
(1997) 12 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10760 of 1992

State of Punjab

APPELLANT

Vs

Baljit Singh and Others

RESPONDENT

Date of Decision : 23-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 98

Citation : (1998) 2 ACC 243 : (1998) 119 PLR 434 : (1998) 2 RCR(Civil) 584

Hon'ble Judges : T.H.B. Chalapathi, J;H.S. Brar, J

Bench : Division Bench

Advocate : G.S. Dhillon,A.A.G, for the Appellant; Baldev Kapoor, P.S. Bawa for Respondent No. 1 and G.S. Virk, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—By this common judgment, Civil Writ Petitions Nos. 9952, 10760, 10762, 10775, 10776, 10778, 10779 and 10781 of 1992 filed by the State of Punjab and Civil Writ Petitions Nos. 5073, 5298, 5299, 52300, 5301, 5302, 5311, 5312 and 5816 of 1992 filed by the objectors are disposed of as the points raised in all these writ petitions are common and identical.

2. C.W.Ps. Nos. 9952, 10760, 10762, 10775, 10776, 10778, 10779 and 10781 of 1992 are filed by the State of Punjab against the orders of the State Transport Appellate Tribunal dated March 9, 1992, allowing the appeals filed by the respondents who applied for mini bus stage carriage permits. The existing operators who filed objections for the grant of permits filed the remaining writ petitions.

3. The private respondents in these writ petitions filed by the State of Punjab applied for mini bus stage carriage permits on Bhatinda-Dabrikhanna via Gill Patti-Nahianwala-Chand-Bhan-Seweala route to the Commissioner, Ferozepur Division, who is exercising the powers of the Regional Transport authority. By an order dated September 17, 1991, the Commissioner rejected the applications.

Aggrieved by the same, the applicants preferred appeals before the State Transport Appellate Tribunal. By the impugned order, the Tribunal allowed the appeals and granted mini bus stage carriage permits to the respondents in the writ petitions filed by the State of Punjab. As stated above, against the said grant of permit by the Appellate Tribunal, the State filed nine writ petitions while the existing operators who filed objections for the grant of permits filed the remaining nine writ petitions.

4. A preliminary objection was raised by the learned counsel for the respondents that the writ petitions filed by the State of Punjab are not maintainable as the State of Punjab was neither an applicant nor an objector for the grant of mini bus stage carriage permit. In support of this proposition, reliance was placed on a decision of the Division Bench of this Court in *State of Punjab Vs. Patiala Bus Highways (P) Ltd. and Others*, . It has been held in that case that the State of Punjab did not apply for any of the disputed permits and it was not aggrieved against the orders of the State Transport Commissioner. Their Lordships also referred to an earlier decision of this court in *C.W.P. No. 14400 of 1992 (State of Punjab v. New Akal Land and Finance Pvt. Ltd., Ludhiana and Anr.,)* wherein it was held as follows:-

"This writ petitions deserves to be dismissed on various grounds, State of Punjab did not claim any of the permits which were advertised, Punjab Roadways, Ludhiana, was one of the contenders but an appeal was filed against the order of the State Transport Commissioner before the appellate Tribunal by the Punjab Roadways, Ludhiana. Thus, State of Punjab could not challenge the order of the State Transport Commissioner of the Appellate Tribunal straightway in this writ petition."

There can be no dispute about the proposition laid down by their Lordships in those cases. But the controversy in these writ petitions is quite different. State of Punjab formulated the scheme for the grant of mini bus stage carriage permits. The grievance of the State of Punjab is that the State Appellate Tribunal violated the provisions of the Scheme framed by the State of Punjab and, therefore, the order of the State Transport Appellate Tribunal is liable to be set aside. It is not a case where the State of Punjab is seeking grant of permit to itself. It is invoking the jurisdiction of this Court under Article 226 of the Constitution of India for the implementation of the provision of the Scheme formulated by the State of Punjab in exercise of its statutory functions. When the provisions of the scheme which are mandatory, are deviated, it is always open to the State of Punjab to make a grievance of the same and seek redressal from this court for implementation of the provisions of the scheme which is statutory in nature and binding on the authorities and the State Transport Appellate Tribunal. In this view of the matter, we are of the opinion that the writ petitions filed by the State of Punjab and also by the existing operators who raised the objections, are maintainable and the writ petitions filed by the State of Punjab cannot be dismissed on the ground that neither the State of Punjab nor the existing operators could maintain the writ

petition as they have not applied for the grant of mini bus stage carriage permits. We, therefore, overrule the preliminary objections raised by the learned counsel for the respondents.

5. There is no dispute that the State of Punjab formulated a scheme dated 18, 1980, for issuance of mini bus stage carriage permits in exercise of its powers u/s 43-A of the Motor Vehicles Act, 1939 (as introduced in the State of Punjab). Under the said scheme, the authorities exercising the functions were directed to ensure the following conditions to be fulfilled while granting permits:-

- (a) the total length of each route does not exceed 25 kms;
- (b) not more than half of the total route length run across a national or state highway;
- (c) one of the termini of the route is a village.

The learned counsel for the respondents argued that these directions issued u/s 43-A of the Motor Vehicles Act are not applicable to the grant of mini bus permits after enactment of the Motor Vehicles Act, 1988, (hereinafter called the 1988 Act) which came into force from July 1, 1989. According to the learned counsel for the petitioner, under the 1988 Act, the grant of permit has been made liberalised and the directions issued in the year 1980 cannot be pressed into service to deny the permit. Learned counsel for the respondents also referred to a decision of the Apex Court in *Mithilesh Garg, Vs. Union of India and others etc.*, etc., . We agree with the contention of the learned counsel that if the grant of permit is solely under chapter V of 1988 Act, the permits have to be granted liberally unless the authorities are satisfied that there is no need for grant of permits and/or on any valid reason but the directions issued in the notification dated June 18, 1980, have been incorporated in the scheme framed by the State of Punjab under Chapter VI of 1988 Act. u/s 98 of the 1988 Act, Chapter VI and the rules and the orders made thereunder shall have overriding effect over the provisions contained in chapter 8 or any other law for the time being in force. Thus, it is clear that provisions of the scheme framed under Chapter VI will govern the grant of permits. It is, therefore, to be seen whether any restrictions in regard to grant of mini bus stage carriage permits in the scheme framed under Chapter VI of 1988 Act. The learned counsel appearing for the State of Punjab and the existing operators who filed the separate writ petitions have contended that the directions issued in the notification dated June 18, 1980, have been incorporated in the scheme framed by the State of Punjab under the provisions of Chapter VI in its notification dated August 9, 1990. The said notification dated August 9, 1990, was issued in exercise of the powers conferred by the Government of Punjab by Section 99 of the 1988 Act. Clause (viii) of the said notification dated August 9, 1990, reads as follows:-

"Notwithstanding anything contained in the scheme:-

- (i) the services of the persons of any "state other than the State of Punjab or

U.T. operating on any rules by virtue of any reciprocal argument or understanding shall not be affected; and

(ii) the operation of Mini Bus Service shall be undertaken in accordance with the scheme notified vide Govt. of Punjab Department of Transport Notification in S.A.O. No. 371CA. 4/39/S.43-A/80, dated June 18, 1980".

Thus, it is clear that the directions issued in the year 1980 u/s 43-A of the repealed Act have been incorporated in the scheme which was published in the year 1990 under the 1988 Act, A reference was made to the earlier notification of 1980 in the later notification. It means that all the provisions of the earlier notifications have been incorporated in the new notification. Therefore, any grant of permit shall be in accordance with the directions as contained in 1980 notification as those provisions are deemed to have been incorporated in the scheme published in 1988 Act in accordance with Chapter VI of the said Act. As already noticed, the directions issued under Chapter VI arc having overriding effect over the provisions of Chapter V of the Act. Thereafter, any stage carriage permits to be issued under Chapter V shall be only in accordance with the directions contained in the notification dated June 18, 1980. As already noticed for the grant of mini bus permit, total length of the route shall not exceed 25 kms. and not more than half of the total route length shall run across a national or state highway. Unless these the conditions are satisfied, no mini bus stage carriage permit can be granted to any private operator. The Commissioner who is exercising the powers of the Transport Authority, in his order, rejected the applications of the respondents on the ground the single length of the route is more than 25 kms. while the State Appellate Tribunal opined that if the length of phernies of the villages route are excluded, the route would be less than 25 kms. The State Appellate Tribunal has not given any specific finding about the length of the route. It excluded the phernies of the village enroute. Learned counsel for the respondents relied upon a letter dated April 2, 1987, addressed by the State Transport Commissioner, Punjab, to the Secretaries of the Regional Transport Authorities of Jalandhar, Patiala and Ferozepur, wherein it is stated that while counting the route length, the phernies of the village should be excluded. It is not shown how and under that authority the State Transport Commissioner, Punjab, issued such a letter to exclude the phernies of the villages in counting the length of the route. The said letter has no statutory basis. The State Transport Commissioner is not empowered to issue such directions. The said directions were not issued in exercise of the powers u/s 43-A of the 1939 Act. Further, the scheme which has been framed on August 9, 1990, does not refer to letter dated April 2, 1987, thereafter, the letter of the State Transport Commissioner, dated April 2, 1987, cannot be pressed into service as it has no statutory or legal force. The said letter has to be excluded from consideration. Only the provisions of the scheme under Chapter VI of 1988 Act alone will have to be seen. As already noticed, the scheme which has been framed under Chapter VI of 1988 Act incorporates the provisions of the notification dated June 18, 1980. It does not refer anywhere to the letter dated April 2, 1987. Therefore,

in our view, the phernies of the village enroute cannot be excluded. We arc unable to agree with the view taken by the State Transport Appellate Tribunal.

6. The State Appellate Tribunal has not considered the actual length of the route on the basis of the record. We arc of the opinion that the orders of the Appellate Tribunal are liable to be set aside and these cases are fit to be remitted back to the Stale Transport Appellate Tribunal for consideration whether the mini bus permit can be granted in accordance with the provisions contained in the scheme dated August 9, 1990, read with the directions issued in the notifications dated June 18, 1980.

7. Accordingly, we allow these writ petitions, set aside the orders of the State Transport Appellate Tribunal granting permits to the respondents and remand the matter to the State Appellate Tribunal to consider afresh whether the mini bus stage carriage permits can be granted in view of the specific provision of the scheme dated August 9, 1990, under Chapter VI of the 1988 act read with the directions contained in notification dated June 18, 1980.