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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4737 of 2018 (O&M)
Date of decision:23.05.2018

M/s Rajguru Transport (Regd.) ...Petitioner

Versus

State of Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Puneet Bali, Senior Advocate, with
Mr. Vibhav Jain, Advocate,
for the petitioner in CWP No.4737 of 2018.

Mr. Anil K. Ahluwalia, Advocate,
for the petitioner(s) in CWP Nos.11451, 11437,
11303 and 11287 of 2018.

Mr. Baldev Kapoor, Advocate,
for the petitioner(s) in CWP Nos.4803 and 4825 of 2018.

Mr. Rajinder Sharma, Advocate,
for the applicant in CM No.4712 of 2018.

Mr. H.S.Sitta, AAG, Punjab.

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Rakesh Kumar Jain, J. (Oral)

This order shall dispose of 7 petitions bearing CWP Nos.4737, 4803, 4825, 11287, 11303, 11437 and 11451 of 2018 as the issue involved in all the cases is common. However, the facts are being extracted from CWP No.4737 of 2018.

The petitioner is a private bus operator who is aggrieved against the order dated 16.02.2018 passed by the State Transport Commissioner, Punjab and the consequent notice dated 21.02.2018 issued by the Secretary, Regional Transport Authority, Patiala, by misinterpreting the order passed by

Vinod Kumar
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I attest to the accuracy and
integrity of this document

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the Division Bench of this Court in CWP No.15786 of 1999 titled as "**M/s. Vijayant Travels & Anr. vs. State of Punjab & Ors.**, decided on 20.12.2012.

In brief, in **M/s. Vijayant Travels' case (supra),** the transport scheme notified by the Transport Department, Punjab on 09.08.1990 and the transport scheme dated 20.12.2011 (hereinafter referred to as the "modified scheme") were under challenge and the Division Bench of this Court, while rendering a lengthy and elaborated judgment, drew its conclusion(s) in paragraph 136 of the said judgment and vide sub-para (v) of paragraph 136, it was held that *"for the reasons assigned in paragraph 106 of this order, proviso to Clause (10) of the Scheme modified on December 20, 2011 empowering extension of operation of existing permits to an unlimited extent is hereby struck down."*

In order to understand as to what has been struck down by the Division Bench, it would be relevant to refer to Clause 10 of the modified scheme, which reads as under:-

> "(10) Any route of a State Transport Undertaking or a private operator, may be curtailed or extended or their number of trips may be increased or decreased, as the case may be, on the basis of the passenger and road transport need as assessed by the State Transport Commissioner from time to time.
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> Provided that the operation of an existing permit on a route may be extended up to 24 kilometers at a time from the termini which may further be extended up to another 24 Kilometers from the next termini of the route and so on, on the basis of the passenger and road transport need as assessed by the State Transport Commissioner from time to time."

Although the proviso to Clause 10 of the modified scheme was struck down by this Court but the State Transport Commissioner, vide his letter

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dated 16.02.2018, addressed to various Regional Transport Authorities in the State of Punjab, asked them to implement the order of this Court rendered in **M/s. Vijayant Travels' case (supra)** and also to serve notices upon the concerned STUs, private transport companies, firms and individual operators/permit holders. In the said impugned order dated 16.02.2018, the following observations were made:-

> "Enclosed please find herewith specimen notices to be served upon the concerned STUs, private Transport companies/firms and individual operators/permit holders in order to implement the order of the Hon'ble High Court of Punjab and Haryana dated 20.12.2012 with regard to the following:-
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> 1. Since the proviso to clause 10 of the Transport Scheme modified on 20.12.2011 has been struck down by the Hon'ble High Court, therefore, all the illegal extensions, diversions, curtailments, increase in trips/decrease in trips etc., by the Regional Transport Authorities in the State beyond the permissible limit of 24.0 Km both prior and after 20.12.2011 deserve to be withdrawn/cancelled.
> 2. Since the Second proviso to Clause 3 of the Transport Scheme modified on 20.12.2011 vide which the private operators of HVAC, Air Conditioned Integral Coaches or Super Integral Coaches to operate on the neighboring inter-state routes maximum upto a distance of 15.0 Km has been struck down by the Hon'ble High Court, therefore, all such extensions allowed by the RTAs in the State in pursuance of the said proviso deserve to be withdrawn/cancelled.
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> You are, therefore, requested to ensure that these notices are served upon the concerned operators immediately and a report in this regard is sent to this office immediately thereafter."

Accordingly, the Secretary, Regional Transport Authority, Punjab, while acting upon the impugned order dated 16.02.2018, issued a show cause notice upon the petitioner, which read as under:-

> "It is to inform you that as per the proviso to clause (10)

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added in the Transport Scheme modified on 20.12.2011, the operation of an existing permit on a route may be extended upto 24 kilometer at a time from the termini which may further be extended upto another 24 kilometer from the next termini of the route and so on the basis of the passenger and road transport need as assessed by the State Transport Commissioner from time to time.

2. In the light of the above Clause in the modified Transport scheme dated 20.12.2011, you were granted extensions, curtailments, diversions, increase in trips/decrease in trips etc. repeatedly beyond 24.0 km from time to time, the list of which is appended herewith as Annexure A.

3. However, the above proviso to clause 10 was struck down by the Hon'ble High Court of Punjab and Haryana vide its order dated 20.12.2012 in CWP No.15786 of 1999 which attained finality on 20.12.2016.

Therefore, through this notice, you are directed to show cause as to why the extension, diversion, curtailments and increase in trips/decrease in trips allowed in favour of your company in respect of the stage carriage permits as mentioned in the enclosed list Annexure A should not be cancelled/drawn as per the above order of Hon'ble High Court of Punjab and Haryana. Your reply should reach this office within a week's time positively, failing which it would be presumed that you have nothing to submit and the action as proposed above would be taken exparte."

Learned senior counsel appearing on behalf of the petitioner has vehemently argued that there is a total non-application of mind on the part of the State Transport Commissioner, Punjab, while issuing the impugned order dated 16.02.2018, by which he has assumed that this Court has struck down the entire Clause 10 of the modified scheme by striking down the proviso to Clause 10 of the modified scheme and with that, the other aspect of the transportation like diversion, curtailment and increase/decrease in trips etc. have also become non-existent like the illegal extensions. It is submitted that there are two parts of Clause 10 of the modified scheme. The first part deals

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with the extension, curtailments, increase/decrease in the trips, whereas the second part, i.e. the proviso, deals only with the unlimited extensions of 24 Kms. It is submitted that this Court, while deciding the issue raised in **M/s. Vijayant Travels' case (supra),** was of the view that there cannot be unlimited extensions in the garb of the proviso to Clause 10 of the modified scheme and that was the reason that only proviso was struck down and not the entire Clause 10 of the modified scheme.

On the other hand, learned State counsel has submitted that the impugned notice dated 21.02.2018 is just a show cause notice by which the petitioner has been asked to file reply and so far, no adverse order has been passed against the petitioner(s). It is also submitted that this Court has already taken a view in this regard in a case titled as **M/s Gobind Motors (Regd.) Barnala vs. The State of Punjab and others,** CWP No.6463 of 2018, decided on 28.03.2018. He has also submitted that the impugned order has been passed on 16.02.2018 because the State of Punjab has formulated the new transport scheme called “The Punjab Transport Scheme, 2018” and notified the same on 22.02.2018. In order to buttress his arguments, he has also referred to paragraph 105 of the judgment passed in **M/s. Vijayant Travels's case (supra)** and supported the impugned order dated 16.02.2018.

In this regard, counsel appearing on behalf of the petitioner has submitted that the Punjab Transport Scheme, 2018 has a prospective effect and has nothing to do with the issues involved in the present case as to whether the State Transport Commissioner has rightly interpreted the order passed by this Court in **M/s. Vijayant Travels's case (supra).** In respect of the earlier order passed by this Court in **M/s Gobind Motors' case (supra)**, it is submitted that

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since the entire facts were not brought to the notice of this Court, therefore, the writ petition was disposed of with an observation that the petitioner in that case may file reply and would pursue its legal remedies in case any adverse order is still passed.

It is also submitted by Shri Anil Ahluwalia, who was the counsel in **M/s Gobind Motors' case (supra)** and has also filed 4 petitions which are being decided with this case in which notice of motion has not been issued yet, that no order of any kind has been passed by the respondents in that case as well.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The impugned order passed by the State Transport Commissioner is nothing else but the alleged compliance of the decision rendered by this Court in **M/s. Vijayant Travels's case (supra).** The argument of learned counsel for the petitioner is that there is a non-application of mind on the part of the State Transport Commissioner to the conclusion drawn by this Court, which is available in paragraph 136(v) of the said judgment, as per which only proviso to Clause 10 of the modified scheme was struck down which pertains to unlimited extensions, whereas the State Transport Commissioner seems to have added the first part of Clause 10 of the modified scheme also which has not been struck down by the Division Bench of this Court.

As I have already observed that in **M/s. Vijayant Travels's case (supra),** this Court had only struck down the proviso to Clause 10 of the modified scheme which had empowered extensions of operation of existing permits to an unlimited extent, therefore, the withdrawal of diversions,

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curtailments, increase/decrease of the trips etc. on the part of the State Transport Commissioner by his impugned order is totally unwarranted and uncalled for. Had this Court been convinced in striking down this aspect of the modified scheme, then the entire Clause 10 of the modified scheme would have been struck down but this Court had only felt that there would be no end to the repeated extensions and, therefore, only proviso to Clause 10 was struck down.

Thus, in my considered opinion, the State Transport Commissioner has totally misinterpreted the judgment passed by this Court in **M/s. Vijayant Travels's case (supra),** while issuing instructions to all the Regional Transport Authorities for issuing show cause notices to the private bus operators not only for the repeated extensions but also for curtailments, diversions and increase/decrease of the trips etc.

At this stage, learned State counsel has submitted that the petitioners are only aggrieved against paragraph 1 of the impugned order dated 16.02.2018 and not with paragraph 2 thereof.

Mr. Bali has accepted this contention raised by learned counsel for the petitioner and has submitted that the petitioner is only aggrieved against paragraph 1 of the impugned order dated 16.02.2018.

Thus, in view of the aforesaid, all the writ petitions are hereby allowed and paragraph 1 of the impugned order dated 16.02.2018 passed by the State Transport Commissioner, Punjab and the consequent show cause notices, based upon it, served upon the petitioner(s) are set aside.

May 23, 2018 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No