

(1997) 09 AHC CK 0225

Allahabad High Court

Case No: C.M.W.P. No. 23496 of 1997 and other 3 Writ Petitions

Randhir Singh and Others

APPELLANT

Vs

State Transport Authority and
Others

RESPONDENT

Date of Decision: Sept. 26, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1
- Constitution of India, 1950 - Article 226
- Motor Vehicles Act, 1988 - Section 103, 104

Citation: (1997) AWC 560 Supp

Hon'ble Judges: R.R.K. Trivedi, J; M. Katju, J

Bench: Division Bench

Advocate: A.R. Dube, for the Appellant;

Final Decision: Allowed

Judgement

R.R.K. Trivedi, J.

In all the above writ petitions, the questions of law and facts involved are common and all the petitions can be conveniently decided by a common judgment against which learned Counsel for parties have no objection. Writ Petition No. 23496 of 1997 shall be the leading case.

2. In Writ Petition No. 23496 of 1997, an impleadment application No. 23797 of 1997 was filed by one Om Prakash Gupta which was allowed by this Court on 24.7.1997 and thus Om Prakash Gupta, son of Makhan Singh resident of 6, Man Sarovar, Meerut ought to have been impleaded as Respondent No. 7 in the writ petition which has not been done. However, a detailed counter-affidavit has been filed on his behalf along with stay vacation application and we have considered the same.

3. In this petition, counter and rejoinder-affidavits have been exchanged and learned Counsel for parties have agreed that the writ petition may be finally decided at this stage.

4. In this writ petition, Petitioners have challenged the order dated 17.7.1997 passed by Secretary, State Transport Authority, Respondent No. 2, by which he directed that the permits issued in favour of the Petitioners on 10/11.7.1997 should be returned and deposited in his office immediately and the Petitioners should stop plying their buses of their route. Copy of the impugned order has been filed as Annexure-19 to the writ petition. It also appears that the impugned order was passed by Respondent No. 2 on some objection filed by Respondent No. 7 Om Prakash Gupta. Aggrieved by the impugned order, Petitioner Nos. 1 to 15 in whose favour the permits were issued in pursuance of the resolution of Respondent No. 1, dated 14/15.6.1993, have approached this Court under Article 226 of the Constitution of India.

5. This case has a chequered history and appears to be a glaring example as to how the court process is being abused by filing writ petitions for the same matter and cause of action at Allahabad and Lucknow Benches of this Court and thus creating complications by obtaining different orders and in our opinion, it is high time to take some stern steps and measures to prevent this kind of abuse of the process of the Court at the hands of unscrupulous litigants. This very matter has already had two rounds of litigation upto the Apex Court but in spite of the final orders passed, the matter was again tried to be reopened by filing fresh petitions or by other means. We have no hesitation in saying that in this process, the Officers of Respondent No. 1 are also responsible. At least for one round of litigation upto the Supreme Court, responsibility can be fixed on Respondent No. 2 who passed an order on 31.7.1993. Now, another order dated 17.7.97 has been passed by Respondent No. 2 which has been challenged in this petition. We hope and expect from Respondent No. 1 to curb repetition of such tendencies in future which only results in waste of time and money of the litigants and loss of valuable time of this Court in hearing the same matter again and again either at Allahabad or at Lucknow. What we have observed above shall also be clear from the narration of the facts given below.

6. The State Transport Authority of Uttar Pradesh by a resolution dated 14/15.6.1993 granted 38 regular stage carriage permits for the route in question, namely, Muzaffarnagar-Chhajlet via Sikhera-Jansath-Meerapur-Dawal-Ganga Bridge-Noorpur-Bijnor route. Out of 38 grantees, 11 persons were issued the permits in the month of July, 1993. Thereafter, a series of writ petitions were filed one after another:

(1) First writ petition was filed by Har Pal Singh as Writ Petition No. 3511 of 1993 at Lucknow Bench in which an interim order was passed on 16.8.1993 restraining the State Transport Authority from issuing permits of the route.

(2) Respondent No. 2 passed order on 31.7.1993 directing 11 permit holders to ply their vehicles on Muzaffarnagar-Chhajlet via Jolly -Jarwar-Katia route. The Chairman of Respondent No. 1 passed another order on 2.2.1995 directing the 11 operators to ply their vehicles on Muzaffarnagar-Chhajlet route via Jansath-Meerapur. Challenging the order dated 31.7.1993. Smt. Saima Jamal filed Writ Petition No. 4250 of 1994 at Lucknow Bench.

(3) Challenging the order dated 31.7.1993. Saima Jamal filed Writ Petition No. 4250 of 1994 at Lucknow.

