
(1999) 01 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16714 of 1997

Nand Kishore

APPELLANT

Vs

State Transport Commissioner

RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 76

Citation : (1999) 2 ACC 641 : (1999) 122 PLR 715 : (1999) 2 RCR(Civil) 421

Hon'ble Judges : V.K. Bali, J;B. Rai, J

Bench : Division Bench

Advocate : A.M. Punchhi, for the Appellant; Ritu Bahri, A.A.G. and H.N. Mehtani, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Challenge herein is to order dated 3rd of October, 1997 (Annexure P-8). Petitioner Nand Kishore in the wake of setting aside Annexure P-8 further seeks a writ in the nature of mandamus directing State Transport Commissioner, Haryana, Respondent No. 1 herein as also Secretary, Regional Transport Authority, Rohtak respondent No. 2 to grant counter-signatures on the permit held by him bearing No. (R.S.9) 2999 on Pilani-Chandigarh via Loharu route.

2. The facts on which relief aforesaid is sought to rest reveal that petitioner was issued a regular stage carriage permit to Pilani-Chandigarh route on 27.2.1996. On the same very date, Secretary, Regional Transport Authority, Jaipur recommended the case of the petitioner to Secretary R.T.A. Rohtak for grant of counter-signatures on the permit. On the very next day, the petitioner applied to Secretary, RTA, Rohtak praying for grant of counter-signatures. Since no action was taken, the petitioner instituted Civil Writ Petition 1835 of 1996 in Rajasthan High Court. The writ petition aforesaid was disposed of since there was no reciprocal agreement between the States of Haryana and Rajasthan on 29.8.1996. The petitioner, however, thereafter learnt that two States were contemplating entering into an inter-State Agreement for the purpose of grant of

counter-signatures and, therefore, on 27.3.1997, he made yet another application to the Haryana State Transport Authority praying for grant of counter-signatures. On 22.4.1997, Government of Haryana published a draft notification of the inter-State Agreement and the final agreement came to be published by the Haryana Government after considering the objections on 15.7.1997. A few days thereafter on 25.7.1997, petitioner represented praying for seeking counter-signatures which was followed by legal notice on 18.8.1998. The respondents, however, passed the order Annexure P-8 on 3.10.1997 declining the application of the petitioner for grant of counter-signatures. However, respondents 5 and 6 who had submitted applications later in point of time were allowed counter-signatures and the positive case of the petitioner is that he applied prior in point of time than respondents 5 and 6 and the policy of the government is to entertain applications on first come first serve basis. There is no justification so as to ignore the petitioner who has been taking the issue at all relevant times and to prefer respondent 5 and 6.

3. Pursuant to notice issued by this court, respondents have entered defence and contested the cause of the petitioner. Whereas respondents 1 and 2 have filed one written statement, the other has been filed by respondent No. 5. By way of preliminary objection it has been pleaded by respondents 1 and 2 that the petitioner is not entitled to any relief within the scope of inter State Agreement dated 9.7.1997 entered into between the States of Haryana and Rajasthan. The private operators have already been allowed to ply their buses by countersigning the permits under reciprocal agreement by the State of Haryana as per Annexure 2 of the agreement. Now there is no scope left to counter-sign any more permits as the permits within the scope of agreement have already been counter-signed. It is then pleaded that respondent No. 1 had considered the application of the petitioner for counter-signing the route permit issued by the Secretary, Regional Transport Authority, Jaipur and rejected the same vide order dated 3.10.1997 being over and above the agreement. It is admitted that final reciprocal agreement was considered on 9.7.1997 and the same was notified on 21.7.1997 in the official gazette in super session of all the previous agreements. It was finalised after deciding objections by the government by affording due opportunity of hearing to all objectors. The Secretary, Regional Transport Authority, Jaipur has recommended the permits for grant of counter-signatures beyond the agreement and request of all the applicants under the agreement was considered and counter-signatures were done on the principle of first come first served and on the basis of the recommendations letters issued under agreement within scope under new contract agreement. It has further been mentioned that in the nationalised scheme, it has been laid down in the agreement that the Passenger Road Transport Service "ply of stage carriage" shall be run and operated by State Transport Authority, namely, Haryana Roadways and on all inter-State routes which fall within the share of Haryana as per the inter-State Agreement to the extent of 100 per cent to the complete exclusion of other persons. There is a provision of two single trips only against

the permits. Counter-signatures on the two permits has only been allowed on the principle of first come first served within the scope. Inasmuch as arguments have been raised on the basis of averments made in the written statement filed on behalf of respondents 1 and 2 and there is no need to give the averments made in the written statement of respondent No. 5. An additional affidavit was filed by Shri Subhash Chander, Deputy Transport Controller on 15.12.1998 pursuant to our interim order dated 9.12.1998 which reads as follows:-

"During the course of arguments, Ms. Ritu Bahri has sought adjournment to file additional affidavit on record to aver that persons mentioned in impugned order at serial Nos. 4 and 5 are the same as at serial Nos. 1 and 3-A in the same annexure as also that what is the latest position with regard to Civil Writ Petition mentioned in the impugned order in which interim relief was granted for one year."

