

(2010) 11 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal No. of 2010 (Arising out of S.L.P. (C) No's. 14450, 15686 and 15796 of 2008)

Raj Transport Co. Pvt. Ltd., Amritsar

APPELLANT

Vs

State Transp. Appellate Tribunal Pb. and Others

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 100, 101, 102, 103, 104

Citation : (2011) 1 LW 590 : (2011) 3 RCR(Civil) 379 : (2010) 12 SCALE 241 : (2010) 13 SCC 460 : (2010) 3 UC 2117 : (2011) 1 UJ 44

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Altaf Ahmad, J., Lal Gupta, Kawaljit Kochar, Ashok K. Sharma, Kusum Chaudhary, Rani Chhabra and B.S. Giri, for the Appellant; Kuldip Singh, R.K. Pandey, Ajay Pal, K.K. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—Leave granted.

2. As all these appeals deal with similar facts and the issues involved are almost identical, we propose to dispose of these appeals by this common Judgment and Order.

3. These appeals are filed by the appellants herein being aggrieved by the Judgment and Order passed by the Punjab & Haryana High Court dismissing their writ petitions while affirming the Judgment and Order passed by the State Transport Appellate Tribunal, Punjab, Chandigarh. These appeals arise out of the similar facts, which we propose to recapitulate herein.

4. In 1988, the State Transport Commissioner, Punjab (hereinafter referred to as 'the STC') issued a notification, which was also published in the Motor Transport Gazette (weekly) Chandigarh, inviting applications for grant of four stage-carriage permits for plying two return trips daily on the Samana-Amritsar (via

Bhawanigarh, Nabha, Malerkotla) route. In response to the said notice published, 15 applications, including applications of the appellants and one of the respondents, namely, Pepsu Road Transport Corporation (hereinafter referred to as 'PRTC') were received. As per Rules, the contents of those applications were published in the Motor Transport Gazette (Weekly), Chandigarh, for inviting objections, if any. Thereafter, all the applicants were considered on merits by the STC and after hearing all the applicants, the order was reserved on 29.11.1988. The same came to be pronounced on 10.12.1988, whereby in public interest only two stage carriage permits with one return trip daily were granted to PRTC, one of the respondents herein, on the ground that the said PRTC was having experience and knowledge of the route. The remaining two permits were withheld.

5. Against the aforesaid order passed, the appellants herein and some other aggrieved persons filed five separate appeals. It may be stated herein that when the aforesaid orders were passed by the STC, the proceedings were governed by the provisions of the Motor Vehicles Act, 1939. The aforesaid Act of 1939, however, came to be repealed by the Motor Vehicles Act, 1988 which came into force effective from 01.07.1989. The aforesaid appeals filed by the appellants herein and others were considered by the Appellate Tribunal and the same were disposed of by a common order passed on 08.01.2003. By the said order, the appeal filed by the Indian Bus Service (Regd.), Malerkotla, was dismissed as being barred by limitation, whereas the appeals filed by the other four appellants including the appellants herein were allowed holding that since two permits were available, therefore, the same be granted to four appellants with half return trip daily on the route in question. The Appellate Tribunal passed a detailed reasoned order for granting benefit to the four appellants.

6. Feeling aggrieved by the aforesaid order, two writ petitions were filed in the Punjab and Haryana High Court. CWP No. 3314 of 2003 was filed by the Indian Bus Service (Regd.), Malerkotla whereas CWP No. 10661 of 2003 was filed by the PRTC. In CWP No. 3314 of 2003, Indian Bus Service (Regd.) Malerkotla challenged that its appeal was wrongly dismissed as time-barred and that its claim for grant of permits on the route in question was not considered. Whereas in CWP No. 10661 of 2003, PRTC challenged the order of granting of two permits with half return trip daily on the route in question to four appellants, on the ground that it had applied for grant of all the four permits and now after coming into force of the Act of 1988 and also after introduction of the new Transport Scheme of the State, the PRTC being a State Transport Undertaking is solely entitled to all the permits for the route, which is a monopoly route.

7. A Division Bench of the Punjab and Haryana High Court vide its order dated 04.08.2006, allowed the writ petitions and set aside the order dated 08.01.2003 and remitted the matter back to the Appellate Tribunal to decide the entire dispute afresh in accordance with law. In the said order, it was also recorded by the High Court that the Appellate Tribunal had committed an error of jurisdiction

by granting two permits with half return trip daily to four applicants, without recording any reason and without inviting applications for those permits.

8. After the remand, the Appellate Tribunal, vide its Judgment and Order dated 04.12.2006 dismissed all the five appeals including the appeals filed by the present appellants. In the said order it was recorded by the Appellate Tribunal that keeping in view the public interest, the two permits, with one return daily, were rightly granted to PRTC, who had prior experience and knowledge of the route, being the extant operator. In so far as the remaining two permits are concerned, which were withheld by the STC, it was held that after coming into force of the Transport Scheme as notified on 09.08.1990, which was subsequently modified vide notification dated 21.10.1997, it has to be give effect to, as the same is applicable and in light of the same, the route could not have been granted to the private operators because a stretch of 83 Kms. of the route in question falls on the monopoly route of Punjab Roadways and PRTC. Such a conclusion stemmed from the Transport Scheme, whereby only 20% or upto to a distance of 15 Kms. of the monopoly route (whichever is less) can be permitted to be operated by the private operators, and therefore it was held under the Transport Scheme that the appellants are not entitled to grant of any permit.

