
(2008) 03 P&H CK 0123
In the Punjab And Haryana At Chandigarh

Pepsu Road Transport Corpn.

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 2008 P&H 155 : (2008) 4 RCR(Civil) 45

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

Bench : Division Bench

Judgement

1. The Pepsu Road Transport Corporation, Patiala (hereinafter referred to as the petitioner Corporation") has filed this writ petition under Articles 226 and 227 of the Constitution of India for setting aside the order dated 13-9-2004, passed by the State Transport Appellate Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Appellate Tribunal"), whereby the order dated 24-1-1996, passed by the State Transport Commissioner, Punjab, exercising the powers of Regional Transport Authority, Patiala (hereinafter referred to as "the STC) granting all the four regular stage carriage permits on Fatehgarh Sahib-Talwandi Sabo via Sirhind, Nabha, Sangrur, Barnala, Bathinda route (hereinafter referred to as the route in question") in favour of the petitioner Corporation for a period of five years in the public interest, has been set aside and those permits have been granted to respondents No. 3 to 5 each on regular basis with half trip daily on the route in question.

2. In the instant case, with a view to provide direct bus service on the route in question for the convenience of the travelling public, the applications were invited for grant of four regular stage carriage permits for plying two return trips daily, vide a notice dated 15-12-1992. In response thereto, 115 applications were received. The STC, after considering the claim of all the eligible candidates, granted all the four stage carriage permits with two return trips daily to the petitioner Corporation, while recording the finding that portion of the proposed route from Bathinda to Kotshamir falls on the monopoly route of PRTC and in

view of clause (4) of the Transport Scheme, notified by the Punjab Government vide notification dated 9-8-1990, all operations existing or future on monopoly routes shall exclusively be undertaken by the State Transport Undertakings. Since the route in question was found to be a monopoly route, therefore, none of the private applicants was considered eligible for grant of any of these permits in view of the abovesaid notified and approved Transport Scheme.

3. Feeling aggrieved against the said order, three separate appeals were filed by respondents No. 3 to 5. During the pendency of those appeals, a status report was sought by the Appellate Tribunal from the Secretary, Regional Transport Authority, who vide his letter dated 5-7-2004 intimated the Appellate Tribunal that all the four permits in question have been surrendered by the petitioner Corporation and that to cater the needs of the travelling public, the Regional Transport Authority has invited fresh applications for grant of the permits in question vide notice published on 8-7-2002. In response thereto, 64 applications were received, which were pending consideration. The Appellate Tribunal, while taking into consideration the fact that during the pendency of the appeal, the petitioner Corporation surrendered four permits, therefore, the same are to be allotted to the unsuccessful applicants, who had applied for those permits before the re-advertisement, allowed all the three appeals and each of the three appellants was granted a regular stage carriage permit on regular basis with half trip daily on the route in question.

4. The said order has been challenged by the petitioner Corporation.

5. Learned Counsel for the petitioner Corporation submitted that the impugned order passed by the Appellate Tribunal is totally contrary to the provisions of the Act as well as the statutory Transport Scheme dated 9-8-1990, formulated and approved by the State. Learned Counsel submitted that undisputedly, a portion of the route in question falls on the monopoly route and as per the Transport Scheme dated 9-8-1990, all operations existing or future on monopoly routes have to be exclusively undertaken by the State Transport Undertakings and no stage carriage permit can be regularly granted to any private operator on a monopoly route. He further submitted that Section 104 of the Act provides that where a scheme has been published under Sub-section (3) of Section 100 in respect of any notified area or notified route, the Regional Transport Authority shall not grant any permit except in accordance with the provisions of the said scheme, provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified route in pursuance of an approved scheme, the Regional Transport Authority may grant temporary permits to any person in respect of such notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that route.

6. Learned Counsel submitted that the Appellate Tribunal has acted illegally while granting four stage carriage permits to respondents No. 3 to 5 on regular basis, when admittedly a portion of the route falls on the monopoly route as per the

notified and approved transport scheme. He further submitted that the Appellate Tribunal has also acted illegally while holding that all the surrendered permits are to be granted to the persons, who were applicants at the time of inviting applications for grant of those permits, if the appeal against the order of grant of such permit was pending consideration. Learned Counsel submitted that the Appellate Tribunal has totally ignored/overlooked the fact that initially the permits were granted to the petitioner Corporation for a period of five years and after the expiry of the period, the permits were surrendered by the petitioner Corporation, because at the relevant time, it was not having sufficient number of new buses. He further submitted that subsequently, the petitioner Corporation had purchased new buses and put their claim on those surrendered permits. Therefore, learned Counsel for the petitioner Corporation submitted that if respondents No. 3 to 5 would have been granted temporary permits on the monopoly route, the same have to be granted to the petitioner Corporation in terms of Section 104 of the Act.

