
(1992) 08 AHC CK 0035

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8152 of 1990

Fahim Sabir and Another

APPELLANT

Vs

Regional Transport Authority Bareilly Region and Another

RESPONDENT

Date of Decision : 05-08-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 68D

Citation : (1992) 3 AWC 1821

Hon'ble Judges : M.K. Mukherjee, C.J.; R.A. Sharma, J

Bench : Division Bench

Advocate : C.P. Ghildyal, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—The Petitioners were granted permanent stage carriage permits by Regional Transport Authority, Bareilly (hereinafter referred to as R.T.A), "on, 20-12-89 on Bareilly-Badaun via Bhamora route, (hereinafter referred to as the Route). R.T.A. however, did not issue those permits inspite of order of grant in view of the intrim order dated 11-1-1990), passed by this Court in a writ petition. Petitioners, as such, have filed this writ petition for writ of mandamus directing the Respondents to issue them permits in accordance with the order of grant dated 20-12-1989.

2. A counter affidavit has been, filed on behalf of R.T.A in which it has been stated that as the route has been notified u/s 68-D of the motor vehicles Act, 1939 for operation of State transport undertaking no permit can be issued to the Petitioners. A counter-affidavit has also been filed on behalf of the U.P. state Road Transport Corporation (hereinafter referred to the Corporation) in which identical plea of the route being nationalised has been taken. The Petitioner have filed rejoinder-affidavit in reply to the above counter - affidavit.

3. Sri C.P Ghildiyal, learned Counsel for the Petitioners has submitted that as the scheme itself permits private operators by Clause 5, it cannot be said to be a

scheme for exclusive operation. It has been further argued that in view of the Clauses 4 and 8 of the scheme the scheme cannot be said to be a scheme excluding the other private operators from operating vehicles on the route.

4. In *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, , the Supreme Court has laid down as under:

Once a scheme is published u/s 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself.

It is thus clear that if scheme provides for exclusive operation of state Transport Undertaking, no permit can be granted to any private operator on the notified route or portion thereof. But if the scheme is for partial exclusion permit can be granted to private operators only in accordance with the terms and conditions laid down by the scheme. In *T.N. Raghunatha Reddy Vs. Mysore State Transport Authority*, and *D.M. Thippeswamy Vs. The Mysore Appellate Tribunal, Bangalore and Others*, , wherein existing permit holders on the inter-State routes were permitted to ply by the approved scheme. It was declared by the Supreme Court that a person, who was not holding any permit on the date the scheme was approved or on the date on which the State Transport undertaking applied for permit u/s 68-F(1) of the Motor Vehicles Act 1939 cannot be granted any permit on the notified route or portion thereof. to the same effect is the law laid down by the Supreme Court in the case of *Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan*, and *Karnataka State Road Transport Corporation Vs. Secretary, Karnataka State Transport Authority and Others*, .

5. In the instant case a copy of the approved scheme has been filed as annexure-1 to the counter-affidavit of the corporation. Clause 6 of the scheme lays down that all the services mentioned against item No. 3, relating to the route, shall be provided exclusively by the State Government. Clause 5 of the said scheme, however makes an exception in favour of the three persons holding permit number 45, 169 and 167, who have been permitted to continue to operate on the nationalised route. Clauses 4 and 8, which provide for restriction or prohibition of the other transport services and cancellation or modification of the existing permits, do not indicate that any other person, excepting the three mentioned in Clause 5 are permitted to operate by the scheme in view of the clear language of Clause 6 no private operator is entitled to operate on the route excepting the three persons, named in Clause 5.

6. It appears R.T.A. granted permits to the Petitioner and other operators on the route in ignorance of the approved scheme mentioned above, in view of which it had no jurisdiction to grant any permit to any private operator, as the scheme provides for exclusive operation by the State Transport Undertaking, excepting the three persons mentioned in Clause 5. It is also true that initially the R.T.A. declined to issue permit in view of the interim order mentioned herein before,

which in fact was not applicable to the route. However, when the approved scheme came to its notice it refused to issue permit on the ground that it has no jurisdiction to grant or issue permit on the route or part thereof. The stand of the R.T.A. is fully justified, because as mentioned herein before, the R.T.A. had no jurisdiction to grant permit on the route.

7. In the end the learned Counsel for Petitioners has also contended that power to issue permit is the ministerial action and is not open to the R.T.A. to refuse to issue permit after having granted the same. Normally this submission is liable to be accepted. But if R.T.A. has granted any permit on the nationalised route over which it has no jurisdiction, this Court will not issue writ of mandamus to enforce illegal order.

8. For the reasons given above the writ petition is dismissed. In view of facts and circumstances of the case there shall be no order as to costs.