

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.18493 of 2016

The General Manager, Haryana Roadway, Gurgaon and others

... Petitioners

Versus

Surinder Kumar

... Respondent

(2)

CWP No.22093 of 2016

The General Manager, Haryana Roadway, Gurgaon and others

... Petitioners

Versus

Satish Kumar

... Respondent

Decided on :22.12.2016

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Gaurav Jindal, Addl. AG, Haryana
for the petitioners.

Mr. Lekh Raj Sharma, Advocate
for the respondent.

G.S. Sandhawal, J. (Oral)

The present order shall dispose of ***CWP Nos.18493 and 22093 of 2016***, as common question of law and facts are involved. The facts are being taken from ***CWP No.18493 of 2016 'The General Manager Haryana Roadways, Gurgaon and others Vs. Surinder Kumar'***.

The challenge is to the common order dated 21.04.2016
(Annexure P-2) passed by the State Transport Appellate Authority-cum-

District Judge, Ambala. Vide the impugned order, the Tribunal accepted the two appeals alongwith other 12 appeals and issued directions to the respondents to consider afresh the applications of the appellants regarding the renewal of the route permits. They were also allowed to ply their vehicles on old permits, provided they fulfilled other conditions of the permits including payment of taxes/dues except Adda Fee till fresh orders were passed.

It has been brought to the notice of this Court by Mr. Sharma, who was also counsel before the Tribunal for the private respondent that in compliance of the said orders, the renewal has been granted till 07.09.2019. Apart from the said fact that the order has already been duly complied with, the present writ petitions are liable to be dismissed on the ground that the findings recorded by the Tribunal do not seem to suffer from any legal infirmity.

The dispute mainly arose when the petitioners filed application of renewal of the Stage Carriage Permits granted under the City Private Bus Service Scheme, 2004. On account of the fact that no action had been taken by the official respondents on the renewal, the operators as such had approached this Court, whereby directions were issued on 20.04.2015 to decide the applications moved by them.

Vide the order dated 22.05.2015 (Annexure R-1), the application was rejected by the Regional Transport Authority, Gurgaon on the ground that the requisite Adda Fees to the General Manager, Haryana Roadways, Gurgaon had not been paid. Resultantly, reliance

had been placed upon Clause 16 (1) and Clause 14 (8) of the Permit to hold that the operators could only be permitted to operate, if all the payments have been made for the necessary taxes, fees etc. Resultantly, the appeal was filed before the Tribunal, which have now been allowed as noticed above. During the pendency of the appeals, it is to be noticed that an Local Commissioner was appointed vide order dated 12.02.2016 for inspection of the site/Bus Stand, Gurgaon and to submit a detailed report. The Local Commissioners visited the site on 27.02.2016, after issuing due notice and inspected the premises in question and gave their report dated 03.03.2016 which had also been relied by the Tribunal. State has also placed on record the report of the Local Commissioner. The report is of importance as it was the case of the private respondent that the facilities which are to be offered to them at the Bus Stand, Gurgaon were not given them and, therefore, they are not liable to pay the said amount, apart from the fact there was no demand as such of any arrears.

The inspection was done by in the presence of the both the sides and the report was prepared by Mr. Sanjeev Chaudhary and Mr. Murari Lal Madaan, Advocates. The relevant part of the report reads as under:-

“That we have spent near about two hours and disputed spot was identified by both the parties. It has been observed that the spot which has been allotted to the applicant for parking their buses was found locked which was got opened and observed that the condemned buses of Haryana Roadways were lying parked inside. The spot was photographed which are attached as Annexure A-7,

A-8, A-9 to A-14. Thereafter, the spot was further inspected and it was observed that there was no waiting room and peoples were sitting under shadow of trees. Photographs in this respect marked As A-15, A-16, A-17, are attached. The entry of private bus stand was found to be locked by constructing the wall. Photo in this respect is attached as A-18. It has been further observed instead of showing the booth for getting bus for particular place, no board was there, but board of advertisement was affixed on the pillars. Bus stand Gurgaon was not having adequate drinking water facility and toilet facility. However Sulabh Sauchalya was there. It has been told that they are over charging for using the same. The rate list of the said toilet was covered by putting up a calendar. Photograph in this respect is attached as Annexure A-19 and A-20. It was further observed by us that private buses are boarding passengers from outside the bus stand and no proper parking site has been embarked for them. Photographs in respect of this are attached as Annexure A-21, A-22, A-23. Moreover entry of people for entering in bus stand building has been blocked by officials by putting up iron Jali. Photograph in this respect is attached as Annexure-24. The concerned officials of Bus stand Gurgaon has also handed over a letter in respect of bad condition of bus stand and not safe for public use. Photograph is attached as Annexure A-25.”

The reading of the report and the photographs which are on record would thus go on to show that the stand of the appellants was duly vindicated by factually noticing that the facilities which were to be provided as such like parking, booths, entry in bus stand, drinking water, toilet and waiting facilities etc. were not being provided. It was also further noticed that the order which was passed on 22.05.2015 (Annexure R-1) was only by the Secretary of the RTI, Gurgaon without the Transport Commissioner or the Additional/Joint State Transport Commissioner, Haryana being associated with the proceedings.

The order had been passed without hearing the private respondents. The provisions of Section 81 (4) of the Motor Vehicles Act, 1988 were taken into consideration by the Tribunal that application could not be rejected unless an opportunity of being heard was given to the applicant. Resultantly, it was rightly held that once the mandatory provisions were not complied the order would liable to be set aside on that ground. A finding has also been recorded that the arrears of Adda Fees were never demanded or that any such notice was issued asking for the said amount and the arrears and for which period, though claim was made that they were there since 2007. The factum was noticed that on account of non-payment of Adda Fees, the station in charge of the bus stand would be entitled to cancel its booth timings as well as time schedule of operation after intimation to the District Transport Officer. and stop the operation of the buses, after the intimation to the District Transport Officer, which has also not been done.

Reliance is also placed upon the communication dated 25.08.2015 addressed to the General Manager, Haryana Roadways, Gurgaon whereby directions were issued regarding charging of Adda Fees from private mini buses/Cooperative private buses, which was to be charged on lump sum basis and that the same was not be charged from the private buses when such buses were not given booth time and were not allowed entry into the bus stand. The said order was admittedly received in the office of General Manager, Haryana Roadways, but had not been implemented due to the pendency of the appeal before the

Tribunal.

Thus, for the abovesaid reasons which have been recorded by the Tribunal in appeal, this Court is of the opinion that no such illegality or irregularity as such can be found in the order, since the action of the petitioner/State itself has been found to be without jurisdiction and the private respondents had never been put to notice of the arrears as such and the order was passed at their back. The factual finding has been recorded that the facilities were not being provided. The photographs on the record would go on to show that the Roadways condemned buses were standing in the area which was designated for the city bus stand.

In such circumstances, this Court is of the opinion that the impugned order dated 21.04.2016 (Annexure P-2) is well reasoned and justified in the above facts and warrants no interference under Article 226 of the Constitution of India. Accordingly, the writ petitions are dismissed.

DECEMBER 22, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No