

(1992) 09 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11150 of 1992

State of Punjab

APPELLANT

Vs

Dhillon Transport Co. and Another

RESPONDENT

Date of Decision : 30-09-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 103(3)

Citation : (1993) 103 PLR 593

Hon'ble Judges : Ashok Bhan, J;A.L. Bahri, J

Bench : Division Bench

Advocate : G.K. Chatrath, General and M.C. Berry, D.A.G, for the Appellant;
Baldev Kapoor and P.S. Bawa for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—A bunch of writ petitions is being disposed of by this judgment as the question of Law involved therein is common, i. e. as to whether applications filed by existing stage carriage permit holders for variation of the terms and conditions of the permits in the matter of either increase of return trips or extension of the area of routes having been declined, on enforcement of Motor Vehicles Act, 1988, and publication of the Scheme u/s 100 thereof, could the State Transport Appellate Tribunal entertain appeals and grant the relief. Broad facts are taken from the writ petition No. 11150 of 1992.

2. Dhillon Transport Company-respondent No. 1 made an application for increase of return trips from one to three on Mansa-Tal-wandi via Jhunir route and subsequently extension of three trips upto Bhatinda. The length of extension sought was stated to be 30 Kilometers. This application was published for inviting objections by the Regional Transport Authority (State Transport Commissioner, Punjab). On July 18, 1991, vide Annexure P/1, the application was rejected, inter alia, on the ground that the grant of new mileage was to be decided in accordance with the provisions of the scheme. Against the aforesaid order, Dhillon Transport Company filed an appeal, which was decided by the State

Transport Appellate Tribunal, Punjab/respondent No. 2 vide order dated June 3, 1992. Annexure P-2. It is this order, which is subject matter of the challenge in this writ petition filed by the State of Punjab, through Joint Secretary of Government, Punjab. Annexure P/3 is a notification issued by State of Punjab dated August 9, 1990, in exercise of powers conferred by Section 99 of the Motor Vehicles Act, 1988. In exercise of the powers u/s 100 of the aforesaid Act, the scheme was notified to be operative w. e. f. August 9, 1990. The relevant provisions of the Scheme are contained in paragraphs 5 and 6, which are reproduced below :-

"(5)-All future operations of routes on the National Highways falling within the State shall be undertaken by the State Transport Undertakings, and the private operators in ratio of 70 : 30 which shall be determined on the basis of the passenger road transport needs as so assessed by the State Transport Commissioner, Punjab, from time to time. The existing operations of the State Transport Undertakings on the National Highways falling within the State are given in Annexure "D" and "D-1".

(6)-All future operators of routes on State Highways other than the routes specified in clauses 2, 3 and 4 shall be undertaken by the State Transport undertakings and private operators in the ratio of 50 : 50 which shall be determined on the basis of the passenger road transport needs, as so assessed by the State Transport Commissioner, Punjab, from time to time. The existing operation of routes of the State Transport Undertakings on the State Highways are given in Annexures "E" and "E-1".

The stand of the State of Punjab in this writ petition is that the State Appellate Tribunal had no jurisdiction to entertain an appeal against the order of rejection of the application for the grant of extension of route permit or increase in the number of trips, in view of the Scheme aforesaid, whereas the stand taken up by the respondent-Dhillon Transport Company in the written statement, filed in response to the notice of motion, is that since the application was already pending before 1988 Act came into force, the same was to be disposed of in accordance with law, then prevalent. An appeal was, thus maintainable against the order of State Transport Commissioner, who was exercising powers of the Regional Transport Authority, and the State Transport Appellate Tribunal enjoyed all the powers which the Regional Transport Authority could exercise and, thus, the appeal was rightly accepted, granting the relief, as prayed for.

3. Similar is the position in respect of Civil Writ Petition Nos. 11152, 11153, 11134, 11765, 11018, 11215, 11822 and 11823 of 1992. In all these writ petitions order of the Appellate Tribunal has been challenged by the State of Punjab.

