
(2002) 09 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3985 of 2002

Narmada Travels Bus Service, Shahdol

APPELLANT

Vs

State Transport Appellate Tribunal, M.P. and Others

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 100(4)

Citation : (2002) 09 MP CK 0005

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : B.K. Rawat, for the Appellant; A.G. Dhande with P.K. Mishra, for M.P.S.R.T.C, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Petitioner in this writ petition seeks the quashment of the order P/10 passed by the State Transport Appellate Tribunal (for short "STAT") setting aside the grant of permit 66/91 and its renewal made by State Transport Authority (hereinafter referred to as "STA") as per order P/9 dated 4-2-2002 for the period 15-11-2001 to 14-11-2006 on the ground that route Shahdol to Allahabad is covered under the scheme 24, 50 and 50-M, thus, M.P. State Road Transport Corporation (for brevity "MPSRTC") has the exclusive right to ply on the route Shahdol to Allahabad.

2. Petitioner submits that on 28-9-1991 petitioner was granted interstate permit by the STA on the route Shahdol to Allahabad vide order P/1 dated 28-9-1991 for a period of five years. Under the terms of reciprocal agreement between the State of M.P. and Uttar Pradesh four single trips have been provided under Item No. 79 on the route Shahdol to Allahabad; under the terms of reciprocal agreement dated 20th September, 1980 two single trip permits were granted to the petitioner as against the vacancy of four trips. Reciprocal agreement is P/2. Two regular stage carriage permits bearing No. 445/STA/Stage/97 and 446/STA/Stage/97 were issued valid for the period 15-11-1991 to 14-11-1996. The permit

was renewed with effect from 15-11-1996 to 14-11-2001 and thereafter permit has further been renewed by STA vide order dated 4-2-2002 for the period 15-11-2001 to 14-11-2006. Petitioner submits that interstate permits P/3 and P/4 have been duly countersigned by the STA, Lucknow. Initially the permit No. was 66/91; under new Motor Vehicle Rules, it was renumbered as 445/97 and 446/97.

3. Petitioner further submits that against the initial grant MPSRTC had filed writ petition No. 2150/1991 before the Gwalior Bench of this Court which was transferred to the Main Seat and renumbered as WP 1190/92. Writ Petition 1190/92 was dismissed as per order P/6 dated 23-1-1998; perusal of the order P/6 indicates that the period of permit expired on 14-11-1996 was the objection raised by the petitioner as such the writ petition was dismissed as infructuous. Against the grant of renewal on 18-2-1997, MPSRTC preferred an appeal before the STAT; the appeal was partly allowed; renewal was upheld and application of MPSRTC was directed to be considered on merit. Against the order P/7 dated 3-12-1998 passed by the STAT, MPSRTC preferred Writ Petition No. 60/99; petition was dismissed on the technical ground of non-compliance of the Court order dated 28-10-1999 and was not adjudicated on merit. The period of renewal granted as per P/7 from 15-11-1996 expired on 14-11-2001, hence the petitioner again applied for renewal to the STA; the renewal was objected to by MPSRTC and Sri Dushyant Singh. The STA felt bound by the previous order P/7 which was passed by the STAT at the time of first renewal and STA ordered the renewal of the permits for the period 15-11-2001 to 14-11-2006 with the usual conditions. The prayer made by the MPSRTC for grant of permits was not allowed by the STA.

4. An appeal 67/2002 was preferred by MPSRTC before the STAT and revision 82/2002 against the order P/9 by which the renewal was granted to the petitioner till 14-11-2006 and application of MPSRTC for grant of permit was dismissed. The learned STAT as per order P/10 dated 19-7-2002 has allowed the appeal and revision and has ordered cancellation of the permit 66/91 and the order of renewal of permits of petitioner as per order P/9 passed by the STA; the application of MPSRTC for grant of permit has been remitted back for reconsideration to the STA.

5. Petitioner assails the order P/10 passed by the STAT on the ground that interstate permit was rightly granted to the petitioner as per reciprocal agreement between the State of M.P. and Uttar Pradesh. Once permit has been granted, it cannot be declared illegal or without jurisdiction for the reason that petitioner was not an existing operator on the date of the scheme inasmuch as the petitioner's birth was subsequent to the approval of the scheme. If the permits have not been granted before the approval of the scheme, it is not the mistake or fault of the petitioner. Thus, the order P/10 passed by STAT be quashed.

6. Respondent/MPSRTC in its return contends that material facts have been

suppressed in the writ petition; the grant of permit has not been disputed. There is another reciprocal agreement dated 30-5-1994 which is applicable with effect from 1-6-1994; petitioner has based his case on earlier reciprocal agreement. Route is covered by Scheme 24, 50 and 50-M. There is no error in the order passed by the appellate authority. The route is reserved for MPSRTC; petitioner could not be granted renewal on the route; MPSRTC's application was not considered by the STA. Thus, the matter has been remitted back by the appellate authority for consideration of the MPSRTC's application. The scheme No. 50 is from Shahdol to Rewa modified scheme is 50M which covers Shahdol to Rewa route, and scheme No. 24 is from Jabalpur-Rewa-Allahabad;

7. A rejoinder has been filed by the petitioner that renewal can be rejected under sub-section (4) of section 81 only on the grounds mentioned in the provision. None of the ground for refusal of renewal is available. Against renewal of permit a revision was preferred and an appeal against rejection of their application by MPSRTC; while deciding the revision against renewal STAT committed an error in overlooking the order P/6 passed by this Court dismissing the writ petition No. 1190/92. STAT has not considered the findings recorded by it in the order P/7 dated 3-12-1998 passed in appeal No. 163/97 in which the STAT itself held that there is no bar to grant permit on the route in question. Petitioner further submits that scheme 50 was approved on 7-3-1967 and was modified by scheme No. 50-M which was approved on 6-4-1979 vide order of the Special Secretary. In the order RJ/1 of Special Secretary by which scheme 50-M has been approved. The order RJ-1 by which scheme 50-M has been approved on 6-4-1979. the route Shahdol to Allahabad has been excluded with the direction to the respondent No. 3 to frame fresh scheme to cover the route Shahdol to Allahabad. Thereafter another scheme No. 85 had been proposed by MPSRTC as contained in Annexure RJ/2 to the rejoinder. In this proposed scheme this route Shahdol to Allahabad had been included for exclusive plying of the MPSRTC, but this scheme has never been approved by the Special Secretary and stands cancelled because of lapse of time by virtue of provision contained in sub-section (4) of section 100 of Motor Vehicles Act, 1988. The Central Government has not approved the interstate route as per scheme 85 Shahdol to Allahabad under sub-section (3) of section 100 of the Motor Vehicles Act, 1988. After lapse of scheme 85, there is no impediment for grant of interstate permit on the route Shahdol to Allahabad to the extent vacancies available as per reciprocal agreement dated 16-9-1980. Approved scheme 50 has been amended by scheme 50-M and once STAT has found in order P/7 that the said three schemes do not create any bar to grant permit in question; order P/7 operates as res judicata and cannot be challenged at the time of second renewal. Against the grant, no appeal or revision was preferred. The effect of dismissal of the writ petition has also not been properly considered by the STAT. The grant could not be set aside by the STAT after ten years. The order RJ/1 of Special Secretary (Home) while approving the modified scheme 50-M passed on 6-4-1979 has not been considered by which the route in question has been excluded from the purview of

the scheme 50-M. The permit is granted u/s 72; renewal is made u/s 81; considerations for renewal are different than for grant which have been lost sight of by the STAT; temporary permit has been granted to MPSRTC but it has not been countersigned by STA, Lucknow.

8. Shri B.K. Rawat, learned Counsel for petitioner submitted that in scheme 85 there was a proposal or Shahdol-Allahabad route; that has not been culminated into the scheme. Scheme 50-M does not cover the route in question. The observations of Special Secretary (Home) in order RJ/1 is to that effect. The order P/7 passed by the STAT while granting first renewal is final, conclusive and binding between the parties; it has not been successfully challenged. The scheme has to be read with the order of the Special Secretary. Once the matter has been concluded between the parties, it operates as *res judicata*. Consideration for renewal u/s 81 are different than for grant u/s 72. Petitioner has not violated any of the condition on which renewal could be refused. The order P/10 passed by the STAT declaring the grant and renewal to be illegal is bad in law.

9. Shir A.G. Dhande, learned senior counsel for the respondent/MPSRTC submitted that the route in question is completely covered by scheme 50-M and scheme 24; the initial grant was itself invalid; MPSRTC has challenged the initial grant; writ petition was dismissed as infructuous as the period of permit was over; against the renewal order P/7 passed by the STAT also a writ petition was preferred which was not adjudicated on merits. As the route in question is covered by the scheme, even in the absence of scheme 85 which was not finalized as per proposal, the route in question is covered by Scheme 24, 50 and 50-M. His further submission is that at the time of renewal it is open to look into the fact whether route is covered by scheme and whether permit is held validly. He has also placed reliance on a full Bench decision of this Court in W.P. 330/1995, *Mujahid Faridi and another vs. State Transport Appellate Tribunal, M.P., Gwalior and others* decided on 26-10-1999 [reported in 2001(4) MPLJ (FB) 521].

