

(2019) 04 MP CK 0073

**Madhya Pradesh High Court****Case No:** Writ Petition No. 14973 Of 2018

Sheikh Mohd. Anees

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

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**Date of Decision:** April 8, 2019**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 68, 68(2), 88(3), 88(4), 90
- Constitution Of India, 1950 - Article 14, 19, 19(1)(g), 32, 226

**Hon'ble Judges:** Atul Sreedharan, J**Bench:** Single Bench**Advocate:** H.C. Kohli, Brijesh Dubey, Shashank Shekhar, Samdarshi Tiwari, Subodh Pandey, Kapil Duggal**Final Decision:** Dismissed

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**Judgement**

1. This case has been filed by the Petitioner challenging the order dated 17/07/17, passed by the Respondent No.4 Mr. Ajay Gupta, holding the additional charge of Deputy Transport Commissioner Cum Regional Transport Authority for Jabalpur region. By the said order, the Respondent No. 4 has granted permanent permit to the Respondent No.5 for a period of five years on the route Udaipura to Gadarwara, without calling for objections and granting an opportunity of hearing to the Petitioner and the other route operators to oppose the grant of permit to the Respondent No.5. It is undisputed that the Petitioner have never preferred a revision u/s. 90 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"), against the impugned order and have directly approached this Court to invoke its plenary powers under Article 226 of the Constitution and quash the

impugned order dated 17/07/17, passed by the Respondent No.4. The main challenge in the petition is to the appointment of the Respondent No. 4 on the post of Deputy Transport Commissioner Cum Regional Transport Authority, the same, according to the Petitioner, being legally invalid.

Consequently, all the permits issued by the Respondent No.4 in such capacity are also challenged as being illegal. In other word, the petition is in

effect one seeking a writ of Quo Warranto, but the prayer is for the issuance of a Writ of Certiorari.

2. Vide order dated 13/07/18, this Court had stayed the operation of the impugned order till the next date of hearing. During the course of hearing on

18/02/19, this Court had asked the Ld. Counsel for the Petitioner if the Petitioner has filed the case as a "person aggrieved" or "pro bono

publico" to which the Ld. Counsel categorically stated that the Petitioner is a person aggrieved. However, as there was no categorical averment in

the petition as to how the Petitioner was a person aggrieved, time was taken to move an application for amending the plaint. On the same day, I.A No.

832/2019 filed by the State for vacation of the ad-interim stay granted by this Court vide order dated 13/07/18, was sought to be decided on account of

the financial loss being caused to the State. After hearing the parties, the ad-interim stay order was vacated and any action taken by the Respondent

No.4 was made subject to the outcome of the petition. Vide order dated 28/02/19, I.A No. 2438/19 moved by the Petitioner for amending the petition

was allowed and the same were incorporated in the petition.

3. On 14/03/19, with the consent of parties, this Court heard arguments from both sides on the question of maintainability of the petition on the grounds

of Locus Standi. Under the circumstances, this Court shall restrict itself to a finding on locus standi in the present order.

4. The brief facts required for the consideration of the Petitioner's locus standi are as follows. The Petitioner states that he is holding permanent

permits issued by the authority concerned and that he is greatly affected by the grant of permanent permit to the Respondent No.5. The crux of the

Petitioner's challenge to the grant of permit to Respondent No.5 is in paragraph 5.3 of the petition where, the Petitioner has averred that section

68(2) of the Act lays down the mandatory qualifications required for the post of Regional Transport Authority which, according to the Petitioner, the

Respondent No. 4 did not possess. Thus, the grant of permit to the Respondent No.5 by the Respondent No.4 has been called into question only on the

ground that the Respondent No.4 was not authorised under the law to issue the permit in favour of the Respondent No.5

5. Thereafter, in view of the order of this Court dated 18/02/19, the Petitioner filed I.A No. 2438/19 for amending the petition in order to insert specific

averments relating to locus standi of the Petitioner to maintain the writ petition. The said application is allowed and the proposed amendment to be

added to the petition after paragraph 5.1 is taken on record and considered. The said proposed amendment reads as hereunder:

“The Petitioner had also filed objections before the RTA which was not considered and permit granted to the Respondent No.5 and therefore he is

a person directly aggrieved by the impugned order and entitled to maintain the present petition. Further by granting various permits by Respondent

No.4 which is not vested with statutory powers would cause irreparable loss for his livelihood and would also affect the Petitioner’s constitutional

right to carry on his trade and business which is in violation of his constitutional rights and therefore also he is an affected person as also person

aggrieved”.

From the amendment which is being considered, the following contentions emerge.

(a) That the Petitioner had filed objections before the RTA which

was not considered and is so, an aggrieved person, (b) as the Respondent No.4 was not vested with authority to issue permits, the permits issued by

him would cause irreparable injury to the livelihood of the Petitioner and (c) the same would also affect the constitutional right of the Petitioner to

carry on his trade and business which would be violative of his constitutional rights, thus making him a person aggrieved.

6. The Ld. Counsel for the Petitioner has argued that, the fact that the Respondent No.4 was not clothed with the authority to issue permits, would

render the permits issued by him null and void ab initio and that the same would affect the right of the Petitioner who also plies his bus on the same

route on which the Respondent No.5 has been given the permit. In other words, the case made out by the Petitioner is that the issuance of permit to

the Respondent No.5 would have the effect eating into the earning of the Petitioner and thereby reduce his margin of profit. This according to the Ld.

Counsel for the Petitioner directly impinges upon the fundamental right of the Petitioner as enshrined under Article 19(1)(g) of the Constitution.

7. The Ld. Counsel for the Petitioner has also argued that once notice is issued and the case is fixed for final hearing, the case cannot be dismissed on

the grounds of maintainability. In support of his contention, the Ld. Counsel for the Petitioner has cited (2002) 5 MPLJ 161, (1992) JLJ 156 and AIR

(1991) SC 1872. The law laid down by the said judgements is that a petition cannot be belatedly thrown out of consideration only on the ground of

maintainability where such petitions have been admitted for final hearing. In the instant case, the case is admittedly at an incipient stage and has not

been admitted for final hearing. Therefore, the norm espoused by the abovesaid cases would not be applicable in the present case and the issue of

maintainability on the grounds of locus standi can very well be looked into by this Court at this stage. In fact, the issue of "locus standi" or

sometimes also referred to simply as "standing" can be looked into even at the stage of final hearing after admission of the petition especially if it

goes to the root of the Petitioner's case. "At the permission stage the court should take a preliminary view as to whether or not the claimant

has standing. If its preliminary view is in the claimant's favour then permission to bring the claim should be granted. The purpose of the permission

requirement is to identify hopeless cases: permission should be refused for want of standing only in circumstances where the lack of sufficient interest

is very clear. Once permission has been granted, the question of standing can then be reconsidered at the full hearing in the light of all the evidence.

There are many examples of cases where the question of standing has been considered at the full hearing only after an extensive discussion of the

merits of the case" Judicial Review, Fifth Edition by Sir Michael Supperstone, James Goudie QC and Sir Paul Walker .

8. The Ld. Counsel for the Petitioner has challenged the authority of the Respondent No.4 to issue permits as his appointment is not in accordance

with section 68 of the Act. The Ld. Counsel for the Petitioner has relied upon the decision of the full bench of the Calcutta High Court Prabhat Pan

and Others Vs. State of West Bengal and Others " AIR 2015 Calcutta 112. The State on the other hand, has relied upon the judgement of the

Supreme Court in Mithilesh Garg and Others Vs. Union of India and Others " (1992) 1 SCC 16,8 in order to impress upon this Court that the

Petitioner lacks the necessary locus standi to sustain the petition.

9. Before this Court embarks upon the question of locus standi of the Petitioner, it is essential to assess the nature of the present writ petition. In this

regard, the averments made by the Petitioner in the amended paragraph 5.6 to 5.9 are relevant. In paragraph 5.6, the Petitioner avers that by order

dated 19/05/15, the Respondent No.4, who was working as the Regional Transport Officer (hereinafter referred to as the "RTO"), was given the

additional charge of Divisional Deputy Transport Commissioner for Jabalpur and Sagar Divisions. This, in the view of the Petitioner was illegal in the

light of the decision of this Court reported in AIR 1973 MP 104 (FB) and order dated 16/02/63 (DB) passed in M.P No. 376/63. According to the

Petitioner, the Respondent No. 4 could not exercise the powers and functions of a statutory post. Allegation has been levelled that the Respondent

No.4 is the "Blue Eyed Person" and so the Respondent transgressed all norms of service jurisprudence and fair play. This next order that has

been called into question by the Petitioner is the order dated 26/08/15 by which, the Respondent No.4 was given a proforma promotion and posted as

Divisional Deputy Transport Commissioner w.r.e.f 01/12/14 and temporarily posted the Respondent No.4 as Divisional Deputy Transport

Commissioner for Jabalpur Division and also gave him additional charge of Divisional Deputy Transport Commissioner for Sagar Division and

Narmadapuram (Hoshangabad). All this, according to the Petitioner, was in violation of the procedure laid down in the Madhya Pradesh Transport

Department (Gazette) Service Recruitment Rules, 2011.

10. In paragraph 5.7 of the petition, the Petitioner has called into question the order dated 15/12/17, by which the Respondent No. 4 has been given the

additional charge of six divisions which according to the Petitioner is contrary to law and also impractical as, according to the Petitioner, the

Respondent No.4 would waste his five days just travelling from one division to another and no effective work can be done by the Respondent No.4.

11. In paragraph 5.8 of the petition, the Petitioner has alleged that by giving the Respondent No.4 the charge of six divisions, the provisions of section

88(3) and (4) of the Act are rendered redundant, as the powers exercised by the Respondent No.4 are illegal and without authority of law. In

paragraph 5.9, the Petitioner states that the order dated 15/12/17 is purely an administrative order as the same has not been notified and therefore it

does not vest the Respondent No.4 with any statutory powers and therefore, all the actions/orders passed by the Respondent No.4 is without

jurisdiction and so liable to be annulled.

12. Thus, from the above averments in the petition which have been condensed herein, challenge has been given to the order dated 15/12/17 by which

the Respondent No.4 has been given the charge of six additional districts. The order dated 17/07/17 passed by the Respondent No.4 by which permit

was granted in favour of the Respondent No.5, is sought to be set aside, not because the permit has been issued in violation of the law, but that the

said permit has been issued by the Respondent No.4 who, according to the Petitioner, was not authorised under the law to issue it. By amendment to

the prayer clause, the Petitioner has also sought the quash of order dated 26/08/15 which gave proforma promotion to the Respondent No.4 and saw

him enter the office of the Divisional Deputy Transport Commissioner for the Jabalpur and Sagar Divisions.

13. Thus, the present petition has in effect questioned the authority of the Respondent No.4 to occupy the aforementioned offices and has challenged

the same. Therefore, the present petition is one in the nature of a Quo Warranto though there is no prayer for the same. The prayer in the writ petition

is for the issuance of a writ in the nature of a writ of Certiorari. The prayer clauses in the petition disclose that the petition essentially relates to a

service matter where the continuation of the Respondent No.4 on particular post/posts is challenged and all decisions/orders/permits issued by the

Respondent No.4 is sought to be annulled on the basis that the Respondent No.4 lacked the authority to issue them.

14. This court now proceeds to examine the case laws cited by the parties. These case laws are being examined in the backdrop of the

Petitioner's contention that standing of the Petitioner to sustain this petition is on account of the operation of Article 19(1)(g) of the Constitution.

Firstly, the court shall examine the judgement put forth by the State in order to buttress their contention that the Petitioner lacks the necessary locus

standi to challenge the appointment of the Respondent No.4 on the aforesaid posts by way of this petition. The State has relied upon a judgement

delivered by a three-judge bench of the Supreme Court in *Mithilesh Garg and Ors. Vs. Union of India and Ors.* (1992) 1 SC C168. In this case,

the Petitioners filed petitions under article 32 of the Constitution of India challenging the liberalisation for private sector operations in the field of motor

transport business. The said petitions were filed by existing transport operators on the ground that their rights under Article 14 and 19 of the

Constitution were infringed. The need to file the petitions arose on account of the amendment of the Motor Vehicles Act which now made the grant

of permits easy, notwithstanding the number of operators already plying on a particular route. In paragraphs 8 and 9 of the judgement, the Supreme

Court makes it clear that the right under article 19(1)(g) of the petitioners is to seek, and be granted permits to enter the transport business and ply

their vehicles, but does not extend to prevent others from entering the same business on the ground of the earnings of existing operators being

affected. Thus, the judgement of the Supreme Court in *Mithilesh Garg* held that existing operators had no locus standi to prevent new players from

entering the field.

15. The Full Bench judgement of the Calcutta High Court in *Prabhat Pan and Ors., Vs. State of West Bengal and Ors.*, - AIR 2015 Calcutta 112,

relied upon by the Petitioner, saw the Calcutta High Court elucidating the circumstances on which the judgement of the Supreme Court in *Mithilesh*

*Garg supra* would apply. The issue before High Court of Calcutta in this case was whether the ratio decidendi in *Mithilesh Garg* can be extended in a

case where an existing operator who is prejudiced by an illegal grant of a new permit will have no right to complain to the authorities. Clarifying the

law on this issue, the Ld. full bench of the Calcutta High Court held in paragraph 17 that the dictum of the Supreme Court in *Mithilesh Garg* has to be confined to the context of the challenge before the Supreme Court and its amplitude ought not be increased in a case, where the existing operators were prejudiced on account of illegal grant of permits to other operators plying on the same route or partly on the same route as the existing operators.

The Ld. Full Bench held that *Mithilesh Garg*'s dicta could not be a licence for sustaining a colourable exercise of authority.

16. This court is in respectful agreement with the view of the Ld. Full Bench of the Calcutta High Court that the judgement in *Mithilesh Garg* cannot be a shield to protect an authority from issuing permits in contravention of the law resulting in prejudice to the rights of the existing operators. The judgement has rightly arrived at the conclusion that the dicta in *Mithilesh Garg* is applicable only where the challenge to the issuance of permits is on the grounds of affecting the profits of the existing operators.

17. In the present case however, the Petitioner has not challenged the grant of permit being violative of the *jus scriptum* but on the ground that the Respondent No. 4 was not vested with the authority to issue the permit. In other words, if the authority of the Respondent No.4 to issue permits was unquestionable, the ratio of *Mithilesh Garg* would squarely apply divesting the Petitioner the locus standi to challenge the grant of permits. Therefore, the question before this Court is whether the Petitioner had the standing to challenge the appointments of the Respondent No.4? the answer to the said question must be answered in the negative for the following reasons.

18. The primary question that arises is whether the Petitioner is a "Person Aggrieved" to sustain the present petition whereby the Petitioner prayed for the issuance of the Writ of Certiorari to quash the various appointment orders of the Petitioner. The dictionary defines a Person Aggrieved or an Aggrieved Party in the following words; "aggrieved party. (17c) A party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment. " Also termed party aggrieved; person aggrieved" *Black's Law Dictionary* " Tenth Edition . "A person who feels disappointed with the result of a case is not a



person aggrieved. The order must cause him a legal grievance by wrongfully depriving him of somethingâ€”Adi Pherozshah Gandhi Vs. H.M.Servai

â€”AIR 1971 SC 385 . â€”The expression â€œperson aggrievedâ€ meant a person who has suffered a legal grievance and against whom a decision

has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to

somethingâ€”Buxton Vs. Minister of Housing & Local Govt., (1961) 1 QB 278 . From the above expositions of the term a â€œPerson Aggrievedâ€ it

follows that though the phrase is incapable of a singular precise definition, what it must involve is an element of a legal wrong directly affecting an

individual, giving rise to a justiciable grievance. The questioned act must be such that it violates the right of the person, be it constitutional, statutory or

under the common law, resulting in a loss or deprivation to such person.

19. The Petitioner cannot be termed as a person aggrieved in respect to the various appointments of the Respondent No.4 as the Petitioner is in no

way concerned with internal affairs of the Transport Department or the service conditions of its employees. The Petitioner is only a stage coach

operator and not someone in the hierarchy of the Transport Department so as to be aggrieved by the appointments of the Respondent No.4. To

sustain a petition praying for the issuance of a prerogative writ in the form of Mandamus, Certiorari and Prohibition, it is essential as a condition

precedent, to establish before the Court that the Petitioner is a person aggrieved. However, in a writ of Habeas Corpus or Quo Warranto, the

requirement for the Petitioner to be a person aggrieved is relaxed. A relief of Habeas Corpus is never viewed as an adversarial contest and bearing in

mind the human rights angle to case, all formalities and procedures may be given short shrift and the only thing that the court is concerned with is

acting to protect a human life from illegal detention or harm.

20. A petition of Quo Warranto can be sustained even by a person who is not a person aggrieved albeit in public interest. In fact, in service matters,

Public Interest Litigation is impermissible except by way of a petition seeking a writ of Quo Warranto Paragraph 11 and 19 in Hari Bansh Lal Vs.

Sahodar Prasad Mahto & Ors. (2010) 9 SCC 655 . The Supreme Court held â€œFrom the aforesaid pronouncements it is graphically clear that a

issue the permit to the Respondent No.4. It has never been contended that the issuance of the permit is bad in law on account of it being violative of

the statute or the rules made thereunder. In other words, a case has not been made out that even if the permit was issued by an authority who was empowered to issue the permit, the same was still defective as it violated the statutes or the rules made thereunder. Thus, the Petitioner's stand is that the permit issued in favour of the Respondent No.5 is bad in law on account of the same having been issued by the Respondent No.4 who, according to the Petitioner, was not empowered to do so on account of the Respondent No.4 illegally occupying his office. Thus, the alleged illegality in the issuance of the permit to the Respondent No.5, is a consequence of the Respondent No.4 illegally occupying his office without any authority of law. Thus, even the relief of quashing the permit issued to the Respondent No.5 can only be a consequential relief in a writ of Quo Warranto which can, in the facts and circumstances of this case, be sustained only as a public interest litigation.

23. On the basis of what has been observed and held hereinabove by this Court, this petition being deficient for want of locus standi, is dismissed.