

Punjab-Haryana High Court

Gurdip Kaur vs The State Of Punjab And Others on 16 July, 2009

CWP Nos. 4646 and 4718 of 2009 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP No. 4646 of 2009
Date of decision 16 .7.2009

Gurdip Kaur ... Petitioner

Versus

The State of Punjab and others ... Respondents.

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Rajinder Sharma, Advocate for the petitioner
Mr. Piyush Kant Jain, Addl. AG Punjab for the respondents

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether the judgement should be reported in the Digest ?

M.M.KUMAR, J.

This order shall dispose of petitions bearing CWP Nos. 4646 and 4718 of 2009 as the issue raised in both the petitions is same. Facts are being taken from CWP No.4646 of 2009.

The instant petition filed under Article 226 of the Constitution prays for quashing order dated 25.11.2008 (P.6) passed by the State Transport Appellate Tribunal, Punjab, Chandigarh (for brevity 'the Tribunal') dismissing the appeal filed by the petitioner under Section 89 of the Motor Vehicles Act, 1988 (for brevity 'the 1988 Act'). A prayer has also been made for declaring the Punjab Mini Bus Service Scheme, 2007 (for brevity 'the Scheme') (P.5) as wholly illegal, void and ultra vires of amended provisions of the 1988 Act and also fundamental rights of the petitioner guaranteed by Articles 14 and 19(1)(g) of the Constitution.

Brief facts of the case necessary for disposal of the instant CWP Nos. 4646 and 4718 of 2009 2 petition are that the petitioner filed an application for grant of one stage carriage permit for plying four return trips daily for the operation of a mini bus on Maur- Talwandi Sabo via Maur- Charat Singh- Mari- Mansa Burj Seikhpura- Lellewala route. The State Transport Commissioner rejected the application on 20.12.2007 despite the fact that no objections were filed after issuance of notice for the grant of permit. Thereafter the petitioner filed an appeal under Section 89 of the 1988 Act. The Tribunal upheld the order passed by the State Transport Commissioner, Punjab holding that the Punjab Government had already published a draft scheme known as The Punjab Mini Bus

Service Scheme 2007 vide notification dated 23.8.2007. The view of the Tribunal is discernible from para 6 of the order dated 25.11.2008 which reads thus:

" There is no dispute about the fact that the route in question, for which the mini bus permit has been sought by the appellant is the formulated one. On such a route a mini bus permit can, of course, be granted on asking of the appellant but the competent authority had rejected his application on the ground that the Punjab Government had already published a draft scheme known as "The Punjab Mini Bus Service Scheme 2007" vide notification No. SO 34/CA 59/1986/S.99/2007 dated 23.8.2007 under Section 99 of the Motor Vehicles Act, 1988. Under the said draft scheme which is in offing, the operation of mini buses for plying as state carriages is required to be undertaken by the private operators and STUs in a fixed ratio. It has been provided under Section 99(2) of the Act that where a proposal is published under the above said provision, CWP Nos. 4646 and 4718 of 2009 3 then from the date of publication of such proposal, no permit shall be granted to any person. In view of this, the competent authority, in compliance of the provisions of Section 99(2) of the Act, has rightly rejected the application. The order has been passed after affording due opportunity of hearing to the appellant. The order passed is well reasoned and well considered. No interference is warranted in the same. As such, the appeal is dismissed being without any merit. Record of the RTA, if any, be returned. Appeal file be consigned to the record room." (emphasis added) Mr. Rajinder Sharma, learned counsel for the petitioner has argued that scheme has lapsed as it has been published after a period of one year.

According to the learned counsel the draft scheme was published on 23.8.2007 (P.3) and approved scheme was required to be published before the lapse of one year from that date. However, it was published on 14.11.2008 (P5) which is patently against the provisions of Section 100 of the 1988 Act. In support of his submission, learned counsel has placed reliance on a judgement of Hon'ble the Supreme Court in the case of Krishan Kumar v. State of Rajasthan and others AIR 1992 SC 1789. He has further submitted that the Act has come into force w.e.f. 1.7.1989 and grant of permits has been liberalized to such an extent that permit can be obtained by an operator on asking irrespective of the number of operators already in the field. According to the learned counsel State Government had notified the scheme on 21.10.1997 (P2) by modifying the earlier scheme dated 9.8.1990 (P1). By modification Clause 7 A was inserted. He has pointed out that validity of clause 7 A of Scheme dated 21.10.1997 was challenged before Hon'ble the Supreme Court in the case titled as Subhash Chander v. State Transport Appellate Tribunal AIR 2002 SC 1562. According to the learned counsel Clause 7 A was found to be ultra vires of Section 99 of the 1988 Act as it failed to provide that state transport undertaking was to operate on the said route wholly or partially. Therefore, the liberalization for grant of permit to Mini buses which has been the principal object envisaged by the Act, could not be defeated.

Mr. Piyush Kant Jain, learned counsel for the respondent has, however, argued that in the present case notification dated 23.8.2007 of the Scheme proposing the draft scheme has not lapsed merely it was published on 14.11.2008 as sanction was accorded within one year. However, he remained

unable to point out as to how this Scheme with Clause 7A could be floated by the respondents.