4. In this additional affidavit it has been stated that according to the reciprocal agreement on route No. 24, Pilani to Chandigarh via Loharu-Rohtak, there is a provision of two single trips falling to the share of Rajasthan for counter-signatures. For the aforesaid route for counter-signatures, the following applicants submitted their applications:-

Sr.	Name & Address of applicant	Vehicle No.	Diary No.	& No	Date
1.	Shri Jai Singh Hooda	RJ-18P/0659	4038/27.12.96	2.	Sh. Nand Kishore S/o Sh. Sher Singh
3.	Sh. Satbir Singh S/o Sh. Har Dayal	RJ-14P/3707	1197/04.04.97	3-a.	Sh. Satbir Singh S/o Sh. Har Dayal
4.	M/s Krishan Motor Service, Jaipur	RJ-18P/069	1133/15.4.97	5.	Sh. Dharam Bir S/o Sh. Karam Singh
6.	Sh. Deepak Dahiya	RJ-14P/5031	4377/8.6.97		

5. The applications were considered on 24.7.1987. The applicants at Sr. Nos. 1 and 3 filed writ petition 5566/96 and 2391/97 in the High Court of Rajasthan Bench at Jaipur and on the ex parte interim order passed, their permits were counter-signed and the stay is still continuing. However, when the applications of the aforesaid six applicants were considered it was noticed that the permits issued to the applicants at Sr. Nos. 1 and 3 by the Rajasthan Transport Authority were beyond the scope of Annexure R-1, R-2 and R-3. It has then been mentioned that as per policy of the Haryana Government the permits issued by the State of Rajasthan within the scope of agreement are counter-signed on the basis of first come first serve, therefore, the counter-signatures were granted to the applicant at Sr. Nos. 4 and 5 which was within the scope of reciprocal transport agreement. Thus, for two single trips and instead of two permits, four applicants have been granted counter-signatures i.e. Serial Nos. 1, 3, 4 and 5. In the reciprocal agreement since kilometre quota is prescribed, to avoid increase in kilometerage four operators have been ordered to operate on this route by

rotation.

6. Mr. Punchhi, learned counsel for the petitioner vehemently contends that at all given times, be it before the agreement, as mentioned above, was arrived at between the two States or thereafter, petitioner has applied prior in point of time and if respondents were to adhere to their policy of first come first served, there was no question that the petitioner would have been ignored. Insofar as persons mentioned at Sr. Nos. 1 and 3 are concerned, they have been granted counter-signatures on their permits for the sole reason that they have obtained stay from the High Court of Rajasthan (Jaipur Bench) and the stay in their favour is still continuing. Insofar as respondents 4 and 5 are concerned, they have been permitted counter-signatures on their permits as only two such permits could be counter-signed. Respondents 4 and 5 are not the persons who might have applied before the petitioner. They could not have been preferred over and above the petitioner as per policy of the respondents of first come first served. Inasmuch as the persons at Sr. Nos. 1 and 3 have been granted stay by the High Court the respondents have conveniently thought of granting counter-signatures on the permits of respondents 4 and 5 as only two such permits could be counter-signed, but insofar as petitioner is concerned, he has been left high and dry despite the fact that he had applied before all the persons, mentioned above. In any case, if the respondents could allow four permits to be countersigned and order them to operate the route by rotation, the same treatment at least ought to have been meted out to the petitioner as well, further contends the learned counsel.

7. The submissions made by learned counsel for the petitioner, as noted above, could not be refuted at all during the course of arguments. All that has been repeatedly told to us is that on the route in question only two permits could be counter-signed and, therefore, the respondents cannot permit countersignatures on the permit of the petitioner on the route in question. We find absolutely no merit in the only contention raised by learned counsel for the respondents, as noted above. It is proved on records and it is conceded position that the policy of the Government is to grant such counter-signatures on the basis of first come first served. To prefer respondents 4 and 5 over and above the petitioner is nothing short of sheer favouritism. It is rather strange to note that respondents 4 and 5 have been allowed counter-signatures on their permits taking shelter of interim orders passed in the case of persons at Sr. Nos. 1 and 3. If that could be done, we find no earthly reason whatsoever that such a treatment should not have been meted out to the petitioner as well.

8. For what has been said above, we allow this petition and direct the respondent-State to counter-sign the permit of the petitioner issued to him by the Regional Transport Authority, Jaipur, Annexure P-1 as per rules. Let the directions aforesaid be complied within a period of one month from the date a copy of this order is produced before the authority concerned. This petition is allowed with costs quantified at Rs. 2,000/-.