

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.W.P. No. 4221 of 2007

DATE OF DECISION: MARCH 31, 2008

Jaswinder Kaur

.....PETITIONER

Versus

The State Transport Appellate Tribunal, Punjab,
Chandigarh and others

....RESPONDENTS

CORAM: **HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE RAKESH KUMAR GARG**

Present: Mr. Nonesh Kumar, Advocate,
 for the petitioner.

Mr.N.D.S.Mann, Addl.A.G.,Punjab.

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SATISH KUMAR MITTAL, J.

In this petition, the petitioner has raised the sole question for consideration of this court as to whether the respondents being transport authorities, can refuse to grant the variations in the stage carriage permit of Mini Buses under Section 80(3) of the Motor Vehicles Act (hereinafter referred to as 'the Act') on the ground that the route operated by the petitioner had not been formulated under Section 68(3)(ca) of the Act.

In this case, the petitioner is holding one regular stage carriage permit of mini bus to operate four return trips on Amritsar to Bhoewali via Raja Sansi, Kukranwali, Teera, Kiampur route (hereinafter referred to as 'the route in question'). The said permit was granted to the

petitioner in the year 1991 which is valid up to 16.6.2009. Subsequently, on the demand made by the travelling public, the petitioner applied under Section 80(3) of the Act for grant of extension in the original route up to Teera and increase in return trips from 3 to 5. On the application of the petitioner, the objections were invited, but no body preferred any objection. The proposed extension sought by the petitioner was also recommended by the District Transport Officer in public interest. The State Transport Commissioner, while exercising the powers of the Regional Transport Authority, rejected the application of the petitioner vide order dated 16.12.2005 on the ground that an application under Section 80(3) of the Act can be considered on routes which are formulated under Section 68(3)(ca) of the Act, and no extension can be granted on an unformulated route as it will violate Section 68(3)(ca) of the Act.

Feeling aggrieved against the above-said order, the petitioner filed an appeal under Section 89 of the Act read with Rule 85 of the Punjab Motor Vehicles Rules, 1989 before the State Transport Appellate Tribunal (hereinafter referred to as 'the Appellate Tribunal') on the ground that Section 68(3)(ca) of the Act provides for formation of the new rules and does not cover the permits already granted as provisions of Section 68(3)(ca) of the Act were inserted later in the year 1994. The Appellate Tribunal dismissed the appeal filed by the petitioner vide its order dated 3.11.2006 on merits as well as on limitation. It was held that in view of sub-section (3) of Section 80 of the Act, an application for extension or alteration of route shall be treated as an application for the grant of a new permit, and if the government has formulated the route of the mini buses by issuing notification dated 22.2.2005 under Section 68

(3)(ca) of the Act, then no extension can be granted contrary to the notification dated 22.2.2005.

Learned counsel for the petitioner argued that both the authorities have committed grave illegality while declining the application of the petitioner for grant of extension and increase in return trips from 3 to 5 on the ground that the proposed extension of the route does not fall under the formulated routes prescribed in the notification dated 22.2.2005. Learned counsel submits that the petitioner was granted permit for plying the mini buses in the year 1991 on the route in question which was renewed from time to time. However, Section 68(3)(ca) of the Act was inserted in the year 1994. Therefore, any notification issued in exercise of Clause (ca) of sub-section (3) of Section 68 of the Act will only be applicable on the application for grant of a new permit on the route, when any fresh application is made under Section 80(3) of the Act. Learned counsel submits that if a permit holder seeks extension or alteration of the permit already granted to him, then the notification issued under the aforesaid Clause will not be applicable. In support of his contention, learned counsel for the petitioner has relied upon a decision of the Supreme Court in M/s Shiv Chand Amolak Chand v. The Regional Transport Authority and another, AIR 1984 SC 9, wherein it was observed that where an applicant seeks a short extension of the route specified in the permit, it would not be appropriate to say that it is an application for grant of a new permit, though technically the extended route may not be regarded as the same as the original route and where such is the case, it would not be necessary to comply with the procedure set out in sub-section (3) of Section 47 of the Motor Vehicles Act, 1939. Learned

counsel for the petitioner further submitted that in view of the liberalized policy for grant of permits as held by the Supreme Court in ***Mithlesh Garg etc.versus Union of India and others, AIR 1992 SC 443*** and the Division Bench of this Court in ***Libra Bus Service Pvt.Ltd. & Anr. versus State Transport Commissioner and Anr., (CWP No.4381 of 2006, decided on 30.5.2006)***, the permit can be granted on the route even if not formulated under Section 68(3)(ca) of the Act.

On the other hand, learned counsel for the respondents submitted that sub-section (3) of Section 80 of the Act provides that an application for extension or alteration of route shall be treated as an application for the grant of a new permit and a new permit cannot be granted on the route, which is not a formulated route, under the notification dated 22.2.2005 issued by the State Government in exercise of Section 68(3)(ca) of the Act. Learned counsel submitted that the judgment relied upon by the learned counsel for the petitioner in M/s Shiv Chand Amolak Chand's case (supra) is not applicable because the said judgment was given under the old Act where there was no provision like sub-section (3) of Section 80 of the Act which provides that an application for extension or alteration of route shall be treated as an application for the grant of a new permit. Since the route in question does not fall in the list of formulated routes as notified vide notification dated 22.2.2005 issued under Section 68(3)(ca) of the Act, the proposed extension cannot be granted to the petitioner.

After hearing the counsel for the parties, we do not find any merit in the instant writ petition. Sub-section(3) of Section 80 of the Act clearly provides that an application for extension or alteration of route

shall be treated as an application for the grant of a new permit. In view of this clear provision, we do not find any force in the contention of the learned counsel for the petitioner that the notification issued under Section 68(3)(ca) of the Act will not be applicable in case of the petitioner where she has only sought for the increase of the permit and has not claimed the issuance of a new permit. Clause (ca) of sub-section (3) of Section 68 of the Act empowers the State Government to formulate routes for plying stage carriages under Chapter V of the Act. If the State Government in exercise of this power formulates routes for plying stage carriages of a particular type, then only the permits can be granted on those specified routes, but where the State Government, in exercise of the said power, has not formulated any route for plying stage carriage of any particular type, then the grant of permits is regulated by the liberalized policy as laid down in Section 80(2) of the Act, as has been held by the Supreme Court in Mithilesh Garg's case (supra). Further the Division Bench judgment relied upon by the counsel for the petitioner in Libra Bus Service Pvt.Ltd.'s case (supra) pertains to a case where the State Government did not formulate any route for operation of A.C. coaches. In that situation, it was held that Clause (ca) of sub-section (3) of Section 68 of the Act will not pose an obstacle in grant of permit under the liberalized policy as laid down in Section 80(2) of the Act. In the instant case, the position is totally different. In our opinion, as per the provisions of sub-section (3) of Section 80 of the Act, an application for extension or alteration of route shall be treated as an application for the grant of a new permit, and if the government has formulated the route of the mini buses by issuing a notification dated 22.2.2005 under Section 68(3)(ca) of

the Act, then no extension of the route can be granted contrary to the said notification. Since the proposed extension of the route does not fall under any of the formulated routes prescribed in the aforesaid notification, therefore, in our opinion, both the authorities have rightly come to the conclusion that the proposed extension/variation in permit can not be granted under Section 80(3) of the Act.

In view of the above, we do not find any ground to interfere in the impugned orders passed by both the authorities.

Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

March 31, 2008
vkg

(RAKESH KUMAR GARG)
JUDGE