
(2014) 11 MP CK 0156
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8678/2013

Kashmiri Lal Batra

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(31), 72, 74, 76, 79

Citation : (2014) 4 MPJR 190 : (2015) 2 MPLJ 245

Hon'ble Judges : Sheel Nagu, J;S.K. Gangele, J

Bench : Division Bench

Advocate : H.D. Gupta, Sr. Advocate and R.D. Sharma, Advocate for the Appellant; M.P.S. Raghuvanshi, Additional Advocate General, Advocate for the Respondent

Judgement

1. Heard.

2. The grievance of the petitioner in this PIL is that in accordance with the reciprocal agreement entered between the State of M.P. and State of U.P., the State of M.P. has a right to issue permits on certain inter-state routes. State of U.P. did not counter sign the permits issued by the State of M.P., hence, the residents of districts of M.P. neighbouring the U.P. are facing problems and they can not travel easily.

3. It is an admitted fact that a reciprocal agreement was entered between the State of Uttar Pradesh and State of Madhya Pradesh and it was in force w.e.f. 21.11.2006. A copy of the agreement has been filed as Annexure P/2 alongwith the petition. Inter-state routes specified in Schedule-A have been reserved for private operators and inter-state routes specified in Schedule-B have been reserved for transport corporation.

4. State of M.P. has decided to close the operations of the M.P.State Road Transport Corporation. It is an admitted fact that M.P.State Road Transport Corporation has not been plying any vehicle on the nationalised routes or inter-

state routes. These routes have been de-notified. This fact has been noted by this court in W.P.No.15166/2007 in order dt.21.7.2011 and the court has held as under :-

"We have heard learned counsel for the parties and we are of the view that by efflux of time, this petition has lost its efficacy. Admittedly the M.P. State Road Transport Corporation is not now plying its any vehicle and all the nationalised routes are de-notified. In view of the aforesaid factual scenario, it would be open to the transport operators to apply for permanent/temporary permit before the competent authority who may deal with the applications in accordance with law. We have no manner of doubt that competent authority shall bear in mind the aspect of convenience of the public. Needless to state that all the interim orders passed in this writ petition stand discharged.

With the aforesaid observation, the writ petition stands disposed of."

5. Hon"ble Supreme Court in one SLP bearing SLP(Civil) No (s).23463/2011 noted the fact that on the basis of counter affidavit filed on behalf of the State of M.P. before the Hon"ble Supreme Court, M.P.State Road Transport Corporation has not been plying any vehicle and all the nationalised routes have been de-notified. The findings of the Hon"ble Supreme Court recorded in the aforesaid SLP are as under :-

"In the counter affidavit filed on behalf of the State of M.P., it is stated that the M.P.State Road Transport Corporation is not plying any of its vehicles and all the nationalized routes have been de- notified.

Further, in the counter affidavit filed on behalf of the M.P. State Road Transport Corporation it is stated as follows :

"After coming to know about the aforesaid "No objection" of the Central Government for winding up of the then Managing director of Respondent No.3 corporation, as the direction of the Central Government, the Managing Director of Respondent No.3 and issued a scheme called as "Voluntary Retirement from Service". Number of employees who were aware of the financial losses and the financial condition of the Corporation took VRS and left the job. Further, for remaining employees, the Respondent No.3 has been continuing the voluntary retirement scheme that of 1.7.2005. As a result of this, as of today out of 10719 employees only 296 employees have remained in the service to attend day-to-day work till its final closure."

In view of the above factual scenario we do not find any ground to interfere with the impugned order. The special leave petition is dismissed accordingly."

6. State of M.P. used to issue temporary permits on the inter-state routes, which have been de- notified by the State Government and on which earlier the State Road Transport Corporation had been plying its buses, however, the authorities of the State of U.P. refused to counter-sign the aforesaid permits on the basis of the judgment passed by the Division Bench of Allahabad High Court in Civil Misc.

Writ Petition No.13106 of 2009.

7. As per the petitioner, due to the aforesaid in action by the State of U.P. in refusal to counter- sign the temporary permits issued in favour of the private operators, on 35 routes and 138 trips the vehicles could not be plied. The routes and number of vehicles have also been mentioned by the petitioner in Annexure R-A filed alongwith the affidavit. It is also submitted that due to non availability of the vehicles on the aforesaid routes, the commuters are facing problems.

8. The respondents No.1 and 2 in their reply pleaded that the answering respondents are trying their best to resolve the issue of grant of temporary permits. They proposed the amendment in the Reciprocal Transport Agreement for counter signature of temporary permits in the proposed draft of amendment agreement between the State of M.P. and U.P. The preliminary publication has also been issued. State of M.P. issued notification inviting objections and Transport Commissioner had written a letter to Principal Secretary, U.P. Transport Department convening the meeting for resolving the dispute.

9. Section 88 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act of 1988") prescribes validation of permits for use outside region and Section 88(5) and (6) of the Act of 1988 prescribes procedure in regard to agreement between the states and counter signature of permits. The relevant provisions of Section 88(5) & (6) of the Act of 1988 are as under :-

"(5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered.

(6) Every agreement arrived at between the States shall, in so far as it relates to the grant of counter signature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it."

10. Section 87 of the Act of 1988 prescribes temporary permits which reads as under :-

"87. Temporary permits.- (1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in sector 80, grant permits, to be effective for a limited period which shall, not in any case

exceed four months, to authorise 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 purposes of a 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 condition 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 sub-section (1), a temporary permit may be granted thereunder in respect of any route or area where--

(i) no permit could be issued under section 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; or

(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."

11. From the aforesaid provisions it is clear that temporary permits could be granted for a limited period under specific circumstances on specific occasions or for seasonal business or for a particular temporary need or pending decision on an application for the renewal of a permit for renewal of permit. Temporary permit can not be substituted for regular permit, which has been defined under Section 2(31) of the Act of 1988, which reads as under :-

"(31) "permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;"

12. In such circumstances, the Division Bench of Allahabad High Court has rightly held that the temporary permit can not be issued on an inter- state route contrary to the conditions, which have been mentioned in Section 87 of the Act

of 1988. Clause 4 (3) of the reciprocal agreement prescribes that if the routes mentioned in Appendix "B" have been de-notified for private operators, then it shall be deemed to be included in Schedule 1 of the agreement. The relevant clause is as under :-

13. In the present case, the State of M.P. has de- notified all the routes, which were reserved earlier for State Transport Corporation as mentioned in Schedule "B" of the agreement. This means that these routes have been included in Schedule "A" and the authorities of the State of M.P. are competent to issue permits to the private operators on the aforesaid routes and trips in accordance with the reciprocal agreement and in such circumstances, the State of U.P. - respondent No.3 is bound to counter sign the permits.

14. As held earlier, in our opinion, it would not be just and proper to issue temporary permits on inter state routes which are permanent in nature because temporary permits could only be issued under the circumstances and contingencies enumerated under Section 87 of the Act of 1988 as mentioned in the order. This apart, issuance of temporary permits in place of regular permits on inter state routes would adversely affect the interest of commuters because no bus operator would ply good condition buses and recent model of buses on a temporary permit because it is for a limited period and it will also affect the economic development of the region.

15. We fail to understand as to why the State of M.P. has not issued permanent permits on inter state routes for trips in accordance with the reciprocal agreement entered between the State of U.P. and State of M.P. It would be more beneficial to the commuters and also in the interest of State of M.P. because the State would get revenue. When the large number of vehicles have not been plying on a large number of inter State routes certainly the commuters and passengers have been facing problems. It also affects commerce and trade of the State adversely.

16. In this view of the matter, in our opinion, applying the principle laid down in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , this PIL is maintainable

17. Consequently, this petition is disposed of with the following directions :-

(1) The State of M.P. shall initiate proceedings in regard to grant of stage carriage permanent permits for trips allocated to it in accordance with the reciprocal agreement mentioned in Schedule B of the Reciprocal Agreement and complete the process of allotment of permits within a period of two months from the date of passing of this order.

(2) After issuance of permits to the operators, the State of U.P. - respondent No.1 shall counter sign the same within a period of 15 days and shall also provide facilities to the stage carriage buses and vehicles of parking in the State of U.P. at par with the vehicles of State of U.P.

No order as to costs.