
(1991) 09 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4585 of 1991

M/s. Mohali Bus Service Regd. Jalandhar	APPELLANT
Vs	
State Transport Appellate Tribunal, Chandigarh and others	RESPONDENT

Date of Decision : 25-09-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 56, 57, 57(3)
Punjab Motor Vehicles Rules, 1940 — Rule 4.6

Citation : (1992) 1 ACC 325 : AIR 1992 P&H 162

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : H.S. Sawhney, for the Appellant;

Judgement

1. By an order dated August 4, 1986 the State Transport Commissioner, Punjab issued two temporary stage carriage permits with two return trips on Amritsar-Anandpur Sahib route in favour of Punjab Roadways, Amritsar. In the absence of any transport policy in the State, these temporary permits continued to be reissued on four monthly basis till the Supreme Court ordered cessation of all temporary permits and directed the grant of regular permits on all routes where the need of the travelling public was of permanent/regular nature.

2. In pursuance of the directions issued by the Supreme Court, the State Transport Commissioner, Punjab, invited applications for the grant of two regular stage carriage permits for plying two return trips on the route in question. The petitioner herein and many others filed their applications. It may be mentioned that the Punjab Government by a notification dated September 13, 1979 had reserved for the members of the Scheduled Castes domiciled in Punjab twenty five per cent of the stage carriage permits to be granted in any calendar year. A similar reservation has been made in favour of Economically Weaker Sections of the Society but we are not concerned with that reservation in the present case. All the applications received in response to the invitation including the one from the petitioner were published under S. 57(3) of the Motor Vehicles Act, 1939

(hereinafter called "the Act") read with Rule 4.6 of the Punjab Motor Vehicles Rules, 1940 for inviting objections/representations. The matter regarding the grant of permits was then taken up by the State Transport Commissioner in his meeting held at Jalandhar on 29th and 30th August, 1988. There were only two scheduled caste applicants including the petitioner who had applied for a permit. After considering the applications of all the applicants, two permits with two return trips were sanctioned in favour of Punjab Roadways, Amritsar, which was already operating on the route on temporary basis whereas one permit with one return trip was sanctioned in favour of one Sokhal Bus Service (Regd.) village Jethowal, District Amritsar. from the quota reserved for Scheduled Castes. This order of the State Transport Commissioner dated October 26, 1988 is Annexure P-1 with the writ petition. The claim of the petitioner for the grant of a permit was rejected with the following observations: --

"This applicant has already been granted permit on Goindwal-Rayya route on the basis of reservation for Scheduled Castes."

3. Two appeals were filed before the State Transport Appellate Tribunal against the order of the State Transport Commissioner. One of them was filed by the petitioner while the other appeal was filed by Rohtak District Transport Co-op. Society Ltd., Amritsar which was an applicant for a permit from the general category. The second applicant who had applied for a permit from the reserved quota for Scheduled Castes did not feel aggrieved from the order of the State Transport Commissioner and did not prefer any appeal. Both the appeals were dismissed and the claim of the appellant for the grant of a permit was rejected but the permit granted to Sokhal Bus Service was cancelled on the ground that it had applied for a permit reserved for Economically Weaker Sections and could not be granted a permit out of the quota reserved for Scheduled Castes. After setting aside the permit granted in favour of Sokhal Bus Service, the Appellate Tribunal remanded the case back to the State Transport Commissioner with a directions to invite applications afresh for this permit only from applicants belonging to the category of Scheduled Castes and then grant a permit in accordance with law. M/s. Sokhal Bus Service was, however, allowed to continue its operations to avoid inconvenience to the general public. The order passed by the State Transport Commissioner as also the appellate order have been challenged by the petitioner in the present writ petition.

4. It is not in dispute that only two appeals were filed before the Appellate Tribunal against the order of the State Transport Commissioner. The other unsuccessful applicants did not feel aggrieved from the non-grant of permits to them. One of the appeals was by an applicant from the general category with whom we are not concerned. That appeal having been dismissed, the appellant therein has not challenged the appellate order in this Court. Sokhal Bus Service (Regd.) to whom a permit had been granted by the State Transport Commissioner and which was set aside in appeal, filed civil writ petition 16520 of 1990 in this Court challenging the appellate order but the same was dismissed in

limine on May 10, 1991. Admittedly, one permit was to be granted to a scheduled caste applicant and the only such candidate left in the field is the petitioner but his claim was rejected by the State Transport Commissioner solely on the ground that he had already been granted a permit on Goindwal-Rayya route. This, to my mind, was not a valid ground on which the claim could be rejected and in some cases it may even be an added merit of the applicant. The fact that a person already holds one or more permits is not necessarily a disqualification or a factor against him. The paramount consideration in such matters is the interest of the travelling public but when a permit is to be granted to an applicant belonging to a reserved category then inter se merits of the candidates belonging to that category alone would have to be seen and their merits cannot be compared with those from the general category.

5. Learned counsel for the petitioner has contended that by remanding the case back for inviting fresh applications, the Appellate Tribunal would be giving another chance to applicants who had already applied but had failed in obtaining a permit or who did not choose to apply in response to the earlier advertisement. I find force in this contention. In my opinion, the Appellate Tribunal could not remand the case and had to restrict its choice only to the appellants and the stage. It is a settled principle of law that the State Transport Commissioner cannot now hear the applicants who either did not apply in the first instance or who did not prefer appeals against the non-grant of permits to them. This is so because where an application for a permit is rejected, that application comes to an end and if such an applicant does not appeal, the Appellate Tribunal while dealing with the appeals filed by other aggrieved applicants has no jurisdiction to direct the Transport Commissioner to consider and dispose of afresh even the applications which had been rejected but no appeals therefrom were preferred. The view I have taken finds support from a Division Bench judgment of the Assam High Court in *Narendra Kumar Dass v. The Appellate Board* AIR 1960 Gua 100 and also from a judgment of Madras High Court in *The Anamalais Bus Transports (P) Ltd., Polachi v. Sri Tiruppur Karur Transports (P) Ltd., Tiruppur* AIR 1966 Mad 470 . A somewhat similar view was taken by their Lordships of the Supreme Court in *Cumbum Roadways (P) Ltd. Vs. Somu Transport (P) Ltd. and Others*, and also in *Hanuman Transport Co. Ltd. v. Meenakshi G. Ramabhai*, Civil Appeal No. 794 of 1963: (reported in 1963 SC 375).

6. The Tribunal was, thus, not justified in remanding the matter to the State Transport Commissioner but it should have at its own considered the claim of the petitioner viz-a-viz the other scheduled caste applicants, if any. In the instant case, the petitioner was the only scheduled caste candidate before the Tribunal whose claim should have been considered objectively in accordance with law instead of directing new applications to be invited. There was, of course, another scheduled caste applicant before the State Transport Commissioner but he did not prefer any appeal against the refusal of the grant of the permit to him. The mere fact that the petitioner is the only candidate left in the field or that he already holds another permit is by itself no ground to refuse a permit to him or

to invite fresh applications.

7. In the result, the writ petition is allowed and the appellate order to the extent it remands the case of the State Transport Commissioner for inviting fresh applications from Scheduled Caste candidates is set aside. The case is sent back to the Tribunal with a direction to consider the claim of the petitioner in accordance with law and dispose of its application for the grant of a permit. The parties are left to bear their own costs.

8. Petition allowed.