

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

CWP No.25949 of 2016

Anand Moudgil

... Petitioner

Versus

State Transport Authority, Punjab and another

... Respondents

(2)

CWP No.25461 of 2016

M/s Indo Canadian Transport Co.

... Petitioner

Versus

The State of Punjab and others

... Respondents

Decided on :15.12.2016

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

Present : Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate for the petitioner
in CWP No.25949 of 2016.

Mr. Rohit Kapoor, Advocate for the petitioner
in CWP No.25461 of 2016.

G.S. Sandhawal, J. (Oral)

The present order shall dispose of two writ petitions i.e. ***CWP Nos.25949 and 25461 of 2016***, as common facts are involved.

It is the case of the petitioner in **CWP No.25949 of 2016** that vide the order dated 08.12.2016 (Annexure P-4) six authorizations issued to the petitioner in respect of Bus Nos.PB-01B-2190, PB-01B-2191, PB-01B-2192, PB-01B-2193, PB-01B-2194 and PB-01B-2195 for which valid

contract carriage permits had been granted. The same have been suspended temporarily without granting an opportunity of hearing to the petitioner. Challenge has also been raised to the show cause notice dated 08.12.2016 (Annexure P-5) and accordingly a writ of mandamus has been issued to allow the petitioner to operate his buses on the strength of legally granted authorizations accompanying the valid permits dated 07/17.11.2016 (Annexure P-2), which was being granted by respondent No.1.

The writ petitioner in **CWP No.25461 of 2016-M/s Indo Canadian Transport Company** on the other hand seeks the setting aside the grant of six authorization certificates as noticed above, which have been issued in favour of respondent No.4, who is the petitioner in **CWP No.25949 of 2016**.

Notice of motion.

On the asking of the Court, Mr. S.S. Chandumajra, Addl. AG, Punjab, accepts notice on behalf of the respondent-State.

In view of the order which is sought to be passed, it is not necessary to obtain reply from the respondent-State.

It is the common case of the parties that admittedly a complaint had been received on behalf of M/s Indo Canadian Transport Company and it is on that basis, the show cause notice dated 08.12.2016 was issued by the respondent No.2-Secretary, State Transport Authority. Vide the said show cause notice the petitioner-Proprietor of the M/s Hermes International has been asked to appear before the said respondent

on 22.12.2016 with all the relevant documents concerning to the grant of tourist transport operators licence, failing which action would be initiated for the cancellation of the permit under Section 86 of the Motor Vehicles Act, 1988. Thus, it is apparent that it is only a show cause notice as such and the authority has yet to decide on the same on merits.

Mr. Kapoor has placed on record photocopy of the complaint which was made by his client to the said respondent, on which there is a endorsement by the State Transport Commissioner that the matter be examined and put up. The grouse in the complaint is elaborate on various accounts, which necessarily will thus have to be redressed by the authorities concerned.

In such circumstances, it is apparent that the complainant's prayer as such before this Court for the setting aside of the six authorization certificates would also be rendered infructuous, since the matter is being re-examined by the authorities.

However, the aspect which remains is that by virtue of the order of even date dated 08.12.2016 (Annexure P-4), the authorization certificates issued to the above tourist buses have been suspended temporarily, apparently on the abovesaid complaint/representation. This has virtually amounted to an order being passed in favour of the complainant-the writ petitioner M/s Indo Canadian Transport Company.

It is not disputed that vide communication (Annexure P-2), the contract carriage permits have been issued for a period of 5 years which are valid till 06.11.2021 qua the abovesaid buses. As per the

permit itself, the route is as per authorization and the authorization which has been attached would thus be valid for All the Territories in India/State of Punjab/All States of India.

A period of almost a month had expired, since the abovesaid issuance of the permit and the authorization. It is the case of the petitioner that he is operating those buses and paying heavy installments of as much as ₹28 lakhs per month on the loan which he has obtained.

In such circumstances, this Court is of the opinion that by virtue of the authorization being suspended temporarily, the petitioner has been condemned un-heard in spite of the fact that the matter is already fixed for 22.12.2016 for decision on merits. Therefore, it could have been more appropriate for the authorities not to have taken the extreme step and the matter could have been decided after getting the reply from the petitioner to whom the permits had been issued. In such circumstances, this Court is of the opinion that the authority shall decide the issue regarding the cancellation/suspension of the authorization certificates and the cancellation of the permits.

It will be open to both the petitioners to represent their point of view before the respondent-authority which shall decide the issue as per the relevant provisions.

Mr. Kapoor has sought to argue that the alternative remedy of appeal is available to the petitioner and which is before the Tribunal and also sought to address on merits. However, keeping in view the above facts, since the matter is only regarding issuance of show cause

notice, it is not for this Court to go into the issue on merits. Regarding the right of alternative remedy, also keeping in view the fact that the operator M/s Hermes International would be adversely affected on account of the interim order which has been passed without hearing him, the writ Court would not hesitate to step in such circumstances and merely an alternative remedy would not as such estopp this Court from exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

Resultantly, the respondent-authority shall decide the issue, expeditiously. However, till the decision by respondent No.2, the order dated 08.12.2016 (Annexure P-4)-in **CWP No.25949 of 2016**, whereby the authorizations have been suspended shall remain in abeyance and will not be enforced.

With the abovesaid observations, the present writ petitions are disposed of.

Copy of this order be given to the counsel for the petitioners under the signatures of the Special Secretary of this Court.

DECEMBER 15, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes