

GAHC010144902017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 6379/2017

1: BURABURI ANCHALIK OMNI BUS STAND SAMITY
REP. BY ITS PRESIDENT URMAT ALI, REGISTERED OFFICE AT VILLAGE and
PO- BURABURI, PS- MAYONG DIST. MORIGAON, ASSAM

VERSUS

1: THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
TRANSPORT DEPTT., ASSAM SECRETARIAT, DISPUR, GUWAHATI-781006

2: THE COMMISSIONER OF TRANSPORT
PARIBAHAN BHAWAN
JAWAHAR NAGAR, KHANAPARA
GUWAHATI-22

3: THE SECRETARY
STATE TRANSPORT AUTHORITY
PARIBAHAN BHAWAN, JAWAHAR NAGAR
KHANAPARA, GUWAHATI-22

4: THE DEPUTY COMMISSIONER
MORIGAON, PO, PS and DIST. MORIGAON
ASSAM-78

5: THE SUPERINTENDENT OF POLICE
MORIGAON, PO, PS and DIST. MORIGAON,
ASSAM

6: THE DISTRICT TRANSPORT OFFICER
MORIGAON
PO, PS and DIST. MORIGAON
ASSAM-78

7:MRS. APARANA GOSWAMI
HEAD MISTRESS
SANJUKTA BURABURI PRIMARY SCHOOL
PO-BURABURI, PS- MAYONG
DIST. MORIGAON, ASSAM

8:MR. IBRAHIM KHALIL
S/O SAMSUDDIN
R/O POCHOTIYA, PO, PS and DIST. MORIGAON
ASSAM

9:JAHUR UDDIN
S/O LATE AZIMUDDIN
VILL and PO- KURANIBARI,- MAYONG
DIST. MORIGAON, ASSAM

Advocate for the Petitioner : MR.R K BORA

Advocate for the Respondent : FOR CAVEATOR

BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI

JUDGEMENT AND ORDER
(ORAL)

29.03.2018

Heard Mr. R. K. Bora, learned counsel appearing for the petitioner. Also heard Mr. P. N. Goswami, learned counsel appearing for respondent No. 8 as well as Ms. M. Bhattacharjee, learned State counsel, appearing for respondent Nos. 1 to 6.

2. Perused the office Note dated 04.12.2017, which goes to show that notices were sent to respondent Nos. 7 and 9 on 04.12.2017 by registered post with A/D.
3. Office note dated 15.03.2018 goes to show that A/D Card in respect of respondent No. 7 has been received back, but A/D Card has not been received back in respect of respondent No. 9.
4. Having regard to the period of time that has elapsed from the date of dispatch of

notice to respondent No. 9 by registered post with A/D, service of notice upon the said respondent is presumed.

5. Service is complete.

6. As agreed to by the learned counsel for the parties, this case is taken up for final disposal at the admission stage itself.

7. The relevant facts necessary for the purpose of disposal of the writ petition are that the petitioner, which is a registered society, entered into a lease agreement with one Samser Ali in respect of a plot of land measuring 1 Bigha, covered by Dag Nos. 456, 457 and 458 of Periodic Patta No. 15 under Mayong Mouza, for running a bus stand, namely, Buraburi Anchalik Omni Bus Stand. The petitioner also applied for grant of an Agent's Licence under Rule 51(1) of the Assam Motor Vehicle Rules, 2003 (for short, "Rules").

