act, which mandates counter-signatures by the Competent Authority authorizing the permit holder the use of vehicle in that place in the manner in which the vehicle is being used. This provision does not exclude or suspend the other provisions of the Motor Vehicles Act from their operation or enforceability. The requirement of the 1939 Act had to be fulfilled and complied with by such permit holder except the provisions of Section 63 thereof.

9. Section 74 of the Reorganization Act cannot be said to confer permanent exemption from counter-signatures by the Competent Authority of the Union Territory of Chandigarh to permits issued by the competent Authority of the State of Punjab prior to the appointed date i.e. 1.11.1966 which earlier were intra-State permits but became inter-State permits after the appointed date. This Section was enacted to overcome a transitional legal glitch caused as a result of reorganization of the State, which if not taken care of would have created an anomalous situation, where a person holding a valid permit for a particular period, which was an intra-state permit, could not operate his bus with effect from 1.11.1966 because it would become inter-State permit requiring counter-signature, which apart from procedural and jurisdictional uncertainties and complications would have caused avoidable hardship and harassment to operators as well as the users (passengers). The rigors of Section 63 of the 1939 Act were thus relaxed by suspending its operation qua the permits granted by the competent Authority of the existing State of Punjab which were valid and effective on 1.11.1966 in any area therein, for only the remaining period of their validity and not beyond that i.e. Counter signing would not be required during this remaining period of validity of such permit. The moment the period of the permit expired, Section 63 would come into operation requiring counter signature by the Authority of the State other than the one where the permit was renewed.

10. As per Section 58 of the 1939 Act (now Section 81 of the 1988 Act) on the expiry of the period of its validity, the permit was mandated to be got renewed

and in case it was a route permit of another State, it had to be counter-signed by the Competent Authority of the State other than the permit issuing Authority of the State. As per this provision, the maximum period for which the permit could be issued was for a period of five years and thus required the Respondent-Company to get the permits counter-signed by the Union Territory of Chandigarh after the expiry of the period of permits. It is admitted that the permits were renewed unilaterally by the Authority of the State of Punjab and they were never got countersigned from any Authority of the Union Territory of Chandigarh for its operation in the territory of U.T., Chandigarh resulting in the operations of the Company in the U.T., Chandigarh to be not on a valid permit on the date of expiry of their validity after 1.11.1966 as protected u/s 74 of the Reorganization Act.

11. In any case, as per Section 98 of the 1988 Act, the provisions of Chapter VI and the Rules and Orders made there under shall have effect notwithstanding anything inconsistent there under contained in Chapter v. or in any other law for the time being in force or any instrument having an effect by virtue of such law. Chapter VI provides for special provisions relating to State Transport Undertakings and runs from Section 97 to Section 108. Section 99 of the said Act deals with preparation and publication of proposal regarding road transport service of a State Transport Undertaking. This enables the State to formulate a proposal and to frame a Scheme. It empowers the government to publish such proposals in the Gazette in public interest. After inviting objections to the proposed scheme and examining the same, the Scheme has to be published in accordance with the provisions of Section 100 of the Act. Section 102 empowers the State Government to modify or cancel any approved Scheme at any time in public interest after following the mode prescribed therein. Section 104 imposes restriction on grant of permits in respect of notified area or notified route where the Scheme operates and has been published under Sub-section (3) of Section 100. The Scheme once published is law which overrides not only the provisions of Chapter v. of 1988 Act but any other law for the time being in force or any instrument having effect by virtue of any such law. The State Government u/s 99 of the Act is empowered to frame the Scheme which can be to the exclusion, complete or partial, of other persons or otherwise. Once a Scheme has been approved and published and if the Scheme provides for complete exclusion of other persons, no private operator(s) has/have any right to claim regular permit(s) to operate his/their vehicle(s) in the notified area/route or portion thereof. In other words, the provisions of this Chapter confer a monopoly on the State in respect of transport service to the partial or complete exclusion of other persons.

12. In the present case, the Chandigarh Administration framed a Scheme u/s 99 read with Section 100(2) of the 1988 Act called the Chandigarh Stage Carriage Permit Scheme 1998 published on 14.10.1998 which provided for exclusion of any private person or agency for the road transport services along with stage permits in the Union Territory, Chandigarh. An exception was carved out by

amendment of the said Scheme vide notification dated 19.11.2001 which provided that the Stage Carriage permit may also be granted to private operators for operation of air conditioned buses from U.T., Chandigarh to District Headquarters and important towns in the State of Punjab and their return, as also private operators of the air conditioned buses from District Headquarters and important towns to the State of Punjab to the U.T., Chandigarh on the basis of Reciprocal Agreement by fixing the number of such Stage Carriage permits to the air conditioned buses.

13. As per the provisions of Section 88(6) of the 1988 Act, Reciprocal Transport Agreement was entered into between State of Punjab and the Union Territory, Chandigarh and was notified on 4.6.1988. According to clause v. (i), apart from others, routes of permits issued for non-air conditioned buses of the private operators before 1.11.1966 could be allowed to operate on inter-State routes between U.T., Chandigarh and Punjab after verification of the original permits and counter-signatures provided such permits fall within the scope and term of Section 74 of the Reorganization Act and provisions of 1988 Act.

14. This Reciprocal Agreement while dealing with the private operators having valid permits issued to operate non-air conditioned buses before 1.11.1966 enabled the said permits to be counter-signed by the Union Territory of Chandigarh but subject to fulfillment of certain conditions, out of which, one was that the original permits would be verified as to their validity. This the Company fulfills as there is no dispute that the permits in question were issued by the competent Authority of the then existing State of Punjab. The second requirement was verification of counter-signatures on these permits, which admittedly was not there, thus rendering these permits ineligible for counter-signatures. The third condition was that these permits fall within the scope and terms of Section 74 of the Reorganization Act, which they fulfilled initially but all permits after 1971, in the absence of counter-signatures on the permits by the Authority of the U.T., Chandigarh, as per Section 63 of 1939 Act, ceased to be legal permits after expiry of their period of validity as per the provisions of Section 74 of the Reorganization Act itself as held above in preceding paras. The fourth requirement which was mandated to be fulfilled so as to make these permits eligible for counter-signatures by the competent authority of U.T., Chandigarh, was that it should be as per the provisions of the 1988 Act. This condition, the Respondent-company did not fulfil as the 1998 Scheme framed under Chapter VI of the 1988 Act do not allow the grant of any permit to any private person or agency, meaning thereby that the private operators have been totally excluded from operation in the notified area and route. The 1998 Scheme and the modified Scheme of 2001 does not permit non-air conditioned buses of the private operators (persons/agencies) to operate in the U.T., Chandigarh. Section 66 of the 1988 Act prohibits an owner of the motor vehicle to permit use of his vehicle as a transport vehicle in any public place whether or not carrying any passengers or goods without permit granted or counter-signed by the competent authority. This Section necessitates a permit for a vehicle to be used

as a transport vehicle. Section 88 of the 1988 Act provides counter-signatures of a permit granted in any one State to be valid in any other State. Since the 1998 Scheme of the U.T. Chandigarh excludes the operation of private operators altogether, which Scheme has been framed u/s 99 read with Section 100 of the 1988 Act falling in Chapter VI of the 1988 Act, the same shall have an over riding effect. If that be so, the Respondent-Company, a private operator, has no right to claim counter-signatures from the Authority of U.T. Chandigarh on the permit issued to it by the Authority of the State of Punjab under the Reciprocal Agreement dated 4.6.2008 also.

15. In the light of the above conclusions reached by us, the Respondent-Company cannot claim counter-signatures on an inter-State permit from the Authority of U.T., Chandigarh to operate a non-air conditioned bus in the territory of U.T. Chandigarh.

16. Accordingly, we allow this appeal, set aside the judgment dated 29.6.2010 passed by the learned Single Judge, uphold the order dated 30.3.2009 passed by the Secretary, Transport-cum-Chairman Transport Authority, U.T., Chandigarh and dismiss Civil Writ Petition No. 5319 of 2009 filed by the Respondent-Company.