
(2017) 04 SHI CK 0122
In the High Court Of Himachal Pradesh
Case No : 1961 of 2015

Rattan Chand

APPELLANT

Vs

State of H.P. & Ors.

RESPONDENT

Date of Decision : 28-04-2017

Acts Referred:

Constitution of India, Article 12 - Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam
Legal Services Authorities Act, 1987, Section 12 - Criteria for giving legal services

Citation : (2017) 04 SHI CK 0122

Advocate : Veena Sharma, Meenakshi Sharma, Rupinder Thakur, J.S. Guleria, Abhilasha Kaundal

Judgement

1. By medium of this writ petition, the petitioner has called in question the action of respondents No. 1 and 2, whereby they without inviting all the eligible route permit holders, on their own, altered the time table thereby permitting respondent No. 3, the time slot 7:30 am for the route Rajal to Kangra.
2. It is not in dispute that as regards the timing of the bus of the petitioner, there is no change whatsoever in the same but his grievance is that in case other operators would have been given an option for the aforesaid time, he would be more ready than willing to opt for the same.
3. The officials -respondents No. 1 and 2 have not disputed the fact that they of their own have permitted respondent No. 3 to ply his bus at 7:30 am and have sought to justify the action only on the ground that since the timing of the petitioner's bus remains same, therefore, no injustice has been caused to him.
4. Respondent No. 3 has filed a separate reply, wherein he has supported the action of respondents No. 1 and 2 and would contend that he had earlier been plying three buses from Rajal to Kangra, the timings whereof are 7:30 am, 7:50 am and 8:19 am. However, in the month of December, 2010, he has surrendered the route of the timing of 7:30 am. It was thereafter on the basis of public

demand backed by resolution of three Gram Panchayats, namely, Rajal, Nandrool and Bohar-Kawalu that the timing of the route of the bus of respondent No. 3 had been changed by respondents No. 1 and 2 from 8:19 am to 7:30 am, which in no manner caused prejudice or adversely affected the petitioner as his bus would ply as the time already fixed i.e. 8:00 am and earlier to that respondent No. 3 was already plying his bus at 7:50 am. I have heard learned counsel for the parties and have gone through the records of the case.

5. The Division Bench of this Court in a judgment authored by me in CWP No. 1297 of 2015, titled Niji Bus Operator Kalyan Sabha vs. State of H.P. & Ors. had directed the respondents to draw up time table(s) in a manner so as to ensure equitable distribution of passengers.

6. Further this Court in *Ajay Parihar vs. State of H.P. & Ors.*, ILR 2016 (3) 935 had made scathing observations reminding the official respondents that the offices being held by them were sacred trust and meant for use and not abuse and in case they would surpass the rules, then law is not that powerless and would step in to quash such arbitrary orders.

7. In a welfare State, the Government has to Act in a fair, transparent, just and reasonable manner. It must as said by Mr. Justice Frankfurter in *Vitrelli vs. Satun*, 359 US 535 rigorously hold to the standard by which it professes its action to be judged, no action of the Government or its functionaries can be founded on the arbitrary exercise of power, nor can any individual be chosen for distribution of State largesse or benefits on its liking. The Government cannot be permitted to exercise its action in favour of any person on the basis of its discretion to do so unless such exercise of discretion is founded on clear cut guidelines and the policy bereft of unreasonableness or arbitrariness.

8. Admittedly, the respondents, more particularly, respondent No. 2 is a creation of statute and is a State within the meaning of Article 12 of the Constitution of India and, therefore, cannot act like a private individual, who is free to act in a manner whatsoever he likes, unless it is interdicted or prohibited by law. It is settled that the State and its instrumentalities have to act strictly within the four corners of law and all its activities are governed by Rules, regulations and instructions. In addition to that respondent No. 2 is bound to act in a fair and transparent manner so as to dispel all fears that its action is, in fact, activated by extraneous consideration.

9. Adverting to the facts, it would be noticed that though the timing of the bus of the petitioner has not been changed but in so far as the timing of the bus of respondent No. 3 is concerned the same has admittedly been changed from 8:19 am to 7:30 am, therefore, can it be said that the petitioner has no cause of action merely because the timing of his bus have not be disturbed? Answer to the same is obviously in the negative.

10. It was not for respondents No. 1 and 2 to decide as to what is best to suit the interest of the petitioner without his consent and the mere fact that the

timing of his bus remains same would not mean that he has no cause of action. The petitioner had already filed objection with respondent No. 3 objecting to the action of the respondents in allotting the time slot of 7:30 am in favour of respondent No. 3 and at the same time had also shown his keen interest for the same time slot. Once the officials/respondents intended to vary the time table by preponing or postponing or even introducing a new time slot, it was incumbent upon them to have first sought option from all the existing permit holders seeking their options and only in case there was no option or there was only single option, could it have made the alteration. It was imperative upon them to allocate the time slot in a manner which was both fair and transparent and at the same time just and not arbitrary.

11. Therefore, in the given circumstances, the mere fact that the time slot allocated to respondent No. 3 does not effect the timing of the petitioner's bus , is of no consequence.

12. Having said so, I find merit in this petition and the same is accordingly allowed. Respondent No. 3 is directed to seek option from all the existing route permit holders including the petitioner for the route Rajal to Kangra for the time slot 7:30 am, and only thereafter permit the eligible route permit holders after following fair and transparent procedure to ply his bus at 7:30 am on the route Rajal to Kangra.

13. However, before parting, the conduct of respondent No. 3 in availing legal aid by sheer representation cannot be ignored. This Court on 23.3.2015 had issued notice to the said respondent returnable on 2.6.2015. On the schedule dated i.e. 2.6.2016, respondent No. 3 appeared before this Court and stated that he was not in a position to engage counsel and prayed for providing legal assistance and accordingly Shri Sanjeev Bhushan, Advocate, who was later on designated as Senior Advocate was requested to appear on his behalf as a legal aid counsel, as would be evident from the order dated 2.6.2015, which reads thus:-

"Respondent No. 3 stated at the Bar that he is not in a position to engage a Counsel and prayed for providing legal assistance.

Mr. Sanjeev Bhushan, Advocate, who is present before the Court, is requested to appear on behalf of respondent No. 3 as a Legal Aid Counsel. The State Legal Services Authority to do the needful.

Registry is directed to furnish paper book to Mr. Sanjeev Bhushan, Advocate.

Reply be filed within six weeks.

List on 12.08.2015."

14. It is not in dispute that respondent No. 3 apart from other sources of income is already plying his two buses at 7:50 am and 8:19 am, respectively, which was changed to 7:30 am and earlier to that he had been plying another bus at 7:35 am, therefore, by no stretch of imagination, respondent No. 3 can be said to be

having no source of income or entitled to legal aid.

15. This Court on 29.4.2016 directed respondent No. 3 to file his income tax return for the last three years. In compliance to this direction, respondent No. 3 has placed on record the income tax return for the years 2013-14, 2014-15 and 2015-16, wherein his income is disclosed as Rs.2,34,699/-, Rs.3,07,196/- and RS.3,65,386/-, respectively.

16. Section 12 of the Legal Services Authorities Act, 1987 (for short the "Act") lays down the following criteria for giving legal services and the same reads as under:-

(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) a victim of trafficking in human beings or beggar as referred to in article 23 of the Constitution;

(c) a woman or a child;

(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

17. It would be evidently clear from the aforesaid section that the right to get legal aid is not an absolute right and is dependant upon fulfilment of certain eligibility conditions and respondent No. 3 does not fulfil any of the aforesaid conditions. The representation made by him before this Court to the effect that he is not in a position to engage a counsel is otherwise falsified from the income reflected in the aforesaid income tax returns.

18. It is more than settled that one who comes to the Court must come with clean hands. Respondent No. 3 by mis-representation has defeated salutary

object of the Act, which has been enacted to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Respondent No. 3 by his aforesaid mis-representation has taken the Court for ride and that apart may have also deprived other eligible persons of the legal aid.

19. The precincts of the Court are hallowed places and the foremost duty of the litigant is to be honest and fair to the Court and not reduce Court proceedings to a place for contrivances like a game of chess to snatch order from the Court by supersession and misinformation. At no cost can the stream of justice be permitted to be polluted by unscrupulous litigant.

20. Registry is directed to register a separate proceeding under the Contempt of Courts Act against respondent No. 3 by issuing notice in Form-I of the Contempt of Courts (Himachal Pradesh) Rules, 1996, returnable on 24.05.2017.

21. The petition is disposed of in the aforesaid terms leaving the parties to bear their own costs.