10. The foremost question for consideration is whether the route Shahdol-Allahabad is covered under the scheme. Scheme 50 (P/11) was published in M.P. Gazette dated 24th February, 1967. It unequivocally declared that State Road Transport services shall be provided inter alia on Rewa-Shahdol route. Modified scheme 50-M was published in M.P. Gazette dated 1st December, 1978 u/s 68 D(3). The scheme inter alia covered Rewa-Shahdol route. Route has been reserved for State Road Transport Services. Prior to modification of scheme 50, scheme No. 24 was published in M.P. Gazette dated 6th March, 1970 (P/13) and that covered Jabalpur-Rewa-Allahabad route. The route has been reserved for State Road Transport Services. Thus, it is clear that the route Shahdol to Allahabad is covered. Scheme 50-M covers the route Rewa-Shahdol and scheme 24 covers Jabalpur-Rewa-Allahabad, thus, it is clear that the route is covered under the scheme 24 and 50 M.

11. Learned counsel for petitioner submitted that in scheme 85 there was

proposal for Shahdol-Allahabad route and the proposal was published, but scheme was not framed, thus, it should be taken that route is not covered. Submission is devoid of substance as the route in question is covered by scheme 24 and scheme 50, as modified by scheme 50-M, and this route has been covered much before the grant was initially made in favour of the petitioner for the route in question on 28th September, 1991. Learned counsel further submitted that scheme has to be read with the order of the Secretary. He has relied on a decision of Apex Court in 1994 UJSC 93; there is no quarrel with the proposition, however, the observations made by Special Secretary (Home) in the order RJ/1 while considering scheme 50M are obiter and they are not in the context of scheme 24 and cannot have the effect of touching the matter which was not for consideration while passing the order RJ/1 on 23rd November, 1978. No bonanza can be derived on the basis of observations made in para 6 of the order RJ/1 passed by the Special Secretary (Home); the observation is to the effect that inclusion of an interstate route in this scheme appears to be incongruous. I, therefore, drop the interstate route viz. Shahdol-Allahabad from the scheme. It appears that Special Secretary (Home) was not considering any other scheme but only scheme 50-M. In that context this observation has been made. However, it is clear that in the order the route notified undisputably is "Rewa-Shahdol" which is not an interstate route; in that connection observation has to be read and understood; scheme 24 has not been modified by order RJ/1 and scheme 24 did not come up for consideration while passing an order RJ/1 which covered the remaining portion of the route Jabalpur-Rewa-Allahabad which is interstate route. Thus, STAT has passed well reasoned order P/10 in accordance with law and no fault can be found in the factual and legal understanding of the matter in question. A full Bench of this Court in *Mujahid Faridi and another*, 2001(4) MPLJ 521 (FB) overruled the decision of *Joginder Singh vs. State Transport Appellate Tribunal*, 1978 MPLJ 703 : 1978 JIJ 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 full Bench of this Court referred to the decision of *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, and other decisions; this Court held that:-

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

13. We have carefully gone through the contents of Clause (3) of the Scheme read 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).

14. 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 *Jogindar 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.

15. 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.

16. In M/s Shastri Brothers (supra), reference was made and reliance was placed on the decision of Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, in which a similar claim for fresh permit on an interstatal route overlapping the portion of nationalised route was negatived. In paragraph 6 it 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 authorised 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.

18. 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 interstatat route. For an intra-state scheme for nationalisation 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 interstatat permits were excluded the nationalised scheme did not prohibit operation on overlapping portion of interstatat 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 of Adarsh Travels Bus Setyice 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 Jogindar 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.

12. Full Bench of this Court has held that Clause (3) of the Scheme No. 30 which is *pari materia* to Clause (3) of Scheme No. 24 and 50-M only protects the existing operators under any existing permits issued under reciprocal agreement who were in operation on the date of publication of the scheme. No private operator can be granted permission to ply on such routes after framing of scheme. The answer is given by the Full Bench in para 19 in Mujahid Faridi and another (supra) with respect to the validity of the permits granted after the scheme has been framed; para 19 is quoted below for ready reference:-

19. 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 permit or grant under any reciprocal agreement as the same is prohibited by Clause (3) of Scheme No. 30.

13. Learned counsel for petitioner submitted that Scheme 50M has to prevail as per the decision of the Apex Court in M/s Standard Motor Union Private Ltd. vs. The State of Kerala and others, AIR 1969 SC 273 in which it was held by their Lordships that:

Insofar as the new scheme modifies the earlier schemes, the modifications could be made u/s 68E. As the procedure laid down in sections 68C and 68D were followed and the conditions of section 68E were satisfied. Section 68E does not require that the new scheme should expressly say that it cancels or modifies the earlier schemes. On the promulgation of the new scheme the earlier schemes

stand modified by implication pro tanto.

In the instant case, the decision cited does not advance the cause of the petitioner as scheme 24 and scheme 50-M covers the route in question. Even if the modified scheme 50-M prevails over 50, no change in the situation to the betterment of the petitioner is caused.

14. It is, thus, clear that once Scheme No. 24 and 50 which modified into 50-M are there, petitioner cannot claim fresh permit or grant under any reciprocal agreement as the same is prohibited by Clause (3) of Scheme 24 and 50M. Thus, the STAT has not erred in arriving at the conclusion that the grant was itself bad in law.

15. Coming to the second submission raised by learned counsel for the petitioner that the initial grant was not challenged by MPSRTC by filing revision and the order of first renewal was challenged and order P/7 passed by the STAT has attained finality, thus, order operates as res judicata.

16. It is clear that MPSRTC had preferred a writ petition against the grant before the Gwalior Bench of this Court which was registered as MP No. 2150/91 which was transferred to the Main Seat and renumbered as WP No. 1190/92 which was dismissed as per Order "P/6" as infructuous, it cannot be said that the decision operates as res judicata. The plea of res judicata is not attracted as the W.P. No. 1190/2002 was dismissed as infructuous; that too on the objection raised by the petitioner that the period of permit had expired on 14-11-1996. Similarly against the order P/7 writ petition was preferred by MPSRTC which too was dismissed in default not on merit and the observations which were made in the order P/7 by the learned STAT are contrary to the decision of the Full Bench of this Court. Even that order cannot be said to be binding in view of the decision of the Apex Court and in any case fresh cause of action has arisen when second renewal has been sought and granted as per order P/9 passed on 4-2-2002. Thus, the invalidity of the permit has been rightly set up by the State Road Transport Corporation and, in my opinion, at the time of fresh renewal it is open to the authority renewing to look into the matter whether route in question is covered by the scheme or not. Technical plea of res judicata cannot be attracted in the instant case and the submission raised by learned counsel for the petitioner is devoid of merit.

17. Learned counsel for the petitioner has pressed into service the decision of the Apex Court in Vallapally Plantations Pvt. Ltd. Vs. State of Kerala, to contend that proceedings could not be reopened once order of Board attained finality. Subsequent change in law in view of the later decision of the High Court taking a contrary view regarding legal position cannot permit reopening of the proceedings by Board. In the instant case, facts are totally different; this Court has never adjudicated on the merits of the case, the writ petition against the grant was dismissed as having been rendered infructuous due to lapse of period of initial grant in 1996. Thus, MPSRTC cannot be denied right to challenge the

grant now in this writ petition when the renewal has been granted by the STA as per Order P/9 for the period upto 2006 which order has been rightly set aside by STAT as per Order P/10. The facts of Vallapally Plantations Pvt. Ltd. (supra) are totally different.

18. The grant of renewal is a fresh grant is a well settled proposition of law as held by the Apex Court in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., ; in para 39 the Apex Court held as under:-

39. It is settled law that grant of renewal is a fresh grant though it breaths life into the operation of the previous lease or licence granted as per existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal. The right to get renewal of a permit under the Act is not a vested right but a privilege subject to fulfilment of the conditions precedent enumerated under the Act. u/s 58 of the Repealed Act, renewal of a permit is a preferential right and refusal thereof is an exception. But the Act expresses different intention. Sections 66, 70, 71 and 80 prescribe procedure for making application and compliance of the conditions mentioned therein. Existence of the provisions of the Act consistent with the Repealed Act is a pre-condition. Grant of renewal u/s 81 is a discretion given to the authority (STA or RTA) subject to the conditions and the requirement of law. Discretion given by a statute connotes making a choice between competing considerations according to rules of reason and justice and not arbitrary or whim but legal and regular. Sections 70 and 71 read with section 81 do indicate that grant of permit or renewal thereof is not a matter of right or course. It is subject to rejection for reasons to be recorded in support thereof. Therefore, right to renewal of a permit u/s 81 is not a vested or accrued right but a privilege to get renewal according to law in operation and after compliance with the pre-conditions and abiding the law.

19. Last submission of learned counsel for petitioner is that grant itself has been set aside is of academic importance in view of decision of Gajraj Singh (supra). When the nature of grant can be looked into at the time of renewal, the order has to be construed in the manner that there is refusal to renew is on the ground that the grant was invalid and matter has been rightly remitted back for consideration of the application of the MPSRTC.

20. Resultantly, the writ petition is dismissed. Impugned order P/10 is upheld.

21. In the facts and circumstances of the case, costs on parties.