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

% *Date of Judgment: 21.09.2010*

\+ **WP(C)No. 3681/2010 & C.M.Appl.7371/2010**

M/S CAPITAL BUS SERVICE (P) LTD. & ANR.
.....Appellants
Through: Mr. B.B. Sawhney, Sr. Advocate with Mr. Amit Kr. Singh and Ms. Indra Sawhney, Advocates.

Versus

GOVT. OF NCT OF DELHI
THROUGH TRANSPORT SECRETARY & ORS.
.....Respondents
Through: Mr. Anjum Javed, Advocates.

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. (Oral)

1. There are two petitioners before this court. The petitioner no. 1 is a duly incorporated company of whom petitioner no. 2 is the Director. The buses of the petitioner had been granted stage carriage permits by the respondent i.e. State Transport Authority of the Government of the National Capital Territory of Delhi (hereinafter referred to as the STA). Buses of the petitioner are plying from Delhi to Palwal and vice-versa. There are fifteen such buses. The petitioner is plying his buses in compliance with the provisions of the Motor Vehicles Act, 1988 and the Rules framed therein (hereinafter referred to as MVA).

2. In 2009-2010, the respondent no. 4 i.e. the Assistant Commissioner of Police (Traffic) had started challaning the buses

of the petitioner either on the ground of overtaking, picking up/dropping passengers without valid bus stop. The documents of the petitioner including R.C. fitness certificate and permits had been seized. The petitioner chose to compound the same by paying fines ranging from Rs.2500/- to Rs.5100/-. By mechanical stereotyped orders, without application of mind, show cause notices were issued to the petitioner and the permit of the buses of the petitioner was suspended. The instances have been detailed in the petition. It is pointed out that the petitioners have not violated any of the provisions of Section 66 of the MVA under which the petitioner has been challaned; he has instead compounded and settled the matter with the respondent. These acts of the respondents are arbitrary and unjustified; they violate his fundamental rights; show-cause notices dated 07.09.2009, 22.10.2009, 05.03.2010, 03.05.2010 and 07.05.2010 be declared illegal and quashed. Further, prayer is that the documents of the petitioner which have been seized by respondent nos. 3 to 6 be returned back; further the directions issued by the Supreme Court in the case of *MC Mehta Vs. UOI* on 20.11.1997 that speed governor devices be put on the buses would not apply to the petitioner as the permits of the petitioner are inter-state.

3. The counter affidavit filed by the respondents has opposed the petition. The various orders of the Supreme Court passed in CWP No. 13029/1985 titled as *M.C. Mehta Vs. Union of India & Ors.* have been detailed. It is pointed out that these orders have been passed with respect to the transport vehicles which were violating the statutory provisions of the law regarding road safety resulting into congestion on Delhi road, accidents and pollution.

These directions were contained in the orders of the Supreme Court dated 20.11.1997, 16.12.1997, 28.07.1998 and 1.12.1998. It is pointed out that a coordinate Bench of this court in the case of *Tara Kant Jha & Ors. Vs. State Transport Authority & Others* in WP(C) No. 2838/2010 on 20.05.2010 had disposed of similar prayers made (by the petitioners in that case) holding therein that the directions issued by the Supreme Court in the *M.C. Mehta Vs. Union of India & Ors.* (supra) require the traffic police to treat the directions as implied conditions of every permit and to take action on that basis; the traffic police has no discretion in the matter. With these observations, that petition was disposed of.

4. Pleadings are complete.

5. Today, on behalf of the appellant, it had been urged that a police officer is authorized to impound documents only in terms of Section 206 of the MV Act; in the instant case, this power has been exercised mechanically and in total disregard of the principles of natural justice. It is pointed out that the show cause notice has been issued on a cyclostyled format by filling in the blanks showing no application of mind. It is a classic case of a rejection without calling for any explanation i.e. without perusal of the reply to the show-cause. There has been a blatant violation of the rules of natural justice for which interference is called for by this court. Reliance has been placed upon (2003) 2 SSC 107 *Harbanslal Sahnia and Anr. Vs. Indian Oil Corporation Ltd. & Others.* to substantiate this submission that writ jurisdiction should be exercised where there has been a violation of the principles of natural justice. It is submitted that although a appeal lies against

the order of the Assistant Commissioner of Police yet that is not an equally efficacious remedy. The impugned orders have ordered suspension of the permit of the petitioner for periods ranging from 3 to 10 days, by the time the order is obtained, the period of suspension gets over; in this view of the matter, the writ petition is the only remedy which can challenge this continuous course of the arbitrary conduct of the respondents. Attention has also been drawn to the provisions of Section 200 (2) of the MV Act. It is pointed out that in the instant case, the petitioner to avoid any further harassment had pleaded guilty and had paid the compounding fee; yet punitive action continued against him. The bar of Section 200 (2) clearly states that where an offence has been compounded, no further proceedings shall be taken in respect of such an offence.

It is submitted that these contentions have not been dealt with in the judgment of *Tara Kant Jha & Ors. Vs. State Transport Authority & Others.*

6. The judgment of the coordinate Bench of this court reported in the case of *Tara Kant Jha & Ors. Vs. State Transport Authority & Others* is fully applicable to the facts of the instant case; this court has no reason to differ from the same. The grounds urged and noted hereinabove have in fact been dealt with. It is relevant to state that no reply has been filed to the show-cause notice issued to the petitioner; question of the rejection of the explanation of the petitioner does not arise. Argument that there has been a violation of the principles of natural justice is thus clearly misconceived. Provisions of Section 200(2) are not attracted. In the instant case

on the date on which the compounding fee had been paid, on the very same date the show-cause notice had been issued; the question of "further proceedings" having taken place thereafter also does not arise. Show cause notice issued to the petitioner related to the violation of the permit conditions by the vehicles of the petitioner. Section 192 (A) of the MVA deals with the use of vehicles without permit or contravention of any provisions of Section 66(1) or of any condition of a permit. Applicability of Section 200 as such would even otherwise be excluded in view of the Division Bench Judgment of the High Court of Gujarat reported in 1998 (1) ACC 81 *Ramji Bhai Daya Ram Bhai Joshi Vs. State of Gujarat (DB),* wherein it was held that offences covered by Section 192(A) of the MVA cannot be compounded by placing reliance upon the provisions of Section 200.

7. The relevant extract of the judgment in *Tara Kant Jha* (supra) where also the question of the suspension of buses permits of the petitioner was in question had been dealt with herein as under:-

> "9. At the outset it must be noticed that when a similar petition was dismissed earlier by the order dated 9th December, 2004, this Court did not have the benefit of the judgment of the Supreme Court in the UPSRTC case.
>
> 10. Section 66(1) of the MVA prohibits the use of a transport vehicle without a permit in a public place. Therefore, if a transport vehicle is plied without a permit, its owner can certainly be proceeded against under the MVA. A penalty for such violation is provided under Section 192A MVA. Section 207 gives the power to the transport authority to seize and detain vehicles plying without a permit as required under Section 66(1) or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. This phrase was interpreted by the Supreme Court in State of Maharashtra v. Nanded Parbhani Z.N.B.M.V. Operator Sangh (2000) 2 SCC 69. It was clarified that the power under Section 207 MVA could not be used to detain a vehicle which was found to be used in contravention of the conditions of the permit relating to the number of passengers who could be carried in the vehicle. In other words, it was not for the non-compliance of each and every condition of the permit that the police officer would be entitled to detain a

vehicle. The other possible grounds for detention of a vehicle are the violation of Section 3 or Section 4 or Section 39 MVA.

11. Consequently, as far as Section 207 MVA is concerned, it would appear that the power thereunder can be invoked strictly only for the purposes mentioned therein. The above powers have to also be read together with the Rules of the Road Regulations 1989 framed by the Central Government in exercise of its power under Section 118 MVA. This requires that the driver of a motor vehicle should drive the vehicle on the left hand side of the road and allow all traffic which is proceeding in the opposite direction to pass on his right side. The said Rules prescribe a penalty for violations which have to be read with Section 177 MVA. The other possible violation by holder of a stage carriage permit is of plying the bus on a route other than the one that has been allotted to him.

12. The judgment of the Supreme Court in M.C. Mehta came to be rendered in extraordinary circumstances. The said judgment dated 20th November 1997 came in the wake of the Wazirabad School bus tragedy where a bus carrying several scholl-going children broke the parapet of a bridge and fell into the river Yamuna killing many of its passengers. The three Judge Bench of the Supreme Court laid down several conditions which were required to be complied with by the transport operators in Delhi. This was subsequently reiterated by the three-Judge Bench on 1st December, 1998.

13. Among the directions, which came to be issued to all heavy and medium transport vehicles and light goods vehicles permitted to operate on the roads of the National Capital Region and NCT of Delhi, were the following:

(a) The above vehicles would not operate on the roads in Delhi unless they were fitted with suitable speed control devices to ensure that they do not exceed the speed limit of 40 kmph. This could not apply to vehicles holding inter-State permits and national goods permits. No vehicle would be permitted on roads other than the exempted roads or during times other than the aforesaid times without a speed-control device.

(b) The transport vehicle should not be permitted to overtake any other four-wheel motorized vehicle.

(c) Bus lines were to be segregated and it would be ensured that buses should be confined to such bus lanes. Equally, no other motorized vehicle should be permitted to enter the bus lane.

(d) Buses would halt only at designated bus stops and within the market area.

(e) The vehicle driven by a person other than an authorized river would be treated as a violation of the permit and consequences would follow.

