

**THE HIGH COURT OF MADHYA PRADESH
MP 4391/2018**

Shri Gurinder Singh Atwal vs. The State of MP & Ors.

Gwalior, Dated 20/12/2018

Shri N.K. Gupta, Senior Counsel with Shri Shailendra Gupta, Counsel for the petitioner.

Shri Vivek Jain, Counsel for the respondents No. 1 and 2/ State.

Shri M.S. Jadon Advocate with Shri Santosh Agrawal, Counsel for the respondent no.3.

Heard finally.

This Court by order dated 11-10-2018 had stayed the operation and effect of the impugned order dated 25-8-2018 in Revision No. 109/2016, however, the respondent no.3, filed a Writ Appeal which was registered as W.A. No.1491 of 2018. The Writ Appeal was allowed by order dated 31-10-2018, on the ground that the interim order has the trappings of final order, and by interim order, final relief has been granted. Therefore, the interim order dated 11-10-2018 was set aside with the following observations :

"In view whereof, we request the writ court that as and when, the matter is posted, may be taken up and be decided expeditiously."

Accordingly, when the case was taken up for final hearing, it was objected by the Counsel for the respondent no.3, that M.P. Nos. 5157/2018 and 5210/2018 are also listed for analogous hearing. However, in M.P. Nos.5157/2018 and 5210/2018, this Court has not issued notices, and has not taken cognizance of the same, therefore, they cannot be heard finally. It is further submitted that although the respondent no.3 has appeared in M.P. Nos. 5157/2018 and 5210/2018 and has taken advance notice and had sought time to file return, but mere acceptance of notice by the respondent no.3, on his own, does not mean that the Court has taken cognizance of the matter and therefore, it cannot be said that M.P. Nos. 5157/2018 and 5210/2018 are also ripe for hearing. Further, it is submitted that since this Court has not taken cognizance of M.P. Nos.5157/2018 and 5210/2018,

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therefore, the respondent no.3, has not filed his return in those cases. Thus, in nutshell the objection of the respondent no.3 is that the batch of writ petitions cannot be heard.

The submission made by the Counsel for the respondent no.3 is misconceived and is indicative of improper practice. When an interim order was passed by this Court, in the present petition, then the respondent no.3, filed a Writ Appeal which was allowed with a direction to the Writ Court to take up the matter and decide the petition expeditiously. Thus, this Court has no discretion to adjourn the matter and the judicial discipline demands that the observations made by a Division Bench, should be respected and followed. Therefore, any attempt on the part of the respondent no.3, to avoid hearing of the case, has to be foiled.

So far as the contention of the respondent no.3, that this Court has not taken cognizance of M.P. Nos.5157/2018 and 5210/2018 is concerned, the same is baseless. When M.P. No. 5157/2018 was taken up for hearing, the Counsel for the respondent no.3 appeared on advance notice and copy of the petition along with Annexure was served on him. On 29-10-2018, at the request of the Counsel for the respondent no.3, the case was linked with M.P. No. 5210/2018. In M.P. No. 5210/2018, the respondent no.3, filed his Vakalatnama on 31-10-2018. Thus, the respondent no.3, not only appeared in all the three cases, but was served with the notice of the petition. If the respondent no.3 was of the view that unless and until, a formal order of issuance of notice is not passed by this Court, he is not required to file the return, then in the considered opinion of this Court, the respondent no.3, should not have appeared on advance notice. Once, the respondent no.3, decided to appear in the miscellaneous petitions on his own, then he cannot make a submission, that unless and until a formal order of issuance of notice is passed, he is not required to file reply. Thus, the

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submission made by the Counsel for the respondent no.3 for adjournment is rejected, in the light of the direction given by the Division Bench of this Court.

The necessary facts for the disposal of the present petition in short are that, on 28-7-2015, an application for grant of regular permit was filed. The matter was heard by the R.T.A. On 1-10-2015 and the Regular Permit for a period of 5 years on Udaipura -Bhopal Route via Khargon- Barelli- Badi- 34 Miles-Chiklod-11 Miles - Bhopal was granted by order dated 29-10-2015. Being aggrieved by the order dated 29-10-2015 passed by the R.T.A., the respondent no.3, filed a revision under Section 90 of Motor Vehicles Act. The State Transport Appellate Tribunal, by order dated 25-8-2018, has allowed the revision, and has quashed the regular permit issued by the R.T.A., Bhopal, on the following grounds :- (1) That the route mentioned in the application was not complete. (2) The petitioner did not have a spare vehicle on the date of application and (3) That the application was not complete.

Challenging the order passed by the S.T.A.T., it is submitted by the Counsel for the petitioner, that a part of cause of action has arisen within the territorial jurisdiction of this Court, and once, the petition has been entertained, and interim order was passed, which has been set aside in Writ Appeal and a request has been made to the Writ Court, to decide the matter, therefore, under these circumstances, this Court, may not refuse to exercise its jurisdiction on the ground of **Forum Conveniens**. It is further submitted that the respondent no.3, was not the co-applicant for grant of regular permit, therefore, he has no locus standi, to either object before the R.T.A., nor has any locus standi to challenge the order of R.T.A., before the S.T.A.T. Even otherwise, it is submitted that vehicle no. MP 38H0055 was spare on the date, when the application for grant of regular permit was made, and even otherwise, on the date of passing of the order i.e., 29-10-2015, the

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petitioner had already purchased a new bus and also got it registered. Therefore, on the date of order, the petitioner was having a spare new vehicle of 2015 make. It is further submitted that the application for grant of regular permit was not vague and the route Udaipura - Bhopal Route via Khargon -Barelli - Badi- 34Miles - Chiklod - 11 Miles - Bhopal, was already formulated by the Government /S.T.A. It is submitted that earlier, the vehicle no. MP38H0055 was being plied on a different regular permit, however, the said regular permit completed its life on 28-2-2015 and an application for renewal of the said regular permit was pending, and the application for renewal was allowed on 1-9-2015, and during 1-3-2015 and 31-8-2015, his vehicle No. MP38H0055 was standing idle. The application for grant of regular permit was made on 28-7-2015 and thus, on the said date, the petitioner was having a spare vehicle. Before the order on the application for grant of regular permit could be passed, the petitioner had purchased a new vehicle, which was also got registered and on the date, when the regular permit was granted, the petitioner was having a new spare vehicle.

Per contra, it is submitted by the Counsel for the respondent no. 3 that on the date when the application was filed, the petitioner was not having any spare vehicle. The vehicle bearing registration no. MP38H0055 was being plied on different route under different regular permit. Merely because the petitioner had purchased a new vehicle before the grant of regular permit, would not make any difference, because, the eligibility of the petitioner to obtain regular permit, on the date of application is to be seen. It is further submitted that the application was incomplete and the route was not specifically disclosed. It is further submitted that it is incorrect to say that the respondent no.3, has no locus standi to either raise objection before the RTA or to file revision against the grant of permanent permit. It is further

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submitted that since, the respondent no.3 was not the co-applicant, therefore, he could not be said to be an aggrieved person, therefore, instead of filing an appeal, the respondent no.3 had filed a revision under Section 80 of Motor Vehicles Act. It is further submitted that the application must contain all the details and documents as mentioned in Section 70 of Motor Vehicles Act, and Rule 72 of M.P. Motor Vehicle Rules. It is further submitted that the co-ordinate Bench of this Court, in its order dated 13-12-2018 passed in M.P. No.722 of 2018 has not considered the judgment passed by the Division Bench of this Court in the case of **Kalim Mohd. Vs. STAT** reported in **1994(1) MPWN 15**, therefore, the same is *per-incurium*. It is further submitted that although Section 72 of Motor Vehicles Act, 1988, gives discretion to the R.T.A. to grant stage carriage permit with such modifications as it deems fit but the said modifications cannot be made in respect of any route or area not specified in the application. It is further submitted that it is true that the regular permit on the basis of which vehicle No. MP38H0055 was being plied by the petitioner had come to an end on 28-2-2015, but since, an application for renewal was pending, therefore, in view of Section 87 of Motor Vehicles Act, the petitioner was entitled for temporary permit, during the pendency of the renewal application, therefore, it cannot be said that on the date of application, any vehicle was in spare with the petitioner.

