
(2011) 08 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 14777 of 2011 (O and M)

Parveen Kumar and another

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(6)
Motor Vehicles Act, 1988 — Section 71

Citation : (2011) 164 PLR 771 : (2012) 2 RCR(Civil) 43

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—Challenge in the present petition is to the notification dated 3.5.2011, whereby approved scheme for road transport service in the State of Haryana, was notified.

2. Prior to the notification of the approved scheme, a draft policy was notified seeking objections from the interested persons. The background for framing/ revising the instant policy, as mentioned in the draft policy, was a judgment of this court, increase in the population in the State, setting up of more educational institutions and inability of the State Transport to cope with the growth in the passengers traffic. To supplement the gap, permits were proposed to be granted to persons as per the eligibility criteria laid down in the policy. Prior to 1993, ever since the passenger transport business was nationalised in the State of Haryana, state transport buses were plying on all the routes. In 1993, to supplement the gap, permits were granted to certain private operators. The number was increased by framing a new policy in the year 2001. However, while framing the present policy, number of permits were increased further considerably, i.e., more than double. To the draft policy notified by the State, certain persons raised objections including petitioner No. 1. However, as is evident from the paper book, no objections were filed by petitioner No.2, i.e., Eco Friendly Tours &

Travels Ltd. Though objections were filed by Anand Moudgil (Annexure-P2), but claiming himself to be the proprietor of Ansh Bus Service, Inter-City Bus Service and Asian Express Bus Service. However, as is evident from the record, he filed application for grant of permit in March, 2009.

3. Learned counsel for the petitioners submitted that advertisement of draft policy, which was published in the newspaper for inviting objections was lacking in material particulars. Though draft policy, as was notified in the gazette, was running into 400 pages, but only some portion was printed in the newspaper, which did not give effective opportunity to the persons who were seeking to raise objections against that. The provisions of Section 71 of the Motor Vehicles Act, 1988 provide for basic objects for framing of any such policy. However, none of them was considered while framing the policy. As to how the general public will be benefitted is not borne out from the terms thereof. The ideal situation would be to leave everything open and let the market forces decide as to what should be the appropriate fare and who is the best service provider. Limited release of permits in favour of some persons will not bring efficiency in the system. Any one desirous of operating a bus on a route should be granted the permit. Preferential treatment is sought to be given to certain persons, which is violative of Articles 14 and 19(1)(g) of the Constitution of India. Details of the existing routes and the number of routes were not provided in the draft policy to enable the petitioners and other similarly situated persons to effectively object to the terms of the policy and work out their economics as anyone would apply for grant of permit considering its viability and profitability.

4. Heard learned counsel for the petitioners and perused the paper book.

5. There is no dispute about the proposition that in policy matters the State/ Executive is normally the best judge. The courts do not sit in appeal over their judgment. Depending upon the needs and considering the relevant factors, the policies are framed. Trial of even new methods is also permitted.

6. As far as contention raised by learned counsel for the petitioners that the entire draft policy, which was notified in the official gazette, was not published in the newspaper to enable the persons to effectively raise objections against that is concerned, the same is totally misconceived. We are living in an era where there is lot of environment degradation, various factors are responsible therefor and in recent times, one of the factors, which is resulting in environmental degradation and requiring large deforestation, is the use of paper for printing. In every area, whether in the government departments or in private establishments, efforts are being made to reduce use of paper. The communications are sought to be sent through e-mails or even SMS service is also used. The banks are also offering to send the statements of accounts through e-mails. Private corporates are sending annual reports using the same methods which otherwise many a times runs into hundreds of pages. In the present case as well, working in same line, the government had specifically mentioned in the advertisement issued in the newspapers that transport policy

consisting of around 400 pages (Hindi and English version) is not being published in the newspaper. However, its main features are mentioned. Any one desirous of going through the entire policy can access the website of the transport department or visit the office of the Transport Commissioner/Secretary, RTAs/ G.M. Roadways/Sub Divisional Officer (Civil). Once this option had been provided in the advertisement itself, to raise a grouse that persons interested did not have access to the policy in detail is liable to be rejected.

7. Similar is the fate of the contention that reservation having been provided in the policy for the existing permit holders, no other person will have the opportunity to keep the permit. A perusal of the policy shows that as against 691 existing routes, 860 new routes were added and as against 995 existing permits, 1,714 new permits were added. The aforesaid addition in the routes and the permits to be granted certainly gave opportunity to persons other than those who were already operating to compete and get the permits in case they were eligible as per the eligibility criteria. Moreover, the contention ignores the scheme of Chapter VI which overrides Chapter V and contains special provisions for permits to state transport undertakings to the exclusion of other persons. The said provisions are in accordance with the scheme of the Constitution under Article 19(6) as held in *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, . There is nothing to show in the present case that the impugned scheme is not as per Chapter VI.

8. As far as the contention regarding working out of viability and profitability of the routes is concerned, it is for the applicant who wants to apply for the permit to work out those details. If any relevant information was required to be asked for from the State, the exercise should have been done before filing objections. In the present case, there is nothing in the objections filed by the petitioners after the issuance of draft policy that any information was sought by the petitioners regarding the number of buses plying on any route or the time table thereof. In any case, the persons who are in business in the same line, know the details thereof. Further, this court in a policy matter would not like to go into the minute details in this regard, once it is found that the policy has been framed in terms of the powers delegated and the required procedure has been followed. In the present case, it is not disputed that objections were invited by the State. The petitioners filed objections and were even afforded opportunity of hearing before finalisation of the policy.

9. This court would also not like to enter into a far-fetched argument sought to be raised by learned counsel for the petitioners that the system for grant of permit should be free. Any applicant should be welcome to apply for any route at any time for letting the market forces decide for the demand and supply to create healthy competition resulting into providing better transport facilities to the passengers. It is a matter of policy, which is to be decided by the government. Everything cannot be left open as certain regulatory measures are required. The number of buses on the routes are required to be checked

considering the infrastructure available. In case, every thing is left open, the same may result in more people joining the trade which may be more than the demand in the market resulting in losses, which may have more disastrous effect. However, depending upon the needs and circumstances, the policy makers have tried different schemes at different levels.

10. For the reasons stated above, the writ petition is dismissed.