
(1996) 10 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8121 of 1996

Punjab State

APPELLANT

Vs

Guria Bus Service Pvt.Ltd.

RESPONDENT

Date of Decision : 29-10-1996

Acts Referred:

Citation : (1996) 10 P&H CK 0059

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. N.S. Boparai, D.A.G., Punjab., Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. By this judgment I dispose of two Writ Petition Nos. 8121 of 1996 of Punjab v. M/s. Guria Bus Service and another) and 7006 of 1996 M/s Guria Bus Service Pvt. Ltd. v. State Transport Commissioner and others) 1995(2) RRR 6(P&H) as the same question of fact and law is involved therein.

2. In the C.W.P. No. 8121 of 1996 filed by the State of Punjab prayer has been made for the issuance of a writ in the nature of certiorari quashing the impugned judgment/order dated 28.2.1996 (Annexure P9) passed by the State Transport Appellate Tribunal, Punjab, while in C.W.P. No. 7006 of 1996 filed by M/s. Guria Bus Service Pvt. Ltd. prayer has been made for the issuance of a writ in the nature of mandamus directing the State Transport Commissioner and the Secretary, Regional Transport Authority, Ferozepur, respondents Nos. 1 and 2, respectively to release two permits with one return trip in favour of the petitioner on Khubana Chandigarh route, in pursuance of the judgment dated 28.2.1996, referred to above, passed by the State Transport Appellate Tribunal. I am taking up the facts from C.W.P. No. 8121 of 1996 because the fate of the other writ petition depends upon the decision of this writ petition. If C.W.P. No. 8121 of 1996 is dismissed, the writ petition filed by M/s. Guria Bus Service Pvt. Ltd. will succeed, and if C.W.P. No. 8121 of 1996 is allowed as prayed for, the second writ petition, i.e. C.W.P. No. 7006 of 1996, would become infructuous.

3. The case set up by the Punjab State in its writ petition is that in order to issue/grant route permits to the Transport Companies/Punjab Roadways/PEPSU Road Transport Corporation two separate schemes envisaging progressive nationalisation of road transport were in operation in the erstwhile areas of Punjab and Pepsu. The former scheme expired on 18.11.1976 and the latter on 30.6.1977 without taking over operations from the private operators by the Punjab Roadways or the PEPSU Road Transport Corporation. No further scheme was approved by the State Government at the relevant time. In the absence of the transport policy, the department of State Transport Commissioner adopted the practice of issuing four monthly temporary permits instead of regular permits. Accordingly, Punjab Roadways, Muktsar, was granted two temporary stage carriage permits with one return trip daily in the year 1986. Aggrieved by the orders of the State Transport Commissioner, Punjab, Libra Bus Service Pvt. Ltd., Malerkotla, had filed C.W.P. No. 865 of 1986 in the High Court, which was allowed vide Annexure P1, vide which it was held that the temporary permits were to be issued after issuing notice and hearing the concerned operators. In compliance with the order (Annexure P1) passed in C.W.P. No. 865 of 1986, applications for the grant of two temporary stage carriage permits with one return trip daily on the said route were invited through public notices. In response thereto applications were received from 14 applicants, including the Punjab Roadways, Muktsar, M/s Guria Bus Service Pvt. Ltd. and M/s Libra Bus Service Limited. The contents of their applications were published in Motor Transport Gazette, Chandigarh dated 22.7.1988 under Section 57(3) of the Motor Vehicles Act, 1939 (for short 'the Act'). No objections were received from any quarter within the prescribed period. In the meanwhile the Hon'ble Supreme Court issued directions on 27.7.1987 in that case reported as M/s Jagjit Bus Service State Transport v. State Transport Commissioner, Punjab and another, AIR 1987 S.C. 2272, wherein it was directed that only regular permits should be issued, by cessation of all temporary permits. In the light of the judgment of the Supreme Court it was decided that in case an existing operator has been giving trouble free service to the general public and who has experience and knowledge of the route, he would certainly be placed in a better position, so as to serve the interests of the travelling public. After thorough consideration, the State Transport Commissioner, Punjab, exercising the powers of the Regional Transport Authority, granted two stage carriage route permits to the petitioner (State of Punjab) with one return trip daily on the route KhurbanChandigarh via BhatindaPatiala, in its meeting dated 16.11.1988 (Annexure P3). Aggrieved by this order the Libra Bus Service Pvt. Ltd., Malerkotla and others filed separate appeals before the State Transport Tribunal, Punjab, Chandigarh, who dismissed the appeals vide judgment dated 20.11.1990. Aggrieved from this judgment/order, M/s Guria Bus Service filed C.W.P. No. 13236 of 1991 and the judgment dated 20.11.1990 was set aside and the case was remanded to the State Transport Tribunal, Punjab, Chandigarh, with the directions for a fresh decision after taking into consideration the Government decision dated 4.11.1986 (Annexure P5), in which it was clearly laid down and decided not to grant any

route permit to the State Transport, namely, Punjab Roadways and PEPSU Road Transport Corporation because both these undertakings were running into huge losses. After remanding the case both the parties were summoned by the State Transport Appellate Tribunal, who accepted the appeal of M/s Guria Bus Service by observing that due to financial constraints the State Transport Undertakings were not able to provide fresh service and that the State Transport Undertaking was not an existing operator as it did not operate on this route from May 1986 to January 1989 (Annexure P7). Aggrieved by the order dated 1.5.1992 (Annexure P7) of the State Transport Appellate Tribunal, the State Transport Commissioner, Punjab, filed C.W.P. No. 12094 of 1992 in the High Court and the case was remanded to the State Transport Appellate Tribunal, Punjab (for short 'the Tribunal') vide order dated 18.5.1993 (Annexure P8) and a perusal of this judgment/order would show that the Government letter dated 4.11.1986, which was relied upon by the Tribunal was in the nature of proposal and not any decision. It was also observed by the High Court that the decision not to expand the operation of the State Transport Undertaking was never taken by the Government and no scheme was prepared by the State Transport Commissioner (for short 'the Commissioner') in consultation with the Managing Director of the P.R.T.C. for submission to the Government. It was further held that it could not be said that the State of Punjab had decided not to expand the operation of the State Transport Undertaking. Rather it was decided that a regular scheme was to be drawn up by the Transport Department in consultation with the Managing Director of the P.R.T.C. After the second remand order (passed by Hon'ble Mr. Justice Ashok Bhan) the Tribunal decided the matter on 28.2.1996.

4. The grouse of the petitioner is that the judgment dated 28.2.1996 had been given after three years against the directions of the High Court, which ordered for the decision within three months and secondly the Tribunal did not hear the petitioner, as is apparent from its order/judgment dated 28.2.1996. It is also alleged by the petitioner that there was no basis for the Tribunal to satisfy itself that the conditions mentioned in the proviso to Section 47 (1H) of the Act had not been fulfilled by the petitioner. The remarks given by the Tribunal in its order dated 28.2.1996 are not borne out from the record. The order of the Tribunal is Annexure P9. In short the order (Annexure P9) is challenged in the present writ petition further on the grounds that the decision was given ex parte without giving any opportunity to the petitioner (Department) and, in fact, it has come to know of the order dated 28.2.1996 only on its publication in the Punjab Gazette.

5. With the above allegations and the averments, the prayer of the State of Punjab is for setting aside the order dated 28.2.1996 passed by the Tribunal.

6. Notice of the writ petition was given to the respondents. Respondent No. 1 M/s Guria Bus Service Private Limited through its Managing Director has filed reply and denied the averments. A preliminary objection has been taken that in spite of the order/judgment dated 28.2.1996 cancelling the route permit in favour of the petitioner, it is violating its order with impunity by operating the buses on

this route and in these circumstances, the petitioner does not deserve any relief, much less discretionary relief from this Court. The petitioner in spite of the directions dated 28.2.1996 is not granting the permit in favour of the answering respondent, which has also made representations and has filed separate C.W.P. No. 7006 of 1996. It was also pleaded that the disputed questions of fact had been raised with regard to the merits and demerits of the petitioner and the answering respondent with regard to the fulfilment of the conditions laid down in Section 47(1H) and such disputed questions of fact cannot be decided in the present writ petition. On merits respondent No. 1 has tried to support the order dated 28.2.1996 (Annexure P9) by stating that the petitioner was not an existing operator and, therefore, the Commissioner erred in law in declaring that the petitioner was an existing operator. Secondly, no satisfaction, as envisaged under Section 47(1H) of the Act was recorded by the Commissioner in giving a preference claim to the petitioner over the contesting respondent, and, thirdly, the Commissioner failed to take into consideration the policy decision of the Government dated 4.11.1986 by which it was undertaken that there would be no extension on the part of the State Transport Undertaking due to their unsatisfactory financial resources. The impugned order dated 28.2.1996 has been passed by the Tribunal after proper application of mind and it had afforded several opportunities and granted repeated adjournments to the petitioner in compliance with the directions of the High Court. The alleged experience gained by the petitioner on the basis of the illegal grant could not be taken as a good experience. Even this aspect was purely factual. The tribunal was satisfied with the material placed before it by the answering respondent in the form of extracts from statistical abstract of the Government of Punjab in the form of budgetary statement as also gazette notification and came to the conclusion that the condition of the Punjab Roadways was deplorable. The impugned order has been passed in the presence of the State counsel and should not be set aside nor any case of remand has been made out, as pleaded by the learned Deputy Advocate General, Punjab, Shri N.S. Boparai.

7. The parties have placed documents in support of their contentions and I have heard Shri Ashu M. Punchhi, learned counsel appearing for M/s. Guria Bus Service Pvt. Ltd., and Shri N.S. Boparai, D.A.G. Punjab, appearing for the State of Punjab, and with their assistance I have gone through the record of this case.

8. In this case the controversy lies in a very narrow compass to see the propriety and legality of the order dated 28.2.1996. Before I deal with the argument of Mr. Boparai, it may be useful for me to refer to the two judgments one dated 26.3.1992 passed in C.W.P. No. 13236 of 1991 (M/s. Guria Bus Service Pvt. Ltd. v. the State Transport Commissioner, Punjab and others) delivered by Mr. Justice G.C. Garg vide which the remand order was passed. It was categorically held by this Court in the said judgment that the decision of the State Government dated 4.11.1986 that there would not be further expansion was not noticed by the State Transport Commissioner while granting permits in favour of the Punjab Roadways, Muktsar. The Court relied upon M/s. Themmalapuram Bus Transport,

Palghat v. The Regional Transport Authority Palghat and others, AIR 1967 Kerala 285 and held that it could not be said that the State Transport got the requisite experience which it gained on the basis of an illegal route permit. In the second decision dated 18.5.1993 in C.W.P. No. 12094 of 1992 (State of Punjab v. M/s Guria Bus Service Pvt. Ltd. and another), Mr. Justice Ashok Bhan gave specific directions to the Tribunal to afford an opportunity to Punjab Roadways, Muktsar to place on record the material to satisfy the condition mentioned in the proviso to Section 47(1H) of the Act and it was also directed that opportunity would be granted to the private operators to place on record the material which would show that the Punjab Roadways, Muktsar did not have the capacity to take out an additional responsibility of running the buses on this route and thereafter record the satisfaction as contemplated in Section 47(1H) of the Act. Also directions were given to the Tribunal whether a requisite security had been deposited by M/s Guria Bus Service Pvt. Ltd. for applying for the route permits. The gist of both the judgments, if taken together in the light of the back history of the case, would show that the action on the part of State Transport Commissioner was under challenge when he granted the route permit in favour of Punjab Roadways, Muktsar and it was also to be seen whether the State Transport Corporation was able to satisfy the conditions laid down in the aforesaid proviso. The Government was disputing the earlier decision of 1986 by alleging that it had been modified/repealed subsequently somewhere in the year 1987, but the rights of the parties in this case have to be governed under the old Act.

