
(1991) 07 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10929 of 1988

M/s. New Central Doaba Tourist Bus Company, Chandigarh
and another

APPELLANT

Vs

State Transport Authority, Chandigarh and another

RESPONDENT

Date of Decision : 17-07-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 50

Citation : AIR 1992 P&H 164

Hon'ble Judges : G.C. Mital, Acting C.J.; H.S. Bedi, J; A.P. Chowdhri, J

Bench : Full Bench

Advocate : H.S. Sawhney, for the Appellant; Ashok Aggarwal and Gulshan Sharma, for the Respondent

Judgement

Gokal Chand Mital, Ag.C.J.—The matter has been referred to a Full Bench vide orders dated March 21, 1989, in view of the cleavage in the ratio of the Judicial decisions of two Division Benches of this Court in CWP No. 2578 of 1977 decided on November 29, 1977 and CWP No. 3597 of 1977 decided on December 8, 1977. The facts that are relevant to the disposal of this petition are as under:--

Petitioner No. 1 filed an application dated 13th November, 1987, Annexure P-1 to the petition, to the Home Secretary-cum-Chair-man, State Transport Authority, Union Territory, Chandigarh, for the sale of Bus No. CHW 5427 of 1981 Model. As no action was taken thereon, a number of reminders were issued to the respondents and ultimately, vide Annexure P-3, the permission to sell the bus was declined. As per the averments made in the petition, the permission was declined in view of the decision taken by the State Transport Authority, Chandigarh, that in case an old bus was sought to be replaced by a new one, the replacement would be permitted only on the condition that the old vehicle would be taken out of Chandigarh. Vide-Annexure P-7 certain other conditions with regard to the maximum age of the bus for grant of contract carriage permit were also laid down, but, as we do not propose to go into the matter in view of what

follows hereinafter, such conditions are not being reproduced in extenso.

2. During the course of arguments we found that in Annexure P-1, which is the application for permission to sell the bus in question, it had been specifically stated that the applicant would not claim for the replacement of the bus and also for the contract carriage permit in lieu and it was on that basis that permission was sought. We have examined this application in light of Annexure P-6. Annexure P-6 would be applicable if a permission was sought to replace the bus and would be wholly inapplicable in a case such as the present one where, in fact, no replacement of the bus has been sought. We time and again asked the counsel for the respondents to show us any provision of law either in the Motor Vehicles Act 1988 or any other rule/instructions to the effect that an embargo could be imposed even in a case where no replacement of the vehicle in question was sought. Counsel for the respondents has stated that except for Annexure P-6, there is no other rule or regulation to the above effect. As already indicated above, Annexure P-6, also will not help the case of the respondents as that would be applicable only in case where replacement of the old vehicle was sought.

3. In view of what has been stated above, this petition is allowed; order Annexure P-3 is quashed and it is held that the petitioner would be entitled to transfer the bus in question. The respondents are also directed to register the transfer as per Section 50 of the Motor Vehicles Act, in case it is sought. However, there will be no order as to costs.

4. Mr. H. S. Sawhney, counsel for the petitioner, has also argued on the basis of Annexures P-6 and P-7 that the condition with regard to the maximum age of the buses should also be decided at this stage, in view of the reference that has been made and a judicial determination be made of the legality of Annexures P-6 and P-7. As we find that the question necessitating the reference does not arise on the facts of this case, it would be wasteful to go into it. This matter is, therefore, left open to be agitated in some other suitable case.

5. Petition allowed.