14. In the judgment dated 20th November 1997 in M.C. Mehta a separate set of directions were issued to the police and all authorities entrusted with the administration and enforcement of the MVA. As regards the directions, it was ordered that any breach of the aforementioned directions by any person would, apart from entailing other legal consequences, be dealt with as contravention of the conditions of the permit which could entail suspension/cancellation of the permit and impounding of the

vehicle. Further in clause (g) of the directions it was directed as under:

> "(g) To enforce these directions, flying squads made up of inter-departmental teams headed by an SDM shall be constituted and they shall exercise powers under Section 207 as well as section 84 of the Motor Vehicles Act."

15. The grievance of the Petitioners here is that the above directions have been used by the traffic police in Delhi to harass the bus operators. Even when a passengers alights or broads a bus at a traffic signal, which is not an uncommon feature in Delhi, the bus owner is challaned using the Supreme Court's directions. Even for the flimsiest of reasons like the bus driver not wearing proper uniform, the directions of the Supreme Court have been used to either place the permit under suspension under Section 86 of the MVA or detain the bus under Section 207 MVA.

16. It is submitted that in the subsequent judgment in the UPSRTC case, the Supreme Court clarified many of the directions issued in M.C. Mehta v. UOI.

17. This Court has examined the judgment in the UPSRTC case where, in para 27, the Court discussed the directions issued in M.C. Mehta v. UOI and observed as under:-

> "27. Keeping in mind the aforementioned legal principles, we may now consider the effect of the directions issued by this Court. Para A of the directions has been issued upon the police and all other authorities entrusted with the administration and enforcement of the Act and generally with the control of the traffic. The directions upon the authorities to ensure that the transport vehicle are not permitted to overtake any four-wheel motorized vehicle was issued as in the view of this Court, the scheme of the Act necessarily implied an obligation to use the vehicle in a manner which does not imperil public safety. Clause (e) of the order must be construed in the light of the purpose and object for which the Act was enacted.
>
> 28. The direction that any breach will be considered to be in contravention of the conditions of the permit which could entail suspension/cancellation of the permit and impounding of the vehicle must be read in the light of the provisions of the Act and not dehors the same. This Court could not and, in fact, did not while issuing the said direction confer a statutory authority upon a person who did not have any such authority under the statute. An order passed by an authority without jurisdiction, it is trite, would be a nullity. It would, therefore, be preposterous to presume that this Court would confer jurisdiction upon an authority whose order would be a nullity and, thus, nonest in the eye of the law.
>
> 29. The aforementioned directions must be construed having regard to the reasons assigned in support thereof."

18. Even as regards the power under Section 207 MVA after referring to the directions in M.C Mehta v. UOI, the Bench in the UPSRTC case observed in para 31 as under:-

> "31. What was emphasized is the empowerment of the authority. Such empowerment must be within the broad framework of the Act. The Judge-made law in an area covered by the parliamentary Act should not be applied in an expansive manner. Nothing should be deduced therefrom."
>
> 19. While the above observations of the Supreme Court in the UPSRTC case would in essence be construed as a clarification or a modification of the directions issued by Supreme Court in M.C. Mehta v. UOI, the difficulty in drawing that conclusion is that the earlier judgment in M.C. Mehta v. UOI was by a Bench of three learned Judges whereas the subsequent decision in the UPSRTC case is by a Bench of two learned Judges.
>
> 20. This Court appreciates the concern expressed by the Petitioners about the possible abuse of the powers by the traffic police on the strength of the judgments of the Supreme Court in M.C. Mehta v. UOI. Yet, the concern expressed by the traffic police that they have no option but to strictly abide by the judgment of the three-Judge Bench of the Supreme Court in M.C. Mehta v. UOI is also not without merit. Indeed, the directions issued in M.C. Mehta v. UOI require the traffic police to treat the direction as implied conditions of every permit and take action on that basis. They have no discretion in the matter.
>
> 21. In the considered view of this Court, the Petitioners should seek appropriate clarifications from the Supreme Court whether the subsequent judgment in the UPSRTC case should be read in substitution of the earlier directions issued by a larger Bench of three-Judges in the M.C. Mehta v. UOI. It is not open to this court to undertake that exercise."

8. On the last date i.e. on 07.09.2010, the learned counsel for the petitioner has pointed out that an appeal has been filed against the judgment of the case of *Tara Kant Jha* (supra). Admittedly there is no stay. It was pointed out that the matter is likely to be heard for which purpose an adjournment had been granted. The matter had not been taken up. It has been pointed out by the learned counsel for the respondent that there being no urgency in the matter, the matter will be taken up by in due course. It is pointed out that the interim directions which are operating against the respondents are however causing hardship to the respondents; the respondents are not in a position to challan the petitioners in spite of the traffic violations committed by them.

9. The judgment of *Tara Kant Jha* (supra) and the directions contained are binding and have been followed by this court. No further orders are called for in this petition. Petition as also the pending application is disposed of accordingly.

INDERMEET KAUR, J.

SEPTEMBER 21, 2010
ss