

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 14237 of 2020 (O&M)

Date of Decision: 25.09.2020

Aman Singh and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. D.S.Patwalia, Senior Advocate
with Mr. Gaurav Rana, Advocate
for the petitioners.

Mr. Ankur Mittal, Additional Advocate
General, Haryana for the respondents.

Anil Kshetarpal, J.

This writ petition under Article 226/227 of the Constitution of India has been filed by 28 petitioners, with the following substantive prayers:-

“I) an appropriate writ, order or direction including a writ in the nature of Certiorari quashing the order dated 18.08.2020 (P-53) passed by respondent No 1 & 2 whereby the representations/applications of the petitioners have been held to be not eligible for grant of route permit, in view of the fact that the petitioners failed to purchase their buses within a period of 90 days as per the condition no. 5 mentioned in Offer of Allotment dated

21.03.2017 till 12.04.2017 (Annexure P-2 to P-36) issued in favour of the petitioners by the respondent authorities under the State Carriage Scheme of 2016, the same being liable to be set aside inasmuch as the respondents have failed to appreciate the fact that the State Carriage Scheme of 2016 was withdrawn by the State Government for granting Stage Carriage Permits to private bus operators and therefore, the petitioners who were issued Offer of Allotment from 21.03.2017 till 12.04.2017 (P-2 to P-36) were never granted the requisite mandatory period of 90 days to comply with the terms and conditions of Offer of Allotment.

II) It is further prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents to treat the Offer of Allotments as issued in favour of petitioners as valid and alive without relying upon condition No. 5 of the Offer of Allotment, in view of the facts and circumstances as mentioned in the present writ petition.

III) It is further prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents to consider the period from the date of issuance of Offer of Allotment(s) till the time order(s)

granting permission to get the buses registered are not passed in favour of petitioners as dies non as during the said period the State Carriage Scheme of 2016 as well as the Draft Scheme of 2017 was sub judice before this Hon'ble Court as well as the Hon'ble Supreme Court of India, therefore, the said period shall not be counted towards the period of 90 days in which the petitioners were required to purchase buses and get the same registered.

IV) It is further prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents to grant a period of 90 days in order to allow the petitioner to comply with the terms and conditions in its entirety as contained in the Offer of Allotments.

V) It is further prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents to issue route permits in favour of the petitioners in terms of the terms and conditions of offer of Allotment as issued in favour of each petitioner.

VI) It is further prayed that this Hon'ble Court may be pleased to issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and

proper in the peculiar facts and circumstances of the present case.

VII) It is further prayed that during the pendency of the present writ petition and subject to the final outcome of the same, operation of the impugned order dated 18.08.2020 (P-53) passed by respondent No.1 and 2 may kindly be stayed”.

Some facts are required to be noticed. The Transport Department, Haryana, on 17.02.2017, issued a scheme for the State Transport Undertakings, in terms of Section 100 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the 1988 Act”), which is commonly known as “Stage Carriage Scheme of 2016”. Apart from other things, the scheme also enumerated intra-State routes available for grant of permit to the Transport Undertakings, any person or society/firm/company of the State. The writ petitioners claim that they being engaged in the business of plying buses, applied for issuance of route permits along with the non-refundable fee of Rs.25,000/- . The applications submitted by the writ petitioners were tentatively accepted and the writ petitioners were issued offer of allotment between 21.03.2017 to 12.04.2017. The relevant terms & conditions of the offer of allotment are common, which are extracted as under:-

“1) The permit shall be valid for a period of five years and renewal shall be subject to the satisfactory performance of the permit holder.

XXXX XXXX XXXX XXXX XXXX

3) A non refundable application fee of Rs. 25,000/- will be

charged from the applicants under the Scheme.

XXXX XXXX XXXX XXXX XXXX

- 5) *The operation of bus will be started within 90 days from the date of issue of offer letter In case there is a genuine documented justification for delay and if the Secretary, Regional Transport Authority is satisfied further extension of thirty days may be allowed on payment of Rs.50,000/- only in case the chassis has been procured within the abovesaid period of 90 days. After the expiry of the period of 90 days from the date of issue of offer letter or the extended period as the case may be the offer of allotment of permit shall be deemed to be cancelled without any further reference to the applicant and the refundable security shall be forfeited”.*

XXXX XXXX XXXX XXXX XXXX

The Stage Carriage Scheme of 2016, was challenged before this Court in various writ petitions. The lead case was Civil Writ Petition No. 5867 of 2017 (*“The Naya Baksh Co-operative Society Limited and Others v. State of Haryana and Others”*). On 01.05.2017, a Division Bench passed the following order:

“Additional affidavit of Dr. Suprabha Dahiya, Transport Commissioner, Haryana, Chandigarh, dated 1.5.2017, filed in CWP No. 5936 of 2017, in Court, is taken on record. Copy furnished to counsel for the petitioners. It has been stated therein that on re-consideration, the State

Government has decided to withdraw the Scheme of 2016 for grant of stage carriage permits to the private transporters.

Learned counsel for the State seeks short adjournment to apprise the Court about the status of the applications processed for issue permits under the Scheme 2016, which has been withdrawn.

Adjourned to 4.5.2017.

A copy of the order be placed on the file of each connected case”.

On 16.05.2017, the writ petitions were disposed of by the Division Bench. The operative part of the order reads as under:

“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”.*

Certain applicants, who were issued offer of allotment to enable them to make preparation to start operating on the routes after purchasing the buses but failed to fulfill the conditions within the time prescribed, filed a Review Application No. 298 of 2017. The aforesaid review application was disposed of on 21.07.2017. The operative part of the said order is extracted as under:-

“The grievance of the applicants is that in fact, they had applied for issuance of permits and had been issued offer of allotment in March/ April, 2017. On fulfilment of conditions laid down in the offer of allotment within the specified time, permits were to be issued and the applicants were also required to be considered for allotment of temporary permit treating them to be applicants before the order was passed by this court.

Be that as it may, in our opinion, that issue is not required to be considered for the reason that the stand taken by the State is that the draft scheme has been notified on 23.6.2017

and any applicant can apply for issuance of a temporary permit on the routes, as specified in the draft scheme, or of his choice including the routes mentioned in the offer of allotment. On fulfilment of the conditions required for the purpose, the application so filed shall be considered and final decision shall be taken thereon within a period of one week from the date of filing of the application. Let the needful be done.

The aforesaid interim arrangement is till the final Stage Carriage Scheme is notified in supersession of the 2016 Scheme.

With the aforesaid modification in the order passed on 16.5.2017, the review application is disposed of”.

The writ petitioners herein, are also identically situated.

Against the judgment dated 16.05.2017, a Special Leave Petition was filed before the Supreme Court in which, initially, only notice was issued, however, on 04.09.2017, it was directed that in the meantime, status quo, as it existed on that day, shall be maintained by the parties. Subsequently, on 13.10.2017, the Supreme Court modified its interim order, which is extracted as under:-

“Heard Mr. P.S.Patwalia, learned senior counsel for the petitioners and Mr. Tushar Mehta, learned Additional Solicitor General for the respondents.

Having heard learned counsel for the parties, the order of status quo is modified to the following extent:

a) The respondent-State is at liberty to call for

objections and offer hearing to the objectors in respect of the Draft Scheme of 2017 but shall not finalise the same.

b) The transporters who are continuing on the basis of the 2016 Scheme shall be allowed to operate and if any permit has expired, the same shall be renewed in accordance with law.

c) If any transporter is eligible to obtain the permit in pursuance of the directions given by the High Court, his case shall be considered and shall not be refused on the ground that a new policy/scheme is coming.

The matters be listed after six weeks”.

Various applications for impleadment/intervention, filed before the Supreme Court were allowed. Before the Supreme Court, the State Government took a stand that it has decided to withdraw the draft scheme of 2017 and all the dispensations afforded under that scheme. It was stated that the State would take steps as are permissible under Section 102 of the 1988 Act, to cancel or modify the Stage Carriage Scheme of 2016. In view of the aforesaid statement, on 21.01.2020, the Supreme Court disposed of Civil Appeal No. 556 of 2020. The operative part of the order is extracted as under:

“In view of the statement made on behalf of the State Government, referred to above, which we have accepted, nothing remains for consideration in these appeals. However,

we make it clear that all future actions be proceeded in accordance with law.

The appellant(s)/applicant(s) or any other eligible person will be free to make application(s) to the concerned authority, if already not made, for registration and for grant of permit within one week from today, and if so made, the competent authority may consider the same as per law expeditiously and in any case before 20th March, 2020.