4. There is another set of writ petitions and broad facts are taken from Civil Writ Petition No. 11214 of 1992. Raj Transport Company respondent No. 1 moved an application for increase of return trips on Amritsar-Bhatinda route via Faridkot-

Jeto, from one to two on the authority of regular stage carriage permit held by it. The State Transport Commissioner, exercising powers of the Regional Transport Authority considered the application in the meeting held on July 18, 1991, and rejected the same on the ground that the increase in trips would amount to grant of new mileage and such application should be invited through advertisement, so as to provide ample opportunity to all interested. It was also noticed that the new transport policy/Scheme had been enforced and the grant of new mileage is to be decided in accordance with the provisions of the Scheme. Copy of the order is Annexure P/1 and copy of the Scheme Annexure P/2. Aggrieved by this order, an appeal was filed before the State Transport Appellate Tribunal, which was accepted vide order dated February 6, 1992, copy Annexure P/3. In this case General Manager, Punjab Roadways Mukatsar, has also joined the State of Punjab in filing the petition, who is also one of the operators on the route in dispute. On the same ground, there is another writ petition No. 11223 of 1992.

5. Raj Transport Company has filed a separate writ petition No. 8967 of 1992, for a direction to the State Transport Commissioner exercising powers of the Regional Transport Authority, to comply with the directions/order passed by the Appellate Tribunal, inter alia asserting that the Transport Appellate Tribunal had validly allowed the appeal and granted the relief prayed for. Since Raj Transport Company is represented in this writ petition, it was not considered necessary to have separate reply from this Company in the writ petition filed by the State of Punjab, referred to above. However, proper hearing has been given to different counsel appearing on behalf of Raj Transport Company in these writ petitions. Civil Writ Petition Nos. 8737 and 9640 of 19(sic)2 are also on similar grounds. Written statement has been filed by the State that the order of the State Transport Appellate Tribunal is without jurisdiction.

6. Other similar writ petition Nos. 12661 to 12665 are filed by private operators for a direction to the State Transport Commissioner who is exercising powers of the Regional Transport Authority, to comply with the orders of the State Transport Appellate Authority, who had allowed the increase of trips and subsequent extension of route. In these writ petitions, notices of motion have not so far been issued and these were simply adjourned. Since the question of law is being disposed of, as framed above, these writ petitions will also be disposed of accordingly.

7. Motor Vehicles Act, 1988, was enforced, w.e.f. July 1, 1989. Chapter VI of the Act contains special provisions relating to State Transport Undertakings. Section 98 provides that the provisions of Chapter VI and Rules and Orders made thereunder shall effect notwithstanding anything inconsistent therein contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law. Section 99 provides for preparation and publication of proposal regarding road transport service of a State Transport Undertaking. Such a scheme proposed is to give particulars of the nature of services proposed to be rendered, the area or route proposed to be covered and

other relevant particulars respecting thereto. Section 100 provides for publication of any such proposal inviting objections and to decide the same, and to finally approve or modify such proposals which is to be notified in the official Gazette as provided u/s 100(3). The notification Annexure P. 2, referred to above, has been issued under the aforesaid provision. Sub-Sections (2) and (3) of Section 103 of the Act on the basis of which the present cases are to be disposed of are reproduced as under:-

"103. Issue of permits to State Transport Undertakings:-

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or, as the case may be; the Regional Transport Authority concerned may, by order :-

(a) refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending ;

(b) cancel any existing permit ;

(c) modify the terms of any existing permit so as to :-

(i) render the permit ineffective beyond a specified date ;

(ii) reduce the number of vehicles authorised to be used under the permit ;

(iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route.

(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken or order passed, by the State Transport Authority or any Regional Transport Authority under sub-section (1) or sub section (2)"

"Section 104 : Restriction on grant of permits in respect of a notified area or notified route :-Where a scheme has been published under sub section (3) of Section 100 in respect of Any notified area or notified route, the State Transport Authority or the Regional Authority as the case may be, shall not grant any permit except in accordance with the provisions of the scheme."

