

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

CWP No.12749 of 2018 (O&M)

Date of Reserve: 12.04.2023

Date of Decision: 26.05.2023

Smt. Darshana and others

.....Petitioners

Vs

The Secretary, Regional Transport Authority and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Lekh Raj Sharma, Advocate
for the petitioners.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

Mr. Amit Jhanji, Senior Advocate with
Ms. Nikita Garg, Advocate
for the respondents No.4 to 10.

RAJ MOHAN SINGH, J.

[1]. The petitioners have preferred this writ petition for the issuance of an appropriate writ, order or direction especially in the nature of certiorari, quashing the time table dated 12.04.2018 (Annexure P-11) issued by the respondent No.1 and order dated 11.05.2018 (Annexure P-16) passed by the respondent No.3 upholding the time table dated 12.04.2018.

[2]. The petitioners are the permit holders and are

operating their buses from Gurugram to Bahadurgarh and back under the policy/notification dated 20.01.2004 authorizing the private operators to ply their buses from two major cities namely Gurugram and Faridabad. The petitioners are holding route permits from Gurugram to Bahadurgarh. One of the conditions under Section 72(2) of the Act at the time of granting the permits was that the vehicle would be operated as per the time table and the same could be altered only after giving notice of 30 days to the stakeholders. The petitioners are having trips from Gurugram and Bahadurgarh. There are 14 operators on this route. Out of which, 7 operators used to start their journey from Gurugram and whereas remaining 7 operators used to start their journey from Bahadurgarh and vice versa. This practice was being followed from the very inception of the permit. Under the aforesaid policy, 14 permits were issued to the petitioners and other similarly situated operators on Gurugram to Bahadurgarh route and were also provided time table for the operation of their buses on the routes but they were not allowed to enter their buses in the bus stand and their permits were not renewed. The applications for renewal were kept pending.

[3]. The petitioners filed Civil Writ Petition in the High Court for renewal of their permits in which the stand was taken by the respondents that the permits cannot be renewed in the light of

condition No.16(1) of the permit as the petitioners had failed to deposit the *Adda* fee. The said condition of the respondents were refuted by the petitioners on the ground that the *Adda* fee can only be charged in case the petitioners have availed the facilities and amenities available to them on the bus stand. The petitioners had been requesting the respondent No.1 to allot the counter time for the buses of the petitioners and also to avail services of the bus stand but that never happened.

[4]. The High Court vide order dated 20.04.2015 directed the official respondents to decide the application moved by the petitioners. Ultimately the respondent No.1 rejected the applications of the petitioners for renewal of the permits vide order dated 22.05.2015. The petitioners filed statutory appeals before the respondent No.3. During pendency of the appeals, the State Transport Appellate Tribunal (District Judge) Ambala appointed a local Commissioner in order to ascertain the factual position i.e. whether the private operators were allowed to enter into the bus stand or not. The local Commissioner submitting the findings/report in favour of the petitioners. In view of report of the local Commissioner, the stand of the respondent/State was found to be false. Rather the appellate Tribunal went up to observe that the official respondents have committed perjury for misleading the Court instead of coming to the Court with clean

hands. The grounds for rejecting the renewal of the permits i.e. non-payment of *Adda* fee was held to be illegal and unsustainable in law. The appeals were allowed. The official respondents were directed to consider the applications for renewal of permits afresh on their respective routes. Till the fresh orders were to be passed, the petitioners were allowed to ply their vehicles on old permits provided they fulfill other conditions except *Adda* fee. Ultimately, the permits were renewed. The time table was never in issue at that time. The appeals were allowed vide order dated 21.04.2016.

[5]. The aforesaid order dated 21.04.2016 passed by the State Transport Appellate Tribunal (District Judge) Ambala was assailed by the respondent/State in CWP No.18493 of 2016 and the writ petition was dismissed vide order dated 22.12.2016. It was observed that the private buses were granted booth time and were not allowed to enter their buses in the bus stand, therefore, refusal to renew the permits on the ground of non-payment of *Adda* fee was not justified. The issue of renewal of permits without payment of *Adda* fee ultimately culminated at that stage and the permits were renewed.

[6]. Thereafter, the petitioners got issued a legal notice to the respondent No.1 allowing the buses of the petitioner to enter

in the bus stand and allow them the counter/booth time table subject to payment of *Adda* fee. The petitioners with reference to their valid permits granted to them under the City Bus Scheme, 2004 submitted that forcing them to ply their vehicles out of the bus stand was in violation of the conditions of the permit and also against the interest of the travelling public. The petitioners also showed their willingness to pay the *Adda* fee provided the petitioners are given booth time by making provision in time table.