(4) Shri Sanjiv Kumar also filed Writ Petition No. 7875 of 1994 challenging the order of Respondent No. 2 dated 31.7.1993 at Allahabad.

(5) One Smt. Shashi Goel filed Writ Petition No. 6774 of 1995 challenging the order dated 2.2.1995 passed by Chairman of Respondent No. 1.

7. The two writ petitions filed at Allahabad, namely Writ Petition Nos. 7875 of 1994 and 6774 of 1995 were decided by a Division Bench of this Court by order dated 5.5.1995. Orders dated 31.7.1993 passed by Respondent No. 2 and 2.2.1995 passed by the Chairman of Respondent No. 1 were quashed and Respondent No. 1 was directed to pass a specific order indicating the route for which the permit was granted in the meeting of 14/15.6.1993. This order was challenged before the Apex Court in Special Leave to Appeal No. 13594 of 1995 which was decided by Hon'ble the Supreme Court by order dated 21.7.1995. The order of the Supreme Court is being reproduced below:

Heard the counsel for both the parties.

Leave granted.

We are of the opinion that there are several disputed questions of facts and law which require a clear and comprehensive investigation. For example, one of the questions is whether the original permit granted to the Petitioners on the route Muzaffarnagar to Chhajlet via Meerapur, Ganga Bridge and Noorpur runs along the route Muzaffarnagar, Sikhera Jansath and Meerapur so far as Muzaffarnagar-Meerapur sector is concerned, or does it run along Muzaffarnagar, Joli, Behra Sadat, Jadwad Katia and Meerapur. There is also a controversy as to whether the route Muzaffarnagar to Meerapur is nationalised or not and further whether there are any High Court orders precluding the grant of any permit on the sector Muzaffarnagar to Meerapur. In all these circumstances, we are of the opinion that all these matters should be sent to S.T.A.T., which shall treat the writ petitions filed in High Court as appeals and after hearing all the parties, dispose of the matters in accordance with law.

8. From the judgment of Hon'ble Supreme Court, it is clear that the dispute remanded to the State Transport Appellate Tribunal (S.T.A.T.) was not confined to the route only but it also covered the grant of permits. In pursuance of the order of

the Hon"ble Supreme Court, the three petitions, namely Saima Jamal v. State of U.P. and Ors. Writ Petition No. 4250 of 1994 filed at Lucknow Bench, and Smt. Shashi Goel v. State Transport Appellate Tribunal and Ors. Writ Petition No. 6774 of 1995 and Sanjiv Kumar v. Secretary, State Transport Authority and Ors. Writ Petition No. 7875 of 1994, were transferred to the Tribunal and were registered as Appeal Nos. 127 of 1995, 142 of 1995 and 143 of 1995. The Tribunal by order dated 27.1.1996 allowed the appeals and set aside the orders dated 31.7.1993 and 25.10.1995, passed by Respondent No. 2 and also the order dated 2.2.1995 passed by the Chairman. The Tribunal recorded the following finding:

Firstly, that the original permits in pursuance of the resolution dated 14/15.6.1993 were granted via Jansath-Meerapur.

(2) Muzaffarnagar-Bijnor via Jansath-Meerapur became part of the notified route on 3.12.1994 and was not a notified route on the date of the impugned resolution.

(3) There were no stay orders against the grant of permits on Muzaffarnagar-Chhajlet route via Jansath and Meerapur on 14/15.6.1993.

9. The order dated 21.1.1996 passed by the Tribunal was challenged by Smt. Shashi Goel by filing two writ petitions at Allahabad. Both the writ petitions were dismissed by this Court by order dated 30.4.1996 and the judgment of the Tribunal was upheld. The judgment of this Court dated 30.4.1996 was challenged before Hon"ble Supreme Court in Special Leave to Appeal Nos. 14269 and 14270 of 1996. However, both the appeals were dismissed after hearing counsel for the Appellants by order dated 5.8.1996.

10. After the judgment of Hon"ble Supreme Court, one could reasonably have expected that the dispute between the parties had come to an end but it was not so. Dharmendra Singh had already filed Writ Petition No. 37607 of 1995 at Allahabad challenging the grant of 38 permits by resolution dated 14/15.6.1993 which was upheld by S.T.A.T. by order dated 27.9.1995. This writ petition was heard and dismissed by judgment dated 3.3.1997. Then an application for review of the judgment dated 3.3.1997 was filed which was also rejected by order dated 24.7.1997.

11. As the permits were not being issued by Respondent Nos. 1 and 2, the 21 grantees filed Writ Petition No. 9990 of 1997 in this Court seeking a direction to Respondent Nos. 1 and 2 to issue permits in their favour under the Resolution dated 14/15.6.1993. In this petition, following order was passed:

Heard Shri K. N. Tripathi for Petitioners, Learned Chief Standing Counsel, Shri Rajeev Sharma and Shri H. P. Dubey seek a week's time to file impleadment application in the case.

Shri A. D. Saunders has filed an application on behalf of Dharmendra Singh for impleadment in the case as a Respondent. Shri K. N. Tripathi, learned Counsel for

the Petitioners prays for and is granted a week's time to file counter-affidavit to the said application.

In the meantime Shri Tripathi will implead U.P.S.R.T.C. as Respondent and will take necessary steps in this regard.

The case will be listed on 7 4.1997.

12. It appears that during this period on 10/1 1.7.1997, 16 permits were issued in favour of the grantees. At this stage, an objection was filed by Respondent No. 7 before Respondent No. 2 requesting him not to issue permits and Respondent No. 2, for the reasons best known to him, readily accepted this illegal request, and passed the impugned order dated 17.7.1997 directing the Petitioners to deposit their permits and stop plying vehicles. This order is the subject-matter of challenge in this petition.

13. We have heard learned Counsel for the parties at length. However, we do not find any justification on the part of Respondent No. 2 for passing the impugned order dated 17.7.1997. The reasons stated in the order are pendency of Writ Petition No. 9990 of 1997 in this Court and the order dated 20.3.1997 passed therein. We have already reproduced the order dated 20.3.1997 in earlier part of this judgment. There is no order directing Respondents Nos. 1 and 2 not to issue permits or to recall permits after they were issued to the grantees. It is also noteworthy that this petition was filed by the grantees for issuing a writ of mandamus against Respondent Nos. 1 and 2 to issue permits in pursuance of the resolution dated 14/15.6.1993. We fail to understand the justification on the part of Respondent No. 2 to pass the impugned order on the basis of pendency of this writ petition. It only demonstrates that Respondent No. 2 was eagerly waiting for any lame excuse on which basis permits may not be issued to the Petitioners.

14. The second reason mentioned is the interim order passed in Writ Petition No. 2600 of 1993. The interim order passed in this petition was subject-matter of discussion before the Tribunal as well as before this Court and Hon"ble the Supreme Court and the finding of the Tribunal that there was no stay order operating preventing Respondent No. 1 from granting permits vide resolution dated 14/15.6.1993 was upheld upto the Apex Court. It may be mentioned here that before the Tribunal as well as before this Court, the case of the Respondents was that in view of the interim order granted in Writ Petition No. 2600 of 1993, permits could not be granted by Respondent No. 1 by resolution dated 14/15.6.1993, which was not accepted. It was wholly illegal and unreasonable on the part of Respondent No. 2 to stop issuing permits to the grantees and further to recall the permits already issued in pursuance of the resolution dated 14/15.6.1993 on the basis of the interim order granted in Writ Petition No. 2600 of 1993. The finding of the Tribunal which was confirmed by this Court and was maintained by Hon"ble Supreme Court was binding on Respondent No. 2 and he could not accept the objection raised by

Respondent No. 7 taking a view contrary to the view taken in the judgments of the Tribunal and this Court. Petitioners have filed copy of the order-sheet of Writ Petition No. 2600 of 1993 an Annexure-5, which shows that the interim order was extended till the next date of listing by order dated 14.11.1993. The writ petition was listed on 20.7.1995. However, the interim order was not extended by the Court. Thus, the fact stated in the alleged objection of Respondent No. 7 that the interim order is operating was a non-existent fact. Respondent No. 2, however, without any verification or scrutiny from the record, passed the impugned order in haste, or in collusion with some parties to frustrate the judgments of this Court and the Supreme Court.

15. Learned Counsel for Petitioners submitted that as the permits were issued in favour of Petitioners and the Petitioners started plying their buses, Respondent No. 2 ought to have given opportunity of hearing to them before passing the impugned order as it entailed serious civil consequences against them. However, no such opportunity was afforded to the Petitioners and the impugned order is wholly illegal, violative of principles of natural justice and liable to be quashed. We find force in this submission also. The order has been clearly passed without affording any opportunity of hearing to the Petitioners. Para 27 of the writ petition in which the Petitioners have asserted that the order has been passed without affording any opportunity to the Petitioners has been replied in para 47 of the counter-affidavit. However, the fact has not been disputed. Only this much has been said that there was no occasion to afford any opportunity of hearing before issuing the order dated 17.7.1997. Thus, it is an undisputed fact that the impugned order has been passed without hearing the Petitioners, in violation of the principles of natural justice and cannot be sustained.

