

SUPREME COURT OF INDIA

Punjab Roadways Moga Tr.Gen.Manager

Vs.

Punjab Sahib Bus & Transport Co.

C.A.No.3879 of 2010

(R.V. Raveendran and K.S. Radhakrishnan JJ.)

27.04.2010

JUDGEMENT

K.S.Radhakrishnan, J.

1. Leave granted in all these special leave petitions. Facts of the first two appeals.
2. We will first deal with the first two appeals which arise out of a common order dated 21.8.2000 passed by the State Transport Commissioner (in short "the Commissioner") exercising the powers conferred on the Regional Transport Authorities of Jalandhar, Patiala and Ferozpur. The order of the Commissioner was confirmed by the State Transport Appellate Tribunal (in short "the Tribunal") vide its order dated 27.4.2005, but interfered with by the High Court in C.W.P No.8483/2005 and C.W.P. No.11768 of 2005 respectively with a positive direction to the Commissioner to grant Stage Carriage Permits to the private operators rejecting the claims of the State Transport Undertakings (STUs). The legality of the order of the High Court is under challenge in these two cases filed by the State of Punjab through the Commissioner and the Punjab Roadways, Moga, represented by its General Manager.
3. The Secretary, Regional Transport Authority, Jalandhar, published a notice in the Motor Transport Gazette, Weekly, Chandigarh in its issue dated 22.2.1999 inviting applications for the grant of four Stage Carriage Permits for plying two return trips daily in the Pathankot - Faridkot via Mukkerian, Dasuya, Jalandhar Nakodar, Moga, Talwandi Bhai, Mudki route a substantial portion of which falls within the National and State Highways. As per the scheme published on 9th August, 1990 (in short the `1990 Scheme') modified by the Punjab Government on 21.10.1997 (in short the `1997 modified scheme'), the routes on the National as well as State Highways have to be shared by the STUs and private operators in a specified ratio.

4. In response to the notice, 112 applications were received which included the applications from the General Manager, Punjab Roadways, Moga as well as from the Pepsu Road Transport Corporation, Faridkot, (STUs).

5. The contents of the applications were published in the Motor Transport Gazette Weekly, Chandigarh in its issue dated 22.4.1999 inviting representations/suggestions from the general public, but there was no response.

6. Out of the 112 applicants, 31 applicants failed to respond. Out of four permits, it was decided by the Commissioner that two permits with one return trip daily be allotted to STUs and other two trips to the private operators.

“The General Manager, Punjab Roadways, Moga applied for the grant of two stage carriage permits with one return trip daily in the notified route and the General Manager, Pepsu Road Transport Corporation, Faridkot applied for the grant of four stage carriage permits for plying two return trips daily on that route.”

7. The representatives of the STUs submitted that due share of mileage be allotted to them. The Commissioner heard the rest of the applicants who had applied for permits in the private sector. It was decided that the applications of existing operators be not considered in the interest of healthy competition and for maintaining balanced transport service and also to ensure that monopoly of individuals or a group be not allowed to develop in the particular route/ area.

8. Applications from the new entrants were considered by the Commissioner and it was resolved vide order dated 21.8.2000 to grant one stage carriage permit for plying one return daily trip each on the notified route to the Punjab Roadways, Moga and to Pepsu Road Transport Corporation, and one permit to Gurbhajan Singh and Jagdev Singh jointly and the other to Metro Transport Registered Sangrur for a period of five years. The grantees were allowed three months' time to obtain the permits.

9. Aggrieved by the order of the Commissioner, three appeals -- Appeal Nos.391/2000, 233/2001 and 147/2004 were preferred by the private applicants before the Tribunal under Section 89 of the *Motor Vehicles Act, 1988* (in short the `Act') challenging the grant of permits to the private operators and the STUs. Before the Tribunal, it was represented that STUs though granted the permits, were not operating the services and, therefore, those permits be granted to the appellants so that public would not be put to inconvenience. On their request, reports were called for from the Regional Transport Authority (in short the `RTA') to ascertain as to whether the STUs were in fact operating services. The Secretary, RTA, Jalandhar vide his reports dated 5.4.2005 and 20.4.2005 reported that the permit granted to Pepsu Transport Corporation was surrendered by it on 1.6.2002 and that the Punjab Roadways had so far not utilized the permit. The Tribunal considered the comparative merits of the applicants and found no illegality in the order granting the permits to the private operators and found no reason to disturb the grant of permits to STUs. Appeal

No.223/2007 was also rejected on the ground of delay so also on the ground that applicant cannot be treated as a new entrant since its sister concern was already granted permit. All the three appeals were therefore rejected by the Tribunal vide its order dated 27.4.2005.

