

Pancham Chand And Others vs State Of Himachal Pradesh And Others on 4 March, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1888, 2008 AIR SCW 2111, 2008 (2) AIR JHAR R 881, 2008 (4) SRJ 192, (2008) 6 ALLMR 32 (SC), 2008 (3) SCALE 378, 2008 (7) SCC 117, 2008 (6) ALL MR 32 NOC, (2008) 1 WLC(SC)CVL 706, (2008) 2 UC 1082, (2008) 3 CAL HN 110, (2008) 1 ORISSA LR 762, (2008) 4 MAD LJ 265, (2008) 5 MAH LJ 525, (2008) 4 MPLJ 99, (2008) 3 SCALE 378, (2008) 2 ACC 391, (2008) 3 ANDH LT 4, (2008) 2 ALL WC 1109

Bench: S.B. Sinha, V.S. Sirpurkar

CASE NO.:

Appeal (civil) 1732 of 2008

PETITIONER:

Pancham Chand and others

RESPONDENT:

State of Himachal Pradesh and others

DATE OF JUDGMENT: 04/03/2008

BENCH:

S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 1732 OF 2008 (Arising out of SLP) NO. 1615 OF 2006) S,B. SINHA, J.

Leave granted.

1. Whether Chief Minister of a State has any role to play in a matter of grant of permit of a Stage Carriage Permit in terms of the provisions of the Motor Vehicles Act, 1988 (for short the Act) is in question in this appeal which arises out of a judgment and order dated 15th September, 2005 passed by a Division Bench of the Himachal Pradesh High Court, Shimla, in C.W.P. No. 1217 of 2004.

2. The basic fact of the matter is not in dispute.

Appellants are the bus owners. They applied for grant of stage carriage permits for different routes before the Regional Transport Officer as envisaged under Section 70 of the Act. While Appellant No.1 had applied for grant of route Tikri to Palampur, Palampur to Chahiar and Palampur to Jaisinhpur, Appellant No.2 had applied for grant of permit for the route Palampur to Jaisinhpur,

Jaisinhpur to Baijnath and Jaisinhpur to Palampur, Appellant No.3 had applied for the route Indora to Kaaza, Macloedganj to Mandi and Damtal to Manali.

3. Fourth respondent, who is said to have a political connection being a leader of Congress Party, approached the State Chief Minister directly by a letter, which reads thus :-

"The Hon'ble Chief Minister, Himachal Pradesh, Shimla Subject :- Application regarding route permit Hon'ble Sir, With due regards, it is requested that I have previously requested for the route permit, but I was not given any route permit in the meeting of RTA. I have come to the Oakover and I have again stated that no buses are running on the route and still then I was not given any route. It is, therefore, requested that the following route may kindly be granted in my favour.

Baijnath Tikkari Panchrukhi 6RT.

This route was notified, but not issued to any one.

Yours faithfully, Sd/-

(Rajinder Rana) Tehsil Baijnath, District Kangara"

4. The said letter was addressed on the letter head of Mandal Congress Committee, Rajgir Panchukhi, Himachal Pradesh. Respondent No.4 described himself to be the President thereof. The said letter was received in the official residence of the Chief Minister. The Chief Minister's office by a letter dated 9th March, 2004 addressed to the Commissioner (Transport), Himachal Pradesh, respondent No.5, directed :-

" It has been approved that permit may be sanctioned in favour of Shri Rajender Rana, VOP Rakkar, Tehsil Baijnath Tikri, Panchrukhi-G RT route. A copy of his application is enclosed.

Commissioner Transport, H.P. is requested to please take further action accordingly and send compliance report to this office.

Sd/-

Dt. 9.3.2004

Additional Secretary to
Chief Minister, HP"

5. The Director Transport-Respondent No.2 herein, in turn, communicated the said order to the Regional Transport Officer by his letter dated 16th March, 2004 asking him to place the said proposal in the next meeting of the Regional Transport Authority after obtaining an application from the applicant in the prescribed format.

It furthermore appears that the Chief Minister's Office again on 9th June, 2004 issued another letter to the second respondent indicating approval for grant of a route permit in favour of the 4th respondent. Respondent No.2 was requested to take action as per observations of the Hon'ble Chief Minister.

