

PETITIONER:

JAGJIT BUS SERVICE (REGD.) AMRITSAR, THROUGHITS MANAGING PAR

Vs.

RESPONDENT:

STATE TRANSPORT COMMISSIONER, PUNJAB AND ANR.

DATE OF JUDGMENT 27/07/1987

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

SINGH, K.N. (J)

CITATION:

1987 AIR 2272	1987 SCR (3) 661
1987 SCC (4) 131	JT 1987 (3) 185
1987 SCALE (2) 143	

ACT:

Motor Vehicles Act, 1939---Issue of Stage Carriage Permits-Statutory Authorities should discharge duties imposed on them by the Act by giving primary consideration to public interest and also to fundamental rights of citizens to carry motor transport business in accordance with law.

HEADNOTE:

The appellant, a stage carriage operator, applied for renewal of a permit to ply his bus on a particular route but was granted only a temporary permit to do so. Thereafter he applied for issue of a regular permit, but once again, action was initiated for issue of a temporary permit only. Aggrieved by this approach of respondent No. 1, who was exercising the power of the Regional Transport authorities in the State, the appellant filed a writ petition seeking a direction that respondent No. 1 should consider and grant stage carriage permits to eligible persons under s. 46 read with s. 57(2) and grant renewal of such permits under s. 58 of the Motor Vehicles Act, 1939. The High Court dismissed the petition at the admission stage.

Respondent No. 1, in his counter affidavit, stated that the State Government had approved and published two Schemes under s. 68(D) (2) of the Act for grant of stage carriage permits in favour of State Transport Undertakings and private operators in two specified areas of the State which envisaged the complete take over of all the routes by the State Transport Undertakings in a phased manner within 3 years of the expiry of the Scheme. Since the State Transport Undertakings had not taken over the operations from the private operators in accordance with the two Schemes and the State Government had neither announced new schemes to replace them, nor declared its transport policy, Respondent No. 1 had considered it inadvisable to grant regular permits on long term basis and was issuing temporary permits only. Allowing the appeal by special leave,

662

HELD: The Transport Authorities which are statutory authorities have to discharge the duties imposed on them by the Act without waiting for any policy to be announced by the State Government. In doing so, primary consideration

should be given to the public interest and also to the fundamental right of the citizens to carry on motor transport business in accordance with law. This Court has observed in several decisions that a Regional Transport Authority would be failing in its duty if it grants repeatedly temporary permits to ply stage carriages on routes even though it is aware of the fact that there is a permanent need for granting regular permits in respect of the said routes. [666E; G]

The entire policy followed by the State Government and the 1st Respondent is contrary to the general scheme of the Act. The schemes said to have been published under s.68-D do not specify any notified routes or any notified areas. It is not possible also to find out from the said schemes whether private operators have been excluded from any particular area or route. The schemes appear to be incomplete and, therefore, are ineffective. In the above situation the Regional Transport authorities whose functions have been delegated under the Act to the State Transport Commissioner, Punjab, cannot decline to grant stage carriage permits on applications properly made to them by intending operators only because the State Government has not announced its transport policy. The State Government cannot have any policy different from or independent of the provisions contained in Chapters IV and IV-A of the Act. [666B-E]

In the instant case, it is not denied that there is a permanent need to grant permits to ply stage carriages on the several routes in the State of Punjab. The policy adopted by the 1st Respondent, namely, issuing of temporary permits from time to time, is highly irregular and is against the language and spirit of s. 62 of the Act, which provides for the grant of temporary permits. [666F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1522 of 1987.

From the Judgment and order dated 29.7.1986 of the Punjab and Haryana High Court in Civil Writ Petition No. 3464 of 1986.

Mohan Pandey and Baldev Kapoor for the Appellant.

N.K. Sodhi, Mrs. Indu Goswamy for the Respondent.

663

The following Order of the Court was delivered:

ORDER

Special leave granted. The appeal is heard.

This appeal by special leave is filed against the Order dated 29.7. 1986 passed by the High Court of Punjab and Haryana rejecting the writ petition filed by the appellant inter alia for the issue of the writ in the nature of mandamus, directing the State Transport Commissioner, Punjab, who is exercising the powers of the Regional Transport authorities in the State of Punjab to grant permits to ply stage carriages on the route Taran Taran --Muktsar via Ferozepur and Sadiq under Chapter IV of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') and to dispose of the applications for renewal of stage carriage permits which are pending before the Regional Transport authorities.