7. On the other hand, learned Counsel for respondent No. 3 submitted that if during the pendency of the appeals against the grant of permits by the STC in favour of the petitioner Corporation, the permits are being surrendered by the grantee, then those permits are to be offered and granted to the unsuccessful applicants on regular basis, whose appeals were pending. He submitted that in such a situation, it is not open for the Regional Transport Authority to invite fresh applications for grant of surrendered permits. In support of his contention, the learned Counsel relied upon the decision of a Division Bench of this Court in CWP No. 1402 of 2003, titled *Amloh Bus Service (Regd.) Gobindgarh v. State of Commissioner*, decided on 24-5-2003. The learned Counsel further submitted that even if a permit is surrendered by the State Transport Undertaking, which was granted to it being the monopoly route, then such permit can be allocated to a private operator on regular basis. He further submitted that once a permit granted to the State Transport Undertaking is surrendered, then it cannot again apply for the said permit till such time the route is advertised afresh. In support of his contention, the learned Counsel relied upon another decision of a Division Bench of this Court in CWP No. 18713 of 2003, titled *Amloh Bus Service (Regd) v. State of Punjab*, decided on 27-3-2006.

8. After hearing the arguments of learned Counsel for both the parties, we are of the opinion that the Appellate Tribunal has passed the impugned order not only in violation of the notified and approved transport scheme dated 9-8-1990, but the said order is also in violation of the provisions of Section 104 of the Act. Undisputedly, portion of the route in question falls on the monopoly route of the State Transport Undertaking. As per the notified and approved transport scheme dated 9-8-1990, all operations existing or future on monopoly routes shall exclusively be undertaken by the State Transport Undertakings. No private operator can be granted a stage carriage permit for plying the buses on monopoly route. Section 104 of the Act clearly provides that where a scheme has been published under Sub-section (3) of Section 100 in respect of any notified

area or notified route, the Regional Transport Authority shall not grant any permit except in accordance with the provisions of the said scheme, provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified route in pursuance of an approved scheme, the Regional Transport Authority may grant permits on temporary basis to any person in respect of such notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that route. Therefore, even if a State Transport Undertaking is not available or has not applied for grant of stage carriage permit on the monopoly route, in that situation, the Regional Transport Authority, while taking into consideration the need of the travelling public, can grant the said permit to a private operator temporarily, subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking for the said route. Hence, from the provision of Section 104 of the Act read with notified and approved transport scheme, it is clear that in no circumstance a private operator can be granted the stage carriage permit regularly on a monopoly route but in a particular situation, he can be granted the stage carriage permit on such route on temporary basis till the time the State Transport Undertaking is granted the regular permit on the said route. In view of this, the Appellate Tribunal has acted illegally, while granting the four stage carriage permits to respondents No. 3 to 5 on regular basis. Even if it is assumed that the unsuccessful candidates, whose appeals against the grant of regular stage carriage permit were pending, are entitled for consideration for allotment of the surrendered permits, as per the law laid down in CWP No. 18713 of 2003, title *Amloh Bus Service (Regd.) v. State of Punjab*, decided on 27-3-2006 (*supra*), even then those appellants cannot be granted those permits on the monopoly route on regular basis.

9. The Division Bench judgment of this Court in CWP No. 18713 of 2003, titled *Amloh Bus Service (Regd.) v. State of Punjab*, decided on 27-3-2006 (*supra*), as relied upon by counsel for respondent No. 3, where it has been observed that there is absolutely no bar not to grant the stage carriage permits on monopoly route to the private operator on regular basis, in case the State Transport Undertaking surrenders those permits, is totally contrary to the provision of Section 104 of the Act and the learned Judges, while making the said observation, have not even referred or considered the provision of Section 104 of the Act. Therefore, the said observation is not binding on us being per incuriam.

10. In view of the above, the present writ petition is partly allowed and the impugned order dated 13-9-2004, passed by the Appellate Tribunal, is modified to the extent that all the three permits granted to respondents Not 3 to 5 with half trip daily on the route in question shall deemed to be temporary subject to the condition that these permits shall cease to be effective on the issue of those permits to the State Transport Undertakings in accordance with Transport Scheme.