

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

1.

**LPA No.1294 of 2018
Date of decision: 31.10.2018**

M/s Karan Bus Service (Regd) Head Office Sirhind, District Fatehgarh
Sahib

... Appellant

Versus

State Transport Commissioner, Punjab and others

... Respondents

2.

LPA No.1417 of 2018

M/s New Patiala Bus Service (Regd) Head Office Sirhind, District Fatehgarh
Sahib

... Appellant

Versus

State Transport Commissioner, Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

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

These are intra-court appeals under Clause X of the Letters Patent against the orders and judgments dated 03.05.2018 and 25.05.2018, rendered by the learned Single Judge, vide which the writ petitions preferred by the appellant(s) have since been dismissed. For the issue involved in both these appeals is common, and in fact vide impugned order dated 25.05.2018 in LPA No.1294 of 2018, the learned Single Judge has dismissed the writ petition in terms of his earlier decision dated 03.05.2018, which is being assailed in LPA No.1417 of 2018, both these appeals are being decided by a common judgment. However, the facts are being derived from LPA No.1294 of 2018.

In the State of Punjab, two separate schemes, namely, The Punjab Roadways Scheme and Pepsu Road Transport Corporation Scheme were approved by the Government under Section 68D of the Motor Vehicles Act, 1939 (the Old Act). Although these schemes were published on 19.11.1969 and 18.02.1972, respectively, but neither did the Punjab Roadways nor Pepsu Road Transport Corporation ever took over the operations from the private operators in terms of the said schemes. For no new scheme was published by the Government, the Regional Transport Authority continue to issue temporary permits owing to non-finalization of any new scheme. However, the Supreme Court in its judgment rendered in Civil Appeal No.1522 of 1987 arising out of SLP (Civil) No.8847 of 1986 ordered cessation of all temporary stage carriage permits on the routes where the public need was perennial in nature. Accordingly, a notice was published by the authorities inviting applications for granting four regular stage carriage permits with two return trips daily to operate upon the Samana-Kapurthala route. And 11 applications were received pursuant to the said notice. Two permits with one return trip were granted to Pepsu Road Transport Corporation. However, the rest two permits remained un-allotted. Aggrieved by the said order, two of the applications, namely, M/s Devigarh Transport Co. Regd. Patiala and M/s Patiala Bus Highways Pvt. Ltd. filed appeals before the State Transport Appellate Tribunal. And vide order dated 19.02.1991, the Tribunal accepted the said appeals and remitted the matter to State Transport Commissioner to grant the remaining two permits, if still lying vacant to those appellants. For the order passed by the Tribunal was not implemented, M/s Patiala Bus Highways Pvt. Ltd., one of the appellants before the Tribunal, approached this Court vide CWP No.1793 of 1991. Likewise, another unsuccessful applicant, namely, M/s Patiala Bus Sirhind

Pvt. Ltd., vide CWP No.15416 of 1991, also assailed the order dated 19.02.1991. As this Court set aside the order of the Tribunal and directed the State Transport Commissioner to consider the claim of all the unsuccessful applicants rather than the two appellants in whose favour the Tribunal had passed an order dated 19.02.1991, upon a consideration of all the applicants, the department, vide order dated 06.05.1992, granted two permits with one return trip in favour of Patiala Bus Sirhind Pvt. Ltd. But even against the said order, dated 06.05.1992, three appeals were filed by (i) M/s Devigarh Transport Co. Regd. Patiala; (ii) M/s Patiala Bus Highways Pvt. Ltd. Patiala; and (iii) Pepsu Road Transport Corporation, Patiala. During the pendency of those appeals, one permit with half trip in question was transferred in favour of M/s Karan Bus Service (appellant in LPA-1294-2018). Resultantly, M/s Karan Bus Service was also arrayed as respondent in the said appeals. Vide order dated 04.08.2006, the Tribunal accepted the said appeals and remitted the matter to the Regional Transport Authority for re-consideration. The appellants assailed the said order before this Court vide CWP No.17068 of 2006, which however was dismissed by this Court. Aggrieved by the said order, the appellant herein preferred a Special Leave Petition before the Supreme Court i.e. SLP No.14869 of 2008, in which while issuing notice on 28.07.2008 the Supreme Court observed that any action taken will be subject to the final outcome and the further orders that shall be passed in the appeal. However, vide order dated 05.01.2016, the Supreme Court dismissed the Special Leave Petition though liberty was granted to the appellant that if it was still aggrieved by any subsequent order it was at liberty to move the appropriate forum. But in the meanwhile, in terms of the order passed by the Tribunal dated 04.08.2006, which was affirmed by this Court while dismissing the writ petition preferred by the