If the appellants(s)/applicant(s) are aggrieved by any decision taken by the competent authority, it will be open to them to pursue such other remedies as may be permissible in law including under Section 100(2) of the Motor Vehicles Act, 1988.

In view of the above, nothing survives for consideration in these appeals. Accordingly, the appeals and pending applications, if any, are disposed of”.

The writ petitioners claim that on 27.01.2020 they applied to the Secretary, Regional Transport Office, requesting for revival of offer of allotment and for issuance of permit. However, no action thereon, was taken forcing them to file miscellaneous applications before the Supreme Court, which came to be disposed of vide order dated 07.07.2020, the operative part whereof, is extracted as under:

“We are not expressing any opinion either way about the claim set up in the application(s).

This observation is being made in light of the

penultimate paragraph of order dated 21.01.2020 that if any person is aggrieved by any decision taken by the competent authority, it will be open to them to pursue such other remedies as may be permissible in law including under Section 100(2) of the Motor Vehicles Act, 1988.

The competent authority shall take appropriate decision within four weeks from today and inform the decision so taken forthwith to the applicant(s). We say no more.

The application(s) are disposed of accordingly”.

Thereafter, the writ petitioners again submitted applications to the Additional Transport Commissioner, for grant of route permit for which offer of allotment was issued to them in March/April, 2017. The State Transport Authority, after granting them an opportunity of hearing, has rejected the applications vide order dated 18.08.2020.

Hence, the writ petition has been filed claiming various reliefs including a writ of certiorari, directing the quashing the order dated 18.08.2020.

On 11.09.2020, after hearing learned senior counsel for the writ petitioners, learned Additional Advocate General, Haryana, who appeared pursuant to the service of advance copy of the writ petition, was requested to assist the Court. Thereafter, on 18.09.2020 and 21.09.2020, the matter was heard at length. The learned counsel for the parties have also forwarded certain documents on the official e-mail of this Court.

Learned senior counsel appearing for the writ petitioners has submitted that the period from March/April, 2017 till 07.07.2020, is liable to

be declared “*dies non*”. He further submitted that the State Government is guilty of taking contradictory stands before this Court as well as before the Supreme Court. He further submitted that keeping in view the aforesaid facts, the writ petitioners could not be expected to make investments by purchase the vehicles (buses) particularly when the writ petitions were pending. He further contended that the writ petitioners cannot be placed at a low pedestal than the new applicants. He, hence, submitted that the order dated 11.08.2020 is liable to be set aside.

Per contra, Sh. Ankur Mittal, Additional Advocate General, Haryana, while drawing the attention of this Court to various provisions of the 1988 Act, has contended that the writ petitioners do not have any right. He submitted that the offer made to the writ petitioners for allotment was a conditional offer and since the writ petitioners failed to fulfill the stipulations provided therein within the prescribed time, hence, the writ petitioners do not have any right to the permits. He further submitted that the identically placed persons did file Review Application No. 298 of 2017, which was disposed of by the Division Bench on 21.07.2017, granting them permission to apply for temporary permit on the routes specified. He submitted that the writ petitioners never chose to apply, hence, not entitled to further indulgence. Still further, on 13.10.2017, the Supreme Court modified the order of status quo. The writ petitioners still did not apply. He further contended that in fact, there is no provision for cancellation of the approved scheme. He drew the attention of this Court to Section 102 of the 1988 Act while considering that apart from the caption of the Section, the word “cancellation” has not been used in the substantive provision. He contended

that this fact was noticed by the Division Bench while passing order on 16.05.2017 and it was for that reason, it was ordered that the Stage Carriage Scheme of 2016 would continue to remain operative till such time a new scheme is notified. He further contended that the writ petitioners are not entitled to any benefit because they have been sitting on the fence. He further contended that even pursuant to the order passed by the Hon'ble Supreme Court on 21.01.2020, the writ petitioners did not file applications for grant of new permits, although an opportunity was available to everyone. He, hence, prayed that the writ petition be dismissed.

In the rejoinder, Mr. Patwalia, learned senior counsel, has submitted that the application submitted by the writ petitioners on 27.01.2020, has not been considered and it was incumbent upon the respondents to consider the applications, particularly when they had already been selected and given the offer of allotment.

This Court has considered the submissions of learned counsel for the parties and with their able assistance, perused the paper book.

