
(1978) 05 AHC CK 0087

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 1666 and 2649 of 1974

Nand Kishore and Others

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 24-05-1978

Acts Referred:

Motor Vehicles Act, 1939 — Section 64, 64(1), 64(2), 64(3), 68F

Citation : AIR 1979 All 83

Hon'ble Judges : V.N. Misra, J;M.N. Shukla, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

M.N. Shukla, J.—These two connected Writ Petitions arise out of the order of the State Transport Appellate Tribunal, U, P. Lucknow dated 14th Sept. 1973.

2. The material facts of the case are that applications for grant of permits were invited for three vacancies in the route known as Bulandshahr-Bhon-Bahadurnagar route. The Regional Transport Authority in its meeting held on 12-3-1962 granted one permit to the petitioner viz. Messrs Modern Transport Co-operative Society Ltd. Bulandshahr (hereinafter referred to as the society) and two to others. The applications of respondents Nos. 3 and 4, namely, Nand Kishore and Munshi Lal Sharma respectively, who had made a joint application, was however, rejected. Against the grant of permit to the petitioner and to others (with whom we are not concerned in this case) respondents 3 and 4 filed an appeal, which came up for hearing on 22-8-1964 before the State Transport Appellate Tribunal, which cancelled the permit of the petitioner and granted a permit to respondents 3, 4 jointly on the said route. Against the said order of grant of permit the petitioner filed a writ petition in this Court, which was eventually allowed by Broome, J. on 16th Sept. 1969 and the order of the State Transport Appellate Tribunal was quashed. Respondents 3 and 4 preferred a special appeal against the order of the learned single Judge. The special appeal

Bench by its judgment dated 29-1-1972 refused to set aside the order of the learned single Judge in so far as it cancelled the order of the State Transport Appellate Tribunal dated 22nd Aug. 1964, but it issued a direction that the appeal should be re-heard by the State Transport Appellate Tribunal. Before the appeal could be actually heard a scheme u/s 68-C of the Motor Vehicles Act (hereinafter referred to as the Act) was framed for the said route and the scheme is still pending disposal before the State Government. There is one very important fact which must be mentioned at this stage, namely, that the State Transport Undertaking also applied for grant of temporary permit on these vacancies and the strength having been augmented in the meantime, the Regional Transport Authority granted four temporary permits to the State Transport Undertaking u/s 68-F (1-A) of the Act on the said route. When the appeals preferred by respondents 3 and 4 came up for hearing before the State Transport Appellate Tribunal it was of the view that the appeals had become infructuous and so it dismissed the same, but it directed that one temporary permit u/s 88-P (1-C) could be issued in favour of respondent No. 4. Accordingly, one joint permit in favour of respondents 3 and 4 was issued by the order of the Tribunal dated 14th Sept. 1973. It is this order which has been impugned in these writ petitions. The contention of the petitioner, M/s Modern Transport Co-operative Society, Bulandshahr in Writ No. 1666 of 1974 is that no such temporary permit could be granted by the Tribunal, whereas the contention of the petitioner in Writ No. 2649 of 1974 is that not only was the Tribunal right in granting temporary permit to them but it erred in refusing to grant them permanent permits as prayed for by them.

3. The decision in these writ petitions would largely turn on the effect of the provisions of the Motor Vehicles (Amendment) Act, 1969 (Act. 56 of 1969), which made material alterations and additions in the Motor Vehicles Act. In the instant case we are particularly concerned with the amendments incorporated in Sections 64 and 68-F. While the latter provision deals with the issue of permits to the State Transport Undertakings, the former relates to the right and forum of appeals. It is mainly in these two matters that the amending Act impinges on the rights of the parties which are in controversy in the present case. One of the effects of the new provisions was a change in the forum of appeal. Section 64 originally stood as follows:--

"64, Appeals -- Any person--(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard." After amendment Section 64 reads as follows:--

"64. Appeals-- (1) Any person--(a) aggrieved by the refusal of the State or Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or may, within the prescribed time and in the

prescribed manner, appeal to the State Transport Appellate Tribunal constituted under Sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

(2) The State Government shall constitute for the State a State Transport Appellate Tribunal which shall consist of a whole-time judicial Officer not below the rank of a District Judge: Provided that in relation to a Union territory the Tribunal may consist of the Administrator of that territory or any officer who has judicial experience.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), every appeal pending at the commencement of the Motor Vehicles (Amendment) Act, 1969 (56 of 1969) shall be proceeded with and disposed of as if that Act had not been passed....."