In reply it is submitted by the Counsel for the petitioner that view of Section 80 of Motor Vehicles Act, the RT.A. cannot ordinarily refuse to grant an application for permit of any kind made at any time under this Act.

Heard the learned Counsel for the parties.

1. Whether the Petitioner was having any spare vehicle for grant of regular permit on Udaipura- Bhopal Route via Khargone – Barelli -Badi- 34Miles – Chiklod- 11Miles - Bhopal or not?

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It is the submission of the Counsel for the Petitioner, that Vehicle No. MP 38 H 0055 was being plied on Devari -Bhopal Route as per regular permit No. M.C.P.06/04-05. However, this permit was valid upto 28-8-2015, and before the expiry of the said permit, an application for renewal was already filed. The application for renewal of permit No. M.C.P.06/04-05 was allowed by order dated 1-9-2015 and during this period, the vehicle no. MP 38H0055 remained idle and was not plied. The application for grant of regular permit on Udaipura-Bhopal Route was filed on 27-8-2015 and thus, on the said date, vehicle no.MP 38 H 0055 was in spare and was not being used by the Petitioner. Merely because the regular permit was renewed with effect from 1-3-2015, it does not mean that the vehicle no. MP 38H0055 was not in spare as it is not the case of the respondents, that the said vehicle was being used by the petitioner on any other route. It is further submitted that the arguments on the question of grant/non-grant of regular permit were heard by R.T.A. on 1-10-2015 and order was passed on 29-10-2015 and the permit was issued on 25-11-2015 for a period of five years. However, in the meanwhile, the petitioner purchased a new bus chassis and the same was registered on 23-10-2015 and was issued on 13-11-2015, where the order was passed on 29-10-2015, and on the said date, the petitioner was having a new spare vehicle and accordingly, the regular permit was granted to ply the new vehicle. It is further submitted that under any circumstances, it cannot be said that the petitioner was not having any spare vehicle. Thus, the only question for determination is that whether the petitioner was having a spare vehicle on the date of application as well as on the date of order or not?

The Division Bench of this Court, in the case of **Padamchand Vs. State Transport Authority** reported in **2014(1) MPLJ 124** has held as under :-

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“**19.** It is clear from the above judgments that an applicant has to fulfil qualification required in the rule and in regard to availability of the vehicle at the time of passing of the order by the Regional Transport Authority.”

Thus, it is clear that on the date of passing of the order by the Regional Transport Authority, the applicant must have a spare vehicle. In the present case, undisputedly, the petitioner was having a new spare vehicle on the date of passing of order by the Regional Transport Authority, therefore, the contention of the Counsel for the respondent no.3, that the petitioner was not having a spare vehicle on the date of application is misconceived and therefore, rejected, accordingly, the findings given by the S.T.A.T. in this regard is also set aside. Further, the S.T.A.T. has also given a contradictory findings in this regard. In order dated 12-10-2018, which is the subject matter of M.P. No. 5157 of 2018, the S.T.A.T. has given a finding that the petitioner was having a spare vehicle on the date of passing of the order by the Regional Transport Authority.

2.Vagueness of Route

The Petitioner has applied for grant of regular permit on Udaipura-Bhopal Route via Khargone-Barelli -Badi - Bhopal. According to the respondent no.3, it was not the complete description of Route. Whereas it is the submission of the Petitioner, that the Via Route was specifically disclosed and even otherwise, under Section 72 of Motor Vehicles Act, the R.T.A. may make such modifications, which he may deem fit.

The Respondent no.3 is having his regular permit from Udaipura-Bhopal via Badi- Mandideep-Bhopal, whereas the petitioner has been granted regular permit from Udaipura -Bhopal via Badi-Chiklod -Bhopal. The total route of the petitioner covered under the regular permit is approximately of 155 Kms. and out of which, some part of the route of the petitioner and the respondent no.3 is common. As per the order of

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the S.T.A.T., the common route of the petitioner and the respondent no.3 is only of less than 57 Kms. The S.T.A.T. has allowed the revision on one of the ground that when the complete route was not mentioned in the application, then why the R.T.A. awarded the route of Udaipura-Barelli-Badi-34 Miles-Chiklod-11Miles-Bhopal is also not clear.

In the considered opinion of this Court, in view of Section 72 of Motor Vehicles Act, the R.T.A. may grant permit with such modifications as it deem fit.

It is submitted by the Counsel for the respondent no.3, that under the garb of modification, the R.T.A. cannot grant permit on a route which was not applied for. The submissions made by the Counsel for the respondent no. 3 is misconceived. Proviso to Section 72(1) of Motor Vehicles Act, reads as under :

"Provided that no such permit shall be granted in respect of any route or area not specified in the application."

In the present case, the petitioner had applied for grant of regular permit for Udaipura – Barelli – Badi - Bhopal route. The R.T.A. has not completely changed the route as specified in the application. The R.T.A. has clarified that the route would be Udaipura -Khargone-Barelli-Badi-34Miles-Chiklod-11Miles-Bhopal. Thus, it cannot be said that the regular permit has been granted in respect of a route which was not specified in the application. Thus, without modifying the specified route as mentioned in the application, the R.T.A. has clarified by way of modification, which in the opinion of this Court, is permissible in view of Section 72(1) of Motor Vehicles Act.

Non-Disclosure of all the material information in the application

The S.T.A.T. has also set aside the order of the R.T.A. on the ground that the petitioner had not disclosed the details of other permits, which he was holding. Even the R.T.A., before deciding the application, could have got those columns filled from the Petitioner, but that was not done. It is submitted by the Counsel for the respondent no. 3, that

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since, all the mandatory provisions were not disclosed by the petitioner, therefore, his application was liable to be rejected on the said ground. Considered the submission made by the Counsel for the respondent no.3. The Counsel for the respondent no.3 has fairly admitted that one person may have multiple stage carriage permits and therefore, if the petitioner was having multiple stage carriage permits, then it would not adversely effect the entitlement of the petitioner to obtain new regular permit. Thus, where the disclosure of an information, does not have any adverse effect on the entitlement of the petitioner to obtain new regular permit, then it cannot be said non-disclosure of certain information would vitiate the entire proceedings. Although it was desirable for the petitioner to have disclosed all the information, but in the considered opinion of this Court, because of non-disclosure of number of permits, the claim of the petitioner would not get adversely effected and thus, the R.T.A. could have asked the petitioner to fill up the blanks left by him, but non-disclosure of an information, would not lead to dismissal of the application.

2. Locus standi of the respondent no.3 to object to grant of regular permit

A Co-ordinate Bench of this Court, in the case of **Mohd.Ansar (Anwar) Vs. The State Transport Appellate Tribunal and others** by order dated **13-12-2018** passed in **MP No. 722 of 2018** has held as under :

“In the case at hand, it is observed that respondents No. 3 and 4 were not the applicants for the route for which petitioner applied; but were operating over part of said route. And though objections were raised in respect of the locus of respondents no. 3 and 4 to challenge the grant of permit (which is evident from averments in paragraph 1 of the written submissions), the Tribunal did not avert to the same, there is no finding to that effect in the impugned order.

In view whereof and taking note of the law laid down in **Mohd. Ibrahim (Supra) Munnawar Jahan Begum**

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(Smt.) (Supra) and **E. Rama Rao (Supra)**, there remains no iota of doubt that the respondents No. 3 and 4 had no locus to question the grant of Stage Carriage Permit in favor of the petitioner. It was incumbent upon the Tribunal to have dismissed the revisions on said ground alone.

The Tribunal, in the considered opinion of this Court, grossly erred in entertaining the revisions."

It is submitted by the Counsel for the respondent no.3, that the judgment passed in the case of Mohd. Ansar(Anwar) (Supra) is per incurium, as it has not taken note of judgment passed by Division Bench of this Court in the case of **Kalim Mohd. Vs. S.T.A.T. (Supra)**.

Considered the submissions of the parties.

The undisputed fact is that the respondent no. 3 is not the co-applicant for grant of regular permit, but is a part route operator

The Supreme Court in the case of **Mithilesh Garg Vs. U.O.I.** reported in **AIR 1992 SC 443** has held as under :-

"**15.**The petitioners have further contended that the conditions of roads, social status, of the applicants, possibility of small operators being eliminated by big operators, conditions of hilly routes, fuel availability and pollution control are some of the important factors which the Regional Transport Authority is bound to take into consideration while taking a decision on an application for grant of permit. These are the matters which are supposed to be within the comprehension of the transport authorities. The legislative policy under the Act cannot be challenged on these grounds. It is not disputed that the Regional Transport Authority has the power under the Act to refuse an application for grant of permit by giving reasons. It is for the authority to take into consideration all the relevant factors at the time of quasi-judicial consideration of the applications for grant of permits. The statutory authorities under the Act are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalized policy."

This Court in the case of **Kalim Mohd (Supra)**, after relying upon the judgment of the Supreme Court in the case of **Mithilesh Garg**

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(Supra) has held as under :-

"It is clear from our decision in M.P. No. 730/93 and M.P. No. 969/93 while deciding those cases this Court heavily relied on the observations of the Supreme Court in *Mithilesh Garg V. U.O.I. (AIR 1992 SC 443)* wherein the reason for affording hearing to concerned persons was stated to be the necessity of some one to inform the tribunal deciding grant of permit about the condition of roads, social status of the applicant, possibility of small operators being eliminated by big operators, conditions of hilly routes, fuel availability and pollution control etc., so that the tribunals are able to decide the grant or refusal of permit on objections received. It is for this reason that we held that the rivals in the trade, competitors would be able to assist the tribunals in this matter by raising objections and being heard.....

(emphasis supplied)

Thus, it is clear that objections can be raised with regard to condition of roads, social status of the applicant, possibility of small operators being eliminated by big operators, conditions of hilly routes, fuel availability and pollution control etc., but it is an admitted position, that no such objection was raised by the respondent no.3 before the R.T.A. or before the S.T.A.T. Even before this Court, no such objection has been raised. All the objections which have been raised by the respondent no.3 were in relation to the maintainability of the application and availability/non-availability of spare vehicle with the petitioner. The Division Bench of this Court in the case of **Kalim Mohd (Supra)** has not held that all sorts of objections can be raised by the part route operators, who are not the co-applicants. Thus, in the considered opinion of this Court, in absence of any objection of the nature mentioned in para 15 of the judgment passed by the Supreme Court in the case of **Mithilesh Garg (Supra)** and in the case of **Kalim Mohd. (Supra)** it cannot be said that the judgment passed by the Co-ordinate Bench of this Court in the case of **Mohd. Ansar (Anwar) (Supra)** is per-incurium.

Accordingly, it is held that the respondent no. 3 had no locus

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standi to challenge the grant of regular permit before the S.T.A.T. or even before the R.T.A. Accordingly, this Court is of the considered opinion, that the S.T.A.T. should not have entertained the revision on behalf of the respondent no.3.

For the reasons mentioned above, this Court is of the considered opinion, that the order dated 25-8-2018 passed by S.T.A.T., Gwalior in Revision No. 109/2016 cannot be allowed to stand, and accordingly, it is set aside.

Consequently, the regular permit No. 186/2015 granted by the Regional Transport Authority, Bhopal for Udaipura-Khargone-Barelli-Badi-34 Miles-Chiklod-11 Miles -Bhopal is restored.

The petition succeeds and is hereby **Allowed.**

No order as to costs.

**(G.S. Ahluwalia)
Judge**