
(1996) 03 AHC CK 0009
In the Allahabad High Court
Case No : C.M.W.P. No. 37607 of 1995

Dharmendra Singh

APPELLANT

Vs

State of Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 03-03-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 68D(3)
Motor Vehicles Act, 1988 — Section 102, 104

Citation : (1996) 03 AHC CK 0009

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : A.D. Saunders, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order of the State Transport Appellate Tribunal, U.P. dated 27.9.1995 Annexure 3 to the writ petition and for a writ of certiorari to quash the resolution dated 14/15.6.1993 passed by the State Transport Authority, U.P. granting stage carriage permits to the Respondents.

2. Heard Sri L. P. Naithani, learned Senior Advocate and Sri A. D. Saunders for the Petitioner, and Sri K. N. Tripathi, learned Senior Advocate and Sri A. R. Dubey for the private Respondents as well as learned standing counsel for the Respondents.

3. The facts of the case are that there is an inter-regional route known as Muzaffarnagar-Bhopa-Morna-Bijnore route. A sketch map in this connection is Annexure 1 to the writ petition. This route was earlier passing from Morna direct to Bijnore via a Pontoon Bridge at Rawli Ghat and it was notified u/s 68D(3) of the Motor Vehicles Act, 1939 on 28.9.1977 published in the U.P. Gazette on 5.11.1977. True copy of the said notification is Annexure SCA-3 to the supplementary counter-affidavit of Vishnu Datt Paliwal. A perusal of the said

notification shows that existing operators were allowed to continue operating vide clause 4 of the said notification. The Petitioners were existing operators since their permits were issued prior to 5.11.1977 and hence then they continued to operate. Since the major portion of the route lies within Meerut region, it is the R. T. A., Meerut region which is entitled to grant renew the permits on the route.

4. It is alleged in paragraph 5 of the writ petition that the R. T. A., Meerut granted permits on the route by its resolution dated 4.9.1989 and 21.9.1989 which were challenged before this Court in separate writ petitions which were allowed and such resolutions were quashed on the ground that the route is notified and as such the R T. A. had no Jurisdiction to grant permits. It is alleged in paragraph 6 of the writ petition that the judgments were challenged in the Supreme Court which dismissed the S.L.P./Appeal on 24.4.1991. In paragraph 7 it is alleged that the State Transport Authority granted permits on 29.9.1989, but the same were set aside by the Tribunal.

5. In paragraph 12 of the writ petition it is alleged that by resolution dated 14/15.6.1993, the State Transport Authority illegally granted 38 permanent stage carriage permits although the route was notified vide Annexure 2 to the writ petition. In paragraph 16 of the writ petition it is stated that in view of the clear bar of Section 104 of the Motor Vehicles Act, 1988 no such permits could have been legally granted. Aggrieved against that resolution the Petitioner filed a revision before the Respondent No. 1 which was dismissed on 27.9.1995. Hence this petition.

6. Sri K. N. Tripathi, learned Counsel for the Respondent has raised a preliminary objection that the writ petition is not maintainable because as held by the Tribunal in the impugned order dated 27.9.1995 the writ Petitioners had no right for renewal of their permits and they had to apply for a fresh grant of permit as held by the Supreme Court in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., . The Petitioners "permits were to expire in 1991 and they were renewed in 1991 after the Motor Vehicles Act, 1988 came into force. They were again renewed in 1996 and according to Sri K. N. Tripathi. the second renewal of 1996 is illegal. In my opinion, it is not open to the Respondents to challenge the renewal of the Petitioners" permit at this late stage, and that too in collateral proceedings. Since nobody challenged the renewal of the Petitioners" permits in 1996 it is not open to challenge the same now. In fact till today no revision or appeal or writ petition has been filed against the renewal of the Petitioners" permit in 1996. In the absence of such direct challenge to the renewal of the Petitioners" permit, I am not inclined to entertain this objection in collateral proceedings. Hence the preliminary objection of Sri K. N. Tripathi is rejected.

7. Sri L. P. Naithani submitted that the earlier principle of permitting operation with corridor restrictions on notified routes had been invalidated by the Supreme Court in various decisions e.g., Adarsh Travels Bus Service and Another Vs. State

of U.P. and Others, . On the route in question certain permits had been illegally granted and this was set aside by this Court in Har Pal Singh Beniwal v. Regional Transport Authority, Meerut and Anr. 1991 (18) ALR 9, and the SLP against the judgment had been dismissed by the Supreme Court on 22.4.1991 vide Annexure SCA-5 to the supplementary counter-affidavit of Vishnu Datt Paliwal.

8. It appears that in 1995 a pucca bridge was constructed at Dewal Ghat and hence a notification dated 3.9.94 was issued u/s 102 of the Motor Vehicles Act, 1988 modifying Muzaffarnagar-Bijnore route and now the notified route is Bijnore to Muzaffarnagar via Jansath-Meerapur-Dowal instead of the route via Bhopa and Morna. A true copy of the Gazette Notification dated 3.9.94 is Annexure SCA-6 to the supplementary counter-affidavit of Vishnu Datt Paliwal.

9. A perusal of the impugned resolution dated 14/15.6.1993 Annexure 2 to the writ petition shows that the permits have been granted to the Respondents on the Muzaffarnagar-Chhajlet route via Ganga Bijnore Noorpur which is said to be a non-nationalised route. The submission of Sri Nathani is that part of this route is in fact nationalised and hence the impugned resolution was illegal. On the other hand, the submission of Sri K. N. Tripathi is that the impugned resolution was valid because no part of the aforesaid route on which permits have been granted is nationalised.

10. It appears that at the time of the notification u/s 68D (3) dated 28.9.1977 (published on 5.11.1977) buses did not travel from Dewal to Bijnore because there was no pucca bridge at that time. The aforesaid notification hence had not notified the portion from Dewal to Bijnore, and hence this portion was not part of the notified route. It became part of the notified route only when the notification dated 3.9.1994 was published. i.e., after the grant of permits by the impugned resolution dated 14/15.6.1993, and hence at the time when the permits were granted on 14/15.6.1993, the portion from Dewal to Bijnore route was not the part of the nationalised route. Hence in my opinion, the impugned permits were validly granted.

11. This very controversy was decided by a learned single Judge of this Court in Writ Petition No. 6065 of 1996 Smt. Shashi Goel v. S.T.A.T. and Ors. decided on 30.4.1996 and the contention of the Petitioner in that case, which is similar to the contention of the Petitioners in the present case, was rejected. Against that judgment an SLP was filed in the Supreme Court which was dismissed on 5.8.1996.

In Manzoor Ahmad v. S.T.A.T. 1993 ALR (2) 329, also a similar contention has been negated by a learned single Judge of this Court. It has been observed in paragraph 3 of the said judgment that it is undisputed that the strip from Dewal to Bijnore was not part of the route which was notified 5.11.1977. Similarly in paragraph 15 of the said judgment it was observed that the aforesaid patch from Dewal to Bijnore was not the matter of consideration when the scheme was notified in 1977, and the Corporation had not even objected against the grant of

permits to Petitioners and others on this non-notified portion. Against this judgment in Manzoor Ahmad's case (supra) also an SLP was filed in the Supreme Court which was rejected on 10.5.1993.

12. No doubt the portion from Dewal to Bijnore was notified from 3.9.1994 but the impugned permits were granted much before that date. The point being pressed in this writ petition has already been decided by this Court in Smt. Shashi Goel's case and Manzoor Ahmad's case (supra) against which S.L.Ps. have been rejected by the Supreme Court. Hence this point cannot be agitated again. The decision in Harpal Singh Beniwal's case (supra) is distinguishable because it relates to the Muzaffarnagar-Bhopa-Morna-Berha Sadat-Dewal Bijnore route, most of which (except the portion from Dewal to Bijnore) was part of the original route notified on 5.11.77. The Petitioners' route, on the other hand is Muzaffarnagar-Jansath-Meerapur-Dewal-Bijnore-Chajlet route, no part of which was notified upto 3.9.94, and only the portion from Dewal to Bijnore was notified from 3.9.94, that is, after the issuance of the impugned permits.

13. Thus, there is no force in this petition. It is accordingly dismissed. No order as to costs.