
(2008) 03 P&H CK 0119
In the Punjab And Haryana At Chandigarh

Kesar Singh

APPELLANT

Vs

State Transport Commissioner and Others

RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1988 — Section 100, 68, 80, 90, 99

Citation : (2008) 151 PLR 714 : (2008) 3 RCR(Civil) 553

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India for setting aside the order dated 29.1.2007 passed by the State Transport Appellate Tribunal (hereinafter referred to as "the Appellate Tribunal") whereby the order dated 28.1.2005 passed by the State Transport Commissioner allowing the regular extension of one mini bus permit for plying four return trips daily on Dhuri-Bagriani route up to Bohran Gate, Nabha from Bagriani via Galwati, Dhingri, has been set aside while observing that the impugned extension granted by the State Transport Commissioner is illegal and violative of the Notification dated 22.2.2005 and the provisions of Clause (4) of the modified Transport Scheme dated 21.10.1997.

2. In the present case, the petitioner was granted one mini bus permit with four return trips daily on Dhuri-Bagriani route in the year 1988. Subsequently, in respect of the said permit, the petitioner applied for grant of regular extension of the said route up to Bohran Gate, Nabha from Bagriani via Galwati, Dhingri. On his application, a survey was conducted by the District Transport Officer. After considering all the facts, he did not recommend the proposed extension on the ground that the proposed route falls on the monopoly route of the Pepsu Road Transport Corporation, therefore, as per the Transport Scheme dated 9.8.1990 as modified on 21.10.1997, only the State Transport Undertakings have the

exclusive right to operate on the monopoly routes. However, the State Transport Commissioner ignoring the said report of the District Transport Officer, granted the proposed extension vide order dated 28.1.2005.

3. Feeling aggrieved against the aforesaid order, the Pepsu Road Transport Corporation, Patiala (respondent No. 3 herein) filed a revision petition u/s 90 of the Motor Vehicles Act (hereinafter referred to as "the Act") before the Appellate Tribunal. The Appellate Tribunal vide order dated 29.1.2007 allowed the revision petition and set aside the order of grant of regular extension while observing as under:

13. Now coming to the legality of the impugned order, the same cannot be upheld by the Tribunal because the RTA was not justified in granting the extension on a route, which is not a formulated route and is not covered by the Notification dated 22.2.2005, issued by the State Govt. Department of Transport. The purpose of passing the notification was to avoid any threat being caused by the operators of the mini bus permits to the operators of the regular stage carriage permits. The Notification has not been set aside by any court of competent jurisdiction. Therefore, the same could not be allowed to be violated by the Authority for no good reasons. The extension in respect of a mini bus permit cannot be allowed by ignoring the notifications/circulars, issued by the Department itself.

14. Moreover, the extension has gone to affect the operation of the STU namely, PRTC on Malerkotla-Dhuri route. No reasoning, whatsoever has been given by the RTA in the impugned order in having allowed respondent No. 1 to operate on the monopoly route of the PRTC. The RTA failed to cover the case of respondent No. 1 under the first proviso to Clause (4) of the modified transport Scheme dated 21.10.1997, which provides that a private operator may be allowed to operate on a portion of twenty percent of the monopoly route or up to the distance of fifteen kilometers of the said route, whichever is less, where it is necessary or is in public interest to do so. The record contains the objections to have been preferred by the General Manager, PRTC, Sangrur to the effect that the extension would cover the monopoly route Patiala-Malerkotla from Bagrian to Nabha to a distance of 11 Kms., but the RTA failed to deal with the said objections. The objections being very valid could not be ignored, as the extension affects the operation of the PRTC on the monopoly route.

4. During the course of hearing of this petition, a contention was raised by the counsel for the petitioner that the case of the petitioner falls under Proviso to the modified Transport Scheme dated 21.10.1997 whereby the private operators may be allowed to operate on a portion of 20% of the monopoly route or up to the distance of 15 Kms., whichever is less. He submitted that in the instant case the monopoly route comes to 65 Kms. and 20% thereof comes to 13 Kms. whereas the monopoly route for which the extension has been granted is only 11 Kms.

5. On the other hand, counsel for the respondents controverted the aforesaid

factual position and submitted that in the present case the monopoly route on which the proposed extension has been sought is Nabha-Malerkotla via Bagrian-Amargarh route which has been notified at serial No. 18 of the monopoly route under the Transport Scheme vide notification dated 9.8.1990 and the length of the said monopoly route is 35 Kms. and not 65 Kms. as claimed by the petitioner and 20% of the said monopoly route comes to 7 Kms. As such, allowing the petitioner to ply even for 11 Kms. on the aforesaid monopoly route is contrary to the provisions of the Transport Scheme dated 9.8.1990 as modified on 21.10.1997.

6. In support of their contentions, both the parties were required to place on record the material. Respondent No. 3 has placed on record the site plan of the route map of mini bus permit showing the proposed extension up to Nabha and has also placed on record the application filed by the petitioner where he claimed that the route be extended up to Bohran Gate, Nabha from Bagrian via Galwati, Dhangi, which covers 11 Kms. of the monopoly route of PRTC on Malerkotla-Nabha route. Thus, this fact is admitted that a stretch of 11 Kms. falls on the monopoly route of PRTC on Malerkotla-Nabha via Bagrian, Amargarh route. The petitioner himself has annexed a copy of Annexure "A" showing the list of monopoly routes being operated by the State Transport Undertakings which was notified in the Gazette along with the Transport Scheme dated 9.8.1990 and in that list at serial No. 18, Nabha-Malerkotla route via Bagrian, Amargarh has been shown to be a monopoly route. Undisputedly the length of the said route is 35 Kms. The contention of the petitioner is that the monopoly route should be taken from Patiala-Malerkotla via Nabha, Ahmedgarh as has been shown at serial No. 6 of the list of monopoly routes. In our opinion that route is a different route and the length of the said route cannot be taken into consideration while calculating 20% portion as per Proviso to Clause (4) of the Transport Scheme. Thus, in our opinion, the case of the petitioner does not fall under the proviso to Clause (4) of the modified Transport Scheme dated 21.10.1997. The Supreme Court in Mysore State Road Transport Corporation Vs. Mysore State Transport Appellate Tribunal, , observed that if any Transport Scheme published, approved and notified under the Act, prohibits private transport operators to operate on the notified area or route or any portion thereof, the Regional Transport Authority can not either renew the permit of such private operators or give any fresh permit in respect of a route which overlaps the notified route. It was further held that where a private transport operator makes an application to operate on a route which overlaps even a portion of the notified route, then that application has to be considered only in the light of the scheme as notified. If any conditions are placed then those conditions have to be fulfilled and if there is a total prohibition then the application must be rejected. Similarly, this Court in PEPSU Road Transport Corporation, Patiala Vs. State of Punjab and another, , has observed that since the route in dispute, over which extension was sought, is a monopoly route of the STU, as per the Transport Scheme, the STU can raise a valid objection for grant of stage carriage permit or increase in return trips on the said

route. A private operator cannot claim, as a matter of right, extension of its route overlapping wholly or partly over the monopoly route, as the same would be clearly infringing the provisions of the Transport Scheme, approved and notified under Sections 99 and 100 of the Act. Hence, the order of extension passed by the State Transport Commissioner was clearly violative of Clause (4) of the Transport Scheme dated 21.10.1997. Thus, in our opinion, the Appellate Tribunal has rightly set aside the proposed extension granted to the petitioner being violative of the provisions contained in the modified Transport Scheme dated 21.10.1997. Further in view of Sub-section (3) of Section 80 of the Act, the application for extension of the route in the permit shall be treated as an application for the grant of a new permit. Once new permit cannot be granted on the monopoly route to the private operators, therefore, the extension of the route in the permit, which falls on the monopoly route, could not be granted to the private operators.

7. Further, the route, on which the extension has been sought, is not a formulated route and is not covered by the Notification dated 22.2.2005, which was issued by the State Government in exercise of Clause (ca) of Sub-section (3) of Section 68 of the Act. The purpose of issuing the said Notification was to avoid any threat being caused by the operators of the mini bus permits to the operators of the regular stage carriage permits. This fact has not been disputed by the learned Counsel for the petitioner that the route on which the extension has been sought is not a formulated route. In our opinion, as per the provisions of Sub-section (3) of Section 80 of the Act, an application for extension or alteration of route shall be treated as an application for the grant of a new permit, and if the government has formulated the route of the mini buses by issuing a notification dated 22.2.2005 u/s 68(3)(ca) of the Act, then no extension of the route can be granted contrary to the said notification. Since the proposed extension of the route does not fall under any of the formulated routes prescribed in the aforesaid notification, therefore, in our opinion, the Appellate Tribunal has rightly come to the conclusion that the extension of the route having been allowed by the Regional Transport Authority is in violation of the notification dated 22.2.2005 as also the provisions of Clause (4) of the modified Transport Scheme dated 21.10.1997.

8. In view of the aforesaid factual and legal position, we do not find any merit in this petition and the same is hereby dismissed.