10. Aggrieved by the said order, Majhi Express Transport Service Corporation, preferred Writ Petition C.W.P. No.8483/2005 and Punja Sahib Bus Transport Corporation preferred Writ Petition C.W.P. No.11768 of 2005 before the Punjab and Haryana High Court. The Writ Petition C.W.P. No.8483/2005 came up before a Division Bench of the Punjab and Haryana High Court on 24.10.2005. It was represented before the Court that since STUs had failed to operate the two permits granted to them, those permits be granted to the Writ Petitioner. The High Court took the view that the Tribunal was not justified in declining grant of permit to the Writ Petitioner on the ground of delay and on the ground that its sister concern had already been granted a permit on 9.11.2004.

“Further, the High Court also took the view that due to non user of the permit by the STUs, public will be the sufferer. The Court noticed that the permit granted to STUs was neither utilized nor operated and, hence, it was not open to the STUs to raise any objection regarding the grant of permit to the writ petitioner. The High Court, therefore, gave a positive direction to the Commissioner to grant one stage carriage permit with half return trip daily to the said writ petitioner. The permits granted to the other private operators were not interfered with.”

11. C.W.P. No.11768/2005 later came up for hearing before the Division Bench on 1.12.2006 and following the judgment in Writ Petition no. 8483/2005, the Court ordered that one stage carriage permit be granted to the writ petitioner therein also with half return trip daily in the notified route since the STUs were not operating the permits granted. Permits granted to the private operators were not interfered with.

12. Aggrieved by the judgments in C.W.P. No.8483/2005 and 11768/2005, the State of Punjab and the Punjab Roadways Moga respectively have filed the first two appeals.

Facts in the other appeals.

13. We shall now refer to the facts of the other connected appeals since some of the issues which arise for consideration in all those appeals are common. The Punjab Roadways has preferred all these appeals challenging the common judgment dated 1.5.2007 of the Punjab and Haryana High Court in C.W.P. No.11916/2006, CWP No.123/2006, 11332/2006, 12982/2006, 9085/2005 and 5824/2006. The Punjab Roadways was the petitioner in all those writ petitions challenging the orders passed by the Tribunal on 28.10.2005, 17.12.2004, 25.8.2005, 3.10.2005 and 1.8.2005 directing grant of permits to private operators in various notified routes on the ground that Punjab Roadways was not operating services inspite of grant of permits. In these appeals, the Punjab Roadways has contended that the Tribunal as well as the High Court has erred in granting regular permits to the private sector over-

looking the claims of STUs in gross violation of 1990 scheme as modified in the year 1997 and the provisions of Chapter VI of the Act.

14. The learned counsel for the appellants submitted that the High Court was not justified in directing the Commissioner to grant permits to the private operators on the ground that the STUs had either not utilized the permits, surrendered the permits or not applied for the permits.

“Learned counsel submitted that substantial portions of the notified route fall under the National/State Highways and as per the provisions of the 1990 scheme as amended in the year 1997 the mileage of different types of routes in the State of Punjab has to be shared by the STUs along with private operators in the prescribed ratio mentioned in the scheme.

Learned counsel submitted that the STUs could not operate services due to insufficiency of fleets and dearth of staff and now STUs are in possession of sufficient number of buses and are in a position to operate services on the notified routes.

Learned counsel submitted that granting permits falling in the share of STUs to the private operators would be against the provisions of the Act and the Rules and the provisions of notified scheme. Learned counsel submitted that even if STUs had failed to utilize the permits or surrendered the permits, or had failed to apply for permits on the notified routes those vacancies could be filled up only by inviting fresh applications and only temporary permits could be granted in case if there is a public need. Learned counsel submitted that the Tribunal and the High Court have committed a grave error in directing the RTA to grant regular permits to the private operators on the notified routes upsetting the ratio fixed by the scheme in gross violation of the proviso to Section 104 of the Act.”

15. Mr. Jawahar Lal Gupta, learned senior counsel appearing for the contesting respondents submitted that there is no illegality in the order passed by the High Court in directing the grant of stage carriage permits to the private operators since there was failure on the part of STUs in operating the services in spite of grant of permits. Learned senior counsel referred to Rule 128(5) of the Punjab Motor Vehicles Rules, 1989 and submitted that if the grantees fail to utilise the permit for a period of more than six months, the permit would lapse and the grantee is debarred from raising further claims on the grant of permit to the other operators.

“Learned senior counsel also submitted that the High Court was justified in directing the grant of permits to the private operators under Article 226 of the Constitution of India in public interest. Learned senior counsel also referred to the 1990 scheme and submitted the route i.e. Pathankot - Faridkot does not find a place in the annexures to scheme and is not a notified route. Further, it was also pointed out that the Pathankot - Faridkot is not a monopoly route of the STUs and no portion of the route partly

overlaps any of the monopoly routes. It was also pointed out that with reference to the appeal by Punjab Roadways, Nawanshahar, that the route in dispute that is Ludhiana to Mahilpur is also not a monopoly route and is not a part of the list annexed with the 1990 scheme. Various other infirmities have also been pointed out.”

16. The first question for our consideration is whether the Tribunal and the High Court are justified in directing the Commissioner exercising the powers of RTAs to grant regular permits to the private operators on the ground that the STUs had either failed to utilize the permits granted or surrendered the permits or had not applied for the permits in the notified routes. In order to examine that question it is necessary to refer to the 1990 Scheme as amended in the year 1997.

17. The Government of Punjab, in exercise of the powers conferred under Section 100 of the Act, formulated a scheme so as to provide an efficient, adequate, economical and properly co-ordinated road transport service in the State of Punjab. Notification to that effect was published in Punjab Government Gazette (Extra Ordinary) dated 9th August, 1990 stipulating areas and routes to be operated by the STUs to the complete or partial exclusion of other persons. Clause 5, 6 and 7 of the Scheme are relevant for our purpose and hence extracted hereunder:- (5) All future operations of routes on the National Highways falling within the State shall be undertaken by the State Transport Undertakings and the private operators in the ratio of 30:30 which shall be determined on the basis of the passenger road transport needs, as so assessed by the State Transport Commissioner, Punjab, from time to time.

“The existing operations of the State Transport Undertakings on the National Highways falling within the State are given in Annexures `D' and D-1.

(6) all future operations of routes on the State Highways other than the routes specified in clauses 2, 3 and 4 shall be undertaken by the State Transport Undertakings and private operators in the ratio of 50:50 which shall be determined on the basis of the passenger road transport needs, as so assessed by the State Transport Commissioner, Punjab, from time to time. The existing operation of routes of the State Transport Undertakings on the State Highways are given in Annexure `E' and `E-1'.

(7) All future operations of routes other than the routes specified in clauses 2,3 and 4 on District and other roads shall be undertaken by the State Transport Undertakings and private operators in the ratio of 50:50 on the basis of the passenger road transport roads, as to assessed by the State Transport Commissioner, Punjab, from the time to time." [Page 8 of the Written Notes].”

18. Annexure 'A' of the Scheme deals with monopoly routes operated by the STUs viz., Punjab Roadways and Pepsu Road Transport Corporation. Annexure 'B' of the Scheme deals with the list of National Highways. Annexure 'C' of the Scheme deals with a list of State

Highways Roads. Annexure 'D' deals with the list of routes falling on National Highways (Punjab Roadways). Annexure 'D-1' deals with list of routes falling on National Highways (Pepsu Road Transport Corporation). Annexure 'E' deals with list of routes falling on State Highways (Punjab Roadways) and Annexure 'E-1' deals with list of routes falling on State Highways (Pepsu Road Transport Corporation). Future operations of services on the above mentioned routes have to be undertaken by the STUs and private operators in the prescribed ratio mentioned in the Scheme.

19. The 1990 Scheme was modified by the Government of Punjab in exercise of the powers conferred under Section 102 of the Act and a notification to that effect was published in the Punjab Government Gazette (Extraordinary) dated 21.10.1997.

“Clause 5 of the 1990 Scheme was amended and the ratio 30:30 was substituted by 75:25 and the ratio 50:50 mentioned in Clauses 6 and 7 was substituted by 50:50 and 40:60 respectively as per the amended scheme dated 21.10.1997. The Tribunal in its orders dated 27.04.2005 as well as on 28.10.2005 has stated that the routes for which applications were preferred by the STUs for the grant of permits were notified routes under the Scheme. All the parties had proceeded as if the routes in question were included in the 1990 Scheme. Before the Tribunal it was represented by the private operators that though the Pepsu Transport Corporation was granted a Stage Carriage Permit on the route notified, the same was surrendered by the Corporation on 1.6.2002 and the Punjab Roadways though was granted permit had failed to utilize the permit. Few other instances were also pointed out where inspite of grant of permits the STUs had either surrendered the permits or were not operating the permits on the routes notified. A copy of such an order dated 19.7.2007 passed by the Secretary RTA, Jullandhar was produced before this Court and it was submitted that Punjab Roadways, Pathankot had surrendered 29 return trips on the route between Amritsar and Pathankot. Further it was also contended that due to surrendering of large number of return trips on the route, the public of that area was put to considerable hardships and inconvenience. Consequently it was pointed out that there is no illegality in granting regular permits to the private operators in the vacancies occurred either due to surrender of permits or not utilizing the permits or on omission to apply for permits in the notified routes.”

20. The Tribunal in Appeal No. 46 of 2000 and connected matters, decided on 28.10.2005 has taken a view that where an STU applies for permit and if it is granted and, thereafter the STUs fail to operate the services inspite of grant, they will lose their right and share of the permits unless the route in question is Inter-state or monopoly routes.

“Further, it was also held if the permit is not utilized within the maximum period of six months under Sub-rule 5 of Rule 128 of the Punjab Motor Vehicles Rules, 1989 the RTA could revoke the sanction of the permit. Further it was also held in such a case RTA has a right to issue regular permits and not temporary permits as provided in the proviso to Section 104 of the Act.”

21. We find it difficult to accept the reasoning of the Tribunal. In our view, there is complete misreading of the provisions of 1990 Scheme as amended and provisions of Chapter VI of the Act. Provisions of this Chapter confer a monopoly on the State in respect of transport service to the partial or complete exclusion of other persons. Section 98 says that provisions of above mentioned Chapter and the Rules or orders made thereunder shall have effect notwithstanding, anything inconsistent contained in Chapter V or in any other law for the time being in force or any instrument having effect by virtue of any such law. Section 99 of the Act deals with preparation and publication of proposal regarding road transport services of an STU which enables the State Government to formulate a proposal for the purpose of providing an efficient, adequate, economical and properly co-coordinated road transport service, by giving particulars of the nature of the service proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereof and the Government is also empowered to publish such a proposal in the gazette in public interest. After calling for objections to the proposed scheme, and examining the same the scheme has to be published in accordance with the provisions of Section 100 of the Act.

“The scheme once published is law and chapter VI has an overriding effect on Chapter V of the Act and it operates against everyone unless it is modified or cancelled by the State Government.”

22. The scheme also provides for a ratio with regard to the grant of permits on the notified routes between STUs and private operators which is fixed based on the assessment made by the State Transport Commissioner, Punjab on the basis of the passenger road transport needs which is legally binding on all.

“The provisions of the scheme including the list of routes mentioned in the various annexures, and the ratio fixed are statutory in character which cannot be tinkered with by the RTAs and have overriding effect over the powers of RTAs under Chapter V of the Act. The power to cancel the Scheme or modify the Scheme rests with the State Government under Section 102 of the Act and the RTA and the Tribunal have committed a grave error in tampering with the Scheme as well as disturbing the ratio fixed by the Scheme by granting regular permits to the private sector from the quota earmarked for STUs. Once a scheme is approved and published, private operators have no right to claim regular permits to operate their vehicles in the notified area, route or portion thereof upsetting the ratio fixed. Since the scheme makes provision for partial exclusion, the private operators are not completely excluded, they may get regular permits on the notified route or portion thereof in accordance with the terms and conditions laid down in the scheme and within the quota earmarked for them.”

23. Therefore, a combined reading of Sections 99, 100 and 104 in the light of Section 2(38) of the Act, makes it clear that once a scheme is published under Section 100 in relation to any area or route or portion thereof, whether in complete or partial exclusion of other persons, no persons other than STUs may operate on the notified area or route except as

provided in the scheme itself. Reference can be made to the decisions of this Court in *Adarsh Travels Bus Service and Anr. vs. State of U.P. and Ors.*¹, *U.P. State Road Transport Corporation, Lucknow vs. Anwar Ahmad and Ors.*², *Ram Krishna Verma vs State of U.P.*³.

24. Section 104 of the Act specifically restricts the grant of permits in respect of notified area or notified route. The said provision is extracted hereunder:- Restriction on grant of permits in respect of a notified area or notified route---Where a scheme has been published under sub-section (3) of section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:

“Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area nor notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area, or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route.”

