

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 04.8.2010*
Judgment Delivered on: 19.8.2010

+ **W.P.(C) No.2128/2010 & CM No.4250/2010**

1. BERNARD SORENG
2. RAJENDER PRASAD SHARMA Appellants
Through: Ms.Rani Chabbra, Advocate.

Versus

1. STATE TRANSPORT AUTHORITY,
NCT OF DELHI (THROUGH CHAIRMAN)
2. ASSISTANT SECRETARY
PERMIT BRNCH,
STATE TRANSPORT AUTHORITY
.....Respondents
Through: Mr.Rajiv Nanda & Mr.Rachna Saxena,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. This writ petition has been filed by two persons. Both the petitioners, of whom petitioner no.1 belongs to the Scheduled Tribe, were granted Regular Stage Carriage permits pursuant to which they have been plying their respective vehicles on the routes allotted to them. Permit of petitioner no.1 was valid up to 28.2.2010; he had submitted all documents for renewal but his permit has not been renewed. The permit of petitioner no.2 had expired on 24.10.2009. He had also completed all requisite formalities but his permit has also not been renewed.

2. On 30.3.2009, a public notice had been issued by the State
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Transport Authority Delhi Administration (hereinafter referred to as "STA") stating that the permits involved even in a single fatal accident are liable to be cancelled. On 28.4.2009 a representation against this public notice was given by the Association of bus operators. On 3.6.2009, the STA amended its earlier notice with the modification that buses involved in a single fatal accident would not be considered for grant of a stage carriage permit but may be considered for the grant of contract carriage permit. On 7.6.2009 this decision was publically advertised. On 8.8.2009 detailed objections were filed by the Association of private bus operators which objections are still pending.

3. It is the contention of the petitioners that the decision of the respondents in not granting permits to the petitioners is arbitrary, illegal and violative of the statutory provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as "the said Act") The action of the respondents is not protected by any of the powers conferred upon the respondents under the aforementioned statute. The action of the respondents is also discriminatory as the petitioners before this Court are the only victims of this irrational decision of the department. Accordingly a prayer has been made that the STA be directed to renew the permit of the petitioners.

4. The counter affidavit filed by the respondents has negated these submissions. It is submitted that the resolution no.2/2009 passed by the STA in its meeting held on 3.6.2009 empowers the Department to keep a check and control on the menace of blue line buses pursuant where to the abovenoted resolution had been passed.

5. The relevant extract of the said resolution inter alia reads as

follows:

“ 1. **Agenda No.2/2009**
Resolution No.2/2009

Fatal Accidents

The STA Board in its meeting on 18.1.2008 decided vide resolution No.44/2008 that no permit of any kind will be given to the given to the transport vehicles involved in double fatal accidents and that the owner would be asked to take NOC to operate vehicle outside Delhi.

In order to check/control this menace of blue line buses, the STA Board further resolved on 16.03.09 as under:-

(a) Permits of blue line buses will be cancelled even after single fatal accident in supersession of current policy of cancellation of permits (after two fatal accidents in the life time). All permits issued in the name of operator (whose vehicle is involved in fatal accident) shall be cancelled.

(b) No permit of any kind will be given to the transport vehicles involved even in single fatal accidents w.e.f. the cut off date and the permit holders will be asked to take NOC for operating their buses outside Delhi. The permit holder shall not be allowed to transfer the permit and the vehicle to another person.

(c) Blue line buses involved in single fatal accidents before the above cut off date will not be given stage carriage permits. However, such buses may be given CC permits. Cases disposed earlier will not be reopened as regards type of permit to be given.

In this regard, a public notice was published in leading newspapers by the department on 30.03.09. The Blueline bus operators met Secretary-cum-Commissioner (Transport)/Chairman. STA & other members of STA and submitted a representation to reconsider the above policy of cancellation of permit in the light of the following point in their representation:-

(a) Pre-trial punishment, without establishing the culpability is against the principles of natural justice.....

(b) Criminal liability cannot be vicarious.

(c) The decision to issue NOC to buses is legally/practically not possible as the vehicle involved in an accident becomes

a case property i.e. it can be disposed off only if the Court so directs. Since Courts do not permit such transfer outside Delhi, the buses cannot be taken outside Delhi.

Decision

STA Board after carefully considering different aspects into consideration decided as under:

Resolution No.1/2009 is amended. The policy regarding fatal accidents will be as under:

(i) **Double Fatal Accidents**

(a) The Permit Condition (No.13/2004 dated 8.4.2004) regarding double fatal accidents will continue to be applicable. As per this decision if any transport vehicle is involved in two fatal accidents, the permit of the same will be liable to be cancelled.

(b) The STA Board in its meeting on 18.1.2008 had decided vide resolution No.44/2008 that no permit of any kind will be given to the transport vehicles involved in double fatal accidents. The transport vehicles involved in two fatal accidents in their life time are being asked to take NOC and operate their vehicles outside Delhi. **The same policy will continue to be applicable.**

(ii) **Single Fatal Accidents**

Buses involved in **single fatal** accident after will be considered for grant of **contract carriage permit** (and not Blueline stage carriage permit). Public Notice in this regard shall be issued in prominent newspapers.

(iii) If the permit holder/transport vehicle involved in fatal accident is acquitted by the Court, the accident will not be treated as a fatal accident for the purpose of the above policy."

6. In the rejoinder affidavit, the stand of the STA has been controverted. It is submitted that the permits had been granted to the petitioners under Section 71 of the said Act and this is clear from the fact that temporary permits which had been granted to the petitioners are being continuously renewed. Section 72(2) is the only statutory provision under which conditions can be imposed or attached to such a permit. Section 84 also lays down general

conditions which may be attached; it is only open to the STA to impose such conditions as are permissible either under Section 72(2) or Section 84 of the said Act. There is no such condition prescribed in either of the two sections that if a vehicle is involved in an accident its permit will not be extended or is liable to be cancelled. The said Act is a complete Code in itself and any condition attached to a permit which is violative of the said Act is arbitrary, unjustified as also violative of fundamental rights guaranteed to the petitioners under Articles 14 and 19 of the Constitution of India.

7. Before advertng to the question before this Court, it would be necessary to elicit the background where from this resolution No.2/2009 has emanated and made into a policy decision.

8. W.P.(Crl.) No.878/2007 was a writ petition titled as Court on Its Own Motion Vs. State & Ors. The High Court of Delhi had seized itself of jurisdiction pursuant to repeated fatal accidents by blue line buses being widely reported in the newspapers. On 10.7.2007, the following order was passed:

“In spite of a public outcry in face of persistent and fatal defaults by the blueline buses, no effective deterrent action appears to have been taken to curb the menace to the pedestrians and commuters, posed by these blue line buses, the above mentioned light commercial vehicles and heavy commercial vehicles like trucks, and the terror on the roads to all the road users continues unabated.

Accordingly, while issuing notice to the Delhi Administration through the Chief Secretary and the Ministry of Transport, we direct the Delhi Administration to file an affidavit within three weeks indicating the following:-

(a) Is the guideline of maximum speed of 40 kms per hour being observed by the blue line buses? If not, what action is taken against such offenders?

- (b) What action is taken against a bus involved in a fatal accident and what further action is taken against a driver involved in a fatal accident?
- (c) How many of the blue line buses running today are owned by the family members and relatives of the Delhi Police personnel?
- (d) What action has been taken against the buses involved in fatal accidents since January, 2005?
- (e) The Administration should show cause why this Court should not immediately order the replacement of these blue line vehicles by a safer mode of public transport.

This court has been compelled to take suo moto notice of the repeated fatal accidents being caused by the blue line buses as reported in almost all Delhi newspapers yesterday. The persistent menace to life by the blue line buses, light commercial vehicles like the vehicles being used by the call Centres, RTVs and other heavy commercial vehicles like the vehicles being used by the Call Centres, RTVs and other heavy commercial vehicles like trucks is evident to any road user in the capital. These vehicles have also been noticed to be indulging in reckless driving posing a constant threat to the life of the commuters. This has assumed such alarming proportions that not only it is a threat to the life of the common man who uses the public transport but it also affects the control and regulation of traffic in the NCT of Delhi and other road users and commuters which is violative of Article 21 of the Constitution of India. This has been so held by the Hon'ble Supreme Court in M.C. Mehta vs. Union of India and Ors. (1997)".

