

(2003) 11 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 261, 1079, 1141, 7555, 10783, 10810 and 17426 of 2003

Shinder Pal Singh and Others

APPELLANT

Vs

State Transport Commissioner and Others

RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 99

Citation : (2004) 2 ACC 350 : AIR 2004 P&H 265 : (2004) 136 PLR 729

Hon'ble Judges : S.S. Nijjar, J; S.S. Grewal, J

Bench : Division Bench

Advocate : A.M. Punchhi and Mahesh Grover, for the Appellant; H.S. Sran, Addl. A.G. and Baldev Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—This order will dispose of CWP Nos. 1079, 17426, 10810, 1141, 2614, 7555, 10783 of 2003 as identical questions of law have been raised in all these writ petitions. For facility of reference, the facts and arguments are noticed from CWP No. 1079 of 2003.

2. We have heard the learned counsel for the parties at length and perused the paper-books.

3. Learned counsel for the petitioners submits that mini-buses permits cannot be granted on routes where the State Undertakings are performing operations in accordance with the statutory scheme formulated by the State of Punjab on 9.8.1990. Learned counsel submits that the respondents are granting mini bus permits merely on the asking of the applicant. It is further submitted that the respondents are deliberately misconstruing the law laid down by the Supreme Court in the cases of Jagdeep Singh v. Jagir Chand and Anr. AIR 2001 S.C.W. 4109 and Subhash Chander and Anr. v. State Transport Appellate Tribunal and Ors. AIR 2002 S.C.W. 1457 wherein Clause 7-A of the Mini Bus Scheme

contained in Notification dated 21.10.1997 has been struck down.

4. Written statement on behalf of respondents No. 1 and 2 has been filed. In the preliminary submissions, it has been stated that the petitioners have no locus standi to file the present petition and no cause of action has arisen in their favour. The grant of permits to mini buses has been liberalised in view of the law laid down by the Supreme Court in the cases noted above. It has also been submitted that mini buses permits are granted under Chapter-V and not under Chapter-VI of the Motor Vehicles Act, 1988. Mr. Kapoor has submitted that the controversy raised in the present petitions is no longer res integra as the same argument has been rejected by the Division Bench of this Court in three separate petitions.

5. We have perused the judgments relied upon by Mr. Baldev Kapoor. In CWP No. 3544 of 2002, the petitioners had challenged the order dated 9.1.2002 by which the State Transport Appellate Tribunal (hereinafter referred to as "the Tribunal") had allowed the appeal filed by respondent No. 3 therein and directed the grant of permit to him to operate mini bus on the route in question. Initially, the permit had been granted to the petitioner by order dated 21.2.1991 by the Commissioner, Patiala Division, Patiala exercising the powers of Regional Transport Authority, Patiala. This order was challenged by respondent No. 3 before the Tribunal by way of appeal which was allowed. In the aforesaid case, it was, inter-alia, argued as follows:-

".....Shri Kapoor then argued that the Tribunal committed a serious legal error by directing grant of permit to respondent No. 3 without considering the fact that his application did not satisfy the conditions specified in Clause 7-A of the Notification dated 21.10.1997 vide which the original scheme notified on 9.8.1990 had been modified. Shri Kapoor tried to distinguish the decision of the Supreme Court in Jagdip Singh's case (supra) by asserting that the point raised by him had not been considered in that case."

6. The aforesaid argument of Mr. Baldev Kapoor was controverted by Mr. Sawhney, learned Sr. Advocate as follows:-

"Shri Sawhney countered the argument of Shri Kapoor on the question of applicability of the ratio of Jagdip Singh's case (supra) and argued that the doubt, if any, about the true import of the ratio of said decision stands cleared by the later pronouncement of the Supreme Court in Subhash Chander and Another Vs. State Transport Appellate Tribunal and Others, "

7. The Division Bench considered the aforesaid arguments and observed as follows:-

"...The question as to whether the grant of mini bus permit to respondent No. 3 deserves to be nullified on the ground of non-fulfilment of conditions laid down in Clause 7-A of Notification dated 1.10.1997 issued by the State Government u/s 99 read with Section 100 of the Act must be answered in the negative in view of

the decisions of the Supreme Court in Jagdip Singh 's case (supra) and Subhash Chander"s case (supra). In the first case, their Lordships of the Supreme Court referred to Notification dated 21.10.1997 including Clause 7-A thereof and held as under:

"For the purpose of the appeals: Clauses 2 and 4 are not at all relevant. Clause (2) provides for all inter-state routes and Clause (4) provides for future operators on monopoly routes which are to be operated by the State undertakings. Relevant clause is Clause (7-A) and it nowhere reveals that it is in conformity with Section 99 of the Act. u/s 99 of the Act if the State Transport undertaking is to operate on a particular route, then only the Scheme could be made applicable. The aforesaid scheme does not provide that the routes mentioned in Clauses 7(A) are to be covered and operated completely or partially by the State Transport undertaking. In such cases, Section 80(2) would be applicable as u/s 99, the State Government is not empowered to provide that only few private operators would operate on a particular routes and regional Transport Authority or other prescribed authority cannot ordinarily refuse to grant an application for permit of any kind made at any time under the Act."

In the latter decision, their Lordships of the Supreme Court declared that Clause 7-A of notification dated 21.10.1997 was not in conformity with Section 99 of the Act. This is clearly borne out from paragraph 11 of the judgment, which is extracted below:-

"Clause 7-A quoted above nowhere provides that state transport undertaking was to operate on the said routes. As stated above, the State Government is empowered to frame the scheme only in cases when the State transport undertaking is to operate particular class of service in relation to any area of a route or a portion thereof. But if the transport undertaking is not to operate the said routes, then there is no question of framing any scheme. Further, the main purpose of the scheme should be to provide an efficient, adequate, economical and properly co-ordinated road transport service in public interest. The scheme cannot be vague reserving some routes on the assumption that in future, State Transport Undertaking would operate upon such routes. On the contrary, under the Act, the state government is required to formulate a proposal regarding the scheme having particulars of (a) nature of services proposed to be rendered; and (b) the area of route proposed to be covered along with other relevant particulars respecting thereof. Under the scheme also, dominant purpose should be public interest and not to have permit Raj through back or otherwise whole purpose of Sub-section (2) of Section 80 would be frustrated. Hence, regarding Clauses 7 and 7-AA together also, it would not mean that there was any contemplation by the state transport undertaking for operating on the routes linking one village with another village or a town or a municipality in between the aforesaid two villages or a route linking a village with block headquarters or a municipality or city. Hence, as stated in Jagdip Singh"s case (supra), Clause 7(A) was not in conformity with Section 99 of the Act. Hence, there is no substance in

the contention raised by the learned counsel for the respondents privileged mini bus operators."

8. The aforesaid observations of the Division Bench make it abundantly clear that the grant of mini bus permit can no longer be declined by the authorities on the basis of Clause 7-A of the Notification dated 21.10.1997. Similar view has been taken by the Division Bench in the judgments rendered in the cases of Balwinder Singh v. The State Transport Appellate Tribunal, Punjab and Anr. C.W.P. No. 6942 of 2003 and Maharaja Travels Registered v. State of Punjab and Anr. C.W.P. No. 3977 of 2003.

9. In view of the above, we find no merit in these writ petitions and the same are hereby dismissed. No costs.

Sd/-

S.S. Grewal, J.