

(1992) 12 P&H CK 0005
In the Punjab And Haryana At Chandigarh

State of Punjab

APPELLANT

Vs

Sandeep Bus Service Pvt. Limited and Another

RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 100, 103, 82, 83, 89

Citation : (1993) 1 ACC 522

Hon'ble Judges : Ashok Bhan, J;Amrit Lal Bahri, J

Bench : Division Bench

Judgement

A.L. Bahri, J.—Delay in the disposal of applications for the grant of permits not only affects the parties but also the Public at large. The present case is an example where after lapse of years, the State Transport Commissioner postponed adjudication of the matter which frustrated the applications already received for the grant of stage carriage permits. The callousness with which the matter was considered and dealt with deserves to be condemned so that in future authorities under the Motor Vehicles Act should act with the promptitude to achieve the purpose and objects of the act in the matter of grant of stage carriage permits. Brief narrations of the facts from the pleadings is considered necessary.

2. M/s. Sandeep Bus Service Pvt. Ltd. Mansa who was operating on Mansa-Rampura route on one regular permit issued with one return trip applied for extension of the route up to Baja Khana. On November 8, 1985, the matter was taken up in the meeting by the State Transport Commissioner who was exercising powers of Regional Transport Authority under the Motor Vehicles Act. Since no minutes of the meeting were recorded, the aforesaid Company moved the High Court in the writ petition. It was represented that the fresh applications would be invited for the grant of one regular stage carriage permit for Mansa Baja Khana route. Ultimately, on November 1, 1988 as per advertisement issued by the State Transport Commissioner applications were invited. In response to the advertisement 14 applications were received from different persons for the

grant of permits. The contents of the applications were further advertised for inviting objections/representations. At this stage, it may be noticed that the applications were invited after the need for the grant of the permit was found to be existing, on the basis of the survey report. No objections were filed to the applications of the 14 applicants. On August 12, 1990, State Transport Commissioner passed an order, copy of which was produced during the arguments. It was observed therein that before any decision be taken, the present traffic potential should be ascertained. The report of the Survey Officer on the basis of which the applications were invited, was quite old. Thus he adjourned the item with the directions to the Secretary, Regional Transport Authority Ferozepur to re-survey the route. The matter was ordered to be listed thereafter in the meeting of the State Transport Commissioner. M/s. Sandeep Bus Service filed an appeal against the aforesaid order before the State Transport Appellate Tribunal which was accepted vide order dated April 2, 1992 (copy Annexure P-1). One stage carriage permit with one return trip on the route Rampura to Baja Khana via Bhagta route was granted in favour of the aforesaid Company. This order is impugned in the present writ petition by the State of Punjab through Joint Secretary to Government Punjab, Department of Transportation. On notice of motion having been issued, the writ petition has been contested on behalf of M/s. Sandeep Bus Service-respondent No. 1 inter alia on the ground that the State of Punjab is not a party aggrieved by the order of the Appellate Tribunal and thus not competent to file the writ petition. Reliance was placed on the decision of the Single Bench of this Court in C.W.P. No. 6772 of 1991 that where State of Punjab was not a contesting candidate, it could not in the writ petition challenge grant of permit to a private-party. It is further averred relying upon the decision of the Division Bench of this Court in C.W.P. No. 9254 of 1992 decided on July 31, 1992 that the State Transport Appellate Tribunal being the appellate authority under the Motor Vehicles Act was exercising same powers of the Regional Transport Authority. The order of the Appellate Tribunal granting the permit was thus a valid order and not open to challenge in the writ petition. We have heard Counsel for the parties.

3. The object of granting permits for stage carriage in the State is to regulate traffic on the roads and to provide better transport facilities to the public. If need for grant of the permit existed in 1988 or prior thereto when initially applications for extension of the route was filed, the authorities under the act were duty bound to exercise powers under the act and to grant permits. The Apex Court has already pointed out while discussing the powers of the Regional Transport Authority to grant the permit, if there is no scheme prepared and finalised for any category of routes i.e. inter-State or otherwise the Regional Transport Authorities are required to issue permits merely on the asking. If there are more operators, there would be healthy competition that would lead to providing more amenities facilities efficiency in the Transport Service to the public. However, where the grant of the permits is regulated to scheme approved u/s 100 of the Act, in such a case even the State Transport Commissioner could refuse to

entertain the application or reject it without considering on merits and no appeal against such an order is maintainable in view of Section 103(3) of the Act. Since there is no question of framing or approving any scheme under Chapter 5 of the Act, the case is to be considered under other provisions of the Act.

4. State of Punjab or Semi State Government Undertaking such as Punjab Roadways or Pepsu Road Transport Corporation were not the claimants to the grant of the permit in dispute. Thus, even if the impugned order of the Appellate Tribunal is to be quashed, no relief is acquired to be given to the present writ petitioner in that sense the present petitioner is not a party aggrieved of the order passed by the State Transport Appellate Tribunal and has no locus standi to file the petition.

5. Since the matter has come to the notice of this Court not only in this case but in other cases also that the authorities appointed under the act were not performing their duties as required under the Act, a suo motto action was required to be taken that the writ petition is being disposed of on merits. The State Transport Appellate Tribunal has no jurisdiction to entertain an appeal u/s 89 of the Motor Vehicles Act and the impugned order passed is without jurisdiction, null and void.

6. After noticing the history of the case as has been reproduced above, the State Transport Commissioner in its order dated August 12, 1990 observed as under:

At the time of meeting, all applicants except those mentioned at Serial No. 3 and 4 above were present themselves or through their counsels. Sh. R.K. Khanna, Advocate represented the applicant/company and argued that since the company is holding regular permit on Mansa-Rampura route it is most deserving company to have permit for extension portion too. All other applicants also argued for grant of route permit in their favour on various grounds like experience of transport sector, fleet strength, previous operation on the part of route etc. I feel, before taking any decision on this item, present traffic potential should be ascertained. The report of Survey Officer is quite old and it is high time asking for new report Accordingly, this item is adjourned and Secretary, Regional Transport Authority, Ferozepur is directed to survey the route and after that list this item in State Transport Commissioner, Punjab meeting.

7. Section 89 of the Motor Vehicles Act which provides for appeals reads as under:

(1) Any person--

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit u/s 82, or

- (d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or
- (e) aggrieved by the refusal of renewal of a permit, or
- (f) aggrieved by the refusal of grant permission u/s 83, or
- (g) aggrieved by any other order which may be prescribed,

may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under Sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give decision thereon which shall be final.

8. The order of the State Transport Commissioner, operative portion as reproduced above does not amount to an order of refusal to grant the permit to bring the u/s 89(1)(a) of the Act as reproduced above. At the most the order of the State Transport Commissioner be considered to have postponed the hearing of the matter and call for afresh survey report. No appeal could be entertained u/s 89(1) of the Act against such an order. That being the position the order of the State Transport Appellate Tribunal, Annexure P-1 attached with the writ petition is palpably without jurisdiction. Mr. H.S. Sawhney, learned Counsel for respondent No. 1-M/s. Sandeep Bus Service has argued that the order passed by the Appellate Tribunal is otherwise just and in accordance with the scheme of the act and this Court should not interfere to quash the order when no injustice has been done to the petitioner or to the other applicants who chose not to represent or appeal against the order of the State Transport Commissioner aforesaid. There is no merit in this contention. Neither the State Transport Commissioner nor the Appellate Tribunal considered the merits of the different applicants who had applied for the grant of such permits in response to the advertisement. If the State Transport Commissioner after examining merits of die applicants had decided to grant permit to one of them and then the order had been challenged only by one of the non-grantees and others having not challenged the same, it could be said that the others felt satisfied with the order of the State Transport Commissioner in not granting permits to there When those persons were neither parties before the appellate tribunal nor had opportunity of hearing or representing their case before and other cases having not teen open by the State Transport Commissioner who had merely postponed the hearing it cannot be said they were satisfied with the non-grant of the permits to them. They may still be hoping that some day, their applications would be taken up for hearing by the State Transport Commissioner. The contention of the learned Counsel for respondent No. 1 in this respect is, therefore, repelled.

9. It has been argued that u/s 90 of the Motor Vehicles Act, the State Transport Appellate Tribunal also had revisional powers to set aside order of the State Transport Commissioner like the one passed in the present case and the position or as it deem fit, the "impugned order of the State Transport Appellate Tribunal, as argued by counsel for the respondents should be treated to this, passed under

the exercise of the revisional jurisdiction u/s 90 of the Act This contention again cannot be accepted. The order of adjournment could not be such an order which could be revised u/s 90 of the Act. Order, calling for fresh survey report was one which could be challenged in revision. However, the revisional power under the circumstances of the case in hand could not be expanded to such extent that the Appellate Tribunal could assume--powers of the State Transport Commissioner to decide the dispute on merits as such authority afresh and that too without hearing all the concerned parties. After observing that the State Transport Commissioner was not right in postponing the hearing of the case to await the new survey report, what was expected of appellate tribunal was to remand the case to the State Transport Commissioner with the appropriate directions. This is what we have also thought of doing so. If the State Transport Commissioner had granted the advertised permits to one of the applicants before it, on appeal, the appellate tribunal would have exercised same powers sire exercised by the Regional Transport Authority and considering the merits of the parties before him could grant such permits to someone else. He could not otherwise increase the number of permits to be granted. To assume such jurisdiction in him of granting/ distributing permits more than what were advertised is not contemplated under the provisions of the Act 01 the Appellate Tribunal. In the exercise of revisional jurisdiction also the appellate tribunal could not exercise powers which could not be exercised in appeal.

10. In the circumstances of the present case, the only option left is to remand the case to the State Transport Commissioner who is exercising power of the Regional Transport Authority under the Act with the direction to decide the case afresh after hearing all the 14 applicants before him and on the basis of the existing survey report which had justified the pllant of one regular permit with one return trip on the route in dispute. Respondent No. 1, M/s. Sandeep Bus Service represented through counsel is directed to appear before the State Transport Commissioner on January 4, 1993. Without any delay, the State Transport Commissioner shall dispose of the matter. With directions as above and quashing order of the State Transport Appellate Tribunal, Annexure P-1, the present writ petition stands disposed of. There will be no order as to costs.