

⑧

Avt

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)**WRIT PETITION NO. 2166 / 2002**

M.P. State Road Transport Corporation
Through its Divisional Manager, MP.S.R.T.C.
Bilaspur (C.G)

: PETITIONER

VERSUS

1) State of Chhattisgarh
Through the Secretary, Transport,
D.K. Bhavan, Secretariat,
Raipur(C.G)

: **RESPONDENTS**

2) The Regional Transport Authority
Bilaspur (Chhattisgarh)

3) The Secretary,
Regional Transport Authority Cum R.T.O
(Regional Transport Officer)
Bilaspur

4) Shri Anil Kumar Duggal
Bus Operator,
R/o. Ambikapur (C.G)

P.P. No. 2253/02
Presented by Shri. Ramkrishna Jaiswal
dated 18.10.02

**WRIT PETITION UNDER ARTICLE 226 & 227 OF
CONSTITUTION OF INDIA**

(14)

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.2166/2002

**In the matter of writ petition under Articles 226 &
227 of Constitution of India**

M. P. State Road Transport Corporation

Petitioner.

Versus

State of Chhattisgarh & Others

Respondents

For petitioner : Shri P.R.Patankar, Adv.

For respondents : Shri Ranbir Singh, G.A.
No.1 to 3.

Date of Order

29.03.2003

PRESENT

HON'BLE SHRI JUSTICE P.C.NAIK

This petition under Article 226 of Constitution of India has been filed by the M.P. State Road Transport Corporation (Bilaspur) for issuance of a writ of certiorari quashing the order and temporary permit granted to the respondent No.4 vide Annexure P-3. Further prayer is for issuance of a writ of mandamus directing respondent No.1 not to grant temporary permits to private operators on notified route and in contravention of the orders of the State Chhattisgarh and statutory provisions.

2. The respondent No.4 had applied for a grant of stage carriage permit for the route Ambikapur to Raigarh via Sitapur,

178

Pathalgaon, Dharamjaigarh and back. According to the petitioner, the route between Ambikapur and Raigarh is reserved under the nationalized Scheme No.52 M and Clause (g) thereof prohibits private operators from plying their vehicles on the nationalized route. It is the case of the petitioner that in complete contravention of the statutory provisions and settled legal position, the respondent No.3 in an arbitrary manner and without inviting objection from the petitioner- Corporation granted temporary permit to the respondent No.4, which is liable to be quashed. Admittedly, the said permit was for the period 26-9-02 to 31-10-2002.

3. On the prayer of the learned counsel for the petitioner Humdast notice was ordered to be issued to respondent No.4. However, as the record indicates, service report has not been filed. Learned State counsel had taken notice on behalf of the respondents No.1 to 3 and a preliminary objection has been filed stating that as the M.P. State Road Transport Corporation has been dissolved, so far as the State of C.G. is concerned the petition has become infructuous.

4. It is not doubt true, that by efflux of time and also because of the fact that the M.P. State Road Transport Corporation has ceased its operation within the State of C.G. as it has been dissolved, but the Court considers it necessary to make some observations as regards the duty of the concerned Transport Authorities while considering applications for grant of temporary permits.

5. Since at the time when the petition was filed M.P. State Road Transport Corporation was in existence, while considering application for grant of temporary permits, the transport authority ought to have taken into consideration provisions contained in Section 104 of M.P. Motor Vehicles Act, 1988 and Sub-rule (3) (e) of Rule 72 of M.P. Motor Vehicles Rules, 1994. Section 104 of the Motor Vehicles Act, 1988 which relates to restriction of grant of permit in respect of a notified area or notified route. This Section lays down that where a scheme has been published under Sub-Section (3) of Section 100 of the Act in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. It is only in those cases where the State Transport undertaking does not apply for a permit in respect of notified area or notified route in pursuance of an approved scheme can the State Transport Authority or the Regional Transport Authority, as the case may be, grant temporary permits to any person in respect of such notified area or notified route? Further, under the proviso such temporary permits shall cease to be effective on the issue of a permit to the State Transport undertaking in respect of that area or route. Further in case where an application for permit is made for a route where some portion of it is covered by any nationalized scheme the applicant, in terms of Sub-Rule (3) (e) of Rule 72 of the M.P. Motor Vehicles Act, 1994, is obliged to give a declaration duly certified by an Officer of the M.P. State Transport Corporation authorized by

the Managing Director with respect to portion and distance of the route covered by any nationalization scheme. These requirements do not appear to have been complied with/fulfilled by the respondent No.3 in this case. Be that as it may, in view of the changed situation nothing more need to be said on this aspect. However, it may be observed that grant of temporary permit is governed by the provisions contained in Section 87 of the M.P. Motor Vehicles Act, 1988. This section confers the power on the Regional Transport Authority to grant temporary permits but it also lays down the purposes for which the temporary permit can be granted. These are mentioned in Clauses (a) to (d) of the said Section. It is now a settled position that the power to grant temporary permits cannot be exercised unless the specific and particular circumstances mentioned in the Clauses (a) to (d) exist and for this reason it can be said that even the application for grant of a temporary permit should indicate the purpose for which it is claimed. That apart, the authority is also obliged to give reasons which would indicate the purpose for which a temporary permit has been granted. A temporary permit is not to be granted mechanically, at the mere asking of the operator and on the whims of the Transport Authorities, as this would be in contravention of the statutory provisions relating to grant of temporary permits. It is hoped that the concerned authorities will keep the statutory provisions in mind while considering the applications for grant of a temporary permit.

149

6. A copy of this order should be sent to the Transport Commissioner and it is expected of him to impress upon the concerned authorities who are dealing with the grant of temporary permits that they should keep in mind the relevant statutory provisions while granting temporary permits.

7. With the aforesaid observations and directions, the writ petition stands disposed of. Consequently M.W.P. No.1234/2002 and I.A. No.6987/2002 for urgent hearing also stand disposed of.

Sd/-
P.C NAIK
Judge