The appellant was a transferee of a bus along with two permits to operate one return trip on the route Taran Taran--Muktsar via Ferozepur and Sadiq. Those permits could not be renewed owing to the default on the part of the transferor to make within time an application for the renewal of the said permits before the permits were actually

transferred. Therefore, the State Transport Commissioner, Punjab, who was exercising the powers of the Regional Transport authorities instead of granting regular permits on applications made under section 46 of the Act granted temporary permits in favour of the appellant on the route in question. Thereafter despite the request of the appellant to issue regular permits the State Transport Commissioner proceeded to invite applications for the grant of temporary stage carriage permits. Pursuant to the said notification the appellant and some others made applications. For some reasons which need not be set out here the application of the appellant was rejected and the temporary permits were granted in favour of the 2nd respondent. The appeals filed against the order granting temporary permits in favour of the 2nd respondent became infructuous as the period for which they had been granted expired before the appeals could be disposed of.

Be that as it may, the main grievance of the appellant has been that the State Transport Commissioner, Punjab, who is exercising the powers of the Regional Transport authorities has failed to discharge his duty under the Act which requires him to consider and grant stage carriage permits on applications made under section 46 read with section 57(2) of the Act where there is need to do so to applicants who are eligible to be granted such permits and to grant renewal of such permits on applications for renewal made under section 58 of the Act. The appellant, therefore, filed the writ petition, out of which this appeal arises, before the High Court of Punjab and Haryana for appropriate relief. The said writ petition was dismissed at the stage of admission. Aggrieved by the order of the High Court the appellant has filed this appeal by special leave.

When the Special Leave Petition came up for hearing on September 16, 1986 notice was issued to the State Transport Commissioner requiring him to show cause as to why he should not be directed to take action on applications made under section 46 of the Act for granting permits to ply stage carriages instead of issuing temporary permits under section 62 of the Act periodically, even though there was permanent need to grant regular stage carriage permits. In reply to the said notice the 1st Respondent has filed a counter-affidavit, the relevant portion of which is as follows:

" In the State of Punjab two separate schemes with regard to the grant of stage carriage permits in favour of the State Transport Undertakings and the Private Operators were approved by the Government of Punjab under sub-section (2) of section 68(D) of the Motor Vehicles Act, 1939. Out of the two schemes one is called 'Punjab Roadways Scheme' operative in the erstwhile Punjab areas and the other is called 'Pepsu Road Transport Corporation Scheme' operative in the erstwhile Pepsu areas. The schemes for Punjab Roadways and Pepsu Road Transport Corporation were published on 19.11.1969 and 18.2.1972 respectively. A copy of both the schemes are exhibited as Annexure R1 and R2.

According to the above notifications the Punjab Government had announced that:
(i) 60% operation will be undertaken by the Punjab Roadways and the remaining 40% by the existing private operators and new entrants in the ratio of 30: 10, respectively in the areas

of erstwhile Punjab State.

(ii) 60% operation will be undertaken by the Pepsu Road Transport Corporation and 40% by the private operators in Pepsu territory.

665

(iii) Notifications further provided that the schemes will have the effect for a period of 7 years (upto 18.11.1976) in Punjab State and will last till 30th June 1977 in the Pepsu territory.

(iv) After the expiry of 7 years (upto 18.11.1976) in the case of Punjab Scheme and from 1st July, 1977 in the Pepsu territory, 1/3rd operations of the private operators will be taken over by the Punjab Roadways/Pepsu Road Transport Corporation every year to complete the take over in three years.

Neither the Punjab Roadways nor the Pepsu Transport Corporation have taken over the operations from the private operators in the terms of above mentioned notifications nor new schemes have been announced by the Government. The transport operations have, however, to be continued as at present to save the public from inconvenience. At the same time it will not be advisable to grant regular permits on long terms basis in the absence of any transport policy announced by the Punjab Government. Under these circumstances I am granting/issuing permits on temporary basis after following the prescribed procedure laid down under section 47 of the Motor Vehicles Act, 1939 and after giving due hearings to all the applicants at the time of initial grant. As soon as the new transport policy is finalised by the Government all the stage carriage permits granted on temporary basis due to non-finalisation of transport policy will be granted on regular basis after following the procedure as laid down under sections 57(2) and 57(3) of the Motor Vehicles Act, 1939. It may, however, be added here that the State Government is in the process of finalising a new Transport policy."

A reading of the counter-affidavit filed by the State Transport Commissioner, Punjab practically does not set-up any defence at all to the prayer made by the appellant. The counter-affidavit refers to two schemes, namely, the Punjab Roadways Scheme and the Pepsu Road Transport Corporation Scheme approved under section 68-D of the Act, which were published on 19.11.1969 and 18.2.1972 respectively. It is, however, admitted that neither the Punjab Roadways nor the Pepsu Road Transport Corporation have taken over the operations from the private operators in terms of the above-mentioned notifica-

666

tions nor any new scheme has been announced by the Punjab Government. The 1st Respondent further states that since there was general inconvenience, the temporary permits were being issued after following the prescribed procedure laid down under the Act. The affidavit further says that due to the non-finalisation of the transport policy by the State Government it was not possible to issue regular permits to run stage carriages by following the procedure prescribed under sections 57(2) and 57(3) of the Act. We are of the

view that the entire policy followed by the State Government and the 1st Respondent is contrary to the general scheme of the Act. The schemes said to have been published under section 68-D of the Act do not specify any notified routes or any notified areas. It is not possible also to find out from the said scheme whether private operators have been excluded from any particular area of route. The schemes appear to be incomplete and, therefore, are ineffective. In the above situation the Regional Transport authorities whose functions have been delegated under the Act to the State Transport Commissioner, Punjab, cannot decline to grant stage carriage permits on applications properly made to them by intending operators only because the State Government has not announced its transport policy. The State Government cannot have any policy different from or independent of the provisions contained in Chapter IV and Chapter IV-A of the Act. The Transport Authorities which are statutory authorities have to discharge the duties imposed on them by the Act without waiting for any policy to be announced by the State Government. In doing so primary consideration should be given to the public interest and also to the fundamental right of the citizens to carry on motor transport business in accordance with law. It is not denied that there is a permanent need to grant permits to ply stage carriages on the several routes in the State of Punjab. In the circumstances, the policy adopted by the 1st Respondent, namely, issuing of temporary permits from time to time, appears to be a highly irregular one. It is against the language and spirit of section 62 of the Act, which provides for the grant of temporary permits. This Court has observed in several decisions that a Regional Transport Authority would be failing in its duty if it grants repeatedly temporary permits to ply stage carriages on routes even though it is aware of the fact that there is a permanent need for granting regular permits in respect of the said routes. The fact that the State of Punjab is thinking of finalising a new transport policy can have no bearing on the question in issue.

We are, therefore, of the view that the 1st Respondent cannot successfully resist the writ petition out of which this appeal arises. In the circumstances we feel that it is appropriate to issue a writ in the

667

nature of mandamus to the Regional Transport authorities in Punjab. whose duties are being discharged by the State Transport Commissioner, Punjab, to take immediate steps to invite applications suo motu under section 57(2) of the Act for issuing regular stage carriage permits to deserving applicants, to grant stage carriage permits to deserving applications who make applications for the stage carriage permits in accordance with law and to dispose of the applications for renewal, if any, made under section 58 of the Act by the holders of stage carriage permits. We accordingly direct the Regional Transport authorities in the State of Punjab to take immediate steps to invite applications suo motu under section 57(2) of the Act for issuing regular permits to deserving applicants to ply stage carriages in respect of the routes where there is a permanent need, to dispose of the applications made by persons who wish to ply stage carriages on the said routes in accordance with law and to dispose of the applications that may be pending before the Regional Transport authorities for renewal of stage carriage permits under section 58 of the Act. All these steps should be taken within four months from today. The temporary permits which are now in force shall cease on

the expiry of the period of four months and the Regional Transport authorities are directed not to issue any fresh temporary permits where there is permanent need for granting a stage carriage permits after four months.

This appeal is allowed accordingly. There shall, however, be no order as to costs.

A copy of this order shall be sent to the Chief Secretary to the State of Punjab within a week for information and implementation of the above directions.

H.L.C.

Appeal allowed.

668

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