

ALLAHABAD HIGH COURT

Santosh Kumar

Vs.

Regional Transport Authority

Civil Misc. Writ Petn. No. 21773 of 1989 15900 and 11881 of 1986, 22090,
23216 etc. of 1989

(V.K. Khanna and R.A. Sharma, JJ.)

16.03.1990

JUDGMENT

R.A. Sharma, J.

1. By these writ petitions the petitioners pray for a writ of mandamus so as to restrain Regional Transport Authority (hereinafter referred to as R.T.A.) from granting any permit on their routes. With the consent of learned counsel for both the parties in all these cases we have made ¹ *Santosh Kumar v. Road Transport Authority*, as the leading case.

2. The routes, Muzaffarnagar-Shamli-Jhinjana-Don-Chausana and Shamli-Chausana extended up to Muzaffarnagar (hereinafter referred to as route) are within the jurisdiction of R.T.A. and the petitioners are holding regular stage carriage permit on the route and are existing operators. A proposal (hereinafter referred to as Draft Scheme) under Section 68-C of the Motor Vehicles Act, 1939 (hereinafter referred to as old Act) was published on 13-2-1986, proposing to nationalize route as well as various other routes. The petitioners claim that during pendency of this Draft Scheme of 1986 no permit can be granted to any person.

3. Old Act as originally enacted did not contain any provision for nationalization of route. It was in 1956 that Chapter IV-A was added by Central Act 100 of 1956 whereby special provisions relating to State Transport Undertaking and nationalization of routes were introduced in this Act. Section 68-C of this Act authorized State Transport Undertaking to prepare a Draft scheme. If it is of the opinion that for the purposes of providing efficient,

adequate, economical and properly co-ordinate Road Transport Service, it is necessary in public interest that Road Transport Service in relation to any area or route should be run and operated by State Transport Undertaking whether to the exclusion, complete or partial, of other persons or otherwise. Provision was made for filing objection under Section 68-D and State Government after hearing the objector and State Transport Undertaking was empowered to approve or modify the Scheme. As power to approve includes power not to approve, it has been held that Government can approve, modify or disapprove it. The Scheme, if approved, is required to be published in official gazette by the State Government and thereupon such Scheme becomes final and is called approved Scheme and the area or route, to which it relates, is called notified area or notified route. An approved Scheme can be modified or cancelled under Section 68-E. Section 68-F provided for issue of permit to State Transport Undertaking and for taking consequential action for the purposes of giving effect to the approved Scheme.

4. Under Chapter IV-A of the old Act, there was no provision requiring the State Government to finalize Draft Scheme within some specified period, with the result that Draft Scheme remained pending for several years. Supreme Court in *Yogeshwar v. State Transport Appellate Tribunal*,² held that inordinate delay in approving Scheme under Section 68-D of the Act prejudices public interest and amounts to abuse of power. Same position was reiterated by Supreme Court in *Phool Chand Gupta v. R.T.A.*,³ and *Shri Chand Govt. of U.P.*, AIR 1986 Supreme Court 242. Supreme Court in *Onkar Singh v. R.T.A.*,⁴ laid down that approval of Draft Scheme cannot be longer than three to five years. In all these cases Draft Schemes were quashed as they have not been approved within a reasonable time.

5. In Chapter IV-A or any other section of the old Act there was no provision prohibiting grant or renewal of regular permits, during pendency of Draft Scheme of the route or area. In the absence of any prohibition in old Act Transport Authorities used to grant and renew regular permits during pendency of the Draft Scheme. Delay in disposing of the application for renewal or grant of regular permits on account of pendency of Draft Scheme under Section 68-C was deprecated by the courts. In *Samarth Transport Company v. R.T.A.*,⁵ the Supreme Court observed that transport authorities are expected to discharge

their functions fairly and without bias even in a case where interests of the Government are involved and it is not justified to postpone the petitioner's application for renewal of regular permit to give time to enable the Government to approve the Scheme. It was further observed that in the event of delay in deciding these applications during pendency of Draft Scheme the operators are entitled to writ of mandamus for early disposal.

6. In 1969 Parliament amended old Act by adding amongst other provisions, Sub-sections (1-A) to 1-D to Section 68-F by Central Act 56 of 1969. By Sub-section (1-D) grant of regular permits and their renewal was prohibited during pendency of Draft Scheme and transport authorities were merely authorized to grant temporary permits to State Transport Undertakings under sub-section (1-A) and to private operators under sub-section (1-C). Renewal of permit was also prohibited, but transport authorities were authorized to grant renewal for limited period under the proviso of the aforesaid sub-section. sub-section (1-D) is quoted below :

"(1-D) Save as otherwise provided in sub-section (1-A) or sub-section (1-C), no permit shall be granted or renewed 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 favor of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme :Provided that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published under Section 68-C expires after such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under sub-section (3) of Section 68-D."

On account of aforesaid prohibition the Transport Authorities stopped granting regular permit and their renewal during pendency of draft scheme after enforcement of Central Act 56 of 1969. Supreme Court also in *Smt. Praveen Ansari v. The State Transport Appellate Tribunal*, ⁶ has laid down that in view of Section 69-F (1-D) of the Act Transport Authorities have ceased to have any jurisdiction to grant regular permit or their renewal and their jurisdiction is confined to grant temporary permits. Relevant passage from this judgment is

quoted below (at p. 517 of AIR) :

"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 favor 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)."

7. In 1988 Parliament enacted Motor Vehicles Act, 1988 (hereinafter referred to as the New Act) and it has been enforced on 1-7-1989. By Section 217(1) of the New Act the Old Act has been repealed and a saving clause has been enacted in form of sub-section (2) of the same section. Section 217 of the New Act is quoted below :

"217 : Repeal and Savings :- (1) The Motor Vehicles Act 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereinafter in this section referred to as the repealed enactments) are hereby repealed.

(2) Notwithstanding the repeal by subsection (1) of the repealed enactments :-

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made or exemption granted, or any confiscation made, or any penalty or fine imposed, any forfeiture cancellation or any other thing done, or any action taken under the repealed enactments, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act.

(c) any document referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to this Act or to the corresponding provision of this Act.

(d) the assignment of distinguishing marks by the registering authority and the manner of display on motor vehicles in accordance with provision

of the repealed enactments shall, after the commencement of this Act, continue to remain in force until a notification under sub-section (6) of Section 41 of the Act is issued.

(e) any scheme made under Section 68-C of the Motor Vehicles Act 1939 (4 of 1939) or under the corresponding law, if any, in force in any State and pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of this Act.

(f) the permits issued under sub-section (1-A) of Section 68-F of the Motor Vehicles Act 1939 (4 of 1939), or under the corresponding provisions, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved scheme under Chapter VI of this Act is published.

(3) Any penalty payable under any of the repealed enactments may be recovered in the manner provided by or under this Act, but without prejudice to any action already taken for the recovery of such penalty under the repealed enactments.

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the affect of repeals."

8. Learned counsel for the petitioners have argued that draft scheme under Section 68-C of the Old Act published on 13-2-1986, proposing to nationalize the petitioners' route, shall be deemed under Section 217(2) (a) of the New Act to have been issued under the corresponding provisions of the New Act, which has come into force on 1-7-1989, as such it shall be presumed to have been published on the date of enforcement of the New Act (1-7-1989) and by virtue of Section 100(4) of the New Act it shall remain in force for one year which will come to an end on 30-6-1990. It is further contended that during the pendency of the draft scheme, no permit can be granted by the transport authorities for the route covered by it. For deciding this controversy following two questions are required to be decided : (i) whether this draft scheme under Section 68-C of the Old Act shall continue to exist after the repeal of the Old Act and (ii) whether the transport authorities are prohibited from granting any permit under the New Act, if a route is covered by a draft scheme.

9. By virtue of Section 217(2)(a) any notification issued, anything done or any

action taken under the Old Act and is in force immediately before commencement of the repealing Act, so far as it is not inconsistent with the provisions of the New Act, shall be deemed to have been issued, done or taken under the corresponding provisions of the New Act. The effect of this provision is that a thing, which was valid under the repealed Act, would become invalid, after the repeal if it is inconsistent with the repealing Act and as such, it will cease to be effective with effect from the date of repeal. Identical provisions are to be found in Section 133(2) (a) of the Old Act which came up for interpretation before Supreme Court in *Sumer Chandra v. State of U.P.*,⁷. Under U. P. Act IX of 1955 permit on nationalized route could be granted with the permission of the Transport Commissioner and this Act was repealed by Central Act 56 of 1969. By Section 135 U. P. Act was repealed and a saving clause was incorporated in sub-section (2). Supreme Court relying on identical language of Section 135(2)(a) laid down that only those permits or permission under repealed enactment will survive, which are not inconsistent with the Motor Vehicles Act as amended by the Central Act 56 of 1969 and inconsistent provisions will cease to be effective from the date of the repeal. Supreme Court accordingly held that the permission/permits granted on notified, route under U.P. Act are inconsistent with the Motor Vehicles Act under which permits on noted route cannot be granted, and as such, these permissions/ permits have lapsed on the repeal of the Act. Relevant extract of the judgment is quoted below (at p.1113 of AIR) :

"Section 76 of the Act 56 of 1969 (which was inserted into 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 permissions granted under Section 10(1)(c) of the U. P. Act IX of 1955 was patently inconsistent with the provisions of Chapter VI-A, of the Motor Vehicles Act, 1939 and the permission, therefore, ceased to be effective from 1-4-1971, the date of repeal of the 1955 Act. Therefore, it was no longer permissible for private operators to ply their vehicles on the common sectors from 1-4-1971 onwards."

10. Provisions relating to State Transport Undertakings and nationalization of routes are contained in Chapter VI of the New Act. Provisions of Chapter IV of

the New Act are virtually similar to the provisions of Chapter IV-A of the Old Act, as it was before amendment by Central Act 56 of 1969. This Chapter has restored the position which was existing under the Old Act before the amendment by Central Act 56 of 1969. However, new provision has been added in, the form of sub-section (4) to Section 100 whereby it has been laid down that if a Scheme is not published as an approved Scheme under Sub-section (3) in the official gazette within a period of one year from the date of publication of the Draft Scheme in the official gazette, the Draft Scheme (proposal) shall be deemed to have lapsed. sub-section 4 of Section 100 is quoted below :

"(4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under sub-section (1), the proposal shall be deemed to have lapsed.

Explanation - In computing the period of one year referred to in this sub-section, any period or periods during which the publication of the approved scheme under sub-section (3) was held up on account of any stay or injunction by the order of any Court shall be excluded."

11. By sub-section (4) of Section 100 of the new Act absolute prohibition have been made against continuation of Draft Schemes after one year from the date of their publication in the official Gazette. As Draft Scheme in this case was published under Section 68-C read with Section 68-D(1) of the old Act on 13-2-1988 its continuance after 1-7-1989 will contravene sub-section (4) of Section 100 and on account of this inconsistency with the new Act this Scheme has lapsed on the date of repeal of the Old Act (1-7-1989). No advantage can be taken by the petitioners of Section 217(2)(a) new Act. However, specific provision has been made regarding pending Scheme under Section 217(2) (e) of the New Act; whereby a provision has been made that Draft Scheme under Section 68-C of the old Act pending immediately before commencement of the new Act shall be disposed of in accordance with the provisions of Section 100 of the new Act. Sub-section (4) of Section 100, as mentioned earlier, has categorically laid down that a Draft Scheme, proposing nationalization of route, if not published as approved Scheme within one year from the date of its publication in official gazette shall be deemed to have lapsed. In the present case the Draft Scheme was published on 13-2-1986 and it shall be deemed to

have lapsed on the date of enforcement (1-7-1989), because of absolute prohibition contained in Section 100 (4) against continuance of any scheme after of year. As the scheme will lapse on 1-7-1989 when the Old Act was repealed and new Act was enforced, question of presuming that the said scheme shall be deemed to have been published on 1-7-1989 does not arise.

12. Second argument of the learned counsel for petitioners also has no force. Assuming that aforesaid draft scheme still exists there is nothing in Chapter VI or any other provisions of the New Act which prohibits grant of permit on a route covered by draft scheme. The provisions of Chapter VI of the New Act are similar to the provisions of Chapter IV-A of the Old Act before its amendment by Central Act 56 of 1969. It has already been mentioned earlier that under Chapter IV-A of the Old Act before amendment by Central Act 56 of 1969 permits both permanent and temporary used to be granted to the operators on the route covered by draft scheme. Prohibition against grant of regular permits and their renewal was enacted under the Old Act for the first time in the form of sub-section (1-D) of Section 68-F. The provisions like sub-section (1-D) of Section 69-F of the Old Act not having been incorporated in New Act it shall be presumed that the omission of such a provision in the New Act was deliberately made by the Parliament.

13. Learned counsel for the petitioners, however, contended that as the draft scheme has to be approved within one year and State Transport Undertaking under Section 101 of the New Act is entitled to operate more buses on a route, if need for additional services is felt. Grant of permit during this period of one year is impliedly prohibited. Firstly it cannot be presumed that a scheme is bound to be approved within one year and the scheme may lapse. That apart, the State Government may reject the scheme, or modify it so as to enable private operators to operate on the notified routes. In all these three contingencies permit granted to private operators during pendency of draft scheme will continue. However, if the scheme is approved, the permit so granted to private operators shall be cancelled under Section 103(2) of the new Act. The power of cancellation of the permit under this provision brings ministerial/mechanical the transport authorities are bound to cancel the permit of private operators if scheme is approved for exclusive operation of the State Transport Undertaking. This was the interpretation, given by the Supreme

Court, of the corresponding provision 68-F(2) of the old Act. There will be no effect on the draft scheme or its implementation if approved by grant of permit during pendency of these schemes. Under Section 101 of the New Act, State Transport Undertaking may operate additional services for conveyance of the passengers on special occasions, such as to or from fairs and religious gathering by informing the transport authorities concerned. Section 87 of the New Act authorizes the grant of temporary permit and by clause (a) of sub-section (1) of this section, such permits can be granted for conveyance of passengers on special occasions, such as to and from fairs and religious gathering. Section 101 of the new Act authorizes the State Transport Undertaking to operate additional services for the purposes mentioned under Section 87(1)(a) after information to the transport authorities. The only effect of Section 101 is that for the contingency contemplated by Section 87(1) (a), Corporation can ply without any permit subject to giving information to the transport authorities. This section does not authorize the State Transport Undertaking to operate without permit in the contingencies and circumstances covered by cls. (b) (c) and (d) of sub-section (1) of Section 87 of the new Act. Even saving of the temporary permits of the Undertaking granted under sub-section (1-A) of Section 69-F of the old Act until the approved scheme published under Chapter VI cannot lead to the conclusion that grant of permits is prohibited. Only some draft schemes published under Section 68-C of the old Act, where one year from the date of the publication has not yet expired will survive the repeal of the old Act and in such cases only temporary permits granted under sub-section (1-A) of Section 68-F will continue. It may be noticed that in the new Act, there is no such provision like 68-F (1-A). No such prohibition on these basis against grant of new permit during the pendency of draft scheme can be implied. In view of the absence of provision like sub-section (1-D) of Section 68-F of the old Act in the new Act, grant of permanent or temporary permits cannot be said to be prohibited during pendency of these draft schemes.

14. No other point has been argued by the learned counsel for petitioners in these cases.

15. These writ petitions have no force and are accordingly dismissed. In view of the facts and circumstances of the case there shall be no order as to costs.

Petitions dismissed.

Cases Referred.

1. writ petition No. 21773 of 1989
2. AIR 1985 SC 516
3. AIR 1986 SC 119
4. AIR 1986 SC 1719
5. AIR 1961 SC 93
6. AIR 1981 SC 516
7. AIR 1986 SC 1112