
(2010) 03 RAJ CK 0096
In the Rajasthan High Court

Jai Chand

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 82, 83, 89

Citation : AIR 2010 Raj 146 : (2010) 3 RLW 1955

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. In these bunch of writ petitions, the facts of S.B. Civil Writ Petition No. 5901/09 will serve the purpose, as all the petitioners are seeking implementation of the order dated 18.5.2009 by which the permits to run the motor vehicles on the routes referred in the order have been granted. The reciprocal transport agreement has been made between the States of Rajasthan and Haryana on September 12, 2008 in respect of inter-states route which includes the routes referred in the present writ petitions. Both the State have fixed the limit of 4 permits with 8 single trip from Rajasthan side and two permits with 8 single trip from Haryana side, as was the case in S.B. Civil Writ Petition No. 5901/08 and this route finds place at S. No. 86 in Annexure 2 which is schedule of inter-state routes on which private operators of Rajasthan and Haryana Roadways shall ply their buses. For grant of permit on these routes referred in the writ petitions, the Secretary, Regional Transport Authority, Bikaner issued notification dated 4.2.2009 inviting applications for grant of permits" on the said route. The petitioners applied for the grant of such permit. The Regional Transport Authority, Bikaner granted various permits and copies of the permits have been placed on record by the petitioners. The petitioners even after order dated 18.5.2009, have not been given permits to ply the buses on the routes referred in the order dated 18.5.2009, therefore, the petitioners preferred these writ petitions seeking

direction against the respondent that the Secretary, Regional Transport Authority, Bikaner be directed to issue sanction permits to the petitioners on the routes sanctioned by the order/resolution dated 18.5.2009. The petitioners contention is that the respondents, without any rhyme and reason, are not issuing the permits in spite of the fact that the competent authority has passed the order to issue the permits.

3. The learned Additional Advocate General Shri Punia vehemently submitted that the writ petitions of the petitioners are not maintainable in view of the fact that the order dated 18.5.2009 has been appealed by the aggrieved parties wherein interim orders have been passed and further submitted that in view of the availability of the alternative remedy, these writ petitions may be dismissed. However, on merit it has been submitted that about 800 permits were granted and the matter was reported to the Anti Corruption Department and at the relevant time, the matter was under investigation. It is submitted that in identical facts and circumstances, S.B. Civil Writ Petition No. 8982/09 Narendra Kumar v. State and Ors. was dismissed by this Court on 16.9.2009, S.B. Civil Writ Petition No. 6652/09 Yasin Khan and Ors. v. The State of Raj. and Ors. was dismissed by the Jaipur Bench of this Court vide order dated 4.8.2009 and the Public interest Litigation, which is D.B. Civil Writ No. 6336/09 Nihal Singh v. State of Raj. and Ors. was dismissed by the Division Bench at Jaipur of the Rajasthan High Court on 19.9.2009.

4. I considered the submissions of the learned Counsel for parties and perused the order dated 18.5.2009 and orders/judgments referred above.

5. It is not in dispute that by order dated 18.5.2009, several permits were granted. Whether this order dated 18.5.2009 is appealable or not, is the core question. Sub-section (1) of Section 89 of the Motor Vehicles Act, 1988 is as under:

89. Appeal. (1) Any person-

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him; or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof; or

(c) aggrieved by the refusal to transfer the permit u/s 82; or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such counter signature; or

(e) aggrieved by the refusal of renewal of a permit;

(f) aggrieved by the refusal to grant permission u/s 83; or

(g) aggrieved by any other order which may be prescribed;

may, within the prescribed and in the prescribed manner, appeal to the State

Transport Appellate Tribunal constituted under Sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

6. A bare perusal of Section 89 will reveal that the appeal lies against the order passed by the Regional Transport Authority (RTA) only if party is aggrieved against the orders as referred in Sub-clauses (a) to (g) of Sub-section (1) of Section 89. The person in whose favour an order has been passed by the RTA, cannot prefer any appeal nor there can arise any occasion for him to prefer appeal because of the plain and simple reason that a person who had an order in his favour, cannot have any grievance so as to challenge the order. Here in the present writ petitions, the petitioners are not challenging the order dated 18.5.2009 and, therefore, the petitioners cannot prefer any appeal u/s 89 of the Act of 1988.

7. The judgments of this Court, referred above, are entirely different and either have no application to the facts of the present case or are supporting the above view.

8. In the case of Narendra Kumar (supra), the question involved before the High Court was that the interim order was passed by the STAT, against the same order of RTA dated 18.5.2009, wherein certain observations were made by the STAT. Obviously, that appeal was preferred by the person who was aggrieved against the order dated 18.5.2009 and not was the appeal of a person in whose favour the order dated 18.5.2009 was passed by the RTA. In Narendra Kumar's case, the only question was whether there was just and valid reason for passing the interim order by the STAT and the issue whether the order dated 18.5.2009 could have been appealed by the persons in whose favour the order dated 18.5.2009, was not under consideration.

9. In another judgment of this Court delivered in the case of Yasin Khan (supra), the order under challenge was appealable order and that was the admitted position. Whereas here in the present cases, the order dated 18.5.2009 is not under challenge nr the petitioners could have challenged the order. For seeking enforcement of this order, no provision of law has been brought to the notice of this Court under the Act of 1988. Therefore, in Yasin Khan's case, on the basis of admitted facts and on the basis of the order under challenge, being appellate order, the petition was not entertained.

10. The view taken by me above is fully supported by the Division Bench judgment delivered in the case of Nihal Singh's case (supra). The order dated 18.5.2009 itself was challenged in Nihar Singh's case. In view of the fact that the order dated 18.5.2009 could have been challenged by the petitioner in Nihal Chand's case who was aggrieved against the order dated 18.5.2009, therefore, the Division Bench of this Court refused to entertain the writ petition on the ground of availability of alternate remedy of appeal, though Nihal Chand's petition was preferred as Public interest Litigation.

11. The learned Additional Advocate General then submitted that some of the persons aggrieved against the order dated 18.5.2009 have preferred appeals wherein there are interim orders. If it is so, then the petitioners are not seeking any direction against any order passed by any competent authority in exercise of jurisdiction vested in that authority by virtue of any provision of law. The petitioners prayer, as stated by the learned Counsel for the petitioners, is that they are entitled to issuance of the permits, if there is no stay order from any competent authority.

12. Therefore, it is held that the writ petitions preferred by the persons in whose favour order has been passed by the RTA is maintainable and the petitioners are entitled to compliance of the order dated 18.9.2009, but obviously subject to the condition that there should not be any order passed by any competent authority against grant of the permit in pursuance of the order dated 18.5.2009.

13. In view of the above, all the writ petitions are allowed and the respondents are directed to issue permits to the applicants in whose favour order dated 18.5.2009 is but subject to the condition that before granting permit, the authority shall satisfy itself that there is no interim order staying operation of that order and the order dated 18.5.2009 has not been quashed. The applications for being impleaded as party, therefore, are dismissed.