

(1970) 11 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1882 of 1970

The Malwa Bus Service Private Ltd.

APPELLANT

Vs

The State Transport Commissioner, Punjab at Chandigarh and
Others

RESPONDENT

Date of Decision : 05-11-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 43

Citation : AIR 1971 P&H 466

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : Bhagirath Dass, S.K. Hiraji and B.K. Jhingan, for the Appellant; J.S. Wasu and R.K. Chhiber and S.P. Goyal for A.G., Punjab, for the Respondent

Judgement

1. The Malwa Bus Service Private Limited, Moga, a transport company (hereinafter referred to as the petitioner) operates 5 return trips on Ferozepur-Amristar route via Tarn Taran. The petitioner has alleged that Chaudas and Amawas fairs are held in Tarn Taran every month and to cope with the rush of passengers who come to attend the fairs, temporary permits are granted by the Regional Transport Authority, respondent No. 2 From 1965 onwards the principle regarding grant of temporary permits that has been followed by respondent No. 2 was 50 per cent to Punjab Roadways and 50 per cent permits to the private transport companies like the petitioner and others. On 22nd of May 1968 respondent No. 1 issued an order debarring the petitioner and another company from getting the temporary permits of the kind mentioned above, a copy of the said order is filled with the petition as Annexure "A". The petitioner-company made a representation Annexure "B" on 19th of June 1969 to the Chief Minister of Punjab and thereafter, on reconsideration of the matter, respondent No. 1 issued an order Annexure "C" dated 21st of July 1969. The operative part of the said order reads-

"The issue of temporary permits on Chaudas and Amawas fairs at Tarn Taran by

your office to only one company viz. The New Suraj Transport Company(P) Ltd., Amristar, is a clear disobedience of the instructions. This practice should be stopped. On these fairs temporary permits should in future be granted to all the companies touching or passing through Tarn Taran proportionately in the public interest.

That on 24th of April 1969 the petitioner-company applied for the renewal of its permits for operating on Moga Amristar, Ferozepur-Amristar routes and respondent No. 4 objected to the renewal of the permits and one of the objections that was taken was that a condition he attached to the renewal of the permits that the petitioner-company shall not be granted temporary permits to cater to the additional rush of passengers on Chaudas and Amawas fairs held every month at Tarn Taran. However, the objections of respondent No. 4 were overruled by an order dated 19th January, 1970. It has been further alleged that on 27th May, 1970, vide order Annexure "E" temporary permits of the kind were granted to the petitioner-company. That on 30th of May, 1970, the State Transport Controller issued an order containing direction to the Secretary, Regional Transport Authority, which is annexed to the petition as Annexure "G". The operative part of that order reads.

"Reference this office letter No. 8632-T2/AIP, dated 21-7-1969.

2. On the subject noted above the Government has now decided that for future for Tarn Taran at every month's Amawas fair, at Amristar-Tarn Taran route, only Punjab Roadways and New Suraj Transport Company, Amristar should be granted new permits."

The above order led to the cancellation of three temporary permits issued for Amristar-Taran Taran route for Amawas fair granted to the petitioner-company earlier on 27th May, 1970, and it is orders Annexure "G" and "F" which have been impugned by the petitioner through the present writ petition. Only respondent No. 4 has submitted its return in reply to the allegations contained in the writ petition. Respondent No. 4 also has not challenged the material facts in the petition. It has only pleaded in reply that respondent No. 1 was competent to review his order Annexure "C" and that respondent No. 1 as also the Government was competent to issue the direction contained in Annexure "G" to the Regional Transport Authority and there was valid reason for doing so as respondent No. 4 operated on shorter route between Amristar and Tarn Taran only and so it was considered desirable by the Government to restrict the grant of temporary permits for Amawas and Chaudas fairs at Taran Taran to respondent No. 4 and the Punjab Roadways.

