

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

Reserved on 22.12.2022

**CWP No.10721 of 2022O&M)
Date of Decision: 07.02.2023**

Indian Canadian Transport Company

.....Petitioner

Vs

State of Punjab and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Puneet Bali, Sr. Advocate with
Mr. Vibhav Jain, Advocate and
Mr. Uday Agnihotri, Advocate
for the petitioner.

Mr. Navdeep Chhabra, Sr. DAG, Punjab.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India for the issuance of an appropriate writ in the nature of certiorari, quashing the order dated 27.04.2022 (Annexure P-17) passed by the respondent

No.2 (State Transport Appellate Tribunal), whereby the appeal filed by the petitioner against the order dated 07.01.2022 (Annexure P-11) passed by the respondent No.3 (State Transport Authority) has been dismissed. The petitioner has also prayed for the issuance of an appropriate writ for the quashing of the order dated 07.01.2022 passed by the respondent No.3, vide which three permits bearing Nos.PB/1/AITP/TVP/2019/2128, PB2020-AITP-0938A and PB2020-AITP-0937A of the Contract Carriage Buses of the petitioner-Company have been cancelled *ex parte* under Section 86 of the Motor Vehicles Act, 1988 in complete disregard of the provisions of the Motor Vehicles Act, 1988 and Rules framed thereunder and in transgression of All India Tourist Vehicles (Authorization or Permit) Rules, 2021.

[2]. The petitioner is a company incorporated under the Companies Act and is engaged in the business of plying contract carriage tourist buses for tourists and NRIs at Amritsar-Indira Gandhi International Airport, New Delhi route on the basis of permit as well as authorization granted to the petitioner under the Motor Vehicles Act, 1988 and Rules framed thereunder. For the aforesaid purpose, the petitioner has entered into a licence agreement dated 28.02.2020 with the Delhi International Airport Limited (DIAL), under which the petitioner has been granted a licence to set up and manage a bus picking counter for the

entire licence terms at Indira Gandhi International Airport, New Delhi.

[3]. The relevant statute governing the dispute is the Motor Vehicles Act, 1988 along with the Rules framed thereunder and also the Rules passed by the Central Government from time to time. The Central Government brought into operation the motor vehicles (All India Permit for Tourist Transport Operators) Rules 1993 (hereinafter referred to as 1993 Rules), exercising the powers under Sub Section (14) read with Section (9) of Section 88 of the Motor Vehicles Act, 1988. This was aimed to get over the persistent problem faced by the tourists and NRIs, especially keeping in mind that under the existing scenario, the tourist vehicles, to which, All India Permits were granted under Rule 88 of 1989 Rules, could not carry individual passenger as the vehicle had to be engaged as a whole by one hirer/customer. Sub Sections (9) and (14) of Section 88 of the Motor Vehicles Act, 1988 are reproduced hereasunder:-

“(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice

indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86 2[clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply in relation to such permits.

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(14) (a) The Central Government may make rules for carrying out the provisions of this section.

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the authorisation fee payable for the issue of a permit referred to in sub-sections (9) and (12);

(ii) the fixation of the laden weight of the motor vehicle;

(iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;

(iv) the colour or colours in which the motor vehicle is to be painted;

(v) such other matters as the appropriate authority shall consider in granting a national permit. Explanation.—In this section,—

(a) “appropriate authority”, in relation to a national permit, means the authority which is authorised under this Act to grant a goods carriage permit;

(b) “authorisation fee” means the annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a State to enable a motor vehicle, covered by the permit referred to in sub-sections (9) and (12) to be used in other States subject to the payment of taxes or fees, if any, levied by the States concerned

(c) “national permit” means a permit granted by the

appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous States, not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application.”

[4]. The petitioner applied for and granted E-recognition as an Approved Tourist Transport Operator by the Ministry of Tourism, Government of India, vide letter dated 12.03.2021, which is valid upto 11.03.2026. The aforesaid grant i.e. recognition as an Approved Transport Operator is in respect of three buses mentioned in the show cause notice i.e. bus bearing No.PB01C-9726, PB01C-2884 and PB01C-9727. Two buses bearing Nos. PB01C-9726 and PB01C-9727 have been granted an authorization certificate in terms of Rule 4(2) of 1993 Rules i.e. enabling the aforesaid buses to be operated throughout the territory of India, on recognized tourist circuits. The third bus of the petitioner i.e. PB01C-2884 has been granted authorisation certificate in terms of Rule 4(4) of 2021 Rules, enabling the same to be operated throughout the territory of India.

[5]. A perusal of 1993 Rules would show that only that company or an individual which is engaged in the business of promotion of tourism by providing tourist vehicles on prescribed tourist circuits or a travel agency or a tour operator, could be

classified as a “Tourist Transport Operator” as defined under Rule 2(g) of the aforesaid Rules. In other words, such company or individual could take benefit of 1993 Rules. The only specified places of tourist interest situated in a State for which package tours prepared and sold by the recognized Tourist Transport Operators, could be classified as a “Tourist Circuit” as defined under Rule 2(h) of the aforesaid Rules. Therefore, the Central Government in the year 1993, in its wisdom opened the tourism industry only for certain tourist transport operators, running their business for promotion of tourism on specified tourist circuits.

[6]. The eligibility condition for recognition as an Approved Tourist Transport Operator can be appreciated from Rule 15(1) read with IV Schedule, which lays down the eligibility condition for recognition as an Approved Tourist Transport Operator, which specifies around 15 tourist circuits including Amritsar. For ready reference, Section 2(g) and 2(h) of 1993 Rules are reproduced hereunder:-

“2(g) ‘Tourist Transport Operation’ means-

- (a) A company or an individual engaged in a business of promotion of tourism by providing tourist transport vehicles on tourist circuits, or*
- (b) any travel agency (who possesses his own vehicle or have taken a vehicle on lease for this purpose for a period of at least one year) run by a company or an*

individual provides all tickets for travel by air, rail, ship, passport, visa and also arrange accommodation, tours, entertainment and other tourism related services; or

(c) the tour operator (Company or individual who provides for transport, accommodation, sight- seeing, entertainment and other tourist related, services for tourist, and who possesses his own vehicle or has taken a vehicle on lease for this purpose for a period of at least one year and is recognised by the Department of Tourist of the Government of India:

*2[(h) **Tourist Circuit**" means all places of tourist interest situated in a state for which package tours are prepared and sold by the recognised tourist transport operator.*

Explanation. For the purpose of removal of doubts, it is clarified that the permit covering such tourist circuits shall be valid throughout the State."

[7]. Under 1988 Act, commercial passenger vehicles have been defined as contract carriages, stage carriages, omni buses and tourist vehicles of which contract carriages, stage carriages and tourist vehicles are relevant in the present scenario. 1988 Act defines the contract carriages, stage carriages and tourist vehicles as under:-

"2. Definitions- *In this Act, unless context otherwise requires,--*

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(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or

implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-

(i) a maxicab; and

(ii) a motor cab notwithstanding that separate fares are charged for its passengers;

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(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

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(43) "tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf;"

[8]. A perusal of the definition of the contract carriage and stage carriage would show the basic difference between them. In case of contract carriage, the vehicle has to be engaged as a whole under a contract, so as to carry passengers from one point to another. In case of stage carriage, the vehicle can carry passengers from one point to another in stages of the journey or

for the entire journey and can pick and drop the passengers en-route.

[9]. Under 1993 Rules, there was no express Rule, permitting transportation of tourists having different origins or destination. Rule 13 mandates the Tourist Transport Operator to carry a list of tourist passengers in respect of each trip. Rule 13 of 1993 Rules is reproduced hereasunder:-

“13.List of Tourists.-

A tourist vehicle, other than motor cab, plying under an All India Permit for a Tourist Transport Operator shall at all times carry a list of tourist-passengers in respect of each trip, and the list shall be produced on demand by the officers authorised to demand production of documents by or under the Act or the rules made thereunder.”

[10]. On 01.04.2021, in supersession of 1993 Rules, the Central Government notified to All India Tourists Vehicles (Authorization and Permit) Rules 2021 (hereinafter referred to as 2021 Rules), exercising powers under Sub Section (9) and Sub Section (14) of Section 88 of the Motor Vehicles Act, 1988.

