
(2009) 05 RAJ CK 0017
In the Rajasthan High Court

Omprakash

APPELLANT

Vs

Chief Electoral Officer and Others

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Constitution of India, 1950 — Article 162, 166

Motor Vehicles Act, 1988 — Section 66, 67, 68, 69, 70

Citation : AIR 2009 Raj 161 : (2011) 7 RCR(Civil) 1987 : (2010) 3 RLW 1937

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed by petitioner Omprakash, who in response to notification issued by the secretary, Regional Transport Authority, Bikaner applied for grant of permit. In fact, Secretary, Regional Transport Authority, Bikaner vide the aforesaid notification dated 4-2-2009 invited applications for grant of permit for as many as 12 different routes. This notification was issued pursuant to agreement dated 12-9-2008 between the State of Rajasthan and the State of Haryana. About 1300 applications are stated to have been received in response to the aforesaid notification for the route of Bhadra to Hisar via Adampur. Petitioner also applied for the same route. One such applicant was the intervenor Rajkumar Singh. Regional Transport Authority heard arguments on all such applications on 25-3-2009 and thereafter fixed the matter on 30-3-2009 for further hearing on which date, arguments were concluded and judgment was reserved. According to the petitioner, Regional Transport Authority entertained doubts whether in view of the model code of conduct enforced by the Election Commission of India, it could decide the application and pass appropriate orders in terms of Sections 68 and 72 of the Motor Vehicles Act, 1988. It therefore approached the Chief Electoral Officer of the State for clarification/permission. Attested copy of relevant note-sheet has been produced on record. It is

contended that Chief Electoral Officer on 17-4-2008 directed that although hearing of the matter may take place but the final order should be passed only after the election process is over.

3. Shri J.K. Singhi, learned Counsel for the petitioner submitted that Regional Transport Authority exercise quasi-judicial powers under Sections 68 - 72 of the Motor Vehicles Act, 1988. It is an independent statutory body which has to judicially apply its mind and after hearing of the interested parties, pass appropriate order. Its functioning cannot therefore be controlled or otherwise regulated by some other authority. Learned Counsel in support of his argument relied on the judgment of Supreme Court in Pancham Chand and Others Vs. State of Himachal Pradesh and Others, and submitted that Supreme Court in that case while analyzing the issue of functioning of the Regional Transport Authority held that the authority is an independent quasi-judicial body which is required to act in terms of the Act. Learned Counsel also relied on the judgment of Division Bench of Andhra Pradesh High Court in Dr. Y. Sivaji Vs. The Chief Election Commissioner, New Delhi and others, and argued that the Election Commission has no power to give direction to any quasi-judicial authority or otherwise hamper functioning of such bodies by recourse to model code of conduct.

4. Shri B.C. Chirania, learned Counsel appearing for respondent No. 1 Chief Electoral Officer of the State has submitted that no new permit can be granted by the Regional Transport Authority during the period model code of conduct remains in force. He in this connection has referred to Clause 10(f) of the model code of conduct and submitted that by the aforesaid clause, it has been provided that prior permission of the Election Commission shall be required for signing a memorandum of understanding or an agreement where Government is a party. It is contended that since in the present matter, the Regional Transport Authority itself approached the Election Commission, the Chief Electoral Officer has obviously take a view of the matter, who advised the Authority to go ahead with the hearing of the matter but may not pass the final order till election process is over. Learned Counsel submitted that ratio of the cited judgments cannot be applied to the facts of the present case. Petitioner is only one of the applicants out of 1300 and at his instance alone, writ petition cannot be entertained. Writ petition be therefore dismissed.

5. Shri Swaraj Sharma, learned Counsel submitted that his client does not oppose the view taken by the Chief Electoral Officer.

6. I have given my anxious consideration to rival submissions and perused the material on record.

7. Clause 10(f) of the model code of conduct which according to Shri B.C. Chirania, learned Counsel appearing for the Chief Electoral Officer, is the basis of impugned decision, provides as under:

The following type of activities will require prior permission of the Commission:

f. Signing a MOU or an agreement where the Government is a party will also require prior clearance by the Commission.

8. According to the aforesaid clause, what is prohibited is signing of a memorandum of understanding or an agreement where Government is a party and in fact even that prohibition is not absolute because it provides that prior permission of the Election Commission shall be obtained before doing so. Here in the present case, even if the Regional Transport Authority by way of abundant caution, approached the Chief Electoral Officer, he was yet required to objectively examine the matter whether it lies within his domain or for that matter, of Election Commission to control or otherwise regulate functioning of a quasi-judicial authority. As is evident from Clause 10(f) although, it is clear that this was not a case where a memorandum of understanding or an agreement was intended to be signed by the State of Rajasthan with the State of Haryana which process was already over on 12-9-2008 when such duly signed agreement was notified. Their Lordships of the Supreme Court in *Pancham Chand supra*, examined a matter in which Chief Minister of the State of Himachal Pradesh straightway received an application from one of the applicants desirous of obtaining permit of a particular route and passed order to that effect which was communicated to the, Regional Transport Authority by the office of Chief Minister. Regional Transport Authority acting on such order, granted permit to such applicant. Although, the facts of that case were different but the observations with regard to character of the Regional Transport Authority are nonetheless weighty and worth quoting:

16. Chapter V of the Act provides for control of transport vehicles. Section 66 provides for necessity for permits in terms whereof a statutory embargo has been placed to the effect that no owner of a motor vehicle shall use or permit the use thereof as a transport vehicle, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority.

