
(2008) 03 P&H CK 0048
In the Punjab And Haryana At Chandigarh

Sukhchain Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 100, 80, 99

Citation : (2008) 151 PLR 711

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Judgement

Satish Kumar Mittal, J.—The petitioners have filed this petition under Articles 226/227 of the Constitution of India for setting aside the order dated 14.11.2006 (Annexure P-11) passed by the State Transport Appellate Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Appellate Tribunal"), whereby the order dated 15.4.2005 passed by the State Transport Commissioner, Punjab, exercising the powers of Regional Transport Authority, Patiala (hereinafter referred to as "the STC"), allowing regular extension of stage carriage permit of the petitioners with two return trips daily on Sangrur-Bhikhi via Tungan, Kolaran, Sunam, Cheema route upto Mansa from Bhikhi via Kotra, Khiala, has been set aside, while observing that the impugned extension granted by the STC is illegal and violative of the provision contained in Section 80(3) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") and the provisions contained in the modified transport scheme dated 21.10.1997.

2. In the present case, the petitioners were granted one permit with two return trips daily on Sangrur to Lakhiwala via Tungan, Kolaran, Sunam, Satauj, Budhlada, Boha route. Subsequently, they applied for the grant of regular curtailment of their permit from Cheema to Lakhiwala and extension of the remaining route upto Bhikhi. The said application was allowed by the Secretary, Regional Transport Authority, vide order dated 14.2.2003 (Annexure P-6). Thereafter, the petitioners filed the instant application for grant of extension of their Sangrur to Bhikhi via Tungan, Kolaran, Sunam, Cheema route upto Mansa

from Bhikhi via Kotra, Khiala. Their application was processed and survey of the proposed extension was got conducted from the District Transport Officer, Mansa, who recommended the proposed extension in the public interest. According to the survey report, the proposed extension is 17.3 Kms. in single length; the existing route is 44 Kms. in single length and in case the proposed extension is allowed, it would come to 61.3 Kms. and the total daily mileage against the said permit would come to 245.2 Kms. When the application of the petitioners was got published, the General Managers of the Pepsu Road Transport Corporation (hereinafter referred to as "the PRTC), Sangrur, Budhlada and Bathinda filed objections to the proposed extension. Four private operators, namely Hardeep Bus Service Regd. Sunam, Vishal Transport Co. Regd. H.O. Mansa, Preet Bus Service Pvt. Ltd. H.O. Patiala Road, Sunam and M/s Sandeep Bus Service Pvt. Ltd. Mansa, also filed objections. At the time of hearing, no one appeared on behalf of three objectors, namely Hardeep Bus Service, Vishal Transport Co. and M/s Sandeep Bus Service. The remaining objectors, including the PRTC, objected the proposed extension on the ground that since sufficient bus service was already available on the proposed extension and the need of the traveling public was already being met with adequately by them, therefore, there was no need for the grant of proposed extension. The STC allowed the application of the petitioners and granted regular extension of stage carriage permit of the petitioners with two return trips daily on Sangrur-Bhikhi via Tungan, Kolaran, Sunam, Cheema route upto Mansa from Bhikhi via Kotra, Khiala.

3. Feeling aggrieved against the said order, PRTC filed revision before the Appellate Tribunal. The present petitioners (respondents in the revision) raised the point of limitation, but the same was not accepted and it was held that the PRTC filed revision against the order dated 15.4.2005 within the prescribed period from the date when the said order was implemented by the authority by making endorsement on the permit of petitioner No. 1 with regard to extension of the permit. Thereafter, the revision of the PRTC was decided on merits. The Appellate Tribunal vide its order dated 14.11.2006 has set aside the said order of STC while holding that the extension granted by the STC is illegal and violative of the provision contained in Section 80(3) of the Act and the provisions contained in the modified transport scheme dated 21.10.1997.

4. We have heard learned Counsel for the parties and gone through the impugned order passed by the Appellate Tribunal as well as the order passed by the STC.

5. During the course of arguments, it has not been disputed by counsel for the petitioners that Sangrur to Bhikhi route is a part of monopoly route of the PRTC from Patiala to Mansa and it covers a portion of 54 Kms. By the proposed extension, the petitioners wanted to further cover up the monopoly route from Bhikhi to Mansa, a distance of 19 Kms. It is also not disputed that in the year 2003, route of the petitioners was extended from Cheema to Bhikhi i.e. a stretch of 14.5 Kms. and in case, further proposed extension from Bhikhi to Mansa is

granted, which undisputedly covers 19 Kms., then the total extension comes to 33.5 Kms.

6. In view of the abovesaid factual position, which has not been disputed, in our opinion, the petitioners have no case. As per Clause (4) of the Transport Scheme dated 21.10.1997, which has been formulated and approved by the State Government in exercise of the power conferred under Sections 99 and 100 of the Act, all future operations on monopoly routes shall be operated by the State Transport Undertakings, provided that a private operator may be allowed to operate on a portion of twenty percent of the monopoly route or up to the distance of fifteen kilometers of the said route, whichever is less. Therefore, the STC could not have granted the extension from Bhikhi to Mansa, which covers a distance of 19 Kms. of the monopoly route.

7. The case of the petitioner does not fall under the proviso to Clause (4) of the aforesaid modified Transport Scheme. The Supreme Court in *Mysore State Road Transport Corporation Vs. Mysore State Transport Appellate Tribunal*, observed that if any Transport Scheme published, approved and notified under the Act, prohibits private transport owners to operate on the notified area or route or any portion thereof, the Regional Transport Authority can not either renew the permit of such private owners or give any fresh permit in respect of a route which overlaps the notified route. It was further held that where a private transport owner makes an application to operate on a route which overlaps even a portion of the notified route, then that application has to be considered only in the light of the scheme as notified. If any conditions are placed then those conditions have to be fulfilled and if there is a total prohibition then the application must be rejected. Similarly, this Court in *PEPSU Road Transport Corporation, Patiala Vs. State of Punjab* and another, has observed that since the route in dispute, over which extension was sought, is a monopoly route of the STU, as per the Transport Scheme, the STU can raise a valid objection for grant of stage carriage permit or increase in return trips on the said route. A private operator cannot claim, as a matter of right, extension of its route overlapping wholly or partly over the monopoly route, as the same would be clearly infringing the provisions of the Transport Scheme, approved and notified under Sections 99 and 100 of the Act. Hence, the order of extension passed by the STC was clearly violative of Clause (4) of the Transport Scheme dated 21.10.1997.

8. Secondly, it is not disputed that by the first extension of 14.5 Kms., granted earlier in the year 2003 and by the proposed extension of 19 Kms., the total extension would come to 33.5 Kms. However, Clause (2) of the second proviso to Sub-section (3) of Section 80 of the Act provides that in the case of extension, the distance covered by the extension shall not exceed 24 Kms. from the termini. The Appellate Tribunal, while relying upon a decision of the Kerala High Court in *Kumnhikrishanan Nair v. RTO Malappuram* 1991(2) K.L.T. 266, where a similar question came up for consideration, has held that the proposed extension is violative of the provision contained in Section 80(3) of the Act. In

Kumnhikrishanan Nair's case (supra), the Kerala High Court observed as under:

The argument of the learned Counsel for the appellant is that in the case of the piece-meal extensions, as in the present case, the limit of twenty four kilometers applies to each of the extensions, and not to all the extensions taken together. We are not able to agree. In the new Act several of the restrictions which had been imposed by the predecessor Act of 1938 have been removed and the grant of permit has been liberalized. Nevertheless certain restrictions have been retained, one such being the restrictions wise in the case of the variation or extension. It must be taken that legislature deliberately retained this restrictions in enacting the new Act. The distance covered by extensions shall not exceed twenty four kilometers from the termini. If the contention of the appellant is accepted, it may not be difficult for an existing operator to seek quite a large number of extensions, taking care to see that each extension is within the limit of twenty four kilometers and thus run on a route which is totally different from the route for which original permit has been granted. Such can not be the legislative intention. A careful examination of language used in the second provision to Sub-section (3) of Section 80 with reference to extension will only support this view. The law cannot be that by a subterfuge an existing operator is able to obtain extension for a considerably long route inspite of the restriction deliberately imposed by the Act.

9. Learned Counsel for the petitioners submits that since the PRTC has already surrendered route of Bathinda to Budhlada via Mansa-Bhikhi and another route of Mansa-Lakhiwal via Bhikhi, therefore, its objections on the application for the proposed extension should not be entertained. Further, learned Counsel has submitted that the Appellate Tribunal has erred in law while rejecting the objection of the petitioners regarding the limitation and while deciding the appeal on merit.

10. We do not find any substance in any of the contentions raised by learned Counsel for the petitioners. Once it has been found that the proposed extension is violative of the provision contained in Section 80(3) of the Act and the provisions contained in the modified transport scheme dated 21.10.1997, then the PRTC cannot be stopped from challenging the illegal extension, merely on the ground that it has surrendered the route permit. Surrendering of a particular route permit is not relevant to seek an extension of a route permit. Secondly, once the Appellate Tribunal has exercised its discretion, while treating the revision to be within limitation, as the same was filed within the prescribed period from the date when the impugned order passed by the STC was implemented by the authority by making endorsement on the permit of petitioner No. 1 with regard to extension of the permit, we do not find any ground to interfere in the said order on the point of limitation.

11. Since on merits, the Appellate Tribunal has rightly come to the conclusion that the STC had illegally granted the impugned extension, we do not find any ground to interfere in the impugned order, in exercise of the writ jurisdiction

under Articles 226 and 227 of the Constitution of India.

Dismissed.