

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

% *Date of Judgment: 28.01.2011*

+ **W.P.(C) No.6185/2010 & CM Nos. 12246/2010 & 12247/2010**

SOM VEER SINGH MALIK & ORS. Petitioner
Through: Mr. Anil Kumar Mishra,
Advocate.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondent
Through: Ms.Sana Ansari, 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. (Oral)

1 This writ petition has impugned the Policy of the respondent Government dated 03.06.2009. Vide the aforementioned Resolution, the respondents government had resolved that buses involved in a single fatal accident will be considered only for the grant of contract carriage permits. He would not be granted state carriage permit. Further, if the permit holder/ transport vehicle involved in such a fatal accident is acquitted by the Court, the said accident will not be treated as a fatal accident for the purposes of the above policy.

2 It has been contended that this policy of the Department dated 03.06.2009 is not only illegal, arbitrary and unreasonable but the same has been issued without any application of mind.

3 There are four petitioners before this Court. On 11.09.2009,

the bus of petitioner No. 1 met with a fatal accident. FIR No. 204/2009 had been registered in P.S. Darya Gang against the driver of the vehicle. On 16.03.2010, the bus of petitioner No. 2 met with a similar fatal accident. FIR No. 92/2010 was registered in P.S. Nangloi against the driver. Petitioner No. 3's bus met with a fatal accident on 26.05.2010 pursuant to which FIR No. 176/2010 was registered against the driver in P.S. Binda Pur. Petitioner No. 4's bus met with a fatal accident on 07.10.2009; this has led to registration of FIR No.255/2009 at P.S. Nihal Vihar against the driver of the ill-fated bus.

4 Contention is that the liability, if any, of the aforementioned petitioners/their drivers is yet to be proved/disproved before a Court of competent jurisdiction; till that intervening time, a presumption of guilt cannot be drawn against the vehicle holder. The said Policy being illegal, arbitrary; it is liable to be quashed.

5 This policy was the subject matter of the decision by this Court in W.P.(C) No. 2128/2010 delivered on 19.08.2010 in the case of Bernard Soreng & Anr. Vs. State Transport Authority, NCT of Delhi & Anr. Although in that writ petition, the aforementioned Policy was not strictly under challenge yet the same had been examined in depth and detail. The prayer was that the permit of the petitioners be renewed as they are victims of aforementioned irrational policy of the Department i.e. the policy dated 03.06.2009. This Court had returned the following findings:-

"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

aforenoted. 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

aforenoted 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.”

6 Applying the ratio of the aforenoted case, there is no merit in this appeal. Appeal as also the pending applications are dismissed.

INDERMEET KAUR, J.

JANUARY 28, 2011

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