9. The Court was thereafter regularly and periodically supervising and monitoring the proceedings in this matter. On 23.8.2007, it was recorded as follows:

"5. Pursuant to the orders of this Court dated 10th July 2007 and 31st July 2007, Status Report dated 18th August 2007 has been filed by the Government of NCT of Delhi. We propose to address the main issues which arise at this juncture.

6. A Time-table has been set out in the Status Report of the Government of NCT for the expiry of permits of blueline buses, which are said to be issued for a period of 5 years. It is stated that the last of such permits will expire in the year 2012. It has also been stated that in case, there is an expiry of permit in the interregnum, four months' extension shall be granted to tide over the period subsequent to the expiry of the permit, so that the

commuting public is not inconvenienced by the absence or paucity of buses on the concerned routes. While we appreciate that an extension may be required to be granted, the extension cannot be endless. Prima facie, we are of the view that subject to such pleas as the 'Blueline Operators Association', which has been impleaded as a party today, may choose to raise in their counter-affidavits, that not more than two such four months extensions should be granted and permits should be replaced appropriately in view of the government's own stated stand. Since we shall be hearing the 'Blueline Operators' Association' who are directly affected by the orders of this Court, the said Association is directed to file their reply within one week from today and rejoinder thereto, if any, shall be filed by the Standing Counsel for the Government of NCT within one week thereafter."

10. Order dated 16.4.2010 passed in W.P.(Crl.) No.878/2007 has also been placed on record, which inter alia reads as follows:

"In the circumstances explained to us, we permit renewal of temporary permits for Private Stage Carriage (Blue Line) for a further period of four months. A detailed affidavit shall be filed within a period of four weeks apprising the Court compliance with the Statement made by Mr. R.K.Verma, Secretary-cum-Commissioner of the Government of NCT of Delhi"

11. It is submitted that the order of 16.4.2010 also advances and further fortifies the submission of the respondents that the four month renewal of permits in favour of the petitioners was in fact only temporary in nature.

12. It is in this background that the Delhi Administration had taken this policy decision. It was with a view to curb the menace of the increase in the number of fatal accidents. This decision was reflected in the resolution dated 3.6.2009 which has been reproduced as aforementioned. It was a conscious decision keeping into account the interest of the pedestrians, road users, commuters as also the obligations and responsibilities of the blue line bus operators.

13. The main question, however, which has arisen for decision is

as to whether the permits of the petitioners were governed by the provisions of Section 87 of the said Act which deals with a temporary permit or Section 71 of the said Act which deals with the permanent stage carriage permits.

14. Section 71, 72, 84 and 87 are all a part of Chapter V of the said Act dealing with the Control of Transport Vehicles. Section 87 of the said Act reads as under:

“87. Temporary permits – (1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section 80, grant permits, to be effective for a limited period which shall, not in any case exceed four months, to authorize the use of a transport vehicle temporarily-

- (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or
- (b) for the purposes of a seasonal business, or
- (c) to meet a particular temporary need, or
- (d) pending decision on an application for the renewal of a permit, and may attach to any such condition as it may think fit.”

PROVIDED that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature; and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year.”

