
(1992) 07 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9254 of 1992

State of Punjab

APPELLANT

Vs

Guru Ram Dass Transport Company (P) Ltd. and Another

RESPONDENT

Date of Decision : 31-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 100, 103, 103(3)

Citation : (1992) 2 ACC 340 : (1993) 103 PLR 40

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : G.K. Chatrath, A.G. and M.C. Beri, D.A.G, for the Appellant; Nirmal Jit Kaur and H.S. Sawhney, for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—Vide this judgment two civil writ petitions (Nos. 9254 and 9255 of 1992) are being disposed of as common questions of fact and law are involved therein.

2. Respondent Guru Ram Dass Transport Company (P) Ltd., Amritsar, is common in both the cases. Two applications were filed by the said Company for the grant of stage carriage permits. In one application two regular stage carriage permits to operate one return trip on Amritsar-Mansa via : Faridkot, Bhatinda, (2) Amritsar-Abohar via : Faridkot, Muktsar route and in the other application permit for Batala-Bhatinda via : Amritsar, Faridkot route were claimed. For these route permits applications were filed on May 28, 1990 and July 3, 1990 concerning C.W.P. No. 9254 of 1992.

3. The other writ petition relates to an application filed by the aforesaid Company for grant of two regular stage carriage permits with two return trips on Amritsar-Patiala via Jalandar, Ludhiana route. This application was filed on August 8, 1990. Thus it would be seen that the aforesaid application related to routes covering State Highways in one case and National Highway in the other. The aforesaid

Company approached this Court as the applications were not being disposed of by the Regional Transport Authority (State Transport Commissioner). A direction was given to dispose of the applications within two months. Subsequently, the applications were dismissed in view of enforcement of the scheme prepared under Chapter VI of Motor Vehicles Act (hereinafter referred to as the Act"). Appeals were filed against the aforesaid orders of rejection of the applications which were allowed by the State Transport Appellate Tribunal respondent No. 2, vide separate orders which are Annexure P. 1 dated February 3, 1992, in the writ petitions, granting the permits to the Company aforesaid. These orders are under challenge in these writ petitions filed by the State of Punjab through the Secretary to Government, Department of Transport, Chandigarh.

4. The orders of the Tribunal are challenged on the ground that the Tribunal had no jurisdiction to entertain the appeals against orders of rejection of the applications filed by the Company after enforcement of the scheme u/s 103(3) of the Act.

5. On notice of motion having been issued, the writ petitions are being contested by the Company aforesaid, inter alia, alleging that the writ petitions filed on behalf of the State are not maintainable as the State of Punjab was not a party aggrieved by the orders passed by the Tribunal. Further it is asserted that the Tribunal had the jurisdiction to entertain and dispose of the appeals relating to the applications for the grant of stage carriage permits filed before the enforcement of the scheme under Chapter VI of the Act.

6. After hearing counsel for the parties in detail, we are of the view that the Tribunal had no jurisdiction to entertain the appeals and pass the impugned orders. Annexure P. 2 is the notification dated August 9, 1990 which was also published on the same date in the Punjab Government Gazette (Extra). This notification was issued by virtue of powers u/s 100 of the Act, after following the procedure of inviting objections and their disposal as required u/s 99 of the Act. This notification was issued by the State of Punjab. Paras 5 to 7 of this notification which are relevant 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 the 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-I".

(6) All future operations of routes on the 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".

(7) All future operations of routes other than the routes specified in clauses 2, 3 and 4 on District and other roads shall be undertaken by the State Transport Undertakings and private operators in the ratio of 50:50 on the basis of the passenger road Transport needs, as so assessed by the State Transport Commissioner, Punjab, from time to time."

