
(2015) 11 AHC CK 0066
In the Allahabad High Court
Case No : Misc. Single No. 4927 of 2012

Akhtar Ali	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Constitution of India, 1950 — Article 166, 166(1)
General Clauses Act, 1897 — Section 21
Motor Vehicles Act, 1988 — Section 100, 100(2), 102, 102(1), 102(2)

Citation : (2015) 11 ADJ 68

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : N. Iqbal, for the Appellant; Alok Saxena, Chandra Shekhar Pandey and Mahesh Chandra, for the Respondent

Final Decision : Allowed

Judgement

Rajan Roy, J.—Heard learned counsel for the petitioner, Sri Alok Saxena, learned counsel for the private opposite parties and Shri Pankaj Verma, learned counsel for the State and its authorities.

2. By means of this writ petition a challenge has been made to the orders dated 28.02.2012, 25.07.2012 and 14.08.2012 passed by the opposite party No. 2-State Transport Appellate Tribunal, U.P. Lucknow.

3. The private opposite parties filed applications for grant of permit under Section 70 of the Motor Vehicles Act, 1988 (For short "Act, 1988"). The said applications were rejected by the Regional Transport Authority, Ghaziabad vide his order dated 25.11.2010 on the ground that the permits had been sought in respect to the route which was part of Dhaulana Gulaothi route which was a nationalized notified route, therefore, the permit could not be granted to them, as, on such routes the State Transport Undertaking and permit holders mentioned in the notification alone can be allowed to ply or to get permit. Being aggrieved the private opposite parties filed an Appeal under Section 89 of the Act, 1988 before

the opposite party No. 2-State Transport Appellate Tribunal, U.P. Lucknow which was registered as Appeal No. 3 of 2011.

4. The petitioner herein filed an application for impleadment which was rejected by the Appellate Tribunal vide order dated 28.02.2012 on the ground that the aforesaid notification of the scheme for the route in question stood modified vide order of the Hearing Authority dated 25.04.2008 by which it approved the proposed modification in the scheme which was published vide notification dated 05.08.2005 and no publication of the modified scheme had been made under Section 102 of the Act, 1988. It held that the contention of the petitioner-applicant that the appeal was not maintainable, instead, a revision should have been filed under Section 90 of the Act, 1988 was incorrect and that in such an appeal under Section 89 of the Act, 1988 the petitioner-applicant was not a necessary party. Thereafter, the petitioner filed an application for being given a right of hearing which was rejected by the Appellate Tribunal vide order dated 25.07.2012 on the ground that the earlier order dated 28.02.2012 had not been challenged, therefore, a third party did not have a right of hearing in the matter.

5. The State Transport Appellate Tribunal proceeded to allow the appeal vide judgment dated 14.08.2012. The Appellate Tribunal held that the proposed modification in the scheme notified for the route in question, vide notification dated 05.08.2005, was approved by the Hearing Authority vide its decision dated 25.04.2008 and no publication of such decision was required in view of the dictum of this Court in the case of Radha Krishna Sharma Vs. State of U.P. and others, Page 995 which had been affirmed by the Hon"ble Supreme Court vide judgment dated 20.11.1998 passed in Civil Appeal No. 2690 of 1998. Accordingly, it held that the decision of the Regional Transport Authority that the route in question was a notified nationalized route was incorrect as the scheme notified earlier stood modified vide decision of the Hearing Authority dated 25.04.2008 thereby entitling the private operators to seek permit for plying their vehicles on the said route as per the modified scheme. Accordingly, it issued directions to the Regional Transport Authority to grant and issue the permits to the private opposite parties-appellants within three months.

6. Being aggrieved the petitioner whose application for impleadment was rejected and right of hearing was also denied, filed this writ petition.

7. Another writ petition bearing Writ Petition No. 4828(MS) of 2012 was also filed against the same orders wherein an interim order was passed on account of which the judgment of the Appellate Tribunal could not be given effect.

8. A preliminary objection was raised by the counsel for the private opposite parties as regards the maintainability of this writ petition at the behest of the petitioner based upon the decisions of this Court reported in Mithilesh Garg, Vs. Union of India and others etc. etc., ; Prabhat Bhushan and Ajai Kumar Vs. State Transport Appellate Tribunal and others, ; Dharam Raj Vs. State of U.P. and Others, It was contended by Shri Alok Saxena, learned counsel for the private

opposite parties that in view of the aforesaid pronouncements, the petitioner did not have any locus standi firstly, for the reason that he was not entitled to be heard in the appeal under Section 89 of the Act, 1988 and secondly, for the reason that an existing operator does not have any right to oppose the grant of permit to others as more competition or anticipated loss of business does not make him an aggrieved person. He also addressed the Court on merits of the controversy.

9. As far as the locus standi of the petitioner to maintain this writ petition is concerned, the petitioner had filed an application for impleadment and thereafter, an application for right of hearing before the State Appellate Tribunal which have been rejected by the impugned order, therefore, certainly he has locus standi to maintain this writ petition. As regard his locus to be heard before the State Appellate Tribunal in appeal is concerned. the first and foremost issue which is required to be considered is as to whether the appeal filed by the private opposite parties under Section 89 of the Act, 1988 challenging the order of the Regional Transport Authority dated 25.11.2010 was maintainable or not and whether the appropriate remedy was a revision under Section 90 of the Act, 1988 as has been asserted by the petitioner herein, as, in the event it is held that the appeal was not maintainable and a revision should have been filed, then in view of the proviso to Section 90 of the Act, 1988 any person who would be prejudiced by any order passed in such revision would be a necessary party and no order could be passed therein without giving a reasonable opportunity of being heard. Whether the petitioner was a person who would be prejudiced by any such order passed under Section 90 of the Act, 1988 is another question, which would have been considered if such revision had been filed.

10. In the process of considering the aforesaid issue the merits of the controversy involved in the writ petition and the validity of the impugned orders and arguments of the parties in this regard will also be considered.

11. On bare perusal of the order dated 25.11.2010 copy of which is annexed as Annexure No. 9 to this writ petition and is also on record of the Writ Petition No. 4828(SS) of 2012, which has also been heard together, the application of the private opposite parties filed under Section 70 of the Act, 1988 was rejected for the reason that the route in respect of which the permit was being sought was a nationalized route meaning thereby it was notified by a scheme on account of which only State Transport Undertaking or those mentioned in the notification could ply their vehicles and private operators generally could not be allowed to ply their vehicles.

12. In this context it is relevant to refer to the provisions of Section 103 (2) of the Act, 1988, which has been relied by the counsel for the petitioner, which provides that for the purpose of giving effect to the approved scheme in respect to notified area or notified route, the State Transport Authority or, as case may be, the Regional Authority concerned may, by order, refuse to entertain any application for the grant or renewal of any other permit or reject any such

application as may be pending. Subsection 3 of Section 103 of the Act, 1988 further provides for the removal of doubts that no appeal shall lie against any such action taken, or order passed, by the State Transport Authority or any Regional Transport Authority under Sub-section (1) or Subsection 2, meaning thereby if the State Transport Authority or the Regional/Transport Authority refuses to entertain any application for the grant or renewal of any other permit i.e. an application other than by a State Transport Undertaking, then an appeal shall not lie against such order.

13. Now the next question to be considered is as to whether the route in question was notified for a scheme of nationalization or not. It is not in dispute that initially the route in question was notified for a scheme of nationalization, however, on 05.08.2005 a proposal was published for modification of said scheme by the State Government under Section 102 of the Act, 1988 and objections were invited. The petitioner did not file any objection but others did and the said objections were considered, heard and decided by the Hearing Authority vide his order dated 25.04.2008. The Special Secretary Transport Government of U.P. was appointed as Hearing Authority vide notification dated 13.03.2002.

14. A perusal of the order dated 25.04.2008 passed by the Hearing Authority reveals that the objections to the proposed modification of the scheme were rejected by him and he approved the modification of the scheme.

15. Based on this, it was contended by Shri Alok Saxena, learned counsel for the private opposite parties that once proposal for modification of the scheme was approved and scheme was modified by the decision of the Hearing Authority dated 25.04.2008, who was competent to do so, then the scheme/route no longer remained a notified nationalized route and it was permissible for the private opposite parties to apply for permit on the said route, as, no publication of the modified scheme was required as per the law laid down by the Division Bench of this Court in Radha Krishna Sharma's (supra) which had been upheld by the Hon''ble Supreme Court, and the Appeal under Section 89 of the Act, 1988 was maintainable, the opinion formed by the Regional Transport Authority vide his order dated 25.11.2010 that the scheme not having been published the route continued to be nationalized notified route, was erroneous. The Appellate Tribunal had rightly held that such publication was not necessary and the nationalized scheme stood modified by the decision of the Hearing Authority dated 25.04.2008.

16. As far as the contention of Shri Alok Saxena, learned counsel for the private opposite parties that the modified scheme under Section 102 of the Act, 1988 was not required to be published is concerned there is merit in his contention in view of the Division Bench in Radha Krishan Sharma's case (supra) which has been upheld by the Hon''ble Supreme Court but there is another aspect of the matter which has not been considered in the said judgment but has been considered in the subsequent judgment of the Hon''ble Supreme Court rendered

in the Case of Rasid Javed and Others Vs. State of U.P. and Another etc. etc., i.e., whether the decision of the Hearing Authority is a decision envisaged under Section 102(1) of the Act, 1988 and whether it can be treated as a decision of the State Government modifying any approved scheme or not.

17. Section 102 of the Act, 1988 reads as under:--

"102. Cancellation or modification of scheme.--(1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving-

(i) the State transport undertaking; and

(ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification, an opportunity of being heard in respect of the proposed modification.

(2) The State Government shall publish any modification proposed under sub-section (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government."

18. As per Section 102(1) of the Act, 1988, it is the State Government which may if it considers necessary in the public interest so to do, modify any approved scheme after giving the State Transport Undertaking; and other person who, in the opinion of the State Government, is likely to be affected by the proposed modification, an opportunity of being heard in respect of the proposed modification. Thus, the decision has to be that of the State Government.

19. As per the supplementary affidavit filed by the State Government in connected Writ Petition No. 4828(SS) of 2015 dated 15.09.2015, the power to hear the objections to the proposed modification and take a decision on such objections was conferred/delegated upon the Special Secretary, Transport Government of U.P. Vide notification dated 13.03.2002 which reads as under:--

20. A perusal of the aforesaid notification reveals that the Hearing Authority was empowered to hear the objections to the proposed modification and to dispose off the same but no power was vested in him to modify the approved scheme or approve the proposed modification. In this regard it is relevant to quote paragraph Nos. 34, 35 and 36 of the Judgment of the Hon'ble Supreme Court in Rasid Javed's case (supra) reads as under:--

"34. Chapter VI of the 1988 Act contains special provisions relating to the STUs. Section 99 thereof makes a provision for preparation and publication of proposal by the State Government regarding road transport service of an STU. As per sub-section (1) of Section 100, on the publication of such proposal, the objections may be filed before the State Government within 30 days therefrom. Sub-section

(2) of Section 100 provides that the State Government may approve or modify such proposal after hearing the objectors and the representatives of the STU. Sub-section (3) of Section 100 makes a provision that the scheme relating to the proposal as approved or modified under sub-section (2) shall be published in the Official Gazette in at least one newspaper in the regional language circulating in the area or route covered by such scheme. On publication of the said scheme in the Official Gazette, it becomes final. Section 102 of the 1988 Act empowers the State Government to modify the approved scheme in the public interest. Since the controversy relates to this Section, it is appropriate that we reproduce Section 102 of the 1988 Act as it is. The said Section reads thus:

"S. 102. Cancellation or modification of scheme.--(1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving -

(i) the State transport undertaking; and

(ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification, an opportunity of being heard in respect of the proposed modification.

(2) The State Government shall publish any modification proposed under sub-section (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government."

35. A close look at Section 102 would make it manifestly clear that modification of the approved scheme may be done by the State Government in the public interest after giving opportunity of being heard in respect of proposed modification to the STU and the persons likely to be affected by the proposed modification. The modification proposed is required to be published in the Official Gazette and in one of the newspapers in the regional languages circulating in the concerned area under Section 102(2). On behalf of the appellants, it was contended that in the proposed modification published in the Official Gazette on April 16, 1999, the authority to hear the objections/representations was given to Shri Zamirruddin, Special Secretary and Additional Legal Remembrancer and the said Hearing Authority after hearing the objections of the affected persons and the UPSRTC approved the proposed modification and rejected the objections received in this regard and the approval by the Hearing Authority of the proposed modification by his order dated October 11, 1999 is the approval of the State Government. Is the order dated October 11, 1999 of the Hearing Authority approving the proposed modification published in the Official Gazette dated April 16, 1999, an order of the State Government modifying the approved scheme of 1993 under Section 102(1) of the 1988 Act? The answer has to be in the negative because Shri Zamirruddin was given authority to hear the

representations received by the State Government to the proposed modification but no authority was given to him to approve the proposed modification or modify the approved scheme. The Notification dated April 16, 1999 does not empower the Hearing Authority to approve or modify the scheme; he has only been empowered to hear the objections. That a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. This settled principle has also been highlighted by this Court in Gullapalli Nageswara Rao but based on such principle the limited authority of hearing given to the Hearing Authority by the State Government cannot be treated as enlarged in its scope. A delegate must confine his activity within four corners of the powers invested in him and if he has acted beyond that, his action cannot have any legal sanction unless ratified by the delegator.

36. A distinction must be maintained where the hearing authority is empowered by the State Government to hear objections and approve the proposed modification or modify the approved scheme and a case where the hearing authority is authorized to hear the objections/representations relating to the proposed modification to the approved scheme. In the latter case, the authority delegated to the Hearing Authority is limited and he is not authorized to approve the proposed modification or modify the approved scheme. The present case falls in the latter category and accordingly the order of the Hearing Authority dated October 11, 1999 is in excess of the authority given to him and cannot be construed as a final order of approval under Section 102(1) of the 1988 Act. Whether such limited authority of hearing to the Hearing Authority makes any legal sense is an aspect for consideration by the State Government. Suffice, however, to say that it was not open for the Hearing Authority to approve the proposed modification or modify the proposed scheme."

21. In the aforesaid judgment, the Hon'ble Supreme Court considered the question as to whether the decision of the Hearing Authority dated 11.10.1991 was the approval of the State Government as envisaged under Section 102(1) of the Act, 1988 modifying the approved scheme. It answered in the negative. It considered the notification dated 16.04.1999 which empowered the hearing authority to hear the objections but did not empower him to approve or modify the scheme. It held that a person who hears must and decide, but, based on such principle, the limited authority of hearing given to the Hearing Authority by the State Government can not be treated as enlarged in its scope. A delegate must confine its activity within four corners of the powers invested in him and if he has acted beyond that his action cannot have any legal sanction unless ratified by the delegator. In para 21 of its judgment it also repelled the contention made on behalf of the appellants before it that the order of the Hearing Authority had been approved by the Principal Secretary, thus, there was an approval by the State Government. It also held that the decision of the Hearing Authority was not communicated to the appellants before it or any of the affected parties, therefore, for this reason also it was not an order as

contemplated under Section 102(1) of the Act, 1988. Relevant extract of para No. 37, 40 and 41 of the judgment are quoted herein below:--

"37. Having already held that the order of the Hearing Authority dated October 11, 1999 is in excess of the authority given to him and that the said order has no legal effect, we do not find that there was any impediment for the State Government in exercising its power under Section 102 of the 1988 Act read with Section 21 of the General Clauses Act, 1897 to rescind the Notification dated April 16, 1999.

40. It seems to be fairly settled that under Section 21 of the General Clauses Act, an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in the like manner. In the instant case, there is no doubt that the Notification dated April 15, 2000 has been made in the same manner as the earlier Notification dated Kamla Prasad Khetan Vs. The Union of India (UOI), . Since the order of the Hearing Authority dated October 11, 1999 is not an order of approval under Section 102(1) of the 1988 Act and cannot be treated as such, the power of the State Government to rescind the Notification dated April 16, 1999 did not get exhausted. The argument that the draft Notification dated April 16, 1999 merged in the order dated October 11, 1999 is fallacious and devoid of any substance.

41. Mr. Dinesh Dwivedi, learned senior counsel urged on behalf of the appellants that even otherwise the material on record demonstrated that the order of the modification dated October 11, 1999 was approved by the Principal Secretary of the Department and, thus, there was an approval by the State Government. We are unable to accept this submission. In the first place, except the decision of the Hearing Authority dated October 11, 1999 there is nothing on record to conclude that the State Government had approved the proposed modification as notified on April 16, 1999. Secondly, even if we assume that an executive action not expressed to be made in the name of the Governor as contemplated under Article 166(1) of the Constitution may not vitiate such action as nullity and as held by this Court in Dattatraya Moreshwar Pangarkar v. The State of Bombay and Others 17 the non-compliance with the provisions of either of clauses of Article 166 would lead to the result that order in question would lose the protection which it would otherwise enjoy had the proper mode for expression and authentication been adopted, but then there has to be some formal order by the State Government under Section 102(1) of the 1988 Act. Moreover, there is nothing on record even to indicate that the order dated October 11, 1999 of the Hearing Authority was communicated to the appellants or any of the affected parties. For all these reasons, the only conclusion that can be drawn is that the order dated October 11, 1999 is not an order as contemplated under Section 102(1) of the 1988 Act by the State Government approving the modification proposed in the Notification dated April 16, 1999."

22. Considering the aforesaid judgment passed in Rasid Javed's case (supra), this Court is of the view that the only authority vested in the Hearing Authority

by the notification quoted herein above was to hear and dispose of the objections to the proposed modification of the scheme as published on 05.08.2005 but he was not empowered to modify or approve the modification of the scheme.

23. In this context it is necessary to refer to the provisions contained in Rule 126, 127, 128 and 129 of the U.P. Motor Vehicles Rules, 1988 which have been framed under the provisions of the Motor Vehicles Rules, 1988 so that there may not be any doubt about the non-application of the said provisions to the exercise of power under Section 102 . Section 102 of the Act, 1988 very clearly provides that the State Government may modify any approved scheme. The decision under Section 102 has to be of the State Government and not of anybody else. The substantive provision contained in Section 102 has been considered by the Supreme Court in Rasid Javed's case (supra) as has already discussed herein above. Rule 126, 127, 128 and 129 of the Rules, 1998 are in continuation and they relate to the scheme proposed under Section 99 and objections referred in Section 100 of the Act, 1988 and not to a cancellation or modification of an already published/notified scheme under Section 102 of the Act, 1988. The opening line of Rule 126 refers to a proposal regarding a scheme prepared under Section 99 of the Act, 1988. The opening line of Rule 127 refers to "objections under Sub-section (1) of Section 100 ." The opening line of Rule 128 refers to "the objections so received" which is obviously a reference to the objections under Section 100 referred in Rule 127. The provisions contained in Rule 128 (7) provides "After the hearing of such parties as appear, such officer shall give a decision approving or modifying the proposal as he may deem proper." The officer referred therein is the one referred in Rule 128(1) of the Rules 1988. Therefore Sub-rule (7) of Rule 128 is also in relation to the scheme proposed under Section 100 of the Act, 1988. In this regard Sub-section (1) of Section 100 is relevant, as, it says that the State Government after considering the objections and after giving an opportunity to the objector on his representation and the State Transport Undertaking to be heard in the matter, if they so desire, approve or modify such proposal. This provision refers to the proposal under Section 99 , as, Section 100 is also in continuation of Section 99 . As a logical corollary Sub-rule (7) of Rule 128 of the Rules 1998, where it refers "such Officer" (as referred in Rule 128 (1)), after hearing parties shall give a decision approving or modifying the proposal as he may deem proper, is also in relation to the power under Section 100 (2) regarding approval or modification of the scheme proposed under Section 99 . The original proposal under Section 99 can also be modified by the State Government under Section 100 (2) after receipt of objections and hearing the objections and as this power can be delegated to an officer of the State Government by virtue of Rule 128(1) of the Rules 1998, therefore, the power has been conferred under Rule 128 (7) on "such officer"/ delegatee as referred in Rule 128 (1) to approve or modify the proposal under Section 99 read with Section 100 in view of Section 100(2) . Thus Rule 128(7) applies to the scheme proposed under Section 99 and exercise of power under Section 100 (2) as delegated by Rule 128(1) and not to the exercise of power of

the State Government under Section 102 . The Rules made under an enactment can not be understood in conflict with the substantive provision of the Act.

24. As far as the exercise of power under Section 102 is concerned, the only power which has been delegated vide notification dated 13.03.2002 upon the Hearing Authority is to hear and decide the objections but not to approve or modify the scheme, as has already been discussed in the earlier part of the judgment. Moreover, it is not the case of the State Government that the Hearing Authority was authorized to take the requisite decision under Section 102 on behalf of the State Government.

25. This Court had summoned the original records in this regard and after perusing the same observed vide order dated 28.08.2015 passed in connected Writ Petition No. 4828(MS) of 2012 as under:--

"Heard the learned counsel for parties.

The original records as desired by this Court vide order dated 26.08.2015 has been produced before the Court and the same has been perused.

The original records do not disclose any decision of the State Government for acting upon the modified scheme dated 05.08.2005 nor any decision for acceptance of the order of the hearing authority dated 25.04.2008.

The note sheets from pages 52-96 show that the State Government was seized with the issue as to whether after the order of the appellate authority dated 25.04.2008 publication of the modified scheme was required as per law or not but no final decision could be taken in this regard though the note sheet refers to the decision of this Court in the case of Radha Krishna Sharma wherein it has been held that publication of modified scheme was not contemplated under Section 102 of the Act but even thereafter the noting in the note sheet reveals the question would be appropriate that instead of publishing the entire scheme, the minimum details which are required to be known by the public, is to be published but no final decision could be taken in the matter and as per note sheets dated 31.05.2013 the State Government proposed to cancel/withdraw the proposal for modification of the scheme dated 05.08.2005 but no final decision could be taken.

The note sheet after page No. 96 indicates that the matter was referred to the Law Department/the Special Secretary law/Additional Legal Remembrancer for legal advice in this regard and the note sheet dated 03.07.2013 referres to the order of the State Transport Appellate Tribunal dated 14.07.2012 against which the Writ Petition No. 4828 (MS) of 2012 (Gaurav Shishodiya v. State of U.P. and others) was filed and was pending with the query, as to whether there was any stay order in the said writ petition and what were the directions of the Transport Appellate Authority. These informations had not been provided to the office of the Legal Remembrancer till the final noting dated 15.07.2014, which is at page 102 and thereafter the note sheet ends, which reveals that the said issue is still

pending.

The original records are returned back to the learned Additional Chief Standing Counsel.

Arguments of the respective parties counsel have already been concluded.

Judgement/orders reserved."

26. The original record revealed that after the decision of the Hearing Authority, the State Government did not take any decision for approving the modified scheme or modifying the approved scheme. No formal order was passed by the State Government under Section 102 nor was the order of the Hearing Authority communicated to the affected parties, a fact admitted by the State Government in the supplementary counter affidavit filed in the connected Writ Petition No. 4828(MS) of 2012.

27. The record revealed that the State Government was seized with the issue as to whether, after the order of the Hearing Authority dated 25.04.2008, publication of the modified scheme was required as per law or not, but, no final decision could be taken in this regard and ultimately as per the note sheet dated 31.05.2013, the State Government proposed to cancel/withdraw the proposal for modification of the scheme dated 05.08.2005 but no final decision could be taken even on this issue and the matter remained pending awaiting the opinion of the legal remembrancer in the matter.

28. In view of the above discussion, this Court is of the view that in the absence of any decision of the State Government approving the modified scheme dated 05.08.2005 as envisaged under Section 102(1) of the Act, 1988 as per the dictum in Rasid Javed's case (supra) the route in question continues to be a notified nationalized route in respect of which the State Transport Undertaking and the persons mentioned in the notified scheme or persons legally entitled to ply as successor in interest, alone, are entitled to ply. It being so, the rejection of the application of the opposite parties for grant of permit on the said route on the ground of it being a nationalized route did not suffer from any error and it would not be amenable to an appeal under Section 89 of the Act, 1988. It being so, the very basis for rejection of the application for impleadment filed by the petitioner herein by the Appellate Authority as also denying him a right of hearing falls to the ground. The remedy, if any was by way of a revision under Section 90 of the Act, 1988 and under the proviso to Section 90 no order could be passed in such revision unless the person who would be prejudiced by such order or given a reasonable opportunity of being heard. Had the private opposite parties filed such a revision, the revisional Court would have considered the question of locus standi in the light of the aforesaid proviso. Suffice it to say that a specific assertion has been made in the paragraph 4 of the writ petition that the applicants and their predecessors in interest were permitted to ply the vehicle on the route in question as per the scheme notified which has not been specifically and categorically denied either by the private opposite party or by the

State in their counter affidavit. In fact it has been admitted in the counter affidavit that the petitioner is plying on the route in question. During the course of the argument Shri Saxena himself stated that the petitioner was plying on the route in question in terms of some interim order passed by the revisional authority. Had it been a non notified route then the plea of the opposite parties as regards locus standi may have carried weight in view of the authorities cited by them but it being a notified route, it can not be said that he does not have any locus standi to maintain this petition. The decision in Prabhat Bhushan's case (supra) does not apply, for the reason, it is applicable only in respect of the appeals under Section 89 .

29. Moreover, the order of the Appellate Tribunal to the effect that notified nationalized scheme stood modified under Section 102 ipso facto by the decision of the Hearing Authority dated 25.04.2008 without considering the law laid down in Rasid Javed's case (supra) though the said decision was cited before it, and the direction to the RTA/STA to issue permit to private operators under a misconception that the route was no longer a notified nationalized route, being patently illegal this Court can not ignore such illegality or allow it to continue based on technical considerations, especially as the said decision has far reaching consequences on policy matters relating to operation of STU and private operators on such routes.

30. For the reasons already discussed herein above not only the writ petition is held to be maintainable the appellate orders can also not be sustained. All the impugned orders dated 28.02.2012, 25.07.2012 and 14.08.2012 passed by the opposite party No. 2-State Transport Appellate Tribunal, U.P. Lucknow are accordingly quashed. Consequences to follow as per law.

31. The writ petition stands allowed.