

Anil Kumar Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-17-1995

Reported in : AIR1996Raj16; 1997(1)WLC482; 1995(1)WLN504

Judge : N.K. Jain, J.

Acts : [Constitution of India](#) - Article 226; [Motor Vehicles Act, 1988](#) - Sections 72

Appeal No. : S.B.C. Writ Petn. No. 5212/94

Appellant : Anil Kumar

Respondent : State of Rajasthan and ors.

Advocate for Def. : R.N. Munshi and; S.P. Arora, Advs.

Advocate for Pet/Ap. : B.L. Maheshwari, Adv.; Vineet Kothari, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

N.K. Jain, J.

1. By this writ petition, the petitioner seeks to quash the impugned orderdt. 17-10-1994 passed by the R.T.A., Bikaner Region, Bikaner whereby the stage carriage permits have been granted to the non-petitioners Nos. 3 to 12. It has been prayed

that the non-petitioners be restrained from plying their vehicle on the impugned inter-statal route.

2. This Court while issuing notice on 28-11-1994, ordered that the non-petitioners shall not ply vehicle on the route which is inter-State till the permit is counter-signed by the corresponding State.

3. In pursuance to the notice, reply to the writ petition has been filed on 13-1-1995 with Anx. R/7/1. The petitioner filed rejoinder dt. 5-2-95. In counter the respondent No. 7 filed reply to the rejoinder along with the documents Anxs. R/7/2 to 7/5 on 13-3-1995. The petitioner also moved application for amendment under Article 226 read with Order 6, Rule 17, C.P.C. and also moved application for deleting the name of non-petitioner No. 7. The application for amendment has been opposed by the respondents. However, the application for deleting the name of respondent No. 7 has already been allowed.

4. As agreed by the learned counsel for the parties, the matter is heard finally.

5. Learned counsel for the respondents have raised preliminary objections about the maintainability of the writ petition. They have contended that the petitioner who alleged to be the operator on the inter-statal route from Hanumangarh to Thalerka which is being over-lapped in its portion Hanumangarh to Elnabad route, cannot maintain this writ petition as he is not even a permit holder as per the per-emptory condition since he has not replaced the vehicle within two months. They have also contended that the petitioner has not filed earlier resolution dt. 5-12-1991 granting permits to other persons including his brother Ashok Kumar and he has also not challenged those grants, so now he cannot challenge the impugned order. They have further contended that the petitioner has not even filed the resolution and the impugned order challenged in this writ petition and, therefore, the petitioner cannot maintain this writ petition. It has been contended that the petitioner has alternative remedy which should be availed first but the petitioner has approached directly to this Court. It has been lastly contended that the vehicle on the basis of which the petitioner obtained permit has already been transferred by him in favour of his brother, therefore, the petitioner stopped from challenging the grant due to his conduct and on this count also the petitioner cannot maintain this writ petition

particularly, when the petitioner is a private operator. Reliance has been placed on *RSRTC, Jaipur v. RTA, Bikaner* (D.B.C.W. Petition No. 2947/87) decided on 8-9-1988, *Ghanshyam Lal Kabra v. The State Transport Appellate Tribunal and others*. SBCW Petition No. 1079/91) decided on 24-7-91 and *Charanjit v. RTA, Bikaner*, AIR 1993 Raj 134 and *Surinder Singh v. Central Government* (AIR 1986 SC 2166).

6. Mr. Maheshwari, learned counsel for the petitioner has submitted that the decision of this Court rendered in *Charanjit's case*, AIR 1993 Raj 134 (supra) is not applicable as the petitioner holds a permit and he being an aggrieved party, due to overlapping of his route, can very well challenge the grant of permit. He has urged that the impugned resolution being illegal can be challenged in this writ petition and alternative remedy is no bar. He has also submitted that the route of the petitioner overlaps only 10 Kms. from Hanumangarh to Shergarh. He has further urged that the impugned order dt. 17-10-1994 may be set aside.

7. I have heard learned counsel for the parties and perused the material on record as well as the case law cited at Bar.

8. At the very outset it may be stated that it is not necessary to discuss the case law cited at Bar as the principle enunciated is not in dispute. It is settled law that a writ petition cannot be thrown out merely on the ground of availability of alternative remedy and one can approach this Court under Article 226 provided the order impugned is per se illegal and without jurisdiction. It is also settled that the order which is sought to be quashed should also be filed. It is also well settled that disputed questions of fact which need investigation cannot be decided in the writ jurisdiction. There cannot be any dispute that on the existing inter-State route RTA can grant permit over and above ceiling limit but such grant will be subject to counter signature by the competent authority of the other State. It is also true that no permit could be granted to a private operator on the notified area or a portion thereof except to the extent excluded under the Scheme itself. On existing inter-State route permits can be granted within the corridor condition i.e. on 10 Kms. At the same time if a person is plying vehicle on the route which overlaps the notified route, he cannot raise any grievance against the grant of permits in favour of

others. The aggrieved party against such grant is only RSRTC and no private operator can challenge the grant of permit on a portion of the notified route or a route under the draft scheme.

9. Now the case is to be examined in the light of the aforesaid legal situation and it is to be seen whether the permits granted to the non-petitioners Nos. 3 to 12 are per se illegal and without jurisdiction and what relief under the facts of the given case can be granted.

10. So far as the argument of Mr. Maheshwari that each case depends upon the facts of its own is concerned, the same is correct and it has rightly not been disputed by counsel for the respondents.

11. Admittedly, the petitioner filed the writ petition without filing the impugned order dt. 17-10-1994 which has been sought to be quashed by this Court under Article 226, which is a condition precedent as in the absence of the impugned order it is not possible to ascertain the reasons which may have impelled the authority to pass the order. Therefore, it would not be proper for this Court to quash an order in the extraordinary jurisdiction, which is not produced. Reference may be made to a decision of their lordships of the Supreme Court rendered in Surinder Singh v. Central Government, AIR 1986 SC 2166 (supra). Earlier vide order dt. 5-12-1991, the RTA Bikaner granted 8 non-temporary stage carriage permits on this very inter-State route Hanumangarh-Elnabad infavour of the RSRTC and the other private operators including the brother of the petitioner. Though the RSRTC has challenged the order dt. 5-12-1991 by way of S.B.C.W. Petition No. 729/1993, but the same has not been challenged by the petitioner. Therefore, the argument of the learned counsel for the respondents that now the petitioner is stopped from challenging the impugned grant made in favour of the non-petitioners Nos. 3 to 12 as the petitioner cannot be allowed to approbate and reprobate at the same time, cannot be brushed aside and the contention has substance. The conduct of a party is to be taken into consideration while exercising extraordinary jurisdiction. Though the maintainability of the writ petition has been questioned on the conduct of the petitioner also as according to the respondents the petitioner did not fulfil the peremptory condition of permanent replacement by another vehicle attached with

the permit granted to the petitioner, he cannot come as aggrieved party as his permit stood revoked and further the vehicle which was covered by the petitioner under his permit held on Hanumangarh-Thalerka route is now covered by the permit granted to his brother Ashok Kumar vide resolution dt. 5-12-1991 on the Hanumangarh to Elnabad route. Be that as it may and in this connection suffice it to say that a separate procedure has been provided under the Act for such acts and it would be appropriate for the respondents to agitate the point before the competent authority.

12. So far as the merits of the case is concerned, the petitioner has filed order dt. 5-12-1991 (Anx. 3) to show that the portion of Hanumangarh to Elnabad inter-State route from Hanumangarh to Shergarh is a portion of the Hanumangarh to Rawatsar via Shergarh notified route of total exclusion in a length of 14 Kms. It has been submitted that under the provisions of the approved and notified scheme dt. 13-8-1976 for the said route no private person was permitted to overlap the said notified Hanumangarh to Rawatsar route but thereafter all such schemes of total exclusion came to be modified by the State of Rajasthan and according to the modified notified scheme dt. 12-4-1979 the overlapping of the notified route not exceeding in any case 10 Kms. has been permitted and that too under certain special conditions incorporated therein. The petitioner who is alleged to be a holder of permit on Hanumangarh to Thalerka route and plying his Bus from Hanumangarh and while reaching Shergarh he comes via Nathawali, Gurusar and Kishanpura. According to him for the respondents the length of route from Hanumangarh to Shergarh is 14 Kms. The petitioner has not been able to show how the maximum limit of 10 Kms. does not come in his way to reach up to Shergarh and he has not established that how the distance of Hanumangarh to Shergarh, the overlapping route is only 10 Kms. for him. According to the petitioner in the Circulation Note dt. 30-11-1991 as against the column overlapping of the notified route/scheme 'yes', Hanumangarh to Shergarh nearly 14 Kms. This position has been disputed by the opposite side stating that in the Circular dt. 5-12-1991 itself at page 3 (Res. No. 3256/30-11-1991) permits were granted considering the length of overlapping portion of the nationalised route after leaving municipal limits as 10 Kms. Therefore, this writ petition does not call for any interference particularly when the petitioner himself is plying vehicle on the same

route which overlaps a part of the notified route and in view of the decision of this Court rendered in Ghanshyam Kabra v. State, SBCW Petition No. 1079/91, or on 24-7-1991 (supra), which has been given while relying on Division Bench decisions of this Court rendered in D.B.C.W. Petition No. 1862/86 (Prabhatilal v. RTA) and in D.B.C. Special Appeal No. 10/87 (Tara Chand v. RTA, Jaipur), the petitioner cannot challenge the grant of permits to others as he cannot be allowed to approbate and reprobate at the same time, as also being a private operator the petitioner is not an aggrieved person. That apart the writ petition raises a serious disputed question of fact about the length of the overlapping part of the route, and such disputed questions of fact needs investigation which cannot be decided under Article 226. Under these circumstances, I am of the view that in the facts of the given case, the petitioner cannot be granted any relief and the writ petition deserves to be dismissed. Since the writ petition fails, allowing amendment at this stage will not be of any help to the petitioner.

13. No other point was pressed before me.

14. Accordingly, the writ petition has no force and the same is hereby dismissed. The ad interim order dt. 28-11-1994 stands discharged.

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