
(2011) 12 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : LPA No. 140 alongwith 162 of 2007

Manmohan Bedi and etc.

APPELLANT

Vs

State Transport Authority, Shimla and Another

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(40), 2(7), 80, 86(1)(a), 86(5)

Citation : AIR 2012 HP 78 : (2012) 3 ShimLC 1403

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Sunil Mohan Goel, for the Appellant; J.S. Guleria, Assistant Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—The appellants who are transporters have filed these two appeals, which are directed against the judgment dated 18th September, 2007 passed by a learned single Judge of this Court. The writ petitions before the learned single Judge were filed by the State Transport Authority and were directed against the order dated 26.10.2006 passed by the learned State Transport Appellate Tribunal. All the writ petitions were allowed. It appears that other than the present two appellants none of the transporters have challenged the main judgment.

2. The facts relevant for decision of the appeals are that the appellants are owners of delux buses which have been issued All India Route Permits as contract carriage. One of the stipulations of the permit was that the transporters shall comply with the conditions laid down in Rule 85 of the Central Motor Vehicles Rules, 1989. In case of violation of conditions of the Rules, the permit was liable to be cancelled. Respondent No. 1 noticed that either the appellants were not complying with the conditions of the permit or were misusing the permit and were actually using the contract carriage buses as stage carriage buses. Consequently, a notice was issued by the State Transport Authority to the

appellants in the year 2003 in which it was alleged that the appellants were required to submit a list of tourist passengers as per the provisions of Rule 85(1) of the Central Motor Vehicles Rules, 1989 and that the permit holders shall require to maintain a day-to-day log book and shall submit a return to the State Transport Authority every three months based on information such as starting and destination points of journey, with the time of departure and arrival and the names and addresses of the hirers. It was also alleged that under Rule 85(5) of the Central Motor Vehicles Rules, 1989 the appellant was required to issue a receipt to the hirer and the counterfoil of the same was required to be produced. Basically, the allegation was that the vehicle was not being used as contract carriage but as a stage carriage.

3. The appellants replied to the notice and along with the notice sent certain documents. However, the appellants also informed the authority that the passenger lists were made but since the RTA office never asked for the same the record of the same has not been kept. Log books were never maintained since the department had not issued log books to the transporters and that some of the transporters were maintaining Form PGT-20, receipt and counterfoils. Thereafter, another show cause notice was issued to the transporters on 10th November, 2003 in which it was clearly stated that the appellants had failed to furnish any statement and on examination of the documents submitted by the appellants no log book was produced. The name and addresses of the hirers as required under Rule 85(10) were not furnished and therefore, the genuineness of the receipts could not be verified. Thereafter, another show cause notice was issued to the appellants stating therein as to why action u/s 80 be not taken to cancel their permits. In this notice it was clearly mentioned that the appellants had violated Rule 85(10) and (11) of the Central Motor Vehicles Rules, 1989. Thereafter, the State Transport Authority after considering the case of the appellants and taking into account the difficulty being faced by the appellants devised a method of compounding the offence(s) at a fixed amount of Rs. 50,000/- per vehicle. This amount was arrived at by making an average assessment of Rs. 97,000/- per vehicle, if it had been plied as a stage carriage. The transporters did not deposit this amount and consequently their permits were cancelled vide letter(s) dated 20.12.2003. The appellants along with other transporters filed appeals before the Appellate Authority, who remanded the matter back to the respondents. It would be pertinent to mention that the State Transport Tribunal decided about 35 appeals by the same judgment. It did not discuss the facts of each case separately but formulated the following common points:--

Point No. 1: Whether the impugned order dated 18.11.2003 passed by the respondent authority and conveyed vide letter dated 27/ 28.11.2003 for deposit of a sum of Rs. 50,000/- is legal and sustainable?

Point No. II: Whether the "contract carriage" permits could have been cancelled pursuant to the order impugned?

Point No. III: Final Order.

and gave its finding as follows:--

In the instant cases there is no proof of service of the notice or the show cause notices to the appellants, the file of each appellant is lacking the information even the respondent did not produce the record of service except a list and those appellants were present no chance was given to them to place their cases before the respondent. The notices issued to them were on non payment of amount of Rs. 50,000/- passed by the Secretary. Initially the notice containing general allegations and the action to cancel all the permits were on the basis of general allegations without particularizing the breach of conditions of each permit was also wrong. Therefore, the procedure adopted by the respondent authority was also violative of the principles of natural justice. Even in the proceedings of the respondent four members were shown to have been present and the proceedings were signed only by three without any explanation why the fourth member was avoided further, the amount so arrived at was also not an agreed amount, therefore, the impugned order deserves to be set aside. The Points No. 1 and II are decided accordingly.

