

(1993) 11 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition. No. 12398 of 1990

M/s. Sky Highways Pvt. Ltd.

APPELLANT

Vs

The State Transport Appellate Tribunal, Punjab and another

RESPONDENT

Date of Decision : 02-11-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 48

Citation : AIR 1994 P&H 155 : (1994) 106 PLR 341

Hon'ble Judges : Jawaharlal Gupta, J

Bench : Single Bench

Advocate : Mahesh Grover, for the Appellant; S.C. Pathela, for the Respondent

Judgement

1. The petitioner is aggrieved by the order of the State Transport Appellate Tribunal, Punjab, by which it has varied the order of the State Transport Commissioner. A few facts may be noticed.

2. On November 1, 1987, the State Transport Commissioner issued a notice inviting applications for the grant of two permits with return trips on the Thein Dam --Amritsar route. The petitioner as well as respondents No. 2 applied for the grant of permits along with various other applicants. On September 17, 1988, the State Transport Commissioner considered the claims of various applicants. It granted one return trip to the petitioner. None was granted to respondent No. 2. The respondent along with various other aggrieved parties filed an appeal before the Tribunal. Vide order dated August 27, 1990, the Tribunal has varied the order of the State Transport Commissioner and ordered that the petitioner shall be granted half return trip instead of one return trip and half return trip shall be granted to respondent No. 2. Aggrieved by this order, the petitioner has approached this Court through the present writ petition. The order of the Tribunal has been challenged primarily on the ground that it suffers from an error apparent on the record in as much as the finding that the respondent had Bus No. PAB 1777, is virtually based on non-existent assumption. It has also been averred that in accordance with the provisions of S. 47 of the Motor Vehicles Act,

1939, the petitioner could have served the interests of the public better than the respondent.

3. In the written statement filed on behalf of respondent No. 2, the claim of the petitioner has been controverted. It has been inter alia averred that the respondent had been granted a temporary permit on January 22, 1987 when it had purchased a Bus. However, on account of the permit having expired, the BUS in question was transferred temporarily. Along with the written statement, an affidavit of Mr. Sukhdev Singh, Director of M/s. New Janta Bus Service Pvt. Ltd., Batala, has been produced as Annexure R-1. On these pre-mises, it has been prayed that there is no merit in this petition and may be dismissed with

4. I have heard learned counsel for the parties.

5. Mr. Mahesh Grpver, learned counsel for, the petitioner. has made a two-fold submission. Firstly, he contends that a permit is normally granted to a person who is in a position to provide efficient service to the travelling public. According to the learned counsel, respondent No. 2 did not have any Bus either on September 17, 1988 when the State Transport Commissioner had considered the matter or on August 27, 1990 when the appellate Tribunal had decided the appeal. Learned counsel submits that since the respondent was not having any Bus at the relevant time, the finding recorded by the tribunal that the Bus was standing idle was wholly incorrect and the order is consequently vitiated. On the other hand, Mr. S. C. Pathela, learned counsel for respondent No. 2 contends that Bus No. PAB 1777 is in fact owned by the respondent. It has been leased out in M/s. New Janta Bus Service Pvt. Ltd., Batala. He also submits that according to the affidavit filed by the Director of the said Company, the respondent can retrieve this Bus at any time.

6. The petitioner has made a categorical averment in paragraph 11(i) of the petition that Bus No. PAB 1777 is not in possession of respondent No. 2. Reference has also been made to the certificate issued by the Registering Authority (MV), Amritsar to the effect that "Bus No. PAB 1777 was originally registered in the name of M/s. New United Transport (P) Ltd., Amritsar. After that it was transferred in the name of M/s. Tiwana Pehalwan Transport Co. Regd., Amritsar. On 29-6-1988, this Bus has been transferred in the name of M/s. New Janta Bus Service (P) Ltd., Batala as per order of R.T.A., Jalandhar No. 1380 dated 5-2-87. As per record of this office, no bus in the name of M/s. Tiwana Pehalwan Transport Co. Regd., Amritsar stands registered in this office at this stage." This certificate was given on an application dated August 30, 1990 filed by the petitioner. It has been further averred that "neither at the time of grant of permit by the State Transport Commissioner nor at the time of the dismissal of the appeal was he (respondent No. 2) in possession of Bus No. PAB 1777". In reply to these averments, it has been averred by the respondent that the Bus has been temporarily transferred in the name of M/s. New Janta Bus Service Pvt. Ltd., Batala. Without going into the nature of transfer, the fact remains that neither on September 17, 1988 nor on August 27, 1990, the respondent was in

possession of Bus No. PAB 1777. In fact, the certificate issued by the Registering Authority clearly shows that the Bus had been transferred by the respondent in the name of M/ s. New Janta Bus Service Pvt. Ltd., Batata on June 30, 1988. That being so, the finding recorded by the Tribunal is apparently contrary to record and cannot be sustained.

7. Mr. Pathela has placed strong reliance on the affidavit of Mr. Sukhdev Singh, Director of M/s. New Janta Bus Service Pvt. Ltd. A perusal of this affidavit shows that no date is mentioned thereon. It is not known as to when this affidavit was signed or attested. Even otherwise, for reasons best known to the respondent, the original affidavit has not been produced but only a true copy thereof has been attached with the written statement. Further more, it has been stated in this affidavit that "Bus No. PAB 1777 of M/-s. Tiwana Pehalwan Transport Co. Regd. Amritsar has been taken by us on hire and the same has been got transferred in the name of M/s. New Janta Bus Service Pvt. Ltd., Batala". The affidavit goes on to mention that the bus is returnable to M/s. Tiwana Pehalwan Transport Co. Regd. Amritsar as and when needed.

8. At this stage, Mr. Pathela has stated that the original affidavit of which R-1 is a copy is in his brief and a perusal thereof shows that Mr. Sukhdev Singh had been identified on July 29, 1988. On this premises, learned counsel seeks to contend that the affidavit had been executed on July 29, 1988; Even if it is assumed to be so, it is clear that bus had been transferred by the respondent on or before July 29, 1988. It did not have the bus in its possession on September 17, 1988 when the State Transport Commissioner had decided the case or on August 27, 1990 when the appellate Tribunal had passed the impugned order.

9. Still further, there is nothing on record, not even a bare averment, that the respondent has retrieved the bus from M/s. New Janta Bus Service Pvt. Ltd., Batala. In this situation, it is apparent that the finding of the Appellate Tribunal that the respondent's bus was standing idle suffers from an error apparent on record and cannot be sustained.

10. Mr. Pathela also contended, that one of the partners of respondent-firm is an ex-serviceman and the other partners are unemployed graduates. He also points out that one of the partners of the firm has a driving licence for a heavy transport vehicle. On this basis, learned counsel submits that the respondent was in fact entitled to be preferred to the petitioner. Even if all these matters are assumed to be correct, the possession of a bus is a necessary pre-requisite for providing efficient transport service to the travelling public. Apparently, the respondent does not possess any bus. Till, then, it can have no claim to the grant of any preferential treatment.

11. In view of the above, the writ petition is allowed. The impugned order in so far as it relates to the petitioner is set aside. The order passed by the State Transport Commissioner granting one return trip on the Tehin Dam-Amritsar route, is restored. In the circumstances of the case, there will be no order as to

costs.

12. Petition allowed.