
(2012) 05 AHC CK 0024
In the Allahabad High Court
Case No : C.M.W.P. No. 6357 of 2012

Ramendra Kumar Goel and Others	Vs	APPELLANT
State Transport Appellate Tribunal, U.P., Lucknow and Others		RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Citation : (2012) 5 AWC 5244

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : S.N. Jaiswal, for the Appellant; Samir Sharma and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri S.N. Jaiswal, learned counsel for the petitioners, Sri Yashwant Verma, learned chief standing counsel appearing on behalf of respondents No. 1, 2 and 4 and Sri Samir Sharma, advocate for respondent No. 3. The petitioners applied for grant of regular stage carriage permits on an Inter Regional Route i.e., Bulandshahr-Badaun via Shikarpur-Naraura-Sahaswan (hereinafter referred to as "applied route"). The part of applied route falls within the region of Ghaziabad and part within the region of Bareilly and that is how it is termed as "Inter Regional Route". It is not in dispute that jurisdiction to grant permit in such matter lie with State Transport Authority, U.P. Lucknow (hereinafter referred to as "S.T.A.").

2. The petitioners' claim that applied route is a non-notified route. The applications, however, were rejected by S.T.A. on the ground that applied route forms part of a notified route i.e., Sahaswan to Badaun via Bilsa which was notified vide notification No. 1754/30-2-26-66 dated 22nd June, 1977. It also observed that no private operator has been permitted to ply its buses on the aforesaid route. The petitioners filed appeal and Appellate Tribunal partly allowed the appeal by order dated 9th May, 2011 and passed the following order:

The appeals are partly allowed and partly dismissed. The S.T.A. is directed to grant the permit to the appellants to operate their vehicles on the route Bulandshahr-Shikarpur-Narora-Sahaswan. Required permit fee etc. be deposited by the appellants in accordance with law.

A copy of this judgment be kept on the record of each of Appeal Nos. 21/2008, 22/2008, 23/2008, 24/2008, 25/2008 and 26/2008 and the original judgment be retained on the record of appeal No. 1/2008.

Record received from the State Transport Authority, U.P., Lucknow be sent back to its office.

3. Consequently, applications of the petitioners for grant of permit from Sahaswan to Badaun route were rejected. In para 12, the petitioners have admitted that Badaun-Sahaswan-Bilsa was notified on 4th April, 1960. It is, however, pleaded that due to increase in population multi fold and the route getting busy, it had become necessary to increase buses to cater the public and save them from hardship but all these aspects have been ignored by respondents authorities. It is also said that the Government has denotified all the old schemes in U.P. This fact has been said in para 16 of writ petition, which has been sworn on the basis of legal advice.

4. This Court while entertaining the writ petition on 6.2.2012 passed the following order:

Let the Secretary, State Transport Authority, i.e., respondent No. 2 file his personal affidavit by 22nd February, 2012 categorically stating that once it had come to a finding that the route Bulandshahr to Badaun was notified and therefore, applications filed for grant of permit on the said route were liable to be rejected, how has it proceeded to grant permit on part of the same route i.e., Bulandshahr to Sahaswan, more so when no applications qua said limited part of the route were filed.

Put up this matter on 22nd February, 2012.

5. The aforesaid order, despite communication by learned standing counsel, was not complied and no affidavit was filed by Secretary S.T.A. i.e., respondent No. 2 hence the Court was constrained to pass following order on 23.3.2012 which reads as under:

This Court directed respondent No. 2 to file personal affidavit by 22.2.2012 relating to certain facts stated therein but the same has not been complied so far.

Learned standing counsel states that he has sent a letter but has not received instructions.

In the circumstances, Secretary, State Transport Authority, U.P. Lucknow is directed to appear before this Court personally on 11.4.2012 to explain as to why proceedings under Contempt of Courts Act be not initiated against him for disobeying and flouting this Court's order dated 6.2.2012.

A copy of this order shall be made available to learned standing counsel by 26.3.2012 to enable him to communicate the concerned respondent and compliance.

6. Despite this order of 23rd March, 2012. respondent No. 2 did not appear before the Court. The two affidavits, however, were filed on 11.4.2012. One is by Sri S.R. Tripathi, Secretary, State Transport Authority, U.P. Lucknow alongwith misc. application which infact is a photocopy of a draft affidavit and application and is not a sworn affidavit at all. It is not signed by anyone. It appears to have been prepared on 29th March, 2012 at 11.25 a.m. but without swearing, in what manner it was filed is really beyond any comprehension. The application detailed as Civil Misc. Exemption Application No. Nil of 2012, however, is signed by Shree Prakash Singh, standing counsel.

7. Another affidavit sworn by Sri Jamshed Alam Siddiqui, Deputy Transport Commissioner (Passenger Tax), U.P. Lucknow has been filed. He is said to be looking after the work of Secretary, S.T.A. The affidavit states that Sri S.R. Tripathi retired on 31st March, 2012 and the deponent Jamshed Alam Siddiqui has taken charge as Secretary, S.T.A. on 2nd April, 2012. hence he is filing the affidavit in purported compliance of this Court's order dated 23rd March, 2012. He states that order of Court has been complied with by filing required counter-affidavit. No reason has been given therein as to why Court's order dated 6th February, 2012 was not complied till 23rd March, 2012. The counter-affidavit is again an unsworn document though the affidavit is alleged to be of Sri S.R. Tripathi. The same being not sworn affidavit is no counter-affidavit in law and has to be rejected outright. It is thus evident that even on 11th April, 2012, there was no compliance of any order of this Court passed earlier.

8. The casual and negligent approach and the manner in which respondents authorities dealt with the matter, as discussed above, speak volumes about their conduct and approach to the Court as also cases pending before this Court. Despite this, averments contained in draft affidavit of Sri S.R. Tripathi were taken note by this Court to find but truth and thereafter it passed following order on 11th April, 2012:

1. Pursuant to this Court's order dated 23.3.2012 an affidavit on behalf of S.R. Tripathi alongwith exemption application has been filed stating his designation as Secretary, State Transport Authority, U.P. Lucknow but he himself is not present. He has also filed an affidavit. In the affidavit filed alongwith exemption application it is said that though order dated 6.2.2012 was received in his office but it was not brought to his notice by concerned Office Superintendent and, therefore, Sri Tripathi could not comply this Court's order dated 6.2.2012.

2. The averments are extremely vague, evasive and shows casualness in which respondents treat and deal with orders of this Court communicated to them through their standing counsel. Moreover, since the deponent of affidavit himself is not present, there is no question of passing any order on the exemption

application.

3. Learned standing counsel stated that Sri Tripathi has retired on 31.3.2012 and the competent appointing authority of Office Superintendent is Transport Commissioner, who is not party in this matter, therefore, no effective step could be taken against him.

4. Learned counsel for the petitioner at this stage prays for and is allowed to implead Transport Commissioner, U.P., Lucknow as respondent No. 4.

5. It is really unfortunate that respondents deal with the Court's matter and that too of High Court in such a negligent and contemptuous manner. Let bailable warrant be issued to Sri S.R. Tripathi S/o Late Sri J.K. Tripathi. It shall be executed through Chief Judicial Magistrate of concerned district. Newly impleaded respondent No. 4 shall also appear before this Court on the next date.

6. Further respondent No. 2 shall place before this Court original record pertaining to this Court's order dated 6.2.2012 and letter of standing counsel dated 14.2.2012 for its perusal.

7. List this matter on 1.5.2012.

8. Office shall take appropriate steps forthwith and submit compliance report on the next date.

9. Sri Samir Sharma, advocate has filed counter-affidavit on behalf of respondent No. 3. The petitioner may file rejoinder-affidavit by the next date fixed.

10. A copy of this order shall be given to learned standing counsel for communication to the concerned respondents and compliance.

9. As a consequence Sri S.R. Tripathi, former Secretary, S.T.A. and Sri Alok Kumar, Transport Commissioner, U.P., Lucknow both appeared on 1st May, 2012.

10. The learned chief standing counsel filed a copy of counter-affidavit after serving the same on the same day i.e., 1.5.2012 upon counsel for the petitioner. This affidavit shows swearing on 29th March, 2012 by Sri S.R. Tripathi". Besides, two affidavits of compliance have been filed which are sworn by Sri S.R. Tripathi and Sri Alok Kumar respectively. It is admitted by both these authorities that Court's order dated 6th February, 2012 was communicated by learned standing counsel vide letter dated 14th February, 2012 but the concerned Office Superintendent did not bring it to the notice of Secretary, S.T.A. on or before the date fixed i.e., 22nd February, 2012 hence it could not be complied with. It is only when this Court passed order on 23rd March, 2012, which was conveyed by learned standing counsel vide fax letter dated 26th March, 2012, was received in the office of Transport Commissioner on 27th March, 2012, the lapse on the part of subordinate staff in S.T.A. came to notice.

11. Sri S.R. Tripathi holding the office of Secretary, S.T.A. at that time immediately directed the concerned reference clerk Sri Arjun Srivastava to place

the entire record and thereafter a show cause notice was issued to Office Superintendent on 27.3.2012 to explain why and under what circumstances the Court's order and standing counsel's letter dated 14.2.2012 were not brought to the notice of Sri Tripathi. It is said that an enquiry has been set up by Transport Commissioner against the Office Superintendent. It is also said that after acquiring knowledge, immediate steps were taken and the counter-affidavit was sworn on 29th March, 2012. Since Sri Tripathi was retiring on 31st March, 2012 he bona fide believed that it is the incumbent discharging duties of Secretary, S.T.A. on 11th April, 2012 who should appear before the Court hence he remained absent.

12. Sri Alok Kumar, Transport Commissioner in his affidavit has also reiterated the similar facts about lack of communication on the part of office staff. His affidavit however, admits that learned standing counsel's letter dated 14th February, 2012 was received in the office of S.T.A. on 16th February, 2012 but it was entered in the register at serial No. 336 on 17.2.2012 and thereafter was handed over to Reference Clerk, S.T.A. (Section) on the same date i.e.. 17.2.2012. A preliminary enquiry report submitted by Additional Secretary, S.T.A. on 16th April, 2012 found that the Office Superintendent was not responsible for any delay since it was handed over to Sri Ashwani Kumar Upadhyay on 16th February, 2012 itself. After perusing preliminary enquiry report. Transport Commissioner claims that he has passed an order on 26th April, 2012 awarding adverse/censure entry to Office Superintendent and regular departmental enquiry has been ordered against Sri Ashwani Kumar Upadhyay by another letter dated 23rd April, 2012.

13. Sri Yashwant Verma, learned chief standing counsel fairly admitted that this Court's order dated 6th February, 2012 was communicated to respondent No. 2 by learned standing counsel vide his letter dated 14th February, 2012 and the said letter was received in the office of respondent No. 2 on 16th February, 2012. Thereafter he has placed the entire responsibility on the subordinate ministerial staff. He states that since Court's order was not brought to the notice of respondent No. 2 hence the order could not be complied. He submits that in future it shall be endeavoured that such occasion may not repeat. The respondents No. 2 and 4 in these circumstances be excused for the time being and fault, if any, on their part be condoned.

14. The Court is constrained to observe that the kind of lapses occurred in this case is not new and this is something which has not happened for the first time. The experience of this Court in dealing with various matters, invariably, wherein State is party, show similar kind of lapses almost every day and with usual frequency and candidness. Every time lack of communication is sought to be saddled on the shoulder of ministerial staff. The higher officers tried to escape any kind of laxity, lack of response apathy etc. to the Court and its orders with impunity. Almost invariably the genius of learned State Law Officers i.e., Chief Standing Counsel, Addl. Chief Standing Counsel, learned standing counsel etc.

succeed in persuading the Court not to take a strict view of the matter otherwise carrier of the officers, who treat themselves to be the cream of the administrative cadre, may be ruined. Most of times, due to pressure of work, with an intention to decide the case without indulging in further investigation as to why Court's orders are being defied with such impunity so invariably, the Court used to take a lenient view and decide matters without going further into such lapse, May be, it is one of the reason, encouraging consistent and persistent defiance and deliberate noncompliance of Court's order under the impression that if some serious situation may arise, any petty official may be made a escape goat and the matter will not take a serious turn. Some times the Courts have gone to impose some cost also but unfortunately nothing has succeeded in reforming the attitude, aptitude and vision towards the orders of the Court as also the Court cases.

15. One of the problem lie in the system that Court's orders are not received at the level of responsible officer and there is no system of communication of the same to the concerned authority immediately then and there and in any case, with reasonable promptness. Like any other communication, letters or orders of the Courts are received by a petty Dak receiving Class III or Class IV employee who do not understand its seriousness and complication and thereafter everything follow in a usual bureaucratic red-tapism. Time has come when the Court find it obligatory to direct the State Government and its authorities to evolve a system ensuring communication of High Court's as well as Apex Court's order without any delay to the responsible officials so that such situation may not recur. This will not only prevent the regular stern observations of the High Courts in one or the other matter almost everyday, but would protect the officers from the personal inconvenience in attending the Courts due to non-compliance of the directions and would save precious time of the Executive as well as Judiciary in these ancillary matters which may be utilised for other substantial issues.

16. The Chief Secretary, U.P. Government, therefore, is directed to issue a general instructions to all the officials of various departments in the State to ensure that orders of High Courts as well as Apex Court are received in their office by a responsible officer who shall ensure communication of such orders to the concerned authority immediately and without any delay. Further details of the system may be worked out by responsible departments in their own way.

17. In the present case I put on record sanction and displeasure of the Court to the respondents authorities in showing recklessness in dealing with the orders of this Court.

18. Now coming to the merits of the matter, the respondents have clearly stated that there is no de-notification of route, as alleged by the petitioner, and no person has been granted permit in violation of notified routes and the statute concerned. The petitioners though have pleaded otherwise but nothing has been brought on record. In these circumstances, I find no reason to interfere with the impugned order.

19. The writ petition lacks merit. Dismissed. Registrar General is directed to send a copy of this judgment to the Chief Secretary, U.P. Lucknow for information and compliance of the directions.