

(2003) 04 AHC CK 0102

In the Allahabad High Court

Case No : C.M.W. P. No. 48623 Connected with 48624 of 2002

M.K. Jain and Others

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 100(3), 104, 2(38), 68(3), 69

Citation : AIR 2004 All 33

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : P. Naithani Ravi Kant and H.P. Dube, for the Appellant; R.N. Singh, A.P. Sahi, G.K. Malviya, B.D. Mandhyan, S.N. Jaiswal and Sameer Sharma, SC, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Meerut-Bijnor route lies partly within the jurisdiction of Regional Transport Authority (in short referred to as "R.T.A."), Meerut, and partly within the jurisdiction of R.T.A., Moradabad. There are 83 permit holders on Meerut-Bijnor route for operating stage carriages. Another inter regional route namely Muzaffarnagar-Bijnor route is traversed by 38 permit holders of stage carriage operating private transport vehicles. A scheme was proposed u/s 68-C of the Motor Vehicles Act, 1939 (in short "Old Act") covering Muzaffarnagar-Bijnor route, which was confirmed u/s 68-D of the Old Act and was notified on 5-11-1977. This notified Muzaffarnagar-Bijnor route passed through Bhope-Morna-Rawalighat for reaching Bijnor, and crossed river Ganges by Pentoon bridge at Rawalighat. The other route namely Meerut-Bijnor passed through Mawana-Behsuma-Ramraj-Dharapur-Bidur Kuti for reaching Bijnor. This other route was not notified route, and crossed river Ganges at Bidur Kuti for reaching Bijnor. A portion of this route from Bidur Kuti and Bijnor was also a part of notified route which is, however, not subject-matter of dispute in these petitions. In the year 1985 a bridge was constructed over river Ganga at Dewal known as

Ganga Barrage and was made open to public. Upon construction of this bridge and making it open to public, the Pantoon bridges at Rawalighat and Bidur Kutty were abandoned and that both Muzaffar Nagar-Bijnor (notified route) and Meerut-Bijnor (non notified route) converged for passing through the Ganga Barrage, at Dewal; whereas the Muzaffarnagar-Bijnor (notified route) diverted from Morna to Dewal for reaching Bijnor, the non notified route of Meerut-Bijnor diverted at Ramraj to Mirapur and then to Dewal Barrage for reaching Bijnor. Upon such convergence both the routes started sharing a common strip of about eleven KM from Dewal to reach Bijnor, for crossing river Ganga. There is no dispute that there is no other town between Dewal and Bijnor and that Dewal bridge is the only bridge for crossing over river Ganga, available to both the routes.

2. On the date of notification of the scheme u/s 68-D of the Old Act dated 5-11-1977, the existing operators including Mohd. Sabir who is succeeded by Mohd. Tahir, respondent No. 3 were operating on Meerut-Bijnor (non notified route) under valid permits, and were protected by the scheme. Section 68-FF of the Old Act prohibited any private operators to ply vehicles over notified portion of the route except in accordance with scheme. The same restriction has been incorporated in Section 104 of the Motor Vehicles Act, 1988 (in short the "New Act").

3. Some applications were moved before the R.T.A. Meerut for grant of permits on Meerut-Bijnor route. They were rejected vide resolution dated 27/28-8-1982. A writ petition was filed before this Court restraining R. T.A.'s of Meerut and Moradabad from granting/issuing permit on Meerut-Muzaffarnagar route in which restraint orders were issued on 30-10-1989. However, R.T.A., Meerut by its order dated 4/5-9-1989, had granted permits. Applications were also made for temporary permits on the route against which existing operators filed another writ petition challenging proposed grant. On 11-8-1989 this Court directed Transport Authorities to consider the objections made by petitioners in respect of grant of permits. The existing operators of Meerut-Bijnor route also apprehended that the S.T.A.'s may grant permits and as such objections were filed before the S.T.A. on 19-1-1989 and 5-6-1989. On 29-9-1989 the State Transport Authority assumed powers and functions over non nationalised portions of Meerut-Bijnor-Muzaffarnagar routes and on the same day by same order, it granted permits to 48 applicants. Aggrieved against the action of State Transport Authority in taking over the jurisdiction and granting permits to 48 applicants. Revision No. 68 of 1990 was filed by Mohd. Sabir, since deceased and substituted by Mohd. Tahir, on 20-11-2001, u/s 90 of the Motor Vehicles Act, 1988. After condoning the delay in filing of revision, the State Transport Appellate Tribunal, Lucknow (in short STAT) has allowed the revisions on 23-10-2002, and while setting aside the order dated 29-9-1989 of S.T.A. assuming jurisdiction on Meerut-Bijnor and allied routes has set aside the grant of 48 regular Stage carriage permits, giving rise to these two writ petitions by operators holding permits, issued prior to notification of the Scheme.

4. I have heard Sri L.P. Naithani and Sri Ravi Kant assisted by Sri H.P. Dubay for petitioners in writ petition No. 48624 of 2002, and in writ petition No. 48623 of 2002 respectively; and Sri R.N. Singh assisted by Sri A.P. Sahi for respondent No. 3 in writ petition No. 48623 and Sri B.D. Madhyan assisted by Shri S. N. Jaiswal, for respondent No. 3 in writ petition No. 48624 of 2002; and Sri Samir Sharma for U.P. State Road Transport Corporation.

5. Before proceeding to consider the submissions of the respective parties on merits, it will be appropriate to consider the objections of the petitioners with regard to condonation of delay by State Transport Appellate Authority in filing revision, which was filed against the order dated 29-9-1989 on 7-5-1990. The limitation for filing revision u/s 90 of the new Act is thirty days. The second proviso to Section 90 authorizes State Transport Appellate Tribunal to entertain the application after the expiry of the said period of thirty days, after it is satisfied that the applicant was prevented by good and sufficient cause for making the application in time. The delay condonation application was allowed by State Transport Appellate Authority on 30-5-1990. An application was filed by Sri Sanjay Kumar Jain, opposite party No. 28 to the revision alleging that the delay was condoned before giving any opportunity to the opposite parties. The Tribunal found that the permits were lifted at the end of October, 1989 and November, 1989, and the new grantees started operating vehicles in the first week of December, 1989, and then on coming to know of the impugned orders, the revisionist filed an application on 16-12-1989 for which certified copies which was issued to him on 5-5-1990. The revisionist Mohd. Sabir had filed writ petition No. 3144 (MS) of 2002 before Lucknow Bench of this Court in which an order was passed by the bench which did not enter into merits of the case, and finally disposed of the writ petition with a direction to Chairman of State Transport Appellate Tribunal to decide the revision No. 68 of 1990 in the light of judgment dated 18-5-1992 passed in writ petition No. 19148 of 1989 within three months from the date a certified copy is produced before the Tribunal. This direction required the Tribunal to decide the revision on merits. The Tribunal, however, went on to consider the question of condonation of delay and relying upon the decision of Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and Banwasi Seva Ashram Vs. State of U.P. and Others, justified the order of the then Chairman condoning the delay in filing revision. Looking into the fact and circumstances of the case and the nature of dispute involved between the parties, the delay in obtaining a certified copy of the order for which an application was made on 16-12-1989, of which a copy was issued on 5-5-1990, and the fact that the Lucknow Bench of this Court had directed the Tribunal to decide the matter on merits, in the light of its judgment dated 18-5-1992, the State Transport Appellate Tribunal did not commit any error in exercise of its discretion in upholding its order dated 30-5-1990 condoning the delay. Sri L.P. Naithani rightly and fairly did not lay much emphasis on this issue.

6. On merit, Sri L.P. Naithani and Sri Ravi Kant appearing for petitioners,

challenging the order passed by State Transport Appellate Tribunal have submitted that Muzaffarnagar-Bijnor route via Bhopa-Morna-Rawalighat was notified on 5-11-1977. Writ petitions filed by some existing operators were dismissed. However, writ petition filed by Ram Narain Sharma was allowed finding that he was not heard by the competent authority. The scheme was later on confirmed after hearing Ram Narain Sharma. On 4/5-9-1989 R.T.A. Meerut granted 21 permits. On 29-9-1989, S.T.A. took over the route and granted 48 stage carriage route permit by taking care for excluding notified portion of the route namely Bidur Kuti-Bijnor. There is no dispute that the two routes namely Muzaffarnagar-Bijnor, and Meerut-Bijnor were separate routes. Muzaffarnagar-Bijnor route was a notified route. A portion of Muzaffarnagar-Bijnor route cannot by implication be deemed to be notified only for the reason that the route was diverted consequent upon construction of bridge over river Ganga near Dewal. Modalities of taking over a route by State Transport Authority are prescribed under Chapter-IV-A of the Old Act. The route is notified only after following the provisions of Section 68-D of the Old Act. The scheme is law. It is intended to create monopoly in favour of the State Transport Undertaking. Such monopoly cannot be created by deeming the diverted route to be notified. At the time when Muzaffarnagar-Meerut route was notified the diverted route was not in existence. The procedure prescribed u/s 68-C required satisfaction of the State Transport Undertaking which is a condition precedent for preparation of a scheme. The satisfaction has to be with regard to sufficient commercial and coordinated service. The scheme has to be formulated by the State Transport Undertaking and finally by the State Government, and thus a diversion even for necessity cannot be treated to be part of notified route and that no other construction can be put to the scheme of Section 68-D of the Old Act.

7. The question whether the diversion of the Muzaffarnagar-Meerut route by which a portion of the route was shared by the Meerut-Bijnor route came for consideration in *Manzoor Ahmad Vs. The State Transport Appellate Tribunal, U.P. Lucknow and others*, in which learned Single Judge of this Court distinguished the judgment in *Janta Motor Transport v. Regional Transport Authority* in Special Appeal No. 883 of 1967 decided on 27th September, 1968 and held that the view taken in *Janta Motor Transport* case was necessary for the purpose and necessary implementation of the scheme in the said case, and that no such necessity is present in the case of Muzaffar-nagar-Bijnor route. The reasoning in paras 11, 13 and 15 of the judgment are quoted as below (at pages 206-207 of AIR) :

"11. From the facts mentioned above, it is manifestly clear that the facts of the case before the Division Bench and the two cases before Hon'ble Supreme Court relied on by the Tribunal for reversing the Order of the Regional Transport Authority were entirely different. In the present case the sharing is of only a small strip just before the terminis, i.e. Bijnor and that too for the compelling reason that the facility of pantoon bridge for reaching the destination is now no more available. The unnotified Meerut-Bijnor route and other allied routes had to

pass through Dewal barrage because there is no other route available. The analogy adopted by Division Bench of this Court on which basis even after diversion Muzaffarnagar-Bijnor route could be taken to be a notified route cannot be extended that far to include even unnotified routes for the reason of sharing the small strip at the end. As is clear from the judgment of the Division Bench, the view was taken as the route could not be taken to be different one merely on basis of re-alignments here and there, which are made to make the road more useful and convenient for vehicular traffic. Such view was necessary for purposeful and effective implementation of Scheme, No such necessity is in the present case. On the other hand the same analogy may be extended to other unnotified and allied routes, which may be allowed to retain their status and nature without causing any violation of the provisions of the Act and the Scheme. Such routes may also be subject to re-alignments to make them more useful and convenient. If the analogy adopted by the learned Tribunal is applied, even if the two independent routes join only for a short distance before reaching the termini, the bar created by law may be attracted, but in my opinion, this cannot be the intention of law. The Tribunal has committed a manifest error of law in taking the view that the Regional Transport Authority could not grant the permit.

13. Both the learned counsel have addressed on the question of route and have referred to the definition of the word "route." provided from time to time in different enactment's but, in my opinion, after the enactment of the Central Act in the year 1988, i.e. enactment of Central Act 59 of 1988, definition of the route earlier given are no more relevant. Section 2(38) defines the word "route" that it means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. The definition of the route provided u/s 2(28-A) of the Old Act was identical. A close scrutiny of the definition of the word "route" leaves no doubt that it denotes a line of travel by a motor vehicle for passing from one place to another which is technically called highway or main road. This line of travel may be subject to changes and whatever line is ultimately specified, shall be route between one terminus and another. This may be irrespective of the fact whether it is a notified route or an unnotified route. On the fact, of this definition different reasoning cannot be adopted in respect of notified and unnotified route. It does not appear to be either reasonable or equitable that only because a small portion is used as line of travel by the motor vehicles plying on notified route and unnotified route in a situation like the present case, the entire unnotified route should be subject to bar against granting the permits. The peculiar situation as involved in the present case was not there in any of the cases cited and relied on by the counsel for the respondents. In my opinion, in such cases, the testing point should be as to whether by grant of permit the implementation of the scheme over the notified route would be prejudicially affected. However before the Tribunal no such question was involved or argued and considered. As already noted, the State Road Transport Corporation has never objected against grant of permits. In these circumstances, there should not be any hesitation in permitting two

independent routes to be used independently for motor vehicles.

15. Thus the proviso to Section 68-E(1) could not be applicable and the existing scheme published under Sections 68-D could not be modified except by following the procedure laid down in Sections 68-C and 68-D of the Old Act and the corresponding provision of the New Act. Sections 68-C and 68-D contain provision for objection and hearing before a route is notified for exclusive operation by State Transport Undertaking. In my opinion, in the situation like the present one this valuable right could not be taken away without following the procedure prescribed by law. If such a view is taken it would be in violation of the right guaranteed under Article 19(1)(g) of the Constitution. The petitioner has been granted permit for independent and separate route. The sharing of the small patch started in 1985, it was not subject matter of consideration when the Scheme was prepared, published and approved by the State Government in 1977. Even after 1985 no effort has been made by the State Government or the U.P. State Road Transport Corporation to get the Scheme modified u/s 68-E. The Corporation has not even objected against the grant of permits to petitioner and others by the orders which were challenged before the Tribunal. The revision was filed by respondent No. 3 who himself is operating stage carriage on the same route Meerut Bijnor vis Meerapur Dewal Barrage."

The judgment in Manzoor Ahmed case was challenged before Supreme Court in SLP (civil) No. 7310, 7457 and 7458 of 1993 by order dated 10-5-1993 all the SLP's were dismissed.

8. Sri Naithani submits that subsequent to the judgment in Manzoor Ahmed's case, the Muzaffarnagar Bijnor route was modified by notification dated 3-9-1994, and that now the notified route is Bijnor to Muzaffarnagar via Jamsath-Meerapur, Dewal instead of route through Bhopa and Morna. This notification was considered in Dharmendra Singh v. State Transport Appellate Tribunal, Lucknow 1997 (29) FLR 567.

9. According to Sri Naithani Section 68(3)(b) of the Act, does not prescribe for any condition to take over the route. No resolution as contemplated by State Transport Appellate Tribunal, is required to be passed before the route is taken over. The power to grant permit is a quasi judicial power and relying upon the judgment in Shamim Haider and another Vs. Regional Transport Authority, Meerut and another, he submitted that the STA made a conscious application of mind to all pending application and granted permits to only those applications who had given their vehicle particulars, deposited fees and submitted their affidavits and time tables. In respect of applicant Nos. 49 to 51, the applications were rejected. Reliance was placed upon the new policy contemplated under the New Act, and emphasis was supplied on the judgment in Mithilesh Garg, Vs. Union of India and others etc. etc., in which the Supreme Court held that after the liberal policy was enforced by the New Act, the thrust is upon more operators on the area to provide ample choice to the commuter public to board the vehicle and patronize the operator who is providing the best service. The petitioner also

challenged the locus standi of revisionist in challenging the grant of permits after the liberal policy was enforced by the New Act, Section 80(2) of the Act was relied upon which provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. The grant of permit, according to Sri Naithani, is a Rule, and refusal is an exception.

10. Sri Ravi Kant challenged the order of State Transport Appellate Tribunal on the ground that taking over of a route pertains to subjective satisfaction of the State Transport Authority. There are no condition imperative for such satisfaction which need not be recorded in writing. The Act does not contemplate any resolution to be passed by S.T.A. before assuming jurisdiction over the route. According to him in *Raj Kumar v. State of U. P.* in Writ Petition No. 10323 of 1989, decided on 2-5-1990, this Court, held in its judgment dated 2-5-1990 that it is true that there must be subjective satisfaction in exercise of powers but in view of the legal position including Section 100(4) of the Motor Vehicles Act, if State Transport Authority considers it fit to assume the jurisdiction, in the interest of general public, it can exercise jurisdiction vested in it. The exercise of jurisdiction is to be held to be valid, and once the jurisdiction has been validly taken, the power to grant permit cannot be denied. The said judgment was also upheld by Supreme Court in SLP No. 9322 of 1990 in *Raj Kumar v. State of U. P.* on 30-6-1990. According to Sri Ravi Kant more than thirteen years had passed and thus State Transport Appellate Tribunal was not justified in finding that since the record of the some of the applications were not produced, the applications were not in order, and in accepting that some of the applications for permit was made after grant of merely because some affidavits were not filed along with the application or the permit cannot be said to be illegal. The applications, according to him, are complete as prescribed u/s 71(2) of the New Act and that the State Transport Appellate Tribunal has considered each and every application and rejected those which were not proper.

11. Sri R. N. Singh appearing for respondent No. 3 defending the revisional order, submitted that the judgment of this Court in *Manzoor Ahmed (supra)* is in teeth of law settled by Constitution Bench judgment of Supreme Court beginning from *Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation*, in which the nationalization of route by partial conclusion of same among the same class of service u/s 68-C was held to be saved by Article 19(6)(ii) of the Constitution of India, upto a judgment of Supreme Court in *Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others*, in which the Supreme Court upheld the law laid down by a Constitution Bench in *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, it has been consistently held, according to him, without any exception that once a scheme is notified, it prohibits from plying the stage carriage on whole or part of notified route and that no permit could be granted on a notified route or portion thereof. Muzaffarnagar-Bijnor route was a notified route by notification dated 5-11-1977. The construction of bridge at Dewal, made a diversion of route upto Bijnor

through Dewal bridge. Since the old route gave way, after its diversion to Dewal, the portion shared by similarly diverged Meerut-Bijnor route from Dewal to Bijnor overlapped, and that upon such overlapping, no permit could be granted on the overlapping portion of the route. According to Sri R. N. Singh the judgment in Manzoor Ahmed's case attempted to distinguish the judgment in Janta Motor Transport, but that it was in teeth of the Constitution Bench Decisions beginning from J. Y. Kondala Rao (supra) to Adarsh diversion case (supra), which is the correct law of the land as accepted in Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others, The reasoning given by learned single Judge in Manzoor Ahmed's case, to the effect that it was a very small portion with a strip at the end; that it did not effect the implementation of the scheme, it was not reasonable or equitable or intention of law to create a bar, and that the judgment was given in peculiar facts of the case to which the Corporation has not objected; could not be the ground to over reach the settled position law, and the object of Section 104 of the new Act. Sri R. N. Singh submits that the dismissal of SLP by one line order without giving the reason for the dismissal cannot be treated to be approval of the judgment by Supreme Court. He has relied upon the judgment of Supreme Court in Hari Singh Vs. State of Haryana, ; Indian Oil Corporation Ltd. v. State of Bihar AIR 1986 SC 1780 , and Kunhayammed and Others Vs. State of Kerala and Another, in submitting that dismissal of SLP without granting special leave to appeal, by non-speaking order does not constitute merger of the decision and does not attract the principle of res judicata, and that the appellant would not by itself be precluded from seeking relief in writ jurisdiction or review jurisdiction of the High Court, Sri R. N. Singh submits that the judgment in Mishri Lal (Dead) By Lrs. Vs. Dharendra Nath (Dead) By Lrs. and Others, has explained the doctrine of stare decisis, which is a doctrine based upon rule of convenience, expediency and public policy and is not applicable for the facts of the present case inasmuch as the Motor Vehicles Act is a Central Act and that the judgment in Manzoor Ahmed's case cannot be said to have settled the law which may have operated for a long period to take a different view. According to him, the rule of stare decisis is not applicable and that its application must be determined by the discretion of the Court. The liberal policy of the new Act cannot be extended to the extent that it may permit violation of Rule 104 by granting unlimited number of permits on the part of the route, which overlaps notified route. The S.T.A. acted arbitrarily in granting permits and abused his powers in taking over the route without application of mind, and existence of justifiable reasons. The condition imperative for taking over the route were not available. The R.T.A.'s of Meerut and Moradabad were reluctant to grant permits. There was absolutely no application of kind visible on record and that the assumption of power suffers from legal mala fides. The findings, after perusal of the record, that the application for permit were not complete and that some of the applications were made after the permit was granted is a finding of fact based on record which adds perversity to the powers of S.T.A. He submits that the delay in deciding the matter was caused by permit holders and that the pendency of revision for more than 10 years will

not attract principles of estoppel and that equity is not in favour of petitioners, who were granted permits in complete violation of law.

12. Sri B. D. Madhyan appearing for respondent No. 3 in the other writ petition submits that the mandatory condition to take over the route by State Transport Appellate Tribunal were not present. Some of the applications were rejected by R.T.O. on the ground that Dewal-Bijnor part of the routes is notified. He submits that the applications could only be made to R.T.O. and that the S.T.A. should have passed resolution to take over the route and thereafter summoned the applications from S.T.A. The applications did not bear the endorsement as to when they were made and accepted by S.T.A. He has relied upon the judgment in Surendra Rao Vs. Regional Transport Authority, Gorakhpur Region, Gorakhpur and others, in submitting that liberal policy did not mean that the route be converted into a racing ground. The grant of permit is quasi-judicial of power and that the revisionists who were existing operators had a right to challenge the illegal grant of permits. Absolutely no procedure was followed in taking over the route and granting permits. The entire exercise is as such procedurally ultra vires. He has also relied upon the judgment of Supreme Court in Ram Krishna Verma and Others Vs. State of U.P. and Others, in submitting that the consideration that the petitioners were operating for number of years cannot be taken into account as the delay in deciding the revision was attributable to them and that in undesirable advantage and illegal gain contrary to the provisions of law and settled by Supreme Court must be neutralized, and those who are responsible for gaining undue advantage should not be permitted to keep the same and thus the order of Tribunal needs no interference.

13. Shri Sarnir Sharma appearing for U.P. State Road Transport Corporation submitted that Chapter IV relates to Special Provisions relating to State Transport Undertakings and Section 98 provides that provisions of the Chapter will override provisions of Chapter V, and other laws. Scheme is a law. The State Transport Authority illegally assumed jurisdiction, part of which was nationalised. The judgment in Manzoor Ahmed is per incuriam State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, In this case Corporation has serious objections to grant of permits. The grants by State Transport Authority has prejudicially affected the scheme and the fact of its modification proves the point. He has also challenged the manner of grants in which by single order in mala fide exercise of power 48 permits were granted.

14. The first question to be considered is whether the grant of permits by State Transport Authority was violative of Section 104 of the New Act. Muzaffar Nagar-Bijnor route was notified on 5-11-1977. The conditions of the notification allowed only the existing operators to ply on the route. In the year, 1985, after Ganga Barrage were constructed at Dewal, the Pantoon bridge at Rawalighat was discontinued. The route, therefore, had to be, by necessity diverted and converged at Dewal to pass through the Ganga Barrage to reach Bijnor. Sri Naithani submits that such diversion even by necessity will not notify the

diversed route by implication. He submits that such deeming provision is not contemplated by either Section 68-D of the Old Act. According to him this question has been decided in Manzoor Ahmed's case A SLP against the judgment in Manzoor Ahmad's case is dismissed.

15. The question can be looked at another angle, and that is diversion of the notified route, of necessity includes diverted portion to the entire route it was decided by this Court in Janta Motor Transport v. Regional Transport Authority, Meerut Region, Meerut in Special Appeal No. 883 of 1967 as far back as on 16-9-1968, that alignments may be necessitated on each road every year and in case for the sake of such alignments only, which are made to make the road more useful, for vehicular traffic, fresh notices were necessary for publishing and finalizing the scheme and to make it a notified route again, it would be almost impossible to keep any route a legally notified route for any appreciable length of time. It was held in this decision that this could not be intention of the legislature. In Janta Transport (supra) the Court relied upon the definition of the word "route" as defined u/s 2(d) of the 1956 Act. It was defined as "road or roads or part of road or roads over which the transport vehicle may be... to be used under a permit granted or which, but for this Act would have been granted under the Motor Vehicles Act, 1939. It was found that in view of the definition, the Moradabad-Meerut route will mean the Moradabad-Meerut route which formerly used to be passed via--Tigri-Garhmukteshwar, but it does not pass thereafter via Tigri. In the said case a three mile detour, for alignment was made. It was held that consequential substitution of the Gajrawla-Garhmukteshwar portion did not make out a substantial change in the Moradabad-Meerut route and that notwithstanding this substitution the route continued to be the same as it was.

16. The definition of route has undergone a significant change. Section 2(38) of the Motor Vehicles Act, 1988 defines "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. The emphasis in the new definition is on the line of travel between one terminus to another. Section 104 provides that whether the scheme has been published under Sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority as the case may be, shall not grant any permit except in accordance with the provisions of scheme. With the dismantling of Pontoon bridge at Rawalighat, the line of travel of the notified route from the terminus of Muzaffar Nagar to the terminus of Bijnor underwent a slight change by diversion through Ganga Barrage at Dawal. The notification dated 5-11-1977 notifying the route did not specify any points through which the route may be traversed except the terminus at Muzaffar Nagar and Bijnor. There was no other line of travel available after 1985, to traverse this route. Taking the definition of the route as it is provided in the New Act, the Muzaffar Nagar-Bijnor route was notified and this route will mean the line of travel between Muzaffar Nagar-Bijnor. With the change of line of travel even for small portion which in the present case

is about 11 Kms, that portion of the route will not become denotified. It will continue to be the same route covered by the notification. This interpretation supports that the purpose of notifying the route namely that for State Road Transport Corporation to operate exclusively or with the existing operator under the notified scheme for a public purpose to be achieved.

17. The dismantling of the bridge at Bidurkuti also by necessity diverted the non-notified Meerut-Bijnor route through Ganga Barrage at Dewal. The operators on this non notified route were not using this portion before the construction of Ganga Barrage, and that the non-notified Meerut-Bijnor route did not use Ganga Barrage before necessary change or diversion on account of the construction of Ganga Barrage. In *Manzoor Ahmad's* case (supra), this Court did not: hold that upon diversion, the diverted portion will cease to be part of notified route, No such finding was recorded. The Court proceeded on the premises that the testing point should be as to whether by grant of permit the implementation of the scheme over the notified route would be prejudicially affected. It was found in para 11 that notified route may also undergo re-alignments to make them more useful and convenient; even if the two independent routes join only for a short distance before reaching the termini, the bar created by law will not be attracted, and that this could not be the intention of law. In para 13 it was observed that different reasoning cannot be adopted in respect of notified and un-notified route, and that it does not appear to be either reasonable or equitable that only because a small portion is used as line of travel by the motor vehicles plying on notified route and un-notified route in a situation like the present case, the entire un-notified route should be subjected to bar against granting the permits. In para 15 it was held that the sharing of the small patch started in 1985, it was not subject-matter of consideration when the scheme was prepared, published and approved by the State Government in 1977 and that even after 1985 no effort was made by the State Government or the U. P., State Road Transport Corporation to get the Scheme modified u/s 68-E. With the aforesaid findings it was said that Section 104 will not be attracted.

18. The fact that the Scheme was subsequently modified by notification dated 3 9-1994 only reasserted the fact that the State Government always intended that the line of travel from Bijnor to Muzaffar Nagar in Meerut Region has been the notified route. The scheme notified on Nov. 5, 1977 notified Bijnor-Muzaffar Nagar route. After modification the scheme described in column 4 the route between "Bijnor and Muzaffar Nagar via, Jansath-Meerapur-Dewal, instead of route via Bhopa and Morana¹. The effect of this modified notification was considered in *Dharmendra Singh v. State Transport Appellate Tribunal, Lucknow* 1977 (29) ALR 567 where it was found that the portion from Dewal-Bijnor become part of notified route. The Court in the said case was not called upon to consider the effect of diversion of necessity on the route notified on 28-9-1977 u/s 68-D(3) of the Old Act which was published on 5-11-1977. It took the modification as notification for the portion between Dewal to Bijnor. The attention of the Court was attracted to the fact that it was not the Dewal-Bijnor part of the

route which was notified on 3-9-1994 but the Bijnor-Muzaffar Nagar route without specifying the points in between, was modified to cover the route Bijnor-Muzaffar Nagar via Jansath-Morna-Dewal instead of Bhopa-Morna. The modification did not notify any fresh route, but only the change in the line of travel which was by way of necessity. It could not, therefore, be treated a fresh notification but a modification on account of a necessity on account, construction of Ganga Barrage at Dewal in 1985, and dismantling of Pontoon bridge at Rawlghat.

19. The question then arises whether the State Transport Authority was competent to grant the permits on the Meerut-Bijnor route which passed through or overlaps between Dewal to Bijnor?

20. The impugned resolution of the State Transport Authority dated 29-9-1989 by which it took over the jurisdiction on the non-notified portion of Meerut-Bijnor routes, reads as follows :

"Aadesh

Meerut-Bijnor evam Muzaffar Nagar margon ke arastrikrit bhag to rajya Pradhikaran Ko adhikar kshetra may lekar kramsah 01 se 48 evam 1 se 43 kramank rak ke aavedakon ko permit swikrit keye jayen."

The order speaks of taking over-only the non-notified route and not the notified route, and wherever these routes overlapped, no grant could be made to cover the said overlapping portion.

21. The Supreme Court has consistently held from *H.C. Narayanappa and Others Vs. The State of Mysore and Others*, up to *Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others*, that scheme framed and approved under Chapter IV-A of the Old Act is a law within the meaning of Articles 13 and 19(6) of the Constitution of India and it excludes the private operators from notified route or portion thereof. In *Nehru Motor Transport Co-operative Society Ltd. and Others Vs. The State of Rajasthan and Others*, it was held that once a scheme was finally approved and published in the Gazette, it is a law and is final. In *Nilkanth Prasad and Others Vs. State of Bihar*, it was held that even in those cases where the notified route and the route applied for running over a common sector, the curtailment by virtue of the notified scheme would be by exclusive over portion of route or in other words, the route common to both. The distinction between "route" as the notional line and "road" as the physical track disappears in the working of Chapter IV-A, because one cannot curtail the route without curtailing a portion of the road, and even if the route was different, at least the area would be the same. In *Mysore State Road Transport Corporation Vs. Mysore State Transport Appellate Tribunal*, it was held that it is not permissible to grant permit on a portion of a notified route which has an effect to ply a stage carriage on the same line of the notified route excepting an intersection. In *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, same view was expressed, and the Constitution Bench settled the law by

laying down that once a scheme is for total exclusion prohibiting private operators from plying stage carriages on a whole or part of a notified route, no permit can be granted on the notified route or portion thereof.

The intersection, however, in *Karnataka State Road Transport Corporation v. Ashrafulla Khan* (supra) does not amount to traversing or overlapping the route which prohibits plying to a whole or part of the route on the highway on the same line of the route and that in intersection cannot be said to traverse the same line as it cuts across.

22. Sri Naithani submitted that decision in *Manzoor Ahmad*'s case was approved by Supreme Court. The order, however, shows that on 10-5-1996 the SLP No. 6625 of 1993 was dismissed by an order which reads "all the S.L.Ps. are dismissed". I am in agreement with Sri R. N. Singh, Senior Advocate, that an order of dismissal without granting leave does not result into merger and that the dismissal at the stage of Special Leave by non-speaking order does not constitute *res judicata*. The law in this regard was reiterated by Supreme Court in *Kunhayammed and Others Vs. State of Kerala and Another*,

23. It was next argued by Sri Naithani that the judgment in *Manzoor Ahmad*'s case has operating for more than a decade and that the doctrine of "*stare decisis*" should prohibit the Court to take a different view to avoid uncertainty and confusion. He has relied on a judgment of Supreme Court in *Mishri Lal (Dead) By Lrs. Vs. Dharendra Nath (Dead) By Lrs. and Others*, In the said case the Supreme Court held that where the question of law relating to interpretation of local Acts has been settled for a decades, it should not be disturbed. The Apex Court, however, in para 13 added a rider that previous decision should not be followed to the extent that grievous wrong may result. The rule of *stare decisis* is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the Court and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result. The principle should not be followed mechanically when adherence involves collision with prior doctrine more embracing in its scope, intrinsically sounder and verified by experience. This doctrine cannot be applied in the present case inasmuch as firstly wherein dealing with local law on a Central Act but law with regard to overlapping of notified and non-notified routes is settled since very beginning. The decision in *Manzoor Ahmad* and *Dharmendra Singh* case cannot be said to have unsettled the law, which has held the field for such a long period of time. A departure was not permissible. In any case this Court does not propose any departure from a settled view and is only trying to reiterate the view held by this Court since *Janta Transport* case, and by Supreme Court without any deviation, in its various Constitution Benches, referred to above, in respect of overlapping on the notified routes. I, therefore, find that the diversion in 1985 of necessity diverted the notified route from *Muzaffar Nagar* to *Bijnor* as the line of travel underwent a change. The modification by notification dated 3-9-1994 did not amount to

notifying any new route between Dewal to Bijnor or a fresh route but only clarified by re-asserting that the route between the terminals namely Muzaffar Nagar and Bijnor was a notified route and thus no fresh permits could be granted on the overlapping portion on account of the restriction placed by Section 104 of the New Act.

24. Coming to the next submission with regard to the legality of taking over the route by State Transport Authority, I find that Section 68(3)(b) authorises State Transport authority to perform the duties of Regional Transport Authority, where there is no such authority and, if thinks fit or if so required by a Regional Transport Authority to perform those duties in respect of any route common to two or more regions. Sri Ravi Kant Senior Counsel is right in his submission that an order u/s 68(3)(b), does not call for recording reasons, and that it can be justified with the material on record with regard to condition imperative for exercise of such power. In the present case, however, I do not find that there were any such reason available on record so as to take over powers to functions of R.T.A.'s to justify the exercise of such authority.

25. Sri Ravi Kant submitted that there is no error in exercise of jurisdiction if the State Transport Authority takes over the jurisdiction u/s 68(3)(b) and grants permit on the same day. This argument overlooks the fact that taking over jurisdiction u/s 68(3)(b) and the grant of stage carriage permit are two different functions. The power to grant stage carriage permit has been held to be a quasi-judicial power. The applications for permit are to be made u/s 69 only to Regional Transport Authority. These must be endorsed by the Regional Transport Authority giving dates on which permits were received and the grants depend upon the conditions prescribed under Sections 70 and 71(3)(d), of the Act. In the present case the Tribunal recorded a finding of fact that some of the applications were found to have made much after the date of order of grant. The files of Smt. Kanchan, Sri Harvinder Singh and Sri Nanak Singh went on to show that their applicants were verified on affidavits on 5-9-1989 whereas their applications were made on 7-9-1989 and were not at all in existence on the date of their verification of affidavits. 43 permits were granted by State Transport Authority on 29-9-1989 but the record of only 38 grants were made available to Tribunal. Some of the files has been sent to vigilance department for inquiry and were not made available. Out of 36 files, some of them were without application for grant of permits yet the permits were granted. The grants, therefore, were not found bona fide specifically in view of the fact that all the grants were made on the same day when the route was taken over and were rightly found to be made in a mala fide exercise of power with ulterior motive.

26. Much emphasis were laid on the case Mithilesh Garg, Vs. Union of India and others etc. etc., in which the Supreme Court emphasized the purpose of enactment of Motor Vehicles Act, 1988, and held that the grants have to be made liberally, and more operators invite healthy competitive and effective transport system. A note of caution were, however, put by this Court to the

liberalism in Surendra Rao Vs. Regional Transport Authority, Gorakhpur Region, Gorakhpur and others, in which it was held that area or route cannot be permitted to be converted into a racing ground for heavy vehicles in order to pick up more passengers enroute and thereby exposing both the persons and property of the public to great danger. It was further held in Shamim Haider and another Vs. Regional Transport Authority, Meerut and another, that the grant of permit should take into consideration all the relevant factors at the time of exercising their jurisdiction which is quasi-judicial in nature, and that it has to be kept a watch on the erroneous, illegal exercise of power in granting permit under the liberalise. Financial status of the person, satisfactory performance in respect of earlier grants capacity to pay tax and such other matters specified in Sections 70 and 71(3)(d) as prescribed must be taken into account. The prescribed procedure must be followed to check any mala fide exercise of power. In the present case there was absolutely no application of mind by the State Transport Authority. Sri Nalthani tried to persuade the Court with the list appended which shows that the applications were supported by affidavit, payment of fees and the timetable, but that by itself does not follow that the State Transport Authority applied its mind to the application, and that factors provided in Section 70 and Section 71(3)(d) were taken into consideration.

27. In the end it was submitted that the petitioners have been operating stage carriages for more than decade settled transactions, invested huge accounts, and thus the Tribunal was not justified in interfering at such a late stage. A beneficiary of illegal grant cannot be held to raise there arguments. In Ram Krishna Verma and Others Vs. State of U.P. and Others, Supreme Court held that where the private operators were running stage carriage by blatant abuse of process of the Court by delaying the hearing, and by dragging the litigation, the benefit gained by them from such conduct must be neutralized. In the present case, the reasons for delaying hearing of the revisions for about ten years has not come on record. It was suggested by the respondents that the petitioners caused all kind of illegal obstacle. The delay may have only benefited to grantees, who have been found to have taken benefit of grant against the law. The permits could not have been granted and that the manner and method of grant of permits was also grossly illegal and in mala fide exercise of power by the State Transport Authority.

28. For the aforesaid reasons, both the writ petitions are dismissed. There shall be no order for costs.