
(2017) 09 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : 1263 of 2017

M/s New Prem Bus Service

APPELLANT

Vs

State of H.P., & Ors.

RESPONDENT

Date of Decision : 06-09-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 09 SHI CK 0012

Hon'ble Judges : Sanjay Karol, Sandeep Sharma

Bench : Division Bench

Advocate : Ajay Sharma, Shrawan Dogra, Anup Rattan, Romesh Verma,
J.K.Verma

Judgement

1. By way of instant writ petition filed under Section 226 of the Constitution of India, petitioner has prayed for the following relief:-

(i) That impugned order Annexure P-7, dated nill may very kindly be quashed and set-aside with directions to the respondents to allow departure time to the bus of the petitioner on the route in question at 6:37 PM to secure the ends of law and justice;

2. Before advertng to the merits of the case, it may be noticed that despite sufficient opportunities, respondents have chosen not to file reply to the petition and as such, this Court has no option but to decide the instant petition on the basis of material adduced on record by the petitioner.

3. Necessary facts as emerge from the record are that the petitioner was given permit to run a bus on route/area Chamunda (Kangra) -Banikhet (Chamba)-Khadamukh (Chamba), which is valid up till 15.10.2020. Pursuant to grant of aforesaid permit, matter came up before RTA/RTO, Dharamshala for grant/fixing of time table. Documents placed on record suggests that initially departure time of bus owned by petitioner qua the route, as referred above, was fixed at 19:25

PM and accordingly petitioner started plying his bus on the said route permit as per the time table fixed by the RTA/RTO, Dharamshala. It also emerge from the record that though departure time of the bus of the petitioner from Chamunda was 19:25 PM, whereas bus of HRTC having route permit Dharamshala-Bharmour was fixed at 9:30 PM and as such, there was difference of about two hours in the departure time of buses owned by petitioner and HRTC. Subsequently, an application came to be filed before the RTO, Dharamshala on behalf of the HRTC, who vide Annexure P-4 despite there being objections on the part of the petitioner, ordered for adjustment of time table to the detriment of the petitioner and to the advantage of HRTC. Perusal of Annexure P-4, suggests that departure time of bus of the petitioner from Chamunda was changed to 18:37 PM instead of 7:25 PM, originally allowed by the RTO, Dharamshala after issuance of permit in favour of the petitioner. It further emerge from the perusal of Annexure P-7 that the RTO, Dharamshala vide Annexure P-7 again revised the departure time of the bus of the petitioner from 6.37 PM to 6:10 PM. Perusal of Annexure P-7, suggests that aforesaid revision made in the time table by authority concerned was objected to by the petitioner and petitioner prayed that he be allowed to start his bus from Chamunda at 6:30 pm as agreed vide Annexure P-4.

4. In nutshell, the case of the petitioner is that since there are various buses run by HRTC and JNNURAM, Bus Stand Management and Development Authority, purposely got timing of their buses fixed one minute to five minutes in advance or after timings of the bus of the petitioner, as a result of which, great prejudice is being caused to the petitioner. Petitioner's further grievance is with regard to frequency given/fixed by State of H.P. to the private operators, whereby private operators are under obligation to run their buses at the speed of 2 1/2 Km per minute, whereas for the buses of HRTC /JNNURM, frequency is given/fixed 2 KM in one minute, as such, petitioner cannot afford to run its bus beyond said frequency. As per petitioner, buses owned by HRTC/ JNNURM, if starts half an hour after the bus of the petitioner, said bus would overtake bus of the petitioner after about another half an hour, causing great loss to the petitioner, who apart from above, has invested huge money in transport business and has been rendering its valuable services to the State of Himachal Pradesh for more than 2-3 decades without there being any complaint.

5. It also emerge from the record that petitioner being aggrieved and dissatisfied with the aforesaid illegal action of the authority concerned, repeatedly requested the authority concerned to redress its grievance with regard to time table issued by the RTO/STA to benefit the buses plied by HRTC and JNNRM to the disadvantage of the petitioner. Since, authority responsible for fixing time table of the buses being plied in the area concerned, be it of private operators or of HRTC/JNNURM, failed to redress the grievance of the petitioner, it approached this Court by way of instant proceedings seeking therein relief, as have been reproduced hereinabove.

6. Taking into consideration relief sought/ prayed for in the present case viz-a-viz controversy/dispute involved in the present case, this Court is of the view that matter is required to be considered and decided by the respondents impartially without there being any bias. Needless to say, buses owned by HRTC/ JNNURM and private operators including the petitioner are parallel players as far as running business of transportation in the State of Himachal Pradesh is concerned. Chapter-VI of the Motor vehicles Act, authorize the government to nationalize the routes, in case the government finds necessity for the same. Until and unless, scheme as per chapter VI, is finalized by the government, no other and further consideration can be shown and extended in favour of HRTC, rather in terms of scheme, if any, under Chapter-VI, parties i.e. HRTC and private operators are required to apply for grant of route permits to run their buses as per Chapter V of the Motor Vehicle Act. Perusal of provisions contained in Chapter-V clearly suggests that there is no difference as far as grant of permits to HRTC or private operators is concerned. In this regard, application is required to be filed before RTO/STA concerned, who shall decide the same in accordance with law.

7. Though, this Court after having taken note of the pleadings as well as documents adduced on the record by the petitioner, is fully convinced and satisfied that time table has been repeatedly changed by the authority concerned to the detriment of the petitioner just to favour HRTC, but despite that we are restraining ourselves from passing any order as far as fixing time table is concerned as it is the sole domain of RTO/STA concerned. Being instrumentalities of State, authorities, as mentioned above, are expected to perform its duties judicially strictly in accordance with law/rule occupying the field without there being any element of bias. As has been observed above, HRTC and private operators are parallel players as far as running buses in the State is concerned and in this regard, authorities concerned are always expected to exercise its power of issuing permit and fixing time table impartially without there being any element of arbitrariness. Though this Court taking note of the material available on record would have quashed the time table, whereby departure time of the bus of the petitioner was repeatedly changed, but at this stage deems it fit to leave it to the authority concerned to rectify its mistake, if any, in accordance with law.

8. Consequently, in view of the detailed discussion made hereinabove, present petition is disposed of with the direction to the respondents to convene meeting of all the parties concerned and thereafter fix time table for departure/arrival of the buses being operated by HRTC and private operators.

9. Needless to say, authority concerned while carrying out aforesaid exercise shall keep in mind the interest of private operators including the petitioner, who have invested huge money in purchasing buses, which are ultimately used for public transportation. Aforesaid exercise shall be completed by the respondents within the period of four weeks from the date of receipt of copy of this judgment. Till the time issue is finally decided by the authority concerned below as observed above, petitioner shall be allowed to ply its bus on the route in question

strictly in terms of time originally allotted to it after issuance of permit i.e. 6:37 PM from Chamunda. Liberty reserved to the petitioner to approach the Court, on the same cause of action, if need so arises subsequently. Pending application(s), if any, also stand disposed of.