

CWP-23482-2021 (O&M) and
CWP-23710-2021 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Decided on : 6.12.2021

CWP-23482-2021 (O&M)

M/s New Deep Bus Service and another

...Petitioners

vs.

State of Punjab and others

....Respondents

CWP-23710-2021 (O&M)

Orbit Aviation Private Limited

...Petitioner

vs.

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present :- Mr. Akshay Bhan, Senior Advocate with
Mr. Rohit Sud, Advocate and
Mr. Amandeep Singh Talwar, Advocate
for the petitioners in CWP-23482-2021.

Mr. Puneet Bali, Senior Advocate with
Mr. Surjeet Bhadu, Advocate and
Mr. Vaibhav Jain, Advocate
for the petitioner in CWP-23710-2021

Mr. D.S.Patwalia, Advocate General, Punjab with
Mr. Navdeep Chhabra, DAG, Punjab
for respondents-State.

Mr. Amit Jhanji, Senior Advocate with
Ms. Nikita Garg, Advocate
for the respondent-RTA.

AJAY TEWARI, J.

1. Vide this common order we shall dispose of above said two writ petitions as common question of law and facts are involved therein. For the

sake of convenience, the facts are being taken from CWP-23482-2021.

2. By this petition the petitioners have prayed for issuance of directions for quashing the order dated 12.11.2021 (Annexure P-21 and Annexure P-22) whereby permits granted to the petitioners have been cancelled.

3. Brief facts of the case are that the petitioners are transporters in the State of Punjab and have been issued Stage Carriage Permits under Section 72 of the Motor Vehicles Act, 1988 (for short 'the MV Act') which falls under Chapter V of the MV Act. Due to nationwide lockdown on account of Covid-19, the petitioners could not deposit the Motor Vehicle Tax and the Regional Transport Authority, Faridkot (RTA) seized 26 buses of the petitioners. The petitioners made a representation dated 12.10.2021 to the RTA praying for recovery of the Motor Vehicle Tax in installments and the Authority verbally permitted the petitioners to pay the tax in installments and assured the petitioners regarding release of the impounded buses. Thereafter, the petitioners paid the first installment on 12.10.2021 for the month of November, 2021 and undertook to pay remaining installments. The RTA in pursuance of the assurance of the petitioners, released only 6 buses and assured the petitioners that by the morning of 13th October, remaining buses would be released. But thereafter, the RTA re-seized the 6 released buses again on 13th to 15th October 2021. The petitioners filed CWP-21494-2021 which was disposed of by this Court after the Court was informed that the representation dated 12.10.2021 made by the petitioners has been rejected. On 12.11.2021, the State Authority passed orders cancelling the permits.

4 The only additional fact that needs to be noticed in CWP-23710-2021 is that on the representation filed by the petitioner in the said petition for payment of the due tax by way of installments, the RTA, Bathinda, allowed payment in four monthly installments vide order dated 11.10.2021. After the petitioner had paid first installment, the order dated 11.10.2021 was reconsidered and withdrawn. The operative part of the same reads as under:-

“A bare perusal of the aforementioned clause of the Scheme clearly shows that it particularly stipulates that in case the Govt. Dues/Taxes liable to be paid to the Government on account of MV taxes with respect to plying of stage carriage bus on a permit are not paid/cleared in time then as per Clause 11 of the aforementioned Scheme, such permit is liable to cancelled with immediate effect apart from initiation of proceedings for taking penal action against such permit holder for such default. Further, as per mandate of Clause 11 of the present approved stage carriage scheme, all the terms and conditions envisaged therein shall be deemed to be conditions contained in the permit itself.

As per record of the department you are in default of MV taxes to the tune of Rs.671941/- till date with respect to the afore mentioned permit which was required to be cleared/paid by 30.10.2021.”

In view of the aforesaid default, you the permit holder have rendered yourself liable to be proceeded under above mentioned approved scheme and thus permit granted to you is liable to be cancelled with immediate effect under Clause 11 of the said Scheme apart from initiation of penal action proceedings against you.

Therefore, I paramdeep Singh, the Secretary RTA Faridkot exercising the powers vested in the undersigned vide notification Dt. 29.10.2021 do hereby, for the purposes of giving effect to approved scheme under clause (b) of sub-section (2) of Section 103 of the Motor Vehicles Act 1988 and also in order to give effect to the provisions of the notified Scheme mentioned hereinabove, order to cancel the permit bearing No.1-2/Reg/CP/Os Dt. -- with immediate effect and also order to initiate proceedings for taking penal action against

you as per law.”

As per the petitioner, request was made to the concerned authority to provide code for payment of tax including by way of e-mail dated 13.11.2021. On 15.11.2021, the petitioner paid entire tax on 15.11.2021 at around 2:00 PM and on the same date it received the impugned order whereby permits granted to the petitioner were ordered to be cancelled. Hence, the present petitions have been filed. Though, the State has asserted that the petitioners were defaulters however, it is not disputed that both the petitioners have now deposited the entire tax due.

5. We have heard learned counsel for the parties at length.

6. Learned Advocate General, Punjab, appearing for the State of Punjab, was heard at length on 01.12.2021. Today, Shri Amit Jhanji, Senior Advocate has put in appearance and has submitted that he would be arguing from where the learned Advocate General, Punjab, left off and conclude the arguments.

7. Learned Senior counsel appearing for the State has vehemently contended that the petitioners in CWP-23482-2021 are guilty of having committed fraud as they are plying more number of buses than the number of permits and are plying buses on expired permits. Thus, the Senior counsel further urged that the writ petitions deserve to be dismissed as the petitioners have approached this Court with soiled hands. Without commenting upon this, we find that none of the impugned orders cancelling the permits of the petitioners has been passed on the premise of fraud. The other contention of the learned Senior counsel is that the petitioners are plying the buses on expired permit. On our asking Senior

counsel agrees that no expired permit can be ordered to be cancelled and hence is not subject matter of present petition. We are here only concerned with the cancellation of the permits for non-payment of tax.

8. Though a host of allegations have been made, yet the primary allegation is that the permits were cancelled post-haste without issuing any notice. This fact is not disputed. To justify this action, the learned Advocate General and Mr. Amit Jhanji, learned Senior Advocate appearing on behalf of the respondent-RTA have argued that these permits were issued under Chapter VI of the MV Act and not under Chapter V of the MV Act. Further, the petitioners were in substantial arrears of tax and Section 103(2)(b) of the MV Act provides for cancellation of permits. They have also drawn our attention to Section 98 of the MV Act which is quoted hereinbelow :-

“98. Chapter to override Chapter V and other laws.— The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law.”

9. As per them, since Chapter VI of the MV Act has to apply notwithstanding anything contained in the Act, it is clear that the provisions regarding notice etc. which are contained either in Chapter V of the Act or in the Punjab Motor Vehicles Taxation Act, 1924 need not be applied. They have further relied upon the judgment of the Supreme Court titled as ***State of UP vs. Sudhir Kumar Singh*** reported as ***2020 SCC online SC847*** and primarily to paragraph No.39 which is also quoted hereinbelow:-

“39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

10. It is their contention that once the petitioners were admittedly defaulters, Clause 'h' of Section 11 of the Scheme namely, Punjab Govt. Gaz. (Extra), February 22, 2018 (PHGN 3, 1939 SAKA) No. S.O.10/C.A.59/1988/Ss.99 and 100/2018 (framed under Chapter VI (Annexure P-1) permitted the respondents to cancel the permit and since the petitioners had nothing to say and therefore, the lack of notice would not change the outcome of the case.

11. On the other hand, the contention of the learned Senior Counsel

appearing on behalf of the petitioners is that Section 98 of the MV Act specifically gives pride of place to Chapter VI of the MV Act only in the event of there being any inconsistency between any of the provisions of Chapter VI of the MV Act and the other provisions of the MV Act or any other law. They have pointed out that there is no provision in Chapter VI of the MV Act which lays down that no notice would be required. As per them, if such a provision had been there, only then it could have been argued that this provision being inconsistent with the provisions of the Act or the provisions of any other Act would hold the field. They have, moreover, alluded to Clause 11 of the Scheme which is also quoted there :-

“A holder of State carriage permit shall be liable for penal action and cancellation of permit, as provided under the Motor Vehicles Act, 1988 and under the Punjab Motor Vehicles Rules, 1989 in case of non-compliance of terms and conditions of the permit and/or any breach of conditions specified in this Scheme.”.....

12. They have pointed out that the Scheme itself envisages cancellation of permit under the provision of the MV Act and MV Rules and have pointed out that under the provision of Chapter V of the MV Act and the Punjab Motor Vehicles Taxation Act, 1924 there is no question of cancelling any permit without issuing a notice or without hearing. They have further argued that the different situations mentioned in sub-clauses 'a' to 'k' of Clause 11 of the said Scheme are themselves very revealing. For instance, coming to sub-clause 'a', they have argued that if while going from place 'A' to place 'B' a vehicle suffers from a flat tyre and in the process of changing the tyre it does not reach place 'B' on a designated time, it would be most unfair, unreasonable and arbitrary if the permit is cancelled without

even notice. Likewise, coming to Clause 'd', they have argued that if because of some electrical malfunction the power of GPS is discontinued it would again be most unfair, unreasonable and arbitrary to cancel the permit without notice. Likewise, coming to Clause 'j' they have argued that endangering the safety of the passengers can never be a cut and dried conclusion and whether a particular act of a driver endangered the safety of the passengers have to be dealt with on a case to case basis after giving an opportunity to the driver to explain his action. We can also be not unmindful of the fact that one of the main purposes of the MV Act was to ensure that grant of permits is liberalized and made transparent and that the Rule was to grant as many permits as there are applicants and let the market forces ultimately separate the wheat from the chaff. Chapter VI of the Act was added to restrict that liberalization in public interest for those notified areas or notified routes where the State Government wanted State Transport Undertakings to run the buses. Even though we are not giving a final opinion, yet there is much to be said for the argument of the learned Senior Counsel for the petitioner that the cancellations of permits envisaged in Chapter VI of the Act is only in those situations where an existing permit has to be cancelled to make way for the State Transport Undertakings and that is why in Section 105 of the Act, provision is made for determination and payment of compensation by the said State Undertaking to the private operators in the event of cancellation or curtailment of permit. We also cannot ignore the fact that for infraction of conditions of permit or other reasons it is only Section 86 of the MV Act which envisages cancellation.

13. Learned Senior counsel appearing for the State of Punjab has

placed reliance on series of judgments i.e. **Punjab Roadways vs. Punjab Sahib Bus and Transport Co., (2010) 5 SCC (Civil) 235, Ram Krishna Verma and others Vs. State of U.P. and others, (1992) 2 SCC 620, Gaj Raj and others Vs. State Transport Appellate Tribunal and others, (1997) 1 SCC 650 and Adarsh Travels Bus Service and another Vs. State of U.P. and others, (1985) 4 SCC 557**, to impress upon the argument that Chapter VI and the Scheme framed thereunder shall have overriding effect over Chapter V of the Motor Vehicle Act or any other law. There is no dispute with the said law as laid down and reiterated in the aforesaid judgments. Without doubt the law mandates that the Scheme under Chapter VI once published is law. It shall have an overriding effect on Chapter V of the Act and any other law. However, learned Senior counsel representing the State has not been able to show any provision in the Scheme or Chapter VI which expressly or impliedly bars issuance of show cause notice before cancellation of permit. Rather, the provision of the Scheme invoked while cancelling the permits i.e. Clause 11 provides for that the penal action and cancellation of permit against the holder of Stage Carriage Permit shall be as provided under the MV Act, and the Punjab Motor Vehicle Rules, 1989. Admittedly, it is Section 86 of the MV Act which is the only provision which governs the cancellation and suspension of permits. Section 86(1) provides that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation. The argument raised by the learned Senior counsel representing the State with respect to the admission of liability by the petitioners and thus, there being no prejudice caused to them is to be noticed

to be rejected. Even if, the petitioner admitted the liability, he deserved a chance to make payment in lump sum before sounding the death knell to its business in form of cancellation of permits. The petitioner deserved a chance to make due payment of tax and its right to have that chance gains more significance in view of Section 11-B(2) of the 1924 Act. The petitioners have also placed reliance upon an advisory issued by the Government of India to all the States and Union Territories regarding extension of the validity of documents related to Motor Vehicles Act, 1988 and Central Motor Vehicles Rules, 1989 and further to consider relaxation in permit-fees / taxes etc., which reads as under:-

“To

- 1. The Director General of Police*
- 2. Principal Secretaries/ Secretaries, Department of Transport*
- 3. The Transport Commissioners of all the States and Union Territories.*

Subject: Extension of the Validity of documents related to Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989 and further to consider relaxation in Permit - fees / taxes etc.

Madam /Sir,

Please refer to the order by Ministry of Home Affairs vide No.40-3/2020-DMI(A), dated 24th March 2020, and the guidelines issued subsequently, pursuant to a decision to impose a complete lock down in view of the threat imposed by the spread of COVID-19. The Government has provided for the availability of essential goods and has allowed vehicles for the transport of such goods / cargo and further opening up the operation of passenger transport. It had come to the notice of the Government that citizens were facing difficulties in renewal of validity of various documents related to Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989 due to lock-down being at various stages in the country, and they were expected to face long queues in front of Government Transport Offices.

2. In view of the above, Ministry of Road Transport and

Highways had issued advisories dated 30th March, 2020, 9th June, 2020, 24th August 2020, 27th December 2020 and 26th March, 2021 to all States and Union Territories regarding extension of validity of the documents related to Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989. It was advised that with respect to the validity of Fitness, Permit (all types), Driving License, Registration or any other concerned document(s) whose extension of validity could not or was not likely be granted due to lock-down and which had expired since 1st of Feb. 2020, or would expire by 30th of June, 2021, the same may be treated to be valid till 30th of June, 2021. Enforcement authorities were advised to treat such documents valid till 30th of June, 2021.

3. Taking into consideration the grim situation still continuing in this regard, it is advised that the validity of all of the above referred documents, whose extension of validity could not or was not likely be granted due to lock-down and which had expired since 1st of Feb. 2020 or would expire by 30th September 2021, the same may be treated to be valid till 30th September, 2021. Enforcement authorities are advised to treat such documents valid till 30th September, 2021. This will facilitate citizens in availing transport related services.

4. All the States and Union Territories are requested to implement this advisory in letter and spirit so that the citizens, transporters and various other organizations, which are operating under this difficult time, may not get harassed and face difficulties.

Yours faithfully,

Sd/-

(Dr. Piyush Jain)

Director (MVL)”

14. Though, the Court is not oblivious of the hardship faced during the Covid-19 yet we do not find any need to revert to the issues with respect to advisory. Thus, without going into the effect of said advisory, we hold that conjoint reading of Section 86 and Clause 11 of the Scheme leads to inevitable conclusion that the petitioners deserve opportunity of hearing or at least show cause notice before penal action of cancellation of their permits was taken invoking Section 103(2)(b) of the MV Act.

15. Though, there are host of allegations levelled by the petitioners in the writ petition including hostile discrimination against them, political vendetta, malice in law etc., however, having found the action of the State to be arbitrary and illegal on this primary issue, we need not go into the said issues.

16. Keeping in view the aforesaid discussion, the writ petitions are allowed. The respondents are directed to release the buses forthwith and to permit the petitioners to ply them subject to the conditions of the permit even while granting liberty to proceed as per law about any other infractions which may have been made by the petitioners.

17. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

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(PANKAJ JAIN)
JUDGE

6.12.2021

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes