SUPREME COURT OF INDIA

Kerala State Road Transport Corporation

Vs.

Baby P.P.

C.A.No.5257 of 2018

(Kurian Joseph,J., Mohan M.Shantanagoudar and Navin Sinha,JJ.,)

16.05.2018

JUDGMENT

Mohan M.Shantanagoudar,J.,

SLP(Civil)No.26954 of 2017

1. Leave granted.

2. These appeals arise out of the judgment dated 02.08.2017 passed by the High Court of Kerala at Ernakulam in O.P.(C) No. 1827 of 2017, O.P.(C) No. 1784 of 2017 and O.P.(C) No. 581 of 2017 dismissing the writ petitions and consequently confirming the order dated 11.01.2017 passed by respondent no.5 herein, the State Transport Appellate Tribunal (hereinafter referred to as 'STAT5) in M.V.A.R.P No. 53 of 2016. Therein, the STAT had held that the Regional Transport Authority under the facts of the case, may exercise power conferred on it by the proviso to Section 104 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') to grant temporary permits.

3. The State of Kerala vide G.O. (P) No.42/2009/Tran. dated 14.07.2009 notified a new scheme in exercise of its powers conferred by Section 100 of the Act for the purpose of providing convenient, adequate, economical, and properly coordinated passenger road transport services. As per the said Scheme, the route of Kottayam-Kozhikode was made a notified route. Clause 4 of the said Scheme interalia provides that the services to be operated by the State Transport Undertaking (hereinafter referred to as 'STU5) along the notified route were to the exclusion of private stage carriages operating in the said route. Clause 4 of the said Scheme reads thus:

> "4. Whether the services are to be operated by the State Transport Undertaking to the exclusion of other persons or otherwise. Yes, the permits issued in the private sector on or before 9.5.2006 will be allowed to continue till the dates of expiry of the respective permits. Thereafter regular permits will be granted to them. When the State Transport Undertaking applies for introducing new services in the above routes,

corresponding number of existing private stage carriage permits in the said routes whose permits expire first after filing application by the State Transport Undertaking shall not be renewed. As regards permits issued after 09.05.2006 temporary permits alone shall be issued afresh on expiry in these routes or any portion thereof till such time the State Transport Undertaking replaces with new services. The decision of the State Transport Undertaking to apply for permits to replace the existing Stage Carriages as above shall be taken by the Chief Executive of the State Transport Undertaking."

4. From the aforementioned clause, it is clear that the permits which were already issued to the private sector prior to 09.05.2006 will be allowed to continue until the date of expiry of the respective permits. Thereafter, regular permits will be granted to them. However, as and when the STU applies for introducing a new service on the route, the corresponding number of existing private stage carriage permits in the said route, whose permits expire first after the filing of the application by the STU, shall not be renewed. Meaning thereby, the services to be operated by the STU along the notified route were to the exclusion of private stage carriages if the STU operates on the same route. If the STU has not applied for a permit, then the permits issued in the private sector prior to 09.05.2006 will continue until the date of expiry, following which regular permits will be granted. The temporary permits issued after 09.05.2006, on the notified route would be in operation, only until the STU operates on the same route with new services. Clauses 5(c) and 6 of the Scheme read thus:

"5 (c) Whether it is proposed to allow other services to pick up or set down passengers between any two places on the route covered by the scheme.Yes, on the portion of the route permitted to operate as in clause 4 above. Permits will also be granted to private stage carriages of other routes permitting them to overlap 5 kilometre or 5 percent of the length of their own routes, whichever is less on the notified routes, for purposes of intersection.

6. The maximum and minimum number or trips to be provided in relation to each area or route by the State Transport Undertaking in the case of stage carriage. As per traffic demand"

5. Clauses 5(c) and 6 of the aforementioned Scheme provide that private services would be allowed to pick up and drop passengers between any two places on the route covered by the Scheme, if and only if the route of the private stage carriage overlaps the notified route maximum to an extent of 5 kms or 5% of the length of its own route (whichever is less) for purposes of intersection.

