

RAJASTHAN HIGH COURT

Vishnudutt

Vs.

Manoj Kumar

Appeal Nos. 890 and 903 to 912 of 2001
(Rajesh Balia and K.K. Acharya, JJ.)

17.05.2002

JUDGEMENT

Balia, J.

1. These 11 appeals arise out of 11 Writ Petitions filed by respective respondent No. 1 in each case against the common order delivered by learned single Judge by considering 11 petitions along with some other petitions on 27th July, 2001.
2. The facts necessary for the present purposes may be chaffed. All the respondents No.1 have been granted permits by the Regional transport Authority, Bikaner on 29-2-1996 for inter-State route *Hanumangarh* to Dadawali via Sangaria covering State of Rajasthan and State of Haryana. At that time, when these permits were granted, the agreement entered between the two States for this route in 1968 was in force. The respective respondents were holding permits under that agreement from different dates since before commencement of the Motor Vehicles Act, 1988 under the repealed Motor Vehicles Act, 1939.
3. Until grant of permits vide order dated 29-2-1996 in replacement of earlier permits, all the permits were renewed from time to time under the Act of 1988 also. There was some controversy whether permits granted under 1939 Act could be renewed after its repeal, under the new Act of 1988. That controversy was ultimately settled by decision of Supreme Court in *Secy. QDM Transport Workers Co-operative Society Limited v. RTA*, ¹ It was held that permits issued under Motor Vehicles Act, 1939 cannot be renewed under Act of 1988 in the absence of any provision to that effect under the New Act. Albeit the stage carriage permits granted under 1939 Act, after its repeal, will continue to be operative only till expiry of their remaining period. Thereafter fresh application for grant of permit has to be made, by any one desirous of

continuing with their existing permits. The applicants, which included RSRTC, had stated in their applications that new permits may be issued to them in lieu of old permits.

4. It has been further brought to notice of the Court during the course of hearing that in order to maintain the continuity of the permits granted under the 1933 Act even after its repeal under the new Act by process of renewal, finally Section 217-A was inserted in the Motor Vehicles Act, 1988 vide Central Act No. 27 of 2000 w.e.f. 11-8-2000.

5. Be that as it may, the order dated 29-2-1996 dealt with number of applications. 13 permits were granted in favor of Rajasthan State Road Transport Corporation along with permits to respondents petitioners and other persons for five years. All the permits were subject to condition that they will obtain countersignature from the competent authority of Haryana State within a period of six months failing which the permit shall automatically stand cancelled.

6. This order dated 29-2-1996 was not subject matter of challenge before any authority at any time. The permits of the respondent-petitioners in each case were countersigned. The permits issued in favor of RSRTC could not be countersigned, therefore, their permits did not fructify at any time into inter-State route permits. The permits were to be obtained within 60 days from the date of order failing which the sanction for permit would automatically stand cancelled.

7. On 9-7-1997, State of Haryana and State of Rajasthan entered into a fresh reciprocal agreement in respect of inter-State routes between the two States which included the route in question viz. *Hanumangarh Dabawali via Sangaria*. The agreement was published on 22nd July, 1997. Under the 1997 agreement scope of 13 permits with 16 single trips was fixed for Rajasthan State.

8. Assuming that the scope fixed under the agreement of 1997 was in addition to existing permits, particularly in view of the fact that under clause 4(iv) of the new agreement, those existing permits which had been countersigned at or before the commencement of agreement were saved, new applications were moved before the Regional Transport Authority for grant of fresh permits. Such applications were rejected by the Regional Transport Authority vide his order dated 25-4-1998 on the ground that no vacancy existed in view of existing permits operating on the route. This order was challenged before the STAT.

9. Thereafter, 9 other applications were filed for grant of new permits before the Regional Transport Authority, Bikaner which were disposed of by it on 18th Nov. 1998 by holding that though permits cannot be granted under Section 88(6) of the Motor Vehicles Act, 1988 but the same can be issued under Section 88 (1) of the Act as if for the part of the route within the State of Rajasthan, the Regional Transport Authority had authority to open new route covering that part of the route which fall within the State of Rajasthan. The order dated 18-11-1998 was also subject to the appeal before the STAT.

10. STAT vide its order dated 24-7-1999 set aside both the orders and remanded the matter back to the RTA, Bikaner for deciding all the applications afresh. The order dated 24-7-1999 was subjected to writ petitions before this Court in writ Petitions Nos. 3998/99, 4005/99 and 2986/99. During the pendency of these writ petitions, in pursuance of order dated 24-7-1999 of STAT on consideration of fresh applications some more permits were issued on 2-11-1999 on which date two interim *ex parte* stay orders dated 9-9-1999 and 8-10-1999 passed by this Court had come into existence and were operative. However, the same had not been communicated to the RTA by 2-11-1999. In fact the same were communicated to RTA on 13-11-1999 only.

11. During the pendency of the aforesaid writ petitions, the Court realizing that while the scope fixed under 1997 agreement, out of which the petitions had arisen, far more than the scope fixed under the inter-State agreement the operators were plying their buses and therefore a report was called by the Court vide order dated 27th Jan., 2000 from the Secretary Regional Transport Authority, Bikaner to give exact figures and details of individuals who were plying vehicles as on 27th Jan, 2000 on the inter-State route Hanumangarh -Dabawali via Sangaria, in pursuance of which it was reported that in addition to 13 permits in favor of RSRTC, 37 private individuals have been granted permits from time to time and as per factual position 50 permits have already been granted and the said vehicles are plying on the said route.

12. With this scenario, the learned single Judge with reference to decision of this court in *M/s Zamindara Motor Transport Cooperative Society v. Regional Transport Authority* ² and the decision of the Supreme Court in *Aswini Kumar v. Regional Transport Authority* ³ opined that an inter-State route is to be governed by the inter-State agreement and there can be no question of grant of permit over and above the

ceiling fixed by the reciprocal agreement. With this premise, the Court was of the opinion that the vehicles are being plied in excess of 13 permits in violation of law laid down in aforesaid decisions under which only 13 operators could hold permit and run their vehicles on the routes under the reciprocal agreement but far more that number are being operated on the route. With these observations, the learned single Judge directed by his order dated 14-2-2000 that all the cases are remitted to the learned Tribunal with the request to decide the matter expeditiously preferably within a period of three months in the light of the judgment of Supreme Court in Aswini Kumar's case and of this Court in Zamindara Motor Transport Cooperative Society's case and determine that who are 13 permit holders who are having valid permits 'under the reciprocal agreement'.

13. On remission of the case, the State Transport Appellate Authority found all the permits to be not valid and directed the Regional Transport Authority to decide all the applications by taking into consideration only such applications which were filed after 22-7-1997. The order was passed on 29-5- 2000.

14. As noticed by us above, these orders affected the permits issued on 2-11- 1999 as well as permits issued in pursuance of orders dated 29-2-1996. While the persons who had been granted permits on 2-11-1999 in pursuance of Tribunal's order dated 24-7-99 were not found to be valid by the Tribunal on the ground that the same had been issued while the interim orders passed by this Court were operative and also because the order dated 24-7-1999 having been set aside the proceedings taken in pursuance thereof cannot result in any fruitful result. That concerned 12 persons.

15. Aggrieved by that, two petitions were filed; one by 11 permit holders which was S. B. Civil Writ Petition No. 1856/2000 and another was by one Shiv Kumar S. B. Civil Writ Petition No. 1881/2000. The judgment of the State Transport Appellate Authority so far as it concerns the holding of the permits issued on 2-11-1999 has since been held to be valid by the learned single Judge vide judgment under appeal as well as by division Bench while deciding the special Appeals filed by respective permit holders viz. D. B. Civil Special Appeal No. 662 of 2001 by Vishnudutt and 10 others, and D. B. Civil Special Appeal No. 278 of 2002 by Shiv Kumar.

16. On behalf of the present respondent-petitioners it has been contended that since the permits have been countersigned by competent authority of Haryana in terms of

Clause 4 (iv) of the agreement dated 22-7-1997, the same are saved by operation of agreement of 1997, therefore, they cannot be declared invalid. However, the Tribunal found that since they had been issued in excess of the scope fixed under the 1968 agreement after grant of permits to the RSRTC, they were void and merely by countersigning could not be validated and therefore they cannot be held to be valid permits under the 1997 agreement with reference to sub clause (iv) of clause 4 of the agreement also. So far as the 13 permits granted in favor of RSRTC which were within the scope fixed under 1968 agreement did not survive because they were not countersigned by the Transport Authority of Haryana State even until coming into force of the new agreement under which all the existing permits except which have been countersigned by the parties to the reciprocal agreement stood lapsed. The same were also not held to be valid.

17. The RSRTC as well as the 11 permit holders also preferred separate writ petitions challenging the order of the STAT dated 29-5-2000.

18. The RSRTC preferred two writ petitions Nos. 1927 of 2000 and 1928 of 2000 challenging the very same order.

19. The two writ petitions filed by RSRTC were dismissed by learned single Judge of this Court on 9th July, 2001 finding that until the date of hearing the permits were not countersigned by the authority i.e. the Transport Commissioner, Haryana, the Corporation had no right to ply its vehicles even on truncated route from *Hanumangarh to Sangaria* because of the new amendment in the Motor Vehicles Act, 1988 with effect from 14-11-1994, the State Govt. alone was competent to create a route and the Transport Authority could not have created a new route from *Hanumangarh to Sangaria*. Moreover, no valid permit on inter-State route comes into existence until countersigned by the competent officer of other State.

20. In view of this finding, the learned single Judge did not decide the question whether permits granted in favor of RSRTC were at all valid permits or not within the scope under the reciprocal agreement and for that reason it was held that the Corporation has no *locus standi* to be heard before any authority or Court in respect of those permits issued under 1996 Act. We are informed that that judgment has not been further challenged and has become final.

21. In the writ petitions filed by 11 permit holders, out of which present appeals have arisen, the learned single Judge under judgment under appeal has upheld the validity of the permits granted to the respondent-petitioners by observing that the grant of permits under order dated 29-2-1996 had never been challenged anywhere before the cases were remitted to the STAT for considering that which of the existing permits are within the scope fixed under the reciprocal agreement and the permits granted in favor of RSRTC were not granted in the eye of the law in the absence of counter signature from the competent authority of other State and in view of the fact that all the respondent-petitioners had their permits countersigned and the number was within the scope fixed under the agreement of 1997, they survived by dint of clause 4(iv) of the said agreement.

22. Learned single Judge has also referred to amendment made in the Motor Vehicles Act by inserting Section 217-A recognizing the right of renewal of permits existing under 1939 Act, and keeping in view the facts that at the time when the order dated 29-2-1996 was passed according to the then existing declaration of law by the Courts, those permits could have been issued, did not thought it fit to set at naught those permits on the technical plea.

23. This led to filing of these 11 appeals by the operators who had been granted permits vide order dated 2-11-1999 during the pendency of the writ petitions challenging the order by which permits as referred to above have not been held to survive. The order dated 14-2-2000 which resulted in setting aside the order dated 24-7-1999, as a consequence of which the proceedings which have taken place in pursuance of order dated 24-7-1999 cannot be given effect to.

24. Learned counsel for the appellants has urged that from the order dated 29-2-1996 it is apparent that the permits within the scope were issued by Regional Transport Authority only to RSRTC and rest of permits have been issued over and above the scope of permits fixed under 1968 agreement. Therefore, the order dated 22-9-1996 was void ab-initio to the extent it proceeded further to grant permits after grant of permits in favor of RSRTC. The fact that the RSRTC failed to secure counter signatures within the stipulated period or thereafter until the new agreement came into force, would not alter the situation for those grantees who were able to secure counter signatures and were plying the vehicles on the inter-State route when the agreement of 1997 came into existence. The substance of argument of Mr. Joshi, learned counsel for

appellants is that a grant which was void from inception could not have been valid by any subsequent act of the parties or authorities and cannot be saved under new agreement. Such grant can be challenged as not affecting the rights of the petitioners or appellants at any stage.

25. Learned counsel for the respondent-petitioners, on the other hand has urged that since grant of 1996 was never in challenge and agreement of 1968 under which the permits were issued came to an end with the commencement of 1997 agreement, it was not open nor it was the outcome of the order of this Court dated 14-2-2000 to examine the validity of permits issued under 1968 agreement. The matter before the learned single Judge was for considering whether any grants operating under the reciprocal agreement of 1997 is beyond the scope fixed under the reciprocal agreement which in the context must mean agreement of 1997 only and therefore the order dated 14-2-2000 and directions issued there under can only be understood in the context in which the controversy has arisen. The Court never directed to reopen the transactions which have come to a close with the commencement of the agreement of 1997. The limited scope of inquiry was that out of the 50 permits which were plying far in excess of the scope fixed under the said agreement, which permits could continue within the scope, thereafter only such permits as were countersigned before commencement of agreement were saved for further life. He also urged that at the time, when 29-2-1996 order was made, the order was perfectly just and valid, in accordance with law as declared by this Court and binding at that time. Such an order cannot be considered void and non est by a subsequent change of opinion of the courts by taking a different view that too when the agreement under which the permits have been issued has ceased to exist, and further continuance was only under new agreement, and the question at issue was only whether such permits are within the scope fixed under new agreement. In such event, unless the order dated 29-2-1996 would have been challenged in appropriate proceedings, the permits issued under it and bearing countersignature were duly saved by operation of new agreement, and were within the limit of scope fixed thereunder could not have been indicted by way of ancillary proceedings arising subsequently during subsequent proceedings. He also contended that under Section 88 of the Act of 1988 or for that matter under the corresponding provision of Section 67 of the 1939 Act, a grant of inter-State is complete when it is countersigned. Until the grant is countersigned, it does not bear the character of a valid grant at all so as to determine at that stage whether the grant is within the scope or not. It only fructifies when the question of determining the validity

of the grant vis a vis scope within the agreement arise.

26. Mr. Bharat Vyas contends that since the grant in favor of RSRTC blossomed into a valid grant in terms of Section 88(1) read with Section 88(6) of the Act, it cannot affect the grants which had fructified in the valid grant by fulfilling the condition of statute, to the extent it has not exceeded the scope of permits fixed under the reciprocal agreement. As the respondent-petitioners, who number 11, had all their permits countersigned by the competent authority of the other State to the reciprocal agreement and as per Clause 4(iv) of the New Agreement all existing permits under old agreement lapsed with the commencement of the new agreement except the permits which have been countersigned by the competent authority prior to the date of commencement of agreement were saved. It was also pointed out that there was some dichotomy in the English version and the Hindi translation of Clause 4(iv) of the agreement, but that would hardly affect the result of the case inasmuch as in the absence of expression 'to the extent the permits can be validly issued under the agreement' would only mean that permits which are in existence, would survive not beyond the scope of 13. But as the permits which were countersigned in favour of petitioner-respondents were less than 13, it would not entail a further enquiry, and all the permits would survive under clause 4 (iv). He also contends that if English version is read, the equally plausible inference can be drawn that it saved all the existing permits which have been countersigned irrespective of their number.

27. We have given our careful consideration to the rival contentions raised before us and perused the material which has been produced before us during the course of hearing along with the material which is already on record.

28. From the narration of facts stated above, it is apparent that the respondent-petitioners in these appeals were plying their vehicles under the agreement of 1968 since before the grant of permits on 29-2-1996. The grant of permits vide order dated 29-2-1996 were not subject matter of challenge before any Tribunal or Court at any place and have sought to be disturbed for the first time by the order of STAT dated 25-9-2000 with reference to order dated 14-2-2000 passed by learned single Judge.

29. It takes us to consider the purport and scope of enquiry order dated 14-2-2000.

30. It is not in dispute and cannot be doubted that the entire controversy which was

before the Court while deciding the three writ petitions by order dated 14-2-2000 arose out of the proceedings which commenced with fresh applications for grant of permits under the new agreement which was finalized on 7th July, 1997 and published on 22nd July, 1997. Under the said agreement the scope fixed for grant of permits by the RTA within the State of Rajasthan was 13 permits with 16 single trips. By its order dated 25-4-1998, the Regional Transport Authority held that in view of existing permits there was no vacancy available under the new agreement against which new permits could be issued within the scope fixed under new agreement. By yet another order dated 18-11-1998 dismissing the fresh new applications for grant of permit on the inter-State route in question, the Regional Transport Authority again held that there was no scope of grant of permits under new reciprocal agreement so as to grant new permits under Section 88(6) of the Motor vehicles Act, 1988.

31. However, on the assumption that Section 88(1) operates independent of Section 88(6), the 9 applications were allowed under Section 88(1) which were refused under Section 88(6) with reference to the existing scope.

32. These two orders were subject matter of appeals before the State Transport Appellate Authority, both of rejection as well as grant, which culminated in passing the order dated 24-7-1999 by directing the Regional Transport Authority to decide the applications for grant under the agreement of 1997 afresh. The order dated 24-7-1999 was subject matter of Writ Petition Nos. 3998/99, 4005/99 and 2986/99.

33. Apparently, the entire scope of the enquiry under the said writ petitions was whether under the new agreement of 1997 any further permits could be granted in excess of existing permits under the old agreement. This controversy nowhere involved an inquiry into the question whether permits granted prior to the commencement of agreement of 1997 were valid, invalid or void or irregular?

34. Enquiry was ordered vide order dated 14-2-2000 whether the existing permits were within the scope up to which permits could be granted under reciprocal agreement of 1997, by the learned single Judge, noticing that already more permit than number fixed under the new agreement have been granted and are operating, ordered an enquiry into it. On enquiry, it was found that as on the date the report was submitted to the Court, 50 permit holders were plying their buses on the route.

35. It is in this background, the order dated 14-2-2000 was passed by reiterating that it is not permissible to grant permits beyond the scope fixed under the reciprocal agreement for the inter-State route, relying on the decision in Aswini Kumar's case (AIR 1999 Supreme Court 3888) (supra) that Section 88(1) is not independent one of Section 88(6) but has to be construed harmoniously which authorized a Transport Authority to issue permit not beyond the scope fixed under the agreement. The task of finding which of the existing 50 permit- holders fell within the scope up to which permits could be granted under the agreement of 1997 was remitted to STAT.

36. It may be noticed that as on the date this exercise was taken, agreement of 1997 was only agreement in force and pending dispute has also arisen in connection with permits that could operate within the scope fixed under agreement in question i.e. of 1997. Question of enquiry vis a vis superseded agreement of 1996 was not at all an issue to which the Court was required or had in fact adverted to. In the entire context, the enquiry was confined to existence of permit under agreement of 1997. Matters which were remitted also could only be the subject matter of petitions before the Court which has arisen from proceedings before RTA resulting in order dated 25-4-1998 and 18- 11-1998, followed with order of STAT dated 24-7-1999. The reciprocal agreement in the order under which validity was to be examined also related to agreement of 1997 only and no other agreement.

37. The order dated 14-2-2000 in our opinion cannot be held to transgress the scope of dispute which was before the Court viz. whether the scope fixed under reciprocal agreement of 1997 was in addition to the permits which were already operating under the 1968 agreement or the new permits could only be granted subject to the existing permits and total permits does not exceed the permissible limit fixed under the new agreement.

38. It may also be pertinent to notice here the relevant clause 4(iv) under the agreement of 1997, which reads as under:-

4. Stage Carriage permits.

(iv) All the previous State Carriage Permits which are countersigned by either State before coming in force of this agreement, shall remain in force.

39. The provision is clear enough that new agreement has accepted the factual

position.

40. This being the impact of the new agreement, the question of peeping into the validity of the permits granted in 1968 no more survived. Only question which was required to be considered was which of the permits could be said to survive with the commencement of the agreement of 1997 by operation of clause 4(iv).

41. It was not disputed at any time before in these proceedings at any stage that all the 11 petitioner-respondents had their permits counter signed prior to the commencement of the new agreement. Therefore, it cannot be doubted that if clause 4(iv) were to operate, the permits granted in favor of respondent- petitioners did survive the agreement of 1997. A legitimate question of competing claims could have arisen had the question been raised that more than permissible limits had their permits countersigned as on the date agreement came into force, fixing scope under it, as to which of the permits within the scope would survive or all would survive. But number of permits in question being less than the scope of permits fixed under the agreement, their existence has to be assumed for the purpose of agreement with effect from the date of the commencement of the agreement and any short fall in the scope fixed under the agreement would only be available for consideration of fresh grants under the agreement.

42. That appears to us the whole purport of the order dated 14-2-2000 which has also been echoed by the judgment under appeal passed by the same learned Judge who had authored order dated 14-2-2000, while upholding the validity of the permits granted in favor of the respondents-petitioners in these appeals.

43. It may further be noticed in connection with a contention of learned counsel for the appellants that the permits having been granted in favor of RSRTC on 29-2-1996, the Transport Authority was denuded of considering any grant of permit over above the said permits which had been granted in favor of RSRTC and therefore, the grant was void ab-initio.

44. There is cloud in accepting this contention on its face value.

45. Section 88(1) relevant for the present purposes, reads as under :-

88. Validation of permits for use outside region in which granted.- (1) Except as

may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned :Provided that a goods carriage permit, granted by the regional Transport Authority of any one region, for any area in any other region or regions within the same State, shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned :

Provided that a goods carriage permit, granted by the regional Transport Authority of any one region, for any area in any other region or regions within the same State, shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned :

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State :

Provided also

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defense in any other State, such vehicle shall display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, sopecificy, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defense; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State.

46. Sub-section (1) of Section 88 is unequivocal in its terms that except as may be otherwise prescribed a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region unless the permit has been countersigned

by the Regional Transport Authority of that other region and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority or by the Regional Transport Authority of that State concerned.

47. In respect of any other region routes within the State, the prohibition implies that it is valid within the region of the Regional Transport authority granting permits but shall not be valid for the region to which that route passes until countersigned by the Regional Transport Authority of that State.

48. As the validity of permits depends on the countersignature of other authority, the question of validity of any existing grant cannot be decided in vacuum without considering the question of countersignature, one of the essential ingredients of valid permit.

49. It is settled by the consensus of the judicial opinion that until the permit is countersigned by the other authority, it does not carry with it any stamp of validity or invalidity. It is only on countersigning by the corresponding State Authority that any permit acquires validity for its prier. Reference in this connection may be made to *T. N. Reddy v. Mysore State Transport Authority* ⁴ The case had arisen under the corresponding provision of 1939 Act. The question arose in the circumstances while the permits were issued to the private bus owners on the route, the State Transport Authority had also applied for grant of permits on the same inter-State route. The permits granted in favor of the private owners had not been countersigned until application was moved by RSRTC. A very much similar question had arisen before the Court, whether the private bus owners in whose favor order for grant of permit was made but whose permits had not been countersigned by the corresponding authority in the other State could be considered to be existing permit-holders so as to save them from preferential treatment to be given to the State Transport Authority for grant of permit on the route in question. Contention was raised by private owners that they were existing permit-holders within the scope on the route, therefore, the State Transport Authority could not have been granted permits on the said route by violating the limit of scope. The Court held :

"It is quite clear that appellant was not an existing permit holder because he did not obtain the counter signature till July, 1968"

50. The July, 1968 was a date when the State Transport Authority had made

application for grant of permit on the inter-State route in question. If that be the law, the question of declaring the permits of the respondent- petitioners as void ab-initio so as to ignore them for purposes when new agreement came into force on 22-7-1999 and only such existing permits were saved which bore countersignatures of reciprocating State, would not arise at this stage when the agreement under which the permits had been issued, has itself been superseded by the new agreement and it has saved only such existing permits which were countersigned before the date of commencement of the agreement.

51. As we have noticed, and about which there is no dispute, that the State Road Transport Corporation has not been able to obtain any countersignature on permits issued to it under order dated 29-2-1996, until commencement of the new agreement and even thereafter, therefore it cannot be said that the State Road Transport Corporation had valid permits to its credit as an existing operator, so as to survive for operation under the new agreement within the scope fixed there under.

52. As a matter of fact, the grant made in favor of the Corporation in the absence of countersignature never fructified into valid grant. The principle that a permit issued under Section 88(1) or for that matter issued in corresponding provision of the 1939 Act acquires validity only on countersigning and not earlier thereto is also the view taken by Mysore, Kerala, Allahabad, Andhra Pradesh and Allahabad High Courts. Reference in this connection may be made to *M. R. Revanna v. Revenue Appellate Tribunal*,⁵ *T. Narayanswamy v. R. T. Authority*,⁶ *V.G.K. Bus Service v. Kerala STA Tribunal*,⁷ *M. A. Khair v. State of Uttar Pradesh*,⁸ *O. C. Ranganna v. Secy., RTA*,⁹

53. Thus, keeping in view the fact that proceedings which culminated in order dated 22-9-1996 were never subject matter of challenge at any point of time before any forum; and the issue before this Court while order dated 14-2-2000 was made related only to the validity of existing permits under the agreement of 1997, the subject matter of controversy before this Court, we find no reason to take a different view from what learned single Judge has taken that in totality of circumstances which includes the non-challenge to grants of 1996, and that at the relevant time in view of the decision of this Court the permits could be granted over and above scope fixed by the agreement of 1968 to the private bus owners who were plying on the route since 1960-63 or thereafter under the agreement of 1968 and that only such existing permits which were countersigned before the commencement of the new agreement of 1997 were saved under clause 4(iv) and no other permits. The scope left for new grants

against which applications filed after the commencement of agreement could be confined only to the remaining vacancies after adjusting against the existing permits which were allowed to ply under the 1997 agreement, they became the valid permits within the scope fixed there under and grant of new permits can now only be confined to remaining vacancies.

54. At the close of argument, a new plea was sought to be raised by learned counsel for the appellants that the respondent-petitioners permits were not countersigned prior to the date of publication of 1997 agreement. This being a disputed question of fact needing an enquiry and about existence of which neither any doubt has been raised at any time before, nor any cogent material has been placed to hold an enquiry into this aspect of the matter, we decline permission to the learned counsel to raise this new issue at this stage.

55. As a result, these appeals fail and are hereby dismissed. No orders as to costs.

Appeals dismissed.

Cases Referred.

1. AIR 1995 SC 82
2. (1999) 1 Raj. LW 386: (1999 AIHC 821)
3. (1999) 83 SCC 364
4. AIR 1971 SC 1662
5. AIR 1970 Mysore 2194
6. AIR 1971 Mysore 276 (FB)
7. AIR 1960 Ker 18
8. AIR 1960 All 228