

(2009) 06 UK CK 0004
In the Uttarakhand High Court

Manmohan Singh Bisht

APPELLANT

Vs

State of Uttarakhand and Others
 Raj Kumar Bansal
and Inderpreet Singh Vs State of Uttarakhand and others

 Uttarakhand Road Transport Corporation Vs Union of
India (UOI)

RESPONDENT

Date of Decision : 15-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 102, 104, 2, 68, 71

Citation : (2009) 06 UK CK 0004

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—Since the controversy involved in all the writ petitions is similar, therefore, for the sake of convenience, they are being decided by this common order.

2. In Writ Petition (M/S) No. 1875 of 2009, the petitioner has sought the following relief:

1. Issue a writ, order or direction in the nature of certiorari quashing the impugned paper publication dated 6-10-2009 and 5-11-2009 issued by respondent No. 3, the survey report dated 21-10-2009 prepared by the survey committee and the Agenda prepared by the Secretary Regional Transport Authority initially scheduling the meeting for 26-1-2009 and 12-11-2009 on Dehradun-Doiwala city bus. 2. Issue a writ, order or direction in the nature of mandamus commanding the respondents not to process the application for the grant/issue of permit u/s 80 till there happens to be a notification issued by the Central Government u/s 71(3)(a) of the Act.

3. Issue a writ, order or direction, in the nature of mandamus commanding the respondents not to consider the application for grant/issue of permit beyond the

28 services/trips/permits as fixed under the scheme dated 16-3-1961 issued u/s 68(D)(3) of the Old Act, and the modified scheme dated 5-8-1994 issued u/s 102 of the Motor Vehicles Act, 1988.

4. Issue a writ, order or direction, which this Hon''ble Court may deem fit and proper under the circumstances of the case.

5. Award the cost of the petition.

3. In Writ Petition (M/S) No. 2047 of 2007, the petitioner has sought the following relief:

(a) Issue a writ, order or direction in the nature of prohibition restraining the respondent No. 2 R.T.A., Dehradun from considering the application for grant of city permits on the Parade Ground to Selakui route.

(b) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent No. 2 not to grant and issue any city permit on Parade Ground to Selakui route.

(c) Issue any suitable writ, order or direction in the nature, which this Hon''ble Court may deem fit and proper in the circumstances of the case.

(d) Award the cost of the writ petition to the petitioner.

4. In Writ Petition (M/S) No. 587 of 2010, the petitioner has sought the following relief:

i) Issue a writ, order or direction in the nature of certiorari quashing the impugned advertisement dated 17-4-2010 issued by the respondent No. 2 annexed as Annexure No. 4 to the writ petition and the consequential meeting of R.T.A. proposed to be held on 26-4-2010.

ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to grant any permit without modifying the scheme of 12-2-1951.

iii) Issue a writ, order or direction, which this Hon''ble Court may deem fit and proper under the circumstances of the case.

iv) Award the cost of the petition.

5. In Writ Petition (M/S) No. 2028 of 2009, the petitioner-Uttarakhand Road Transport Corporation has sought the following relief:

i) Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 3 not to grant any stage carriage permits either u/s 80 or Section 87 without a prior notification u/s 71(3)(a) and the formulation of route u/s 68(3) (ca) of the Act.

ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 3 not to grant any stage carriage permits on the routes which are notified under Chapter VI beyond the strength fixed under the scheme.

iii) Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 3 not to vary or include an area of or a route by addition or by overlapping the notified routes without there being a notification under sub Section (1) of Section 2.

iv) Issue a writ, order or direction, in the nature of certiorari quashing the impugned survey report dated 21-10-2009 prepared by the survey committee beyond the City Bus Karya Yojana annexed as Annexure-6 to the writ petition.

v) Issue a writ, order or direction in the nature of certiorari quashing the impugned advertisement dated 6-10-2009, 4-11-2009 and 26-11-2009 issued by respondent No. 3 annexed as Annexure Nos. 6, 7 and 8 to the writ petition respectively.

vi) Issue a writ, order or direction in the nature of certiorari quashing the impugned Agenda Item No. 19 prepared by the Secretary, R.T.A. Dehradun annexed as Annexure No. 10 to the writ petition.

vii) Issue a writ, order or direction, which this Hon''ble Court may deem fit and proper under the circumstances of the case.

viii) Award the cost of the petition.

6. The petitioner in each of the three petitions, i.e. WPMS No. 1875 of 2009, WPMS No. 2047 of 2007 and WPMS No. 587 of 2010 are private existing operators, while the petitioner in WPMS No. 2028 of 2009 is Uttarakhand Road Transport Corporation. It may be mentioned here that Writ Petition (M/S) No. 2047 of 2007 and WPMS No. 587 of 2010 pertain to Parade Ground-Selakui route while the rest two Writ Petitions pertain to Dehradun-Doiwala City Bus Route.

7. Before advertng to the facts of the present writ petitions, a reference to background facts is necessary.

8. It appears that the Regional Transport Authority, Dehradun (for short R.T.A.) had granted as many as 267 permits on Dehradun-Doiwala route vide resolution No. 12 passed on 27-12-2008. Aggrieved by the said resolution, Manmohan Singh (petitioner in WPMS No. 1875 of 2009) and one Jasveer Singh challenged the resolution before the State Transport Appellate Tribunal Uttarakhand (for short the S.T.A.T.) by way of Revision Nos. 01 of 2009 and 02 of 2009 on the grounds inter alia that these permits were granted in a mechanical manner without application of mind. The S.T.A.T. after summoning the record of Resolution No. 12 passed on 27-12-2008, found that the R.T.A. had issued the permits completely in violation of the provisions of the Motor Vehicles Act, 1988 and the Rules framed there under. The S.T.A.T. further held that many of the applications were unsigned, many of them without affidavits, many of them without time-table and many of them were received after the resolution was passed. It was also found that granting of 267 permits in one go was violative of the provisions of Rules 58, 62, 63 and 64 of the rules framed under the Motor Vehicles Act, 1988 and only 4 applications at serial Nos. 193, 194, 195 and 196

were found complete in all respect. Ultimately, the S.T.A.T. quashed the resolution dated 27-12-2008 by its order dated 15-5-2009. Aggrieved by the said order, Writ Petition (M/S) No. 749 of 2009 Tejendra Rawat and Ors. v. Regional Transport Authority, Dehradun and Ors. and WPMS No. 785 of 2009 Vinod Chandola and Ors v. R.T.A. and Ors. were filed before this Court. In both the writ petitions, the petitioners sought a writ in the nature of certiorari quashing the order dated 15-5-2009 passed by the S.T.A.T. in Revision No. 01 of 2009 and Revision No. 02 of 2009 whereby the S.T.A.T. had quashed 263 stage carriage permits granted by the R.T.A. on Dehradundun-Doiwala route by resolution No. 12 dated 27-12-2008. Both these writ petitions were dismissed by this Court vide order dated 21-8-2009 with the observation that the R.T.A. may consider afresh the applications of the petitioners for issuance of the permits in the impugned route Dehradun-Doiwala but only in accordance with law. After the decision in the said writ petitions, the R.T.A. started processing the applications in compliance of the Court's observations made in the order dated 21-8-2009.

9. According to the petitioners, the facts giving rise to the Writ Petition (M/S) No. 2028 of 2009 are that the route for which the applications for grant of permits are being considered by the R.T.A. on Dehradun-Doiwala is a city bus route, which is a part of the notified route Dehradun-Rishikesh-Narendra Nagar as published in the scheme under Chapter IV-A of the Motor Vehicles Act, 1939 (for short 1939 Act). The said scheme was formulated u/s 68(d)(3) of 1939 Act and only 14 services were to be provided, meaning thereby that only 28 trips including up and down have to be undertaken. The report was submitted on 24-12-2008 when for the first time, the grant of permits was placed for consideration before the R.T.A. and 17 valid permits were already operating and additional necessity was shown to be of five permits only. This fact was also considered by this Court in paragraph Nos. 9 and 10 of the judgment dated 21-8-2009. According to the petitioner, this Court had remitted the matter to the R.T.A. for reconsideration and in view of the directions contained in paragraph 11 of the judgment, the consideration which was required to be done was in relation to a route which was subject matter of scrutiny i.e. Dehradun-Doiwala city bus route. The R.T.A. in compliance of the said judgment could not have extended the routes beyond the scope of the judgment it self.

10. The R.T.A. on 6-10-2009 issued an advertisement inviting the applications in compliance of the judgment rendered in Writ Petition (M/S) No. 749 of 2009, referred to above. The meeting was scheduled to be held on 26-10-2009. No meeting was held on 26-10-2009 and by virtue of advertisement dated 14-11-2009, the meeting was rescheduled for 12-11-2009, but again on that date, no meeting was held and on 26-11-2009, fresh advertisement was issued to hold the meeting on 2-12-2009.

11. Before any meeting could be held on 2-12-2009, the present writ petition (2028 of 2009) has been filed before this Court on 30-11-2009. This Court vide order dated 1-12-2009 passed an interim order that the meeting scheduled to be

held tomorrow shall go on, however, the orders or resolution passed therein shall not be finalized. This Court by subsequent interim order dated 9-12-2009 has restrained the R.T.A. from issuing or finalizing any permits to private operators, consequent to Agenda No. 19.

12. Learned Counsel for the respondents during the course of arguments informed the Court that since the writ petition is pending, no meeting was held by the R.T.A. so far.

13. Learned Senior Advocate, Mr. Sharad Sharma appearing for the petitioner-Uttarakahnd Road Transport Corporation has contended that the advertisement dated 6-10-2009 and the subsequent advertisement dated 4-11-2009 were limited to Dehradun-Doiwala city bus route but vide advertisement dated 26-11-2009, the R.T.A. proposed to include the consideration for grant of permit to extended non-notified routes in pursuance to the survey made on 21-10-2009, therefore, the advertisement dated 26-11-2009 is beyond the spirit and the ambit of the judgment dated 21-8-2009 rendered by this Court, referred to above and the R.T.A. cannot consider the applications for non-notified route.

