

(2006) 06 OHC CK 0015

In the Orissa High Court

Case No : Writ Petition (C) No's. 6070 and 12802 of 2003 and 283 of 2005

Sri Ajay Kumar Sahoo, Balasore Motor Association

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 20-06-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1988 — Section 67, 87, 88, 88(1), 88(5)

Citation : (2007) 1 ACC 488 : AIR 2006 Ori 188 : (2006) 102 CLT 549

Hon'ble Judges : P.K. Tripathy, J;A.K. Parichha, J

Bench : Division Bench

Advocate : D.B. Das, In W.P.C No. 6070.2003, B.K. Sharma, A.K. Mohanty, K.A. Guru, K.K. Nayak, G.K. Dash, J.R. Mohanty and J. Mohapatra, In W.P.C No. 12802.2003, Amiya Kumar Mohanty A and B.K. Behera and R.C. Pradhan, In W.P.C No. 283/2005, for the Appellant; P.K. Panda, S.C., S.C. Parija, P. Behera and M.R. Tripathy, M.B.K. Rao and R.K. Patnaik, Amiya Kumar Mohanty (A) and S.B. Mohapatra and G.K. Nanda, (In W.P.(C) No. 6070.2003), for the Respondent

Judgement

P.K. Tripathy, J.—Since all the aforesaid three writ petitions, on consent of the parties were heard analogously, being involving common question of law, such writ petitions are disposed of by this common judgment.

2. In W.P.(C) No. 6070 of 2003 case of the petitioner is that he is a state carriage operator within the State. The Opp. Parties 2 to 4 i.e., State Transport Authority, Orissa, Chairman, State Transport Authority, Orissa and Secretary, State Transport Authority, Orissa together with the Opp. Parties 6 and 7, i.e., the Chairman, State Transport Authority, West Bengal and Secretary, State Transport Authority, West Bengal, who are the countersigning authorities, are illegally granting temporary stage carriage permits in breach of the provisions of Motor Vehicles Act, 1988 (in short "the Act") and more particularly provision in Section 88(1) of the said Act. Petitioner's further case is that both the State Governments are deliberately not determining the routes to be opened as Inter-state routes, number of permits together with number of trips on such routes. In

that context, petitioner also stated that reciprocal agreement between the State of Orissa and West Bengal, Annexure-1 was of the year 1986 and that was superceded by the agreement dated 18.11.1996, Annexure-2, but notwithstanding the said agreement after the year 1995 the State Transport Authority, Orissa without executing and taking steps for final reciprocal agreement u/s 88 (5) & (6) of the Act, is granting successive temporary permits to different operators creating unhealthy competition on such routes and that such temporary permits have been granted in utter disregard to the provision in Section 88 (7) and (8) of the Act. Petitioner has appended the list of Routes, Annexure-3 on which temporary permits are being granted with the concurrence from the neighbouring State. Petitioner further stated that granting of successive temporary permits is contrary to the observations of the Apex Court. In that respect, in course of argument, he relied on the case of Jagjit Bus Service (Regd.), Amritsar through its Managing Partner Shri Jagjit Singh Vs. State Transport Commissioner, Punjab and Another, . Petitioner further stated that as per letter dated 26.8.1996 of the State of Orissa issued in exercise of the power u/s 67 of the Act, the Chairman State Transport Authority, Orissa was directed to not to issue temporary permit on any new Inter-state route until finalization of the reciprocal agreement. The State of West Bengal also issued similar instruction in that State. Notwithstanding such directions of both the State Governments the State Transport Authority and the Chairman of the two States have encouraged grant of temporary permit in the Inter-state routes. Accordingly petitioner prayed to issue of writ of mandamus or any other appropriate writ/direction to the Opp. Party members i.e., both the State Governments and the State Transport Authorities and Chairmans functioning there under to not to grant any temporary permit beyond the circumstances mentioned u/s 87 of the Act.

3. Orissa State Transport Corporation (Opp. Party No. 8), Smt. Labanya Shee (Opp. Party No. 9) and Daljeet Singh Chowla (Opp. Party No. 10) were added as Opp. Party members on the basis of their application for intervention. It appears from the applications for intervention filed by the Orissa State Road Transport Corporation that because of the interim orders passed by this Court for not granting temporary permits to new operators for plying stage carriage in the neighbouring States, Orissa State Road Transport Corporation sought for modification of that order so far as the other neighbouring States and particularly the State of Andhra Pradesh is concerned on the ground that because of such stay order the people of K.B.K. Districts are suffering. That aspect was taken care of by the modified order of this Court passed on 13.5.2004 and 28.2.2005 so also orders dated 20.5.2005 in Misc. Cases 3527 of 2005, 3350 of 2005 and 4631 of 2005. We may note here that substantially the grievance of the Orissa State Road Transport Corporation has been considered as per the aforesaid orders. Be that as it may so far as it relates to regulating the Inter-state Transport Services of the Stage Carriages, we consider the same on the basis of the settled position of law.

4. Similarly the case of Labanya Shee, a stage carriage operator between Haladia to Bhubaneswar via Jaleswar and Daljeet Singh Chowla, who is a stage carriage operator between Rourkela to Raipur are for intervention with the prayer for vacating or modification of the order of stay initially passed by this Court. On interim applications their prayers were also considered, as earlier noted, and the interim order of stay was modified. Opposite Party Nos. 2 to 4 have filed counter denying to the allegation of breach of law in issuing temporary permits and they further stated that until finalization of the reciprocal agreement between the States, they consider and grant temporary permits keeping in view convenience of people. Opp. Parties 5 to 7 have stated that because of adoption of practice of grant of temporary permits by Opp. Parties 2 to 4, State of West Bengal suffers losses of tax and revenue. It is pertinent to note here that the Opp. Parties 5 to 7 have not denied to the averments in the writ petition that whenever temporary permits are being granted by the Opp. Parties 2 to 4 for Inter-state unspecified route, counter signature is being granted by the authorities from the West Bengal. In both the counters, the Opp. Party members have challenged maintainability of the writ petitions, and, want of cause of action to file the writ petitions. Neither of the State Government filed any counter affidavit nor made any statement in course of hearing about the performance of their duties and obligation under different provisions under Chapter-V of the Act.

5. W.P.(C) 12802 of 2003 has been filed by one Madhab Chandra Mishra describing himself as General Secretary of Balasore Motor Association and one Ajaya Kumar Sahoo, a stage carriage operator. There is nothing to indicate if the said association is a registered one or has received recognition from the Opp. Parties 1 to 4. It may be noted here that said Ajaya Kumar Sahoo also filed application for intervention in W.P.(C) No. 6070 of 2003, but because of this writ petition being under consideration, such application for intervention were not considered. Same plea as in W.P.(C) 6070 of 2003 has been taken by the petitioners asking for a scheme and reciprocal agreement between two states granting of permanent permit and discouraging of grant of temporary permits in any route including unspecified routes between Orissa and West Bengal. The State Transport Authority appearing as Opp. Party No. 2 in this writ petition was permitted to adopt its counter in the other writ petition.

6. The Orissa State Road Transport Corporation has filed W.P.(C) No. 283 of 2005 with the prayer to direct the State Government and the State Transport Authority, Orissa to cover Bhawanipatna to Visakhapatnam route in their reciprocal agreement with Andhra Pradesh. Because of interim order passed by this Court, as already noted, the writ petition was only pressed with respect to the direction to the State of Orissa for reciprocal arrangements.

7. It is thus seen that the sole issue for consideration is as to the manner in which the opposite party members should conduct themselves in relation to grant of stage carriage permits for stage carriages running inter-state and in that respect whether the practice of grant of temporary permit should be done away

with. It is pertinent to mention here that no documents are available before this Court to show or suggest that any application for permanent permit in an approved inter-state route between Orissa and West Bengal was rejected by the concerned authorities in the State of Orissa. Therefore, we find that ground of availability of alternative remedy to discourage entertaining of the writ petition, as raised by the opposite party members, is not entertainable. In other words, on refusal of an application for grant of permit, the aggrieved party may prefer an appeal or revision in accordance with the statutory provision. In the present case no such grievance has been put forth by the petitioners. On the other hand their grievance is that temporary permits are being granted in approved and unapproved routes followed with the counter signature of the competent authorities of the other State in breach of the mandate of law in Section 88 of the Act. Under such circumstance, in exercise of the jurisdiction under Article 226 of the Constitution, this Court has the jurisdiction to look to that grievance of the petitioners.

8. It is not necessary to prolong a discussion to resolve the dispute inasmuch as the statutory provision in Section 88 read with Section 67 of the Act clearly provides the power of the State Governments in relation to bipartite, tripartite or multipartite agreement as the case may be with the neighbouring States only with the view to cater to the convenience of people at large. A similar dispute was considered and decided by the Apex Court in the case of Ashwani Kumar and Another Vs. Regional Transport Authority Bikaner and Another, . The Regional Transport Authority, Bikaner advocated for grant of temporary permit by taking shelter of Sub-section (1) of Section 88. While rejecting such an argument, Their Lordships held that:

6...The Act envisages three categories of permit-seekers, namely (i) inter-region, (ii) Intra-region and (iii) inter-State. Different criteria and procedure has been provided under the Act for granting permits in respect of each of the categories. The grant of inter-State permits with which we are concerned in these appeals are permissible u/s 88(5) of the Act. The existence of a route is a condition precedent for exercise of the power under Sub-section (1) of Section 88 of the Act. Intra (inter) State route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by one State or an Authority in the State. The concerned State Governments are supposed to deliberate and decide the routes to be opened as inter-State routes by determining the number of trips each route to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective which is claimed to be a social welfare legislation.

Their Lordships further held that:

7. Accepting the submissions made on behalf of the appellants would result in frustration of the objective sought to be achieved by the Act. The interpretation put by the High Court is rationale, legal and proper. In the absence of existence of inter-State route, the authorities under the act were not justified in granting the permits to the appellants. The existence of permit depends upon the

reciprocal agreements between the States covered by the route which, admittedly, did not exist in the instant case. The orders of the Authority granting permit in favour of the appellants were thus without jurisdiction.

9. It appears from Annexures 6 and 7 that the State of Orissa under Annexure-7 on 17th November, 1998 published the Gazette Notification issuing direction that:

No new temporary permit shall be issued or countersigned by the State Transport Authority or any Regional Transport Authority in respect of Stage Carriages for introduction of additional services on any inter-State route except the existing services operating in the existing inter-State routes until further direction.

(underlined by us to put emphasis)

It also appears from Annexure-8, the Gazette Notification of the West Bengal Government dated 10.12.1996, that while specifically not preferring to the practice of grant of temporary permit, it decided to take up the matter with opposite party No. 1 relating to a further supplementary reciprocal agreement between the two States. Therefore, in this case if any reciprocal agreement is in force, then that has to be adhered to by both the States and the number of vehicles to ply in between the States from the departure to the destination station be adhered to and not to be departed unless there is a further reciprocal agreement between both the States. As has been observed by the Apex Court in the case *M/s. Jagjit Bus Service (supra)*, grant of temporary permit should not be encouraged in a fixed route. Grant of permanent permit in such cases would not only tend convenience of the people but also to the rights of the bus operators in carrying on business in a systematic and convenient manner.

10. When the position of law and the directives of the Apex Court stands at that, we dispose of W.P.(C) Nos. 6070 of 2003 and 12802 of 2003 with the direction to the opposite party members to adhere to the Government Order made on the basis of reciprocal agreement between two states on specified routes by inviting application for permanent permit instead of continuing with the practice of grant of temporary permit. We also direct the opposite party members not to grant temporary permits in such specified routes or in any unspecified routes unless they come within the exceptions of running such stage carriages for a temporary period due to any special occasion or special reason and such period shall not in any case be beyond a period of four months as indicated in various provisions and exception in Section 88 of the Act. It is up to the State Governments of both the States to find out with the aid of the State Transport Authorities and the Chairman of the respective States if there is necessity of any further number of stage carriages to run in the approved routes and also to find out if there should be new routes created with the number of stage carriages to ply on such proposed routes and to come to an agreement. In such cases also if the proposal of the Chairman and the S.T.A. is under active consideration of the respective Governments, then pending the decision, the S.T.A. and the Chairman or the R.T.A. of the concerned States may grant temporary permits only if that is

needed for the convenience of the people, but such temporary permits shall not be extended beyond a period of four months if within that period the State Governments do not agree to decide the issue and the authorities may wait for the decision of the States to regulate the grant of permit for the stage carriages in the proposed routes. The aforesaid direction be implemented by the opposite parties 1 to 7 of W.P.(C) 6070 of 2003 within a period of four months from the date of receipt of the copy of order by them. Requisites by registered post with A.D. be filed by the petitioners within a week to communicate the order to each of opposite party Nos. 1 to 7.

11. So far as the case of the O.S.R.T.C. in W.P.(C) No. 283 of 2005 is concerned, we dispose of the same without issuing any further direction and making it clear that the route in which the inter-State buses are operating between Orissa and Andhra Pradesh be allowed to continue unless there is a contrary order from the State of Orissa or until the reciprocal agreement between the two States is rescinded or modified, as the case may be. Requisites by registered post with A.D. be filed by the petitioner within a week to communicate this order to opposite party Nos. 1 to 3 of the writ petition.

A.K. Parichha, J.

12. I agree.