9. As against the aforesaid order passed by the Appellate Tribunal, writ petitions were filed once again before the High Court by the present appellants, which were heard, and by a detailed Judgment and Order passed on 12.02.2008, the said writ petitions were dismissed. Being aggrieved by the said order three special leave petitions were filed in this Court on which notices were issued.

10. We heard learned Counsel appearing for the parties who had taken us through the documents on record. Counsel appearing for the appellants submitted that both the Appellate Tribunals as also the High Court while passing their orders, unfortunately ignored the proviso of Clause (4) of the Notification dated 21.10.1997, which modified the earlier Notification dated 09.08.1990. It was submitted that in view of such error apparent on the face of the record and omission on the part of the Appellate Tribunal as also of the High Court, in ignoring the relevant provision which applies to the facts and circumstances of the present case, both the decisions are required to be set aside and quashed. Another submission which was advanced was that since the process of inviting applications as also the process for grant of permit were initiated prior to the coming into force of the new Motor Vehicles Act, 1988, it must be presumed that in the proceedings in the present case, the law that was applicable was the provisions of the old statute of the Motor Vehicles Act, 1939, and therefore, the new scheme cannot be said to be applicable to the facts and circumstances of the present case.

11. The aforesaid submissions of the counsel appearing for the appellants were, however, refuted by the counsel appearing for the respondents. Our attention was drawn to the provisions of Clause (4) of the notification by which a scheme was introduced. The said provisions read as follows:

(4) All future operations on monopoly route shall be operated by the State Transport Undertaking. Provided that a Private Operator may be

Allowed to operate on a portion of twenty per cent of the monopoly route or up to the distance of fifteen kilometers of the said route whichever is less, where it is necessary or is in public interest to do so;

Provided further that the permits granted by the

Regional Transport Authority before coming into force of the scheme to the private operators for operating on monopoly routes, wholly or on portion thereof on the routes in which the monopoly routes fall, shall remain unaffected.

12. Counsel for the appellants further relied upon the second proviso to submit that the said proviso is applicable to the facts and circumstances of their cases as appellants were granted permit by the Regional Transport Authority before coming into force of the scheme, and therefore, their cases to operate even on monopoly routes wholly or on portion thereof would remain unaffected. The counsel submitted that although appellants were granted permits to operate on the route in question by an order dated 08.01.2003 passed by the Appellate Tribunal, yet the said order would relate back to the order passed by the STC as the order passed by the Appellate Tribunal was in continuation of the proceedings before the State Transport Commissioner, Punjab.

13. Undisputedly, the relevant scheme was introduced under the provisions of Section 99 read with Section 100 of the Motor Vehicles Act, 1988 (Central Act No. 59 of 1988) and the same was published in the Gazette on 09.09.1990 by issuing a notification on 21.10.1997. Modifications were brought in to the aforesaid scheme and one of the modifications was insertion of the aforesaid Clause (4), by substituting the earlier Clause (4) of the scheme of 1990. The Motor Vehicles Act, 1939 was repealed and the same was substituted by Motor Vehicles Act, 1988 that became effective from 01.07.1989. Section 104 of the Motor Vehicles Act, 1988, which is relevant for the purpose of deciding the present case, is extracted below for ready reference:

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

14. When the aforesaid provision is read with the provisions of Section 98, Sub-section (2) of Section 99 and Sections 102 and 103 of Motor Vehicles Act, 1988, it becomes obvious that the provisions of the new Act, which came into operation, would be applicable and govern the cases in respect of the two permits for which appeals were pending before the Appellate Tribunal on the date when the aforesaid new Act came into force. During the pendency of the aforesaid appeals also the new scheme came into operation, and therefore, the claim of the appellants for grant of two permits which was pending before the Appellate Tribunal was governed in accordance with the provisions of the Motor Vehicles Act, 1988 read with the scheme which was promulgated and was operative and functioning. Therefore, the date when the Appellate Tribunal passed the order dated 08.01.2003 granting permits in favour of the two appellants would be the relevant date on which the appellants were granted permits and it cannot be said that the aforesaid permits, which were granted by the order of the Appellate Tribunal dated 08.01.2003 would relate back to the order passed by the STC. In our considered opinion, the relevant date is the date of the grant of the permit and such date cannot relate back to any earlier period, particularly in view of the amendment which gives emphasis on the date of grant of the permit, which factually came to be granted only after promulgation of the Scheme.

15. Examining the matter from this angle, the said position would be crystal clear. The scheme was introduced in the year 1990 and the aforesaid substitution of a new clause in place of old Clause (4) was brought about in the year 1997 and in the said modification/provision it was clearly provided that only those permits which were granted by the Regional Transport Authority before coming into force of the scheme to the private operators for operating on monopoly routes, wholly or on portion thereof would remain unaffected. As on the said date, when the aforesaid provision was inserted, the appellants had no permit granted in their favour by the Regional Transport Authority and therefore it must be held that the present appellants had no permit in their favour granted by the Regional Transport Authority before coming into force of the scheme. Consequently, the aforesaid scheme does not give any protection or benefit to the appellants. In so far other contentions of the appellants are concerned, we have already answered the same in our discussion hereinbefore. In view of coming into force of the new Motor Vehicles Act, 1988, effective from 01.07.1989, all the proceedings and particularly, the provisions of the scheme would be made applicable even to the pending cases in terms of the provisions of Section 104 of the Motor Vehicles Act, 1988 read with Sections 99 to 103.

16. Considering the facts and circumstances of the present case and the discussion made hereinbefore, we find no merit in these appeals, which are dismissed, but we leave the parties to bear their own costs.