appellant i.e. CWP No.17068 of 2006, the State Transport Commissioner, Punjab upon a re-consideration of the matter passed an order dated 24.09.2008, vide which the permit was granted in favour of Pepsu Road Transport Corporation, Patiala. It was the order dated 24.09.2008 against which the appellant filed an appeal, under Section 89 of the Motor Vehicles Act, before the State Transport Appellate Tribunal, which was dismissed vide order dated 19.02.2018 being time barred. Aggrieved by the said order, the appellant(s) preferred a writ petition before this Court, which has since been dismissed vide impugned order and judgment. And, thus, these appeals.

We have heard learned counsel for the appellant(s) and perused the records.

Ex facie, the appellant(s) had assailed the order dated 24.09.2008 after a delay of nearly 8 years, for, the appeal was filed on 17.02.2016. As conceded by the learned counsel for the appellant(s) before the learned Single Judge, the prescribed period of limitation under the Punjab Motor Vehicles Rules, 1989, to prefer any such appeal is 30 days. Although, as per the case of the appellant(s) themselves, the authorities have the jurisdiction to condone the delay in terms of Section 5 of the Limitation Act, 1963, provided a sufficient cause was demonstrated, but no such application was ever moved. The case of the appellants before the Tribunal, learned Single Judge as also before this Court has been that since the Supreme Court while dismissing the Special Leave Petition vide order dated 05.01.2016, as indicated above, had granted liberty to the appellants to move the appropriate forum if aggrieved by any subsequent order, the appellants having obtained the certified copy of the order dated 24.09.2008 on 09.02.2016 filed the appeal on 17.02.2016, and thus the same was within limitation. Apparently, the order passed by the Supreme Court dated

05.01.2016, referred to hereinafter, is being misread and misconstrued by the appellant(s):

“Having regard to the nature of the order passed by High Court, we do not find any reason to interfere with the same. The Special Leave Petition is dismissed. However, if the petitioners are aggrieved by any subsequent order, they are at liberty to move the appropriate forum and in such cases, the observation made in the order passed by the High Court will not come in the way of the petitioners.”

A bare reading of the order, referred to above, rather reveals that the SLP preferred by the appellants against the order passed by this Court affirming the order dated 04.08.2006, whereby the Tribunal had remitted the matter to the Regional Transport Authority for re-consideration, was dismissed. Further, as during the pendency of the said SLP the State Transport Commissioner had passed a fresh order dated 24.09.2008, while disposing of the matter the Supreme Court only observed that the appellants shall be at liberty to move the appropriate forum if aggrieved by any subsequent order. Neither did the Supreme Court condone the delay that had occurred in the meanwhile to prefer an appeal against order dated 24.09.2008 nor any such observation was made in this regard. Not just that, the order dated 24.09.2008 reveals that the appellants herein were party to the said order and it was upon hearing them and other stake-holders the State Transport Commissioner had passed the said order, though subject to the decision of the Supreme Court in SLP No.14869 of 2008. Needless to assert,

the appellants had the option to assail the order dated 24.09.2008 within the prescribed period of limitation, but they never chose to question the said order by filing an appeal under Section 89 of the Motor Vehicles Act. It appears that since the SLP preferred by the appellants was pending before the Supreme Court, it rather chose to await the decision therein, but in the interregnum a period of nearly 8 years had gone by. Obviously, once the SLP filed by the appellants was dismissed by the Supreme Court and the order rendered by this Court whereby the order dated 04.08.2006 passed by the Tribunal was affirmed remitting the matter for re-consideration, the appellants then chose to assail the order dated 24.09.2008 by way of appeal. Thus, for the appeals filed suffered from gross and inordinate delay of nearly 8 years, and as no applications were moved seeking condonation of delay in filing the said appeals, the only and the inevitable conclusion that the Appellate Authority could reach was to dismiss the appeal(s) preferred by the appellant(s). On being pointedly asked, learned counsel for the appellant(s) could not refer to anything on record to show if the conclusions recorded by the Tribunal as also the learned Single Judge were either contrary to the record or suffered from any material illegality.

In the wake of the above, we are dissuaded to interfere with the impugned orders and judgments rendered by the learned Single Judge. The appeals being devoid of merit are accordingly dismissed.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

31.10.2018
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO