

(2000) 02 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 214 of 2000

Susil Kumar Panigrahi

APPELLANT

Vs

Commissioner-cum-Chairman, State Transport Authority and
Others

RESPONDENT

Date of Decision : 18-02-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 72

Citation : AIR 2000 Ori 113 : (2000) 89 CLT 788

Hon'ble Judges : Pradipta Ray, J;L. Mohapatra, J

Bench : Division Bench

Advocate : S.K. Das, S.B. Jena, S.J. Nanda and S. Behera, for the Appellant;
D.B. Das, K. Mohammed, S.C. Parija, G.P. Mohanty, B.M. Patnaik, S. Singh
Samant and D. Nayak, for the Respondent

Judgement

Pradipta Ray, J.—The writ petitioner has been operating his bus bearing Registration No. CR-10-B-0637 in the route of Garabandha to Rayagada via Paralakhemundi, Hadabhangi, Kashinagar, Gunupur, Kujendra and back on the strength of successive temporary permits. The petitioner has also applied for permanent permit, but the same has not yet been considered. Several bus operators raised objections to the time schedule given in the petitioner's temporary permit and on the basis of the said objections the time schedule in the petitioner's temporary permit was revised. The petitioner challenged the same in O.J.C. No. 13731 of 1999. The said O.J.C. was disposed of on December 7, 1999 by remanding the dispute over allotment of time to the Chairman, State Transport Authority for reconsideration after giving reasonable opportunity to the concerned bus operators. In the mean time the petitioner's temporary permit expired and on his application another temporary permit valid upto January 7, 2000 was issued. In the said permit the revised time schedule was allotted. In pursuance of the order passed in O.J.C. No. 13731 of 1999 the Chairman, State Transport Authority reheard the dispute and by his order dated December 22, 1999 maintained the disputed time schedule. Being aggrieved by the said order

dated December 22, 1999 the writ petitioner has filed this writ petition.

2. In support of the writ petition Mr. Das learned Advocate has urged that (i) other bus operators have no right to, object to the time chart given in a permit of another operator; (ii) even assuming that other operators have right to object only those operators, who are operating in the same route or covering at least a substantial part of the same route can object; and (iii) the petitioner was not given reasonable opportunity of hearing as the objections filed by the other operator were not supplied to him in spite of demand.

3. The opp. parties Nos. 2, 3 and 5 have opposed the writ petition by filing separate counters. The opp. party No. 3 in his counter has pointed out that before revision oh return/down trip there was a clash of time between his bus and the petitioner's bus at Gunupur and has asserted that being a permanent permit holder he should have been given preference over the petitioner. It appears that opp. party No. 3 is operating his bus in a different route and the common portion of his route and the petitioner's route is only about 40 K.Ms. out of the total length of about 150 K.Ms. of the petitioner's route. The opp. party No. 3's bus comes from and goes to different place and has only one common stoppage at Gunupur. At that single common stoppage (Gunupur) the bus of opp. party No. 3 departs 15 minutes after the petitioner's bus. The petitioner's bus does not have any stoppage at Hadabhangi and thus no Hadabhangi bound passenger boards the petitioner's bus. In such situation, the opp. party No. 3 should not have been permitted to raise any grievance alleging clash of time with the petitioner's bus. According to us, only those operators can object to the time schedule of operators of any other route only when there is a substantial common portion with common stoppages. Thus opp. party No. 3 having a short overlapping and no stoppage at Hadabhangi is not entitled to raise objection to the time schedule of the operators in the other route only on the ground of clash of time at a particular stoppage.

4. Opp. party No. 2 has filed a counter affidavit, inter alia, pointing out that out of the total length of the petitioner's route of 160 K.Ms. 143 K.Ms. is common with opposite party No. 2 and in that common portion the petitioner's bus at every point moves 30 minutes ahead of his bus. Opposite party No. 2 has also raised objection that the Impugned order of allotment of time being appealable the High Court should not entertain the writ petition.

5. Although in his counter, opposite party No. 2 has claimed that the length of the common portion is 143 K.Ms, in the impugned order it has been said that the common carridor is 70 K.Ms. from Rayagada to Gunupur. From the comparative chart prepared by the learned Advocate for opp. party No. 2 it appears that the vehicle of opp. party No. 2 is running about 25 minutes to 45 minutes behind the vehicle of the petitioner. The said gap of 25 minutes to 45 minutes is a reasonable gap and for which no operator should normally be allowed to complain unless there are very special reason's, such as dearth of travelling public. The main basis of the grievances of opposite party No. 2 appears to be

that being a prior permit holder he is entitled to have priority of time over latter permit holders. The priority of prior permit-holder is a salient principle to be kept in mind but this cannot be an absolute principle applicable under all circumstances. While allotting time various factors are to be taken into account and for good and valid reasons, particularly when adjustment of all the relevant factors cannot be made, said principle can be departed from.

6. In his counter, opposite party No. 5 has stated that he is operating his bus in a different route but has a common portion of about 70 K.Ms. with the petitioner's route. It appears that opposite party No. 5's vehicle leaves Rayagada about 20 minutes after the petitioner's time and proceeds for a different destination after covering 70 KMs. of common portion. It further appears that the major portion of opposite party No. 5's route is common with that of the petitioner. Accordingly he is entitled to object if he has any genuine grievance. Opposite party No. 5 is a prior permit holder and accordingly he is entitled to claim priority provided he can establish that the time schedule given to other operator is prejudicial to his interest.

7. When a large number of operators are operating in different routes overlapping one or the other at one or other point or points, adjustment of all claims and counter claims may not be possible. It should be remembered that prime consideration is the interest of the travelling public and the interest of the Bus operators should be subservient to the interest of the travelling public. Where the number of travelling public is large and demands frequent bus service, a gap of 10 or 15 minutes between two buses may be sufficient. In case of inter-connected routes it may not also be possible to avoid clash of time at one or other points. It does not matter if two buses start at the same time for different directions without having many common stoppages. Mere common time is not clash of time. Common time will be considered as clash of time only when it would result in distribution/division of passengers bound for the same destination.

8. We find that the bus operators are primarily concerned with their private commercial interests and there is scramble for getting favourable time schedule, He also observed that in considerable cases the authorities have failed to apply intelligible principles at the time of allotment of time schedule. We feel that some broad principles should be laid down to reduce the scope of litigation and accordingly we do not regard existence of alternative remedy as a bar to proceed with the present case.

9. It is thus necessary that the authorities while considering the allotment of time chart on deciding objections regarding allotment of time should keep among others the following principles in mind :--

i) The Interest of travelling public should be the prime and over-riding consideration. For example where there are sufficient number of passengers requiring frequent bus service, the intervals between two buses can be very short.

ii) Operators operating in different routes have no right to object to the timings of operators in other routes unless the objecting operator has common portion covering substantial portion of each other's route.

iii) Whether there is real clash, it is to be considered with reference to the volume of passengers, number of common stoppages, if any, and the extent of common portion in case of the different routes.

iv) The principle, that the prior permit holders should have priority over latter permit holders is to be normally followed but where application of such principle clashes with interest of the travelling public or the former permit holder does not suffer any real prejudice, the principle may be deviated from.

v) Interval between two buses will be dependent upon the total volume of passengers available and normally 25 to 30 minutes interval should be regarded as reasonable.

vi) If necessary and possible, the authorities may allot time to the rival operators on rotation basis, so that the advantages and disadvantages if any are equally shared by the rival operators.

10. Another objection has been raised by the opposite parties that the validity period of the petitioner's temporary permit having elapsed the present writ petition has become infructuous. In this State temporary permits are granted for short durations. Normally the time chart allotted in a temporary permit is reallocated in the next temporary permit and so on. If any permit holder moves this Court challenging the time-schedule given in a temporary permit such writ application cannot be disposed of during the short validity period of the temporary permit and the aggrieved person may not get the relief at all. Even successive writ applications may not be of any help, in such situation, we are not inclined to entertain the said objection.

11. For the foregoing reasons, we dispose of this writ petition by directing the Chairman, State Transport Authority, Orissa to reconsider the allotment of time schedule to the petitioner and other objectors on the basis of the principles indicated herein and in accordance with law. Such reconsideration should be completed within one month from the date of communication of this order. The petitioner and the opposite parties 2, 3 and 5 will appear before the Chairman, S.T.A. on March 2, 2000 to ascertain the date of hearing and no notice should be sent to them. In the meantime till reconsideration the Buses will operate according to the time schedule on the basis of which they are operating at present.

L. Mohapatra, J.

12. I agree.