16. Shri U. K. Dhawan, learned Counsel appearing for the Respondent No. 7, however, made submissions justifying the impugned order dated 17.7.1997 on the basis of the provisions contained in Sections 103 and 104 of the Motor Vehicles Act. The submission was that the scheme was modified in 1994 and the major part of the route is a notified route in respect of which permits could not be granted. In this connection, learned Counsel has also made reference to the order dated 12.8.1997 passed in Writ Petition No. 2576 of 1997 by Lucknow Bench of this Court. We have perused the order. However, in our opinion, the submission of the learned Counsel for the Respondents has no force and cannot be accepted in view of the categorical finding recorded by the Tribunal in its order dated 27.1.1996 which was upheld by this Court by order dated 30.4.1996 and the orders were maintained by Hon'ble Supreme Court by order dated 5.8.1996. The impact of the notification dated 3.9.1994 has already been considered at length but no illegality was found on its basis in passing the resolution dated 14/15.6.1993 granting permits to the Petitioners. In the circumstances, in our opinion, the question is no more open to be considered. It is true that in the order dated 12.8.1997, passed in Writ Petition No. 2576 of 1997, a prima facie view has been expressed against the grant of permits in

view of the modification of the scheme on 3.9.1994 but the observations relied on by the learned Counsel for the Petitioner are only interim in nature and are not the final adjudication of the matter. The Bench has already postponed the hearing of the application of the Petitioner in view of the pendency of the present writ petition. In our opinion, we are bound by the earlier judgments of this Court which have been upheld upto the Hon"ble Supreme Court. The controversy cannot be reopened now.

17. The Hon"ble Supreme Court in the case of [State of Maharashtra and another Vs. Prabhakar Bhikaji Ingle](#) , held as under:

But in this case, when the self-same main order was confirmed by this Court, the question arises whether the Tribunal has had power under Order XLVII, Rule 1, C.P.C. or any other appropriate provision under the Tribunals Act to review the orders passed by it and confirmed by this Court by refusing to grant leave. We find that the exercise of the review power is deleterious to the judicial discipline. Once this Court has confirmed the order passed by the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by this Court.

18. The same view has been expressed by the Hon"ble Supreme Court in another judgment in the case of [Sree Narayana Dharmasanghom Trust Vs. Swami Prakasananda and Others](#) . The Supreme Court in para 5 of the aforesaid judgment held as under:

Therefore, once this Court has passed an order, the order passed by the High Court stands merged with the order passed by this Court. Thereafter, the High Court/Tribunal is devoid of the jurisdiction to review the order. This question also was reiterated in Yogendra Narayan Choudhary v. Union of India JT 1995 (9) SC 112.

19. After the aforesaid view expressed by Hon"ble the Supreme Court, in our opinion, it is not open for the Respondents to challenge the grant of permits on the basis of the Notification dated 3.9.1994. The question was specifically remanded to the Tribunal by Hon"ble the Supreme Court by order dated 21.7.1995 which has been considered and decided finally and operates as res-judicata and as a precedent. Further, the order of the Respondent No. 2 which is impugned in this petition is not based on the grounds argued by the counsel for the Respondents. For this reason also, the submission cannot be accepted. Viewed from any angle, in our opinion, the impugned order cannot be sustained and is liable to be quashed.

20. Writ Petition Nos. 9990 of 1997, 15746 of 1997 and 20187 of 1997 have been filed for a direction to Respondent Nos. 1 and 2 to issue permits in favour of the Petitioners in pursuance of the resolution dated, 14/15.6.1993. In our opinion, the Petitioners are entitled for the relief.

21. The resolution dated 14/15.6.1993 was passed granting 38 permits. More than four years have passed but most of the permits have not yet been issued. Considering the delay involved, and in order to close the litigation in this regard, we are of the opinion that it is expedient and necessary in the interest of justice that a direction be issued to Respondent Nos. 1 and 2 to issue permits to the grantees on the basis of the resolution dated 14/15.6.93 of Respondent No. 1 forthwith and without any delay.

22. For the reasons stated above, the writ petitions are allowed. The impugned order dated 17.7.1997, Annexure-19 to the writ petition, is quashed. Respondent Nos. 1 and 2 are directed to issue permits to all the grantees who have not yet been issued permits, on the basis of the resolution dated 14/15.6.1993 forthwith and without any delay. Any further delay in this matter shall be taken by us as wilful disobedience of the order of this Court. However, there will be no order as to costs.