

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 328 OF 2016**

Mr. Tulshidas Apa Swar, Son of Apa
Swar, 38 years of age, resident of
H. No. 269, Thane, Sattari, Goa. Petitioner

Versus

Assistant Director of Transport
and Member Secretary, RTA,
Bicholim, Goa. Respondent

Mr. Ashwin D. Bhobe , Advocate for the Petitioner.

Mr. Sagar G. Dhargalkar, Additional Government
Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATED:- 13th JULY, 2016

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. The
learned Additional Government Advocate waives
service. Heard finally by consent of the parties.

2. The petitioner is challenging the order, by
which the Assistant Director of Transport and Member
Secretary, (RTA), Bicholim, Goa (herein after

referred to as the Competent Authority), has cancelled the stage carriage permit of the petitioner to ply the vehicle bearing registration no. GA-01-U-7088, on Hivrem to Panaji route.

3. The brief facts are that the petitioner is holding a stage carriage permit to operate the said vehicle. It so happened that on 28.07.2014 at 7 a.m., the said vehicle met with an accident at Valpoi in respect of which, an offence at Crime No. 53/2014 was registered under Sections 279, 336, 377 and 338 of IPC and Sections 3, 134(1)(b), 180 and 188 of the Motor Vehicles Act, 1988 (the M.V. Act, for short) with P.S. Valpoi. During the course of investigation, it was revealed that at the time of accident, the bus was driven by one Prathamesh Pangam, who was not holding a driving license. In such circumstances, P.I. Valpoi Police Station by a letter dated 28.07.2014, sought cancellation of the permit.

4. The Competent Authority issued a show cause notice, to which the petitioner filed a reply. According to the petitioner on 28.07.2014, the regular driver Shri Eknath was not present. The bus was initially driven by Shri Nandu Naik, the conductor of the said vehicle, who was not holding a driving license. Shri Nandu Naik had driven the vehicle on the first trip from Hivrem and on the way from Thana to Hivrem, Prathamesh Pangam took charge of the bus and drove the bus towards Valpoi, when the accident occurred. At the time of the accident, there were about 35 passengers, mostly school going children in vehicle, in which, 29 passengers were injured.

5. The Competent Authority by an order dated 05.08.2014 has cancelled the permit in exercise of the power under Section 86 of the M.V. Act for violation of the provisions under Section 84 of the M.V. Act.

6. This was challenged by the petitioner before the learned Principal District Judge, Panaji in STAT Appeal No. 1/2015, which was dismissed on 13.01.2016. That is how, the petitioner is before this Court.

7. I have heard Mr. Bhobe, the learned Counsel for the petitioner and Mr. Dhargalkar, the learned Additional Government Advocate for the respondent. With the assistance of the learned Counsel for the parties, I have perused the order passed by the Competent Authority as well as the judgment in appeal.

8. The only contention raised on behalf of the petitioner is that under Section 86(5) of the M.V. Act, if the Competent Authority is of the opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit, if the holder of the permit

agrees to pay certain amount of money, then, notwithstanding anything contained in sub-section (1), the Competent Authority may, instead of cancelling or suspending the permit, may recover from the holder of the permit, such sum agreed upon. It is submitted that the impugned order passed by the Competent Authority does not show application of mind, as to the requirements of Section 86(5) of the M.V. Act. It is submitted that this was the first incident of breach of the conditions of the permit and the penalty of cancellation of the permit is disproportionate to the breach of the terms as noticed. The learned Counsel for the petitioner also submits that the petitioner is wholly dependent on the income from the plying of the vehicle and in the event, the permit is cancelled, he would suffer serious prejudice.

9. The learned Additional Government Advocate for the respondent has supported the impugned order.

It is submitted that there is serious breach on the part of the petitioner, in as much as the petitioner had allowed unauthorised, unlicensed person to drive the vehicle, thereby endangering the life and limb of the passengers in the bus. It is submitted that fortunately, there were no casualties in the accident. He pointed out that as many as 29 passengers, most of which were school going children, were injured. The learned Additional Government Advocate submits that the order cancelling the permit is legal and proper. The learned Additional Government Advocate further submits that this Court cannot come to a different conclusion as to the penalty, which can be imposed in such a case, unless and until, there is any patent irregularity in the matter of imposing penalty in the case.

10. I have carefully considered the rival circumstances and the submissions made and I do not

find that any case for interference is made out. At the outset, it is necessary to mention that, the fact that the vehicle met with an accident and at the time when the accident occurred, a person not having a valid driving license was driving the vehicle, is not disputed. In fact, it was the case made out before the Competent Authority that, on the relevant day, the regular driver had not attended and initially, the conductor drove the vehicle and subsequently, Mr. Prathamesh Pangam, who boarded the bus en-route, took the bus to Valpoi, when the accident occurred. Thus there is a serious breach of the conditions of the permit, in which not only the life and limb of the occupants of the vehicle, but also the other user of the road, are put into serious peril. It is only by providence that there were no casualties in the accident. However, that cannot be a mitigating factor, when we consider the nature of the breach.

11. Let us now consider the submission based on sub-section 5 of Section 86, which reads thus:

"86. Cancellation and suspension of permits-

(1).....

(2).....

(3).....

(4).....

(5) Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (e) of sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon."

12. It can thus be seen that sub-section 5 of Section 86 of the M.V. Act can be seen as an enabling provision, where the Competent Authority, if it is of the opinion that it would not be necessary or expedient or suspend the permit, can instead recover certain amount, from the holder of the permit. Thus, it can be seen that, only where the Competent Authority is of the opinion that the cancellation or suspension, as the case may be, is not expedient or necessary, that such a power can be exercised. In the present case, the Competent Authority has found that the act of the petitioner was completely irresponsible in permitting unauthorised person to drive the vehicle, thereby endangering public lives and property. If, in such circumstances, the Competent Authority has decided to cancel the permit, it is not permissible for this Court to sit in appeal over the decision of the Competent Authority and/or to substitute any other penalty in exercise of extra ordinary jurisdiction

of this Court.

13. The petition is without any merit, which is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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