

(2011) 09 CHH CK 0013
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1565 of 2011

Kanker Roadways, Kanker

APPELLANT

Vs

State of Chhattisgarh and others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)
Motor Vehicles Act, 1988 — Section 72, 74, 76, 79, 80

Citation : (2011) 2 CGBCLJ 336

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Prashant Jaiswal, with Mr. Sudeep Johri and Mr. Ajay Mishra, for the Appellant; Shashank Thakur, PL for the State CG/Resp. 1 and 2, for the Respondent

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks quashing of the notification No. F-5-58/Two/VIII-trans./2007 dated 2nd March. 2007 (Annexure P-5), order dated 29th September, 2009 (Annexure-P/8) passed by the Assistant Secretary, State Transport Authority (for short "the STA"), Chhattisgarh, Raipur, whereunder the petitioner was informed about rejection of its application 1st September. 2009 and also seeks a direction to the respondent authorities to grant temporary permit on the route from Raipur (Chhattisgarh) to Chandrapur (Maharashtra) via Power House. Durg, Rajnandgaon, Dongargaon, Bandha Bazar, Chowki, Mohala, Maanpur, Savargaon, Murumgar, Dhanaura, Chandgaon, Garhchiroli, Samili Mool, Chichpalli and return. The facts, in nutshell, as projected by the petitioner, are that the petitioner is a partnership firm engaged in the business of transport. After creation of new State of Chhattisgarh, temporary permits were granted by the State of Chhattisgarh for want of reciprocal agreement between the State of Chhattisgarh and State of Maharashtra. One of such route is Raipur (Chhattisgarh) to Chandrapur (Maharashtra) via Poser house, Durg, Rajnadgaon, Dongargaon, Bandha Bazar, Chowki, Mohala, Maanpur, Savargaon, Murumgar, Dhanaura, Chandgaon,

Garhchiroli, Samili Mool, Chichpalli and return.

2. On 3rd March, 2003 the STA granted temporary permit to the petitioner w.e.f. 1st April, 2003 to 31st May, 2003 for vehicles bearing registration No. PB-12-D-9598 & PB-12-D9502 vide Annexure-P/1. Thereafter, temporary permit was granted from time to time for the same route in view of the provisions of Section 88 (7) of the Motor Vehicles Act, 1988 (for short "the MV Act, 1988") Last temporary permit was granted to the petitioner from 1st July, 2009 to 30th September, 2009 (Annexure-P/3).

3. According to the petitioner, in exercise of powers conferred u/s 88 (55) of the MV Act, 198, it was decided by the States of Chhattisgarh & Maharashtra to enter into reciprocal transport agreement (for short "the agreement") between these two States and, as such, within the meaning of Section 88 (5) of the MV Act, 1988 a proposal was circulated by notification dated 26th August, 2003 wherein the representation from the interested persons were invited. The representation were to be filed on or before 28th September, 2003. Accordingly, the petitioner submitted its representation on 23rd September, 2003 (Annexure-P/4) i.e. well within the stipulated period.

4. On 2nd March, 2007 the notification was published in the Gazette. In the said notification it was stated that through the representations were invited from the interested persons, but no representation has been received by the State Government, In fact, the petitioner had submitted its representation of 23rd September, 2003. However, all of a sudden on 22nd April, 2009 (Annexure-P/6) the respondent No. 2 issued a show cause notice to the petitioner calling upon it to explain as to why the temporary permit granted to the petitioner be not cancelled, to which the petitioner submitted its response. Subsequently, by order dated 29th September, 2009 (Annexure-P/8), after affording opportunity of hearing to the counsel for the petitioner, the temporary permit granted in favour of the petitioner was cancelled. Thereafter, the petitioner continuously making applications for grant of temporary permit on the said route, but no orders have been passed by the authorities. Thus, this petition.

5. Shri Jaiswal, learned senior counsel appearing with Shri Johri & Shri Mishra, learned counsel for the petitioner, would submit that the impugned order dated 29th September, 2009 whereby the temporary permit granted in favour of the petitioner has been cancelled in without any authority of law. Even there is no provision in the MV Act, 1988 to issue show cause notice or to cancel the inter state permit. Shri Jaiswal would further submit that in fact, the temporary permit granted to the petitioner on the route from Raipur (Chhattisgarh) to Chandrapur (Maharashtra) has duly been counter-signed by the authorities of both the States. The notification dated 2nd March, 2007 and the impugned order dated 29th September 2009 are prohibitory in nature, against the public interest and violative of Article 19 (1) (g) of the Constitution of India. It is further contended that the State Transport Authority is competent to grant temporary permit on route, other than the scheduled route.

6. On the other hand, Shri Thakur, learned panel Lawyer appearing for the State, would submit that prior to entering into the reciprocal transport agreement, the proposal of the agreement (draft agreement) was published in the Chhattisgarh Gazette on 26th August, 2003 as per the provisions of Section 85 (5) of the MV Act. 1988. Thereafter, on 27th August, 2003 the draft agreement was published in the daily newspaper also and the objections were invited from the interested persons prior to 1st October, 2003. Accordingly, on 1st October, 2003 the, then, Principal Secretary. Transport was present at the place indicated in the notification. In the said meeting some persons including the petitioner were also present.

7. Shri Thakur would further submit that on 6th July, 2004 a letter was written by the State of Chhattisgarh to the Secretary, Transport and Commissioner, Commercial Tax Department, Mumbai, by which it was proposed that some additional route be added in the route of the State of Chhattisgarh. There is no response from the State Maharashtra to the said letter. Ultimately, reciprocal transport agreement was executed between both the States on 22nd January, 2007 in which the list of route allotted to both the State was published i.e. Annexure - "A" & "B". In Annexure - "B" the inter-state route allotted to Chhattisgarh was published, in which at S. No. 4 the route for permit from Rajnandgaon to Chandrapur via. Dongargaon, Chowki, Mohala, Manpur, Sawargaon, Gadchiroli was published for four single trips permit.

8. Thereafter, the petitioner had suggested the route for Raipur - Chandrapur via Durg, Rajnandgaon, Dongargaon, Chowki, Mohal, Manpur, Sawargaon and Gadchiroli be additionally allotted to the State of Chhattisgarh Accordingly, the State of Chhattisgarh requested the State Maharashtra vide letter dated 6th July, 2004 for adding the said route, but there in no response from the State of Maharashtra. Due to lack of consent of the State of Maharashtra. The routes not be added in the list of routes allotted to the State of Chhattisgarh. Thus, the petitioner is not entitled to any relief and the petitioner may be dismissed.

9. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

10. For ready reference, it is necessary to examine the conditions of the reciprocal agreement reached between the State of Chhattisgarh and the State of Maharashtra, which was notified in the official gazette dated 2nd March, 2007 (Annexure P/5). The terms and conditions for Stage Carriage permit, which is in issue in the present case, is as under:

1. Stage Carriage Permits:-

(a) Inter-state routes for stage carriages shall mean the routes connecting the main terminal points by shortest way on the either side of border, unless otherwise mutually agreed upon in any particular case or cases.

(b) The stage carriages with number of trips and number of vehicles under

operation shall be as per Annexure "A" & "B"

(c) The stage carriage vehicles registered in the State of Maharashtra shall be exempted from the payment of the motor vehicle tax applicable to them in the state of Maharashtra under the existing provisions of the Bombay Motor Vehicles Tax Act, 1958 but shall be liable to pay the tax on passengers liable under the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958.

(d) The stage carriage vehicles registered in the State of Maharashtra and are operating under this agreement in the state of Chhattisgarh shall be liable to pay the motor vehicle tax liable under Chhattisgarh Motoryaan Karadhan Adhiniyam, 191.

(e) The fares and freight chargeable by the operators in the reciprocating state shall not be less than those charged by the operators of that state for similar services. The tickets issued by one State shall be deemed to be valid in the reciprocating state.

(f) Any extension or variation of a portion of an inter-state route lying exclusively in one State may be made by the Transport Authority of that State in respect of services run by the operators of the State without prior consultation with Transport Authority of the other State but it shall be necessary to intimate of this variation to the reciprocating state.

(g) It is agreed in respect of stage carriage operated by the nominees of the two States to extend their operation in the reciprocating State not exceeding 20 Kms. Measured along any motor able roads from the border subject to countersignature of the State Transport Authority of reciprocating State.

(h) Till the substantive permits on the routes mentioned in the schedules annexed hereto are granted by the Transport Authorities in the Reciprocating State, Temporary permits to the nominees of the respective States shall be issued and or countersigned by the Transport Authorities.

(i) The stage carriage bus shall not be allowed to ply on interstate routes if, it is more than 10 years of age from the date of its initial registration.

(j) If any discrepancy is found in the distances of routes shown in the Schedule "A" and "B" the same shall be corrected through correspondence between the states and it shall not be treated as modification in the agreement.

(k) No standing passengers shall be permitted by either of the states.

(l) Countersigning authority shall be permitted to make necessary changes, if required, in the timetable issued by the permit granting authority within its own jurisdiction.

12. Section 87 of the MV Act, 1988 reads as under:

87. Temporary permits - (1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section 80,

grant permits to be effective for a limited period which shall, not in any case, exceed four months, to authorize the use of a transport vehicle temporarily

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purpose of seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit, and may attach to any such permit such conditions as it may think fit.

