

(Proceedings through V.C.)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 117 of 2021
In
CWP No. 14237 of 2020

Date of Decision: 02.09.2021

Aman Singh and others

...Appellants

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. J.P. Jangu, Advocate
for the appellants.

ASHOK KUMAR VERMA, J.

1. This appeal arises out of the judgment dated 25.09.2020 passed by the learned Single Judge of this Court whereby the writ petition filed by 28 petitioners, appellants herein, against the order dated 18.08.2020 passed by the State Transport Authority, Department of Transport, Haryana

rejecting the claim of the appellants for grant of route permits under the Stage Carriage Scheme of 2016, has been dismissed *in limine*.

2. The only issue involved in the present case is that whether the appellants showed their intent to adhere to Clause 5 which is one of the terms and conditions laid down in the offer of allotment vide which the operation of the bus was to be started within 90 days from the date of issue of offer letter and in case there would have been a genuine documented justification for delay and if the State Transport Authority is satisfied, further extension of 30 days may have been allowed, subject to payment of Rs.50,000/- only in case the chassis has been procured within the aforesaid period of 90 days?

3. Before delving into the issue involved, a glance of the facts may be taken from the paper-book. The Transport Department, Haryana notified a scheme for the State Transport Undertakings on 17.02.2017 within the ambit of Section 100 of the Motor Vehicles Act, 1988 (for short the 'Act of 1988') which is known as "Stage Carriage Scheme of 2016" which provided inter-state routes available for grant of permit to the Transport Undertakings, any person or society/firm/company of the State. The case of the appellants is that they being engaged in the business of plying buses, applied for issuance of route permits and the applications submitted by them were tentatively accepted and they were issued offer of allotment letters between 21.03.2017 to 12.04.2017. One of the terms and conditions of offer of allotment which is relevant for decision on the issue involved in the present case, reads as under:-

“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”.

4. The aforesaid Carriage Scheme of 2016 was challenged by filing various writ petitions being lead case i.e. CWP No. 5867 of 2017. Vide order dated 01.05.2017, a Division Bench of this Court observed that on re-consideration, the State Government has decided to withdraw the Scheme of 2016 for grant of stage carriage permit to the private transporters. Ultimately, on 16.05.2017, the aforesaid writ petitions were disposed of with the observations that 2016 scheme will remain operative till such time new scheme is notified, the State shall be at liberty to issue permit to 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 fulfil the conditions applicable.

Some applicants who were issued offer of allotment to enable them to make preparations to start operating on the routes after purchasing the buses but failed to fulfil the conditions within the time prescribed, filed Review Application No. 298 of 2017. Vide order dated 21.07.2017 the review application was disposed of with the following directions: -

“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.”

5. An SLP was filed before the Supreme Court against the aforesaid order dated 16.05.2017. On 04.09.2017, the Supreme Court ordered the parties to maintain status quo in the meantime as it existed on that date. Further on 13.07.2017, the Supreme Court modified the aforesaid order which reads 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”.

The Supreme Court allowed various applications for impleadment/ intervention. 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 State Carriage Scheme of 2016. In view of the aforesaid statement vide order dated 21.01.2020, the Supreme Court disposed of Civil Appeal No. 556 of 2020, the operative part of the order is as follows:-

“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.”

6. The appellants claimed that on 27.01.2020 they approached the Secretary, Regional Transport Office for revival of offer of allotment and for issuance of permit but no action was taken. Ultimately, they were compelled to file applications before the Supreme Court which was disposed of vide order dated 07.07.2020, operative part of which reads 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”.

The appellants again submitted applications to the Additional Transport Commissioner for grant of route permit for which offer of allotment were issued to them in March/April 2017. The Transport Authority heard the appellants and rejected the applications vide order dated 18.08.2020. Aggrieved against the said impugned action of the Transport Authority, the appellants filed the aforesaid writ petition seeking various reliefs including quashment of the order dated 18.08.2020 passed by the State Transport Authority. Learned Single Judge of this Court dismissed the said writ petition vide impugned judgment dated 25.09.2020. The said impugned judgment is under challenge in the present LPA before this Court.

7. Learned counsel for the appellants, inter alia, submits that the impugned judgment of the learned Single Judge is erroneous and bad in the eyes of law. Learned counsel submits that the State Transport Authorities have acted arbitrarily and allotted the route permits to the persons who have applied even after the date fixed, but the claim of the appellants have been rejected. Learned counsel further submits that the learned Single Judge has failed to consider the fact that the appellants have submitted applications for revival of offer of allotment and issuance of permit which was not considered by the respondents despite the fact that the appellants had already been selected and offer of allotment was already given to them. Learned counsel also submits that the learned Single Judge has not declared the period from March/April, 2017 till 7.7.2020 as “dies non”.

8. We have considered the submissions of the learned counsel for the appellants anxiously and gone through the paper-book.

9. It is not disputed that the appellants failed to fulfil the terms and conditions of the offer of allotment. A bare reading of Clause 5 of the offer

of allotment, reproduced above would show that the operation of bus will be started within 90 days from the date of issue of offer of allotment. However, in case of genuine documented justification of delay and on the satisfaction of the Secretary, Regional Transport Authority, further extension of 30 days was allowed on payment of Rs. 50,000/- only in case the chassis has been procured within the stipulated period of 90 days. It was made clear in the aforesaid clause that 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 and the refundable securities shall be forfeited.

10. From the aforesaid stipulation in Clause 5 in the offer of allotment, it is apparent that the offer was valid for a period of 90 days. The operation of the bus was to be started within the aforesaid time, however, there was a provision for extension of time for a further period of 30 days. It is not disputed that the appellants never applied for the extension of time. It is also not disputed that the appellants did not purchase the chassis/buses during the aforesaid time period. However, appellants No. 3 and 8 did book the buses but they never took delivery of the same. Learned Single Judge has rightly observed that the contingent contract between the parties did not become enforceable. The offer of allotment was a contingent contract subject to the fulfilment of the stipulations/conditions enumerated therein. It is not disputed that the appellants failed to fulfil the terms and conditions of the offer of allotment and as such under Section 32 of the Indian Contract Act, 1872, such contract cannot be enforced.

11. It is also not disputed that even after a lapse of period of 2 years and 8 months, the appellants did not take any step to purchase the buses or to

apply afresh which shows that their intention is not to ply the buses on the route. Since the appellants failed to adhere to the terms and conditions laid down in the offer of allotment, the offer of allotment would not be a binding force on the State Transport Authorities. The offer of allotment is only a prelude to the purchase of the chassis/buses within the stipulated time as per Clause 5 of the offer of allotment and is not itself binding contract between the appellants and the respondents, unless the terms and conditions laid down therein are fulfilled by the appellants and intention to purchase the chassis/buses would have been shown by the appellants. There is nothing on record to show that the appellants showed their intent to purchase the chassis/buses within the stipulated time. Merely, offer of allotment does not create any right to the appellants unless the stipulations/conditions enumerated therein are complied with by the appellants. Furthermore, learned counsel for the appellants has not been able to show that the respondents have acted in infringement of the Statute and the Rules framed thereunder. Thus, the appellants are not entitled to any relief.

12. It is further to be noticed that the offer of allotment was issued in March, 2017. As per terms and conditions stipulated in the offer of allotment, the appellants had to purchase the buses within a period of 90 days and may seek extension of further time of 30 days on expiry of a period of 90 days. The appellants did not purchase the buses in time and even did not apply for extension of further time of 30 days as provided under Clause 5 of the offer of allotment. For the first time, the appellants submitted applications only on 27.01.2020 to the Transport Authority after the final order of the Supreme Court. The appellants did not file any application before this Court when identically situated persons had filed review

application No. 298 of 2017. Thus, after a lapse of 2 years and 8 months, the appellants applied for the first time on 27.01.2020.

13. In fact, the appellants missed the trains on number of occasions- firstly, when they were given time of 90 days for purchase of chassis/buses; secondly, the appellants failed to seek extension of further time of 30 days as per clause 5 of the offer of allotment; thirdly, vide order dated 16.5.2017, when the Division Bench of this Court allowed 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 fulfil the conditions applicable therein and an opportunity was given to apply for temporary permit; fourthly vide order dated 21.7.2017 passed in Review Application No.298 of 2017, again an opportunity was given to apply for temporary permit; fifthly once again a golden opportunity was given when the Supreme Court modified its interim order on 13.10.2017 and sixthly granted another golden opportunity to every interested party to move an application for new permit and a window was opened for a period of seven days. But the appellants failed to avail all those opportunities in time. For the first time, after a lapse of about 2 years and 8 months, the appellants submitted applications only on 27.01.2020 to the Transport Authority after the final order of the Supreme Court was passed on 21.1.2020.

14. The argument of the learned counsel that the period from March/April, 2017 till 7.7.2020 be declared as “dies non”, is misconceived. The doctrine of “Dies Non” normally applies to service jurisprudence with break in service. Even for the sake of argument, it is assumed that this doctrine would apply in such matters, but it is not for those persons like the appellants who do not swing into action expeditiously for relief and who

standby and allow things to happen and allow the other wheels to run for a period of 2 years and 8 months. The appellants chose to sleep over their right like Rip Van Winkle and got up from their slumber at their leisure after a period of 2 years and 8 months and by that time much water has flown into. In such matters, time flies so fast and interference by this court at this stage would amount to unsettle the settled things. It is settled proposition of law that anyone who sleeps over his rights is bound to suffer and the Court cannot come to the rescue of such persons when they themselves are guilty of waiver and acquiescence. In this view of the matter, we are of the considered opinion that the writ court has rightly refused to exercise its jurisdiction under Article 226 of the Constitution of India.

15. In view of the above, we are of the considered opinion that the impugned judgment dated 25.09.2020 passed by the learned Single Judge of this Court is well-reasoned and we find no illegality, impropriety and irregularity in the same. Consequently, we find no merit in this appeal which is accordingly dismissed.

(ASHOK KUMAR VERMA) (AUGUSTINE GEORGE MASIH)
JUDGE JUDGE

02.09.2021
MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes