
(2012) 12 P&H CK 0210
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15863 of 2010

State of Punjab

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 100, 104, 89

Citation : AIR 2013 P&H 40

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Harsimran Singh Sethi, A.A.G, for the Appellant; A.M. Punchhi, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The State of Punjab has filed the instant writ petition impugning the order dated 27.10.2008, Annexure P4, passed by the State Transport Appellate Tribunal whereby one regular stage carriage permit for plying one return trip daily for air-conditioned bus had been granted in favour of respondent 3 on the Amritsar-Mohali via Jalandhar, Nawanshahar, Ropar route (for short to be referred as "the route in question"). A brief factual backdrop would be necessary. Applications were invited for grant of two regular stage carriage permits for plying two return trips daily on the route in question in terms of a notice dated 1.12.2005 published in the motor Transport Gazette, Weekly, Chandigarh. The route in question had been surveyed by the Secretary, Regional Transport Authority, Jalandhar and in terms of the survey report, the route was 229 kms. in single length, out of which 133 kms. fell on the National Highway and the rest 96 kms. on the State Highway. As per the Transport Scheme formulated by the State dated 9.8.1990 and modified on 21.10.1997, the permits were required to be granted in favour of the State Transport Undertaking and the private operators in the ratio of 40:60. As such, out of the two permits for the route in question for which the applications had been invited,

one permit for plying one return trip daily each was required to be allotted in favour of the State Transport Undertaking and the private operators. Undisputedly, no State Transport Undertaking submitted application for claiming the grant of stage carriage permit on the route in question. Sixteen applications had been received from various private transport operators and in terms of order dated 7.11.2006 passed by the State Transport Commissioner, Punjab, both the regular stage carriage permits were allotted to the private operators i.e. one in favour of Kanwar Partap Singh i.e. respondent No. 4 and the other in favour of Hari Travels Transport Ltd., i.e. respondent 5. Three appeals at the hands of unsuccessful private operators arose out of the order dated 7.11.2006 including one preferred by respondent No. 3 herein. It is in terms of passing a common order disposing of such three appeals that the impugned order dated 27.10.2008 had been passed by the State Transport Appellate Tribunal, Punjab whereby the appeal preferred by respondent No. 3 had been allowed and one permit for operating one return trip daily on the route in question which was lying vacant has been granted in favour of Rara Sahib Bus Service Regd., Ludhiana.

2. Learned counsel for the parties have been heard at length.

3. It has been vehemently argued on behalf of the State that the impugned order allotting one permit for operation of one return trip daily on the route in question in favour of respondent No. 3 is in clear violation of the Scheme formulated by the State and published in the Government Gazette dated 9.8.1990, and as amended in terms of notification dated 21.10.1997. It has been contended that the entire route in question falls on the National Highway and State Highway and as such, the grant of the permits was to be regulated by the provisions of the Scheme and in the light of the ratio stipulated therein. As per learned State counsel, out of the two regular stage carriage permits for plying two return trips daily on the route in question, only one permit could have been allotted in favour of a private operator and since respondent No. 5 Hari Travels Transport Ltd., Patiala had already been granted the regular stage carriage permit on the route in question, the other stage carriage permit could not have been allotted in favour of respondent No. 3 in terms of passing the impugned order dated 27.10.2008, Annexure P4.

4. Having heard learned counsel for the parties, I find that the present writ petition filed at the hands of the State is totally misconceived and deserves dismissal.

5. Undisputedly, in response to the notice dated 1.12.2005 whereby applications had been invited for the grant of two regular stage carriage permits for plying two return trips daily on the route in question, no application had been submitted by any State Transport Undertaking. Admittedly, in terms of order dated 7.11.2006 passed by the State Transport Commissioner, Punjab, both the regular stage carriage permits had been allotted in favour of the private operators i.e. respondents 4 and 5 herein. The State of Punjab chose not to prefer an appeal u/s 89 of the Motor Vehicles Act, 1988 (for short to be referred as "1988 Act")

before the State Transport Appellate Tribunal against such order dated 7.11.2006 passed by the State Transport Commissioner, Punjab. In terms of the impugned order dated 27.10.2008 passed by the State Transport Appellate Tribunal, Punjab, one regular stage carriage permit had been allotted in favour of private respondent No. 3 in the light of the fact that Kanwar Partap Singh-respondent. No. 4 in spite of having been allotted the requisite permit by the State Transport Commissioner, Punjab had not lifted such permit and the same was lying vacant.

6. I find that the State Transport Undertaking having not even submitted an application for the grant of regular stage carriage permit on the route in question and thereafter having chosen not to even file an appeal against the order dated 7.11.2006 passed by the State Transport Commissioner, Punjab granting both the regular stage carriage permits in favour of private operators, the State would not even have the locus to file the instant writ petition.

7. Even otherwise on merits, the State Transport Commissioner in the order dated 7.11.2006 was alive to the ratio of 40:60 between the private operators and State Transport Undertaking as stipulated under the approved Transport Scheme dated 9.8.1990 as modified vide notification dated 21.10.1997 and yet had granted both the stage carriage permits in favour of private operators keeping in view the fact that the State Transport Undertaking had not claimed the grant of a stage carriage permit on the route in question. While adopting such course of action, it had been observed that the share of mileage accruing to the State Transport Undertaking would be accordingly adjusted on some other route. Such view stands affirmed by the State Transport Appellate Tribunal. Even u/s 104 of 1988 Act, it is clearly envisaged that where a scheme stands published u/s 100 of 1988 Act in respect of any notified area or notified route, the State Transport Commissioner shall not grant any permit except in accordance with the provisions of the Scheme but in terms of the proviso to Section 104 of 1988 Act in such a situation where no application for a permit has been made by the State Transport Undertaking. It would be open for the State Transport Commissioner to grant temporary permits to any person in respect of such notified area or notified route and the same would cease to be effective upon the issue of a permit to the State Transport Undertaking in respect of that area or route. Accordingly, I do not find any infirmity in the impugned order, dated 27.10.2008, passed by respondent No. 1.

8. It would be noteworthy that the order dated 27.10.2008 passed by the State Transport Appellate Tribunal granting the regular stage carriage permit in favour of respondent No. 3 has not been implemented till date. This is in spite of respondent No. 3 having preferred Civil Writ Petition No. 5740 of 2009 before this Court and the same having been disposed of in terms of order dated 22.4.2009 with a direction to the respondents to implement the order dated 27.10.2008 subject to there being no legal impediment in the implementation thereof. Ostensibly, the filing of the instant writ petition and pendency thereof has been used as a tool not to implement an order passed by the State Transport

Appellate Tribunal. Such course of action cannot, but be deprecated.

9. The present writ petition, accordingly, is dismissed with a direction to the official respondents to implement the order dated 27.10.2008 passed by the State Transport Appellate Tribunal granting one regular stage carriage permit with one return trip daily for the route in question allotted in favour of respondent No. 3 forthwith. Petition dismissed.