

(1991) 11 AHC CK 0029

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 2991 and 6664 of 1990

Bhagwat Saran Rastogi and Another

APPELLANT

Vs

U.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 12-11-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 94

Citation : (1991) 2 AWC 232

Hon'ble Judges : V.K. Khanna, J;R.A. Sharma, J

Bench : Division Bench

Advocate : A.D. Saunders and Swati Dhawan, for the Appellant;

Judgement

R.A. Sharma, J.—For Budaun-Farrukhabad via-Allahpur-Usawan Kalan-Mirzapur-Doshpur-Nagar-Rajapur-Amratpur-Rajaipur-Janpar Mor route (hereinafter referred to as the route) the Regional Transport Authority, Bareilly region, bareilly has granted ten permanent stage carriage permits to the U.P. State Road Transport Corporation (hereinafter referred to as the Corporation), with the direction that the Corporation will lift the permits by 15-1-1990, failing which the grant will lapse automatically. The Corporation deposited the permit fee Rs. 2500/- for lifting aforesaid permits with the Regional Transport Authority on 29-12-1989. In spite of the deposit being made, the permits were not issued and could not be obtained by the Corporation on or before 19-1-1990. On 17-1-1990 suit No. 12 of 1990 was filed by the Petitioner in the court of Civil Judge, Budaun, for injunction against the grant of permits to the Corporation by the Regional Transport Authority, Bareilly, in respect of the route. In this suit the Corporation has not been impleaded as party. Learned Civil Judge by order dated 17-1-1990 issued an interim injunction directing the Regional Transport Authority to maintain status quo. The Corporation has, however, started plying buses on the route without obtaining permits. The Petitioners who are existing operators on the route, have filed writ petition No. 2991 of 1990 for a writ of mandamus restraining the Corporation not to ply buses on the route without obtaining

permits for the same. The Corporation has also filed writ petition no 6664 of 1990, challenging the aforesaid interim injunction dated 17-1-1990. A prayer for prohibiting further proceedings in the aforesaid civil suit, filed by the petitioners, has also been made.

2. Parties have exchanged counter and rejoinder-affidavits. We have heard the learned Counsel for the parties.

3. Sri A.D. Saunders, learned Counsel for the Petitioners in writ petition No. 2991 of 1990, has argued that the Corporation cannot ply its buses on the route without obtaining permits. Sri S.K. Sharma, learned Counsel appearing for the Corporation has, on the other hand, argued that the Corporation was granted permits on 22-12-1989 and had deposited fee for issuance of permits on 29-12-1990, even then the Regional Transport Authority has not issued permits. On this basis it is contended that the issuance of the permit being purely ministerial action the Corporation can ply its buses on the basis of grant of permits, after depositing the necessary permit-fee. He also argued that the suit was not maintainable in the Civil Court, which granted interim injunction for maintaining status quo, which is also without jurisdiction.

4. It is the settled position by now that no person including the Corporation can ply buses on the route without "obtaining permits. Although issuance of permit in pursuance of the order of the grant is the ministerial action, but unless the permit is issued the grantee cannot ply its buses. The permit is a condition precedent for operating buses on any route. It is true that the corporation has deposited permit-fee on 29-12-1990 and in normal circumstances the Regional Transport Authority should have issued permit to the Petitioners much before 15-1-1990. Nothing has been placed before us by the Regional Transport Authority justifying its omission in not issuing permits to the Corporation in spite of deposit of permit-fee by it on 29-12-1990.

5. It has also been settled that the Civil Court has no jurisdiction to entertain the suit and grant injunction in the matter of grant of permits by the transport authority in view of Section 94 of the Motor Vehicles Act, except on the ground of constitution of the transport authority. In this connection reference may be made to the decision of the Division Bench of this Court in the case of Omkar Singh v. Regional Transport Authority Bareilly 1991 ALR 564, wherein it has been laid down that the Civil Court has no jurisdiction to entertain suit for injunction.

6. We accordingly direct that the Corporation will make an application before the Regional Transport Authority, Bareilly, for extending time for lifting permits granted to it on 22-12-1989, within a period of one month from today, and if such an application is made the Regional Transport Authority will consider and decide it within one month thereafter. In case time is extended and permits are issued by the Regional Transport Authority, the Corporation will ply its buses in accordance with the terms and conditions of its permits. But if the permits are not issued by the Regional Transport Authority to the Corporation it cannot ply its

buses and the operation of its buses on the route in question has to be stopped. It will, however, be open to the Corporation to apply for fresh permits also before Regional Transport Authority, so as to continue plying its buses on the route in question. But in the absence of any permit the Corporation cannot ply its buses on any route.

7. The suit filed by the Petitioners is not maintainable and the order of the interim injunction passed by the Civil Judge was also without jurisdiction. We quash the proceedings of the suit no 12 of 1990, pending in the court of the Civil Judge and also the interim injunction passed in that suit on 17-1-1990.

8. For the reasons given above both the writ petitions are disposed of finally.