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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2317/2003, C.M. No. 7301/2007

Date of judgment: 01.04.2009

PDM COLLEGE OF ENGINEERING Petitioner
Through : Mr. Jasbir Singh Malik, Advocate.

versus

GOVT. OF NCT OF DELHI Respondent
Through : Ms. Latika Chaudhury and Mr. Saurabh Chadda, for Ms.
Avnish Ahlawat, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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

S.RAVINDRA BHAT, J. (OPEN COURT)

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1. The petitioner, an educational institution seeks a direction to the respondent to countersign the permits issued by the Haryana State Transport Authority for its buses which enter into the city of Delhi. According to the petitioner, an AICTE recognized institution, six buses are registered with the Regional Transport Authority, Jhajjar; they possess valid private transport service under Section 76 of the Motor Vehicles Act, 1988. It is contended that the Regional Transport Authority in Haryana recommended countersigning by the Regional

Transport Authority of the concerned area in the Govt. of NCT of Delhi. Reliance is placed in this regard on a letter dated 11.02.2002; the same is in the following terms:

*“Transport Commissioner
Haryana, Chandigarh.*

*To,
The State Transport Authority
Delhi.*

*Memo No. /AT2
Dated:*

Subject: Countersignature of private service vehicle permits.

Kindly refer to the subject cited above.

The following three vehicles of P.D. Memorial Religious & Educational Association, Village Sarai Aurangabad, Distt. Jhajjar have been granted private service vehicles permit under section 76 of Motor Vehicles Act, 1988 for the routes mentioned against each by the District Transport Officer, Jhajjar:-

<i>Sr. No.</i>	<i>Vehicle No.</i>		<i>Route of the permit</i>
<i>1.</i>	<i>HR-55-3132</i>	<i>Route No.1</i>	<i>College Sarai Aurangabad to Rani Bhag via Ghevra Mor, Mundka, Nangloi, Piragarhi, Mangolpuri, Deepawali Chowk, Rohni, Madhuban Chowk, Rohini, Sector 9, Wazirpur depot and back.</i>
		<i>Route No.2</i>	<i>College Sarai Aurangabad to Dhola Kuan via Piragarhi, Panjabi Bhag, Raja Garden, Mayapuri Chowk and back.</i>
<i>2.</i>	<i>HR-55-3131</i>	<i>-do-</i>	<i>-do-</i>
<i>3.</i>	<i>HR-55A-3232</i>	<i>-do-</i>	<i>-do-</i>

Since some students of the said Institution also resides in Delhi area, as such the said Institution has requested us to recommend their permits for

countersignature for Delhi State. Accordingly, you are requested to countersign permits of above said vehicles after charging necessary road tax/fee under the provisions of rules.

*Sd/-
For Transport Commissioner,
Haryana, Chandigarh.*

Endst. No. 1921/AT2

Dated: 11/2/02

A copy is forwarded to the P.D. Memorial Religious & Educational Association, Village Sarai Aurangabad, Distt. Jhajjar for information.

*Sd/-
for Transport Commissioner,
Haryana, Chandigarh.”*

2. The petitioner relies on correspondence with the respondent State authorities and also says that the other technical parameters spelt-out by the provisions of law, including emission norms were satisfied. They rely on letters dated 07.02.2003 and 28.03.2003 in this regard.

3. The petitioner contends that the initial objection of the respondent authority in regard to issue of countersignature was the operation of the Supreme Court's condition that the buses plying in the city should be fitted with CNG kits. It is submitted after becoming aware of such condition, the concerned buses were made compliant and the respondent should have no impediment in affixing countersignature on the permits.

4. The respondent, represented through the Commissioner and Secretary Transport deposes that by virtue of Section 88 of the Motor Vehicles Act, 1988, a procedure or method for validation of countersignature has to be followed. It is contended that the petitioner's diesel buses were travelling deep into the territories of Delhi, taking up staff and students and not merely terminating in the Inter State Bus Terminus (ISBT). Therefore, it is contended that to allow such diesel buses to ply would be in blatant contraventions of the Supreme Court's orders. The respondent also submitted that reciprocal agreement with the Govt. of Haryana did not allow

the State Transport Authority to countersign permits of buses other than that of Haryana State Roadways Undertaking. This statement was contained in the affidavit dated 13.08.2003 by the Additional Commissioner.

5. Before discussion on merits, it would be necessary to extract certain relevant provisions of the Motor Vehicles Act, 1988. The same are as follows:

“Section 2(1): “area”, in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette;

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Section 2 (33): “private service vehicle” means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;

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Section 2(38): “route” means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another;

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Section 2(40): “stage carriage” means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

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76. Application for private service vehicle permit.

(1) A regional Transport Authority may, on an application made to it, grant a private service vehicle permit in accordance with the application or with such modification as it deems fit or refuse to grant such permit:

Provided that no such permit shall be granted in respect of any area or route not specified in the application.

(2) An application for a permit to use a motor vehicle as a private service vehicle shall contain the following particulars, namely:-

(a) type and seating capacity of the vehicle;

(b) the area or the route or routes to which the application relates;

(c) the manner in which it is claimed that the purpose of carrying persons otherwise than for hire or reward or in connection with the trade or business carried on by the applicant will be served by vehicle; and

(d) any other particulars which may be prescribed.

