

GAHC010120832016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6640/2016

GUWAHATI GOODS TRANSPORT ASSOCIATION and ANR.
REP. BY ITS SECRETARY,
SRI KRISHAN KR. SHARMA,
ASHOKA HOUSE, KC CHOUDHURY ROAD,
ATHGAON, GHY., KAMRUP M,
GHY.-781008. REGD. NO. KAMM/240/A-23/277 OF 2010-11

2: SRI KRISHAN KUMAR SHARMA
S/O. LT. LAL CHAND SHARMA
R/O. T.T. ROAD
GUWAHATI
P.O. FANCY BAZAR
P.S. BHARRALUKUKH
DIST. KAMRUP M
ASSAM AND SECRETARY OF THE GUWAHATI GOODS TRANSPORT
ASSAM

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY ITS SECRETARY, TO THE GOVT. OF ASSAM, TRANSPORT
DEPTT., DISPUR, GHY.-06.

2: THE COMMISSIONER OF TRANSPORT
ASSAM JAWAHARNAGAR
BASISTHA KHANAPARA
GHY.-27 GHY. PIN-781005.

3: THE DIST. TRANSPORT OFFICER
JORHAT DIST. JORHAT ASSAM.

4: THE DIST. TRANSPORT OFFICER
SIBSAGAR DIST. SIBSAGAR
ASSAM.

5:THE DIST. TRANSPORT OFFICER
TINSUKIA
DIST. TINSUKIA
ASSAM.

6:THE SECRETARY
REGIONAL TRANSPORT AUTHORITY
TINSUKIA
DIST. TINSUKIA
ASSAM

Advocate for the Petitioner : MR.G Z AHMED, MS.M BORAH,MR.A C
BURAGOHAIN,MR.H BURAGOHAIN,MS.B HAZARIKA,MS.D GOGOI

Advocate for the Respondent : , SC, TRANSPORT

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 28.08.2024

Heard Mr. H. Buragohain, learned counsel for the petitioner and Ms. M. D. Borah, learned counsel for the Transport Department.

2. The petitioner's case is that the petitioner association is a registered body of transporters, who are engaged in carrying goods and providing services to the Collecting and Forwarding (C&F) Agencies, for delivering goods from their godowns/offices to the respective assignees/consignees' of the C&F Agencies at various locations of Assam.

3. The petitioner association has filed the instant writ petition, as they are aggrieved by two impugned notifications dated 21.09.2016 and 12.10.2016, wherein their members have been asked to apply for an

"Agents Licence", as per Rule 54 of the Assam Motor Vehicles Rules, 2003 and have been directed to produce Agents Licence for verification on or before 18.10.2016, failing which they would have to pay cumulative fines under Section 193 of the MV Act, 1988 or to face a court case.

4. The petitioner's counsel submits that the members of the petitioner association are working under the C&F Agencies by using their own vehicles or by hiring vehicles. He submits that the Assam Motor Vehicles Rules, 2003 (hereinafter referred to as 'the Rules') does not contemplate the members of the association to be an agent as per the Rules. However, the impugned notification dated 21.09.2016 issued by the DTO has ordered the members of the petitioner association to apply for Agents Licence with immediate effect. Further, without giving any outer time limit for such applications to be submitted and without issuing notice, the respondent authorities have issued another notification dated 12.10.2016, threatening to impose penal action on the members of the petitioner association, if they are unable to produce Agents Licence.

5. The petitioner's counsel submits that as the provisions of Rules do not provide for persons working under C&F Agencies to be registered as agents, even though they are doing the work of collecting and distributing goods on behalf of the C&F Agencies, the impugned notifications should be set aside.

6. Ms. M. D. Borah, learned counsel for the Transport Department, on the other hand, submits that Rule 2 read with Rule 54 of the Rules clearly provides that the definition of agent means any person, company or firm

engaged directly or indirectly in collecting, forwarding and distributing goods or sale of tickets or booking of passengers for travel by public service vehicles. She submits that even assuming that the members of the petitioner association are working under C&F Agencies by using their own vehicles or by hiring vehicles for the purpose of collecting, forwarding and distributing goods, puts them within the definition of agent as per Rule 2(b) of the Rules. Accordingly, in view of Rule 54 of the Rules, the members of the petitioner association, who are working under the C&F Agencies, have to be registered as agents and they have to be granted Agents Licence under Rule 51 of the Rules.

7. I have heard the learned counsels for the parties.

8. Rule 2(1)(b)(c)(d)(e)(f) and (k) of the Rules provides as follows:-

“2. Definitions-(1) In these rules, unless there is anything repugnant to the subject or the context,

(a) 'Act' means the Motor Vehicles Act, 1988 (Act No. 59 of 1988).

(b) 'Agent' means any person, company or firm engaged directly or indirectly in the business of

(i) Collecting, or

(ii) Forwarding and distributing, or

(iii) Collecting, forwarding and distributing goods for goods carriages, or

(iv) Sale and tickets or booking of passengers for travel by public service vehicles.

(c) "Agent's Licence" means a licence granted under Rule 51 and includes a licence granted either to a Collecting Agent, Forwarding and Distributing Agent or Booking Agent;

(d) 'Booking Agent' means an agent licensed to do the business of selling or booking of passengers for travel by public service vehicles;

(e) "Collecting Agent" means an agent licensed to do the business of collecting goods to be carried by any goods carriage;

(f) 'Collecting Forwarding and Distributing Agent' means an any agent licensed to

do the business of collecting, forwarding and distributing goods to be carried by any goods carriage or of selling of ticket to passengers or of booking passengers for travel by public service vehicles;

(k) 'Licensing Authority' in relation to a driving licence or a conductor's licence means the District Transport officer of the district or the Deputy Commissioner of the district where there is no such District Transport Officer within their area of jurisdiction or such other authority as may be specially empowered in this behalf by the State Government by notification published in the Official Gazette and, in relation to an Agent's licence, the Secretary, State Transport Authority. The licensing authority shall delegate the authority to one of his Subordinate officers in writing to issue or renewal of licence, during his leave period."

9. Rule 51(1) & 54 of the Rules states as follows:-

"51. Licensing of Agents : *(I) No person shall act as an agent unless he holds a valid licence therefore, in Form No. 17 (A.L.) as appears in Schedule-I granted by the Licensing Authority for the purpose of such business.*

54. Conditions for agent's licence : *An Agent's licence shall be subject to the following conditions namely-*

(a) that the licence shall, subject to the provisions of Rules 57, provide places for loading and unloading of goods;

(b) that the licence shall be responsible for proper arrangement for storage of goods collected for despatch or delivery;

(c) that, where he is authorised to forward and distribute goods, the licence.

(i) shall be responsible for proper delivery of the goods to the consignee.

(ii) shall be liable to indemnify the consignee for any loss or damage to goods while in his control or possession.

(iii) shall not deliver the goods to the consignee without actually receiving from the consignee a goods transport receipt or, if the receipt is lost or misplaced an indemnity bond covering the value of goods.

(d) the licence shall insure the goods against any loss or damage while in his control or possession;

(e) (i) that the licence shall maintain a proper record of the vehicle under his control and of the collection dispatch and delivery of goods shall be open for inspection by the State Transport Authority or by a in this behalf by any such Author State Transport Authority, by 31st in respect of the previous calendar (RAI.) as appears in Schedule-I.

(ii) that the place of business of the applicant should not hamper the business of the Assam State Transport Corporation and it must be at least 300 MTR away from the bus stand of ASTC in case of Guwahati City and should be at least 100

MTR away from ASTC Bus Stands. But if any existing licences is at present working within the distance mentioned above, he will have to shift his place of business to other suitable place months from the date of effect of this rule.

(iii) that the licensing authority shall approve the site map of the place showing the exact location.

(f) (i) that the licence shall maintain a proper record of the tickets issued and number of the public service issued and number of the public service area thereof which shall be open Transport Authority or the Regional Transport Authority or on this behalf by the State Transport Authority.

(ii) that the licence shall exhibit the actual passengers fare for the route or the area.

(iii) that the licence shall be responsible for proper sitting arrangements of the passengers in journey and adequate facilities for vehicles.

(iv) that the licence shall ensure that the licence or under his control have by the Competent Authority for the vehicles shall have to ply.

(v) that the vehicles shall have valid Ta Token, Fitness Certificate, Insurance Certificate and Assam Passengers Goods Tax Clearance Certificate, Pollution under Control Certificate

(vi) He must have facilities for pure drinking water and separate Toilets for Gents and Ladies.

(g) that the licence shall not charge, any commission exceeding that as prescribed by the State Transport Authority or the regional Transport Authority ; as the case may be under Rule 56:

(h) that the licence shall furnish to the operator correct figures of the freight receivable by them from consignees;

(i) that the licence shall maintain proper accounts of the commission charged by him and have the same audited by qualified Auditors annually;

(j) that the licence shall ensure that the goods vehicles under his control have valid permits for routes on which the vehicles have to ply;

(k) that the licence shall maintain in good condition a weighing device capable of weighing, at a time, not less than 226 kg. (550 Lbs);

(l) that the licence shall attend to his customers in the order in which they approach him : Provided that that customers in respect of such perishable goods as may be notified by the Official Gazette, shall be given priority over other customer.

(m) that the licence shall assign the available traffic amongst the operators in the order in which they have approached him and shall maintain a register chronologically recording the particulars of the available traffic and the waiting operators.

(n) that the licence shall comply with the provisions of these rules and shall

observe such other conditions as the Licensing Authority may specify in the licence;

(0) that the State Transport Authority may at its discretion, order for seizure, in whole or in part of the security or the additional security furnished by the licence under Rule 52 for contravention of any of these rules or for breach of any of the aforesaid conditions by the licence;

(p) that the State Transport Authority may after giving notice of not less than one month in writing either vary the conditions of the licence or attach further conditions to the licence.

(q) that the Character and Criminal antecedents verification of the employees of the licence holder through Police Authority is mandatory.”

10. A reading of the above quoted Rules clearly shows that any person, company or firm engaged directly or indirectly in collecting, forwarding and distributing goods or those involved in sale of tickets or booking of passengers for travel by public service vehicles are required to apply for an agent's licence under Rule 51 of the Rules.

11. The writ petition is devoid of material particulars, inasmuch as, the petitioner association has not stated as to who are its members, who are claiming exemption from being defined as agents and not requiring Agents Licence, in terms of the Rules. The petitioner association has not given particulars of its members vis-à-vis the registration number of their vehicles and hired vehicles, for the purpose of transporting goods of the C&F Agencies.

12. No particulars have been mentioned by the petitioner association, as to which of its members are working under which C&F Agencies and no Agents Licence of any of the C&F Agencies has been annexed to the writ petition. There is nothing to show that any C&F Agencies have made any documents showing that the members of the petitioner association have

been working under them. The names of the concerned C&F Agencies have also not been mentioned.

13. Rule 51(1) of the Rules provides that no person shall act as an agent unless he holds a valid licence in Form No. 17 (A.L.) as appearing in Schedule I, granted by the licensing authority for the purpose of such business. Rule 54 of the Rules provides the condition which shall govern an Agent Licence.

14. The impugned letter dated 21.09.2016 issued by the District Transport Officer to the Members of the petitioner association has been issued to Sibasagar Road Ways and Vishal Carriers. One of the said letters issued by the District Transport Officer, Jorhat, which is annexed to the writ petition, is as follows:-

“Sub.:- Agent Licence.

Sir,

With reference to the subject cited above I would like to inform you that it is mandatory as per Rule 54 of Assam Motor Vehicle rule, 2003 that all agents both Passenger and Goods must obtain Agent Licence from Secretary, State Transport authority, Assam to carry their business in the State/district.

Therefore, you are hereby directed to apply for the same and stop booking as an agent with immediate effect otherwise necessary punitive action will be taken against you for violation of Sec. 93(11) of Central Motor Vehicle Act, 1988.”

15. A perusal of the above letter dated 21.09.2016 shows that the members of the petitioner association have been informed to apply for Agents Licence as per the Rules or else punitive action would be taken for violation of Section 93(ii) of the Central Motor Vehicles Act, 1988.

16. One of the impugned letter dated 12.10.2016 issued by the Secretary, District Transport Authority, Tinsukia states as follows:-

“Sub: Agent License

Ref: This office letter No. TRTA/0437-0499/2016 did. 05/07/2016

Sir,

With reference to above I am to say that, you have not taken any step to obtain or renew agent license. Hence you have violated section 93 of Motor Vehide Act 1988 & rules 51 to 60 of the Assam Motor Vehicle rules 2003 and accordingly you are liable under section 193 of the Motor Vehicle Act.

You are directed to produce agent license for verification on or before 18/10/2016. If you fail to produce the required license, you have to pay CF under section of M.V. Act 1988 or to face court case

This may be treated as last warning.”

17. A reading of the above letter dated 12.10.2016 clearly shows that the members of the petitioner association have been asked to obtain Agents Licence or else action would be taken against them. On a perusal of the writ petition, this Court finds that the writ petition is woefully short of material facts, inasmuch as, the names of the members of the petitioner association have not been provided in the writ petition. The impugned letters show that the letters have been issued to firms and not to individuals. In any event, the Rule requires those who are engaged directly or indirectly in collecting, forwarding and distributing goods to have an Agents Licence. Only because the members of the petitioner association claim that they are working under C&F Agencies does not leave them out of the ambit of the definition of agent, as provided under the Rules, as they are having their own vehicles and have hired vehicles themselves for

transporting goods directly/indirectly. This fact clearly proves that the members of the petitioner association would come within the definition of agent, as provided in Rule 2(b) of the Rules and would require to have an Agents Licence, even though they may be acting under C&F Agencies.

18. Accordingly, this Court is of the view that the challenge made to the impugned letters by the petitioner is not sustainable. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant