

**(1996) 04 RAJ CK 0013**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 1478 of 1992

Rajasthan State Road Transport Corporation

APPELLANT

Vs

Regional Transport Authority, Udaipur Region and Another

RESPONDENT

---

**Date of Decision :** 10-04-1996

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 217

**Citation :** (1996) 2 RLW 14 : (1996) 2 WLC 599 : (1996) 1 WLN 365

**Hon'ble Judges :** P.P. Naolekar, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## **Judgement**

P. P. Naolekar, J.—The judgment in this case shall also decide the writ petition No. 6521 of 1991 (Fakruddin v. R.T.A. Udaipur and Anr.) as the questions involved are identical.

2. The petitioner Rajasthan State Road Transport Corporation (in short, to be called "the Corporation" hereinafter) has been established and constituted under the provisions of the Road Transport Corporation Act with effect from October 01, 1964. It has been established and constituted for the purpose of providing efficient, economic, adequate and properly co-ordinated transport-services in the State of Rajasthan.

3. The Corporation has published number of schemes of total exclusion from time to time which have been approved and notified as schemes of total exclusion u/s 68-D (3) of the Motor Vehicles Act, 1939. There are 3 separate schemes viz., (i) Udaipur - Fatehnagar, (ii) Udaipur - Ajmer, and (iii) Udaipur - Badi Sadari. These are approved schemes of total exclusion and were notified in the Gazette, by the State Government. These Schemes have been saved under the provisions of Section 217 of the Motor Vehicles Act, 1988. Initially, these approved schemes were schemes of total exclusion of the private operators. Subsequently, having regard to the hardship and inconvenience caused to the travelling public on the

non-scheme routes on account of scheme routes where there was a total exclusion, the State Government issued two notifications, first on August 03, 1976 and another on April 12, 1979 modifying all the schemes of total exclusion by incorporating therein a new clause. The said notifications dated 03.08.76 and 12.04.79 read as under:

Notification dated 03.08.76:

Notwithstanding anything contained in this scheme of Nationalisation notified under subsection (3) of Section 68-D of the Motor Vehicles Act, 1939, the State Transport Authority or the Regional Transport Authority, as the case may be, may if it considers necessary in the public interest, allow to the permit holders other than the State Transport undertaking, overlapping of the notified area, route or portion thereof, which shall in no case exceed 10 Kms. with the condition that such permit holders shall not-pick up or set down passengers on such overlapped portions:

Provided that the total nationalised route shall not be less than five times the length of overlapped portions and

Provided further that there in no other route available to the private operators except the overlapped route.

Notification dated 12.04.79:

Notwithstanding anything contained in this scheme of nationalisation notified under Sub-section (3) of Section 68-D of the Motor Vehicles Act, 1939, the State Transport Authority or the Regional Transport Authority, as the case may be, may if it considers necessary in the public interest, allow to the permit holders other than the State Transport undertaking overlapping of the notified area, route or portion thereof witch shall in no case exceed 10 kms, with the condition that such permit holders shall not pick up or set down passengers on such overlapped portions:

Provided that the total nationalised route shall not be less than five times the length of overlapped portion;

Provided further that there is no other route available to the private operators except the overlapped portion.

By virtue of these notifications each scheme of the nationalised routes has been modified including the three schemes in question. It is manifest from the modification of the schemes by inclusion of the aforesaid portion in the scheme by notification dated 03.08.76 and notification dated 12.04.79 that the private operators of a non-scheme route are allowed to ply their vehicles on the portion overlapping the notified roue on the conditions that:

- i. the overlapping portion does not exceed 10 Kms;
- ii. there is no other route available to the private operators except the

overlapping portion; and,

iii. the operator shall not pick up or set down passengers on such overlapping portions.

The modified scheme thus permits non-scheme routes" permit holders to overlap on the notified route.

4. The second respondent Hem Das submitted an application before the Regional Transport Authority on 04.09. 91 for opening a new non-scheme route from Fatehnagar to Dhariavad via Changeri, Khempur, Dhardav, Vallabhnagar Station, Vallabhnagar village, Bhatevar, Navaliya, Mod, Kheroda village, Amarpura, Kundwas Chauraha, Bansra, Kedariya, Heenta, Bhinder, Motiya, Bikvaniya, Bogri-mata, Panund, Arniya, Kuntha, Lassqriya, Dhanniya Ghata, Nadakhera, Nimbari Khera, and to grant permit on the said route. By order dated 30.09.91 the Regional Transport Authority has passed the order opening the new non-scheme route. According to the petitioner the new route which has been permitted to be opened by the Regional Transport Authority for the grant of non- temporary stage-carriage permit on the Fatehnagar Dhariawad route which is 120 Kms in length, overlaps the three nationalised routes of approved and notified schemes of total exclusion in various portions as under :

(a) the portion from Vallabhnagar to Bhatevar in a length of 8 Kms which is a portion of Udaipur - Fatehnagar notified route implemented in the year 1985;

(b) the portion from Bhatevar to Navaniya Mod in a length of 5 Kms which is a portion of Udaipur - Ajmer nationalised route implemented in the year 1975;

(c) the portion from Kheroda village to Bansara in a length of 9 kms which is a portion of Udaipur - Badi Sadri notified route implemented in the year 1985; and,

(d) the portion from Bhinder Railway Station to Bhinder village in a length of 3 Kms which is again a portion of the notified Udaipur -Badi Sadri route already implemented in the year 1985.

and the overlapping on the nationalised route is 25 Kms which is not permissible under the law.

5. It is submitted by learned counsel for the petitioner that the overlapping permitted by the Regional Transport Authority by introduction of a new route is 25 Kms which is beyond the scope for which the overlapping is permissible under the approved and notified schemes and thus the Regional Transport Authority had no jurisdiction or authority to issue direction or order to open the route Fatehnagar-Dhariavad for grant of non-temporary stage- carriage permit which is in contravention of the schemes. Reliance has been placed on Ram Krishna Verma and Others Vs. State of U.P. and Others,

6. On the other hand, it has been submitted by learned counsel for the respondents that the overlapping is within the permissible limit under the scheme itself and thus the exercise of jurisdiction and authority by the Regional

Transport Authority in opening a new route is in accordance with law. The total distance under all the three schemes is 19.5 Kms. From Kheroda to Bansara the route goes via village Valla and the distance from Valla to Bansara is 7 Kms and not 9 Kms.

7. It is now well settled that the draft scheme u/s 68-C and approved u/s 68-D of Chapter IV-A of the repealed Act of 1939 (Chapter VI of the Motor Vehicles Act, 1988) is law and it has over-riding effect over Chapter IV of the repealed Act (Chapter v. of the Act of 1988) and it operates against everyone unless modified by the State. The effect of coming into force of the scheme is that it excludes private operators from the area or route or portion thereof which are covered under the scheme except to the extent permissible under the scheme itself. The right of the private operators to apply for and to obtain permit under Chapter IV of the repealed Act (Chapter v. of the Act of 1988) has been closed and prohibited. The approved scheme is a law operating against everyone and the permits can be issued only as permissible under the scheme. Thus it has to be seen that the route Fatehnagar - Dhariavad does in any way contravene the three approved and notified schemes. The question requiring consideration in this case is whether restriction imposed of maximum of 10 Kms overlapping of the nationalised route has a reference to the route on which permit is granted or the notified area/route or portion thereof which is nationalised under the scheme i. e., to take and consider each individual scheme separately for the purposes of consideration of permissible limit of overlapping or they have to be taken to be one for the purpose of consideration of the maximum limit of overlapping permissible.

8. By virtue of notifications dated 03.08.76 and 12.04.79, the new clause has become an integrated part of the each scheme which permits overlapping of the notified area, route or portion thereof which shall in no case exceed 10 Kms with the corridor condition that such permit-holders shall not pick up or set down passengers on such overlapping portions and that the overlapping should not be more than 1/5 of the total length of the nationalised route. The purpose and thrust of grant of permit on the routes under the Motor Vehicles Act is to see that more operators are granted permits. In *Mithilesh Garg, Vs. Union of India and others etc. etc.*, it has been held by the apex Court as follows :

More operators mean healthy competition and efficient transport system. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits. Restricted licensing under the old Act led to the concentration of business in the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest.

Therefore, in view of the aforesaid, the scheme has to be interpreted in such a manner that more operators shall be permitted to operate on the non-

nationalised routes rather than restricting the operations of permits on the routes and permitting the virtual continuation of the original scheme of the total exclusion. After modification, overlapping on the nationalised route upto 10 Kms has been made permissible. The consequence of such permission was that the private operators could run their vehicles on any part of the notified route upto 10 Kms while operating the route which is not nationalised route. It is pertinent to note that the overlapping on the route notified upto 10 kms is permissible under each scheme as each and every scheme was modified by incorporation of the new clause permitting overlapping upto 10 Kms on the nationalised routes. The incorporation of the notification clearly indicates that the State Transport Authority or the Regional Transport Authority, as the case maybe, can in public interest allow the permit"-holders other than the State-Transport undertaking to overlap the notified area/route or portion thereof. Overlapping upto 10 Kms is permissible under the nationalised scheme. The routes which are nationalised are permitted to be overlapped upto 10 Kms. Therefore, if a new route is opened overlapping on 3 different nationalised routes, the overlapping shall be construed to be permissible upto the extent of 10 Kms on each nationalised route.

9. The route in question according to the petitioner overlaps the nationalised routes over 25 Kms in 3 different schemes. Each scheme permits overlapping upto 10 Kms. It has not been shown by the petitioner that the overlapping is more than 10 Kms in any one of the nationalised route falling under that scheme. As the route opened by the R.T.A. overtops the nationalised routes in 3 different schemes it does not contravene the permissible limit under the schemes which thus would be to the extent of 30 Kms of 3 nationalised routes. The Regional Transport Authority was well within his right to open the new route Fatehnagar Dhariavad and to grant permit for plying vehicles over the route and permit overlapping which is less than 30 Kms.

10. For the reasons stated above, the writ petitions are dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.