7. In the present writ petitions, as already stated above, we are concerned with the grant of stage carriage permits covering National Highways and State Highways. With respect to National Highways after the State Transport Commissioner determines need, stage carriage permits were to be distributed between the State Transport Undertakings and the private operators in the ratio of 70:30, whereas in the case of routes on the State Highways after such determination of the need the distribution of stage permits between State Transport "Undertakings and Private Operators is to be in the ratio of 50:50. At this stage it may further be-noticed that the State Transport Commissioner subsequently determined the need and thereafter applications from private operators were invited and decision thereon are yet to be made. This was disclosed by the Advocate General appearing on behalf of the State of Punjab.

8. Chapter VI of the Motor Vehicles Act, 1988 contains special provisions relating to State Transport Undertakings. Section 98 provides that the provisions of Chapter VI and Rules and Orders made thereunder shall have 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 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 any Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme."

9. The Legislature was conscious of the fact that during the process of finalising the scheme as contemplated u/s 99 and 100 of the Act as aforesaid, some applications for the grant of permits under Chapter V may have been filed and may be pending for disposal. 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.

10. It has been argued by Shri H.S. Sawhney, Advocate for the respondent Company, that when the Company made applications for the grant of permits, the scheme had not been finalised the Regional Transport Authority was supposed to decide the applications in accordance with law then prevalent. The general policy as contained in Chapter V of the Act was not to restrict the grant of permits and was to liberally issue such permits. In support of this contention reliance has been placed on the decision of the Supreme Court in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, wherein reference to the provisions of the old Motor Vehicles Act and the Motor Vehicles Act of 1988 as well as the provisions of Article 19(1)(g) of the Constitution was made. It was observed as under in para 7 of the judgment :-

"More operators mean healthy-competition and efficient transport system. Over crowded buses, passengers standing in the aisle clinging to the busdoors and even sitting on roof-tops are some of the common sights in this country. More often one finds a bus which has noisy engine, old upholstery, uncomfortable seats and continuous emission of black-smoke from the exhaust pipe. It is therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter-public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits. Restricted licensing under the old Act led to the concentration of business in the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest. The apprehensions of the petitioners, that too many operators on a route are likely to affect adversely the interest of weaker section of the profession is without any basis. The transport business is bound to be ironed-out ultimately by the rationale of demand and supply. Cost of a vehicle being as it is the business requires huge investment. The intending operators are likely to be conscious of the economics underlying the profession. Only such number of vehicles would finally remain in operation on a particular route as are economically viable. In any case the transport system in a State is meant for the benefit and convenience of the public. The policy to grant permits liberally under the Act is directed towards the said goal."

On the same lines observations were made by the Rajasthan High Court in *Shiv Raj Vs. The State of Rajasthan and Others*, . The ratio of the decisions aforesaid cannot be applied to the facts of the case in hand. In those cases no scheme was framed by the State Government under Chapter VI of the Act and thus while interpreting different provisions of Chapter V of the Act it was held that the policy of grant of permits as contained therein was liberalised one allowing any number of operators to operate on the routes to create healthy competition which would be in the interest of the public in general. When the Legislature has authorised the State Government to frame policy with respect to restricting wholly or partially the transport service on National or State Highways in favour of State Transport Undertakings, the Regional Transport Authority while implementing the scheme is to act accordingly and obviously the general principle of liberalised grant of stage carriage permits as provided under Chapter V of the Act is not to be given effect to specifically provided u/s 89 of the Act.

11. Shri H.S. Sawhney. Advocate for Company, relied upon the decision of Single Bench of this Court in C. W. P. No. 6772 of 1991 (*State of Punjab v. State Transport Appellate Tribunal*) C. W. P. No. 6772 of 1991, which was approved by the Division Bench of this Court in *Gill Bus Service (Regd.) Amritsar v. State of Punjab Through Secretary Punjab Transport Department, Civil Secretariat Chandigarh* (1992-1) 101 P. L.R. 678, and has contended that State of Punjab has no locus Standi to file the present writ petitions as the State of Punjab was not the party aggrieved of the orders passed by the State Transport Appellate Tribunal. This contention again cannot be accepted. In the two cases referred to

above the dispute was not with the State of Punjab that any permit was granted in favour of the State of Punjab or there was any such claim. If there was dispute between different transport operators in the matter of grant of permit obviously State of Punjab was not interested in their dispute and further as was held in Gill Bus service case (supra), the Regional Transport Authority could not question the grant of permit by the Appellate Authority and as a Subordinate Authority under the Statute was bound to follow the decision of the Appellate Authority which was to be considered as final. It was observed that the State Transport Appellate Authority in appeal had the same powers as were to be exercised by the Regional Transport Authority. The present is a case where a scheme has been framed under the statute by the State of Punjab and it is the function of the State to see that the scheme is implemented in accordance with law State as Legislature is not before the Court to see that the statute so framed be enforced, Needless to say that after a statute is enacted by the Legislature it becomes the duty of the Executive to implement it. The Executive also acts as State and after a statutory authority assumes jurisdiction which is not vested under the Statute and passes illegal and void orders, even if the State is affected in the sense that State undertakings were not to be aggrieved by such orders at its instance such void orders passed without jurisdiction cannot be got quashed. When the matter has been brought to the notice of this Court under Article 226 of the Constitution, there is ample authority with the High Court to quash such void orders passed without jurisdiction even at the instance of persons who may not be directly aggrieved. The contention of counsel for the Transport Company is, therefore, repelled.

12. The Legislature is supreme in enacting laws. Even if the parties have vested rights, they can be deprived of the same by making laws. In the present case the statute has expressly provided for retrospective operation of the scheme framed u/s 100 of the Act. Section 103 (2) and (3) and Section 104 of the Act as reproduced above give a complete answer to the contention of Shri Sawhney, Advocate for the respondent Company. As a matter of fact there was not vested right, in the respondent Company, by merely applying for the grant of permit. Right would have vested only if the permit was granted. However, even after the grant of the permits express power was given to the Regional Transport Authority u/s 103(2) of the Act to cancel or modify the permit or refuse to renew the same. When scheme was framed under Chapter VI of the Act, the grant of permits under Chapter V of the Act was restricted thereafter, which is only in accordance with the scheme in view of Section 104 of the Act and not otherwise as liberal as was commented by the Supreme Court in the case of Mithilesh Garg (supra), where provisions of Chapter VI of the Act were not under consideration. As to how the application for the grant of permit is to be dealt with is procedural and if the procedure is varied during pendency of such an application the amended procedure is to be followed, as has been argued by the Advocate General appearing on behalf of the petitioner. In support of this contention reference be made to the decision of the Supreme Court in Anant Gopal Sheorey

Vs. The State of Bombay, , wherein the following observations were made :-

"No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective."

13. Reference may also be made to the case C.W.P. No. 3842 of 1992 (Avtar Singh v. State of Punjab) C. W. P. No. 3842 of 1992, decided by this Court on March 26, 1992 upholding order of Appellate Tribunal directing to grant permit after enforcement of the scheme, which was affirmed in SLP No. 5202 of 1992, (decided on July 15, 1992) filed against the same, it cannot be treated as a precedent as it was dismissed in limine.

14. As already observed above expressly power to grant permit to the private operators after enforcement of the scheme in respect of routes covered therein was taken away. Thereafter permits are to be granted under the scheme. The Supreme Court in Ram Krishna Verma and Others Vs. State of U.P. and Others, , laid down while considering the scope of scheme framed under the old Act, vis-a-vis power of the authorities to grant permit for routes covered under the scheme. It was held that 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. Since under the provisions of the scheme applications for proportionate quota to be operated by the private operators were invited, the aforesaid matter would be considered by the Transport Authority according to the scheme who will pass appropriate orders.

15. For the reasons recorded above, these writ petitions are allowed and orders passed by the State Transport Appellate Tribunal granting permits to the respondent in the two cases, Annexure P. 1 as referred to above, are quashed. There will be no order as to costs.