6. Indisputably a meeting of the Authority was held on 3rd July, 2004 but no decision was taken on the applications filed by the appellants, although the same were made prior in time to that of the one filed by the respondent No.4, who had approached the Chief Minister. A Stage Carriage Permit was granted in favour of the fourth respondent for the said route.

7. Aggrieved, a writ petition was filed by the appellants before the Himachal Pradesh High Court which was marked as CWP No. 1217 of 2004. While issuing notice in the said writ petition, operation of the permit granted in favour of the fourth respondent was directed to be stayed by the High Court.

8. In their counter-affidavit, the State of Himachal Pradesh, Director (Transport), Regional Transport Authority and Commissioner (Transport) inter alia contended that the routes applied for by the appellants and that of respondent No.4 are different and the permit was granted in his favour purely on merit. A rejoinder thereto was filed by the appellants stating that the permit was being granted only on the instructions of the higher authorities and not in accordance with law.

9. By reason of the impugned judgment the Division Bench of the High Court dismissed the writ petition of the appellants, stating :-

" It is the admitted case of the parties that the route in respect (of) which permit has been granted to respondent No.4 is different from the routes in respect of which applications have been made by the writ petitioners. Therefore, in our considered view the writ petitioners can have no grievance against respondent No.4.

Now the Directorate of Transport, Shimla, vide communication dated 4th January, 2005 (annexure R-1) with a view to implementing the provision of Section 68(3)(ca) of the Motor Vehicles Act has conveyed the decision of the State Government to all the Regional Transport Officers that all the applications pending with the Regional Transport Authority for grant of route permit, except those which are in respect of 100% exclusively rural routes or 109 notified routes, are to be deemed to have been rejected. In view of the issuance of this communication by the Directorate of Transport, Shimla, we direct respondent No.3, i.e.. Regional Transport Authority, Dharamshala Through its Secretary, to consider the pending applications of the writ petitioners for grant of permits, if those applications or any of them pertain to route(s) which are 100% exclusively rural route(s) or which are among 109 notified routes within a period of six weeks from today. With these directions, the writ petition is disposed of."

10. Notice was issued by this Court on 30th January, 2006 confined only to the question as to whether the application for grant of permit filed under the Motor Vehicles Act can be filed before any authority other than the one prescribed thereunder.

11. Mr. Ravi Bakshi, learned counsel appearing on behalf of the appellants urged that the High Court committed manifest error in refusing to apply the legal principles involved in the matter inasmuch as under no circumstances, applications for grant of permit could be filed before the Chief Minister or any other authority or processed by them, other than those specified in the Act.

12. Mr. J.S. Aattri, learned counsel appearing on behalf of the State and Dr. R.P. Sharma, learned counsel appearing on behalf of respondent No.4, on the other hand, urged that the permit was granted having regard to the need of the public and not under the direction of the Chief Minister. Even otherwise it was urged that the State has the requisite jurisdiction to issue instructions laying down the policy for grant of permits.

13. The Motor Vehicles Act, 1988 was enacted to consolidate and amend the law relating to motor vehicles. While enacting the Act the Parliament inter alia took into account changes in the road transport technology, pattern of passenger and freight movements, development of the road network in the country and particularly the improved techniques in the motor vehicles management.

The Parliament also took into consideration the reports of various Committees and the Working Groups appointed for the said purpose.

14. Section 2(41) of the Act defines "permit" to mean a permit issued by a State or Regional Transport Authority or any authority prescribed in this behalf under the Act authorizing the use of a motor vehicle as a transport vehicle. "Transport vehicle" has been defined in Section 2(47) to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

15. Chapter V of the Act provides for control of transport vehicles. Section 66 provides for necessity for permits in terms whereof a statutory embargo has been placed to the effect that no owner of a motor vehicle shall use or permit the use thereof as a transport vehicle, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority

16. Section 67 of the Act empowers the State Government to control road transport having regard to the factors enumerated therein. Section 68 provides for constitution of the State Transport Authority. An application for grant of Stage Carriage Permit, as envisaged under Section 69 of the Act, is to be filed in terms of Section 70 thereof, detailing the particulars specified therein. Section 71 provides for the procedures to be followed by the Regional Transport Authority in considering application for stage carriage permit. Section 72 empowers the Regional Transport Authority to grant stage carriage permit in respect of any route or the area specified in the application. The other provisions contained in the said Chapter provide for the mode and manner for dealing with the applications for grant of other types of permits.