After hearing learned counsel for the parties, we are of the considered view that the period of one year provided by proviso to Section 100 of the 1988 Act is mandatory. At this stage it would be appropriate to notice the provision concerning preparation and publication of proposal regarding road transport service of State Transport Undertakings and finalization of the same. According to Section 99 of the 1988 Act if the State Government is of the opinion that for the purpose of providing efficient, adequate, economical and properly co-ordinated road transport service in public interest it is necessary in the larger public interest that road transport services in general or in any particular class of such service in relation to any area or route or portion thereof, should be run and operated by the State Transport Undertakings, then it is required to proceed in accordance with Section 99(1) of the 1988 Act. After forming the aforesaid CWP Nos. 4646 and 4718 of 2009 5 opinion the State Government may formulate a proposal which may provide for the exclusion, complete or partial of other persons or otherwise regarding a scheme giving particulars of the nature of services proposed to be rendered, the area or route proposed to be covered and other relevant particulars. Such a scheme is required to be published in the official gazette of the State and also atleast in one newspaper in the regional language circulating in the area or the route proposed to be covered by the scheme. After sanction has been published no permit is to be granted to any person except temporary permit during the pendency of the proposal. Such a permit is deemed to be valid only for a period of one year or till the finalization / publication of the Scheme whichever is earlier.

After publication of proposal in the official gazette and atleast in one of the newspapers of regional language objections are to be invited within 30 days from the date of its publication in the official gazette. After hearing or modifying the scheme it is required to be published in the official gazette within a period of one year from the date of publication of proposal. Sub section 4 of Section of Section 100 of the 1988 Act which is relevant to the controversy in hand reads thus:

" 99. Preparation and publication of proposal regarding road transport service of a state transport undertaking.-

(1)to (3) xx xx xx (4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under sub section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under sub CWP Nos. 4646 and 4718 of 2009 6 section (1) , the proposal shall be deemed to have lapsed. Explanation,- In computing the period of one year referred to in this sub section, any period or periods during which the publication of the approved scheme under sub section (3) was held up on account of any stay or injunction by the order of any Court shall be excluded."

The aforesaid provision came up for consideration of Hon'ble the Supreme Court in the case of Krishan Kumar (supra). In that regard relevant observations of Hon'ble the Supreme Court could be extracted from para 6 which reads thus:

".....On the publication of the approved scheme in the Official Gazette, the area or route to which it relates shall be called the notified area or notified route. Sub-sec. (4) lays down that if a scheme is not published as an approved scheme in the Gazette within one year from the date of publication of the proposed scheme in the Official Gazette, the proposed scheme shall be deemed to have lapsed. Sub-sec. (4) in our opinion prescribes a period of limitation during which the State Government should hear and consider the objections of the objectors and finalize the scheme and publish the same in the Official Gazette and on its failure to do so within that period, penal consequences would ensue as a result of which the scheme itself shall stand lapsed. The object and purpose of S.

100(4) is to avoid delay in finalizing a scheme. The Parliament was aware that under the old Act schemes were not finalized for long years as a result of which public interest suffered, CWP Nos. 4646 and 4718 of 2009 7 therefore, it prescribed a time frame for the approval and publication of schemes." (emphasis added) It is patent that a non obstante provision has been made in sub section 4 of section 100 of the 1988 Act. If Scheme has not been published as an approved scheme in the official gazette within one year from the date of publication of the proposed scheme in the official gazette then such a scheme is deemed to have lapsed. In the present case, the uncontroverted facts are that the draft proposal of the scheme was published on 23.8.2007 (P.3) in the official gazette and thereafter objections were invited. After consideration of objections the scheme could be published in the official gazette only on 14.11.2008 (P.5) which is apparently after a period of one year. Therefore, the impugned scheme (P.5) is liable to be declared as having lapsed.

The other aspect highlighted by the learned counsel for the petitioner is that any scheme proposed by the State Government has to be in conformity with Section 99 of the 1988 Act. Under Section 99 of the 1988 Act if the State Transport Undertaking is to operate on a particular route only then the scheme could be made applicable. If the scheme did not provide which specific routes were to be covered and operated completely or partially by the State Transport Undertakings then in such cases Section 80(2) of the Act would be applicable because under Section 99 of the Act the State Government is not empowered to provide that only a few private operators would operate on a particular route/routes and the Regional Transport Authority or other prescribed authority cannot ordinarily refuse to grant an application for permit of any kind made under the Act. The aforesaid view has been taken by Hon'ble the Supreme Court in the case of CWP Nos. 4646 and 4718 of 2009 8 Jagdip Singh v. Jagir Chand AIR 2001 SC 3027 and Subhash Chander's case (supra).

For the reasons afore-mentioned this petition succeeds and the same is allowed. The scheme is declared to have lapsed. The order dated 25.11.2008 (P.6) passed by the Tribunal is quashed. It is accordingly directed that the respondent State or its official shall not treat this scheme as operative. The State Transport Commissioner is directed to consider the application of the petitioner for grant of mini bus permit on Maur- Talwandi Sabo via Maur- Charat Singh- Mari- Mansa Burj Seikhpura-Lellewala route in accordance with law within a period of two months from the date of receipt of copy of this order. The petitioner shall also be entitled to his costs which is quantified at Rs. 10,000/-.

A copy of this order be placed on the file of connected case.

(M.M.Kumar)
Judge

16.7.2009

(Jaswant Singh)
Judge

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