
(2005) 01 AHC CK 0070

Allahabad High Court

Case No: C.M.W.P. No"s. 24588, 24589 and 24590 of 1995

Smt. Ramzano Begum

APPELLANT

Vs

State Transport
Appellate Tribunal and
Another

RESPONDENT

Date of Decision: Jan. 28, 2005

Acts Referred:

- Motor Vehicles Act, 1988 - Section 2(38), 71(2)

Citation: AIR 2005 All 169 : (2005) 2 AWC 1143

Hon'ble Judges: Sabhajeet Yadav, J

Bench: Single Bench

Advocate: Ajai Sharma, for the Appellant;

Final Decision: Allowed

Judgement

Sabhajeet Yadav, J.

These writ petitions have been filed against the judgment and Order dated 1.6.1995 passed by Sri S.P. Agarwal, Chairman, of the State Transport Appellate Tribunal, U.P., Lucknow in Appeals No. 73, 74, 75 and 76 of 1994, Smt. Pratima Kumari Gupta, Smt. Manorama Devi Shukla, Smt. Ramzana Begum and Om Prakash Jain v. Regional Transport Authority, Kanpur, whereby while deciding the aforesaid appeals together by a common judgment and Order passed therein learned Tribunal has dismissed the aforesaid appeals. The aforesaid appeals were preferred against the Order dated 11.2.1994 passed by The Regional Transfer Authority, Kanpur (hereinafter referred to as R.T.A.), thereby the application for grant of regular stage carriage permit of petitioners on Phaphund-Ghatiaghat route (hereinafter referred as route) has been rejected.

2. The facts and question in controversy involved in all the three writ petitions are identical ; therefore, the same are decided together by a common judgment. The Writ Petition No. 24588 of 1995, Smt. Ramzano Begum would be leading case and for the

purpose of disposal of aforesaid writ petitions the facts of the same may be taken into account by the Court in deciding of the three writ petitions. The judgment and order passed in leading writ petition may be placed on record of connected writ petitions.

3. The brief facts of the case are that the petitioners of the above writ petitions have applied for grant of regular stage carriage permit on Phaphund-Ghatiaghat route before the R.T.A. Kanpur. The R.T.A., Kanpur, did not consider the application for grant of permit, therefore, five persons namely ; Smt. Rama Devi Upadhyay, Smt. Ramzano Begum, Smt. Pratima Kumari Gupta, Om Prakash Jain and Smt. Manorama Devi Shukla (including three petitioners) referred above have filed Writ Petition bearing No. MI of 1993 before this Court for a writ of mandamus with a prayer to direct the R.T.A. to consider the application of aforesaid petitioners for grant of permit. The writ petition was disposed of finally vide Order dated 6.12.1993 with a direction to the R.T.A. to consider the application of the petitioners within a period of two months from the date of production of certified copy of the order. It is alleged that the certified copy of the Order passed by this Court was filed before the R.T.A. on 15.12.1993 but R.T.A. did not consider the matter for a long time. Therefore, one operator moved an application on 1.2.1994 requesting the R.T.A. to consider his matter within two months from 15.12.1993 and also requested to intimate the date of consideration by registered post, but the R.T.A., Kanpur without intimating the petitioners rejected all the applications on 11.2.1994. Aggrieved by the aforesaid Order of R.T.A., Kanpur, petitioners have filed aforesaid appeals before the State Transport Appellate Tribunal, which were dismissed by a common judgment and Order passed by Tribunal on 1.6.1995 holding that the route of the petitioners Phaphund-Ghatiaghat has one termini common to another route Vishnugarh-Chhibramau-Farrukhabad-Ghatiaghat, for which an interim Order maintaining status quo passed by this Court in a Writ Petition No. 25544 of 1990 dated 9.10.1990 is still operating, therefore, no question arises for grant of any regular stage carriage permit to the petitioner on the route in question. Accordingly the Tribunal has dismissed the appeals filed by the petitioners, hence feeling aggrieved against which the petitioners have filed aforesaid writ petitions.

4. I have heard Sri Ajai Sharma, learned counsel for the petitioner and learned standing counsel for the respondent and also perused the record.

5. The thrust of the submission of the learned counsel for the petitioner is that under New Motor Vehicles Act, 1988 (hereinafter referred to as "Act") there is no provision except Section 71(2) under which an application for grant of stage carriage permit can be rejected but the R.T.A. has rejected the application of petitioner on flimsy grounds that an interim Order dated 9.10.1990 passed in Writ Petition No, 25544 of 1990 wherein this Court has directed to maintain status quo on a different and distinct route namely ; Vishnugarh-Chhibramau-Farrukhabad-Ghatiaghat is still operating whereas the petitioners have desired regular stage carriage permit on a route Phaphund-Ghatiaghat on which point Chhibramau-Farrukhabad-Ghatiaghat may be overlapping by the route in question but Phaphund-Ghatiaghat route covers a distance of 107 km. whereas another

route Vishnugarh-Ghatiaghat via Chhibramau and Farrukhabad covers a shorter distance of only 45 km. One termini, i.e., Ghatiaght may be common in both the routes but longer and shorter routes referred above are distinct and different, therefore, any interim Order operating at shorter route namely Vishnugarh - Chhibramau-Farrukhabad-Ghatiaghat cannot come in the way for grant of permit to the petitioners on a longer route in question. In support of his submission learned counsel for the petitioner Mr. Ajai Sharma while explaining the meaning of route defined u/s 2(38) of the Motor Vehicles Act, 1988 has also placed reliance upon a Division Bench decision of Lucknow Bench of this Court rendered in a Writ Petition No. 6667 of 1990, *Basant Lal v. State of U. P. and Ors.*, on 27.7.90 and also a decision of Apex Court rendered in [Rattan Lal Gupta and Others Vs. Shri Suraj Bhan and Others](#), : [Rattan Lal Gupta and Others Vs. Shri Suraj Bhan and Others](#), Mr. Sharma has further submitted that both R.T.A. as well as State Transport Appellate Tribunal have erred in taking the view that since the interim Order dated 9.10.1990 passed in Writ Petition No. 25544 of 1990 maintaining the status quo with regard to the route Vishnugarh - Chhibramau-Farrukhabad-Ghatiaghat is operating, therefore, by the grant of permit for the route Phaphund-Ghatiaghat, there would be likelihood of infringement/ violation of the interim Order of the status quo granted for Vishnugarh-Chhibramau- Farrukhabad- Ghatiaghat route.

6. The short question arises for consideration in the writ petitions is that as to whether the operation of interim Order passed by this Court in another writ petition directing to maintain status quo in respect of route namely ;

Vishnugarh-Chhibramau-Farrukhabad-Ghatiaghat would be treated to be a prohibition or Impediment for grant of regular stage carriage permit on the route in question namely Phaphund-Ghatiaghat for which the permits" were desired by the petitioners. In Order to answer this question it is necessary to have a glance over the definition of "route" contemplated by the "Act". For ready reference, the definition of "route" contained in Section 2(38) of the "Act" is being reproduced as under :

"Section 2(38).-- "Route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another.

7. The issue is not res integra, rather this Court had occasion to consider similar Issue arose in a case of *Basant Lal v. State of U.P. and Ors.* (supra) wherein it appears that an interim Order passed in Writ Petition No. 4982 of 1990, was taken as impediment to give effect to the judgment and the Order dated 26.5.90 passed by this Court in Writ Petition No. 12336 of 1990. By Interim stay Order the Transport Authorities were restrained from issuing permit in respect of route in question and part thereof. The effect of the interim Order in Writ Petition No. 4982 of 1990 was under consideration before this Court at Lucknow Bench in the Writ Petition No. 6667 of 1990, *Basant Lal and Ors. v. State of U. P. and Ors.*, Before a Division Bench of this Court while placing reliance upon the case of [Rattan Lal Gupta and Others Vs. Shri Suraj Bhan and Others](#), : [Rattan Lal Gupta and Others Vs. Shri Suraj Bhan and Others](#), and the other case *Mysore State Transport Appellate Tribunal (1974) 2 SCC 750*, wherein it was held that in case there is a longer

route having different "destinations it will be separate and not the same and If the other shorter route overlaps, a contention had been made that the route in question which is Ghaziabad and Saharanpur route is a longer route. Other route which is shorter but overlaps namely ; Apsara U. P. Border to Shamli is a different route, therefore, the interim Order passed in Writ Petition No. 4982 of 1990 will put no impediment in complying with the Order dated 26.5.1990 passed by this Court in Writ Petition No. 12334 of 1990. While agreeing with the aforesaid contention the Division Bench has held that the interim Order passed in Writ Petition No, 4982 of 1990 is pertaining to the route Apsara U. P. Border to Shamli, This route no doubt overlaps to certain length of Ghaziabad and Saharanpur route which is longer route and its destinations are different. In view of the decision of the Supreme Court, that will be a different route. Therefore, the Order of Interim relief granted in Writ Petition No. 4982 of 1990 will place no impediment in Implementing or complying with the decision of this Court dated 26.5.1990 in Writ Petition No. 12334 of 1990 passed at Allahabad.

8. In my considered view the facts of the instant case is also identical to the facts and circumstances of the case decided by Division Bench of this Court in Writ Petition No. 6667 of 1990, Basant Lal v. State of U. P. and Ors.. The decision in the aforesaid case is binding upon me. Therefore, I have no option but to take the view taken by the Division Bench of Court in Writ petition in question also. Now coming to the facts of the case it is not in dispute that the petitioners have desired regular stage carriage permit for Phaphund-Ghatiaghat route running 107 km. from one termini to another. Another route namely ; Vishnugarh - Chhibramau-Farrukhabad-Ghatiaghat a shorter route of 45 km. having one common terminus at Ghatiaghat and over laps about 30 km. on the route in question nevertheless it is" a different route under the Act as held by the Apex, Court and Division Bench of this Court. Therefore, I have no hesitation to hold that grant of permit on Phaphund-Ghatiaghat route cannot be affected by the Interim Order of this Court dated 9.10.1990 passed in Writ Petition No. 25544 of 1990 granting to maintain status quo with regard to the route Vishnugarh-Chhibramau-Farrukhabad-Ghatiaghat. Therefore, the view taken by R.T.A. and judgment and Order dated 1.6.1995 passed by State Transport Appellate Tribunal, U. P. Lucknow is wholly erroneous, misconceived and not sustainable in the eye of law accordingly the Order of R.T.A., Kanpur dated 11.2.1994 passed on the application of the petitioners refusing to grant the regular stage carriage permit to them on Phaphund-Ghatiaghat route and judgment and Order dated 1.6.95 passed by S.T.A.T., U. P., Lucknow are hereby quashed.

9. The R.T.A. Kanpur is directed to consider the application of the petitioner for grant of regular stage carriage permit on Phaphund-Ghatiaghat route irrespective of operation of interim Order dated 9.10.90 maintaining status quo in Writ Petition No. 25544 of 1990 passed by this Court in respect of route Vishnugarh-Chhibramau-Farrukhabad-Ghatiaghat in accordance with the provision of law applicable for grant of permit on merit within a period of two months from the date of production of certified copy of the judgment and Order passed by this Court before the

R.T.A. Kanpur.

10. The observations made above have not been made on merit of the case in respect of grant of permit to the petitioners on the route in question, therefore, while considering the application of the petitioners R.T.A. Kanpur is required to examine all the relevant materials and law in respect of grant of permit to the petitioners and pass appropriate Order on merit well within time indicated above.

11. With the aforesaid direction the writ petitions are allowed.

12. There shall be no Order as to Cost.