The effect of framing the scheme on the applications already pending was considered by this Court in Civil Writ Petition No. 9254 of 1992, (State of Punjab Vs. Guru Ram Dass Transport Company (P) Ltd. and Another, , decided on July 31, 1992. by this Court. It was held that after enforcement of the scheme if the Regional Transport Authority had declined to grant permit the State Transport Appellate Tribunal would not entertain an appeal against the order of the State Transport Commissioner/Regional Transport Authority. It was held as under :-

"In order to implement the scheme after the same is published, the" Regional Transport Authority could refuse to grant permit on such applications which were pending in view of Section 103(2)(a) and Section 104 of the Act, as reproduced above. If such an order is passed with respect to the applications pending, u/s 103(3) of the Act, no appeal could be entertained. The entire approach of the

State Transport Appellate Tribunal with respect to entertain an appeal against an order which was passed u/s 103(2)(a) of the Act is erroneous in law. The State Transport Appellate Tribunal has no jurisdiction to entertain the appeal and then grant stage carriage permits with respect to National Highway routes or State Highway routes for which the scheme had already been finalised and published u/s 100 of the Act."

The decision of the Supreme Court in Ram Krishna Verma and Others Vs. State of U.P. and Others, , was relied upon. The Supreme Court held as under : -

"The Act excluded private operators from the area of route or a portion thereof covered under the scheme except to the extent excluded under the scheme itself. The ratio of the decision aforesaid fully applies to the case in hand. The respondent-Company after enforcement of the scheme under Chapter VI could not be granted the permit on the application already pending."

7. Learned counsel for the private-operators has argued that on the basis of decision in M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others, the applications for variation of the terms and conditions of the existing permits could not be equated with new applications for grant of permits. It was only in the matter of procedure to be followed that by fiction of law, such applications are to be considered as fresh applications. The ratio of the decision aforesaid cannot be applied to the case in hand. The observations made in the aforesaid case were entirely in a different context. That was a case for renewal of the existing permit. The existing applications pending for grant of renewal of permits were held to be surviving despite repeal of 1939 Act. So far as applications pending for increase of number of permits or extension in area of the route are concerned, the decision of the Supreme Court in Ram Krishna Verma's case (supra) lays down that such applications are to be considered as fresh applications for grant of permits and the provisions of 1988 Act and the Scheme framed thereunder would control the same. It was observed that the Scheme would exclude private operators from the area or route or a portion thereof covered under the scheme except to the extent excluded under that scheme itself. In para 12 of the Judgment, the conclusion arrived at was as under :-

"The nationalisation of Saharanpur Shahdara-Delhi route by publication of the approved scheme on September 29, 1959, is operating to the total exclusion of every private operator except U. P. State Transport Corporation and 50 operators including the appellants herein whose objections were upheld by the High Court in the first instance and merged in the judgment of this court in Jeewan Nath Bahl's case. Equally of Bulandshahr to Delhi route. u/s 80 of the Act no private operator has right to apply for and obtain permits to ply the stage carriages on the approved or notified route/routes or areas or portion thereof. The grant of permit to all the respondents 7 to 285, private operators, in C. A. /92 (S.L.P. No. 9701/90) or any others u/s of the Act on the respective routes or part, or portion thereof to provide transport service is clearly illegal and without jurisdiction.

8. In view of the position of law discussed above, the orders of the State Transport Appellate Tribunal, entertaining the appeals against the orders of the State Transport Commissioner, exercising powers of Regional Transport Authority, declining to grant permits or to grant variations in the terms of the existing permits in respect of increase in the number of trips or extension in the route area, are without jurisdiction. The State Appellant Tribunal had no jurisdiction to entertain such appeals in view of the provisions of section 103(3) of the Act and the State Transport Appellant Tribunal had no jurisdiction to allow the applications filed by the private operators for variation in the terms and conditions of the existing permits in such circumstances. The writ petitions filed by the private operator for a direction to the Regional Transport Authority/State Transport Commissioner to implement such orders of the State Transport Appellate Tribunal in such cases, deserve to be dismissed.

9. For the reasons recorded above, writ petition Nos. 11150, 11018, 11215, 11134, 11152, 1153, 11765, 11822, 11823, 11214 and 11223 of 1992 are allowed and impugned orders of State Transport Appellate Tribunal passed therein are quashed. Other petitions Nos. 8737, 8967, 9640, 12661 to 12665 of 1992 are dismissed. There will be no order as to costs in these writ petitions.