6. The appellant is a STU under Section 3 of the Road Transport Corporations Act, 1950. The respondent no.1 in SLP(C) No.26954 of 2017 (namely Baby P.P contesting respondent in all these appeals), a private stage carriage operator, submitted an application seeking a temporary permit under the proviso to Section 104 of the Act before respondent no. 2 herein, the Regional Transport Authority (hereinafter referred to as 'RTA') to run services for the route Pallissery-Angamaly-Perumbavoor. The total length of this route applied for by

respondent no. 1 is 28 kms. The RTA rejected the application filed by the respondent no.1 on 22.12.2015 stating, interalia, that part of the route applied for by the respondent no.1 from Angamaly to Perumbavoor is 13 kms in length and it objectionably overlaps with the notified route of Kottayam-Kozhikode beyond the permissible limit as contemplated by the Scheme dated 14.07.2009. As against the order of the RTA, the respondent no.1 approached the STAT by filing M.V.A.R.P. No.53 of 2016 which came to be allowed in part on 11.01.2017, remanding the matter to the RTA to consider the matter afresh and to exercise its power conferred under the proviso to Section 104 of the Act.

7. Questioning the order passed by the STAT, the appellant herein approached the High Court by filing O.P.(C) No. 1827 of 2017. Respondent no. 1 in SLP(C) No. 32804 of 2017, a private stage carriage operator, filed O.P.(C) No. 1784 of 2017. Respondent no. 1 in SLP (C) No. 101 of 2018, another private stage carriage operator, also filed O.P.(C) No. 581 of 2017. All these O.Ps. were heard together and came to be dismissed on 02.08.2017 with the following observations:

> "35. Reckoning the legal principles mentioned above and the factual situation revealed in this case, especially Ext. P8 scheme, I find that the petitioners failed to establish a case that the 1st respondent or any other private operator is not entitled to get a temporary permit, overlapping on a notified route, by invoking proviso to Section 104 of the Act. State Transport Authority or Regional Transport Authority, as the case may be, as a temporary measure and until STU puts vehicles on the route, can grant temporary permits to cater the need of travelling public. It is the bounden duty of the STU to cater the needs of the commuting public and if it fails to fulfil obligations, the Government should intervene and pass appropriate modifications/changes in the scheme so as to provide amenities to the passengers. It is for the Government and the authorities to take stock of the situation periodically and reconsider the notification, if STU could not discharge their obligations in the expected lines. Till then, the authorities may invoke power conferred on them by proviso to Section 104 of the Act. In the result, original petitions are dismissed confirming Ext.P5 order."

8. Aggrieved by the judgment passed by the STAT, as well as the judgment of the High Court, these appeals are presented. The issue before this court in these appeals is as under:

> • Can a temporary permit be granted to a private stage carriage operator on a notified route (which is already being served by the STU) for a distance that exceeds the permissible limit provided under the scheme, that too not for intersecting but for merely traversing and consequently overlapping its service on the notified route?
> In other words,
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> • Under the facts of this case, is it open for a private stage carriage operator (Respondent No.1) to operate the services overlapping more than 5 kms or 5% of the route of the private stage carriage operator (as specified under the Scheme) for the

purpose of traversing by overlapping on the notified route which is being served by the STU, but not for purposes of intersection?

9. Mr. V. Giri, learned Senior Advocate appearing on behalf of the appellant contended that no person other than the STU can operate on the notified route except as provided in the Scheme; the proviso to Section 104 of the Act is also subject to the Scheme; Clause 5(c) of the Scheme makes it clear that respondent no.1's route objectionably overlaps with the notified route far beyond the permissible limit; the appellant is plying a sufficient number of buses on the notified route in question as on this day.

10. Mr. R. Basant, learned Senior Advocate appearing on behalf of the respondent no.1 submitted that the Scheme does not render the proviso of Section 104 of the Act otiose; temporary permits can be granted when the route is unserved or underserved by STU; the appellant has failed to prove that it was plying sufficient number of buses on the route Palliserry-Angamaly-Perumbavoor for which the respondent no.1 has a claim for temporary permit; three temporary permits were issued even after the scheme came into force in 2009. He further drew the attention of this Court to the fact that pursuant to the remand order of the STAT, the RTA on 23.02.2017 has granted a temporary permit on the route in question in favour of the respondent no. 1. But, the appellant without questioning such order passed by the RTA, has merely questioned the order of remand passed by the STAT before the High Court. Even before this Court, the order granting temporary permit is not questioned.

11. The law governing the formulation of schemes is found in Sections 99 and 100 of the Motor Vehicles Act. In this context, it is relevant to note the observations of a Constitution Bench of this Court in the case of *Adarsh Travels Bus Service and Anr. vs. State of U.P. and Ors. reported in*[1], where it highlighted the power of the State to make laws on the passage of motor vehicles:

> "3. The right of the members of the public to pass and repass over a highway including the right to use motor vehicles on the public road existed prior to the enactment of the Motor Vehicles Act and was not its creation. The State could control and regulate the right for the purpose of ensuring the safety, peace and good health of the public. As an incident of his right of passage over a highway, a member of the public was entitled to ply motor vehicles for pleasure or pastime or for the purpose of trade and business, subject, of course, to permissible control and regulation by the State. Under Article 19(6)(ii) of the Constitution, the State can make a law relating to the carrying on by the State or by a corporation, owned or controlled by the State of any particular business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise. The law could provide for carrying on of a service to the total exclusion of all the citizens; it may exclude some of the citizens only; it may do business in the entire State or a portion of the State, in a specified route or part thereof. The word "service" has been construed to be wide enough to take in not only the general motor service, but also the species of motor service. There are no limitations on the State's power to make laws, conferring monopoly on it in respect of

an area, and person or persons to be excluded. All this is now well established by the various decisions of this Court."

(emphasis supplied)

12. Chapter V of the Act deals with the control of transport vehicles whereas Chapter VI of the Act deals with special provisions relating to STUs. As per Section 98 of the Act, the provisions of Chapter VI and the rules and orders made there under shall have overriding effect, notwithstanding any inconsistency contained in Chapter V or any other law for the time being in force. Preparation and publication of proposals regarding road transport services of the STU has been dealt with under Section 99 of the Act. If the State Government is of the opinion that for the purpose of providing efficient, adequate, economical, and properly guaranteed road transport services in relation to any area or route or operation thereto, these road transport services should be run and operated by the STU to the exclusion (complete or partial) of private stage carriage operators, a proposal in the Official Gazette shall be published as provided under Section 99 of the Act. Objections to the proposal will be invited before the State Government under Section 100(1) of the Act. After considering the objections, if any, and after giving an opportunity to the objectors or their representatives and the representatives of the STU, the State Government may approve or modify such proposals. The approved or modified scheme will be published in the Official Gazette of the State Government, apart from newspapers, under Section 100(3) of the Act. After publication, the scheme shall be final and the same is called "the approved scheme". The area or the route, to which the scheme relates, shall be called "Notified Area" or "Notified Route". Section 103 of the Act deals with the issue of permits by the STU pursuant to the scheme, if approved. Section 104 of the Act relates to the restrictions on grant of permits in respect of the notified area or notified route.

13. It is relevant to note that Chapter IV of the Motor Vehicles Act, 1939 is analogous to Chapter V of the Motor Vehicles Act, 1988. Chapter IV-A of the 1939 Act corresponds to Chapter VI of the 1988 Act. The sections contained in Chapter IV-A of the1939 Act are in pari materia with the sections contained in Chapter VI of the 1988 Act. To be more precise, Sections 99 and 100 of the 1988 Act are in pari materia with Sections 68-C and 68-D respectively of the 1939 Act.

14. Before proceeding further, it would be relevant to note Section 104 of the Act along with its proviso, which reads thus:

> "104. 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 or 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."

15. A plain reading of Section 104 makes it amply clear that where a scheme has been published under Section 100(3) of the Act in respect of any notified area or notified route, grant of any permit on the notified route or area is impermissible, except in accordance with the provisions of the scheme. However, the proviso clarifies that wherever the STU has not sought any permit in respect of any notified route or notified area in pursuance to the scheme, the RTA (or STA, as the case may be) may grant a temporary permit to any private stage carriage operator in respect of such notified area or notified route, on the condition that such permit shall cease to be effective on the issue of a permit to the STU in respect of that area or route. It is needless to observe that respondent no.1 claims such a temporary permit based on the proviso to Section 104 of the Act, contending that the STU is not operating its services on the notified route.

16. It is by now well settled that the scheme formulated and published by the State Government under Section 100 (3) of the Act holds the fort in all matters involving permits.The scheme is a law by itself, as observed by this Court in various judgments including the case of *Gajraj Singh and Others vs. State Transport Appellate Tribunal and others reported in*[2] wherein it is observed as hereunder:

> "51. After giving careful and anxious consideration to the respective contentions, we find that there is some force in the contention of the respective counsel for the appellants. It bears repetition to state that the approved scheme under the Repealed Act or in the Act is a self-contained and self-operative scheme. It is a law by itself. The schemes published under the Repealed Act, as held earlier, are saved by Section 217(2)(a) of the Act. Therefore, until they are modified or cancelled under Section 102, the scheme should continue to be in operation in the notified area, route or part thereof. The right to apply for and obtain permit in the notified scheme was totally frozen to the private operators giving exclusive right to the STU to apply for and obtain permits to run the stage carriages or additional service under Section 101 of the Act on the notified area, route or a part thereof and none else. With a non obstante clause in Section 101, the right to apply for and obtain temporary permits under Section 87 by private operators was taken away. There is no need for STU to obtain such permits as an intimation to RTA concerned of its providing such additional service on special occasions like fair or religious gatherings for conveyance of passengers, is sufficient. Yet the scheme itself saved and preserved the rights of the named existing operators in respect of overlapping routes in the specified permits, subject to the corridor restrictions of picking up and setting down the passengers en route the prescribed prohibited route. They became entitled to run their stage carriages subject to the law. Though, their permits are saved, the named operators being private operators, Parliament appears to have thought that there was no necessity to expressly retain in Chapter VI itself their right of renewal as the same was already provided in Section 81 of the Act corresponding to Section 68-F(1-D) of Chapter IV-A of the Repealed Act. The reason appears to be obvious. Every private

operator falls within the field covered by Chapter V of the Act. It would seem that Parliament is of the view that the named operators, being saved under the schemes, are entitled to apply for and obtain necessary permit or renewal thereof to ply their stage carriages only on overlapped routes subject to the corridor restrictions mentioned in the scheme itself. It may be stated that we do not find any express indication of their rights being taken away under the Act; nor do we find it by necessary implication in that behalf and to that effect. This view does justice also to all concerned."

(emphasis supplied)

17. In light of this, it is to be noted that the proviso to Section 104 of the Act cannot be read aloof from the main section. A plain reading of the proviso to Section 104 makes it clear that temporary permits can be granted to the private sector, wherever the STU does not operate its service. However, the proviso is also subject to the stipulations of the scheme, akin to the main section. A Four-Judge Bench of this Court in *Dwarka Prasad vs. Dwarka Das Saraf, reported in*[3], observed that the proviso cannot be read separately from the main section, in the following manner:

"18....A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context" (1912 AC 544). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction . "

(emphasis supplied)

18. Since the Scheme on hand partially excludes private stage carriage operators on the notified route, the same is to be adhered to. It is necessary in the public interest that road transport services on notified routes should be run and operated by the STU to the complete or partial exclusions of private stage carriage operators. In a State where the scheme has been published, subject to such scheme formulated by the State, no private stage carriage operator can operate beyond the stipulations of the scheme. This also applies to applications for temporary permits under the proviso to Section 104 of the Act.

19. In the matter on hand, it is the case of the STU that it has been running 452 buses (covering 770 trips) every day on part of the notified route, i.e. from Angamaly to

Perumbavoor, wherein overlapping of 13 kms is claimed. So far as the route from Angamaly to Perumbavoor is concerned, the same is undisputedly a notified route. The STU thus has the exclusive right or monopoly to ply its stage carriages and obtain the required permit as per the Scheme to the exclusion of private stage carriage operators. The proviso gives only a limited breath of life to the private sector, viz., only if the vehicles of the STU do not operate on the notified route as per the scheme, in which event temporary permits may be granted to the private stage carriage operators. In the matter on hand, undisputedly, more than 450 buses of the STU ply everyday on the notified route which pass from Angamaly to Perumbavoor. It is not open for the respondent no.1 to claim that the STU is not running sufficient buses from Palliserry to Perumbavoor via Angamaly. Admittedly, Palliserry to Angamaly is not a notified route. The dispute between the parties, thus, virtually relates to the route between Angamaly to Perumbavoor and not the route between Palliserry to Angamaly.

20. Even otherwise it is not disputed that the STU is plying 8 trips from Palliserry to Perumbavoor via Angamaly. Apart from the same, the private sector is operating sufficient number of services from Palliserry to Angamaly. It is brought to the notice of this Court by the STU that the STU may provide more buses if required between Palliserry to Angamaly. Moreover, it is open for the respondent no.1 to seek permission as per law before the concerned authority and ply its buses on the non-notified route. However, when it comes to operating on the notified route, that is, in between Angamaly and Perumbavoor, the respondent no.1 cannot operate its services for more than 5 kms or 5% of its route (whichever is less). Admittedly, part of the respondent no.1's route measuring 13 kms is between Angamaly and Perumbavoor, and that entire patch of 13 kms overlaps the notified route. The total route length applied for by the respondent no.1 is only 28 kms. The overlap thus, permitted on the notified route (in the case on hand) as per the Scheme could only be 1.4 kms whereas the respondent no.1 wants to overlap by 13 kms, i.e. approximately 50% of his route, which is totally impermissible and the same is rightly objected to by the STU, particularly when the STU is operating 452 buses (amounting to 770 trips) in a day on the said route.

21. The contention of the respondent no.1 is that the travelling public could be inconvenienced if the passengers travelling in the buses of the respondent no.1 from Palliserry to Perumbavoor are asked to get down at Angamaly. Such factors relating to inconvenience etc. necessarily have to be taken into consideration by the concerned authorities before publication of the proposal regarding road transport services of the STU under Section 99 of the Act, by the State Government under Section 100(1) of the Act when considering the objections to the scheme, and thereafter either by the STU or by the Government when inconvenience is experienced by the travelling public and brought to its notice. As held by the Constitution Bench of this Court in case of Adarsh (supra), the question is one of weighing the balance between the advantages conferred on the public by the nationalisation of the route Kottayam-Kozhikode against the inconvenience suffered by the public by wanting to travel straight from Palliserry to Perumbavoor via Angamaly.

22. It is quite well known that under the guise of permits over longer routes covering shorter notified routes, or overlapping parts of notified routes, such permits are more often than not mis-utilized, since it is well nigh impossible to keep a proper check at every point of the route. If indeed there is any need for protecting the travelling public from inconvenience, as was submitted by Mr. Giri, the STU and the Government will make sufficient provisions in the Scheme itself to avoid inconvenience being caused to the travelling public. In Adarsh (supra) under similar circumstances, it was observed thus,

> "7....The question is one of weighing in the balance the advantages conferred on the public by the nationalisation of the route C-D against the inconveniences suffered by the public wanting to travel straight from A to B. On the other hand it is quite well known that under the guise of the so-called "corridor restrictions" permits over longer routes which cover shorter notified routes or "overlapping" parts of notified routes are more often than not misutilised since it is well nigh impossible to keep a proper check at every point of the route. It is also well known that often times permits for plying stage carriages from a point a short distance beyond one terminus to a point a short distance beyond another terminus of a notified route have been applied for and granted subject to the so-called "corridor restrictions" which are but mere ruses or traps to obtain permits and to frustrate the scheme. If indeed there is any need for protecting the travelling public from inconvenience as suggested by the learned counsel we have no doubt that the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid j nconvenience being caused to the travelling public. "
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> "14....We however wish to introduce a note of caution. When preparing and publishing the scheme under Section 68-C and approving or modifying the scheme under Section 68-D care must be taken to protect, as far as possible, the interest of the travelling public who could in the past travel from one point to another without having to change from one service to another en route. This can always be done by appropriate clauses exempting operators already having permits over common sector from the scheme and by incorporating appropriate conditional clauses in the scheme to enable them to ply their vehicles over common sectors without picking up or setting down passengers on the common sectors. If such a course is not feasible the State Legislature may intervene and provide some other alternative as was done by the Uttar Pradesh Legislature by the enactment of the Uttar Pradesh Act 27 of 1976 by Section 5 of which the competent authority could authorise the holder of a permit of a stage carriage to ply his stage carriage on a portion of a notified route subject to terms and conditions including payment of licence fee. There may be other methods of not inconveniencing through passengers but that is entirely a matter for the State Legislature, the State Government and the State Transport Undertaking. But we do wish to emphasise that good and sufficient care must be taken to see that the travelling public is not to be needlessly inconvenienced. "
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> (emphasis supplied)

23. In the case of *U.P. State Roadways Transport Corporation vs. Anwar Ahmed and Others reported in*[4], this Court observed thus:

> "6. In view of the settled legal position that once the scheme has been approved and notified, right to ply stage carriages by private operators on the notified area, routes or portions thereof is totally frozen. Therefore, they have no right to claim any grant of stage carriage, temporary or contract carriage permits thereunder on the said notified area, routes or portions thereof except to the extent saved by the scheme with restrictions imposed thereunder..."
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> "7. 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 travelling 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 to travelling public to infiltrate into forbidden notified area, route or portion thereof to sabotage the scheme. The permits were taken by the appellant and the vehicles are put on the route in terms of the scheme. Therefore, the direction given by the High Court at the pain of contempt is obviously illegal. It is stated by Shri V.R. Reddy, Additional Solicitor General, on instruction that the appellant is prepared to take all the permits required on the routes.
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> 8. But the crucial question is whether a new route can be introduced by fusing two notified routes and temporary permits sought to be obtained on carved-out route? This device is obviously impermissible to enter into frozen area or route or portion thereof through backdoor. The scheme is law by itself and until it is varied according to law, no private operator has any right to camouflage any device to obtain temporary permits. Under these circumstances, action taken by the respondents to obtain temporary permits is obviously ultra vires and authorities have no jurisdiction to grant such permits. The altered or modified routes are contrary to the approved scheme, since they have been occupied by two notified routes and to be operated as per the scheme."
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> (emphasis supplied)

24. From the aforementioned, it is clear that the temporary inconvenience, if any, to the travelling public was to be avoided till the permits were taken by the appellant and vehicles were made to ply on the route by it. Since the appellant is running sufficient number of

buses/trips on the notified route, no inconvenience to the public is made out. Private stage carriage operators generally would be attempting to wear a mask to infiltrate into forbidden routes or areas or portions thereof, under the pretext of inconvenience to the travelling public, to sabotage the scheme.

25. The STAT impliedly interpreted the proviso to Section 104 of the Act to mean that the competent authority would have the power to grant a temporary permit de hors the scheme. Such interpretation deserves to be rejected, i.e., the interpretation that until the STU puts vehicles on the newly carved out route fusing non-notified and notified route, temporary permits may be granted to private stage carriage operators. A new route cannot be introduced by fusing a non-notified route with the notified route to seek a temporary permit on a carved out route. This device is obviously impermissible to enter into a frozen area or route or portion thereof, in excess of the limited permit under the scheme, through a back door. The Scheme is a law by itself and until it is varied according to law, no private stage carriage operator has any right to camouflage any device to obtain the permits. The new route introduced by the respondent no.1 fuses a non-notified route (to an extent of 15 kms) and a notified route (to an extent of 13 kms), totally measuring 28 kms. This is contrary to the approved Scheme, since such newly introduced route by the respondent No.1 overlaps with 13 kms of the notified route, which is prohibited as per the Scheme. There cannot be any dispute that there will not be any scope for grant of any permit in that area or route covered by the Scheme, except what is specifically permitted or provided under the Scheme itself.

26. In the matter on hand, the Scheme does not permit private stage carriage operators to overlap more than 5 kms or 5 % (whichever is less) of the route proposed by the private stage carriage operator, and as the respondent no. 1 wants to run services overlapping by 13 kms, the prayer is liable to be rejected.

27. Thus, the RTA was justified in rejecting the claim of the respondent no.1 seeking temporary permit on the notified route, since the respondent no.1 has sought a temporary permit for the route which overlaps by 13 kms on the notified route; such overlap is clearly prohibited under the Scheme. Since the STU is running hundreds of bus trips on the part of the notified route i.e. from Angamaly to Perumbavoor, it is not open for the respondent no.1 to seek a temporary permit covering that distance.

28. Moreover, overlapping to the extent of 5 kms or 5% of the route of respondent no.1 (whichever is less), is only for purposes of intersection under the Scheme. As the proviso to Section 104 of the Act is also subject to the Scheme, it is not open for any private stage carriage operator including the respondent no.1 to claim a temporary permit for traversing and overlapping with the notified route to the extent of 13 kms. The intersection of the notified route may not, in our view, be the same as traversing and overlapping with the route, because the prohibition under the Scheme must apply to the whole or a part of the notified route, and private stage carriage operators cannot be allowed to traverse the same line in the guise of intersection. In this case, as the stage carriage services of the respondent no.1 are to operate on a notified route to an extent of 13 kms, it cannot be considered an intersection. Intersection means “to cut across”. It is permissible for any private stage carriage operator,

under the Scheme in question, to traverse on a notified route up to the permissible limit as contemplated under the Scheme only for the purpose of cutting across the notified route, and to proceed further on a non-notified route. Only in such a case can the temporary permit be granted.

