

CWP Nos.5539 & 5536 of 2015

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

**(1) CWP No.5539 of 2015
Date of decision:24.08.2016**

Satbir and others ...Petitioners

Versus

State of Haryana and others ...Respondents

**(2) CWP No.5536 of 2015
Date of decision: 24.08.2016**

Krishan Kumar and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. H.S.Sawhney, Senior Advocate, with
Mr. Raj Kaushik, Advocate, for the petitioner(s).

Mr. Randhir Singh, Addl. A.G., Haryana.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP Nos.5539 and 5536 of 2015 as the issue involved in both the cases is common. However, for the sake of convenience, the facts are being extracted from CWP No.5539 of 2015.

The petitioners, who are the stage carriage permit holders, are aggrieved against the order of respondent No.3 by which they have been asked to pay the arrears of bus stand fee (hereinafter referred to as the “adda fee”).

In short, it is alleged that the Government of Haryana had

issued a scheme, namely, Faridabad, Gurgaon City Private Bus Service Scheme, 2004. The petitioners applied for the stage carriage permits on Gurgaon to Dharuheri via Manesar, Bilaspur, Sidhrawli route. They were issued one permit with four return trips each on the aforesaid route. The permit was valid for a period of five years. Initially, after the issuance of permit in the year 2004, the petitioners were allotted booth inside the Bus Stand, Gurgaon but the said arrangement remained effective only for about six months. Thereafter, the petitioners were put up in *kuchha* place outside the bus stand for operation of their bus services. The said area was sans shelter for the passengers and other facilities. On 21.12.2005, the petitioners were asked to pay the adda fee @ ₹10/- per return trip per bus stand consisting of 3 bays or bigger bus stands falling on the route, which was lateron enhanced to ₹50/- vide order dated 01.05.2006. The said order was challenged by the petitioner by way of CWP No.10790 of 2006, which was disposed of on 20.07.2006, holding that increase of ₹50/- from ₹10/- is not illegal. However, the Division Bench passed the following order while disposing of the writ petition:-

“Next grievance of the petitioners is that they are not allowed to park their buses in the bus stand and further that the condition of bus stand is not up to mark. To say so, reference has been made to the photographs Annexures P-4 to P-7. For redressal of this grievance of the petitioners, directions are issued to respondent No.2 to see that money is spent as per Rule 196 of the Haryana Motor Vehicles Rules, 1993, for development of the bus stand and further that the place be also earmarked for the petitioners, to park their buses, inside the bus stand. With regard to this grievance of the petitioners, respondent no.2 is directed to treat this writ petition as a representation and pass an order, as

referred to above, within one month from the date of receipt of a copy of this order.”

Pursuant to the aforesaid order, the Transport Commissioner, Haryana, passed the order on 22.12.2006 by framing two issues viz. (i) that private buses operating on city routes are not being permitted to enter the bus stand, even though, adda fee is being charged from them and (ii) that they should be allowed to park their vehicles in the bus stand premises. While deciding issue No.1, the following observations were made by the Transport Commissioner, Haryana:-

“I have inquired from General Manager, Haryana Roadways, Gurgaon regarding the problems being faced by the private bus operators to bring their buses into the main bus stand Gurgaon for operating them from a designated booth. General Manager, Haryana Roadways, Gurgaon informed that the existing bus stand space is inadequate to accommodate the city services and that Haryana Roadways is undertaking some redevelopment works for improving the bus stand facilities in Gurgaon, whereafter it would be possible to accommodate and run the city bus services from the existing bus stand. Thus, it is clear from the above that the buses of the petitioners are not being allowed into the Main Bus Stand, Gurgaon but all the same the operators are being charged adda fee. As per generally agreed procedure, add fee shall only be chargeable if a bus were to be given booth time and the operator picks up passengers from the designated booth in the bus stand. Under the circumstances when the buses of the petitioners and other private operators running the city services are not being accommodated in the bus stand for want of space collecting add fee is not in order and is not warranted. Accordingly, Gneral Manager, Haryana Roadways, Gurgaon is instructed not to collect adda fee from the private bus operators whose buses are not being given booth time and are not allowed entry into the bus stand.”

It is clear from the aforesaid that respondent No.3 was directed

not to collect the adda fee from the operators who are not allotted any designated booth in the bus stand for picking up the passengers, yet he has issued the order dated 22.09.2014 (colly) asking the petitioner(s) to deposit the arrears of adda fee from the date of grant of permit upto 31.03.2014.

Counsel for the petitioners has submitted that neither the petitioners are allowed to park their vehicles in the bus stand nor any booth has been assigned to them for the purpose of issuance of tickets and picking up the passengers, therefore, the respondents are not entitled to charge adda fee from them. In this regard, he has referred to the order of the Transport Commissioner dated 22.12.2006, which has attained finality.

On the contrary, counsel for the respondents has relied upon an order of the Division Bench of this Court rendered in the case of **Nisha Tomar vs. State of Haryana and others**, CWP No.18317 of 2010, decided on 10.03.2014, wherein direction was issued to the State of Haryana to take steps for recovery of the pending adda fee, on the basis of which, the respondents have passed the orders dated 22.09.2014 to recover the arrears of add fee upto 31.03.2014. It is also submitted by learned counsel for the respondents that the petitioners are deliberately not using the premises of the bus stand because it is convenient for them to drop and pick passengers from outside the bus stand, which otherwise adversely affect the business of the Government Bus Service. It is also submitted that the respondents are ready to provide every kind of facilities including toilets, booth etc. in the main bus stand in case the petitioners deposit their due adda fee.

During the course of hearing, the respondents were asked to produce the record in order to satisfy the Court that the petitioners have

been given booths, time and place in the bus stand not only for the purpose of parking of their buses inside the bus stand but also for using the premises of the bus stand for issuance of tickets and picking up the passengers. The General Manager, Haryana Roadways, Gurgaon, who was present in the Court, could not produce any evidence in this regard from which it can be even inferred by this Court that the petitioners have not been allowed parking of their buses inside the bus stand and have not been allotted booths for the purpose of issuance of tickets and also a particular time for that purpose.

It has been observed by the Transport Commissioner himself in his order dated 22.12.2006 that he had inquired from the General Manager, Haryana Roadways, Gurgaon about the problem being faced by the private bus operators for bringing their buses to the Main Bus Stand, Gurgaon and operating from the designated booth, to which he had informed that the space in the existing bus stand is inadequate to accommodate the City bus services. It has also been observed by the Transport Commissioner that “*as per the generally agreed principle, adda fee shall only be chargeable if a bus were to be given booth time and the operator picks up passengers from the designated booth in the bus stand*”.

In the absence of any material to prove that the petitioners have been allotted designated booth for the purpose of picking up passengers from inside the bus stand at a specified allotted time, no fault can be attributed to them for the purpose of alleging that the petitioners are not bringing their buses inside the bus stand and also for the purpose of charging the adda fee from them as it can be charged only if the facilities

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are provided because in the matter of fee, it is always *quid pro quo* and in the absence of the facilities to be provided to the petitioners who have been asked to pay the adda fee, the same cannot be charged from them.

No other point has been raised.

In view of the aforesaid discussion, I am of the considered opinion that the demand of adda fee from the petitioners by way of the impugned order(s) is patently illegal.

Consequently, both the petitions are hereby allowed being meritorious and the impugned order(s) are set aside.

August 24 , 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No