17. Section 67 of the Apt empowers the State Government to control road transport having regard to the factors enumerated therein. Section 68 provides for constitution of the State Transport Authority. An application for grant of stage carriage permit, as envisaged u/s 69 of the Act, is to be filed in terms of Section 70 thereof, detailing the particulars specified therein. Section 72 provides for the procedures to be followed by the Regional Transport Authority in considering application for stage carriage permit in respect of any route or the area specified in the application. The other provisions contained in the said chapter provide for the mode and manner for dealing with the applications for grant of other types of permits.

18. The Act is a self contained code. All the authorities mentioned therein are statutory authorities. They are bound by the provisions of the Act. They must act within the four corners thereof. The State, although, has a general control but such control must be exercised strictly in terms of Article 162 of the Constitution

of India. Having regard to the nature and the manner of the control specified therein, it may lay down a policy. Statutory authorities are bound to act in terms thereof, but per se the same does not authorise any Minister including the Chief Minister to act in derogation of the statutory provisions. The Constitution of India does not envisage functioning of the Government through" the Chief Minister alone. It speaks of a Council of Ministers. The duties or functions of the Council of Ministers are ordinarily governed by the provisions contained in the Rules of Business framed under Article 166 of the Constitution of India. All governmental orders must comply with the requirements of a statute as also the constitutional provisions. Our Constitution envisages a rule of law and not rule of men. It recognises that, howsoever high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits.

19. Apart from the fact that nothing has been placed on record to show that the Chief Minister in his capacity even as a member of the Cabinet was authorised to deal with the matter of transport in his official capacity, he had even otherwise absolutely no business to interfere with the functioning of the Regional Transport Authority. The Regional Transport Authority being a statutory body is bound to act strictly in terms of the provisions thereof. It cannot act in derogation of the powers conferred upon it. While acting as a statutory authority it must act having regard to the procedures laid down in the Act. It cannot bypass or ignore the same.

20. Factual matrix, as indicated hereinbefore, clearly goes to show that the fourth respondent filed the application before the Chief Minister straightway. Office of the Chief Minister communicated the order of the Chief Minister, not once but twice. Respondent No. 2 acted thereupon. It advised the Regional Transport Authority to proceed, after obtaining a proper application from respondent 4 in that behalf. This itself goes to show that prior thereto no proper application was filed before the Regional Transport Authority. Such an interference on the part of any authority upon whom the Act does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme. It interferes with the independent functioning of a quasi-judicial authority. A permit, if granted, confers a valuable right. An applicant must earn the same.

9. It would be evident from the above referred to observations made by the Supreme Court that Motor Vehicles Act, 1988 has provided a complete scheme according to which, request for grant of permit shall be entertained, considered and decided. While Section 68 of the Act provides for constitution of the State Transport Authority, Section 71 provides for procedure to be followed by the Regional Transport Authority in considering applications for grant of permit. Section 72 of the said Act empowers the Regional Transport Authority to grant such permit. This Act is a self contained code according to which, the Regional Transport Authority is a statutory body. The Authority has to act within the four corners of the Act and strictly in terms of the provisions thereof. It has been held

to be an independent quasi-judicial authority. Moreover, significant aspect of the matter is that petitioner was not the only applicant before the Regional Transport Authority, as has been submitted by the learned Counsel appearing for the Chief Electoral Officer himself that he was one of the 1300 applicants. Chief Electoral Officer therefore could not proceed on the assumption that grant of permit, which was preceded by a full fledged process of hearing and considered order passed by a quasi judicial body like Regional Transport Authority, in favour of one or the other applicant, could be conceived as influence on the fairness of the conduct of elections. Even otherwise, now that the polling in the State of Rajasthan and elsewhere in the country has already taken place, there is no justification to prevent the Regional Transport Authority to go ahead and pronounce its order.

10. In the circumstances, therefore, the view taken by the Chief Electoral Officer that the Regional Transport Authority, which is a quasi-judicial authority, should not pronounce the order even after hearing is complete, cannot be sustained in law. The direction of the Chief Electoral Officer to that extent is declared illegal. The Regional Transport Authority would now be free to pronounce its order.

The writ petition is accordingly allowed.