

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 18.10.2024
Pronounced on: 25.10.2024

**LPA No.166/2024
CM No.5875/2024**

TAXI SUMO STAND NO.1 **...APPELLANT(S)**

Through: - Mr. Hilal Ahmad Wani, Advocate.

Vs.

UT OF J&K & OTHERS **...RESPONDENT(S)**

Through:- Mr. Bikramdeep Singh, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

Per Sanjeev Kumar 'J'

1) This intra-court appeal by Taxi Sumo Stand No.1, Mehandi Kadal, Anantnag, filed through its President Abdul Haq Bhat, is directed against an order and judgment dated 31st May, 2024, passed by learned Single Judge [Writ Court] of this Court in WP(C) No.282/2020 titled "**Taxi Sumo Stand vs. UT of J&K & Ors.**" whereby the Writ Court has dismissed the writ petition filed by the appellants.

2) The appellant is a motor transport undertaking registered with the Labour Department and Mr. Abdul Haq Bhat claims to be its President. In the year 2018, the Transport Commissioner vide notification No.50-MVD of 2018 dated 20th July, 2018, specified a place at Mehandi

Kadal, Anantnag, to be used by the appellants as a stand for contract carriage (Taxi/Maxi Cabs). The appellants were permitted to park thirty vehicles which were specified in the aforesaid notification. This permission was to remain effective only for a period of one year subject to the validity of the agreement executed between the parties involved. The appellants have also placed on record a lease deed executed between Chief Executive Officer, Municipal Council, Anantnag, and the appellant through it's the then President and Secretary. The lease was valid for a period of three years. The appellant claims that ever since the Taxi Sumos' attached to the appellant transport undertaking are operating from Stand No.1 Mehendi Kadal, Anantnag, without any obstruction or hindrance from any quarter, there has been no complaint by any person against their operation from the said taxi stand. It is the case setup by the appellants that till the year 2020, the Taxi Sumo Stand No.1 was being operated from Mehendi Kadal but on 3rd February, 2020, the Executive Officer, Municipal Council, Anantnag, vide communication No.MC/ANG/20/974-81 called upon the appellant to shift TATA Sumo Stand from the present location i.e. DOB Stand Mehendi Kadal to Mehendi Kadal (New Bypass) adjacent to Police Station, Sadder, on the earmarked space immediately. The

appellant felt aggrieved by the aforesaid communication and, accordingly, filed WP(C) No/282/2020 seeking, *inter alia*, Writ of Certiorari to quash the communication dated 3rd of February, 2020, issued by Municipal Council, Anantnag, and also for a Writ of Mandamus commanding the respondents not to shift the Taxi Sumo Stand No.1 Mehandi Kadal, Anantnag, from its present place of operation. The entire writ petition was premised on the ground that the Executive Officer, Municipal Council, Anantnag, was not competent to order shifting of Taxi Sumo Stand, for the power to notify Taxi Stand and to shift Taxi stand from one place to another was vested in the Government or the authorized officer under Section 117 of the Motor Vehicles Act, 1988. The communication of Municipal Council, impugned in the writ petition, was also assailed on the ground that it had the effect of depriving the appellants of their livelihood and, therefore, violative of Article 19 and 21 of the Constitution of India.

3) The writ petition filed by the appellants was contested by the respondents. In the reply affidavit filed by Deputy Commissioner, Anantnag, it was submitted that the order impugned in the writ petition was issued by the Executive Office, Municipal Council, Anantnag, with the consent of District Administration to decongest the traffic between

Mehendi Kadal to Janglat Mandi. It was submitted that the unregulated flow of taxies/sumo's from the existing stand through Anantnag was a single reason responsible for impeding the free movement of vehicular traffic and causing huge inconvenience to the public. It was pleaded that due to inadequate space at Taxi Sumo Stand No.1, the Sumo Stand operators were routinely parking their vehicles on roadside and thereby choking the inherently constrained arterial road of the town leading to District Hospital, Anantnag. It was further case of the respondents before the Writ Court that the Sumo Stand No.1 was established in the year 2018 and registration for operation of the Stand expired on 31st December, 2019. This was evident from the communication of ARTO, Anantnag, bearing No.MVD/ARTO/Ant/2021/1440 dated 14.02.2020. It was, in short, the stand of the respondents that after 31st December, 2019, there was no registration of the appellant and, therefore, the appellant and its members were operating from the Stand in question illegally. Finally, it was pleaded before the Writ Court that in lieu of the old Sumo Stand, the respondents have offered a chunk of land measuring one kanal at Mehendi Kadal itself and the new location was separated from the old one by a distance of 100 meters.

4) The Writ Court considered the rival contentions and was of the opinion that the location of a Bus Stand or Taxi Stand in a public place is a prerogative of the Government governed by a policy decision to be taken at an appropriate level and the Writ Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the policy matter of the Government unless the policy or impugned action is inconsistent with the Constitution or is found arbitrary, irrational or an act of abuse of power. The writ petition was, accordingly, dismissed vide order and judgment impugned in this appeal.

5) Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the controversy raised by the appellants in their writ petition and now before us needs to be viewed from an angle slightly different from the Writ Court. Indisputably, the appellant and its members are operating their taxies/sumo from Stand No.1 Mehandi Kadal, Anantnag, since the year 2018, when in terms of notification No.50-MVD of 2018 dated 20th July, 2018, the then Transport Commissioner, J&K Government, specified the place to be used as Stand by the appellants for contract carriage (Taxi/Maxi Cabs). As is evident from the notification, only thirty vehicles were permitted to be

parked in Stand No.1 Mehandi Kadal, Anantnag and the permission was valid only for a period of one year. Despite repeated queries from us, learned counsel appearing from the appellant could not show us the extension of permission granted vide notification dated 20th July, 2018. Rather stand of the respondents which is on record in the shape of reply affidavit of Deputy Commissioner is that there is no extension of the temporary permission granted by the Transport Commissioner vide notification dated 20th July, 2018 after the expiry of period of one year stipulated in the said notification. It is the stand of the Transport Department that after 20th July, 2019, the appellant is operating from Stand No.1 Mehandi Kadal illegally and unauthorizedly. Learned counsel for the appellant placed strong reliance on the certificate of registration issued by the Labour Department for operating motor transport service employing not more than 54 persons on any one day during the years subject to the provisions of Motor Transport Workers Act, 1951 and the Rules framed thereunder, which as per the appellant has been renewed from time to time. Needless to say, that registration of the appellant to work as a motor transport undertaking under the Motor Transport Workers Act, 1951 and the Rules framed thereunder, is different from the permission that is required

from the Government or an authorized officer in terms of Section 117 of Motor Vehicles Acts, 1988 for determining a place to be used as a bus/taxi stand. Section 117 of the Motor Vehicles Act, 1988, reads thus:

“117. Parking places and halting stations.—The State Government or any authority authorised in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.”

6) From reading of Section 117 (supra), it clearly transpires that a place to be used as bus stand is required to be notified by the Government or an authorized officer in this behalf in consultation with the local authority. If the stand to be notified is within the jurisdiction of a local body like Municipal Council, the consent of such authority is necessary before the Government or its authorized officer notifies a particular place as a stand for contract carriage.

7) The plea of learned counsel for the appellants that since the place was allocated to the appellants for operating their stand at Mehandi Kadal Anantnag was under the orders of Transport Commissioner and, as such, the Executive Officer, Municipal Council, Anantnag, had no authority to revoke such permission, is without any

substance and deserves outright rejection. The permission which was granted to the appellants to operate their stand from Mehandi Kadal Anantnag vide notification dated 20th July, 2018 was temporary and for a period of one year only. As we have noticed above and is otherwise an unequivocal stand of the respondents that this permission granted by notification dated 20th July, 2018 for one year was never extended. If that being the position, the operation of the Taxi Sumo Stand No.1 Mehendi Kadal, Anantnag, by the appellants is illegal and unauthorized with effect from 21st July, 2019. Since Taxi Sumo Stand No.1 Mehendi Kadal, Anantnag, is situate within the territorial limits of Municipal Council, Anantnag, as such, the Municipal Council, Anantnag, is well within its power to direct its shifting to a new location. Needless to say, that for operating the Taxi Sumo Stand at new location proposed by Municipal Council, Anantnag, a proper notification under Section 117 of the Motor Vehicles Act, 1988, read with Rule 180 and 181 of the J&K Motor Vehicles Rules, 1991, is imperative.

8) Mr. Hilal Wani, learned counsel appearing for the appellants, vehemently urged that the new location which is proposed by the Municipal Council is not available on spot and, therefore, if the appellants are shifted from the

existing place of their operation, they would be left high and dry and deprived of their only means of livelihood. We have given our thoughtful consideration to this aspect of matter. While we do not find any illegality or infirmity in the communication of Executive Officer, Municipal Council, Anantnag, impugned before the Writ Court, yet we find that, with a view to serve the ends of justice, some measures are required to be taken to adequately rehabilitate the appellants.

9) For the foregoing reasons, we **dispose** of this appeal by providing as under:

- (I) The appellants have no legal right or justification to operate their taxi sumos' from Taxi Sumo Stand No.1 Mehandi Kadal, Anantnag, which was notified as a stand for contract carriage vide notification No.50-MVD of 2018 dated 20th July, 2018, for parking thirty vehicles only. This is so because the permission granted by the notification was temporary and valid only for a period of one year, which, admittedly, is not extended thereafter.
- (II) That the respondents, in particular Deputy Commissioner, Anantnag, shall take requisite steps and ensure that the land measuring one kanal at Mehandi Kadal (Bypass) adjacent to Police Station, Sadder, is made available to the appellants free from any encumbrance on lease/licence basis in accordance with law. The Transport Commissioner

shall thereafter issue a formal notification under Section 117 of Motor Vehicles Act, 1988 read with Rules 180 and 181 of the J&K Motor Vehicles Rules, 1991, notifying the land so allotted to the appellants at Mehandi Kadal (Bypass) adjacent to Police Station, Sadder, as a Stand for contract carriage.

(III) That till the direction No.(II) is implemented in letter and spirit, the appellants and thirty vehicles only, the details whereof are given in notification dated 20th July, 2018, shall be permitted to operate from Taxi Sumo Stand No.1 Mehandi Kadal, Anantnag.

(IV) That immediately after implementation of direction No.(II), the appellant shall shift to the new location without any further waste of time and in case of any resistance, the District Administration shall be within its power to use reasonable power to ensure such shifting.

10) The impugned order and judgment of the Writ Court is modified to the aforesaid extent.

(RAJESH SEKHRI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
25 .10.2024
"Bhat Altaf-Secy"

Whether the order is reportable: **Yes/No**