Provided that a Regional Transport Authority, or as the case may be, State Transport Authority may, in the case of goods carriages under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year.

(2) Notwithstanding anything contained in subsection (1), a temporary permit may be granted there under in respect of any route or area where -

(i) no permit could be issued u/s 72 or section 74 or section 76 or section 79 in respect of that route or area by reason of an order of a Court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained.

(ii) as a result of the suspension by a Court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension:

Provided that the number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of the permits have been restrained or, as the case may be, the permit has been suspended.

12. Section 88(7) of the MV Act, 1988 which deals with temporary permit in respect of inter-state route, reads as under:

88 (7) Notwithstanding anything contained in sub-section (1) a Regional Transport Authority of one region may issue a temporary permit u/s 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.

13. The petitioner is concerned with the route at Serial No. 5 i.e. Chandrapur to Raipur via Powerhouse, Durg, Rajnandgaon, Dongargaon, Bandhabazar, Chowki, Mohla, Manpur, Sargaon, Murmgaon, Dhanora, Chandgaon, Gadhchironi, Sanwli, Mool, and Chichpalli. Clause 1 (f) of the agreement provides that there may be

extension or variation of a portion of an inter-state route lying exclusively in one state may be made by the Transport Authority of the other state under intimation of the variation to the reciprocating state. But there cannot any variation in the route lying in other state.

14. Contention of Shri Jaiswal that in case of inter-state permit, consent or counter-signature of the reciprocating state is not necessary, is noticed to be rejected, as sub-section (7) of Section 88 of the MV Act, 1988, which is a non-obstante clause provides for grant of temporary permit in inter-state route with the concurrence given generally or for a particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State. Thus, no temporary permit can be granted on inter-state route without concurrence of the Transport Authority of the other state, Grant of permit under the provisions of section 88 (7) of the MV Act, 1988 is subject to conditions prescribed in section 87 of the MV Act, 1988. Thus there is no infirmity in the impugned order dated 29th September, 2009 (Annexure P/8). The petitioner may make a fresh application to the authorities and the authorities would consider the same in accordance with the provisions of law, as explained hereinabove and in terms of the agreement notified on 02nd March, 2007 (Annexure P/5).

15. In respect of challenge to the notification dated 02nd March, 2007 (Annexure P/5) on the ground that the petitioner had made a representation, however, without considering its representation, the notification has been issued, appears to be contrary to the facts as there is no dispute that the proposal of agreement (Draft) was published in the official gazette of the Chhattisgarh on 26th August, 2003 inviting objections from all the concerned on or before 01st October, 2003. The meeting of the objectors was held on 01st October, 2003. The petitioner was present and would have raised his objection.

16. Contention of the petitioner that in the notification, in para 3, it is clearly indicated that the representations have not been considered, is not correct as in the first para, it is clearly stated that the Government of Chhattisgarh and Maharashtra received several representations for introduction of new services connecting Chhattisgarh and Maharashtra and vice versa. In the notification dated 02.03.2007 (Annexure P/5). It is stated as under:

AND WHEREAS, The Government of Chhattisgarh and Maharashtra received several representations for introduction of new services connecting Chhattisgarh and Maharashtra Vice-versa.

xxx xxx xxx

AND WHEREAS, No representations have been received on the said draft by Government

17. Non-acceptance of the objection of the petitioner does not amount to violation of principles of natural justice or fair play in action as required in

governmental action. The petitioner had sought a different route which did not found favour with the government of Chhattisgarh and Maharashtra, thus, it cannot be held that the objection was not considered and notification was issued, which amounts to violation of Article 19(1)(g) of the Constitution of India. As pleaded by Shri Jaiswal. Thus, challenge of the petitioner to the notification dated 02.03.2007. being frivolous and baseless, is rejected.

18. Reliance of Shri Jaiswal in Hridyanand Tiwari Vs. State of M.P. and others, is of no assistance as the learned Single Judge held that at the stage carriage permit between two states is exhausted, the transport authority of the two states can issue a fresh temporary permit. In the case on hand, the petitioner himself was plying the bus on the route on the basis of temporary permit before the agreement between the two state governments came into force.

19. In Ashwani Kumar and Another Vs. Regional Transport Authority Bikaner and Another,) the Supreme Court held as under:

7. Accepting the submissions made on behalf of the appellants would result in frustration of the objective sought to be achieved by the Act. The interpretation put by the High Court is rationale, legal and proper. In the absence of existence of inter-State route, the authorities under the Act were not justified in granting the permits to the appellants. The existence of permit depends upon the reciprocal agreements between the States covered by the route which, admittedly, did not exist in the instant case. The orders of the appellants were thus without jurisdiction.

20. In view of the above and for the reasons stated hereinabove, there is not merit in the case and is accordingly dismissed. No order as to costs.