

(2008) 02 P&H CK 0306
In the Punjab And Haryana At Chandigarh

Libra Bus Service Pvt. Ltd.

APPELLANT

Vs

State Transport Appellate Tribunal Ors.

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Motor Vehicles Act, 1988 — Section 100, 103, 104, 98, 99

Citation : (2008) 152 PLR 48 : (2008) 3 RCR(Civil) 766

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 quashing the order dated 4.9.2004 passed by the State Transport Commissioner exercising powers of the Regional Transport Authority, whereby the application of the petitioner for increase in return trips on Malerkotla-Wagah Border via Ludhiana, Jalandhar, Amritsar route from one to two daily was rejected on the ground that the portions of the route in question from Malerk-otla to Ludhiana and from Jalandhar to Amritsar fall on the monopoly route of Pepsu Road Transport Corporation (hereinafter referred to as "the PRTC") and Punjab Roadways, respectively, and according to 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; and the order dated 21.9.2006 (Annexure P-3) whereby the appeal filed by the petitioner was dismissed by the State Transport Appellate Tribunal (hereinafter referred to as "the Tribunal").

2. We have heard the counsel for the parties and gone through the impugned orders.

3. In the present case, the petitioner is holding two regular stage carriage permits for plying one return trip daily on the route in question. The petitioner applied for grant of increase in return trips on the aforesaid route from one to

two. The said prayer was objected by the PRTC and Punjab Roadways as 83 Kms. portions of the route in question is a monopoly route of Punjab Roadways and PRTC and according to the Transport Scheme dated 9.8.1990 as modified on 21.10.1997, a private operator can be permitted to operate on the monopoly route only to the extent of 20% thereof or up to the distance of 15 Kms. Whichever is less. It has not been disputed that 83 Kms. portions of the route in question from Malerkotla to Ludhiana and from Jalandhar to Amritsar fall on the monopoly route of Punjab Roadways and PRTC.

4. Counsel for the petitioner could not controvert that as per Clause (4) of the Transport Scheme dated 9.8.1997 which was modified on 21.10.1997 the private operators can be permitted to operate on the monopoly routes only to the extent of 20% thereof or 15 Kms. of the said route, whichever is less. It is also not disputed that as per Section 103 of the Motor Vehicles Act (hereinafter referred to as "the Act"), the Transport Authority cannot grant a permit or increase it from one to two for operation by a private operator on the notified monopoly route, as has been held by this Court in C.W.P. No. 297 of 2007 titled as "Raj Transport Company Pvt. Ltd., Amritsar v. State Transport Appellate Tribunal, Punjab and Ors. decided on 12.2.2008, while making the following observations:

Under the Act of 1988, Chapter V deals with control of transport vehicles, which includes grant of stage carriage permits by the transport authorities. Chapter VI deals with special provisions relating to State Transport Undertakings. Section 98, which falls under Chapter VI provides that the provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law. Section 99 deals with preparation and publication of proposal regarding road transport service of a State Transport Undertaking. This section empowers the State Government to formulate a Transport Scheme for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service to the public or for providing transport services in general or any particular class of such service in relation to any area or route or portion thereof to be run and operated by the State Transport Undertaking. Section 103(1) provides as under:

Where, in pursuance of an approved scheme, any State Transport Undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a goods carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State Transport Undertaking, notwithstanding anything to the contrary contained in Chapter V. Sub-section (2) of Section 103 further provides that for the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority may by order refuse to entertain

any application for the grant of renewal of any other permit or reject any such application as may be pending. Section 104 provides for restriction on grant of permits in respect of a notified area or notified route, which read as under:

Where a scheme has been published under Sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme.

Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route.

5. Keeping in view all these facts, counsel for the petitioner on the doctrine of equality argued that on an application filed by the similarly situated applicant, i.e. New Sutej Transport Company Private, Limited, Jalandhar a competitor of the petitioner, the increase in the route was granted by the Regional Transport Authority vide order dated 10.01.2005 (Annexure P-2), whereas the same benefit has been declined to the petitioner. He therefore, contends that on the same reasoning the petitioner should also be allowed the increase in trips on the route in question.

6. We have been informed by the counsel for the respondents that against the aforesaid order dated 10.01.2005 (Annexure P-2), the State Transport Undertaking has already filed an appeal before the Tribunal which is pending. Even otherwise, we are of the opinion that merely because Regional Transport Authority has illegally granted increase in the return trips on a monopoly route, it will not give a right to the petitioner to have the increase in the return trips on the same reasoning on the basis of the said illegal order. It is well settled as has been held by the Supreme Court in Vice Chancellor, M.D. University, Rohtak Vs. Jahan Singh, and Bihar Public Service Commission and Others Vs. Kamini and Others, that merely because some benefit has been conferred to one person illegally, another person similarly situated cannot claim the same benefit on ground of equality. An illegality cannot be allowed to be perpetuated under the so-called "equality doctrine". That is not the sweep of Article 14 of the Constitution of India. Thus, we do not find any force in the contention of the counsel for the petitioner that since the Regional Transport Authority in case of the similarly situated appellant i.e. New Sutej Transport Company Private Limited, Jalandhar, has increased the return trips of the route permit even on the monopoly route, the prayer of the petitioner for increase in the route in question should have" been accepted on the ground of equality. Thus, in our opinion, the prayer of the petitioner cannot be accepted by invoking the "equality doctrine" enshrined by Article 14 of the Constitution of India, particularly when the said

order has not become final and appeal against the said order is still pending.

7. In view of the aforesaid, there is no merit in this petition and the same is hereby dismissed.