
(1987) 07 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3782 of 1985

Punjab Sikh Regular Motor Service, Bilaspur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-07-1987

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Motor Vehicles Act, 1939 — Section 68C, 68F(1D)

Citation : AIR 1988 MP 43 : (1988) JLJ 285 : (1987) 32 MPLJ 776 : (1987) MPLJ 776

Hon'ble Judges : N.D. Ojha, C.J.;C.P. Sen, J

Bench : Division Bench

Advocate : P.G. Palsikar, for the Appellant; V.S. Dabir, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, C.J.

This order shall govern the disposal of Misc. Petition No. 3794 of 1985 also. Both these writ petitions have been filed by the same petitioner M/s. Punjab Sikh Regular Motor Service, Bilaspur.

Shorn of unnecessary details, the relevant facts are that Misc. Petition No. 3782 of 1985 pertains to the grant of a permit on Bilaspur-Ramanujganj route, whereas Misc. Petition. No. 3794 of 1985 pertains to Ambikapur-Bilaspur route. The Regional Transport Officer, Bilaspur, invited applications for grant of permits on 16th February, 1979. The petitioner along with others applied for the grant of permit on both these routes and his case is that this application was made within time. These applications, however, remained pending for long and ultimately it was on 30th September, 1983 and 29th June, 1984 that applications for the two routes were published in the official gazette. On 30th September, 1983 itself Scheme No. 89 was published u/s 68C of the Motor Vehicles Act 1939 (hereinafter referred to as the Act). This scheme is about routes and not about any area and the routes inter alia cover by the scheme were Bilaspur-Madai. and

Tara-Ambikapur, These routes which have been included in the scheme constitute part of the routes in respect whereof applications were made by the petitioner for grant of permit. The R.T.A. granted permit to the petitioner on each of these two routes on the basis of the applications referred to above. M/s. Surguja Transport, Ambikapur (respondent No. 3 in M.P. No. 3782 of 1985) had filed an objection before the R.T.A. against the application of the petitioner for grant of permit on the Bilaspur-Ramanujganj route. In regard to Ambikapur-Bilaspur route, which is the subject-matter of M.P. 3794 of 1985. M/s. Janta Transport Co-operative Society (respondent No. 4 in that petition) was the applicant and the petitioner was a co-applicant. M/s. Surguja Transport, Ambikapur, who is respondent No. 5 in M.P. No. 3794 of 1985, had filed an objection against the grant of permit to the Janta Transport Cooperative Society whereas Khalsa Bus Service, Bilaspur (respondent No. 6 in M.P. No. 3794 of 1985) had filed an objection against the grant of permit to the petitioner who was co-applicant. Aggrieved by the order of grant of permits to the petitioner on Bilaspur-Ramanujganj route, M/s. Surguja Transport, Ambikapur preferred an appeal before the State Transport Appellate Tribunal, Madhya Pradesh, Gwalior (respondent No. 2). It also filed an appeal against the grant of permit to the petitioner on the Ambikapur-Bilaspur route. An appeal was preferred by M/s. Janta Transport Co-operative Society also who too was an applicant for the grant of permit on the said route. An appeal was preferred by Khalsa Bus Service, Bilaspur, also who was an objector to the grant of permit to the petitioner. The appeals challenging the grant of permits to the petitioner on the two routes aforesaid were allowed and the grant made in favour of the petitioner was quashed by the State Transport Appellate Tribunal.

Before dealing with the submissions made by learned counsel for the petitioner, we find it necessary to point out that on the facts of the instant case which are not disputed, namely, that Scheme No. 89 was published u/s 68C of the Act on 30th September, 1983 and that the said scheme is still pending, the approved scheme not having yet been published, and in view of the plain language of Sub-section (1D) of Section 68F of the Act, the two permits granted to the petitioner on 3rd January, 1985 and 18th April, 1985 could not have been granted. The grant of permits to the petitioner is apparently, therefore, void. In this connection it may be noted that in Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, it was held :

"It will, therefore, be seen that where a scheme is published u/s 68-C, no permit in respect of a route specified in the scheme can be granted or renewed during the intervening period between the publication of the scheme u/s 68-C and the publication of the approved scheme, except a temporary permit to the State Transport Undertaking under Sub-section (i-A) or failing that a temporary permit to any other person under Sub-section (1-C) with this qualification that an existing permit can be renewed for a limited period."

A similar view was taken by a Full Bench of this Court in Damodar Das Sital Dass Vs. Regional Transport Authority, Rewa, . In that case, applications were invited

in regard to Bidhauri Sidhi route which included the highway between Amaliya and Bahari and it was held that grant of permit on this route would offend the ban in Section 68F(1D) and, therefore, the Regional Transport Authority had no jurisdiction to invite applications for the route.

The legal position that on the facts of the instant case the two permits granted to the petitioner were void admits of no doubt. Learned counsel for the petitioner, however, urged that since the petitioner had applied for the permits within limitation from 16th February, 1979 when applications were invited by the R.T.A. in this behalf, the petitioner cannot be allowed to suffer on account of the applications being kept pending till after the notification u/s 68C of the Act was published. According to him, since inordinate delay was caused by the R.T.A. in disposing of the applications of the petitioner, the ultimate grant of permits to the petitioner even if not sustainable in view of Section 68F(1D) of the Act did not deserve to be cancelled and the State Transport Appellate Tribunal committed an error of law in cancelling the grant. In this connection reliance has been placed by learned counsel on *The Cheran Transport Co. Ltd. Vs. Kanan Lorry Service and Another*, . In that case at the time a stage carriage operator's permit expired a draft scheme had already been published. In usual course and in compliance with Section 58, the permit holder had applied for renewal before 120 days ahead. But the State withdrew the draft scheme for some technical reasons and republished it after the operator's permit had expired. The R.T.A. rejected the operator's application for renewal. On writ petition, the High Court had granted renewal on a wider view of Section 68F(1D). On appeal in the Supreme Court it was held that the renewal of permit must remain to the extent contemplated in the proviso to Section 68F(1D). The fact that the draft scheme was later withdrawn could not affect the right of the operator to a renewal. If for reasons beyond the control of the operator the renewal process got delayed or prolonged he could not be penalised. Save in this category of cases, all other permits which expired before the draft scheme was published suffered the ban of Section 68F(1B). However, no permit could enure beyond the time of the publication of the approved scheme. In the instant case, the draft scheme was at no point withdrawn and republished as was done in the case of *Charan Transport Co.* (supra). Further, the instant one is not a case of renewal of a permit but grant of a fresh permit. The case of *Charan Transport Co.* (supra) was distinguished by the Supreme Court in *Anna Transport Corporation Ltd. Vs. Regional Transport Authority, Dharmapuri and Others*, and it was held :

"It is not in controversy that Sub-section (1A) or Sub-section (1C) of Section 68-F are not applicable to the controversy. The rest of Sub-section (1D) provides that no permit shall be granted or "renewed", during the period intervening between the date of publication u/s 68C of any scheme and the date of publication of any approved or modified scheme, in favour of any person in relation to an area or route or portion thereof covered by that scheme.

As has been stated, a draft scheme of road transport service of the appellant-

Corporation was published on June 4, 1976, u/s 68-C of the Act and as has been mentioned, that scheme overlapped a section of the Salem Krishnagiri route. It follows, therefore, that by virtue of the clear provision of Sub-section (1D) of Section 68-F of the Act, no permit could be granted or renewed during the period intervening between the date of publication of the aforesaid scheme u/s 68-C, that is, after June 4, 1976, and the date of publication of the approved or modified scheme, in favour of any person for any class of road transport service. The High Court, therefore, clearly went wrong in thinking that the case fell within the purview of the proviso to Sub-section (1D) and it consequently erred in taking into consideration the so-called rider to proposition No. 2 mentioned in this Court's judgment in Charan's case."

In the case of Damodar Das (AIR 1977 Madh Pra 46) (supra) it was held by a Full Bench of this Court :

"But the purpose behind Sub-ss. (1-A) to (1-D) of Section 68-F appears to be to maintain the status quo as on the date of publication of the scheme u/s 68-C until the approved scheme is finally published subject to the provision for grant of temporary permits in case of need for the intervening period. It was probably expected by Parliament that this intervening period would not be a long one and the process leading to the approval and publication of approved scheme would be over within a reasonable time. Parliament may have never thought that a scheme published in 1965 inviting objections within 30 days can remain in cold storage for nearly eleven years still awaiting approval, modification or rejection by the appropriate Government. Inaction of the Government in that behalf cannot, however, make any difference on a question of construction of the relevant statutory provisions."

In this view of the matter, we are not inclined to accept the submission made by learned counsel for the petitioner that simply because there was delay in the disposal of the applications made by the petitioner for grant of permits, the State Transport Appellate Tribunal committed any error of law in cancelling the permits which were void in view of the bar created by Section 68F(1D).

Learned counsel for the petitioner then urged that Sub-section (1D) of Section 68F was ultra vires inasmuch as it offended Article 19(1)(f) of the Constitution. We find no substance in this submission after the deletion of Article 19(1)(f). Even if reference to Article 19(1)(f) by counsel for the petitioner during the course of arguments is taken to be a slip of tongue for Article 19(1)(g), we are of opinion that Sub-section (1D) aforesaid is not violative even of Article 19(1)(g). The restriction placed by this sub-section, keeping in view of the purpose behind Sub-sections (1A) to (1D) of Section 68F of the Act as pointed out in the Full Bench decision of this Court in the case of Damodar Das (AIR 1977 Madh Pra 46) (supra), namely to maintain the status quo as on the date of publication of the scheme u/s 68-C until the approved scheme is finally published subject to the provision for grant of temporary permits in case of need for the intervening period, is a reasonable restriction.

Lastly it was urged that Section 64(1)(f) of the Act contemplated an appeal only by one who satisfied the test of "having opposed the grant of a permit". It was pointed out that the appeals preferred by M/s. Surguja Transport, Ambikapur, were not maintainable inasmuch as even though objections had been filed by M/s. Surguja Transport, Ambikapur, those objections had subsequently been withdrawn. In this connection it may be pointed out that so far as Ambikapur-Bilaspur route is concerned which is the subject matter of M.P. No. 3794 of 1985, as seen above, an appeal had been filed by Khalsa Bus Service also who was an objector. It is true that the objection of Khalsa Bus Service was decided ex parte, but in our opinion the ground on which the objection was dismissed would not make any material difference. That apart, an appeal had also been filed by M/s. Janta Transport Co-operative Society which was a co-applicant for the permit and was consequently entitled to prefer an appeal u/s 64(1)(a) of the Act. The order of the State Transport Appellate Tribunal, therefore, does not deserve to be quashed in so far as the said route is concerned on this ground either. As regards BiEaspur Ramanujganj route, which is the subject matter of M. P. No. 3782 of 1985, it is true that the appeal in regard to this route was preferred only by M/s. Surguja Transport, Ambikapur, who had withdrawn their objection, but on the facts of the instant case we are of the opinion that in view of our findings recorded above, it is not a fit case for the exercise of the extraordinary jurisdiction of this court under Article 226 for quashing the order of the State Transport Appellate Tribunal on this technical plea. In A.M. Allison Vs. B.L. Sen, it was held that proceedings by way of certiorari are not "of course" and the High Court can refuse to issue a writ of certiorari if it is satisfied that there has been no failure of justice. As seen above, the grant of permit to the petitioner by the R.T.A. was void. It is also settled law that if the effect of quashing an order would be to restore an order which is void, it would not be appropriate to exercise jurisdiction under Article 226 of the Constitution. The effect of quashing the order of the State Transport Appellate Tribunal in the instant case would be to perpetrate a void grant in favour of the petitioner. It cannot be said that any failure of justice would occur in the eye of law if the petitioner does not succeed in achieving the benefit of a grant which is void in law. Certainly, this Court would not be justified under Article 226 of the Constitution to assist the petitioner in achieving such a benefit.

In the result, we find no merit in any of these two writ petitions and they are accordingly dismissed, but there shall be no order as to costs.