17. The Act is a self contained Code. All the authorities mentioned therein are statutory authorities. They are bound by the provisions of the Act. They must act within the four corners thereof. The State, although, have a general control but such control must be exercised strictly in terms of Article 162 of the Constitution of India. Having regard to the nature and the manner of the control specified therein, it may lay down a policy. Statutory authorities are bound to act in terms thereof, but per se the same does not authorize any Minister including the Chief Minister to Act in derogation of the statutory provisions. Constitution of India does not envisage functioning of the Government through the Chief Minister alone. It speaks of Council of Ministers. The duties or functions of the Council of Ministers are ordinarily governed by the provisions contained in the Rules of Business framed under Article 166 of the Constitution of India. All governmental orders must comply with the requirements of a statute as also the constitutional provisions. Our Constitution envisages a rule of law and not rule of men. It recognizes that, how so ever high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits.

18. Apart from the fact that nothing has been placed on record to show that the Chief Minister in his capacity even as a Member of the Cabinet was authorized to deal with the matter of transport in his official capacity, he had even otherwise absolutely no business to interfere with the functioning of the Regional Transport Authority. Regional Transport Authority being a statutory body is bound to act strictly in terms of the provisions thereof. It cannot act in derogation of the powers conferred upon it. While acting as a statutory authority it must act having regard to the procedures laid down in the Act. It cannot bye-pass or ignore the same.

19. Factual matrix, as indicated hereinbefore, clearly goes to show that the fourth respondent filed the application before the Chief Minister straightaway. Office of the Chief Minister communicated the order of the Chief Minister, not once but twice. Respondent No.2 acted thereupon. It advised the Regional Transport Authority to proceed, after obtaining a proper application from respondent No.4 in that behalf. This itself goes to show that prior thereto no proper application was filed before the Regional Transport Authority. Such an interference on the part of any authority upon whom the Act does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme. It interferes with the independent functioning of a quasi judicial authority. A permit, if granted, confers a valuable right. An applicant must earn the same.

In D. Nataraja Mudaliar vs. The State Transport Authority, Madras :

AIR 1979 SC 114 = (1978) 4 SCC 290 this Court held :

"9. The Authority must, remember that a permit holder has an ordinary right of renewal unless it is shown that outweighing reasons of public interest lead to a contrary result. Permits are not bounty but right, restricted reasonably by the Motor Vehicles Act."

The application of the respondent No.4, therefore, was to be entertained alongwith other similarly situated persons.

20. In the matter of grant of permit to individual applicant, the State has no say. The Chief Minister or any authority, other than the statutory authority, therefore, could not entertain an application for grant of permit nor could issue any order thereupon. Even any authority under the Act, including the appellate authority cannot issue any direction, except when the matter comes up before it under the statute.

21. In Commissioner of Police vs. Gordhandas Bhanji : AIR 1952 SC 16, this Court held :-

" It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a license for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that under Rule 250 he has been vested with the absolute discretion at any time to cancel or suspend any license which has been granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it."

22. Yet again in Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others : AIR 1978 SC 851 = (1978) 1 SCC 405 "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji :

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

23. It is not a case where the statutory authority was hearing a grievance from the public that buses are not plying in a particular route as a result whereof the villagers were suffering.

24. Respondent No.4 appears to be the owner of a fleet of buses. He had a political connection. Such political connection encouraged him to file an application for grant of permit before the Chief Minister directly. The Chief Minister could not have entertained the same nor usurp the function of the Regional Transport Authority.

25. Similarly, the respondent No.2 committed a serious illegality in forwarding the same to the respondent No.3 with the purported recommendations of the Chief Minister.

26. We also fail to understand as to how an independent quasi judicial body, like the respondent No.3, could affirm an affidavit together with the State. Its duty before the High Court, in response to the rule issued by it, was to place the facts as borne out from the records. It was not supposed to take any stand one way or the other. It had no business to defend the State or the Chief Minister.

27. For the reasons aforementioned, the appeal is allowed with costs. The impugned judgment is set aside. As a limited notice was issued, we need not pass any consequential order which is within the realm of the Regional Transport Authority.

28. We impose a cost of Rupees one lakh upon the State which may be paid to the National Legal Services Authority. The said amount may be deposited within a period of four weeks failing which it will be open to the National Legal Services Authority to realize the same with interest @ 12 % per annum.