2. Mr. Bhagirath Dass, learned counsel for the petitioner, has urged that the function performed by the Regional Transport Authority for granting temporary or regular permits is a quasi-judicial function and the said authority acts in a quasi-judicial manner while performing its duty of the kind mentioned above and the State Government by issuing direction u/s 43-A of the Motor Vehicles Act cannot

control the judicial discretion of the Regional Transport Authority and issuance of the direction of the kind contained in Annexure "G" is beyond the jurisdiction conferred on the Government by the provisions of Section 43-A of the Act. Learned counsel has also contended that neither in the order Annexure "G" nor any material has been made available by the respondents including the respondent No. 4 as to show the basis for the discrimination sought to be perpetrated as between respondent No. 4 and the petitioner and such like other companies to the detriment of the petitioner and such like other companies.

3. Learned counsel for the respondent No. 4, Mr. J. S. Wasu, has raised a preliminary objection at this stage to the effect that the writ petition is not maintainable as the petitioner has not exhausted its statutory remedies by filing an appeal or revision against the impugned order. As already noticed, the order Annexure "G" had been passed by respondent No. 1 as a result of a decision of the Government and in view of this fact it cannot be held that the remedy by way of appeal to the Financial Commissioner who at the moment was exercising the appellate powers could be considered efficacious. If anything, this statutory remedy in the present case would be a mere formality and illusory as held in similar circumstances by this Court in the two decisions reported in *M/s. New Rajasthan Mineral Syndicate, Niazampur v. The State of Punjab*, 1965 67 PLR 155 and *B. K. Bajaj v. State of Punjab* 1968 70 PLR 211 I am also doubtful whether any remedy at all exists against the decision of the Government and what the State Transport Controller had conveyed to respondent No. 2 through the communication Annexure "G" is not his own order but the order of the Government and this statute envisages no statutory remedy against the governmental order of the kind. Be that as it may, I am satisfied that the statutory remedy, if any, in the present case cannot be considered efficacious. So I proceed to consider the writ petition on merits.

4. Learned counsel for the respondents has contended that the provisions of Section 43-A of the Motor Vehicles Act are of wider amplitude and embrace within its fold, the conferment of powers on the Government to issue direction of the kind even if the said direction affects not only the administrative but also the judicial discretion of the Regional Transport Authority. In view of the authoritative decision of their Lordships of the Supreme Court reported in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, and *Ravi Roadways Vs. Asia Bi and Others*, , the contention advanced by the learned counsel for the respondents cannot be countenanced. The principle enunciated in the above two decisions of their Lordships of the Supreme Court is that the field covered by Section 43-A is administrative and does not include the area which is the subject-matter of the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well accepted notion of judicial process. The direction contained in Annexure "G" is clearly discriminatory. The Government and respondent No. 1 have, by passing the impugned order, discriminated against the petitioner and such like other companies. The respondents have not furnished any material which could

show as to whether there was reasonable basis for excluding the petitioner from the grant of the temporary permits and for choosing respondent No. 4. The object of granting temporary permits was to cater to the additional rush of passengers to Taran Taran as a result of the two fairs held there every month and the petitioner-company and other companies were as much competent just to take care of that additional rush of passengers as respondent No. 4. It has not been shown that either respondent No. 4 provided better facilities to the passengers or the additional rush of passengers has so declined that it would have been un-economic to grant temporary permits to more than one company. Even if it is contended that additional rush of passenger had declined and by granting temporary permits to only one company and the Punjab Roadways, the lessened additional rush of passengers could have been taken care of, yet it does not lie within the jurisdiction of the Government to name the company which should get the temporary permits. It has to be left to the discretion of the granting authority, i.e., the Regional Transport Authority to decide for itself after considering all the relevant factors as to which one of the companies is suitable to be granted the temporary permits of the kind and in this respect I am clearly of the opinion following the principle enunciated by their Lordships of the Supreme Court that the Government acts beyond its powers if it fetters, by issuing directions u/s 43-A, the judicial discretion of the Regional Transport Authority. That being the position, the discretion contained in the impugned order Annexure "G" is clearly beyond the powers of the Government as also that of respondent No. 1 and the same has to be struck down as without jurisdiction as also violative of Art. 14 as being inherently discriminatory in nature.

5. For the reasons recorded above, I strike down the order contained in Annexure "G" as also the order Annexure "F" cancelling the temporary permits earlier issued to the petitioner company and allow this writ petition with costs.

6. Petition allowed.