

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

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Date of Judgment : 14.09.2010

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W.P.(C) 4126/2010

RAJINDER SINGH

.....Appellant

Through: Mr.Anil Kumar Mishra,
Advocate.

Versus

GOVT. OF DELHI AND ORS.

.....Respondents

Through: Ms.Zubeda Begum and Ms.Sana
Ansari, 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. This writ petition has challenged the policy dated 3.6.2009 of the respondent i.e. State Transport Authority (STA). By way of this petition, it has been prayed that this policy in so far as it relates to the cancellation of permits of vehicles who have met a single fatal accident be declared ultra-vires and illegal. Directions have also been sought for quashing of the show cause notice dated 25.5.2010 which had been issued under Section 86 of the Motor Vehicle Act (hereinafter referred to as 'the M.V.Act) by the Joint Commissioner of the State Transport Authority.

2. Case of the petitioner is that he is a permit holder bearing permit no.EX/0064/STAGE plying his bus on Route No.918 from Ambedkar Stadium to Nangloi J.J.Colony. He had been granted this permit on 7.12.2006 under the category of an ex-serviceman scheme which was to be renewed for five years. Clause 25 of the

permit condition provides that the STA may vary the condition of the permit; under Clause 32 it is stated that if the transport vehicle is involved in two fatal accidents, the permit is liable to be cancelled. On 18.1.2008 in terms of directions of the High Court passed in W.P. (Crl.) 878/2007 titled as Court on its own motion vs. State a resolution was passed by the respondent that no permit will be given to transport vehicles involved in double fatal accidents; further the owner would be asked to take a NOC to operate the vehicle outside Delhi. Vide a subsequent resolution dated 3.6.2009 the STA took a decision that the buses involved even in a single fatal accident will be considered only for grant of a contract carriage permit. This policy is illegal and arbitrary and is liable to be quashed.

3. The counter affidavit has opposed this contention. It is submitted that it was pursuant to the directions of the High Court in W.P.(Crl.)878/2007 passed on 10.7.2007 that the fatal accident policy was formulated. On 16.3.2009 a resolution was passed by the STA of which notice had been issued in leading newspapers on 30.3.2009. On receipt of representations from various vehicle operators, the policy was reviewed and in its meeting held on 3.6.2009 the STA had relaxed its policy. Buses involved in a single fatal accident would not be considered for the grant of a contract carriage permit; if the permit holder/transport vehicle involved in the fatal accident is acquitted, the accident would not be treated as a fatal accident for the purposes of the above policy; this policy is even otherwise reasonable and fair.

4. Admittedly, in this case, after the issuance of the show cause notice dated 25.5.2010 the petitioner has not appeared before the

statutory body i.e. before the STA; no reply has been filed by the petitioner to this show cause notice; instead the present writ petition has been filed.

5. On the last date i.e. on 10.8.2010 this had been noted and recorded by the court. The contention of the learned counsel for the petitioner is that no purpose would be served in giving a reply to this show cause notice; the result is inevitable; petitioner's representation would be dismissed; it is for the reason that the petitioner has approached this court straight away by filing this petition with a prayer that this policy of the STA dated 3.6.2009 being unreasonable and unfair be declared ultra-vires.

6. Learned counsel for the respondent on the other hand has drawn the attention of this Court to a reply dated 4.6.2010 filed by the petitioner wherein it has been stated that a writ petition has been filed by him on which show cause notice has been issued by the High Court; as such no further action be taken by the STA. It is pointed out that in a similar situation in WP(C) No. 4121/2010 titled as Bhushan Steel Ltd. vs. UOI & Anr. a Division Bench of this Court on 11.08.2010 had deprecated this practice as an attempt to over reach the Court; contempt proceedings had been initiated. The petitioner has no answer to this submission of the learned counsel for the respondent.

7. This court in a similar case in WP(C) No. 2128/2010 titled as Bernard Soreng & Anr. vs. State Transport Authority & Anr. on 19.8.2010 had dismissed a contention of the petitioners wherein they had sought a renewal of their permits; averring therein that the policy of 03.06.2009 under which their permits had not been renewed is an arbitrary policy. However, in that case the policy of

3.6.2009 was not under challenge. The relevant extract of the
aforenoted judgment reads as follows:

“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.”

8. Although the policy dated 3.6.2009 was not strictly challenged yet the observations of this court in para 20 are relevant. The policy had been considered and scrutinized; this court was of the view that the conditions imposed by this policy/resolution were reasonable and fair and do not infringe upon the fundamental rights of the petitioner. Classification was also found to be reasonable having a close nexus to the object sought to be achieved by the policy i.e. to curb and curtail fatal accidents.

9. The contention of the learned counsel for the petitioner that this policy which has been formulated even otherwise cannot be invoked as the rider has been imposed upon a transport vehicle which is a non entity. It is pointed out that a driver can drive a

transport vehicle only if an authorization card is issued to him; the necessary distinction between an 'owner' and a 'driver' has not been gone into; an owner is never represented in criminal proceedings; an FIR is always registered against a rash and negligent driver and not the owner. In this view of the matter, the rights of the owner cannot be curtailed as he is never in the picture. It is only in cases before the Motor Accident Claim Tribunal that the vicarious liability of an owner is recognized. On these grounds also the petitioner has challenged this policy.

10. As aforementioned in the judgment of this court dated 19.08.2010 (supra) it has held that the restrictions imposed by this policy of 3.6.2009 are reasonable restrictions. These reasonable restrictions have been imposed upon the permit holder/transport vehicle; a permit holder is not a non entity. There is no ambiguity in this policy.

11. Further relevant would it be to state that a Division Bench of this Court in W.P.(Crl.) 878/2007 is regularly supervising and monitoring this menace of fatal accidents by public transport vehicles. 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)".

12. It was in this background that this policy came to be formulated. The policy under challenge suffers from no vice either of arbitrariness or of unreasonableness.

13. Writ petition being without any merit; it is dismissed.

INDERMEET KAUR, J.

SEPTEMBER 14, 2010

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