25. The above mentioned provision states where a scheme has been published under Sub-section 3 of Section 100 in respect of any notified area or notified route, STA or the RTA as the case may be shall not grant any permit except in accordance with the provisions of the Scheme. An exception has been carved out in the proviso to Section 104 stating, where no application for permit has been made by the STU in respect of any notified area or notified route in pursuance of an approved scheme, the STA or the RTA, as the case may be, may grant temporary permits to any person in respect of any such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of permit to the STU in respect of that area or route. In our view same is the situation in respect of a case where an STU inspite of grant of permit does not operate the service or surrenders the permit granted or not utilizing the permit. In such a situation it should be deemed that no application for permit has been made by the STU and it is open to the RTA to grant temporary permit if there is a temporary need. By granting regular permits to the private operators RTA will be upsetting the ratio fixed under the scheme which is legally impermissible.

“In *Anwar Ahmad (supra)* this Court had occasion to examine the scope of the proviso to Section 104 and held as follows:-

"it would, therefore, be seen that where the scheme has been published under sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. Thus, the appellant- Corporation has the exclusive right or monopoly to ply their stage carriages and obtain the required permit as per the scheme. The proviso gives only a limited breath of life, namely, until the Corporation puts the vehicles on the notified

routes as per the scheme, temporary permits may be granted to private operators. Thereby, it would be clear that temporary inconvenience to traveling public is sought to be averted till the permits are taken and vehicles are put on the route by the appellant. Therefore, the temporary permits will have only limited breath of life. Private operators are attempting to wear the mask of inconvenience of traveling public to infiltrate into forbidden notified area, route or portion thereof to sabotage the scheme.....”

26. We may point out if the public is put to hardship or inconvenience due to failure on the part of the STUs to operate services inspite of grant of permits for a considerable long time, it is always open to the State Government to modify the scheme and make appropriate changes in the ratio fixed on the basis of passenger road transport needs as assessed by the State Transport Commissioner but such a power is not conferred on the RTA and till that is done no private operator can operate his service on any part or portion of a notified area or notified route upsetting the ratio prescribed in the scheme except on a temporary permit granted under the proviso to Section 104 of the Act. Reference can be made to the judgments of this court in *UPSRTC and Another vs. Sanjidha Banu and Ors.*⁴ , *M. Madan Mohan Rao & Verma*⁵ for understanding the general purport of such Schemes and the provisions of the Act.

27. Article 226 of the Constitution of India confers extra ordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of fundamental rights or any other purpose, the powers are of course wide and expansive but not to be exercised as an appellate Authority re-appreciating the finding of facts recorded by a Tribunal or an authority exercising quasi judicial functions. Power is highly discretionary and supervisory in nature. Grant of stage carriage permits is primarily a statutory function to be discharged by the RTA exercising powers under Section 72 of the Act and not by the High Court exercising the Constitutional powers under Article 226 or 227 of the Constitution of India.

“A writ Court seldom interferes with the orders passed by such authorities exercising quasi-judicial functions, unless there is serious procedural illegality or irregularity or they have acted in excess of their jurisdiction. If there is any dispute on the proper implementation of the ratio or inclusion or exclusion of any route or area in the Scheme, the RTA can always examine the same, if it is moved. The direction given by the High Court to the RTA to grant regular permits to the private operators, is therefore, patently illegal.”

28. We therefore, allow all these Civil Appeals as follows:-

“(i) The judgments of the High Court in C.W.P. No.8483/2005 and in C.W.P. No.11768 of 2005 are set aside;

(ii) The order dated 21.08.2000, passed by the Commissioner affirmed by the order dated 27.4.2005 of the State Transport Appellate Tribunal is upheld;

(iii) The common judgment of the High Court dated 1.5.2007 in C.W.P. No.11916 of 2006 and connected cases and also the orders dated 28.10.2005, 17.12.2004, 25.8.2005, 3.10.2005 and 1.8.2005 passed by the Commissioner directing grant of regular permits to the private operators are set aside.

(iv) This judgment would not stand in the way of RTAs in granting temporary permits if there is temporary need in the notified routes included in the 1990 scheme as amended in the year 1997.”

¹(1985) 4 SCC 557

²(1997) 3 SCC 191

³(1992) 2 SCC 620

⁴(2005) 10 SCC 280

⁵(2005) 4 SCC 424