

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.2272/2024.
Date of institution 05.09.2024.
Date of decision 10.10.2024.

Transport Operator Union through:-

1. Khawaja Azam Rasool;
2. Waqas Awan;
3. Jamal Abdul Nasir, all representatives of the Transport Operator Union Muzaffarabad, Azad Jammu & Kashmir.

Petitioners

VERSUS

1. Chairman Transport Authority, Azad Jammu & Kashmir Muzaffarabad, having its office at new Secretariat Lower Chatter Muzaffarabad, Azad Jammu & Kashmir;
2. Azad Jammu & Kashmir Transport Authority through its Chairman Transport Authority, having its office at new Secretariat Muzaffarabad;
3. Regional Transport Authority through its Secretary Regional Transport Authority, office at new District Headquarter Complex Muzaffarabad;
4. Secretary Azad Jammu & Kashmir Transport Authority, office at new District Headquarter Complex Muzaffarabad;
5. Secretary Regional Transport Authority/Additional Deputy Commissioner Muzaffarabad, office at new District Headquarter Complex Muzaffarabad;
6. Commissioner/Chairman Regional Transport Authority Muzaffarabad, Azad Jammu & Kashmir;
7. Deputy Commissioner Muzaffarabad, Azad Jammu & Kashmir;
8. Senior Superintendent of Police Muzaffarabad, Azad Jammu & Kashmir;
9. Mayor Municipal Corporation Muzaffarabad, Azad Jammu & Kashmir;
10. Station House Officer, Police Station Saddar Muzaffarabad, Azad Jammu & Kashmir;

11. Sardar Tabarak, Sango Travels D-Class, office situated at Gojra Muzaffarabad, Azad Jammu & Kashmir;
12. Tanveer Mughal, D-Class, Muzaffarabad Express Transport Company Pvt. Ltd. Azad Jammu & Kashmir, office situated at Gojra Muzaffarabad, Azad Jammu & Kashmir;
13. Abbas Qadri, new Qadri Travels, D-Class, office situated at Abbotabad Road Balapeer Muzaffarabad, Azad Jammu & Kashmir;
14. Shakoor Shah, Natko Bus Service D-Class, office situated at Gojra Muzaffarabad, Azad Jammu & Kashmir.

Respondents

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Raja Tariq Bashir Khan/Mir Sharafat Hussain, Advocates for the Petitioners.

Syed Zulqarnain Raza Naqvi, Advocate for Respondent No.11.

JUDGMENT:

Through this constitutional petition filed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 the petitioners implored the following relief:-

- i. "This Hon'ble Court may kindly issue direction to the respondents to cease the operation of all bus stops old and new, that are improperly located in violation of regulations. Prevent vehicles from being parked illegally on the main road and ensure compliance with proper parking practices and implement necessary measures to address and rectify the ongoing traffic congestion/jamming caused by these issues;

- ii. Official respondents may kindly be directed to relocate the bus stops which are located in the city, to its appropriate position after the terminal as required by regulations;
- iii. Private respondents may kindly be restrained from running their vehicles from the front of General Bus Stand and directed them to run their vehicles from D-Class Adda as approved by the official respondents i.e. Gojra, Nalouchi and Abbotabad Road Bala Peer;
- iv. Official respondents may kindly be restrained from issuing approval of license of addas without obtaining the NOC from Municipal Corporation and Survey Committee and stop the illegal construction of new addas which are constructed illegally and unlawfully in one shop near General Bus Stand Muzaffarabad;
- v. It is further prayed that a local Commission may kindly be appointed and report may kindly be obtained regarding the illegal constitution of addas at General Bus Stand after spot inspection.”

2. As per contents of the petition, private respondents applied for the license of the D-Class Stand upon which the official respondents issued license of D-Class and thereafter private respondents got approval of adda at Gojra, Nalouchi and Abbotabad Road Bala Peer, however, they are running their business against the Motor Vehicle Rules, 1973. It has been stated that Transport Union filed applications before the Administrator Municipal Committee as well as Deputy Commissioner to stop the illegal and unlawful Addas but all in vain, hence, the petitioners left with no other option except to invoke the extraordinary jurisdiction of this Court.

3. After issuing notices, private respondent No.11 appeared before the Court and filed objections in the manner that private respondents are carrying on the business in compliance with the terms and conditions as the answering respondent No.11 is the holder of the Class-D Bus Stand as well as route permits. Moreover, no commission or omission contrary to law has been reported by the official respondents against the answering respondent as the said respondents having requisite Stand applied for NOCs and also purchased the land for construction of the Bus Stand.

4. The learned counsel for petitioners reiterated the facts and grounds agitated in the writ petition and contended that private respondent had applied for license and D-Class Stand and in furtherance of the same official respondents illegally, without adopting due course of law and without getting approval of the Municipal Committee issued permit in their favour for D-Class Bus Stand. The learned counsel further contended that answering respondents are running their business affairs away from their Bus Stand (allotted in their favour for grant of D-Class Bus Stand), so, this act of the respondents is against the law, hence, the official respondents may be restrained from

issuing license without obtaining NOC from the Municipal Corporation and Survey Committee.

5. On the other hand, the learned counsel appearing on behalf of respondent No.11 contended that the petition at hand has not been competently filed as the petitioners have not been authorized by the Transport Union and in this regard, he referred Annexure "RA to RA/2 i.e. Acknowledgement of Registration of Firm, Certificate of Incorporation and Form Permit of Stand D. The learned counsel further contended that Azad Jammu & Kashmir Motor Vehicle Rules, 1973 and Azad Jammu & Kashmir Motor Vehicle Ordinance, 1971 provided clear-cut guidelines to run the business activities to provide the best transport facilities to the general public, the answering respondents are running their business activities completely in accordance with laws after obtaining due permit and NOCs. The learned counsel further argued that the matter pertains to controversial question of facts cannot be resolved in exercise of extraordinary jurisdiction.

6. I have heard the learned counsel for the parties at considerable length and gone through the record of the case with due care and caution.

7. At the outset, as it is reflecting from the stance of the petitioners and prayer clause that they are asking for a direction to respondents to seize the operation of the Bus stops (old and new) as well as to relocate the Bus stops at appropriate places outside the city area and also prayed for constitution of a local Commission in this regard but this stance of the petitioners has been negated by the answering respondent who categorically alleged that they are running their business completely in accordance with NOCs and permits allotted by the relevant quarters. It is trite that disputed questions of facts requiring the detailed probe and inquiry are not normally being resolved by this Court in exercise of its extraordinary jurisdiction. The proper fora for adjudication of the disputed question of facts requiring detailed probe and evidence is the Civil Court of competent jurisdiction as envisaged in Section 9 of the Civil Procedure Code, 1908 (if the dispute qualify the criteria of Section 9 CPC).

8. Under Section 230 of the Azad Jammu & Kashmir Motor Vehicle Rules, 1973 consideration governing location of the stand have specifically been given which is to be taken into consideration at the eve of granting permission for Bus vehicle stand (1);

- (a) the interest of the public generally and the efficient organization of motor transport;
- (b) the suitability of the site from the point of view of traffic control;
- (c) the avoidance of annoyance to persons living or having property in the locality;
- (d) the suitability of the site in relation to other stand in the same town, and;
- (e) any other considerations that may appear to be relevant.

(2) In selecting a site for stand, the Provincial Transport Authority shall be guided by any opinion given by the District Magistrate and the Superintendent of Police concerned.

9. Furthermore, the District Magistrate in view of Section 237 of the said rules is authorized to inspect every stand. Under Section 242 of the Azad Jammu & Kashmir Motor Vehicles Rules, 1973 a right of appeal has been given to the aggrieved person by an order of the Transport Authority sanctioning the establishment of a Stand or revoking or modifying an order permitting the establishment of a stand. In view of Section 242 and 95-A, the petitioners have to file an appeal against the order of the Transport Authority instead of filing the instant writ petition in order to resolve the disputed question of facts requiring detailed investigation and evidence. Trite that disputed questions of facts cannot be resolved by this Court in extraordinary jurisdiction particularly when alternate remedy is provided to the petitioners qua redressal of their

grievance, hence, indulgence regarding disputed questions of facts is declined.

10. **Appeal is a creation of statute and must be shown to exist before the higher forum.** The petitioners in very beginning of the prayer clause have prayed for ceasing the operation of all the bus stops (old and new) and relocation of the stops is also solicited. All the respondents are running their business activities in pursuance with the licenses/permits issued by the competent authority, attempt is impliedly being made to challenge the permits and NOCs issued in favour of the answering respondents.

11. **Remedy against such orders is provided qua filing appeal. Statutory remedial forums for the purpose of adjudication of grievances ex-facie meet the purpose of dispensation of administrative justice, thus, bypassing said statutory fora without disclosing solid reason and switching over to writ jurisdiction cannot be allowed at random. It is well settled that the right of appeal is not a mere matter of procedure, but it is substantive right. Right of appeal bestowed by a statute is the right of entering a higher Appellate Forum and invoking its aid and interposition to redress the error of the lower authority.**

(Underlining is mine)

For the above multiple reasons, the titled writ petition being devoid of force is hereby dismissed with no order as to costs. The file shall be kept in record room.

Muzaffarabad.

10.10.2024 (Saleem)

JUDGE

Note:- Judgment is written and duly signed. The office is directed to intimate the parties or their counsel accordingly.

JUDGE

(Approved for Reporting)

JUDGE