

Sumer Chand Sharma and Another

Vs

State of U. P. and Another

Mahinder Kumar Jain and Others

Vs

State of U. P. and Others

Bharatraj Singh and Others

Vs

R. T. A., Varanasi and Others

Gajendra Pal Gupta and Others

Vs

State of U. P. and Others

Rattan Lal Tiwari and Others

Vs

State of U. P. and Others

Smt. P. D. Jaiswal and Another

Vs

State of U. P. and Others

Writ Petition (Civil) Nos. 255, 501 And 690 And Special Leave Petition (Civil) Nos. 3603-10, 5084  
And 4545 of 1986

(O. Chinnappa Reddy, E. S. Venkataramiah JJ)

24.04.1986

ORDER

CHINNAPPA REDDY, J. –

1. The petitioners in these writ petitions and special leave petitions held permits to ply stage carriages over various routes in Uttar Pradesh, sectors of which routes were parts of routes which were nationalised in the Fifties. The nationalisation schemes made no provision for any private operator plying any stage carriage over any part of the nationalised routes. Operation of stage

carriages by private operators was totally excluded. The result was that from the respective dates of nationalisation, it was not permissible to permit any private operator to ply a stage carriage on any sector of the nationalised route. However, by virtue of Section 10(1)(c) of Uttar Pradesh Road Transport Services (Development) Act, 9 of 1955, these several petitioners were allowed to ply their stage carriages on the whole of their routes including the common sectors. The Uttar Pradesh Road Transport Services (Development) Act, 1955 was repealed by Central Act 56 of 1969. Act 56 of 1969 came into effect from April 1, 1971. Section 76 of the Act 56 of 1969 (which was inserted into the Motor Vehicles Act, 1939 as Section 135) saved permissions or exemptions granted as well as things done or actions taken under the repealed enactment so far as they were not inconsistent with the provisions of the Act. The permission granted under Section 10(1)(c) of U.P. Act 9 of 1955 was patently inconsistent with the provisions of Chapter IV-A of the Motor Vehicles Act, 1939 and the permission, therefore, ceased to be effective from April 1, 1971, the date of repeal of the 1955 Act. Therefore, it was no longer permissible for the private operators to ply their vehicles on the common sectors from April 1, 1971 onwards. Despite the statutory prohibition against any private operator plying a stage carriage on any part of the nationalised route in the absence of a provision in the scheme of nationalisation, it appears that a practice grew up (we have borrowed the word 'practice' from one of the judgments of Allahabad High Court which was cited before us), in Uttar Pradesh, of permitting private operators to ply their stage carriages over common sectors of nationalised routes provided they did not set down or pick up passengers at any point on the common sectors. The "practice" was wholly unauthorised and without any legal sanctions whatsoever. However in 1976, the Uttar Pradesh legislature enacted the Uttar Pradesh Motor Vehicles Special Provisions Act, 1976 to provide for the grant of authorisation to holders of stage carriage permits to ply their stage carriages over common sectors. This was provided by Section 5 of the Act. Section 5 was interpreted by the court in *Hindustan Transport Co. v. State of U.P.* (AIR 1984 SC 953 : 1984 Supp SCC 22) to mean that the operator seeking an authorisation should hold a permit on the date of notification. Section 1(3) of the Act makes the provisions of the Act applicable 'only in relation to schemes approved or purporting to be approved, areas and routes notified or purporting to be notified under Chapter IV-A of the Motor Vehicles Act, 1939 as amended in its application to Uttar Pradesh (hereinafter referred to as Principal Act) and to permits issued under Principal Act before the commencement of this Act'. Basing their submissions on Section 1(3) of 1976 Act, Shri S. N. Kacker and Shri K. K. Venugopal learned counsel for petitioners urged that the petitioners were entitled to obtain authorisations from the competent authorities under Section 5 of the Act, if they had permits to ply stage carriages on the routes having common sectors on July 1, 1976 the date of commencement of Act 27 of 1976. They complained that on the basis of the observations of this Court in *Hindustan Transport Co. v. State of U.P.* (AIR 1984 SC 953 : 1984 Supp SCC 22), their applications for renewal of their authorisations had been wrongly rejected on the ground that they did not possess permits on the dates of the nationalisation notifications. We do not see any force in the submission of the learned counsel. As pointed out by us, on the repeal of Act 9 of 1955 it was no longer permissible for the transport authorities to permit the private operators to ply their stage carriages over the common sectors, in the case of areas and routes which were nationalised to the complete exclusion of private operator. If by reason of the unauthorised and unlawful practice which had grown up in Uttar Pradesh, private operators had been allowed to ply vehicles over common sectors, despite statutory prohibition, that would surely not entitle the operators to obtain authorisations under Section 5 of the 1976 Act. Whatever doubts there might have been earlier, it is now settled by the decision of Constitution Bench in *Adarsh Travels v. State of U.P.* ((1985) 4 SCC 557), that where a route is nationalised under Chapter IV-A of the Motor Vehicles Act to the total exclusion of private operators, a private operator with a permit to ply a stage carriage over another route which has a common overlapping sector with the nationalised

route cannot be permitted to ply his vehicle over that part of the overlapping common sector, even if he did not pick up or set down passengers on that part of the route. The law as declared by the court in Adarsh Travels Bus Service v. State of U.P. ((1985) 4 SCC 557) must be considered to have always been the law under the Motor Vehicles Act. The plying of stage carriages by the private operators before the commencement of 1976 Act pursuant to the alleged practice which has grown up in Uttar Pradesh or under interim orders of a court must be considered to be unauthorised so as to disentitle the private operator from seeking the benefit of Section 5 of Uttar Pradesh Act, 27 of 1976. The writ petitions and special leave petitions are, therefore, dismissed.

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