29. There is a clear distinction between overlapping and intersection. The expression "intersection" is not defined in the Act. Hence, in order to understand this distinction, the dictionary meaning of the expression "intersection" deserves close scrutiny. In Black's Dictionary of Law, 5th edn., the word "intersection" means: as applied to a street or highway means the space occupied by two streets at the point where they cross each other. Space common to both streets or highways, formed by continuing the curb lines. In the Law Lexicon, Reprint edn., 1987 "intersect" means as "to cross; literally, to cut into or between; a word which imports the intersection of one line with another". In Chambers English Dictionary, "intersection" means to cut across: to cut or cross mutually; to divide into parts, v.i. to cross each other; intersect appoint of intersection; intersection intersecting: the point or line in which lines or surfaces cut each other (geom.): the set of elements which two or more sets have in common (math.): a crossroad. In Webster's Dictionary, Vol. I, the word "intersection" is: as the act of intersecting the point at which lines cut across each other (or the line at which planes do so), a place where two roads cross each other intersectional.
The Shorter Oxford English Dictionary, Vol. I defines "intersection" as the action or fact of intersection; the place where two things intersect; chiefly geom.; the point (or line) common to two lines or surfaces which intersect. The Concise Oxford dictionary defines: Intersect means, Divide by passing or lying across it; cross or cut each other. A reading of the dictionary meanings thus, shows more than one meaning for the word "intersection". But, it can be said that, meaning of the word "intersection" as provided generally in various dictionaries mentioned supra, is "cutting across". However, in such a situation it would be appropriate to keep in mind that the word has to be construed in the context of the provision of the Act and scheme of the Act. As we find that the "Scheme" intends total exclusion of private stage carriage operators for a notified route except for "intersecting" it is not open for the authorities to grant permits to private stage carriage operators to operate on the notified route but may be permitted merely to intersect within permissible limits. The "intersection" thus, is not traversing the same line of travel beyond permitted limits, but to cut across a notified route for its onward journey. This exception is carved out only to avoid hardships to travellers. Any other view contrary to the above view would amount to violating integrity of an approved Scheme. An intersection is permissible, while an overlap is not. In *Mysore State Road Transport Corporation vs. Mysore State Transport Appellate Tribunal, reported in*[5], this Court held as follows:

> "10. ... It is, therefore, apparent that where a private transport owner makes an application to operate on a route which overlaps even a portion of the notified route i.e. where the part of the highway to be used by the private transport owner traverses on a line on the same highway on the notified route, then that application has to be considered only in the light of the scheme as notified. If any conditions are placed then those conditions have to be fulfilled and if there is a total prohibition then the application must be rejected."

> "12. This Court has consistently taken the view that if there is a prohibition to operate on a notified route or routes no licences can be granted to any private operator whole route traversed or overlapped any part or whole of that notified route. The intersection of the notified route may not, in our view, amount to traversing or overlapping the route because the prohibition imposed applies to a whole or a part of the route on the highway on the same line of the route. An intersection cannot be said to be traversing the same line, as it cuts across it."
>
> (emphasis supplied)

30. The expression "intersection"as observed by this Court in the case *Karnataka SRTC vs. Ashrafutta Khan reported in*[6], has been employed only to provide a facility to private stage carriage operators operating on a non-notified route to continue their onward journey on a non-notified route by cutting across the notified route to the extent permitted under the scheme. This exception is carried out only with the avowed object of avoiding hardship to the travelling public. Except for such exceptional circumstance of cutting across the notified route, the scheme totally excludes private stage carriage operators on the notified route. In case of overlapping, such carrier would ply on the same line to travel on a portion of the notified route, whereas in case of intersection,the private stage carriage operator's route only cuts across the notified route for its onward journey. Since the scheme is a law, the same has to be preserved and protected in public interest.

31. Since it is not a case of intersection as contemplated under Clause 5(c) of the Scheme, and as the overlapping sought by the respondent no.1 is more than both 5 kms or 5% of his total route, the prayer of respondent no.1 must be rejected. However, we hasten to add that (as mentioned supra) Clauses 5(c) and 6 of the Scheme provide that the private stage carriages would be allowed to pick up and drop passengers in between any two places on the route covered by the Scheme, provided that the route of the private stage carriage overlaps the notified route maximum to an extent of 5 kms or 5% of the length of its own route (whichever is less).

32. At the cost of repetition, we must observe that the respondent no. 1 does not fall within the proviso to Section 104 of the Act. The appellant has been plying sufficient number of buses/trips on the notified route as a STU. Both parties admit that the appellant is running sufficient number of buses on the notified route. It was held by this Court in *U.P. SRTC and another vs. Sanjida Bano and others, reported in*[7], that irrespective of the number of buses and trips undertaken by the STU, the fact that it is plying its vehicles on the notified route precludes others from taking the benefit of the proviso to Section 104 of the Act. The Court held thus:

> "5. ..Whether or not the number of buses and the trips operated by the State transport undertaking were enough to cater to the volume of need of the commuting public, is not germane to the applicability of the proviso. The scheme provides for as many permits as needed being lifted by the State transport undertaking. The State transport

undertaking was operating 36 trips on the date of the order of the High Court and is now operating 40 trips, as stated by the learned counsel for the appellants at the Bar. However, the learned Senior Counsel for the respondents has disputed the correctness of this statement and submitted that the Secretary, Regional Transport Authority had found only 25 trips being in operation. Be that as it may, we are not inclined to hold that in spite of the appellant Corporation operating on the route resort can be had to the proviso to Section 104 of the Act for granting temporary permits."

(emphasis supplied)

33. Strangely, the Respondent No.1 sought to produce certain documents before the Court, just about two days prior to the final arguments. Such documents contained so called three temporary permits granted in favour of three private stage carriage operators on the notified route subsequent to the scheme. Relying upon such documents, Mr. Basant argued that same concession as has been given to three private stage carriage operators should be given in favour of the respondent no.1 also. These submissions are rightly objected by Mr. Giri taking an exception to the manner in which these documents were sought to be produced two days prior to the final arguments; these documents were not available on the record before the High Court or before the STAT. Since opportunity was not available to the appellant to have its say on the documents, he submitted that the said documents need to be ignored. It is not clear from any of the record that such temporary permits were granted and even if granted whether they have expired or not. Even otherwise there was no opportunity for the appellant to have its say on alleged permits. Hence, we do not propose to consider and comment upon such documents produced by the contesting respondent.

34. Mr. R. Basant relied heavily on *Punjab Roadways vs. Punjab Sahib Bus & Transport Co., reported in*[8], to make a claim that temporary permits may be granted even when the STU has applied for a permit. In that case, this Court held as under:

"34. The abovementioned provision states where a scheme has been published under sub-section (3) of Section 100 in respect of any notified area or notified route, the 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 in spite of grant of permit does not operate the service or surrenders the permit granted or is not utilising 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 the RTA will be upsetting the ratio fixed under the scheme which is legally impermissible."

(emphasis supplied)

35. Despite the strong submissions made on behalf of the respondent no. 1, it remains that Punjab Roadways (supra) is distinguishable from the present case on facts. In that case, the scheme of the Punjab Government shared all routes on the national and State highways in a specified ratio between STUs and private stage carriage operators. The relevant authorities as well as the High Court held that regular permits may be granted to private stage carriage operators where the STU is not using its permit. However, this Court took exception to the grant of "regular" permits as relief, as doing so would upset the ratio contained in the scheme. Temporary permits would not upset the balance and were hence preferable in a situation where the scheme mandated that the routes be divided and utilized in a specific ratio. In the case on hand, there is no requirement of division into specific ratios. We see no reason to apply the findings in that case to the present scenario.

36. The contention that the subsequent order of the RTA has remained unquestioned, and the respondent no. 1 is therefore entitled to operate his services on the notified route, cannot be accepted. Since the order of the STAT remanding the matter to the RTA with a direction to the RTA to exercise its power under the proviso to Section 104 of the Act, which was confirmed by the High Court, is held to be bad by us in this appeal, the consequent order of the RTA dated 23.02.2017 also needs to be held illegal. Moreover, we have heard the matter in its entirety and the said contention of respondent no.1, in our view, is too technical. Be that as it may, since we find that the Respondent no.1 is not entitled to ply stage carriage buses on the notified routes, the temporary permit granted by the RTA on 23.02.2017 in favour of respondent no.1 is set aside.

37. In view of this discussion, the following answer emerges:

- A temporary permit cannot be issued to a private stage carriage operator to traverse on the notified route which is being served by the STU, in excess of the permissible distance provided under the scheme.

- To rephrase, under the facts of this case, it is not open for a private stage carriage operator (the respondent no. 1) to operate its services by overlapping on a notified route for more than 5 kms or 5% (whichever is less) of the route of the private stage carriage operator (as specified under the Scheme) which is being served by the STU.

38. Accordingly, the judgment of STAT, the consequent order of the RTA granting temporary permit to the respondent no. 1, as well as the judgment of the High Court, are set aside. The Appeals before us are hereby allowed. Consequently, O.P.(C) No. 1827 of 2017, as preferred by the appellant KSRTC, stands allowed. As regards the O.P.(C) No. 1784 of 2017 and O.P.(C) No. 581 of 2017, the same order shall govern their outcome.

Judgment Referred.

[1] *(1985) 4 SCC 0557*

[2]*(1997) 1 SCC 0650*
[3]*(1976) 1 SCC 0128*
[4]*(1997) 3 SCC 0191*
[5]*(1974) 2 SCC 0750*
[6]*(2002) 2 SCC 0560*
[7]*(2005) 10 SCC 0280*
[8]*(2010) 5 SCC 0235*