

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

Civil Writ Petition No.3919 of 2014

Date of decision: 16.9.2016

Rajdhani Transport Company Pvt. Ltd.

...Petitioner

Versus

The State Transport Appellate Tribunal and others

...Respondents

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

Present: Mr. Baldev Kapoor and
Mr. Rohit Kapoor, Advocates for the petitioner.

Ms. Lavanya Paul, Assistant Advocate General, Punjab .

Mr. Anterpreet Singh, for respondents no.4 and 5.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges order dated 12.10.2012 (Annexure P/7) passed by respondent no.1-State Transport Appellate Tribunal, Punjab whereby the appeal of respondents no.4 and 5 (Annexure P/6) was allowed on the ground that the permit was not in operation since long and therefore, their claim be considered. If they fulfilled the legal formalities, then permit on the Mohali-Hoshiarpur route was to be granted without delay. Challenge has also been raised to the show cause notice dated 31.12.2013 (Annexure P/8) issued by respondent no.3-the Secretary, Regional Transport Authority, Patiala regarding the complaint received for transfer of ownership of the bus alongwith permit no.680/Reg/Stage/04 by wrongful means on the ground that Chanan Singh, proprietor of M/s Saini Transport Company had died on 12.7.2008.

Counsel for the petitioner has based his argument on the ground that the Tribunal has wrongly allowed the appeal ~~after~~ **after inordinate**

delay as the order of respondent no.2-the State Transport Commissioner, Punjab dated 25.5.2004 (Annexure P/1) was the subject matter of appeal which was filed on 22.3.2011 after applying for the copy on 16.2.2011. Reliance has been placed upon the objections filed by respondents no.4 and 5 on 1.2.2011 (Annexure R-4/3) to submit that the said respondents had constructive knowledge of the order and therefore, the appeal filed was beyond the period of 30 days of prescribed limitation under the rules. Reliance has also been placed upon the Full Bench judgment in **Jagtar Singh Vs. The State Transport Appellate Tribunal and others 2009(2) PLR 245.**

A perusal of the record would go on to show that the petitioner is a beneficiary of order of transfer of permit on 11.5.2011 (Annexure P/5) issued by the State Transport Commissioner, Punjab from one M/s Saini Transport Company whose proprietor was Chanan Singh who had died on 12.7.2008 which would be clear from the death certificate (Annexure R-4/1). It is not disputed that vide order dated 25.5.2004 (Annexure P/1), four persons were given one stage carriage permit on Mohali-Hoshiarpur route with one return trip and M/s Saini Transport Company was one of the beneficiaries. It is case of the petitioner itself that vide agreement dated 25.7.2006 (Annexure P/2) and the power of attorney (Annexure P/3) in favour of Iqbal Singh along with affidavit (Annexure P/4) permit had been transferred for all practical purposes to the petitioner and on the basis of which the transfer was accordingly allowed vide order dated 11.5.2011 (Annexure P/5).

It is apparent that respondent nos. 4 and 5 had also raised objections on 1.2.2011 (Annexure R-4/3) in pursuance of publication issued

in the Motor Transport Gazette on 1.2.2011 itself. The order whereby transfer of permit had taken place would also go on to show that in the said order it was mentioned that there was no response to the notice and no representation had been received from any quarter within the stipulated period. It is thus apparent that even the transfer as such was on account of presence of Iqbal Singh, power of attorney which had been given by Chanan Singh who had expired three years earlier. This fact was not brought to the notice of the State Transport Commissioner, Punjab and even objections had been filed which were not taken into consideration. Though counsel for the petitioner submits that the objections were not on record yet he has also relied upon the same to submit that the appeal would be time barred because the said respondents had constructive knowledge from the date of filing of objections. So these are necessarily questions which should be decided by the State Transport Commissioner, Punjab.

It is further the case of the petitioner that the appeal was decided without issuing him notice since the original permit holder had already died.

In such circumstances, this Court is of the opinion that the show cause notice dated 31.12.2013 (Annexure P/8) prima-facie had rightly been issued as such and the matter has been sought to be reopened. As per the stand of the State due to pendency of the writ petition, the same has not been acted upon. It is not disputed that there is some substance in the argument of counsel for the petitioner that it should have been heard at that point of time since transfer of permit had already taken place in its favour on 11.5.2011 (Annexure P/5). Therefore, the order of the Tribunal would adversely affect the petitioner.

Resultantly, this Court is of the opinion that the order of the Tribunal dated 12.10.2012 (Annexure P/7) is liable to be set aside and is accordingly quashed. The State Transport Commissioner, Punjab will, however, act upon the notice dated 31.12.2013 (Annexure P/8) in accordance with law. It will be open to the petitioner to reply to the same and show that it is entitled to continue with the permit transferred in its favour on the basis of agreement which had been entered into in spite of the death of the original permit holder. It would also be appropriate for the said authority to call upon respondents no.4 and 5 who can if so desire object to the transfer.

Resultantly, the present writ petition is partly allowed.

September 16, 2016
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No