[11]. It is pertinent to note that Rule 16(1) of 2021 Rules, excludes the applicability of Rules 82 to 85-A of 1989 Rules. Moreover, Rule 16(2) of 2021 Rules, validates the permits issued under 1993 Rules for their validity period as if they were issued under 2021 Rules. For ready reference Rule 16 of 2021 Rules is reproduced hereasunder:-

“16. Exemption.-

(1) The conditions prescribed in rules 82 to 85A of the Central Motor Vehicles Rules, 1989 shall not apply to the permits granted under these rules.

(2) The permit issued under the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993 shall continue to be in force during their validity period as if they were issued under the All India Tourist Vehicles (Authorisation or Permit) Rules, 2021.”

[12]. The third bus of the petitioner i.e. bus bearing No.PB01C2884 has been granted authorization certificate in terms of Rule 4(4) of 2021 Rules, enabling it to operate throughout the territory of India. Therefore, all the three buses of the petitioner, which have been shown in the show cause notice have valid authorization under 2021 Rules. All the three buses for which the show cause notice was issued to the petitioner, are deemed to have been granted authorization under 2021 Rules. The basic comparison of 1993 Rules and 2021 Rules will bring out two major differences between them. Firstly, a perusal of Rules 2(b) and 2(d) of 2021 Rules would show that the Central Government has further expanded the scope of operation for the promotion of tourism as, unlike the 1993 Rules. Now, even an owner is eligible to be granted authorization to ply tourist vehicles and can do so throughout the territory of India (instead of specified tourist circuits as was the case with 1993 Rules). Moreover, the Central Government has omitted the

definition of “Tourist Circuits” and has permitted the owners/tourist vehicles operators to operate throughout the territory of India. Therefore, with the promulgation of 2021 Rules, the tourist vehicles operators including the owners are free to operate their tourist vehicles throughout the territory of India, unlike the previous regime, wherein only specified tourist vehicles operators (not owners) could do so, that too, on specified tourist circuits. For ready reference, Rules 2(b) and 2(d) of 2021 Rules are reproduced hereasunder:-

*“(b) **Authorisation** means an authorization granted by the Transport Authority to enable tourist vehicles operator/ owner to ply tourist vehicle throughout the territory of India subject to the payment of taxes or fees, if any, levied by the State or Union territory through which it plies;*

*“(d) **Permit** means a permit issued by the Transport Authority to enable a tourist vehicle operator/ owner to ply tourist vehicle throughout the territory of India without payment of taxes or fee levied by the State or Union territory through which it plies;”*

[13]. The second major difference between 1993 Rules and 2021 Rules is that under 2021 Rules, the Central Government has clearly provided the power to the owners to pick up individual passengers from different boarding points as also to drop them at different destinations along with the route. This can be appreciated from the combined reading of Rules 7 and 11 of

2021 Rules. For the sake of brevity, Rules 7 and 11 of 2021 Rules are reproduced hereasunder:-

“7 Scope and validity of authorization or permit-

- (1) The authorization or permit, as the case may be, shall be valid throughout India.
- (2) The authorization or permit, as the case may be, shall be used for the transport of **passengers individually or in a group**, along with their personal luggage.
- (3) No individual or a group of individuals shall use the vehicle for the **transport of passengers individually or in a group**, unless they have a valid authorization or permit, as the case may be, either in electronic form or in physical form.

11. List of tourists-

- (1) A tourist vehicle other than a motor cab plying under the permit, shall at all times carry a list of passengers in electronic form or in physical form, which shall contain the **details of origin and the destination of each passenger-**
- (2) The list shall be produced on demand before the officers authorized to demand production of documents by or under the Act or the rules made there under.”

[14]. Evidently, the aforesaid Rules clearly prescribed that passengers can be transported individually or in a group and the details of the origin and the destination of each passenger must be recorded. The only fetter of such tourist vehicles operators/owners is that there must be a prior contract with each passenger and no person who is not included in the

contract, can be picked up or dropped by them en-route.

[15]. In compliance of the requirement of Rule 11 of 2021 Rules, the petitioner prepared a list of passengers, containing the details such as the name, the origin, the destination as well as contact point/boarding point of each passenger, well before the start of the journey. On 18.12.2021, the then Transport Minister along with RTA, Patiala and enforcement staff, stopped the aforesaid three buses of the petitioner on the premise that the buses were being run as stage carriages. On the aforesaid allegation, the show cause notice dated 23.12.2021 was served upon the petitioner, alleging that the buses owned by the petitioner were registered as contract carriage/tourist buses, but the same were being plied as stage carriage buses.

[16]. The impugned show cause notice merely contained allegations without any supporting documents. The petitioner wrote an E-mail dated 31.12.2021 to the respondent, requesting to provide all the documents on the basis of which the impugned show cause notice was issued to the petitioner in order to furnish its detailed reply. Despite the aforesaid request, no documents were supplied to the petitioner and the petitioner was not in a position to file reply to the show cause notice in order to support its defence. Without replying to the genuine request of the petitioner, the respondent No.3 proceeded *ex parte* and passed the impugned order dated 07.01.2022 for

cancellation of permits under Section 86 of the Motor Vehicles Act, 1988 on account of violation of terms and conditions of the permit.

[17]. Feeling aggrieved against the order dated 07.01.2022 passed by the respondent No.3, the petitioner ventured to file an appeal under Section 89 of the Motor Vehicles Act, 1988 on 31.01.2022 before the respondent No.2, assailing the impugned order dated 07.01.2022 as well as the show cause notice dated 23.12.2021 being violative of 2021 Rules.

[18]. The appeal filed by the petitioner has been dismissed by the respondent No.2 on 27.04.2022, holding that the passengers were being picked up from different contact/boarding points en-route i.e. Phillaur, Ludhiana etc and the petitioner was using its vehicles as a stage carriage by stopping the same en-route to pick up passengers and therefore, the same was in violation of the terms and conditions of the permit issued to the petitioner. That is how, the present writ petition came to be filed.

[19]. Learned Senior Counsel for the petitioner vehemently submitted that a perusal of 1993 Rules would show that the company or an individual which is engaged in the business of promotion of tourism by providing tourist vehicles on prescribed tourist circuits, or a travel agency or a tour operator, could be classified as a "Tourist Transport Operator" as defined under

Rule 2(g) and therefore, could take the benefit of 1993 Rules. The only specified places of tourist interest situated in a State, for which package tours prepared and sold by the recognized tourist transport operators, could be classified as a "Tourist Circuit" as defined under Rule 2(h). Therefore, the Central Government in the year 1993, in its wisdom opened the tourism industry only for certain tourist transport operators running their business for promotion of tourism on specified tourist circuits. It would not be out of context to say that even Rule 15(1) read with IV Schedule, which lays down the eligibility condition for recognition as an approved tourist transport operator, specifies around 15 tourist circuits including Arimitsar. Learned Senior Counsel further submitted that under 1993 Rules, there was no express Rule, permitting transport of tourists having different origins or destinations. The aforesaid position is evident from reading of Rule 13, which can only mandates the tourist transport operator to carry a list of tourist passengers in respect of each trip. However, after the promulgation of 2021 Rules, all the three buses of the petitioner have been validated under 2021 Rules and thus 2021 Rules are applicable in the present case.

[20]. Learned Senior Counsel further submitted that a comparison of 1993 Rules with 2021 Rules will bring out two major differences between them. Firstly, a perusal of Rules 2(b)

and 2(d) of 2021 Rules would show that the Central Government has further expanded the scope of operation for the promotion of tourism as, unlike 1993 Rules. Now even an owner is eligible to be granted authorization to ply the tourist vehicle and he can do so throughout the territory of India (instead of specified tourist circuits as was the case with 1993 Rules). Moreover, the Central Government has omitted the definition of “Tourist Circuits” and has permitted the owners/tourist vehicles operators to operate throughout the territory of India. Therefore, with the promulgation of 2021 Rules, the tourist vehicles operators are free to ply their tourist vehicles throughout the territory of India, unlike the previous regime, wherein only specified tourist operators (not owners) could do so only on specified tourist circuits. The second major difference between 1993 Rules and 2021 Rules is that the Central Government has clearly provided power to the owners to pick up individual passengers from different boarding points as also to drop them at different destinations along with the route. The aforesaid position is evident and is envisaged from the combined reading of Rules 7 and 11 of 2021 Rules which have already been reproduced in the preceding para of the order. The aforesaid Rules clearly stipulate that passengers can be transported individually or in a group and details of the origin and destination of each passenger must be recorded. The only

fetter on such tourist vehicles operators is that there must be a prior contract with each passenger and no person who is not included in the contract can be picked up or dropped by them en-route.

[21]. *Per contra*, learned State counsel vehemently contested the claim of the petitioner on the strength of **P.K. Santosh and others Vs. State of Kerala, represented by the Principle Secretary to Government and others, 2019 SCC OnLine Kerala 3364** and **Senithjan S. Vs. State of Kerala, represented by Secretary, Transport Department (B), Government Secretariat and others, 2019 SCC OnLine 3212**. Learned State counsel with reference to Para Nos.59, 60, 62, 63, 64, 65 and 66 of **P.S. Santosh and others case (supra)** submitted that the distinction between the contract carriage and stage carriage is that a contract carriage is engaged for the whole of journey between two points for the carriage of a person or persons hiring it, but it has the right to pick up other passengers en-route. Stage carriage on the other hand, runs between two points, irrespective of any prior contract and it is boarded by passengers en-route, who pay the fare for the distance they propose to travel. The essential condition is that a single party or person should be exercised full control for the use of the vehicle. If there is no single contract in respect of

the vehicle and if no person could exercise full control of the vehicle and several passengers have separately contacted for the use of the vehicle and paid individual fares, such a transport vehicle cannot fall within the definition of 'contract stage'. If there is a prior contract for the use of the vehicle as a whole with the owner, the mere fact that individual fares were collected by the leader of the party from the passengers, does not make the vehicle a 'stage carriage'. It is not possible to read the words 'under a contract' in Clause (7) of Section 2 of Motor Vehicles Act, 1989 as referring to both a single contract and more than one contract. If such a construction is accepted, there would be no distinction between 'stage carriage' and 'contract carriage' permits. A 'stage carriage' is intended to meet the requirements of the general travelling public. On the other hand, 'contract carriages' are for those who want to hire the vehicle collectively or individually for a group or party for their transport from place to place and the whole vehicle is at their disposal. The distinction has to be maintained as regards the stage carriage permit and contract carriage permit as the two types of permits are intended to meet different requirements. For ready reference para Nos.60, 62, 64, 65 and 66 of the aforesaid judgment are reproduced hereasunder:-

“60. Therefore, a 'contract carriage' is meant for those who want to hire the vehicle collectively or Individually

for a group or a party having the same purpose, for their transport from one place to another. The vehicle has to be hired as a whole for the carriage of passengers mentioned in the contract, i.e., the whole vehicle will be at their disposal. On the other hand, a stage carriage is intended to meet the requirements of the general public travelling from one place to another having different purposes. Therefore, an agent or a group of persons/individuals cannot hire a 'contract carriage for going from one place to another with passengers having different purposes. If individual passengers having different purposes are picked up in a 'contract carriage, at the starting point of the journey or en route, even if such passengers are included in the contract, it is virtually a 'stage carriage with corridor restriction.

62. The petitioners' contract carriages are covered by Exts.P1 to P11 contract carriage permits issued by the Regional Transport Authority, Palakkad authorising the use of such vehicles in all fit roads in Kerala State, except those prohibited by law in force. Admittedly, the petitioners' contract carriages are conducting regular service from Palakkad to Thiruvananthapuram, Kozhikode to Thiruvananthapuram and back and also to various other destinations in the State of Kerala. The check reports issued to the petitioners contract carriages for the period from 24.04.2019 to 05.06.2019 are placed on record as Exts.P12 to P42, along with I.A. No. 1 of 2019. The said check reports would prima facie show that the contract carriages in question are conducting daily trips from Palakkad to

Thiruvananthapuram and back. As per the check reports, the irregularity detected is illegal 'stage carriage' operation, by picking up passengers en route and collecting individual fares, in contravention of sub-section (1) of Section 66 of the MV Act, punishable under Section 192A of the said Act

64. As held by the Apex Court in Noorulla Khan's case [(2004) 6 SCC 194], 'contract carriages are for those who want to hire the vehicle collectively or individually for a group or a party for their transport to a destination/destinations. The vehicle has to be hired as a whole for the carriage of passengers mentioned in the contract. There has to be only one contract for carrying the passengers mentioned in the contract from one destination to another. An agent or a group of persons/individuals cannot hire a public service vehicle for going from one place to another with passengers having different purposes. If contract carriage permit holder is permitted to pick up individual or a few of them from the starting point of journey and drop them at the last terminus of the route it would virtually be a stage carriage with corridor restriction. In the said decision, the Apex Court held in categorical terms that a contract carriage' is meant for those who want to hire a public service vehicle as a whole collectively for their transport from one destination to another having the same purpose. On the other hand, a stage carriage is intended to meet the requirements of the general public travelling from one destination to another having different purposes.

65. *In view of the law laid down by the Apex Court in Noorulla Khan's case, the passengers in a 'contract carriage' should be a group of persons going from one place to another having the same purpose and the contract shall be to hire the vehicle as a Whole for the carriage of the passengers mentioned in the contract. Therefore, if the passengers who were travelling in the petitioners contract carriages at the time of issuance of Exts.P12 to P42 check reports were only commuters going from one place to another having different purposes, it would amount to 'stage carriage operation in contravention-of-sub-section (1) of Section 66 of the MV Act, punishable under Section 192A of the said Act. The intention that can be shared alike by the passengers travelling in a 'contract carriage' is to attend a function, gathering or meeting, political, religious, social and the like; or to visit places of tourist, historical or religious Importance; etc. A contract carriage cannot be used to conduct regular service between two points, carrying one set of commuters for the onward journey and another set of commuters for the return journey.*

66. *Relying on the decision of this Court in KSRTC v. State Transport Authority [1998 (2) KLT 677] the petitioners would contend that a 'contract carriage' permit can be granted on a route as well, in view of the provisions under clause (i) of sub-rule (2) of Rule 74 of the MV Act. In the said decision, this Court was dealing with the challenge made by KSRTC against the order of the State Transport Authority, Kerala granting permits/counter signature in favour of the contesting*

respondents therein to operate contract carriages in inter-state routes covering nationalised routes in the State of Kerala. In the instant case, Exts.P1 to P11 contract carriage permits granted to the petitioners are for use of the respective vehicles in all fit roads in Kerala State, except those prohibited by law in force, which cannot be used for conducting regular service between two points carrying one set of commuters for the onward journey and another set of commuters for the return journey.”

[22]. Learned State counsel with reference to **Senithjan S. case(supra)** submitted that in view of Central Motor Vehicles Rules and All India Permit for Tourist Operators Rules 1993, a tourists vehicle covered by All India Tourist Permit shall carry only tourist passengers. Such a vehicle cannot be used to conduct regular service between two points, either as a stage carriage or as a contract carriage, carrying one set of passengers for the onward journey and another set of passengers for the return journey.

[23]. Learned Senior Counsel for the petitioner rejoined the arguments by submitting that the aforesaid judgments as referred by the learned State counsel are not applicable to the present case as they deal only with 1993 rules. With the promulgation of 2021 Rules, the same have greatly liberalized the business of tourism of India. Learned Senior Counsel placed reliance upon **Sri Jeyaram Educational Trust and others Vs.**

A.G. Syed Mohideen and others (Civil Appeal No.852 of 2010) and **Nasiruddin and others Vs. Sita Ram Agarwal, (2003) 2 SCC 577,** wherein the Hon'ble Apex Court has reiterated the settled principle of interpretation of statutes that the statutes should be given their natural, ordinary and popular meaning and jurisdiction of the Court to interpret the statute only and only if, the same is ambiguous. The Courts are not supposed to add or subtract any word in the statute or read something into it, which is not there, but can only interpret the provision to make it meaningful, harmonious and workable, but the Courts cannot re-cast the legislation. The language of 2021 Rules, especially Rules 16(1), 7 and 11 are amply clear which states that the condition prescribed in Rules 82 to 85-A of the Central Motor Vehicles Rules, shall not apply. The authorization or permit under these rules, shall be used for the transport of the passengers individually or in a group and the tourist vehicle shall carry a list of passengers, containing the details of origin and destination of each passengers. Therefore, a bare reading of 2021 Rules, would make it amply clear that individual passengers (who are included in the contract) can be picked up and dropped en-route. Learned Senior Counsel further emphasized that the perusal of the impugned order dated 07.01.2022, cancelling the permits of three buses of the petitioner would show that even as per respondent-authorities,

buses of the petitioner were entitled to pick up individual passengers as they were duly authorized under 1993 Rules. However, the permits of the petitioner have been cancelled only on the ground that the petitioner could not have picked up or dropped the passengers en-route. The relevant observations made in sub Para (VIII) in the impugned order dated 07.01.2022 is reproduced hereasunder:-

*“(viii) Because under Section 88(14) of the Act, the Central Government has the power to frame Rules for carrying out the provisions of Section 88 and in the exercise of such powers read with sub-section 9 of Section 88 of the Act, the Central Government framed the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993. Therefore, a tourist vehicle to which an authorization has been granted under the 1993 Rules can ply its vehicles in terms of the conditions of the permit granted to but still cannot use the said vehicle as a stage carriage and only relaxation to which they may be entitled is that **the vehicle plying under the 1993 Rules may not be engaged as a whole under a contract for a fixed sum and you would have been free to entertain individual passengers for carriage from Delhi Airport to their destination by charging the tariff fixed by the Airport Authority of India and without in any manner stopping en route. Thus, you were strictly bound by the authorisation granted to you under the 1993 Rules. However, you still have violated the rules of contract carriage by picking and dropping***

passengers en route.”

[24]. Therefore, even as per the respondent authorities, the petitioner was free to entertain individual passengers for carrying from Delhi Airport to their destination. However, the respondents have taken U-turn in the reply to this petition by taking a stand that the petitioner was not entitled to take up individual passengers by having separate contracts with them. The aforesaid stand is wholly against the earlier stand taken by the respondents in the impugned order dated 07.01.2022 and further shows *mala fide* of the respondent authorities to harass the petitioner. Neither the impugned order dated 07.01.2022, nor the arguments made by the learned State counsel have considered the implication of 2021 Rules, especially Rules 7 and 11, which categorically permit the petitioner to pick up or drop individual passengers en-route, who are included in the contract. The respondent No.2 in the impugned order has not considered the definition of the contract carriage. The respondent No.2 in the impugned order dated 27.04.2022 has failed to consider the definition of contract carriage as defined under Section 2(7) of 1988 Act that only restricts picking up or setting down the passengers not included in the contract.

[25]. Evidently, there is no embargo of a contract carriage to pick up or set down passengers who are included in the contract. The petitioner prepared the list well before the starting

of journey, of all the passengers who are included in the contract along with the points from where they were to be picked up as per their convenience. Therefore, by picking up these passengers en-route, the petitioner cannot be said to have operated its vehicle as a stage carriage in violation of its permit. Rule 2(7) of 1988 Act as earlier reproduced can be relied in this context. The petitioner does not run its buses as a stage carriage as it does not charge the passengers for the stages of the journey. All the tourists who are travelling in the buses of the petitioner have a prior contract with the petitioner and they are charged a fixed contractual amount for the whole of the journey i.e. Amritsar-New Delhi. The tourists can however, select a boarding/contact point for pick up in the route as per their convenience. Neither any other passenger, who does not have a prior contract with the petitioner is picked up during the journey, nor any tourist is charged different fares for various stages of the journey. A perusal of the definition of stage carriage would show that for a motor vehicle to be considered as a stage carriage, the *sine quo non* is that separate fares should be charged from individual passengers for the different stages of the journey, which is not the case with the petitioner. A stage carriage as defined under Section 2(40) means a motor vehicle carrying or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by

or for individual passengers, either for the whole journey or for stages of the journey.

[26]. Evidently, the respondent No.2 has not considered 2021 Rules, which do not prohibit the use of vehicle to carry individual tourists. Rule 11 of 2021 Rules, which implies that the tourist vehicle authorized under 1993 or 2021 Rules can pick up individual tourists from different contact points along with the route, for the convenience of the tourists. Rule 11 of 2021 Rules, requires the permit holder to carry a list of passengers, containing the details of origin and destiny of each passenger, meaning thereby that though the route of the vehicle is fixed, it can pick up tourists from different contact points along with the route, for the convenience of the tourists. Similarly, Rule 7 of 2021 Rules allows the tourist vehicles operators/owners to transport individual passengers as well.

[27]. Evidently, the respondent No.2 has failed to consider that the petitioner applied for and was granted E-recognition as an Approved Tourist Transport Operator by the Ministry of Tourism, Government of India vide letter dated 12.03.2021. The two buses of the petitioner have been granted an authorization certificate in terms of Rule 4(2) of 1993 Rules and third bus of the petitioner has been granted authorization certificate in terms of Rule 4(4) of 2021 Rules, therefore, buses can pick up individual tourists instead of being engaged as a whole under a

contract. Since the conditions prescribed in Rules 82 to 85-A of 1989 Rules (including the condition that a tourist vehicle can be operated only as a contract carriage and not otherwise, as per Sub Rule (9) of 1989 Rules) are not applicable to the permits granted under 1993 Rules. Rules 82 to 85-A of 1989 Rules, do not apply to the two buses of the petitioner and therefore, it is not mandatory to give these vehicles on hire as a whole but the petitioner could also carry individual passengers from one point to another.

[28]. The petitioner is not operating its buses as stage carriages and does not carry passengers from one point to another in stages of the journey. The petitioner also does not issue tickets to individual passengers for various stages of the journey by charging different fares from them. The petitioner is only engaged in plying its tourist buses between Amritsar and Indira Gandhi International Airport, New Delhi. The petitioner issues only boarding passes to the tourists for the full journey and drops them all at the fixed destination. Though the tourists can select a boarding point for pick up as per their convenience, but the whole group is dropped off at the same destination and every hirer is charged a fixed contractual amount, therefore, the petitioner is not functioning as a stage carriage.

[29]. A perusal of bus ticket confirmation of one Maninder Singh attached with the show cause notice would show that the

same has been allegedly issued by the Travelyaari.com an online bus booking portal of Mantis Technologies Pvt. Ltd. However, Travelyaari.com is only a third party which used to provide technical assistance to the petitioner in the past. The petitioner has no association with the Travelyaari.com for some time. The aforesaid Travelyaari.com has not been associated with the petitioner in any manner and it is not clear as to how the bus ticket confirmation for the bus of the petitioner has been issued by the Travelyaari.com. The present allegation is not substantiated in view of the fact that Travelyaari.com has itself admitted that the said bus ticket confirmation has not been issued by it and it was not dealing with the petitioner. Though the petitioner has alleged forgery and falsification of document at the instance of the respondents due to the political clout, but the plea is such, which cannot be gone into by this Court in these proceedings.

[30]. Evidently, the petitioner has sought verification from the Travelyaari.com whether the said bus ticket confirmation was issued by it or not. In reply to the E-mail dated 30.12.2021, the Area Manager of Mantis Technologies Pvt. Ltd has confirmed that the said document was not issued by it.

[31]. In view of above, this Court would not like to go into the details of aforesaid allegation.

[32]. For the reasons recorded hereinabove, the case of the

petitioner as regards the illegality in passing the impugned orders is found to be proved and therefore, I deem it appropriate to set aside the impugned order dated 27.04.2022 passed by the respondent No.2, confirming and upholding the order dated 07.01.2022 passed by the respondent No.3. The present writ petition is accordingly allowed. With the acceptance of the present writ petition, the respondent No.3 shall proceed to restore the permits of the buses of the petitioner at the earliest. Normal consequences to follow.

07.02.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No