4. It would be evident from the provisions extracted above that in the matter of appeals the Act has introduced two important changes. Firstly, it has created a new tribunal known as the State Transport Appellate Tribunal which would consist of a whole time Judicial Officer not below the rank of the District Judge. Formerly, appeals lay to the "Prescribed Authority," prescribed by the U. P. Motor Vehicles Rules and the authority then prescribed was the Board of Revenue. As a consequence of the creation of this new body appeals now lay to this new appellate authority and not to the Prescribed Authority, as it formerly stood under the unamended Act. This alteration had a direct bearing on the point which arises for determination in the present case and this would have a far reaching effect on a large number of similar cases.

5. There is however, another important change which has been effected in Section 68-F of the Act. The section prior to the amendment made in 1969, ran as follows :--

"68-F. Issue of permits to State Transport Undertakings-- (1) Where, in pursuance of an approved scheme, any State Transport Undertaking applies in the manner specified in Chapter IV for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the Regional Transport Authority shall issue such permit to the State Transport Undertaking, notwithstanding anything to the contrary contained in Chap. IV.

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority may, by order, -

(a) refuse to entertain any application for the renewal of any other permit;

(b) cancel any existing permit;

(c) modify the terms of any existing permit so as to-

(i) render the permit ineffective beyond a specified date;

- (ii) reduce the number of vehicles authorised to be used under the permit;
- (iii) curtail the area of route covered by the permit in so far as such permit relates to the notified area or notified route.

(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the Regional Transport Authority under Sub-section (1) or Sub-section (2)." After amendment Section 68-F reads.-

68-F. Issue of permit to State Transport Undertakings-- (1) Where, in pursuance of an approved scheme, any State Transport Undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State Transport Undertaking, notwithstanding anything to the contrary contained in Chap. IV.

(1-A) Where any scheme has been published by a State Transport Undertaking u/s 68-C that Undertaking may apply for a temporary permit, in respect of any area or route or portion thereof specified in the said scheme for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme, and where such application is made, the State Transport Authority, or the Regional Transport Authority, as the case may be, shall, if it is satisfied that it is necessary to increase, in the public interest, the number of vehicles operating in such area or route or portion thereof, issue the temporary permit prayed for by the State Transport Undertaking.

(1-B) A temporary permit issued in pursuance of the provisions of Sub-section (1-A) shall be effective,--

(i) if the scheme is published under Sub-section (3) of Section 68-D, until the grant of the permit to the State Transport Undertaking under Sub-section (1), or

(ii) if the scheme is not published under Sub-section (3) of Section 68-D, until the expiration of one week from the date on which the order under Sub-section (2) of Section 68-D is made.

(1-C) If no application for a temporary permit is made under Sub-section (1-A), the State Transport Authority or the Regional Transport Authority, as the case may be, may grant, subject to such conditions as it may think fit, temporary permit to any person in respect of the area or route or portion thereof specified in the scheme and the permit so granted shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route or portion thereof.

(1-D) Save as otherwise provided in Sub-section (1-A) or Sub-section (1-C), no permit shall be granted or renewed during the period intervening between the

date of publication u/s 68-C of any scheme and the date of publication of the approved or modified scheme, in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme:

Provided that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published u/s 68-C expires after such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under Sub-section (3) of Section 68-D. So far as the question of grant of permit -- temporary or permanent -- is concerned, it would be governed entirely by the provisions of Section 68-F. The most notable changes which have been introduced in Section 68-F are the addition of Sub-sections (1-A), (1-B), (1-C) and (1-D). I had occasion as a member of another Bench to examine the provisions of the amended Section 68-F and in the course of the judgment in that case (Civil Misc. Writ No. 1285 of 1976, decided on 4-5-1978) the following observations were made:--

"..... The gist of Sub-section (1-A) is that when the strength is increased by the State Transport Authority or the Regional Transport Authority in the public interest of the number of vehicles operating in an area or line coming within the purview of Section 68-C of the Act and the State Transport Undertaking applies for temporary permits the Transport Authority is bound to issue temporary permits prayed for by the State Transport Authority. The provisions of Sub-section (1-A) of Section 68-F of the Act are exhaustive with regard to a case where temporary permits have been applied for by the State Transport Authority. In such eventuality the temporary permits can be issued to no other applicants than "the State Transport Undertaking. The scheme of the Legislature seems to be that this whole matter is considered in two distinct categories;

1. The case where the State Transport Undertaking has applied for a temporary permit.
2. The case where the State Transport Undertaking has not applied for the issue of any such temporary permit.

Sub-section (1-C) of Section 68-F of the Act relates to the second category where no application for temporary permit is made by the State Transport Undertaking. In such case it is open to the Transport Authority concerned to grant temporary permits to other applicants as well. The language of this sub-section is, however, categorical and it leaves no room for doubt that temporary permits to other applicants can be granted only where no application for temporary permits is made by the State Transport Undertaking. There appears to be no intention to permit any over-lapping between these two categories governed by two distinct provisions (1-A) and (1-C) respectively. Ostensibly the two provisions taken together might not appear to be mutually exclusive and may also appear sometimes to result in actual injustice and there might have

been cases in which great delay may be caused with the result that the provisions may be abused. Nevertheless the language of the statute is very clear and the two classes of cases are divided into two separate watertight compartments. In the view that we are taking and the construction that we are placing upon these provisions of law we are fortified by the Division Bench decision of this Court referred to above...."

To the same effect is the decision of another Division Bench in Sureshwar Prasad Khanna v. Regional Transport Authority, Bareilly 1974 All LJ 69 wherein it was ruled that after a scheme had been published u/s 68-C, a permit could be granted to a private operator only under Sub-section (1-C), that under Sub-section (1-C) a permit could be granted to a private operator if no application for a temporary permit was made by the State Transport Undertaking under Sub-section (1-A) and that a temporary permit granted in such a situation ceased to be effective on the issue of a permit to the State Transport Undertaking. The law, therefore, seems to be well settled that it is open to the State Transport Authority to grant a temporary permit to a private applicant only where no such application for permit has been made by the State Transport Undertaking. The grant of a permanent permit appears to be completely prohibited, such prohibition is implicit in the section. So, it is only a temporary permit which can be issued under the provisions of Section 68-F, but the grant of such temporary permit to an applicant is also confined to the solitary case in which no application for a permit is made under Sub-section (1-A) of Section 68F by the State Transport Undertaking. Sub-section (1-A) of Section 68-F is unambiguous and it imposes a prohibition on granting a permit to a private applicant during the period intervening between the date of publication and finalisation of a scheme u/s 68-C. It is a prohibition which admits of only one exception enumerated in the section, namely, where the provisions of Sub-section (1-C) are applicable. The combined effect of the provisions of Sub-sections (1-A), (1-C) and (1-D) is that it is only where no application for temporary permit is made by the State Transport Undertaking that a temporary permit may be granted to private applicants.

6. If the above rule of law is applied to the facts of the present case it follows that no temporary permit could be issued to respondents 3 and 4 and the petitioner's contention in Writ No. 1666 of 1974 appears to be correct. The argument of the respondents in this writ petition and the petitioners in the connected writ petition, however, is that the real question which arises for decision is whether at the appellate stage the appellate authority acted rightly in refusing to grant permanent permits to the petitioners in the connected writ petition and in granting temporary permit to the respondents 3 and 4 in the present petition. "The respondent placed reliance mainly on the non obstinate Clause in Section 64 (3) of the Act, which we have already reproduced. Sri R.A. Sharma vehemently argued that the words of Sub-section (3) were categorical and the mandate of that provision was that every appeal pending at the commencement of the amending Act of 1969 "shall be proceeded with and disposed of as if that Act had not been passed." It is not disputed that the

appeals of respondents 3 and 4 were pending at the time of the commencement of Act 56 of 1969. If the said Act did not apply to the appeals pending at the commencement thereof, naturally Sub-sections (1-A), (1-C) and (1-D) etc. of the present Section 68-F would be excluded and then there would be no bar to the issue of permits to other applicants, even though the State Transport Undertaking may have applied for a permit. It is only when the amended provisions are attracted that the grant of temporary permit to other applicants is forbidden in a case where the Corporation has also applied for a permit.

7. We have, therefore, to examine the question as to whether the words occurring in Sub-section (3) of Section 64 "as if that Act had not been passed" have really the effect of excluding entirely the provisions of the Amending Act, including Sub-sections (1-A), (1-C), (1-D), etc. of Section 68-F. It is quite plain that a non obstinate clause restricts or controls the enacting provisions of a statute. The latter yields place to the former, but it is a matter of some nicety to separate the non obstinate clause from the enacting provisions. Though it is not safe to generalise, yet by and large it is found that the enacting provision is that which is immediately preceded by the word "notwithstanding". In most of the statutes the two provisions are found standing in juxtaposition and the reason is obvious. A non-obstinate clause, which is introduced for the purpose of making the provisions of a statute inapplicable, is expressed by the use of the key word "notwithstanding". So, what is sought to be excluded must Ordinarily follow "notwithstanding". That serves the purpose of defining or circumscribing precisely the provisions which are negatived. The ambit of the word "notwithstanding," or, in other words, of the non obstinate clause must remain confined to the provisions specified thereafter and should not be enlarged. The construction of Sub-section (3) of Section 64 follows the normal pattern of a non obstinate clause. The word "notwithstanding*" is followed by the words "anything contained in Sub-section (1) or Sub-section (2)"; and the latter provisions alone will be controlled by "notwithstanding." Therefore, for construing the effect of the non obstinate clause in Sub-section (3) of Section 64 the enacting provisions are only Sub-sections (1) and (2) of Section 64 as amended by Act 56 of 1969 and not the whole Act 56 of 1969. What do these provisions enact? Sub-section (2) creates a forum viz. a State Transport Appellate Tribunal for disposing of appeals. Sub-section (1) provides that any person aggrieved by any of the orders enumerated therein may within the prescribed time appeal to such Tribunal. 8. It is, however, the general words "shall be proceeded with and disposed of as if that Act. had not been passed" occurring in the concluding part of Sub-section (3) of Section 64 which are likely to deceive the unwary reader. As we have already pointed out, they are not the enacting provisions mentioned in the sub-section, they are really an integral part of the non obstinate clause itself commencing with "notwithstanding." Between "notwithstanding" and the rest of the non obstinate clause have been dovetailed the enacting provisions of the statute. The misgiving likely to be caused by the use of the very wide language employed in the sub-section "as if that Act had not been passed" etc. would be completely

mitigated if we comprehend the object of introducing those words. They were employed for the purpose of remedying a specific evil, which would be clear if we compare the language of the amended Section 64 with the words used in the section prior to its amendment by Act 56 of 1969. Earlier we have noted that the unamended Section 64 provided that an appeal would lie to the Prescribed Authority, which was the Board of Revenue, which alone was under those provisions competent to hear and dispose of the appeal after giving the appellant "and the original authority an opportunity of being heard." It appears that the general phraseology used in the latter part of Sub-section (3) of Section 64 was intended to get over the difficulty which was caused by the amendment made in Section 64 by Act 56 of 1969. If Sub-section (3) had not been added in its present form, the result would have been that the appeals already pending at the time of the commencement of the amending Act before the Board of Revenue would, in the first place, have become incompetent, and, secondly, the Board would not possess the jurisdiction to dispose of those appeals for the simple reason that now the jurisdiction to entertain such appeals and decide them is conferred on a new authority which has been created under the Act, namely, the State Transport Appellate Tribunal. In order to overcome this difficulty the Legislature had to provide that such appeals shall be proceeded with and disposed of as if the Amending Act had not been passed. When a provision is intended to remedy some existing mischief, such construction must be preferred as would render the remedy effectual, for we must always construe an Act so as to suppress the mischief and advance the remedy intended by the statute.

9. Moreover, if the interpretation suggested by the learned counsel for the petitioner were to be accepted, the opening words of Sub-section (3) of Section 64 viz. "anything contained in Sub-section (1) or Sub-section (2)" would become redundant. It is well accepted that in construing the provisions of a statute, Courts should be slow to adopt a construction which tends to make any part of the statute a surplusage. We must, therefore, reject such interpretation. Thus, when the object of the legislature in using these words, is appreciated, it would become apparent that the concluding part of Sub-section (3) of Section 64, is not the enacting provision sought to be controlled or restricted with the aid of the non obstinate clause.

10. Sri R.A. Sharma relied on a number of authorities in support of his contention that the enacting clause in Sub-section (3) of Section 64 consists of the words occurring at the end of Sub-section (3). In our opinion, none of these cases can be of any assistance to him. He referred us to *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, in which their Lordships of the Supreme Court interpreted Section 2 of the Supreme Court Advocates (Practice in High Courts) Act, 1951, which provides:--

"notwithstanding anything contained in the Indian Bar Councils Act, 1926, or in any other law regulating the conditions subject to which a person not entered in the roll of advocates of a High Court may be permitted to practice in that High

Court every Advocate of the Supreme Court shall be entitled as of right to practice in any High Court whether or not he is an Advocate of that High Court."

The decision of the Supreme Court in substance was that even though there may be anything contrary in the Indian Bar Councils Act, 1926 yet by virtue of the provisions of the Supreme Court Advocates (Practice in High Courts) Act, 1951, an Advocate enrolled under the new Act was entitled to practise in the various High Courts, Naturally, therefore, the enacting provisions of the Act, according to the above decision, were those contained in the Indian Bar Councils Act, 1926, or any other law regulating the conditions subject to which a person not entered in the roll of a High Court may be permitted to practise in that High Court. This case also illustrates the position that we have noticed earlier, viz. that mostly the non obstinate clause governs and controls the enacting provisions which immediately follow.

11. The learned counsel then referred to the *The Dominion of India and Another Vs. Shrinbai A. Irani and Another*, in which Section 3 of Ordinance No. 19 of 1946 was being interpreted which was to the following effect:--

"Notwithstanding the expiration of the Defence of India Act, 1939 (35 of 1939), and the rules made thereunder, all requisitioned lands shall continue to be subject to requisition until the expiry of this ordinance and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient."

It was held that the effect of the non obstinate clause was to exclude completely the operation of the Ordinance. That decision was given on the particular words of the Ordinance and cannot be of any assistance to the learned counsel for the petitioner in the matter before us. The language of Section 3 of the Ordinance in that case was very clear, it provided that the entire provisions of the Ordinance relating to requisitioned lands stood suspended by virtue of the non obstinate clause in the Ordinance. Where no such express language is used and, on the other hand, the non-obstinate clause is followed by enumeration of certain specific provisions, it cannot be contended with any force that the non obstinate clause governs the entire Act i. e. sets at naught the provisions of the whole Act. Therefore, so far as the language of Sub-section (3) of Section 64 of the Act is concerned, the authorities relied upon by the learned counsel for the petitioner are not relevant.

12. The last authority on which great reliance has been placed on behalf of the petitioner is a Division Bench decision of the Madhya Pradesh High Court in *Madhya Pradesh State Road Transport Corporation Vs. The State Transport Appellate Authority, Madhya Pradesh, Gwalior and Others*, . In that case the provisions of Section 68-F of the Motor Vehicles Act were construed and it was observed in para. 2 of the judgment:

"It is true that the non-obstinate clause is not harmonious with the enacting clause, because the former is restricted to Sub-sections (1) and (2) of Section

64, but the latter takes within its sweep the entire amending Act. The rule of construction in such cases is that if the enacting clause is plain and unambiguous, it must be given its full effect and its meaning and application cannot be cut down by reference to the non-obstinate clause; the enacting clause must, where it is clear, be taken to control the non obstinate clause,"

With great respect, we are unable to agree with the view expressed in the above case. As we have already observed, the enacting provisions of Section 64 are constituted by Sub-sections (1) and (2) thereof and not by the concluding words of Sub-section (3) of Section 64. This interpretation alone, in our humble opinion, would be consistent with the object of the Act in 1969 in amending the provisions of the parent Act. Thus, so far as the language of Sub-section (3) of Section 64 of the Act is concerned, none of the authorities cited on behalf of the petitioner has any relevance.

13. The construction which we are inclined to adopt appears to be in conformity with another important aspect of the case. That relates to the jurisdiction of the appellate authority to take into account the law as amended during the pendency of the appeal. The law seems to be that it is the duty of the appellate court to take into consideration the law as amended up to the time when appeals come up for disposal and if that be so, it was the duty of the State Transport Appellate Tribunal in the instant case to decide the appeal in accordance with the amended law and according to the amended law the Transport Authority was precluded from granting temporary permit to any private applicant in a case where the State Transport Undertaking had applied for a permit. We have already referred to certain decisions of this Court in which it has been clearly held that under the amended provision of Section 68-F no such permit could be granted to a private applicant, unless the State Transport Undertaking had not made any application for such permit. The proposition that the appellate authority should decide and dispose of the appeal in accordance with the amended law is fortified by ample authority. We need refer to only a few of them. In AIR 1941 5 (Federal Court) it was held that the appellate Court must apply the amended law. Varadachariar J. observed:--

"..... It is also on the theory of an appeal being in the nature of a rehearing that the Courts in this Country have in numerous cases recognised that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against."

14. In *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, it was held that "it is well settled that an appellate Court is entitled to take into consideration any change in the law."

15. It would be perhaps more pertinent to refer to a ruling of the Supreme Court in a case arising under the Motor Vehicles Act itself. The matter came up before that Court, though indirectly, in *Ali Ahmad and Sons, Bus Operators, Kothi Road,*

Rewa Vs. Ramgopal Satya Narain and Others, by way of a SLP from the order of the High Court. The appellant in that case was a firm which held a stage carriage permit on a certain route. The appellant had applied to the Regional Transport Authority for extension of the permit upto a longer station. The application was allowed and the appeal filed against the order was dismissed, but the extension of the permit upto a longer distance was quashed by the High Court. It was from the order of the High Court that appeal by special leave was filed. A preliminary objection was raised about the maintainability of the appeal. It was submitted that the Madhya Pradesh State Road Transport Corporation had published a draft scheme under which the route in question had been proposed to be nationalised and that u/s 68-F (1-D) of the Motor Vehicles Act no permit could be granted or renewed during the period intervening between the date of the publication u/s 68-C of any scheme and the date of publication of the approved scheme in favour of any person in relation to a route covered by the scheme. In that connection, Section 68-F (1-D) was interpreted and Mathew, J. speaking for the Court observed at p. 1876):--

"..... So, even if this Court were to allow the appeal, it cannot grant or direct the grant of an extension of the permit from Shahdol to Rewa. Therefore, this appeal has become infructuous and we dismiss it."

Thus it is evident that even while dealing with an appeal by special leave the Supreme Court applied the provisions of Section 68-F (1-D) and held that these amended provisions were decisive of the matter and the court was precluded from granting any permit, even if the appeal was allowed. This leaves no room for doubt that the mandate embodied in Section 68-F (1-D) is complete and comprehensive and barring the exception provided for in Sub-section (1-C) no permit can be granted even by the appellate or superior authority. Therefore, it seems logical and consistent that the appellate authority must also be considered to be bound by the amended law as it stands on the date of the disposal of the appeal. Thus, this aspect of the case, namely, the manner in which the appellate authority has to proceed to dispose of the appeals has also an important bearing on the interpretation of Sub-section (3) of Section 64 and it supports the construction that we are inclined to place upon this provision. Keeping in mind the scheme of the Act and the language of Sub-section (3) of Section 64 we are of the opinion that the non obstinate clause therein excludes only Sub-sections (1) and (2) of Section 64 and not the entire provisions of the Amending Act. The contention of the petitioners, therefore, that the pending appeals should have been disposed of as if the Amending Act had not been passed at all must be repelled. In that view of the matter the impugned order of the State Transport Appellate Tribunal dated 14th Sept. 1973 is not vitiated by any apparent error of law in so far as it rejected the application of respondents Nos. 3 and 4 for grant of permanent permit but it is apparently erroneous in so far as it granted a temporary permit to respondents 3 and 4.

16. We, therefore, quash the aforesaid order in so far as it grants a temporary

permit to respondents 3 and 4. In the result, Writ Petition No. 1666 of 1974 is allowed, but Writ Petition No. 2649 of 1974 is dismissed. No order is made as to costs.