8. It appears that one Motor Vehicle Inspect (MVI), namely, S. N. Gogoi, inspected the said plot of land pursuant to a letter dated 02.09.2015, issued by the Commissioner of Transport, Assam, and submitted a report (Annexure-4A) to the Commissioner of Transport, Assam. The report reads as under:

"I have physically inspected the site proposed by Burabuti Anchalik Omni Bus Stand Samity for granting Agents license as per your direction and found the following :-

- 1. The proposed site is at par with the annexed sketch map and located at Buraburi near daily market.*
- 2. The plot of land measures 1 Bigha 0 Lessa covered by P.P. No. 15, Dag No. 456, 457, 458 at KISSAM Buraburi under Mayong Mouza in the district of Morigaon.*
- 3. The Passengers Waiting Room is adequately constructed with drinking water facility, Ladies and Gents separate toilet and urinal.*
- 4. Parking area is adequate to accommodate at least 20 big buses.*
- 5. N.O.C. issued by O.C. Mayong P.S., H.M. Buraburi High School, Secy., Buraburi G.P., Morigaon District Omni Tourist Transport Association submitted.*

Since the proposed plot is adjacent to the P.W.D. Road connecting Jagi

Bhakat Gaon and Mayong and also near Buraburi Junction it will be convenient to the travelling public of the locality if the permission is granted in that area as sought for.”

9. It is not very clear from the writ petition (no affidavit has been filed in this case by any of the respondents) as to what was the occasion for submission of another report by another MVI by the name of Utpal Gogoi. It appears that Utpal Gogoi, MVI, had also submitted report to the District Transport Officer, Morigaon, Assam, in respect of the bus stand in question. The report reads as under:

“1. The proposed site is at par with the annexed sketch map and located at Buraburi near Daily market.

2. The plot of land measures 1 bigha 0 lessa covered by P.P. No. 15 Dag No. 456, 457, 458 at Kissam Buraburi under Mayong Mouza in the district of Morigaon.

3. The waiting room for passengers is found adequately constructed having cloak room, drinking water facility and separate toilet and urinal for both gents as well as ladies.

4. The adequate accommodation of parking for at least 20 big buses/auto rickshaws/share taxis and Magic all together.

5. That I am also inclined to mention here that the proposed Omni Bus Stand is 30 Km. away from the office of the ASTC, Morigaon. It can also be said that there would be no traffic congestion due to the proposed stand.

6. That there is also provision to set up CCTV camera for observation.

7. That NOC is issued by O.C., Mayong PS, H.M. Buraburi High School, Secy, Buraburi GP, Morigaon District OMNI Tourist Transport Association have been seen and verified and attached herewith.

Since the proposed plot of land is adjacent to the PWD road connecting Jagi Bhakat Gaon and Narengi (Guwahati) via Mayong, it will be convenient for the public travelling of the locality if the permission is granted in the area as prayed for.”

10. Based on the said report, a letter dated 09.11.2016 was issued by the District

Transport Officer, Morigaon, to the Commissioner of Transport, Assam, recording therein that the conditions laid down for grant of Agent's Licence under Rule 54 of the Rules had been fulfilled and recommending grant of Agent's Licence to the petitioner based on the report of Utpal Gogoi, MVI.

11. The Secretary, State Transport Authority, thereafter issued a letter dated 30.11.2016 to the petitioner requiring it to deposit Security Money of Rs. 5,000.00 and also to furnish Annual Fee of Rs. 10,000.00. Thereafter, Agent's Licence, being Agent's Licence No. 02/2016 STA, dated 03.12.2016 was issued to the petitioner by the Secretary, State Transport Authority, Assam. The Licence was issued for the period from 03.12.2016 to 02.12.2017, renewable from time to time. A note was also given in the licence stating that in case of any impediment arising out of traffic congestion, land dispute, public complaint and law and order situation, the authority shall order rejection of the site with immediate effect.

12. On 09.12.2016, an order was issued by the State Transport Authority keeping in abeyance the petitioner's Agent's Licence dated 03.12.2016 and this prompted the petitioner to approach this court by filing an application under Article 226 of the Constitution of India, which was registered as WP(C) 7570/2016.

13. As no prior notice was given to the petitioner before issuing the said order dated 09.12.2016, the order was interfered with by this court by an order dated 20.12.2016 on the ground of violation of principle of natural justice. It was observed that the petitioner would be entitled to carry on the activities under its Agent's Licence.

14. A perusal of the order dated 20.12.2016 goes to show that the court had taken note of the submission of the learned State counsel that a Show Cause notice dated 30.08.2016 was issued to the petitioner asking him to show cause as to why its licence should not be cancelled in view of public complaints. The petitioner had not brought on record the said Show Cause notice. However, the reply given by the petitioner to the Show Cause notice has been annexed as Annexure-16.

15. The Show Cause reply goes to show that at paragraph 8 thereof the petitioner had accepted that the Omni Bus Stand was temporarily operated from another place, meaning thereby that it was not operating from the plot of land measuring 1 Bigha covered by Dag

Nos. 456, 457 and 458 of Periodic Patta No. 15. It also appears therefrom that, subsequently, the petitioner started operating from the said plot of land.

16. There is a report dated 20.04.2017, submitted by the Enforcement Inspector, Morigaon, to the District Transport Officer, Morigaon, in respect of the complaint petition of Smt. Aparna Goswami, Head Mistress, as well as the complaint filed by Md. Ibrahim Ali and 95 others, stating that an enquiry had been conducted by him on the aforesaid complaints and in the enquiry it was found that the actual allotted land was very near to the school and not at all suitable. The vehicle stand, according to the said report, was running from about 396 meters away from the school and that the said vehicle stand did not disturb the school. An Additional Deputy Commissioner, Morigaon, had also submitted an enquiry report dated 06.07.2017 to the Deputy Commissioner, Morigaon, recording therein that the distance between the Buraburi Primary School and the OMNI Bus Stand is just about 20/25 Meters.

17. The petitioner has also brought on record a report dated 06.07.2017 submitted by Deputy Superintendent of Police (P), Morigaon, addressed to the Superintendent of Police, Morigaon, to the effect that the petitioner was operating the bus stand from another location and not from the actual location in respect of which the licence was granted. It was also noted in the report that there was a complaint from one Smt. Aparna Goswami, Head Mistress, Sanjukta Buraburi Primary School (respondent No. 7), to the effect that the plot of land covered by Dag No. 462, from which the petitioner was operating its bus stand, was very near to the school and it was disturbing the functioning of the school and that the said location is unsuitable for a bus stand.

18. On 09.10.2017, the Assistant Secretary, State Transport Authority, Assam, being the licencing authority, had passed an order cancelling the Agent's Licence of the petitioner in exercise of powers under Rule 58 of the Rules for violation of the provisions of Rule 54 of the Rules. In the said order, it was opined as follows:

"In view of the facts & circumstance herein above, Licensing Authority is of the opinion that, the Licence holders were running the Business of Bus Stand at Buraburi in the place other than the place of allotment by the Licensing Authority. On receipt of notice of hearing on the matter, they have shifted their bus stand to the original place of

allotment without any infrastructure for running the Bus Stand in violation of Rule 54 of the Assam M.V. Rules, 2003. Further, this original allotment place being very nearer (next to the school boundary) to the school, it creates a very unhealthy/noisy & polluted atmosphere which is not at all secured & safety to the students of the school. In this context, the complaints of Mrs. Aparna Goswami, Head Mistress of Sanjukta Buraburi Primary School, Buraburi, Dist. Morigaon is also taken into consideration.

Therefore, Licencing Authority is of the view that Licence holder is unable to run their business in accordance with the provisions of Law and serve the interest of public safety and security. Hence, the Agent's Licence No. 02/2016 STA issued to M/s Buraburi Anchalik Omni Bus Stand Samity is hereby cancelled under Rule 58 of the AMV Rules 2003 for violation of provisions of Rule 54 of the Assam Motor Vehicle Rules, 2003. The M/s Buraburi Anchalik Obmi Bus Stand Samity is directed to close operation of Agent's Licence (passenger) forthwith. This has the approval of Secretary, State Transport Authority, Assam."

19. This order dated 09.10.2017 passed by the Assistant Secretary, State Transport Authority, Assam, whereby the petitioner's Agent's Licence, was cancelled, has been put to challenge in the instant writ petition.

20. A perusal of the aforesaid order goes to show that hearing was afforded by the Assistant Commissioner of Transport, Assam, and that the petitioner and the complainants were heard on two different dates. However, the order finally came to be passed by the Assistant Secretary, State Transport Authority, Assam, who had not heard the petitioner and the complainants.

21. Long back, the Supreme Court, in the case of *Gullapalli Nageswara Rao and Others vs. Andhra Pradesh State Road Transport Corporation and Another*, reported in *AIR 1958 SC 308*, had held that if a hearing is conducted by one authority and the order is passed by another authority, the same militates against the very ethos of the principles of natural justice, reducing it to an empty formality.

22. Judged in the aforesaid context, the impugned order, being rendered in violation of principles of natural justice, would merit quashment on this count alone.

23. However, there is another facet to the entire issue. The two reports given by the two MVIs, one by Mr. S. N. Gogoi and the other by Mr. Utpal Gogoi, to which reference is made in the earlier part of this judgement and based on which the Agent's Licence came to be issued, are conspicuously silent on the existence of the school by the name of Sanjukta Buraburi L.P. School, which, as it appears from the subsequent reports, is very close to the plot of land measuring 1 Bigha, from which the petitioner was supposed to operate the bus stand under the Agent's Licence. It appears that due enquiry had not been conducted by the aforesaid two MVIs as the subsequent enquiry reports demonstrate that Sanjukta Buraburi L.P. School is barely 20/25 Meters away from the bus stand in question and, therefore, the moment the bus stand was sought to be operated from there, the Headmistress of the said school started raising complaints based on which the order dated 09.12.2016 had come to be passed keeping in abeyance the Agent's Licence of the petitioner.

24. Mr. Borah has submitted that because of the objections raised preventing the petitioner from operating the bus stand from the plot of land measuring 1 Bigha covered by Dag Nos. 456, 457 and 458 of Periodic Patta No. 15, the petitioner had to look for an alternative site and start operation. It is submitted by him that in the facts and circumstance of the case, such shifting of the bus stand should not be held against the petitioner. He further submits that after identifying a suitable plot of land, the petitioner will again make an application for grant of Agent's Licence and as and when such application is made, the respondent authorities should be directed to consider such application.

25. Mr. Goswami, learned counsel for respondent No. 8 submits that he will have no objection if an Agent's Licence is granted to the petitioner to operate the bus stand from a suitable plot of land in accordance with law.

26. In view of the above discussions, despite the inherent infirmity in the order dated 09.10.2017 passed by the Assistant Secretary, State Transport Authority, Assam, cancelling the Agent's Licence of the petitioner, the impugned order is not interfered with on the ground that the petitioner, in his Show Cause reply, had admitted to be operating the bus stand from a plot of land other than the plot of land in respect of which the licence was granted. The petitioner has sought to justify the operation of the bus stand from another location by contending that such shifting was necessary due to public complaints. It also transpires that

the plot of land, which was vetted by two MVIs in their reports, was subsequently found not fit for operating a bus stand in view of the close proximity to the L.P. School.

27. Considering the peculiar facts and circumstances of the case, the petitioner is permitted to file a fresh application praying for grant of Agent's Licence for operating a bus stand from a suitable plot of land. In the event of filing of such an application, after making such enquiry as may be considered appropriate, the Licencing Authority will take a decision on the petitioner's application in accordance with law without being influenced by the fact that the petitioner's previous Agent's Licence was cancelled and that an opinion was recorded in the order dated 09.10.2017 with regard to the shortcomings, such as, lack of infrastructure, etc., in view of the basic fallacy, as noted above, in the said order dated 09.10.2017.

28. Writ petition stand disposed of in terms of the above. No cost.

JUDGE

Comparing Assistant