

Balwant Singh and Others

Vs

Mool Chand and Others

Civil Appeal No. 1581(N) of 1969

(J. C. Shah, A. N. Grover JJ)

19.08.1970

JUDGMENT

GROVER, J. -

1. This appeal is directed against an order of a learned single judge of the Allahabad High Court (Lucknow Bench). The facts speak for themselves and the appeal must succeed.
2. The Saharanpur-Delhi route is an inter-State route, the major portion of which lies in the State of Uttar Pradesh. In exercise of the powers conferred by Section 47(3) of the Motor Vehicles Act, 1939, hereinafter called the "Act", the transport Authority fixed the strength of operators who could ply stage carriages on the aforesaid route at 100. The appellants, who are 15 in number, were amongst those operators to whom permits had been issued in December 1957 and they were plying their vehicle since that date. They were initially granted permits for a period of three years but their permits were renewed subsequently at successive intervals. In October 1959 a notification was issued by the State of Uttar Pradesh under Section 68-D(3) of the Act declaring the Delhi-Saharanpur route as a notified route to the total exclusion of all private operators including the appellants. The notification further provided that the U. P. Government Roadways would have a monopoly of plying buses on the said route. Although 100 operators were affected by the said notification only 50 out of them including the appellants challenged the validity of the said notification by means of writ petitions in the Allahabad High Court. These petitions were allowed in October 1961 and the High Court directed the State of Uttar Pradesh not to enforce the scheme against the 50 writ petitioners. The State Government was, however, free to enforce the scheme against the remaining operators who had not preferred writ petitions. The result, therefore, was that the operators who had succeeded in the writ petitions, including the appellants, and the U.P. Government Roadways jointly operated the vehicles on the Delhi-Saharanpur route.
3. In May 1968 the Regional Transport Authority rejected the applications of the appellants for renewal of the permits. The applications of the present respondents Nos. 3 and 4 were rejected on the ground that the route was a notified route and no permit could be granted to them. These respondents had applied for fresh permits being granted to them. The appellants and respondents 3 and 4 preferred appeals to the State Tribunal and their permits were renewed up to April 28, 1972. The appeals of respondents Nos. 3 and 4 were dismissed. In May 1969 respondents Nos. 1 to 4 filed a writ petition in the High Court challenging the decision of the Appellate Tribunal. Apart from other respondents the appellants were also jointed as respondents in the writ petition. The writ petition was admitted by the division bench sitting at Lucknow on May 14, 1969 and the following order was made, "Admit, issue notice". The stay petition which had also been filed was directed to be put up for orders on the next day. On May 15, 1969, the Bench made the following order :

"Mr. Fanthome, the learned counsel for the petitioners, and Mr. Umesh Chandra, the learned Standing Counsel, have jointly suggested that the hearing of the writ petition itself be concluded at a very early date. They have jointly suggested that the writ petition be heard on August 4, 1969.

Office shall show this case in the list of that date.

Learned Counsel for the parties have also suggested that in the meantime the Government may put more buses on the route in question in order to meet the shortage caused by the exit of respondents Nos. 3 to 17 consequent to the order of this court".

On May 19, 1969, appellant No. 9 who was a respondent in the writ petition before the High Court filed appearance through an advocate. Similarly on May 21, 1969, appellant No. 1 filed his appearance. The High Court closed for the vacation on May 23, 1969. It appears that respondent No. 1 and the other respondents filed a petition before the Vacation Judge which came up for hearing on June 2, 1969 and he made an order which must be set out in extenso :

"This is an application of Moolchand and others stating that in compliance with the order passed by a Bench of this Court on May 15, 1969, on their applications [(C.M) An. No. 763 (W) of 1969)] the Secretary to the Regional Transport Authority has not restrained respondents nos. 3 to 17 from plying their stage carriage buses on the Saharanpur to Delhi route on the pretext that the order of the Bench, dated May 15, 1969, was vague. The Chief Standing Counsel is present and has no objection to the order dated May 15, 1969, which was passed by a Bench of which I was also a member, being clarified today. It may be recalled that in the writ petition in which C.M.An. 763(W) of 1969 was filed by Moolchand and others the present applicants had challenged the renewal of the permits in favour of respondents Nos. 3 to 17 as illegal. The order which was passed by the Bench on May 15, 1969, in C.M.An. No. 763(W) of 1969, is therefore clarified and it is made clear that respondents Nos. 3 to 17 are restrained from playing their stage carriage busts on the Saharanpur to Delhi route. It is further clarified that Roadways may ply buses on the route in question in order to meet the shortage caused by the above restrain order which has been passed against operation of the stage carriage buses of respondents Nos. 3 to 17."

4. It was suggested before the Division Bench on May 15, 1969, by counsel for the writ petitioners and the learned Standing Counsel that the Government might put more buses on the route in order to meet the shortage which would be caused by the "exit of the respondents 3 to 17 consequent to the order of this Court". It is not at all comprehensible to which order this had reference and how it was assumed that respondents 3 to 17 in the writ petition were to be prohibited from plying their buses as they had succeeded before the Appellate Tribunal and their permits had been renewed up to April 28, 1972. So long as the order of the Tribunal stood and was not set aside by the High Court there was no question of their so-called exit from the field of operators on the Delhi-Saharanpur route unless the High Court made a proper order after hearing them. Before the Vacation Judge it was sought to be represented that the Secretary to the Regional Transport Authority had not restrained respondents 3 to 17 in the petition from plying their stage carriage buses on the pretext that the order of the Bench, dated May 15, 1969, was vague. The Vacation Judge proceeded to clarify the order by saying that respondents 3 to 17 before him (the present appellants) would be restrained from plying their stage carriage buses and that the U.P. Government Roadways could ply

their buses in order to meet the shortage cause thereby. The result of this order was that without having any notice or opportunity to present their case the appellants were debarred from plying their stage carriage buses and the Government Roadways which had not filed any writ petition and had not asked for any relief from the High Court were enabled to ply their buses in place of the appellants. Neither the Division Bench nor the Vacation Judge thought of issuing a notice to the appellants to show cause in the matter. Even though the orders were made at the interim stage and in miscellaneous proceedings the rules of natural justice could not have been simply ignored in the manner in which it was done merely because the Standing Counsel, who was representing the State of the U.P. Government Roadways, gave his consent or joined in the suggestion made on behalf of the petitioners that in place of the appellants the U.P. Government Roadways be permitted to ply their buses on the route in question. There can be no manner of doubt that the High Court could pass an ex parte stay order to give immediate relief to the writ petitioners but in the present case the order which was made afforded no relief to them but was meant for stopping the plying of buses by the appellants and enabling the U.P. Government Roadways to ply buses instead. If the High Court considered it necessary in the circumstances of the case to make such an order the only proper and just course to follow was to hear the appellants and then proceed to make the order.

5. We are further unable to find any justification or reason for the order which was made on June 2, 1969, by the Vacation Judge which clearly modifies and varies the order made on May 15, 1969, by the Division Bench. The Division Bench never restrained the appellants from plying their stage carriage buses during the pendency of the writ petition. If it was intended that the appellants should be so restrained the learned Judges would have made an order in clearer terms.

6. We are fully alive to the course which could have been followed by the appellants of moving the High Court to vacate the impugned order. It is equally true that this Court is very reluctant to interfere in interlocutory orders but the present case is of such a nature that we are satisfied that there has been a grave miscarriage of justice. We would, therefore allow the appeal and set aside the order of the Vacation Judge made on June 2, 1969. The appellants shall be entitled to their costs in this court.

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