

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.653 of 2014

1. M/s Manish Travels, through its Proprietor, Manish Kumar Jain, S/o Shri Bhagchand Jain, aged about 40 years, R/o New Bus Stand, Durg, Tahsil and District Durg (C.G.)
2. M/s Payal Travels, through its Partner, Swaroop Chand Jain, S/o Shri Gheesulal Jain, aged about 41 years, R/o Sadar Bazar, Durg, Tahsil and District Durg (C.G.)

(Respondents)
---- Petitioners

Versus

1. Regional Transport Authority, Bastar place Jagdalpur (C.G.)
2. Rafiq Ahmad Siddiqui, S/o Late M. Barik Siddiqui, R/o Rajatalab, Raipur (C.G.)

(Respondent)
(Revisionist)
---- Respondents

Writ Petition (Art. 227) No.654 of 2014

1. M/s Manish Travels, through its Proprietor, Manish Kumar Jain, S/o Shri Bhagchand Jain, aged about 40 years, R/o New Bus Stand, Durg, Tahsil and District Durg (C.G.)
2. M/s Payal Travels, through its Partner, Swaroop Chand Jain, S/o Shri Gheesulal Jain, aged about 41 years, R/o Sadar Bazar, Durg, Tahsil and District Durg (C.G.)

(Respondents)
---- Petitioners

Versus

1. Regional Transport Authority, Bastar place Jagdalpur (C.G.)
2. Shakil Ahmad Siddiqui, S/o Late M. Barik Siddiqui, R/o Rajatalab, Raipur (C.G.)
3. Avtar Singh, Bus Operator, New Bus Stand, Raipur (C.G.)

(Respondent)
---- Respondents

AND

Writ Petition (Art. 227) No.655 of 2014

1. M/s Manish Travels, through its Proprietor, Manish Kumar Jain, S/o Shri Bhagchand Jain, aged about 40 years, R/o New Bus Stand, Durg, Tahsil and District Durg (C.G.)
2. M/s Payal Travels, through its Partner, Swaroop Chand Jain, S/o Shri Gheesulal Jain, aged about 41 years, R/o Sadar Bazar, Durg, Tahsil and District Durg (C.G.)

(Respondents)
---- Petitioners

Versus

1. Regional Transport Authority, Bastar place Jagdalpur (C.G.)
(Respondent)
2. Kanker Roadways, through Managing Partner, Shri Pritam Singh Garcha, Civil Line, Raipur (C.G.)
(Revisionist)
3. Vasan Singh, Bus Operator, New Bus Stand, Raipur (C.G.)
(Respondent)
4. Smt. Kamaljeet Kaur, Bus Operator, New Bus Stand, Raipur (C.G.)
(Respondent)
---- Respondents

For Petitioners: Mr. Ajay Shrivastava, Advocate.

For State/Respondent No.1: -

Mr. Ashish Surana, Panel Lawyer.

For Respondent No.2: -

Mr. Shailendra Kumar Bajpai and Mr. Sudeep Johri,
Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/08/2018

1. Since common question of law and fact is involved in these writ petitions, they are heard analogously and are being decided by this common order.

(For the sake of convenience, W.P. (Art. 227) No.653/2014 is taken as lead case.)

2. Respondent No.2 had made an application for grant of stage carriage permit in a route from Rajnandgaon to Bailadila via Durg, Raipur, Abhanpur, Dhamtari, Kanker, Kondagaon and Jagdalpur, which was

rejected by the learned Regional Transport Authority by order dated 17-7-2009; questioning that order, the said respondent preferred an appeal before the State Transport Appellate Tribunal (STAT) and the STAT by order dated 9-3-2011 allowed the appeal holding that the Regional Transport Authority has no jurisdiction to fix the time limit for frequency of buses. Questioning that order, the petitioners herein preferred writ petition before this Court bearing W.P. (Art. 227) No.2284/2011, that was granted by this Court by order dated 25-4-2013 and directed the STAT to consider the application afresh in light of Section 71 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988') against which respondent No.2 herein preferred special leave to appeal before the Supreme Court of India. The Supreme Court of India dismissed the special leave to appeal, however, allowed the operation of vehicles till the disposal of matter by the STAT. Now, the STAT by its impugned order again held that the State Government has not promulgated any rules fixing time limit for grant of permit between the two buses and upheld the stage carriage permit granted to respondent No.2 by the Regional Transport Authority on 21-4-2016. Assailing legality, validity and correctness of that order, the instant writ petitions have been preferred by the petitioners herein in which return and rejoinder have been filed by the parties.

3. Mr. Ajay Shrivastava, learned counsel appearing for the petitioners, submits that the order passed by the STAT runs contrary to the order of the High Court remanding the matter to the STAT, as such, the orders dated 9-12-2005 and 19-12-2005 passed by the Regional Transport Authority are binding upon the parties and therefore time limit can be fixed for grant of permits in respect of two buses in a given route. In the circumstances, the impugned order deserves to be set

aside.

4. Mr. Ashish Surana, learned Panel Lawyer appearing for the State/ respondent No.1, submits that no notification has been issued by the State Government prescribing the time limit for grant of stage carriage permit for two vehicles in a particular route as it has been done away with under the Act of 1988.
5. Mr. Shailendra Kumar Bajpai and Mr. Sudeep Johri, learned counsel appearing for respondent No.2, would also take the stand of the State Government and support the impugned order.
6. I have heard learned counsel for the parties and considered their rival submissions and went through the records with utmost circumspection.
7. Undisputedly, the application of respondent No.2 was rejected by the Regional Transport Authority relying upon the orders dated 9-12-2005 and 19-12-2005 fixing the time limit of minimum 15 minutes for grant of stage carriage permit for a route which was reversed by the STAT which this Court had set aside and remitted the matters to the STAT which was assailed in the Supreme Court. The Supreme Court upholding the order of this Court allowed the operation of vehicles till the order of the STAT and after the order passed by the Supreme Court, again the STAT has taken view that under Section 72(2)(v) of the Act of 1988, the Regional Transport Authority at the time of granting stage carriage permit has jurisdiction to impose a condition attach to the permit that the stage carriage shall be operated within such margins of deviation from the approved time-table as specified by the said authority and further held that there is no such notification by the State Government prescribing time limit between the two vehicles in a particular route.

8. At this stage, it would be appropriate to the notice the provisions of Section 47(3) of the Motor Vehicles Act, 1939 which clearly gives jurisdiction to the Regional Transport Authority to limit the number of stage carriage permits generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region. Section 47(3) of the Motor Vehicles Act, 1939 provides as under: -

“(3) A Regional Transport Authority, may having regard to the matters mentioned in sub-section (1), limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or any specified route within region.”

9. The Motor Vehicles Act, 1939 has been repealed with effect from 1st July, 1989 and Section 71(3)(a) of the Act of 1988 has been inserted which states as under: -

“(3) (a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.”

10. A careful perusal of the aforesaid provision would show that the State Government is empowered if directed by the Central Government to notify in the Official Gazette, to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs. As such, no power has been even conferred to the State Government or to the Regional Transport Authority to limit the number of stage carriage permits on regional or inter-regional routes.

11. The Supreme Court in the matter of Mithilesh Garg, etc. etc. v. Union of India and others etc. etc.¹ noticed the amendment made in the Motor Vehicles Act, 1988, particularly repeal of Section 47(3) of the Motor Vehicles Act, 1939 and insertion of Section 71(3)(a) of the Act of 1988, and clearly held that under the Act of 1988, though a provision has been incorporated in the shape of Section 71(3)(a), number of stage carriage permits can be fixed and as such, no limit for grant of stage carriage permits can be fixed under the Act of 1988. Their Lordships observed as under: -

“6. The Parliament in its wisdom has completely effaced the above features. The scheme envisaged under Sections 47 and 57 of the old Act has been completely done away with by the Act. The right of existing-operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of bringing in the Act was to liberalise the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalisation, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision under Section 71(3) (a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs.”

12. Following the principle of law laid down by the Supreme Court in Mithilesh Garg (supra), a Division Bench of the Allahabad High Court in the matter of Smt. Munni Devi and others v. Regional Transport Authority and another² has clearly held that fixing of limit of stage carriage permit to certain number by the Regional Transport Authority under Section 71 of the Act of 1988 is clearly impermissible and it has

1 AIR 1992 SC 443

2 AIR 1995 Allahabad 330

been held as under: -

“3. Sub-section (3) of Section 47 of the Motor Vehicles Act, 1939 (hereinafter referred to as the old Act) provided for fixation of the limits before grant of stage carriage permit. However, in Motor Vehicles Act 1988 (herein after referred to as the new Act), whereby old Act has been repealed, there is no such provision providing for fixation of limits for grant of stage carriage permit, except in respect of city routes in towns with a population of not less than five lacs. Supreme Court in *Mithilesh Garg. v. Union of India*, AIR 1992 SC 443 : (1991 All. LJ 1167) has, in this connection, also laid down that under the new Act the authorities cannot fix limit for grant of permit. In Writ Petition No. 36761 of 1994, *Shamom Haider v. R.T.A.* decided today, we have held that it is not open to the R.T.A. to fix limits for grant of permits. We have also held that R.T.A. cannot grant permits on the basis of "first come first serve" principle. It has to apply its mind to each applicant for permit and thereafter grant permits to the suitable persons. Regional Transport Authority was, therefore, not justified to fix limit for grant of permit on the route. The order of R.T.A. fixing limit for grant of permit, as such, cannot be sustained.”

13. Reverting to the facts of the present case, it appears that no notification has been issued by the State Government even exercising the power under Section 71(3) of the Act of 1988 restricting the stage carriage permits operating on city route in town with a population of not less than five lakhs, yet the Regional Transport Authority has fixed the time limit of 15 minutes for grant of permit from Raipur to Jagdalpur area in which the route in question is included. In absence of enabling provision contained in the Act of 1988, particularly in view of the fact that there is no such similar provision like Section 47(3) of the Motor Vehicles Act, 1939 in the Act of 1988 which has been noticed by the Supreme Court in Mithilesh Garg (supra) and by the Allahabad High Court in Smt. Munni Devi (supra) for limiting the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region, in my considered opinion in absence of such a jurisdiction / authority, the learned Regional Transport Authority is absolutely unjustified in prescribing

time limit for grant of stage carriages in the route – Raipur to Jagdalpur and as such, the learned STAT is absolutely justified in holding that there is no such time limit prescribed by the State Government by any rules or notification for grant of stage carriage permit. The order of the STAT is strictly in accordance with law and as such, I do not find any merit in the batch of writ petitions. The writ petitions deserve to be and are accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.653 of 2014

M/s Manish Travels and another

Versus

Regional Transport Authority and another
and two other connected cases

Head Note

Under Section 71(3)(a) of the Motor Vehicles Act, 1988, Regional Transport Authority has no jurisdiction to fix limit for grant of stage carriage permits.

मोटर यान अधिनियम, 1988 की धारा 71(3)(क) के अन्तर्गत क्षेत्रीय परिवहन प्राधिकरण के पास 'स्टेज कैरेज' (मंजिली यात्री गाडी) अनुमति प्रदान करने की सीमा निर्धारित करने का क्षेत्राधिकार नहीं है।

