
(1999) 10 MP CK 0013
In the Madhya Pradesh High Court
Case No : Writ Petition No. 330 of 1995

Mujahid Faridi and another	Vs	APPELLANT
State Transport Appellate Tribunal and others		RESPONDENT

Date of Decision : 26-10-1999

Acts Referred:

Motor Vehicles Act, 1939 — Section 63, 68D

Citation : (2001) 1 MPLJ 521

Hon'ble Judges : S.K. Kulsrestha, J;Deepak Misra, J;D.M. Dharmadhikari, J

Bench : Full Bench

Advocate : B.K. Rawat, for the Appellant; V.S. Dabir, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

The order in this petition shall also decide connected Writ Petition No. 2125 of 1995 M/s Shikharchand Ratanchand Jain and another vs. State Transport Appellate Tribunal and others as common questions of law need decision by this Full Bench in the two petitions.

The petitioners in the abovementioned two writ petitions are engaged in the business of transport. They seek grant of stage carriage permit for carrying passengers on interstatal route Chhatarpur to Mauranipur (within State of M.P. and State of U.P.). Both the petitioners claim grant of permit in their favour on the abovementioned interstatal route on the basis of a reciprocal agreement published in M.P. Gazette dated 16th September, 1980 entered into between the states of M.P. and U.P. u/s 63 of the Motor Vehicles Act, 1939. The petitioners in the two petitions state that there is vacancy and increase of frequency of traffic on the interstatal route Chhatarpur-Mauranipur. By the two impugned orders dated 25-1-1995 (Annexure-P/7) in W.P. No. 330/95 and dated 21-2-1995 (Annexure-P/8) in W.P. No. 2125/95 the State Transport Appellate Tribunal refused to grant them permit on the interstatal route by holding that applications

for permit cannot be entertained in terms of Clause (3) of approved Scheme No. 30 framed u/s 68-D of the Motor Vehicles Act, 1939.

In the two writ petitions filed by the transport operators against the orders of the STAT refusing to grant them permits on the interstatal route, the learned Single Judge by order dated 24-9-1996 has made this reference to the larger Bench for deciding the correctness of the Division Bench decision of this Court in the case of Joginder Singh vs. State Transport Appellate Tribunal, 1978 MPU 703 : 1978 J.L.J. 657 in which the provisions of Scheme No. 30 were construed to hold that interstatal routes are not adversely affected by the Scheme and for overlapping portions of interstatal route covered by the scheme permits can be granted. The learned Single Judge in his order of reference has stated that the Division Bench decision in the case of Joginder Singh (supra) does not appear to be good law in view of subsequent decisions of the Supreme Court in the case of M/s Adarsh Travels Bus Service vs. State of U.P., AIR 1986 SC 319 which is followed by the Supreme Court in C.A. No. 1986/70 M.P. State Road Transport Corporation vs. M/s Shastri Brothers and others decided on 28-1-1992. The learned Single Judge in his order has pointed out that the decision of the Supreme Court in the case of M/s Adarsh Travels Bus Service (supra) has further been reiterated and upheld in the subsequent decisions of the Supreme Court in Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, and in the case of Bihar State Road Transport Corporation Vs. State Transport Appellate Tribunal and Others, .

The main question involved before us, as has been posed by the learned Single Judge, is whether the provisions of Clause (3) of approved Scheme No. 30 forbids grant of fresh permit on an interstatal route which overlaps a portion of the nationalised route under the scheme.

The Division Bench of this Court in holding that there is no such prohibition in the scheme for grant of fresh permit on interstatal route, placed reliance on paragraph II of the order dated 8-3-1967 passed by the Special Secretary (Home) u/s 68-D (2) of the Act of 1939 whereby after hearing the affected transport operators the proposed Scheme No. 30 was modified and thereafter Scheme No. 30 was published excluding from it all interstatal permits for routes including Chhatarpur-Mauranipur.

For construing Clause (3) of Scheme 30, the case of Joginder Singh (supra), the Division Bench took the aid of the order of the Special Secretary (Home) to come to a conclusion that the scheme not only saves operation of existing permit-holders on interstatal route on the date of Publication of the intrastate Scheme No. 30 but also saves further grants or permits on such interstatal routes particularly covering or overlapping a portions of nationalized routes. In construing the language of Clause (3) of the scheme, in the case of Joginder Singh (supra), the Division Bench referred to an unreported D.B. decision of this Court in Deendayal Mahton vs. State Transport Appellate Tribunal, U.P. and others M.P. No. 728/72 decided on 12-2-1973 for holding that the use of word "plying" in Clause (3) of the scheme means vehicles which were plying on the

date of publication of the scheme or which may be playing thereafter". The learned Single Judge in the order of reference has raised grave doubt on the interpretation of Clause (3) of scheme 30 and the construction put by the Division Bench in Joginder Singh's case on the word "plying" in the clause. In the opinion of the learned Single Judge (S.K. Dube, J.) such interpretation placed on the language of Clause (3) of the scheme militates against the very purpose for which the scheme of nationalisation was brought into force. In view of the learned Single Judge, the nationalised scheme meant for exclusive operation by the State Transport undertaking and prepared under Chapter IVA has overriding effect in accordance with section 68-B of the Act of 1939 over any reciprocal agreement between the two states entered under Chapter IV of the said Act. The learned Single Judge also finds the decision of Division Bench in Joginder Singh's case to be in conflict with subsequent decision of the Supreme Court (supra).

In order to answer the reference and consequently to decide the two petitioners, it is necessary to critically examine the relevant contents of Clause (3) of Scheme No. 30, particularly portions underlined therein and paragraph II of the order of the Special Secretary (Home) who heard the objections and modified the proposed scheme followed by publication of the approved scheme No. 30. Clauses (1), (2) and (3) of Scheme No. 30 which are relevant for our purpose read as under:

Scheme No. 30.

(1) The State Road Transport Services shall commence to operate from 1st July, 1967.

(2) The State Road Transport Services shall be provided on the following routes of the Rewa, Jabalpur and Gwalior Regions:--

Rewa-Harpalpur

Rewa-Satna

Rewa- Panna

Rewa- Chhatarpur

Satana- Nagod.

Satna-Raigaon

Satna-Chhatarpur

Satna-Panna

Panna-Chhatarpur

Harpalpur-Kishangarh

Harpalpur-Bijawar

Chhatarpur-Harpalpur

Chhatarpur-Kishangarh

Nagod-Gaddi.

(3) The nature and extent of the State Road Transport Services to be provided on the routes mentioned in clause (2) above, are specified in the schedule annexed hereto. The provisions of the transport services otherwise than under the scheme is prohibited except that (i) the vehicles plying under the terms of reciprocal transport agreement in the State of Uttar Pradesh covering portions of the routes mentioned in clause (2) above being subject to and governed by the reciprocal transport agreement between the States of Madhya Pradesh and Uttar Pradesh and (ii) the vehicles playing only on the routes in Uttar Pradesh State area covering portions of the routes mentioned in clause (2) above will be allowed to ply as before.

(emphasis supplied)

Paragraph II of the order of Special Secretary (Home) reads as under:--

Para II:

The scheme as drafted indicated the intention to take over certain interstatal routes shown at S. No. 6, 9, 34, 41, 43, 44, 46 and 47 of Clause (2) it, however, transpired that two permit holder running on interstatal route Chhatarpur to Mauranipur and Chhatarpur to Tikamgarh had not been included in the Scheme. Since the permit holders of interstatal routes are distinct category of operators it would be necessary to aliminate from the scheme of the interstatal routes to avoid discrimination. Further it would be administratively convenient to take us the together relevant interstatal routes of the area covered by the scheme. It would be obviate the necessity of dealing twice to obtain the concurrent of the U.P. Government and the sanction of the Government of India. Accordingly 13 permits in Clause 7(a) shown at S. No. 1, 2, 3,4, 70, 73, 80, 81, 52, 53, 84, 85 and 86 will have to be dropped. Its tals amendment the scheme will cease to be interstatal in nature and no sanction of the Central Government would be required at this stage.

At the outset, we may state that the learned Single Judge in the order of reference has also opined that in construing an approved scheme, the order of the Special Secretary (Home) could not be read as has wrongly been done by the Division Bench in the case of Joginder Singh (supra).

We find that the order of Special Secretary (Home) has been passed by him in exercise of his powers u/s 68-D(2) of the Act of 1939 and it has been expressly passed "by order and in the name of the Governor of Madhya Pradesh". It is thus an Act of the State taken u/s 68-D read with Sub-section (2) thereof and order is passed by the authorized officer in the name of the Governor. Such order passed the Secretary after hearing objections to the proposed scheme can be taken as

external aid to the interpretation of the scheme which was ultimately approved and published.

The core question that arises is whether the underlined (emphasised).... portion of Clause (3) of Scheme No. 30 forbids or permits grant of fresh permits on interstatal routes overlapping partly or fully a nationalized route under the scheme.

Learned counsel Shri B.K. Rawat appearing for the petitioners contends that the abovequoted para II of the order of the Special Secretary (Home) clearly indicates that in order to remove discrimination in the matter of cancellation of certain interstatal permits, decision was taken to omit from the scheme all interstatal permits. The decision contained in para II of the order of the Special Secretary (Home) is duly reflected in the approved scheme ultimately published in which all interstatal routes which may be overlapping the nationalised routes have been omitted from the list of cancelled permits on the nationalized routes. The learned counsel on behalf of the petitioners contends that in the case of Joginder Singh (supra), the Division Bench has correctly decided that Clause (3) of Scheme No. 30. It does not adversely affect or prohibit existing operators on interstatal routes and future grantees under the reciprocal agreement for interstatal routes. The learned counsel for the petitioner made strenuous efforts to distinguish the decision of Supreme Court in Adarsh Travels Bus Service and M/s Shastri Brothers (supra) by stating the Scheme No. 30 with its contents (quoted above) never came up directly for consideration or interpretation in that case.

To reinforce his contentions, learned counsel for the petitioners invited our attention to proviso below Sub-section (3) of section 68-D of the Act of 1939 which reads thus:

Provided that no such scheme which relates to any inter-state route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government.

Relying on the Proviso (supra), the contention advanced is that purposely to obviate seeking of previous approval of the Central Government to the approved scheme, interstatal routes or permits were left unaffected by the nationalized scheme.

12-A. Shri V. S. Dabir, learned counsel appearing for the M.P.S.R.T. Corporation, in his reply submits that similarly worded Scheme No. 40 with similar Clause (3) in relation to interstatal routes covered by reciprocal agreement has been construed by the Supreme Court in the case of M/s Shastri Brothers (supra) and it has been held by relying on the earlier decision in the case of Adarsh Travels Bus Service (supra) that grant of fresh permits on interstatal routes are prohibited by Clause (3) of the scheme if it overlaps a portion of the intra-state nationalized route under the Scheme.

We have carefully gone through the contents of Clause (3) of the Scheme react with para II of the order of the Special Secretary (Home). We have also carefully gone through the judgments in the cases of Adarsh Travels Bus Service and M/s Shastri Brothers (supra).

After examining the contents of the scheme and the decisions of the Supreme Court cited at the Bar, we have come to the conclusion that the Division Bench decision in the case of Joginder Singh (supra) on the construction of the scheme to uphold grant of fresh permits on interstatal routes under the reciprocal agreement, is no longer a good law.

The record of M/s Shastri Brothers" case, M.P. No. 205/79 decided on 17-4-1979 which went up in appeal to the Supreme Court is before us and we find that Clause (3) of Scheme No. 40 is similarly worded. In the case of M/s Shastri Brothers, similar claim for grant of fresh permit on an overlapping portion of interstatal route under the reciprocal agreement was turned down by the Supreme Court by observing thus:

...., A further question is whether a portion of the scheme overlapping is also entitled to the grant of permit. That question is now squarely covered by a Constitution Bench judgment of this Court reported as Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, . Though the judgment relates to the interstate routes, the principle laid down therein equally applied to the intra-state routes as well. But the decision of this Court in another case reported as Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, covers the intra-state routes. This was further followed in Bihar State Road Transport Corporation Vs. State Transport Appellate Tribunal and Others, . We accordingly hold that even in respect of partially overlapping route, no new permit to the Private Operator should be granted.

In M/s Shastri Brothers (supra), reference was made and reliance was placed on the decision of Adarsh Travels Bus Service, AIR 1986 SC 319 in which a similar claim for fresh permit on an interstatal route overlapping the portion of nationalized route was negatived. In paragraph 6 is has been observed:

A careful and diligent perusal of section 68C, section 68D (3) and section 68FF in the light of the definition of the expression "route" in section 2(28A) appears to make it manifestly clear that once a scheme is published u/s 68D 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. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorized so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area.

On critical examination of Clause (3) of the scheme quoted above, even with aid of the order of the Special Secretary (Home), we find that only operations of existing permit holders on interstatal route on overlapping portion on the date of publication of the Scheme have been protected. The underlined (emphasised) portion of Clause (3) of the Scheme cannot be so construed to mean that thereby overlapping portions of interstate routes are kept free for fresh grants. The use of word "plying" denotes an existing state of affair and not any futuristic event. The construction on the word "plying" as done by the Division Bench in Joginder Singh's case (supra) to mean vehicles plying on the date of publication of the scheme as also in future after publication of the scheme, in our opinion, with due respect to the Hon'ble Judges of the D.B., would militate against the very concept of nationalization of route within the State. If Clause (3) of the Scheme is construed in the manner, as has been done by the Division Bench in Joginder Singh's case to mean that future grants on interstatal routes covering an overlapping portion of nationalised interstate route are permissible, it would open flood gates for grants on such overlapping portions under reciprocal agreements to virtually nullify the nationalization of routes for exclusive operation of State Transport undertaking. This mischief has to be avoided as has been observed by the Supreme Court in the case of M/s Adarsh Travels Bus Service (supra):

The question is one of weighing in the balance the advantages conferred on the public by the nationalization of the route C-D against the inconveniences suffered by the public wanting to travel straight from A to B. On the other hand it is quite well known that under the guise of the so-called "corridor restrictions" permits over longer routes which cover shorter notified routes "overlapping" parts of notified routes are more often than not misutilised since it is next nigh impossible to keep a proper check at every point of the route. It is also well known that often times permits for plying stage carriages from a point a short distance beyond another terminus of a notified route have been applied for and granted subject to the so called "corridor restrictions" which are but mere ruses or traps to obtain permits and to frustrate the scheme. If indeed there is any need for protecting the travelling public from inconvenience as suggested by the learned counsel we have no doubt that the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public.

The proviso to Sub-section (3) of section 68-D quoted above, on which reliance has been placed on behalf of the petitioners also, in our opinion, does not advance their case for seeking grant of fresh permit. The Proviso, properly construed, prohibits approval of any scheme relating to any interstate route without previous approval of the Central Government. What is worth noticing in the language of the Proviso is that it speaks of scheme for interstate route and not intra-state scheme which overlaps a portion of an interstatal route. For an intrastate scheme for nationalization which overlaps any inter-state route previous approval of Central Government may not be found necessary under

Proviso to Sub-section (2) of section 68-D of the Act of 1939. We, therefore, find no merit in the contention advanced on behalf of the petitioner that since after the order of the Special Secretary (Home), in the list of cancelled permits as shown in the proposed scheme all interstatel permits were excluded the nationalized scheme did not prohibit operation on overlapping portion of interstatel route under future grant of permits on such routes. We are clearly of the view that Clause (3) of Scheme No. 30 only protects existing operators under existing permits issued under reciprocal agreement who were in operation on the date of publication of the scheme. We are fortified in taking the above view by the decisions of the Supreme Court in the cases Adarsh Travels Bus Service and M/s Shastri Brothers (supra) which are decisions binding on this Court. We do not find any scope for distinguishing the case of M/s Shastri Brothers only on the ground that the said case related to Scheme No. 40 and the case in hand and the one decided by the Division Bench in Joginder Singh (supra) relate to Scheme No. 30. As we have found and stated above, Clause (3) of Scheme No. 40 and Clause (3) are similarly worded and have same meaning and effect. The decision of M/s Shastri Brothers (supra), therefore, renders the decision of Division Bench of this Court in Joginder Singh's case as no longer a good law.

Admittedly, the petitioners in both the petitions herein were not operators under any existing permits under reciprocal agreement on the date of publication of the scheme. They have, therefore, no right to claim a fresh permission or grant under any reciprocal agreement as the same is prohibited by Clause (3) of Scheme No. 30.

Consequently, for the aforesaid reasons, we uphold the impugned order of the State Transport Appellate Tribunal and dismiss the writ petitions. The reference of the learned Single Judge is answered accordingly and the writ petitions are dismissed, but in the circumstances, without any order as to costs.