At the outset, it must be noticed that the learned counsel for the parties have failed to draw the attention of the Court to the provisions of the 1988 Act or the Rules, framed thereunder, by the Central Government or the State Government conferring any right in favour of the person who has been issued offer of allotment. In the absence of any specific provision in the special law, one has to fall back upon the provisions of the Indian Contract Act, 1872 (hereinafter referred to as "the 1872 Act"). From the reading of the offer of allotment, it is apparent that no contract between the parties was arrived at because there was no meeting of mind. At the most, the offer of

allotment would fall within the meaning of contingent contracts, as defined in Chapter III of the 1872 Act. Section 31 of the 1872 Act defines contingent contract whereas Section 32 provides for manner of its enforcement. The same are extracted as under:

“31. “Contingent contract” defined.—A “contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration

A contracts to pay B Rs. 10,000 if B's house is burnt.

This is a contingent contract.

32. Enforcement of contracts contingent on an event happening.—Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations

(a) *A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.*

(b) *A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.*

(c) *A contracts to pay B a sum of money when B marries C. C*

dies without being married to B. The contract becomes void”.

On careful reading, it is apparent that the offer of allotment was a contingent contract subject to the fulfillment of the stipulations laid therein. It is not in dispute that the writ petitioners failed to fulfill the terms & conditions of the offer of allotment. Thus, under Section 32 of the 1872 Act, such contract is not enforceable.

From the reading of stipulation No.5 of the offer of allotment, which has been extracted above, it is apparent that the offer letter was open for a period of 90 days. The operation of the bus was to be started within the aforesaid time. There was a provision for extension of time for a period of 30 days if there is a genuine documented justification for delay to the satisfaction of the Secretary, Regional Transport Authority. In this case, none of the writ petitioners ever applied for the extension of the time/period. It is not the case of the writ petitioners that they did purchase the buses. No doubt, petitioner No. 3 and 8, did book the buses but they never took delivery thereof. In these circumstances, the contingent contract between the parties did not become enforceable. The writ petitioners, by filing this writ petition are in fact praying for enforcement of a contingent contract which is not enforceable because the writ petitioners failed to fulfill the condition.

DELAY AND LATCHES

In the considered view of this Court, the writ petition, filed by the writ petitioners, suffers from unexplained delay and latches. At the outset, it must be noticed that the writ petitioners have not pleaded that they were not in knowledge of the pending litigation in the High Court as well as

the Supreme Court. Rather, the writ petitioners are relying upon the various interim orders passed by the Courts from time to time and are trying to take benefit thereof. The writ petitioners were given conditional offer in March/April, 2017. As per stipulation No. 5, the writ petitioners were to start operation of the bus within a period of 90 days from the date of issuance of offer letter. At the most, extension of 30 days on payment of Rs.50,000/- could be granted. Such extension could only be granted once the chassis of the bus has been procured within the period of 90 days. In the present case, the writ petitioners do not claim that they purchased the chassis of the buses within the aforesaid period. Thereafter, the writ petitioners did not take any step for a period of more than 2 years and 8 months. The writ petitioners kept sitting on the fence. The writ petitioners never filed any application before this Court when identically situated persons filed a Review Application No. 298 of 2017. The writ petitioners, for the first time, submitted applications on 27.01.2020 to the authority after the final order of the Supreme Court. Thus, after an elapse of 2 years and 8 months approximately, the writ petitioners applied for the first time. Therefore, in the considered view of this Court, the claim of the writ petitioners, suffers from unexplained delay and latches.

The writ petitioners are also not entitled to relief as they kept sitting on the fence. The writ petitioners have, for the first time, filed an application before the Supreme Court, after its final order on 21.01.2020. As noticed above, the writ petitioners do not claim that they were not in knowledge of the facts and subsequent developments. In these circumstances, the writ petitioners were sleeping on various opportunities

and hence, are not entitled to any relief.