[7]. The grievance as projected in the aforesaid legal notice was that the petitioners were not provided time table from the bus stand rather they were forced to ply their vehicles out of the bus stand which was in violation of the conditions of the permit and also against the interest of the public. The buses were categorized A, B, C & D under the Haryana Motor Vehicles Rules, 1993 and under the Rules one operator was supposed to start his journey from the counter within the bus stand but the said counter was not provided with reference to any time table, rather they were forced to pick and drop the passengers out of the bus stand at the risk of the general public in violation of the rules. It was requested to provide time table from/within the bus stand. Due to inaction on behalf of the official respondents, the petitioner had to file CWP No.6923 of 2017 which was disposed

of by the High Court vide order dated 03.04.2017 by directing the respondent No.1 to consider the legal notice of the petitioner within a period of two months by passing a speaking order. Thereafter COCP No.2787 of 2017 was also filed in view of the non-compliance of the order dated 03.04.2017.

[8]. The said contempt petition was disposed of vide order dated 28.09.2017 on the statement made by learned State counsel that immediate steps shall be taken to pass a speaking order in terms of the directions issued by the High Court. Thereafter the respondent No.1 issued letter No.198-213 dated 13.02.2018 to the General Manager, Haryana State Transport, Gurugram, General Manager, Haryana Transport, Jhajjar (Bahadurgrah) and City Bus Permit Holder (Gurugram-Bahadurgarh route) in respect of temporary time table. The aforesaid letter was issued in the purported compliance of the order passed by the High Court. In CWP No.23266 of 2016 titled '*Surender Kumar and others vs. Transport Commissioner and others*'. The meeting was held on 23.01.2018 and a draft of temporary time table of City Bus Permit on the route from Gurugram to Bahadurgarh was prepared. The objections were invited against the time table within the specified period. The objections were filed by the petitioners on the premise that all the stakeholders were not invited for the meeting. The official

respondents had issued draft time table on 13.02.2018 and already existing time table was changed detrimental to the interest of the operators. Earlier, the bus operators were plying their buses from Bahadurgarh in the morning and with the new draft permit, the operation of the buses have been changed vice versa i.e. starting from the Gurugram.

[9]. The grievance of the petitioner was that there was no such direction to change the existing time table. The only issue was that the petitioners were not allowed to operate their buses from/within the bus stand for want of *Adda* fee. They were allowed to operate their buses outside the bus stand according to the schedule of timing and trips. The petitioners also pointed out that change in the timings of the time table was on account of collusive affair of the Department with the other stakeholders and that was done without the consent of the petitioner. In the changed time table, the timings were materially changed in order to harass the petitioners. The petitioners were uprooted by way of clubbing done in the temporary joint time table for the buses from Gurugram to Bahadurgarh. The stand of the petitioners was that the time table framed in the year 2006 should remain intact as there was no objection to it from any concerned quarter nor was any addition of any permit on the route nor any objection field by any of the stakeholders including

the public at large.

[10]. On 12.04.2018, the respondent No.1 framed another time table by way of clubbing and changed the time table which according to the petitioners was on account of giving undue benefit to the private operators belonging to the opposite faction. The new time table dated 12.04.2018 was implemented on 16.04.2018. The petitioners filed appeal against the aforesaid new time table on the ground that the time table dated 18.08.2006 was unnecessarily disturbed and the time table dated 12.04.2018 implemented on 16.04.2018 was on account of extraneous considerations just to favour the other private operators particularly when neither any service was added or deleted on the routes and there was no material change in terms of any objection having been received for the change of the time table. The appeal was rejected by the State Transport Appellate Authority, Ambala vide order dated 11.05.2018 by observing that the entire procedure was followed after the directions of the High Court. The Tribunal also observed that the original time table was issued on 28.04.2006 which was superseded by another time table dated 15.04.2013 and the buses were being plied as per the time table dated 15.04.2013. Since the permits of the petitioners were not renewed on the ground of non-payment of *Adda* fee and the same were

ultimately renewed on filing an appeal before the State Transport Appellate Tribunal (District Judge) Ambala and its judgment dated 21.04.2016, therefore, due procedure was adopted and the petitioners have no grievance thereafter.

[11]. Learned counsel for the petitioners vehemently argued that the process for the change of time table was started only under the alleged directions from the High Court which was never given in the context of change of time table rather the same was in respect of not allowing the buses of the petitioners to enter the bus stand for want of *Adda* fee. The grievance of the petitioner was that there was no change in the configuration on the routes on which the buses of the petitioner were being plied. There was no objection by the public at large, in such circumstances the change effected in the time table was on account of *mala fide*. There was no demand for the change in time table from any quarter and it was done only under the grab of the order which was never passed by the High Court in the context of change in the time table, rather the same was in the context of permitting the buses of the petitioners to be operated from the bus stand itself.

[12]. Learned counsel for the petitioner with reference to **Sushil Kumar Panigrai vs. Commissioner-cum-Chairman**

STA & Others, 2000 AIR (Orissa) 113 DB; Biplandas & Others vs. State of West Bengal and others, 2008 AIR (Calcutta) 17 DB and **Krishnnan Kutti vs. John, 1992(2) KLT 883 DB** submitted that framing of time table should be in the interest of travelling public and it should be when there is a real clash between the rival operators and in such situation permit holders should be given option to file objections to the timings when the objecting operators have common portion covering substantial portion of each other. The administrative order in question has civil consequence and, therefore, rules of natural justice ought to have been followed. The respondent No.1 can revise the time table and this power lies with the respondent No.1.

[13]. The respondent No.1 can revise the timings from time to time as per Rule 212 of the Motor Vehicles Rules, 1989. The timings once fixed can be changed or varied any number of times but the words “from time to time” means “as occasion may arise”. As per judicial dictionary (Black's Law Dictionary) it gives the meaning “occasionally, at intervals, now and then”. Evidently for revising the timings/time table an occasion should arise and it can be so only when there is a change or alteration in the situation or circumstances. The order fixing the timings of the stage carriage cannot be altered or changed at the whims and

fancies of the statutory authority under Rule 212 of the Motor Vehicles Rules, 1989 in the absence of any such change or alteration in the situation and circumstances. Though the authority lies with the respondent No.1 but the jurisdiction ought to have been exercised only when there is a change or alteration in the situation and circumstances.

[14]. Learned counsel for the petitioners vehemently submitted that there was no such change or alteration in the circumstances except a prayer in respect of allowing the vehicles of the petitioners to enter in the bus stand without payment of *Adda* fee. There was no such direction issued by the High Court in respect of change in the time table. The petitioners were operating their buses not from the counter but from outside the bus stand as per time schedule and number of trips. The provision of counter time with reference to new time table would impede the public interest and the interest of the stakeholders particularly when there was no such change in the circumstances. This exercise would render the Rule 212 of the Motor Vehicles Rules, 1989 nugatory and it would clothe the statutory authority with unbridled and unguided power to effect change in the time table on arbitrary note without any reason. This exercise would be unfair and would be violative of the Article 14 of the Constitution of India. The interpretation of

words “from time to time” would definitely cause material prejudice to the petitioners and the general public. The statutory authority can act only, if any ground or reason exists for the revision of the time table and that too in altered or changed situation or circumstances or by emergence of new state of affairs which did not exist when the earlier time table was fixed. Mere affixation of notification on the notice board does not constitute opportunity to file objections within the proviso to Rule 212(3) of the Motor Vehicles Rules, 1989. Even if the parties were known to the respondent No.1, there was no difficulty in giving them the personal notice. In such eventuality, the service of personal notices was *sine qua non* before effecting the change in the time table.

[15]. Per contra, learned State counsel and learned Senior counsel for the respondents No.4 to 10 by relying upon **Sujit Kumar Mondal & Anr. vs. State of West Bengal & Ors., 2017 SCC Online Cal 18187; Mahendra Gupta and another vs. State of M.P. and others, 2015(3) MPLJ 684; CWP No.25723 of 2017** titled '**The Shivani Bolan Cooperative Transport Society Ltd. & Another decided** on 15.11.2017 and **Sardar Madan Mohan Singh vs. Regional Transport Authority, Kanpur Region and Regional Transport Officer, Kanpur, 1958 All. LJ 894** submitted that the time table once framed

cannot be supposed to be in existence till perpetuity. The time table cannot be issued for the entire validity of the permit. The time tables are ordinarily issued provisionally so that interests of the operators in the field are not effected by reason of clash of timing. If there is a common route for the operators then racing of the vehicles and clash of timing is inevitable. In order to stop such a situation, the interests of the travelling public and all the stakeholders is of paramount consideration. The convenience of the travelling public has to be considered as the paramount consideration keeping in view the advantage of saving time. The journey is not broken in between. For framing the new time table, the representation of association representing the interest of travelling public, i.e. i) Local Bodies, ii) Local authorities, iii) District Advisory Committee and iv) Police authority are required to be taken into consideration while fixing the time table/timings. The timings can only be changed in the public interest and not on the asking of the operators. The management of the bus stand is a very intricate and dynamic process. Without knowing the ground realities, no interference is possible. The respondent No.1 is a quasi-judicial authority. The respondent No.1 has to act on well settled principles.

[16]. Learned State counsel further submitted that out of 14 operators, only the petitioners have come forward to agitate

against the new timings and the rest of the operators have admitted being satisfied.

[17]. Having considered the issue in question, I find that there cannot be a dispute regarding the legal proposition as espoused by both the parties with reference to the case laws. Evidently, the issue before the Tribunal was in respect of making provision for the buses of the petitioners to enter in the bus stand without payment of *Adda* fee and renewal of the route permits. After having done so, the petitioners were to be accommodated on the bus counter as per the time table prevailing at that time. It was to be ascertained whether there was a material change/alteration at the time when the permits of the petitioners were renewed.

[18]. The grievance of the petitioners is only to the effect that the change in the existing time table was effected solely on the basis of alleged directions issued by the High Court. In fact there was no such direction issued by the High Court in the context of change in the time table after allowing the buses of the petitioners to enter in the bus stand and after renewal of their permits without payment of *Adda* fee. The petitioners have pleaded a case of *mala fide* that under the decision of allowing the buses of the petitioner to enter in the bus stand after

renewal of their permits without payment of *Adda* fee, their timings have been materially changed without there being any change/alteration in the situation or circumstances. The power of revision has been exercised by the respondent No.1 without there being any occasion and, therefore, the words “from time to time” have been misused as the same ought to have been taken notice of at an appropriate occasion which may arise at intervals. The revision of time table could have been done only when occasion should arise and that too only when there is a change or alteration in the situation or circumstances. Without anything more, the order fixing the timings of the stage carriage cannot be altered or changed at the *ipse dixit* of the statutory authority under Rule 212 of the Motor Vehicles Rules, 1989.

[19]. Perusal of the entire record would indicate that there is no material available on record whether the original time table dated 28.08.2006 was in operation or the same was superseded by new time table dated 15.04.2013. Even if the new time table was not placed, the change ultimately effected on 12.04.2018 has to be revisited on the definite parameters i.e. whether there was any material change in the circumstances? Whether there was any undue race/broken in journey, or clash of time? The new time table must correspond to the situation where clubbing becomes inevitable. In any case, the framing of new time table

has to be revisited in the light of the fact that there was no such direction by the High Court in respect of framing of new time table. The only direction was to allow the buses of the petitioners in the bus stand after renewal of the permits without payment of *Adda* fee.

[20]. The time schedule was very much in existence on which the petitioner were plying their vehicles from the outside of bus stand. The only requirement was to allow them to have counter time strictly in accordance with the time schedule available to them. It is true that the power to issue time table lies within the jurisdiction of the respondent No.1. There is no provision in the Motor Vehicles Act, 1988 or Rules framed thereunder to frame a time table for the entire duration of validity of permit issued in favour of the transport operators but at the same time, the jurisdiction has to be exercised by the respondent No.1 strictly within the parameters, where due to overlapping timings, racing and clash of time become inevitable for effecting the new time table. The convenience of the travelling public should be considered as a paramount consideration, keeping in view the advantage of saving time and for that representation of the association representing the interest of travelling public, Local Bodies, Local authorities, District Advisory Committee and Police authority should be

taken into consideration while fixing the time table.

[21]. The parameters for effecting change in the time table ought to have been considered when there was a change or alteration in the circumstances. The respondent No.1 has absolute power to revise the time table/timings from time to time under Rule 212 of the Motor Vehicles Rules, 1989. The words “from time to time” have specific background in the light of the fact that these words are not ordinary words, rather the competent authority under obligation revise the time table when occasion should arise and that can only be when there is a change or alteration in the situation or circumstances. In the absence of any such circumstances, the respondent No.1 ought to have refrained from exercising such power in order to rule out any such instinct of *mala fide*.

[22]. At this stage, this Court is not in a position to give any specific opinion as regards the validity of change effected in the time table in view of the rival claims made by the parties, but in any case the decision as regards framing of the new time table has to be taken by the respondent No.1 in the exercise of powers given under Rule 212 of the Motor Vehicles Act, 1989 only after appreciating the situation arising out of changed circumstances (if any) and that too after inviting objections from

all the stakeholders including the representation of association representing the interest of travelling public, i.e. Local Bodies, Local authorities, District Advisory Committee, (if any working) and the Police authority.

[23]. In view of above, this writ petition is disposed of by diluting the rigour of the impugned orders on record. The case is remanded back to the respondent No.1 to initiate the proceedings of new time table on the definite parameters as enumerated hereinabove in the preceding paras. The competent authority/respondent No.1 would be under legal obligation to strictly abide by the requirement of the statute in effecting the change within its jurisdiction. The final decision be taken in the aforesaid context within a period of three months from the date of receipt of certified copy of this order.

[24]. All pending civil misc. applications, if any, are also disposed of accordingly.

May 26, 2023	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No