

(2011) 08 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13940, 1252 and 1595 of 2009.

Punjab Roadways Chandigarh

APPELLANT

Vs

Arjindera Bus Service Regd. and others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 164 PLR 327

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Singh, J.—Since all the writ petitions are arising out of the one and same impugned order dated 1.12.2008 passed by State Transport

Appellate Tribunal, Punjab, Chandigarh, therefore, with the consent of the learned counsel for the parties, present petitions are being disposed of

together by this judgment.

2. For the sake of brevity, CWP No.13940 of 2009 is being treated as leading case.

3. In the present case, Punjab Roadways, Chandigarh, has challenged the order dated 1.12.2008 passed by State Transport Appellate Tribunal,

Punjab, thereby granting permanent permit to respondent No.1 Arjindera Bus Service on the route in question i.e. Mohali-Ludhiana via Samrala.

4. Undisputedly, as per the approved transport scheme dated 9.8.1990 as modified on 21.10.1997, the permits were required to be granted in

favour of State Transport Undertakings and private operators in the ratio of 50:50 on the route in question. As per the scheme, out of six total

permits for the route in question three were to be granted to the State Transport

Undertaking and three to the private operators. Learned

Transport Commissioner, Punjab, was pleased to grant one each permit to Punjab Roadways, Ropar, Punjab Roadways, Chandigarh and PEPSU

Road Transport Corporation, Ludhiana (total three in favour of the State Transport Undertakings) and one each in favour of Gurdev Tourist Bus

Service (Regd.), Samrala, Libra Bus Service Pvt. Ltd, Malerkotla, and Libra Express (Regd.), Ludhiana (three total in favour of private operators).

5. Learned State Transport Appellate Tribunal called a report from the Punjab Roadways, Chandigarh, to the effect as to whether Punjab

Roadways, Chandigarh, has lifted the permit for the route in question on a application dated 12.8.2008. Regional Transport Authority, Patiala,

vide report dated 21.8.2008 has reported that Punjab Roadways, Chandigarh, has not lifted permit granted to the Punjab Roadways, Chandigarh,

for the route in question. Learned Tribunal having observed that permit could only be lifted within six months, therefore, now Punjab Roadways,

Chandigarh, cannot be allowed to lift the permit in question, therefore, unlifted permit can be granted in favour of the private operator and has

allowed the appeal filed by Arjindera Bus Service and granted permit in favour of Arjindera Bus Service for the route in question.

6. The short question involved in the present petition is as to whether any permit can be granted in favour of the private operator for the quota fixed for STUs?

7. Hon"ble Apex Court in the matter of Punjab Roadways Moga through its General Manager Vs. Punja Sahib Bus and Transport Co. and Others

etc. etc., in paragraphs No.28 to 36 has held as under: -

28. We find it difficult to accept the reasoning of the Tribunal. In our view, there is complete misreading of the provisions of 1990 Scheme as

amended and provisions of Chapter VI of the Act. Provisions of this Chapter confer a monopoly on the State in respect of transport service to the

partial or complete exclusion of other persons. Section 98 says that provisions of above mentioned Chapter and the Rules or orders made

thereunder shall have effect notwithstanding, anything inconsistent contained in Chapter V or in any other law for the time being in force or any

instrument having effect by virtue of any such law.

29. Section 99 of the Act deals with preparation and publication of proposal regarding road transport services of an STU which enables the State

Government to formulate a proposal for the purpose of providing an efficient, adequate, economical and properly co-coordinated road transport

service, by giving particulars of the nature of the service proposed to be rendered, the area or route proposed to be covered and other relevant

particulars respecting thereof and the Government is also empowered to publish such a proposal in the gazette in public interest. After calling for

objections to the proposed scheme, and examining the same the scheme has to be published in accordance with the provisions of Section 100 of

the Act. The scheme once published is law and chapter VI has an overriding effect on Chapter V of the Act and it operates against everyone

unless it is modified or cancelled by the State Government.

30. The scheme also provides for a ratio with regard to the grant of permits on the notified routes between STUs and private operators which is

fixed based on the assessment made by the State Transport Commissioner, Punjab on the basis of the passenger road transport needs which is

legally binding on all. The provisions of the scheme including the list of routes mentioned in the various annexures, and the ratio fixed are statutory in

character which cannot be tinkered with by the RTAs and have overriding effect over the powers of RTAs under Chapter V of the Act.

31. The power to cancel the Scheme or modify the Scheme rests with the State Government u/s 102 of the Act and the RTA and the Tribunal

have committed a grave error in tampering with the Scheme as well as disturbing the ratio fixed by the Scheme by granting regular permits to the

private sector from the quota earmarked for STUs. Once a scheme is approved and published, private operators have no right to claim regular

permits to operate their vehicles in the notified area, route or portion thereof upsetting the ratio fixed. Since the scheme makes provision for partial

exclusion, the private operators are not completely excluded, they may get regular permits on the notified route or portion thereof in accordance

with the terms and conditions laid down in the scheme and within the quota earmarked for them.

32. Therefore, a combined reading of Sections 99, 100 and 104 in the light of Section 2(38) of the Act, makes it clear that once a scheme is

published u/s 100 in relation to any area or route or portion thereof, whether in complete or partial exclusion of other persons, no persons other

than STUs may operate on the notified area or route except as provided in the scheme itself. Reference can be made to the decisions of this Court

in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, ; U.P. State Roadways Transport Corpn., Lucknow through its General

Manager Vs. Anwar Ahmed and Others, and Ram Krishna Verma and Others Vs. State of U.P. and Others, .

33. Section 104 of the Act specifically restricts the grant of permits in respect of notified area or notified route. The said provision is extracted

hereunder: -

104. Restriction on grant of permits in respect of a notified area or notified route.- Where a scheme has been published under subsection (3) of

section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be,

shall not grant any permit except in accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area nor notified

route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant

temporary permits to any person in respect of such notified area, or 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 area or route.

34. The above mentioned provision states where a scheme has been published under Subsection 3 of Section 100 in respect of any notified area

or notified route, STA or the RTA as the case may be shall not grant any permit except in accordance with the provisions of the Scheme. An

exception has been carved out in the proviso to Section 104 stating, where no application for permit has been made by the STU in respect of any

notified area or notified route in pursuance of an approved scheme, the STA or the RTA, as the case may be, may grant temporary permits to any

person in respect of any such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of

permit to the STU in respect of that area or route. In our view same is the situation in respect of a case where an STU inspite of grant of permit

does not operate the service or surrenders the permit granted or not utilizing the permit. In such a situation it should be deemed that no application

for permit has been made by the STU and it is open to the RTA to grant temporary permit if there is a temporary need. By granting regular permits

to the private operators RTA will be upsetting the ratio fixed under the scheme which is legally impermissible.

35. In Anwar Ahmad this Court had occasion to examine the scope of the proviso to Section 104 and held as follows:-

7. it would, therefore, be seen that where the scheme has been published under subsection (3) of Section 100 in respect of any notified area or

notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in

accordance with the provisions of the scheme. Thus, the appellant-Corporation has the exclusive right or monopoly to ply their stage carriages and

obtain the required permit as per the scheme. The proviso gives only a limited breath of life, namely, until the Corporation puts the vehicles on the

notified routes as per the scheme, temporary permits may be granted to private operators. Thereby, it would be clear that temporary

inconvenience to traveling public is sought to be averted till the permits are taken and vehicles are put on the route by the appellant. Therefore, the

temporary permits will have only limited breath of life. Private operators are attempting to wear the mask of inconvenience of traveling public to

infiltrate into forbidden notified area, route or portion thereof to sabotage the scheme"" 36. We may point out if the public is put to hardship or

inconvenience due to failure on the part of the STUs to operate services inspite of grant of permits for a considerable long time, it is always open to

the State Government to modify the scheme and make appropriate changes in the ratio fixed on the basis of passenger road transport needs as

assessed by the State Transport Commissioner but such a power is not conferred on the RTA and till that is done no private operator can operate

his service on any part or portion of a notified area or notified route upsetting the ratio prescribed in the scheme except on a temporary permit

granted under the proviso to Section 104 of the Act. Reference can be made to the judgments of this court in UPSRTC v. Sanjida Banuo, (2005)

10 S.C.C. 280 ; M. Madan Mohan Rao and Others Vs. Union of India (UOI) and Others, and U.P. State Road Transport Corporation through

its Chairman Vs. Omaditya Verma and Others, for understanding the general purport of such Schemes and the provisions of the Act.

8. In view of the dictum of the Hon''ble Apex Court, learned Transport Tribunal absolutely had no jurisdiction to grant permit in favour of the

private operator i.e. Arjindera Bus Service for the route in question on the ground Punjab Roadways, Chandigarh, has failed to lift the permit

within six months. Neither RTA nor STA nor Appellate Tribunal are authorized to grant any permit in violation of the scheme although for the

limited period temporary permit could have been granted when STU was unable to lift the permit. Therefore, order impugned cannot be sustained

in the eye of law.

9. Present petition is allowed. Order impugned is set aside. Permit granted in favour of Arjindera Bus Service stands set aside.