(3) The Regional Transport Authority if it decides to grant the permit may subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:-

(i) that the vehicle be used only in a specified area or on a specified route or routes;

(ii) the maximum number of persons and the maximum weight of luggage that may be carried;

(iii) that the Regional Transport Authority may, after giving notice of not less than one month-

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(iv) that the conditions of permit shall not be departed from, save with the approval of the Regional Transport Authority;

(v) that specified standards of comforts and cleanliness shall be maintained in the vehicle;

(vi) that the holder of the permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may, from time to time, specify; and

(vii) such other conditions as may be prescribed.

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88. Validation of permits for use outside region in which granted.

(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State shall be valid in that area without the counter-signature of the Regional Transport Authority of the other region or of each of the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport authority or the Regional Transport Authority of that other State:

Provided also that-

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State.

(2) Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit.

(3) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may likewise vary any condition attached to the permit by the authority by which the permit was granted.

(4) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:

Provided that it shall not be necessary to follow the procedure laid down in section 80 for the grant of countersignatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority or another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of sub-section (5).

(5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered.

(6) Every agreement arrived at between the States shall, in so far as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it.

(7) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.

(8) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority may, for the convenience of the public,¹ [grant a special permit to any public service vehicle including any vehicle covered] by a permit issued under section 72 (including a reserve stage carriage) or under section 74 or under subsection (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central

Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be.

(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86 ²[clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply in relation to such permits.

³[***]

(11) The following shall be conditions of every permit granted under subsection (9), namely:-

(i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other matters, as the Central Government may specify in this behalf;

(ii) every such motor vehicle shall be driven by a person having such qualifications and satisfying such conditions as may be specified by the Central Government; and

(iii) such other conditions as may be prescribed by the Central Government.

(12) Notwithstanding anything contained in sub-section (1), but, subject to the rule that may be made by the Central Government under sub-section (14), the appropriate authority may, for the purpose of encouraging long distance inter-State road transport, grant in a State, national permits in respect of goods carriages and the provisions of sections 69, 77, 79, 80, 81, 82, 83, 84, 85, 86, ⁴[clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply to or in relation to the grant of national permits.

⁵[***]

(14)

(a) The Central Government may make rules for carrying out the provisions of this section.

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(i) the authorisation fee payable of the issue of a permit referred to in sub-sections (9) and (12);

(ii) the fixation of the laden weight of the motor vehicle;

(iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;

(iv) the colour or colours in which the motor vehicle is to be painted;

(v) such other matters as the appropriate authority shall consider in granting a national permit.

Explanation.-In this section,-

(a) "appropriate authority", in relation to a national permit, means the authority which is authorised under this Act to grant a goods carriage permit;

(b) "authorisation fee" means the annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a State to enable a motor vehicle, covered by the permit referred to in sub-sections (9) and (12) to be used in other States subject to the payment of taxes or fees, if any, levied by the States concerned;

(c) "national permit" means a permit granted by the appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous States, not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application."

6. The petitioner contends that its buses have now complied with the requirements of Supreme Court's directions and are fitted with CNG kits. If that is the position, the first objection with regard to their being diesel buses can no longer be an impediment to consideration of the request for countersignature.

7. As far as other objection by the National Capital Territory authorities is concerned, its interpretation of Section 88 is that under the provision, the only concession allowed for a permit issued by an outside State is that the vehicle can ply in Carriage which is less than 16 kms. Concededly, the petitioner's buses do not fall within such category. The question, therefore, is

whether the interpretation placed by the National Capital Territory (NCT) authorities upon Sections 88(4) and 88(5) are sustainable.

8. Sections 88(5) and 88(6) essentially enable the State authorities to enter into mutual understanding and sign reciprocal agreement. The procedure for such reciprocal understanding is also provided – the proposals have to be notified and the agreements containing restrictions as per the number of routes etc. In the absence of agreement regarding routes, Section 88 itself does not constitute a bar on the power to countersign permit, which is otherwise validly issued by the authority outside the State.

9. A joint reading of Sections 88(5) and 88(6) leads to the conclusion that the State agency is free to impose a cap or restrict the number of countersignatures in case of license or in regard to the routes where such vehicles with permits or licenses of other States can ply. However, the argument made by the NCT authorities that in the absence of such a reciprocal agreement, no countersignatures can be made is unfounded and not tenable. In fact, the subsequent provision, particularly Section 88(7) and 88(9) makes it apparent that for certain purposes, countersignatures can be given on overriding basis. The Central Government can also make rules which will apply in this regard. Learned counsel for the respondent contended during hearing that the State Government has by a notification dated 25.07.2008 indicated the common draft agreement between Haryana, Rajasthan and Uttar Pradesh for movement of goods and Stage Carriage in the NCT region and the States adjacent to the NCT region, a copy was also shown to the Court. The petitioner's permit is a private service vehicle permit under Section 76. *Prima facie* the argument about restriction under Section 88(5) and 88 (6) in such cases of vehicles does not appear to be well-founded. Unlike Sections 88(7) and 88 (9), the mere existence of enabling provisions under Sections 88 (5) and 88(6) cannot be given the cramped interpretation,

restricting the choice of the authority, under Section 88(1) to counter sign a permit issued by some other State Authority, in the absence of a reciprocal agreement. Such a discretion to do so, and countersign even without an agreement, exists.

10. In the light of the above discussion, the Govt. of NCT of Delhi is hereby directed to decide, in the light of any existing policy or agreement under Section 88 of Motor Vehicles Act, 1988 if the petitioner's request for countersignature can be granted and indicate its response to it within four weeks from today.

11. The writ petition and the accompanying application are allowed in terms of the above directions.

12. Order dasti.

APRIL 01, 2009
'ajk'

S. RAVINDRA BHAT,J