

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No. 5867 of 2017 (O&M)

Date of Decision: 16.05.2017

The Nayabash Cooperative Transport Society Ltd. Nayabash,
District Rohtak and others

.....Petitioners

Versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Lekh Raj Sharma, Advocate for the petitioners
in CWP Nos. 5867 and 5936 of 2017,
Mr. Balbir Singh Sewak, Advocate for the petitioners
in CWP No. 6751 of 2017,
Mr. Hakam Singh, Advocate for the petitioner
in CWP No. 7451 of 2017.
Mr. H.S. Sawhney, Sr. Advocate with
Mr. Raj Kaushik, Advocate
for the petitioner in CWP No. 9131 of 2017.
None for the petitioners in CWP No. 5918 of 2017.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. Hari Pal Saini, Advocate for the applicants in
C.M. Nos. 5748-49/2017 in CWP No. 5867/2017 and
Mr. Amit Jhanji, Advocate for the applicants
in C.M. No. 5287-88/2017 in CWP No. 5867 of 2017.

RAJESH BINDAL,J.

1. This order will dispose of a bunch of petitions bearing CWP
Nos. 5867, 5918, 5936, 6751, 7451 and 9131 of 2017.

2. Challenge in the petitions has been made to the scheme
published by the State vide notification dated 17.2.2017 for issuance of
Stage Carriage Permits under the Motor Vehicle Act, 1988 (for short 'the
Act').

3. In the affidavit of Suprabha Dahiya, IAS, Transport
Commissioner, Haryana, Chandigarh, dated 16.5.2017, filed by the State, in

Court today, which is taken on record, the stand taken is that upon reconsideration of the entire matter, the Government has decided that Stage Carriage Scheme 2016 be cancelled and a fresh draft modified scheme shall be notified within a period of two weeks. The process as provided for under Section 102 of the Act shall be followed. Till such time the scheme is cancelled, the permit holders under the 2016 Scheme shall be entitled to ply their vehicles. The applicants who got their vehicles registered on the portal of Transport Department namely “*Vahan*” under the 2016 scheme shall also be issued permits under the existing scheme, in case they fulfill all the requisite conditions. After the cancellation of 2016 scheme, any one interested will be entitled to have temporary permit in terms of the provisions of Section 102 of the Act.

4. In response to the stand taken by the State, learned counsels for the petitioners submitted that for cancellation of a scheme, procedure as provided for, under Section 102 of the Act cannot be followed. The procedure provided therein is meant for modification of existing scheme. In case the State wants to cancel the existing 2016 scheme and come out with a new scheme, it need to follow the procedure provided under Section 99 of the Act. Otherwise the petitioners are satisfied with the stand taken by the State, as the petitioners will have opportunity to file objections against the draft scheme to be notified and further to challenge the final scheme, if aggrieved against.

5. Learned counsel for the applicants submitted that while considering the applications filed by the applicants under 2016 scheme, which is sought to be cancelled, no condition can be put in their permits as

all the allottees of permits under the scheme have to be treated at par, as no condition was put in, in the case of the petitioners, when they were granted the permits similar should be the treatment to the applicants.

6. Heard learned counsel for the parties and perused the paper book.

7. Though in sum and substance the relief prayed for by the petitioners has been granted by the State. 2016 Scheme for issuance of stage carriage permits has been challenged and the State conceded that on re-consideration of matter, it has decided to cancel the existing scheme and come out with a new draft scheme to be finalised after inviting objections. The only issue remains as to what is the procedure to be followed in the circumstances. Section 99, 100 and 102 of the Act, which are relevant to the issue, are extracted below:

99.Preparation and publication of proposal regarding road transport service of a State transport undertaking-[(1)] Where any State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the

area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit.

[(2)] Notwithstanding anything contained in sub-section (1), when a proposal is published under that sub-section, then from the date of publication of such proposal, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal and such temporary permit shall be valid only for a period of one year from the date of its issue or till the date of final publication of the scheme under section 100, whichever is earlier.]

100. Objection to the proposal.-(1) On the publication of any proposal regarding a scheme in the Official Gazette and in not less than one newspaper in the regional language circulating in the area or route which is to be covered by such proposal any person may, within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter, if they so desire, approve or modify such proposal.

(3) The scheme relating to the proposal as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government making such scheme and in not less than one newspaper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the Official Gazette and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

Provided that no such scheme which relates to any

inter-State route shall be deemed to be an approved scheme unless it has the previous approval of the Central Government.

(4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under sub-section (1), the proposal shall be deemed to have lapsed.

Explanation.- In computing the period of one year referred to in this sub-section, any period or periods during which the publication of the approved scheme under sub-section (3) was held up on account of any stay or injunction by the order of any Court shall be excluded.

102.Cancellation or modification of Scheme.-(1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving-

- (i) the State transport undertaking; and
- (ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification,

an opportunity of being heard in respect of the proposed modification.

(2) The State Government shall publish any modification proposed under sub-section (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government.

adequate, economical and proper services, the State may formulate a proposal regarding a scheme giving particulars of the nature of services proposed to be rendered, area or route proposed to be covered. The proposal is to be published in the Official Gazette and in not less than one newspaper in the regional language circulating in the area. Sub Section (2) thereof provides that notwithstanding anything contained in Sub Section (1) when a proposal is published under that sub section then from the date of publication of such proposal, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal. Such temporary permit shall be valid for a period of one year from the date of issue or till the date of final publication of the scheme under Section 100, whichever is earlier.

9. Section 100 of the Act enables any person to file objections to the proposed scheme within 30 days from the date of its publication in the Official Gazette. After affording hearing to the objectors and considering objections, the State may approve or modify the draft scheme. Such approved or modified scheme is then published in the Official Gazette and in not less than one newspaper in the regional language circulating in the area. The scheme shall become final from the date of its publication in the Official Gazette. Where a final scheme is not published in the Official Gazette within one year from the date of publication of the proposal, the proposal shall be deemed to have lapsed.

10. Section 102 of the Act provides that the State may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme. Before such a power is exercised, opportunity of hearing is to be afforded in respect of the proposed modification to the State

Transport Undertaking and any other person who in the opinion of the State Government may be affected with the proposed scheme. The proposed modification has to be published in the Official Gazette and in one newspaper in the regional language circulating in the area. Thirty days' time is to be granted to any of the affected parties to represent and hearing.

11. In the case in hand, a final scheme has already been published on 17.2.2017. In case it is cancelled now, there would be vacuum as no scheme as such will be in force under which anyone can be permitted to ply the buses. Even if on cancellation simultaneously a proposed scheme is to be published under Section 99 of the Act, still fresh permits temporarily will have to be issued in terms of Section 99(2) of the Act, during the pendency of the proposal, which may again have to be on certain basis which can possibly be provisions of the proposed scheme as there would be no other scheme applicable in view of cancellation of 2016 scheme.

12. As stated by learned counsel for the State, 873 permits had been issued in the State to different operators under the 2016 scheme. In case 2016 scheme is cancelled and proposed scheme is notified under Section 99 (1) of the Act and temporary permits are to be issued under Section 99(2) of the Act, lot of exercise will have to be done. The time can very well be utilized fruitfully in the preparation and finalization of new scheme.

13. To take care of such a situation, learned counsel for the petitioners submitted that prior to the framing of 2016 scheme when draft scheme was issued on 25.2.2016, schemes framed by the State in the year 1993 and 2013 were in force. Even at that stage, the State had issued notification on 25.2.2016 in exercise of powers conferred under Section 99

(1) of the Act proposing to supersede earlier schemes notified in the years 1993 and 2013 by formulating proposed scheme and the same was published in the official gazette as well as in the newspapers.

14. In our opinion some procedure can be followed now. As a result there will be no vacuum till such time a modified scheme is notified, 2016 scheme will remain in operation.

15. Learned counsel for the State, on instructions from Mr. Suprabha Dahiya, IAS, Transport Commissioner, Haryana, Chandigarh, present in Court, states that the entire exercise to notify the final scheme shall be completed within a period of six months. Let the needful be done.

16. As 2016 scheme will remain operative till such time new scheme is notified, the State shall be at liberty to issue permits to the applicants, who had already registered on the portal of the Transport Department namely “*Vahan*”, under the 2016 scheme on the same terms and conditions as are applicable to the persons, who have been granted permits earlier under the 2016 Scheme, if they fulfill the conditions applicable.

17. The writ petitions are disposed of accordingly.

(RAJESH BINDAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

16.05.2017
reema

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No