

(2013) 01 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3105 of 2012-A

Suboth Sharoti

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(38), 2(40), 72, 72(2), 8

Citation : (2013) 3 ACC 797 : AIR 2013 HP 55 : (2013) 2 ShimLC 867 : (2013) 1 ShimLC 355

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Anuj Nag, for the Appellant; J.S. Guleria, Assistant Advocate General for the Respondents No. 1 to 3 and Mr. Neel Kamal Sood, Advocate for the Respondent No. 4, for the Respondent

Judgement

Rajiv Sharma, J.—Petitioner is a proprietor of National Bus Service. He has been granted stage carriage permit for the route commencing from Nagrota via Kangra-Jassur-Chaki and back to Palampur, thereafter via Nagri and halt at Nagrota Bagwan. Respondent No-4 was also issued stage carriage permit bearing route permit No. 154/R/Stg/06. The stage carriage permit issued to respondent No. 4 initially was through Pathankot to Kahanphatt via Nagrota Bagwan. The total kilometers which were covered under the stage carriage route permit issued to respondent No. 4 were 234, out of which 200 KMs were for National Highway and 34 KMs were for rural roads. Respondent No. 4 submitted an application for modification of his route permit from Pathankot to Palampur via Kangra-Nagrota Bagwan and Parour. The request of respondent No. 4 was allowed and he was allowed to ply his bus from Pathankot-Palampur via Kangra-Nagrota-Parour by the Regional Transport Authority, Dharamshala in its meeting held on 1/2.11.2011. Petitioner has also made a representation against the modification of the route permit of respondent No. 4 on 17.1.2012. Mr. Anuj Nag has vehemently argued that modification of the route permit of respondent No. 4 vide Annexure P-1 is in negation of mandatory provision of Section 80(3) of the

Motor Vehicle Act 1988 (hereinafter referred to as the "Act" for brevity sake). He then contended that the Regional Transport Authority has changed the termini of the route, which is not permissible under the law. He also argued that while taking the decision to modify the route of respondent No. 4, the competent authority has not taken into consideration that it will serve the convenience of the public.

2. Mr. J.S. Guleria, learned Assistant Advocate General and Mr. Neel Kamal Sood have argued that there is no violation of Section 80(3) of the Act while modifying the stage carriage permit of respondent No. 4.

3. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

4. Section 2(38) of the Act defines "route" as under:

"Route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another.

5. Section 2(40) defines "stage carriage" as under:

stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

6. Section 72 of the Act provides for grant of stage carriage permit. Section 80 lays down the procedure in applying for and granting permits. Subsection (3) of Section 80 reads thus:

(3) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit;

Provided that it shall not be necessary so to treat an application made by the holder of stage carriage permit who provides the only service on any route to increase the frequency of the service so provided without any increase in the number of vehicles;

Provided further that,-

(i) in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed twenty four kilometers;

(ii) in the case of extension, the distance covered by extension shall not exceed twenty four kilometers from the termini, and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient

to grant a separate permit in respect of the original route as so varied or extended or any part thereof.

7. In the instant case, respondent No. 4 was initially granted permit through Pathankot to Kahanphatt via Nagrota Bagwan. However, the same has been changed from Pathankot-Kahanphatt via Nagrota Bagwan to Pathankot-Palampur via Kangra-Nagrota Bagwan and Parour. It is, thus, evident that the termini has been altered, which is not permissible under the second proviso to sub-section (3) of Section 80 of the Act. According to sub-section (3) of Section 80, an application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit is to be treated as an application for the grant of a new permit. However, as per second proviso to sub-section (3) of Section 80, in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed 24 KMs and in the case of extension, the distance covered by extension shall not exceed 24 KMs from the termini. This variation or extension within such limits is to be made only after the transport authority is satisfied that such variation will serve the convenience of the public and it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof.

8. In the case in hand, respondent-State has not placed any material on record that the Regional Transport Authority was satisfied that the variation would serve the convenience of the public.

9. The Division Bench of the Karnataka High Court in A. Diwakara Naik Vs. The Karnataka State Transport Authority, Bangalore and Others, has explained the terms "variation", "extension" and "curtailment" occurring under sub Section (3) of Section 8 of the Motor Vehicle Act, 1988 as under:

15. Sub-section (3) of Section 80 refers to applications to vary the conditions of a stage carriage permit by increasing the number of trips or by variation, extension or curtailment of the route or routes or area specified in the permit. Therefore, the subsection contemplates alteration of a route by (i) variation; (ii) extension; and (iii) curtailment. Each refers to a distinct and different change of the route. As there is a tendency to interchange these terms, we will clarify these terms with reference to Section 80.

15.1 In a "variation" of a route, both termini of the original route remain the same but the route between one end point and another end point gets altered by adopting a different route wholly or partly. In short, it refers to a deviation in the route without altering the starting point and termination point. When a change in route involves either of the termini of the original route being changed, then it is not a "variation" but may be an extension or curtailment.

15.2 In a "curtailment" of a route, a part of the original route is deleted or excised resulting in shortening of the route and consequent shifting of one of the termini to an earlier point on the original route.

15.3 In an "extension" of a route, the original route gets extended beyond one of the terminus resulting in creation of a new terminus, beyond the original terminus. Consequently, the old terminus becomes a point on the extended route.

15.4 In a "curtailment-cum-extension" of the route, a part of the original route upto one of the end points is excised and an extension is made on a different direction from the cutoff point, resulting in a new terminus.

15.5 These may be clarified by way of an illustration (not exhaustive, but only indicative). Let us say a permit has been granted for the route "town W to "town X", to pass through the villages A, B and C The original route is therefore "W-A-B-C-X". Let us assume that "town X" can be reached from town W through an alternative route through the villages D, E and F; that Y is a town beyond X; and that Z is a town lying in a direction different from that of town X.

(i) In a variation of route, the termini W and X remain unaltered, but there is change in the route. "W-A-B-C-X" may become "W-A-E-C-X" or "W-D-E-F-X".

(ii) In a curtailment of route, a part of the original route gets excised and consequently one of the points on the route becomes the termini. "W-A-B-C-X" may become "W-A-B-C" or "WA-B" or "A-B-C-X" or "B-C-X".

(iii) In an extension of route, the original route is extended beyond one of the termini Consequently, one of the termini becomes a point on the route. The original route "W-AB-C-X" may become "W-A-B-C-X-Y".

(iv) In a curtailment-cum-extension of the route, a part of the original route is cut-off and from the cut-off point on the original route, a diversion is made in a different direction. The original route "W-A-B-C-X" thus becomes "W-A-B-C on curtailment, and on extension from the cut-off point, becomes "W-A-B-C-Z".

15.6 Section 80(3) uses the terms "vary the conditions of any permit" and "variation of the route". The word "variation" when used in the term "variation of the conditions of the permit" has a meaning different from the meaning it has, when used in the term "variation of the route". "Variation of conditions of permit" refers to any alteration of the conditions of the permit, inter alia, including an extension of the route or a curtailment of the route or a variation of the route or increase/decrease in the number of trips, "Variation of the route" refers to alteration of the route without changing the termini and is one of the several alterations falling under "variation of the conditions of the permit".

21. Sub-section (1) of Section 80 provides that the application for a permit of any kind may be made at any time and Sub-section (2) provides that the Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time. Sub-section (1) and (2) of Section 80 have

liberalised the procedure for grant of permits under the Act to such an extent that the Supreme Court has observed that intending operators can get permits for the asking irrespective of the number of operators already in the field (vide *Mithilesh Garg v. Union of India*). Sub-section (3) enables filing of applications to vary the conditions of any permit. But grant of variation of conditions of permit by way of extension, variation or curtailment of the route is permissible only if the following conditions are satisfied; (i) where the change of the route sought, is an extension or variation of the route, the same shall not exceed 24 kms.; (ii) the Transport Authority should be satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof.

22. It is therefore clear that before granting any extension, variation or curtailment of the route, the Transport Authority should examine the matter and record a finding that (a) the variation or extension of the route sought does not exceed 24 kms. with reference to the original route; (b) such variation/extension will serve the convenience of public; and (c) it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof. If any of the three conditions is not satisfied, the request for variation of the conditions will have to be rejected. Further, if the resolution/order of the Transport Authority does not expressly or impliedly indicate the application of mind and decision on these three aspects, the resolution/order of the Transport Authority will not be in accordance with Section 80(3) and thus, will be open to challenge. We therefore agree with the learned Single Judge that recording of findings on these three aspects by the Transport Authority is necessary, to confer validity on the order granting variation of the conditions of the permit.

10. The Regional Transport Authority is required to examine the matter and record the findings that the variation shall not change the termini or extension of the route sought would not exceed 24 KMs with reference to the original route and such extension will serve the convenience of the public and it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof. The Regional Transport Authority has overlooked the letter and spirit of sub-section (3) of Section 80 of the Act while modifying the route permit of respondent No. 4. The Regional Transport Authority while doing so has changed the termini from Pathankot-Kahanphatt via Nagrota Bagwan to Pathankot-Palampur via Kangra-Nagrota Bagwan and Parour. The Regional Transport Authority has also not produced records before this Court that it was satisfied that the variation/extension would serve the convenience of public and it was not expedient to grant a separate permit in respect of the original permit.

11. Case of the respondent-State as per main reply is that the route permit has been modified strictly as per sub-section (3) of Section 80 of the Act in its meeting held on 1.11.2011 after curtailing the route from Parour to Kahanphatt

17 KMs rural road and addition of route from Parour to Palampur 11 KMs on National Highways by way of variation of the termini.

12. Mr. Neel Kamal Sood has also argued that the route permit could be varied by the Regional Transport Authority under sub-section (2) (xxii) of Section 72 of the Act. This Section is not applicable in the case in hand since respondent-State has not issued any notice of one month, as stipulated therein. Rather, case of respondent No. 3 in the short reply is that route permit has been modified under sub-section (3) of Section 80. However, in the supplementary affidavit filed, stand of respondents No. 2 and 3 is that the route permit has been modified by Regional Transport Authority under the provisions of Section 72 (2) read with Section 80 (3) of the Act. However, the fact of the matter is that the case was to be considered under sub-section (3) of Section 80 and not under sub-section (2) of Section 72 of the Act. Thus, the modification changing the termini of the route of respondent No. 4 by the Regional Transport Authority was without authority and jurisdiction.

13. Mr. Neel Kamal Sood has also argued that the petitioner has not availed the statutory remedy of appeal. The writ petition was admitted on 31.5.2012. The plea of alternative remedy was not urged at the time of admission nor this right was reserved to be agitated at the time of hearing of the petition. Accordingly, in view of the observations and discussions made hereinabove, the writ petition is allowed. Annexure P-1 is quashed and set aside. Respondent No. 4 shall ply his bus on the old route, i.e. Pathankot-Kahanphatt via Nagrota Bagwan. Pending application(s), if any, also stands disposed of. No costs.