Still further, on examination of the facts, this Court has come to the conclusion that the writ petitioners have already been granted more than enough opportunities and hence, no further opportunity is required to be granted to them. The writ petitioners did not avail the first opportunity when they were given an offer of allotment. The second opportunity was given to the writ petitioners when the Division Bench of this Court, disposed of the writ petition vide order dated 16.05.2017. It was specifically noticed in para 16 of the said order that the Stage Carriage Scheme of 2016, will remain operative till such time, the new scheme is notified. It was further noticed that the persons who have been granted offer of allotment and have already registered on the portal of the Transport Department under 2016 Scheme, will be allowed to operate, if they fulfill the conditions applicable therein. The writ petitioners, at that stage also, never came forward. In the order dated 16.05.2017, every interested party was given an opportunity to apply for temporary permit. The writ petitioners never chose to avail that opportunity. On 21.07.2017, the Review Application No. 298 of 2017, was disposed of. Again, an opportunity was given to apply for temporary permit, but the writ petitioners never chose to apply. Thereafter, once again an opportunity was given when the Supreme Court modified its interim order on 13.10.2017. The writ petitioners still did not make any application. Still further, on 21.01.2020, the Supreme Court granted another opportunity to every interested party to move an application for new permit. That window was open for a period of seven days. The writ petitioners rather than applying for new permits made applications for grant of permit pursuant to

the offer of allotment.

Keeping in view the aforesaid facts, this Court has come to the conclusion that the writ petitioners have already been granted sufficient opportunities even though they had no right. Therefore, in equity also, the writ petitioners do not have a case.

Now let us analyse the contentions of learned senior counsel for the writ petitioners. The first argument is based on the doctrine of *Dies Non*, which is normally applied in service jurisprudence. The expression “*dies non*”, has its origin from the latin phrase ‘*dies - non – juridicum*’. It literally means “a day when the Courts do not sit and carry on business”. In the dictionary, the expression “*dies non*” is defined as a day which is not a Court day or a day on which no legal business can be done or which does not count for legal purpose. In Black’s Law Dictionary (Tenth Edition), the expression “*dies non*” is defined as under:

“***dies non*** (*di-eez non*). See *dies non juridicus*.

dies non juridicus (*di-eez non juu-rid-i-kes*), *n.* [Law

*Latin “ a day not juridical”] (17c) A day exempt from court proceedings, such as a holiday or Sunday – Often shortened to *dies non*”.*

Similarly, in the Concise Oxford Dictionary. Tenth Edition (revised), the expression “*dies non*” has been defined to mean a day on which no legal business can be done, or which does not count for legal or other purposes.

In the present case, although the learned senior counsel has tried to convince the Court that the period from March/April, 2017 till 07.07.2020, is required to be treated as “*dies non*”, however, this Court

expresses its inability to accept the contention for the reasons which have already been discussed in the foregoing paragraphs.

The next argument of learned senior counsel for the writ petitioners that unless the offer of allotment is revived, the writ petitioners cannot be expected to purchase the buses, although appears to be attractive, however, found without any substance, on deeper scrutiny. As noticed above, no right in favour of the writ petitioners was created merely on the basis of an offer of allotment. Such offer of allotment was a contingent contract subject to fulfillment of the conditions which the writ petitioners failed to fulfill. Thereafter, the writ petitioners got a number of opportunities as already noticed but never chose to avail them. The Stage Carriage Scheme of 2016 was never stayed by any Court. No doubt, at one stage, the Government took a stand that the Scheme has been withdrawn, however, the High Court directed the Government to continue to operate the 2016 Scheme till the new scheme is notified. In these circumstances, there was no question of revival of the letter of offer.

The next argument of learned senior counsel that the writ petitioners cannot be placed at lower pedestal or at a place worse than the new applicants, also does not deserve acceptance, particularly when the writ petitioners did not avail various opportunities as noticed above. The Supreme Court, while disposing of the civil appeal as well as the applications for interventions, permitted all eligible persons to make application to the concerned authority, for registration and grant of permit, within a period of one week from the date of order. The writ petitioners did not apply for a new permit. In fact, the writ petitioners cleverly filed

applications on 27.01.2020 but restricted the request to grant the permit on the basis of offer of allotment which were issued in the month of March and April, 2017. At that time, the writ petitioners could have made applications for grant of new permits by submitting applications, in the prescribed form, however, they never chose to adopt that path.

Keeping in view the aforesaid facts, this Court does not find any ground to interfere with the detailed order passed by the State Transport Authority dated 18.08.2020. Hence, the present writ petition is dismissed in *limine*.

The miscellaneous application(s) pending, if any, shall also stand disposed of in terms of the main order.

(Anil Kshetarpal)
Judge

September 25, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No