

Smt. Praveen Ansari and Others

Vs

State Transport Appellate Tribunal, Lucknow and Others

Civil Appeal No. 2520 of 1980

(D. A. Desai, E. S. Venkataramian JJ)

29.10.1980

JUDGMENT

DESAI, J. –

1. The appellants applied for temporary permits under Section 68-F(1-C) for plying the passenger vehicles on Khurja-Pahasu-Chhatari-Dabai-Rajghat-Ramghat-Atrauli route ('route' for short) which applications came to be rejected by the State Transport Authority and their appeal to the State Transport Appellate Tribunal and a writ petition to the High Court of Allahabad did not meet with success.

2. It is a common ground that in respect of the route a scheme has been prepared and published under Section 68-C of chapter IV-A of Motor Vehicles Act, 1939. The route in question is an inter-regional route and therefore an application for temporary permit for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme has to be made to the State Transport Authority under Section 68-F(1-C). Ignoring the previous history of the litigation for the present, it may be noticed that the appellants made applications to the State Transport Authority for grant of temporary permits to ply their vehicles on the route. The U.P. State Road Transport Corporation ('Corporation' for short) also made an application for grant of three temporary permits for the same purpose and the application of the Corporation for three permits was granted while the application made by each of the appellants was rejected on the ground that once a scheme has been published in view of the provision contained in Section 68-F(1-A) the Corporation along to the exclusion of others, is entitled to apply for temporary permit and if such application is made by the Corporation and granted no one else is entitled to obtain a temporary permit. This decision of the State Transport Authority has been upheld both by the State Transport Appellate Tribunal and the High Court.

3. Section 68-F(1) makes it obligatory upon the State Transport Authority or Regional Transport Authority as the case may be to grant permit of the nature envisaged in the section to the Corporation to the exclusion of any other applicant. Section 68-F (1-A) confers power on the State Transport Authority or the Regional Transport Authority, as the case may be, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme to increase in public interest the number of vehicles operating on the route or the area in respect of which the scheme has been published by State Transport Corporation under Section 68-C and further enables the Corporation to apply for temporary permits to ply the vehicles during the interregnum. On such applications being made it is obligatory upon the State Transport Authority or the Regional Transport Authority as the case may be to grant such temporary permits. Section 68-F(1-B) is not relevant for the present purpose.

4. Section 68-F(1-C) reads as under :

If no application for a temporary permit is made under sub-section (1-A), the State Transport Authority or the Regional Transport Authority, as the case may be, may grant, subject to such conditions as it may think fit, temporary permit to any person in respect of the area or route or portion thereof specified in the scheme and the permit so granted shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route or portion thereof.

Section 68-F(1-D) takes away the power of permit granting authority to grant or renew any permit during the period intervening between the date of publication, under Section 68-C of any scheme and the date of publication of the approved or modified scheme, in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme except as provided in sub-section (1-A) and sub-section (1-C).

5. The Corporation has published a scheme in respect of the route. Even when a scheme is published it is open to the State Transport Authority or the Regional Transport Authority as the case may be to fix or increase the number of vehicles that may operate on the route. But the power to increase the number must be exercised in public interest. It is common ground that the strength of vehicles on the route in question was raised from 13 to 20. Hence in view of this raising of the strength, 7 temporary permits could be granted. However, in view of the provision contained in Section 68-F(1-a) consequent upon the scheme being published by the Corporation under Section 68-C in respect of the route the Corporation will be entitled to all the temporary permits to the exclusion of any other operator. But legislature was aware of a possible situation where the Corporation though entitled to temporary permits to the exclusion where the Corporation though entitled to temporary permits to the exclusion of other operators may not be in a position to avail of this statutory right. Section 68-F(1-C) appears to have been introduced to meet with the situation arising out of the inability of the Corporation to obtain all available temporary permits. Section 68-F(1-C) caters to such a situation where a scheme has been published and, therefore, the Corporation would be entitled to temporary permits till the approved scheme is published, yet if the Corporation is unable to provide service by obtaining all requisite temporary permits, the State Transport Authority or the Regional Transport Authority as the case may be, in exercise of power conferred specifically upon it by Section 68-F(1-C) can grant temporary permits to persons other than the Corporation to operate vehicles on the route for which the scheme is published till modified or approved scheme is published.

6. It is not in dispute that there are 7 vacancies for temporary permits. It is an admitted position that the Corporation applied for only 3 permits. The State Transport Authority has not recorded a finding that in public interest remaining 4 permits were not required to be issued. Undoubtedly, therefore, there were 4 vacancies for which 4 temporary permits could be issued by the State Transport Authority on this inter-regional route. Undoubtedly the permits will have to be temporary permits because the scheme has been published in respect of the route Section 68-C.

7. The State Transport Authority, the State Transport Appellate Tribunal and the High Court fell into an error by interpreting Section 68-F(1-C) only to mean that even though there are 7 vacancies and the Corporation applied for only 3 temporary permits, once the Corporation made an application for temporary permits not for the full strength but something short of it there was no power left in the State Transport Authority to grant temporary permits to anyone else. Obviously Section 68-F(1-C) does not admit of such a construction. The State Transport Authority has power under sub-section (1-C) to grant temporary permit to any person in respect of the area or the route or

part thereof specified in the scheme. The expression 'any person' would comprehend any person even other than the Corporation. One has to read Section 68-F(1-A) and Section 68-F(1-C) harmoniously. If the Corporation applies for temporary permits undoubtedly the State Transport Authority cannot grant permit to anyone else if the Corporation has applied for all the permits. But Section 68-F(1-C) clearly envisaged a situation where application for a temporary permit is not made under Section 68-F(1-A) by the Corporation. And there is felt need for providing transport service on the route in question.

8. Now it cannot be gainsaid that there were 7 vacancies for temporary permits because the strength was increased from 13 to 20. The State Transport Authority is the proper authority to decide the strength of vehicles to be plied on a route. If the Corporation is willing to operate vehicles to the maximum strength undoubtedly the State Transport Authority will have to grant permit to the Corporation under Section 68-F(1-A) to the exclusion of others. But if the Corporation was unable to provide vehicles for the optimum strength fixed by the State Transport Authority the remaining permits will have to be granted to any other person willing to obtain temporary permit and ply vehicle because in respect of the remaining strength there would be to application by the Corporation and Section 68-F(1-C) would be squarely attracted. In interpreting the provisions of Chapter IV-A of Motor Vehicles Act, 1939 it is undoubtedly true that the Corporation enjoys a preferential treatment in the matter of obtaining permits. The authority under the Act must to ever loose sight of the fact that the primary consideration must be the service available to the travelling public. While interpreting the provisions of the Motor Vehicles Act undoubtedly the competing claims between the Corporation and the other private operators may be examined with reference to the provisions of the Act. But the overall consideration namely that the service is for the benefit of the travelling public should never be overlooked for a moment.

9. Reverting to the facts of this case if the approach of the High Court is accepted it would lead to a startling result. Assuming there 10 vacancies for temporary permits and the Corporation was able to provide only one vehicle and therefore applied for only one permit, according to the State Transport Appellate Tribunal as well as the High Court no temporary permit can be granted to anyone else for the remaining 9 vacancies. Such is not the position emerging from a combined reading of Section 68-F(1-A) and Section 68-F(1-C). The correct approach would be that keeping in view the strength of the vehicles fixed by the competent authority, the authority should first examine the application for number of temporary permits made by the Corporation. If the Corporation has made application for temporary permits covering all the vacancies the matter ends there. But if the Corporation does not apply for all the permits but only for some, the inescapable conclusion is that for the remaining strength the Corporation has made no application for the temporary permits and Section 68-F(1-C) would be squarely attracted. In that event the State Transport Authority or the Regional Transport Authority as the case may be will have to examine the application for temporary permits made by persons other than the Corporation and if they are found to be competent, eligible and qualified they may have to be granted permits for the benefit of the large travelling public. That is why power to increase strength of fleet operating on the route is conferred and has to be exercised in public interest meaning transport facility to travelling public. In this case there were 7 vacancies for temporary permits. The Corporation applied for only 3. It was incumbent upon the State Transport Authority to consider the application of the present appellants for the remaining 4 vacancies and grant four permits according to law.

10. Accordingly this appeal is allowed and the orders of the State Transport Authority, the State Transport Appellate Tribunal and the High Court are set aside and the matter is remitted to the State Transport Authority to consider the applications of the present appellants for the remaining 4

vacancies and pass orders according to law. I the circumstances of this will be no case, there order as to costs.

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