
(2008) 02 P&H CK 0240
In the Punjab And Haryana At Chandigarh

Paramjit Singh

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 84, 86, 89

Citation : (2008) 152 PLR 39 : (2008) 3 RCR(Civil) 745

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—Petitioner Paramjit Singh has filed this petition under Articles 226/227 of the Constitution of India for quashing the order dated 17.01.2007, passed by the State Transport Appellate Tribunal, Punjab, Chandigarh, (hereinafter referred to as "the Appellate Tribunal") whereby the revision filed by respondents No. 3 and 4 has been allowed and the order dated 22.11.2005, passed by the State Transport Commissioner, Punjab, exercising the powers of Regional Transport Authority, Patiala, (hereinafter referred to as "the RTA") has been set aside, having been passed without jurisdiction.

2. In the present case, the petitioner was holding one mini bus permit No. 743/MB/R/99 with four return trips daily on Jorepul to Khanna via Jarg route, which was to remain valid upto 14.12.2004. The aforesaid permit was covered by mini Bus No. PB-10Y-9097. The petitioner sold the said mini bus in the year 2003 and furnished an affidavit before the Authority that he would put another mini bus against the said permit within a period of one month, so as to operate on the route, but as per the under taking given by the petitioner, he failed to purchase another mini bus within the said period. He was served a show cause notice on 15.12.2003 by the Secretary, RTA, to explain as to why his permit should not be cancelled for having failed to operate the mini bus permit No. 743/MB/R/99 with effect from 28.05.2003. Subsequently, vide order dated 07.02.2005, the mini

bus permit was cancelled by the RTA and the petitioner was duly intimated.

3. Feeling aggrieved against the said order, the petitioner filed an appeal before the Appellate Tribunal. Vide order dated 17.08.2005, the said appeal was allowed; the order dated 7.2.2005 was set aside and the case was remanded back to the RTA with a direction to pass a fresh speaking order within one month from the date of the receipt of certified copy of the order, after affording an opportunity of hearing to the petitioner and respondent No. 4.

4. After the remand, the RTA vide its order dated 22.11.2005 allowed the claim of the petitioner and the mini bus permit held by him was restored on payment of the compounding fee to the tune of Rs. 10,000/- for not having put another mini bus against the permit in replacement of the old mini bus.

5. Respondents No. 3 and 4 challenged the said order before the Appellate Tribunal. It was argued on their behalf that the RTA has passed the aforesaid order without jurisdiction in the matter, as the case of the petitioner was covered by Clause (c) of Sub-section (1) of Section 86 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") and this clause is not covered by Sub-section (5) of Section 86 of the Act for enabling the transport Authority to compound the default by accepting compounding fee. The said contention raised on behalf of respondents No. 3 and 4 was accepted and the order passed by the RTA was set aside by the Appellate Tribunal vide its order dated 17.01.2007, against which the instant petition has been filed by the petitioner.

6. After hearing counsel for the petitioner and going through the impugned order, we do not find any illegality in the impugned order.

Sub-sections (1) and (5) of Section 86 of the Act are being reproduced below for ready reference:

86. Cancellation and suspension of permits.- (1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit:

(a) on the breach of any condition specified in Section 84 or of any condition contained in the permit; or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorized by the permit; or

(c) if the holder of the permit ceases to own the vehicle covered by the permit; or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or

(e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or

(f) if the holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation:

(2) xxxxxx

(3) xxxxxx

(4) xxxxxx

(5) Where a permit is liable to be cancelled or suspended under Clause (a) or Clause (b) or Clause (e) of Sub-section (1) and the Transport Authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money; then notwithstanding anything contained in Sub-section (1), the Transport Authority may, instead of canceling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

7. Undisputedly, the petitioner sold the mini bus No. PB-10Y-9097 in the year 2003 and gave an undertaking that he will replace a new mini bus within a period of one month, so as to operate on the route. When he failed to purchase the new mini bus as per the undertaking, a show cause notice dated 15.12.2003 was issued by the Secretary, RTA u/s 89 of the Act to explain, within a period of 10 days from the date of the receipt of the notice, as to why the permit should not be cancelled having failed to operate the mini bus permit with effect from 28.05.2003. From this, it is clear that when the RTA was not satisfied with the explanation given by the petitioner, he initiated the proceedings against the petitioner under Clause (c) of Section 86 of the Act. A perusal of Sub-section (5) of Section 86 of the Act, which authorizes the Transport Authority to compound the offence, clearly indicates that the transport Authority can exercise this power to charge the compounding fee, instead of canceling or suspending the permit, only when a permit is liable to be cancelled or suspended under Clause (a) or Clause (b) or Clause (e) of Sub-section (1) of Section 86 of the Act. Therefore, if a permit is liable to be cancelled for violation of Clause (c) of Sub-section (1) of Section 86, in that situation, the said violation cannot be compounded on receiving the agreed amount. The violation of Clause (c) of Sub-section (1) of Section 86 has been duly established, as no valid explanation was given by the petitioner for not purchasing the new mini bus to operate on the route in question, as per the undertaking. The Appellate Tribunal, while relying upon a decision of the Madras High Court in Ajantha Travels, Pondicherry Vs. State Transport Authority, Pondicherry and Another, , has held that case of the petitioner is not covered by Sub-section (5) of Section 86 of the Act. Therefore, the RTA while compounding the matter and restoring the permit of the petitioner, has acted without jurisdiction. Thus, we do not find any illegality in the impugned order.

8. Dismissed.