

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 1105 OF 2021

Sudhir Kumar Nayak ***Petitioner***

Mr. Chandrakanta Nayak, Advocate

-versus-

S.T.A., Odisha, Cuttack and others ***Opp. Parties***

Mr. Pravakar Behera, Standing Counsel
(For Transport Department)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.08.2022

Order No.

9. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 4th March, 2020 passed by the State Transport Appellate Tribunal, Odisha, Cuttack in M.V. Revision No.13 of 2019, whereby learned Tribunal while modifying the timing allotted to the Opposite Party No.2 vide order dated 31st August, 2019 passed in M.V. Misc. Case No. 65 of 2019 and setting aside the order dated 15th November, 2019 passed by the Secretary, S.T.A. allowed the Opposite Party No.2 to ply his vehicle on the route from Gandisar to Cuttack with departure time at 13.10 hours from Bhubaneswar.
3. Mr. Nayak, learned counsel for the Petitioner submits that the dispute is with regard to time of departure in respect of the vehicles in question from Bhubaneswar. Although the Opposite Party No.2 had made an application on 14th March, 2019 (Annexure-6) to the effect that the running time between Bhubaneswar and Khurda is very short and it should be extended to 45 minutes, but considering the said application, timing of departure of stage

carriage of Opposite Party No.2 from Bhubaneswar was changed, which seriously affects the business of the Petitioner. It is submitted that the Petitioner is an old operator and has been granted with departure time at 14.00 hours from Bhubaneswar. The Petitioner's vehicle is operating from Kumari to Bhubaneswar via Charichhak and back. By allotting 15.45 hours as departure time in respect of Petitioner's vehicle from Bhubaneswar, he (the Petitioner) is not getting any passenger and in fact, his business has been seriously affected. Learned Tribunal, without considering the same, has passed the impugned order, which was not even prayed for by the Opposite Party No.2. He, therefore, prays for setting aside the impugned order and to allot the Opposite Party No.2 with his original departure time, i.e. 13.10 hours, from Bhubaneswar.

4. Mr. Behera, learned Standing Counsel for the Transport Department submits that temporary permit was issued in favour of Opposite Party No.2 in respect of his vehicle bearing Registration No. OR-02-BJ-8810 on 18th February, 2019 (Annexure-1) on the route from Gandisar to Cuttack and back, but his vehicle was allotted with 15.45 hours for departure from Bhubaneswar towards Kumari. Permanent permit was granted in favour of Opposite Party No.3 in respect of his vehicle bearing Registration No.OD-02-M-1213 on the route from Badambadi to Bhubaneswar and Bhubaneswar to Kantilo and back with departure time at 3.50 P.M. (15.50 hours) from Bhubaneswar. Further, permanent permit was also granted in favour of Opposite Party No.4 in respect of his vehicle bearing Registration OD-02-K-6825 on the route from Pathuriapada to Bhubaneswar and back with departure time at 15.45

hours (3.45 P.M.) from Bhubaneswar. Since the timing slot for departure of the vehicle of Opposite Party No.2 was 15.45 hours from Bhubaneswar, the Opposite Party Nos.3 and 4 made objection before the Secretary, STA, Odisha, Cuttack. Accordingly, vide his order dated 30th March, 2019 passed in MV Misc. Case No. 24 of 2019, timing slot of Opposite Party No.2's vehicle was modified to depart from Bhubaneswar at 13.10 hours. The said timing slot was objected to by the Petitioner stating that it will seriously affect his business as he has been allotted with timing slot for departure from Bhubaneswar at 14.00 hours. Learned Tribunal taking into consideration the facts and circumstances of the case and discussing the matter in detail held that the interval between two operators, i.e. the Petitioner and Opposite Party No.2 is 50 minutes, which can never be said to be a little gap, rather such a gap of 50 minutes is considerable one for plying of the vehicles of two operators. He, therefore, submits that learned Tribunal being the final authority under the statute and has passed an order considering the materials on record, which is a reasoned one, the same should not be lightly interfered with under Article 227 of the Constitution.

5. Mr. Mohammed, learned counsel for the Opposite Party No. 2 reiterating the submission made by Mr. Behera, learned Standing Counsel for Transport Department contended that nothing remains to be adjudicated in this writ petition as the time gap for departure of two operators, namely, the Petitioner and Opposite Party No.2 from Bhubaneswar is 50 minutes, which is considerable one and cannot be said to be a little gap. He further submits that the Opposite Party No.2 has got permanent permit for express service,

whereas the Petitioner is plying his bus on ordinary service. Hence, after departure from Bhubaneswar, time gap will be more and more in subsequent stoppages of both the operators. Thus, learned Tribunal has committed no error in passing the impugned order and prays for dismissal of the writ petition.

6. Taking into consideration the rival contentions of the parties, this Court finds that the dispute started when Opposite Party Nos.3 and 4 have raised objection with regard to timing slot given to the Opposite party No.2 for its departure from Bhubaneswar. Accordingly, the same was considered by learned Tribunal and the Opposite Party No.2 was allotted with timing slot at 13.10 hours for departure from Bhubaneswar, whereas the Petitioner has been allotted with timing slot at 14.00 hours for departure from Bhubaneswar. Thus, the contention of Mr. Nayak, learned counsel for the Petitioner that the petition under Annexure-7 is the basis of change of time of the Petitioner is not correct. It further appears that such a plea was neither raised before learned Tribunal nor before this Court in the writ petition itself.

7. On consideration of the materials on record, it is apparent that there is a time gap of 50 minutes between the vehicles of the Petitioner and Opposite Party No.2 to depart from Bhubaneswar as rightly held by learned Tribunal. The same cannot be said to be a little gap. On the other hand, the time gap is considerable one as it has been held in ***Susil Kumar Panigrahi –v- Commissioner-cum-Chairman, State Transport Authority and others***, reported in 89 (2000) CLT 788 that the interval between two Buses will be

dependent upon the total volume of passengers available and normally 25 to 30 minutes interval should be regarded as reasonable.

8. In view of the above, I find no infirmity in the impugned order. Accordingly, this writ petition being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

