

LPA no.1168 of 2017 (O&M)

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

LPA no.1168 of 2017 (O&M)

Date of Decision : 14.08.2018

Balwinder Kaur and another

....Appellant(s)

Versus

State Transport Appellate Tribunal Punjab and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Raj Kaushik, Advocate for the appellant(s)

MAHESH GROVER, J.(ORAL)

CM no.2425-LPA of 2017

After hearing learned counsel for the applicant and going through the contents of the application, delay of 115 days in re-filing the appeal is hereby condoned. CM stands allowed.

Main case

We propose to reproduce the operative part of order of the learned Single Judge:-

“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.”

Evidently, the permit in question was not allotted in accordance with law. Learned Single Judge took notice of the facts and directed that the matter be remitted back to the State Transport Commissioner for decision afresh after hearing all the affected parties and considering their objections.

This order of the learned Single Judge was passed on 16.9.2016 and the learned counsel for the appellants after wasting the time of the Court for atleast half an hour has now conceded that pursuant thereto an order has been passed and he has placed it on record by way of CM no.3390-LPA of 2018.

Once the order of the learned Single Judge has been executed and fresh order passed, the appellants would have remedy to impugn the same in the event of any dis-satisfaction. The appeal obviously has been rendered infructuous as the directions of the learned Single Judge stand complied with. Instead of straightway bringing this fact to the notice of this

Court, learned counsel for the appellants has been stubbornly arguing the matter resulting in sheer wastage of the time of the Court. Consequently, instant appeal is hereby dismissed with costs of Rs.10,000/- which shall be deposited in the account of Punjab and Haryana High Court Employees Welfare Association within a period of one month from the date of receipt of certified copy of this order.

(Mahesh Grover)
Judge

14.08.2018

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Whether speaking/reasoned

Whether reportable

(Mahabir Singh Sindhu)
Judge

Yes/No

Yes/No