
(2005) 05 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17928 of 2004

Rohit Bhaker

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 10-05-2005

Acts Referred:

Citation : AIR 2005 P&H 257 : (2005) 140 PLR 763 : (2005) 3 RCR(Civil) 240

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : Anil Ghanghas, for the Appellant; Jaswant Singh, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The petitioner is a 100% physically disabled having hearing impairment (deaf and dumb) by birth. The petitioner has invoked the jurisdiction of this Court to seek a writ of certiorari for quashing of its communications, Annexures P-4 to P-6, whereby the benefit of free travelling to 100% deaf and dumb is not being allowed in the Haryana Roadways buses even though a circular has been issued on 21.02.1991 granting the facility of free concession in Haryana Roadways buses to 100% physically handicapped.

2. The petitioner has relied on Annexure P-2, a circular dated 21.2.1991, issued by the Commissioner and Secretary to Government Haryana, Transport Department, Haryana, whereby sanction was accorded to the grant of free travelling concession to cent per cent physically handicapped persons of Haryana in the Haryana Roadways buses in the jurisdiction of Haryana only. The petitioner is a person with 100% physical disability in respect of which Civil Surgeon, Bhiwani, has issued a certificate. As per said certificate, the petitioner is a 100% deaf and dumb. In view of the said certificate, the request of the petitioner for issuance of free travelling pass in the Haryana Roadways buses was not granted on the basis of communication dated 11.04.1996, Annexure P-4, whereby the Transport Commissioner Haryana, Chandigarh, addressed a communication to all

the General Managers of Haryana Roadways in the State to the effect that free travelling facility is admissible only to the persons who are 100% physically handicapped and not to the persons who have 100% disability for hearing. Subsequently, the Commissioner and Secretary to Government Haryana, Transport Department, Haryana, had issued another communication to the Director, Department of Social Justice & Empowerment, Haryana, Chandigarh, on 17.6.2003 to the effect that the Government is not agreeing with the proposal to grant concession of free travelling in the buses of Haryana Roadways to deaf and dumb.

3. The respondents have filed a written statement wherein it was pointed out that the benefit of free travel in the State Roadways buses has been granted as a matter of grace to the orthopaedically handicapped and the blind persons. The policy specifically does not apply to deaf and dumb persons. It was further stated that the State Government on several occasions has taken a specific decision that this benefit shall not be granted to deaf and dumb persons. It is pointed out that the benefit of free travelling in the State Roadways buses cannot be claimed by any person as a matter of right. Reference was made to circular dated 20.2.2001 issued by the Commissioner and Secretary, Government of Haryana, Transport Department, to the effect that the Government is unable to agree with the proposal regarding providing of free travelling facility to the deaf and dumb persons in the buses of Haryana Roadways.

4. During the course of hearing on 7.4.2005, learned counsel for the respondents raised the argument that the benefit of free travelling concession was, in fact, granted to orthopaedically handicapped persons in the year 1991. It was argued that the subsequent circulars are, therefore, in consonance with the decision taken earlier. Learned counsel for the respondents had taken time to produce the original file wherein the decision to grant free travelling concession to physically handicapped persons was taken in the year 1991. Subsequently, learned counsel for the respondents has produced two files - one culminating in issuance of circular dated 21.2.1991, Annexure P-2, and another culminating in issuance of circular dated 20.2.2001, Annexure R-II. Both these circulars read as under: -

ANNEXURE P-2

Copy of letter No. 21/3/79/4T dated 21.2.1991 from the Commissioner and Secretary to Govt. Haryana, Transport Department addressed to Transport Commissioner, Haryana and copies to Accountant General, Haryana and Financial Commissioner and Secy. to Govt. Haryana, Finance Department.

Subject; Free travelling concession to persons who are cent percent physically handicapped in Haryana Roadways buses.

Reference your memo No. 3929/CA-2/C dated 20/10/1989 on the subject noted above.

2. Sanction is accorded to the grant of free travelling concession to cent per cent

physically handicapped persons of Haryana in the Haryana Roadways buses in the jurisdiction of Haryana only. The physically handicapped persons would be required to obtain a medical certificate from the Chief Medical Officer of the concerned District in order to be eligible for this concession and produce the same. Necessary instructions may kindly be issued to all concerned immediately.

Sd/- Under Secretary, Transport, for Comm. and Secy to Govt. Haryana Transport Department."

Annexure R-II/T

From

Commissioner and Secretary Govt. of Haryana, Transport Department.

To

Transport Commissioner, Haryana, Chandigarh. No. 14/23/92-37(II) Chandigarh, Dated: 20-02-2001

Sub: Regarding providing of free travelling facility to the deaf and dumb person in the buses of Haryana Roadways.

Reference your letter No. 210/CA-2/C dated 07.02.2001 on the subject cited above. The Govt. is unable to agree with the proposal sent by you.

Sd/- Superintendent, Transport-II for Commissioner and Secretary Govt. of Haryana, Transport Deptt."

5. A perusal of the files produced by the learned counsel for the respondents further shows that before the issuance of circular Annexure P-2, the State Government has taken into consideration that there are 7670 blind persons; 4828 orthopaedically handicapped and 3359 deaf and dumb persons in the State of Haryana as per 1981 census. However, while considering the request of Kashmiri Lal, husband of 100% deaf and dumb Sumitra Devi, a proposal was initiated with the note that free travel facilities/concessions have been provided in Haryana Roadways buses in the categories of (i) physically handicapped; (ii) the blinds; (iii) Members of Parliament/Members of Legislative Assembly; (iv) Ex-Members of Parliament/ Ex-Members of Legislative Assembly; (v) students appearing for interview; and (vi) patients of Thalsamia disease. It was pointed out that as per 1991 Census, there are about 300 persons in the category of deaf and dumb in the State of Haryana. However, reference to 1991 circular, Annexure P-2, could not be traced out in the said file. While considering the request of Kashmiri Lal, it was pointed out that Haryana Roadways is running in loss and if facility of free travelling is granted to the category of deaf and dumb persons then other categories will also demand the facility of free travelling which is not appropriate and, thus, the department is not in favour of grant of facility of free travelling. The Transport Commissioner recorded that, in view of the present financial situation, it is not desirable to extend the concession to more categories and consequently the request cannot be accepted.

6. A perusal of circular Annexure P-2, as reproduced above, would show that sanction was accorded to the grant of free travelling concession to cent per cent physically handicapped persons of Haryana in the Haryana Roadways buses in the jurisdiction of Haryana only. A person with impairment of deaf and dumb is also a physically handicapped as a person orthopaedically handicapped and also a person who is blind. In fact, while issuing such instructions, the number of blind persons, deaf and dumb and orthopaedically handicapped persons were taken into consideration. There is nothing in the said circular which may lead to an inference that "cent per cent physically handicapped persons" are only orthopaedically handicapped persons as is sought to be interpreted by the respondents. A physical disability can be on different counts. The deaf and dumb impairment is one of the forms of physical handicap.

7. The benefit of free travelling facility to the deaf and dumb persons was declined vide Annexure R-II. Mr. Jaswant Singh, Senior Deputy Advocate General, Haryana, could not point out consideration of circular dated 21.02.1991 when subsequent circular was issued denying the benefit of free travelling facility to the deaf and dumb persons. In fact, note date 16.10.2000 starts with the category of physically handicapped, blinds and other categories of persons. In the said note, it was mentioned that there are no instructions in case of deaf and dumb persons even though the category mentioned was that of physically handicapped. It appears that the concerned official mistook physically handicapped as orthopaedically handicapped alone. Even though, while issuing circular on 21.2.1991, the competent authority has rightly taken into consideration the deaf and dumb as physically handicapped.

8. Thus, in the absence of any reference to earlier circular dated 21.2.1991 in subsequent circular dated 20.2.2001, Annexure R-II, or in the records produced, it is not possible to accept that such circular supersedes the earlier concession granted on 21.2.1991. The earlier decision was not even noticed by the respondents and, thus, the decision conveyed vide Annexure R-II was without taking into consideration the earlier instructions issued by the State Government on the subject. The argument that free travelling facility is a concession and, therefore, has to be specifically granted by the State Government is not in dispute. In fact, such concession was specifically granted vide circular dated 21.2.1991 but the benefit was not extended to deaf and dumb persons assuming them to be a separate category than that of physically handicapped persons which is not tenable on the face of it.

9. Consequently, we are of the opinion that the subsequent circulars issued by the respondents from time to time cannot override the earlier circular dated 21.2.1991 as it could not be shown that, any subsequent circular declining the concession to deaf and dumb persons was issued in continuation, supersession or modification of earlier circular dated 21.2.1991.

10. Thus, the writ petition is allowed and the impugned Annexures P-4 and P-6 as well as Annexure R-II are held to be not valid and are not sustainable in law.

Consequently, the respondents are directed to grant the benefit of circular dated 21.02.1991 to all the persons having cent per cent physical disability including the deaf and dumb persons. No others as to costs.