Point No. III: Consequently on the basis of point-wise findings, the impugned order dated 18.11.2003 conveyed vide letter dated 27th - 28th November, 2004 is set aside and any order thereafter passed by the respondent for cancellation of the permits is also held to be null and void. Since there was a procedural error, therefore, the cases of the appellants are remanded back to the respondent authority to correct the procedure as observed above and the respondent is directed to consider the allegations against each and every permit holder in its meeting if the respondent is prima facie satisfied about the breach of any rule or condition of the permit, shall issue a show cause notice to each of the permit holders, specifying the breaches and after giving them the opportunity of hearing the respondent shall decide the matter afresh by a speaking order as it is open to judicial review. However, it is made clear that the parties are at liberty to mutually agree upon to pay the amount so agreed upon for the breaches qua each permit as contained in section 86(5) of the Motor Vehicles Act. The amount of Rs. 50,000/- or Rs. 35,000/- if deposited by the appellants may be adjusted against the other liability of the appellants or it shall be subject to the final decision arrived at of the respondent.

4. Thereafter a meeting of the STA was again held on 5.1.2004. Individual cases were considered and fresh notices were issued to the appellants in November, 2004 u/s 86(1)(a) of the Motor Vehicles Act, 1988, relevant portion of which reads as follows:--

As per the record supplied by the operator the vehicle has plied only 3044 kilometers between January 2003 to September 2003. Hirer receipts have not been supplied as per 85(5). The Authority felt that the operator is trying to conceal information on operation as it is not viable for any operator to afford the

costs of maintenance of vehicles without any business for such a long time.

5. The appellants replied to the notice. Thereafter, meeting of the transporters was held with the State Transport Authority on 27-4-2005 and finally the State Transport Authority after considering all the pros and cons of the case held that the appellants had violated the terms of the policy and therefore, cancelled the permits of the transporters. The transporters again filed appeals and the State Transport Authority considered the case of all the transport operators and vide order dated 24-8-2005 made an offer to the transport operators to get the offences compounded by paying a minimum of Rs. 35,000/-. The transport operators did not agree to compound the offence and filed an appeal before the State Transport Appellate Tribunal, who again allowed the appeal basically on the ground that the appellants were condemned unheard. The State Transport Authority filed the appeals which have been decided by the learned single Judge. The learned single Judge after going through the entire record has come to the conclusion that the transport operators were offered sufficient opportunity to put forth their case and everything was discussed with them in the personal meeting held on 27.4.2005 and as such the order of the learned Tribunal was wrong and the same was set-aside. The learned single Judge after setting aside the order remanded the matter back to the Tribunal for decision afresh.

6. It has been strenuously contended by Shri Sunil Mohan Goel, learned counsel for the appellants-transporters that when a fresh notice was issued after the earlier order of the State Transport Appellate Tribunal, the earlier notices were deemed to have been waived/superseded. He submits that the last notice did not at all specify the breaches of conditions alleged against the appellants and therefore, the learned single Judge was wrong in holding that the appellants were given sufficient notice of the allegation made against them. It is also contended that the transporters were maintaining sufficient records and could not maintain the log book since no log books were provided by the department. Shri Sunil Mohan Goel, Advocate, has relied upon the following judgments of the Apex Court:-

1 New Samundri Transport Co. (P) Ltd. Vs. The State of Punjab and Others,

2. Tarlochan Dev Sharma Vs. State of Punjab and Others,

7. As far as the second judgment is concerned, the same has no application in the present case. As far as the first judgment is concerned, there can be no quarrel with the proposition that cancellation of a permit must be based on proper allegation and cannot be based on general allegation without particularizing the breach of conditions of each permit. However, we hasten to add that what is a general or a particular breach of condition will depend on the facts of each case. If a transporter fails to maintain record, which he is bound to maintain then the general allegation that he has not maintained the record is sufficient.

8. Relevant portion of Rule 85 of the Central Motor Vehicles Rules, 1989 reads as

follows:-

85(1). The permit holder shall cause to be prepared in respect of each trip a list in triplicate of tourist passengers to be carried in the vehicle, giving full particulars as under:--

- (a) name of the passenger,
- (b) address of the passenger,
- (c) age of the passenger,
- (d) starting point and the point of destination.