15. This is the only provision in the statute dealing into a temporary permit. There are four distinct circumstances under which a condition may be attached to such a temporary permit. The petitioners were admittedly having permanent permits for plying their stage carriage buses which in the case of petitioner no.1 had expired in February 2010 whereas in the case of petitioner no.2 his permit had expired on October 2009. Thereafter no permanent permit had been granted to either of the two petitioners although admittedly all the requisite documents for renewal had been filed by them. Directions of the Division Bench

of this Court in W.P.(Crl.) No.878/2007 were in operation; these directions stated that as per the status report of the Government of N.C.T. the permits had initially been issued for a period of five years; the last of which would expire in 2012. In the interregnum, to tide over the period subsequent to the expiry of the permit, in order that the commuting public was not inconvenienced by the absence or paucity of buses a four month extension of the last permit had been permitted. However, the directions of the Court did not stop there; there was a rider, the rider being that the extension of such a permit cannot be endless. The period of four months mentioned in the directions dated 23.8.2007 of the Division Bench were in fact culled out from Section 87 itself which states that the Regional or the State Transport Authority may grant such temporary permits for a period not extending four months.

16. Even as per the case of the petitioners, their permanent permits granted to them under Sections 71 and 72 of the said Act had stood expired. Thereafter the further renewals of the permits of the petitioners were subject to the orders of the Division Bench of this court which was not to exceed the period of four months. These four month permit renewals could fall under no other category but the category of a 'temporary permit' as defined under Section 87 of the said Act.

17. Section 87(d) is attracted to the case of the petitioners. Applications for renewal of permit along with requisite documents were admittedly pending before the State Transport Authority. The State Transport Authority has ample powers under this statutory provision to attach to a permit any such condition as it may think fit.

18. In line with the directions of this Court which was to safeguard the interest of the commuting public who were facing risk to both life and limb by the increase in the number of fatal accidents by the blue line buses, the aforementioned policy decision promulgated in policy no.2/2009 had been formulated. The power of the Department to impose such a condition was drawn from the provisions of Section 87(d) of the said Act.

19. It is relevant to state that this resolution dated 3.6.2009 is not the subject matter of challenge before this Court. The prayer in the writ petition is that department should be directed to renew the permits of the petitioners.

20. The conditions imposed by this resolution dated 3.6.2009 are even otherwise reasonable and do not in any manner infringe upon the fundamental rights of the petitioners as has been contended. It is not as if the bread or butter of the petitioners has been snatched or taken away. They are still permitted to ply their buses but with a rider. A rash, negligent and reckless driver must face the consequences of his act. These conditions are in the nature of reasonable restrictions on the right of the petitioners to ply their buses i.e. if he suffers one single fatal accident he will not get renewal of his stage carriage permit but will be permitted to apply for a contract carriage permit. In case of an acquittal, this accident will not come in his way; meaning thereby that he can still seek renewal of his stage carriage permit. These conditions are fair and reasonable; the object being to remind such a reckless driver and bring to his notice that he owes some duties and obligations to the job which he is performing. It is also not discriminatory as it is applicable to a distinct class; classification

of such drivers in a separate category is a reasonable classification and has a close nexus to the object which the policy seeks to achieve.

21. The alternate submission of the learned counsel for the STA also has to be noted. His submission is that even presuming that the permit of the petitioners is a permanent permit granted to him under Section 71 and 72 of the said Act, even then the department is empowered to impose reasonable restrictions therein. Attention has been drawn to Section 72(2)(xxii) which inter alia reads:

“72. Grant of stage carriage permit

.....

(2)The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and 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-

.....

(xxii) 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.”

22. The petitioners had been notified of these conditions sought to be varied of the permits by a public notice dated 30.3.2009 to which objections had been filed by them on 28.4.2009; pursuant whereto the modified condition was to the advantage of the petitioners. Provisions of Section 72(2) had been adhered to; principles of natural justice had also been complied.

23. Section 86 of the said Act also permits the Transport Authority to cancel or suspend the permit for a breach of a condition as contained in Section 84 of the said Act. Further under Section 71(3)(d) the Regional Transport Authority while considering an application for a stage carriage permit will have

due regard to the satisfactory performance of the stage carriage operator.

24. A conspectus of these provisions show the unambiguous intent of the legislature which is the enabling power of the Authority to attach conditions to a permit; this condition must, however, pass the test of reasonableness; such a condition is also closely linked to the performance of petitioners.

25. In this background the contentions of the petitioners have no merit. The writ petition as also the pending application is dismissed.

INDERMEET KAUR, J.

AUGUST 19, 2010
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