9. In this regard it will be seen as to what we mean by a reasonable opportunity. Reasonable opportunity to my mind would mean that the party should not be deprived of its legitimate right to adduce evidence in support of its case and sufficient time must be granted to such a party to adduce the evidence, if it so chooses. Such time must be afforded to the party which is reasonable to him/her in order to summon the witnesses or place on record such documents which are necessary for proper adjudication and determination of the case. Reasonable opportunity does not mean that the party obliged to help the Court in the determination of the issue can stretch the time allowed to any dimensions. No doubt Justice Ashok Bhan in his judgment directed the Tribunal to decide the case within three months and it could not be decided due to the legal remedies available to the unsuccessful party to the litigation. If three years had elapsed on the part of the Tribunal in not disposing of the appeal, as directed by the High Court, it must be interpreted to the advantage of the Statepetitioner, which could not even adduce its evidence within a span of three years so as to convince the Tribunal, nor bring its case under the provisions of Section 47(1H) of the Act. If a party has failed to lead evidence in spite of the reasonable time given to it in order to prove its case and to disprove the case of the opposite party, it cannot be allowed to cry that injustice has been done and that this Court should help to it by again remanding the case to the Tribunal. By allowing such a prayer would amount to a mockery of the law, which is never the spirit of the dispensation of

justice. The order of remand was passed by this Court in the presence of the counsel for the parties. It cannot be imagined that the State or its functionaries were not aware of the material which was to be placed before the Tribunal in order to bring its case under the proviso to Section 47(1H) of the Act. In spite of that it had shown its back, the only inference is that it wanted to delay the matter to unlimited proportions so as to deprive the rights of the other parties and such an action on the part of the State authorities cannot be allowed as it will be violative against the principles of Articles 14 and 16 of the Constitution of India. We are a country, which is governed by the rule of law and from everybody it is expected that he would give highest regard to the law of the country irrespective of the fact whether it is a State or a private individual.

10. Now it is to be seen whether the Tribunal gave the opportunity to the State petitioner or not ? In para No. 4 of the impugned order it has been clearly mentioned by the State Transport Appellate Tribunal :

``.....Since there was a direction to decide this appeal within 3 months after giving an opportunity to the parties to place material on the record, parties were directed to do so and the matter was adjourned to July 20, 1995. Thereafter 3 adjournments were granted and on September 18, 1995 the appellant's counsel filed an affidavit dated September 11, 1995 and along with it filed the budgetary statement as contained in statistical abstract for 1993 to support its contention that Punjab Roadways was not in a position to provide an efficient service.

The matter was adjourned on 15 occasions and the Punjab Roadways, Muktsar was given these many opportunities to place material on record but it failed to do so.``

The Tribunal had to say in para No. 4 of its order and rightly too :

``The appeal must necessarily be decided on the basis of affidavit, documents and arguments of the appellant. Complete lack of interest shown by Punjab Roadways, Muktsar, in coming forward to place on record the material to enable this Tribunal to satisfy itself that the condition mentioned in proviso to Section 47 (IV) is fulfilled has been glaring careless, irresponsible and hopelessly damaging to its own case. It seems no officer of R.T.A. Ferozepur whose order dated December 10, 1988 has been impugned in appeal took any trouble to step forward and place material on record to satisfy the condition. The R.T.A. Ferozepur (Powers exercised by S.T.C.) is required to be given an opportunity of being heard and this Tribunal is satisfied that such an opportunity was amply given to the Transport Authority but to no avail. Per force the appeal shall have to be decided on the basis of material placed by the appellant and the arguments addressed by its counsel.``