14. It was further contended by the learned Senior Advocate appearing for the petitioner that the issuance of advertisement dated 26-11-2009 for the extended route and the act of the R.T.A. thereby overlapping the notified routes and also increasing the number of permits beyond the scope of scheme of 16-3-1961 without modifying the scheme u/s 102 and without creation of the route u/s 68(3) (ca) of the Motor Vehicles Act, 1988 is not tenable in the eye of law.

15. Learned Counsel for the petitioner further contended that the petitioner filed objections on 3-11-2009 and 27-11-2009 before the R.T.A. but the R.T.A. without giving opportunity of hearing to the petitioner rejected the objection filed by the petitioner. The order of rejection of objections was never served upon the petitioner and it amounts to denial of natural justice to the petitioner.

16. Learned Senior Advocate for the petitioner has further urged that the R.T.A. is not competent to create the route. The decision of overlapping of the notified area is without competence and the R.T.A. has no power to increase the number of permits on the notified route. The RT. A. has thus acted in violation of the provisions of Section 68(3)(ca) read with Section 104 of the Motor Vehicles Act, 1988. Once the jurisdiction of the R.T.A. itself is questioned, it is the subject matter always open under Article 226 of the Constitution of India.

17. Learned Senior Advocate also contended that u/s 71(3)(a) of the Motor Vehicles Act, 1988, the power to fix the number of permits rests upon the Central Government and the assessment of requirement of the need of vehicles of the public transport on a route is yet again a power vested with the State Government only after publication of the notification u/s 71(3)(a), therefore, the R.T.A. could not have fixed the number of permits enhanced to 47 apart from existing 21, which was against the scheme of 16-3-1961 and this action on the part of R.T.A. is without competence and jurisdiction.

18. The respondents have resisted the writ petition by filing their counter affidavit. The stand taken by the respondents is that the State Government issued Notification No. 2134/XXX-2-94-240/93 dated August 5, 1994 in exercise of its power u/s 102 of the Motor Vehicles Act, 1988 thereby notified the operation of private bus services in the city of Dehradun within a radius of 20 kms. (in exceptional circumstances 25 kms) apart from the Corporation bus service.

19. Learned Counsel for the respondents has contended that the present writ petitions are premature because the R.T.A. has not so far passed any final order and the applications for grant of permits are yet to be considered of the applicants. Learned Counsel for the respondents has relied upon a Division Bench judgment of this Court dated 21-5-2007 rendered in Writ Petition No. 1562 of 2006 (M/B) Jitendra Joshi v. State of Uttaranchal and Anr. which pertains to Parade Ground to Selakui route. Learned Counsel for the respondents also submitted that the applications are being considered by the R.T.A. in compliance of the observations made by this Court vide order dated 21-8-2009 passed in Writ Petition No. 749 of 2009 (M/S) and the said order has not been assailed by any party before a higher Forum and no recall application has been filed.

20. It is pertinent to mention here that in the Writ Petition (M/S) No. 2047 of 2007, the petitioner has only sought a writ of mandamus restraining the R.T.A. from considering the application for grant of city permits on Parade Ground to Selakui route. In WPMS No. 587 of 2010, the petitioner has sought a writ of certiorari quashing the impugned advertisement dated 17-4-2010 whereby the R.T.A. has invited applications for grant of permits on the routes including Parade Ground to Selakui route.

21. Without entering into the merits of the case, the first question to be decided is whether the writ petitions are maintainable or not or whether the writ petitions are pre-mature.

22. I have perused the Division Bench judgment of this Court dated 21-5-2007 rendered in Writ Petition No. 1562 of 2006 (M/B) Jitendra Joshi v. State of Uttaranchal and Anr. In paragraph 4, the Division Bench has observed as under:

4. As the Regional Transport Authority, Dehradun is yet to consider the applications for grant of permit, the writ petition, in our opinion, is premature. The petitioner has already submitted his objections before Regional Transport Authority, Dehradun. In the event of grant of permit by Regional Transport Authority, Dehradun, the petitioner can very well avail the statutory remedies under the provisions of the Motor Vehicles Act, 1988.

23. In the present writ petitions also the petitioner-Transport Corporation has already submitted its objections before the R.T.A. The present writ petitions are squarely covered by the Division Bench judgment of this Court. The final decision is yet to be taken by the R.T.A. in the present writ petitions. If the petitioners feel aggrieved by the order passed by the R.T.A., it is always open to the

petitioners to take recourse to the statutory remedies under the provisions of the Motor Vehicles Act and the petitioners can take all the grounds including the ground of competence of the R.T.A. before the appropriate Forum. Without entering into the merits of the case, all the four writ petitions being premature are liable to be dismissed at the threshold.

24. All the four writ petitions are dismissed summarily.

25. Interim order dated 1-12-2009 and 9-12-2009 are vacated.