85(2) One copy of the list referred to in sub-rule (1) shall be carried in the tourist vehicle and shall be produced on demand by the officers authorized to demand production of documents by or under the provisions of the Act and the rules, and the second copy shall be preserved by the permit holder.

XXX... XXX... XXX...

85(5). The permit holder or his authorized agent shall issue a receipt to the hirer and the counterfoil of the same shall be kept available with him and produced on demand to the officers empowered to demand documents by or under the Act.

XXX... XXX... XXX...

85(9): The permit holder shall not operate the tourist vehicle as a stage carriage.

85(10) The permit holder shall maintain a day-to-day log book indicating the name and address of the permit holder and the registration mark of the vehicle, name and address of the driver with the particulars of his driving licence and the starting and destination points of the journey with the time of departure and arrival and the name and address of the hirer.

9. Sub-rule (1) of Rule 85 requires that with regard to each trip the permit holder is required to maintain record in triplicate containing the names, addresses and ages of the passengers. Sub-rule (5) requires that the permit holder shall issue a receipt to the hirer and the permit holder is required to keep counter foil of the same and produce the same on demand by the officer empowered under the Act. Sub-rule (10) mandates that the permit holder shall maintain a day-to-day log book and sub-rule (9) clearly stipulates that the permit holder shall not operate the tourist vehicle as a stage carriage.

10. A contract carriage has been defined in the Motor Vehicles Act, 1988 u/s 2(7) as follows:--

Contract carriage means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a

permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum--

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes--

(i) a maxicab; and

(ii) a motor cab notwithstanding the separate fares are charged for its passengers.

11. Stage carriage has been defined in Section 2(40) as follows:--

Stage carriage means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

12. The basic difference is that a contract carriage has to be hired together as a whole for the carriage of passengers from one point to another and without stopping to pick up and set down passengers. On the other hand a stage carriage is one where separate fare from individual passengers can be charged and the journey can be undertaken by individual passengers in stages. Basically, a contract carriage can be hired as a whole by an individual or a group of persons and it must go from the starting point to the destination and should not permit the passengers to embark or alight from the vehicle at any station in between. On the other hand stage carriage is like a bus run by the HRTC where each individual pays separate fare for the whole or any part of the journey. We are not at all in agreement with the contention raised by Shri Sunil Mohan Goel, Advocate that once fresh notices were issued the old notices were waived or got obliterated. The State Transport Authority Tribunal did not quash the notices but only set-aside the order of the Appellate Authority on the ground that the petitioners have been condemned unheard. Thereafter fresh notices were issued to the petitioners. This does not mean that the earlier notices ceased to exist. As rightly held by the learned single Judge all the notices have to be read together.

13. This Court is not unmindful of the unhealthy practice where tour operators having contract carriage permits actually ply buses like stage carriage buses. To prevent this, the permit holder of a contract carriage is required to maintain records showing the names, addresses and ages of the passengers and also required to issue a receipt to the hirer and the counterfoil of the same is to be kept with the permit holder. Neither before the authorities nor before us any material has been placed on record to show that the names and addresses of the passengers or hirers of the vehicles were ever noted. There are one or two stray entries by name but these are also incomplete. Some entries show that a group

travelled together but no details of the passengers were given. No log books were maintained. Neither any receipt issued to the hirer nor any counterfoil(s) of the same have been produced. How can the officer verify whether the bus was being run as a "stage carriage" or a "contract carriage", when no such document was maintained by the appellants? The violation is writ large. As noticed by the learned Single Judge if all the three notices are read together coupled with the minutes of the meeting of the transporters with the State Transport Authority, it is absolutely clear that the appellants knew that the violation of the permits alleged against them were:-

(i) not maintaining a list of passengers with their names, addresses and ages as required under Rule 85(1);

(ii) not maintaining the counterfoils of the tickets as required under Rule 85(5); and

(iii) not maintaining a log book as required under Rule 85(10).

14. There could have been no further specification of these breaches. The documents placed on record clearly indicate that the authority had informed the transporters that they were not maintaining the records mentioned hereinabove, which they were required to maintain under the statutory provisions. Once the operators were not maintaining these documents the authorities would be justified in taking a view that an adverse inference should be drawn against the transporters and it may be presumed that they are running their buses as stage carriage. The learned Single Judge in our opinion was right in holding that the petitioners had been given sufficient opportunity to explain their case. We, therefore, find no reason to disagree with the judgment of the learned Single Judge. The appeals are accordingly rejected with costs assessed at Rs. 5000/- in each petition.