The above would show that if a party wants to make the Judicial/QuasiJudicial Authorities helpless, in not rendering assistance in dispensation of justice, such Judicial/QuasiJudicial Authorities do not become helpless in the decision of the matters. In spite of this attitude adopted by the State, the Tribunal considered

the pros and cons of the evidence led by the opposite party and then came to the conclusion that the State Transport Commissioner was not justified in granting the permit. It rightly held that onus of proving this issue lay squarely on the State authorities, but in spite of the repeated adjournments and many opportunities, the Punjab Roadways, Muktsar was not able to discharge that onus. This order was not passed at the back of the Government; rather it would show that the judgment was pronounced in the presence of Shri G.S. Nahar, A.A.G., after hearing his arguments. From the above, a clearcut conclusion can be deduced that reasonable opportunity was afforded to the State authorities in order to prove its case. For some valid or invalid reasons it could not prove the case, nor it wanted to prove the same, and the conclusions drawn by the Tribunal were just and based on the proper appreciation of evidence. The Tribunal also considered the aspect whether the applications were properly filed or not by the private operators and it rightly came to the conclusion that there was no defect in the submission of the applications.

11. Giving allowances to the Statepetitioner of lapses and laches committed by the Tribunal, Shri Boparai tried to build his case relying upon Annexures P10 dated 9th August, 1990, by stating that a new policy has been framed by the Government in the matter of the grant of route permits. Even this notification is not likely to improve the case of the petitioner as it contains that the present operation of the private operators shall remain unaffected till the validity of their route permits or for three years from the date of final publication of the scheme, whichever is later. The route permits granted to the private operators before the issuance of this notification cannot be held to be invalid. In Abdul Rehman and others v. The State Transport Appellate Tribunal and others, AIR 1978 S.C. 949, it was held that Section 47 of the Motor Vehicles Act emphasises the interest of the travelling public as the dominant consideration in the grant of permits. The Hon"ble Supreme Court was pleased to hold that ``the High Court under Article 226 of the Constitution should be reluctant to interfere with or disturb the decision of specially constituted authorities or tribunals under the Act, especially when the Legislature has entrusted the task of granting or renewing the stage carriage permits to the aforesaid authorities or tribunals which are expected to be fully conversant with the procedure and practice and the relevant matters which should engage their attention under the provisions contained in the Act. In dealing with applications for writs of certiorari under Article 226 of the Constitution, the High Court does not exercise the jurisdiction of an Appellate Court and the findings or conclusions on questions of fact could hardly be reexamined or disturbed by it under Article 226 of the Constitution unless the well recognised tests in that behalf were satisfied."" The said ratio of the Hon"ble Supreme Court is applicable to the facts in hand, as this Court is of the opinion that the order of the State Transport Appellate Tribunal has taken care of each aspect of the case even in the absence of the data which could be supplied by the State Transport Commissioner, and then came to the conclusion that the State Transport Commissioner (R.T.A.) was not justified in granting the permit to

the Punjab Roadways, Muktsar. I do not see any infirmity in the order dated 28.2.1996, nor any case of remand is made out, nor it is feasible to do so in order to drag the parties to another round of litigation. The rights of respondent No. 1 in the writ petition of the State are being lingered since 1988 and finality has to be given at one point or the other.

12. In the light of the above, I do not see any merit in C.W.P. No. 8121 of 1996, which is hereby dismissed.

13. The necessary corollary of the dismissal of Civil Writ Petition No. 8121 of 1996 would be the allowing of Civil Writ Petition No. 7006 of 1996. It is held that there vested a right in favour of M/s. Guria Bus Service Private Limited, and there is a corresponding duty on the part of State Transport Commissioner (R.T.A.) to give respect to the orders of the Tribunal. C.W.P. No. 7006 of 1996 is hereby allowed and directions are issued to respondents Nos. 1 and 2 in the said writ petition to release two permits with one return trip in favour of the petitioner, i.e., M/s. Guria Bus Service Pvt. Ltd., of KhurbanChandigarh Route in pursuance of the judgment dated 28.2.1996 passed by the State Transport Appellate Tribunal. The permits shall be granted within three months from the receipt of the copy of this judgment on the usual terms and conditions with no orders as to costs in both the civil writ petitions.