

**(2009) 09 AHC CK 0051**  
**In the Allahabad High Court**

Rajendra Prasad Singhal

APPELLANT

Vs

The State Transport Appellate Tribunal and Another and State  
of U.P. and Others <BR>Vikram Singh Vs The State  
Transport Authority

RESPONDENT

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**Date of Decision :** 18-09-2009

**Acts Referred:**

COMPANIES ACT, 1956 — Section 658  
Constitution of India, 1950 — Article 14, 226  
General Clauses Act, 1897 — Section 6  
Motor Vehicles Act, 1988 — Section 217, 70, 71, 72, 76

**Citation :** (2010) 1 AWC 431

**Hon'ble Judges :** R.A. Singh, J;Ashok Bhushan, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

1. Heard Shri A.D. Saunders, appearing for the petitioners in the first two writ petitions, the Learned Standing Counsel for the State respondents and Shri S.N. Jaiswal for the respondent No. 5 in Writ Petition No. 22377 of 2009. In Writ Petition No. 29531 of 2009, Shri S.N. Jaiswal has appeared for the petitioner and Shri A.D. Saunders for the respondent No. 2 and the Learned Standing Counsel for the State respondents. Counter and rejoinder affidavits have been complete in the last two writ petitions and with the consent of the parties all the writ petitions are being heard and disposed of by this common judgment.

2. Brief facts giving rise to the above three writ petitions are:

Writ Petition No. 24006 of 1997, has been filed by the petitioner challenging the order dated 30/5/1996 passed by The State Transport Appellate Tribunal dismissing the Appeal Nos. 59 of 1987 filed by the petitioner challenging the order dated 20/21-2-1987 of the State Transport Authority, (hereinafter referred to as "STA") refusing to renew the permit of the petitioner. The Father of the petitioner Shri Raghubir Saran was holder of a permit of a Inter State Route

known as Delhi-Ghaziabad. The permit was valid up to 15/10/1985 and an application on 16/5/1985 for renewal was made before the STA. On 01/11/1985, the Father of the petitioner Shri Raghubir Saran died. After the death of the father of the petitioner Shri Raghubir Saran his two sons namely Rajendra Prasad Singhal and Shri Ramesh Chandra Singhal had applied for renewal of the permit. By means of an order dated 20/21-02-1987, the STA refused to renew the permit. Against which refusal an Appeal No. 59 of 1987, was filed by Rajendra Prasad Singhal and Ramesh Chandra Singhal. The appeal was dismissed along with two other appeals. The Appellate Authority took the view that the grounds given for refusal to renew the permit was not correct. It was held by the Appellate Authority that the refusal of the renewal of the permit on the ground that the permit holder had been convicted of an offence under the Motor Vehicles Act, 1939 was not justified. However, the Appellate Authority took the view that the permits were not capable of renewal in view of the Supreme Court judgment in Secretary, Quilon Distt. Motor Transport Workers' Co-operative Society Ltd. Vs. Regional Transport Authority and Others, The appeal was dismissed as infructuous. Against the said order of the appellate authority dated 30/5/2006, Writ Petition No. 24006/1997 was filed. This Court passed an interim order on 29/7/1997, staying the order of the Appellate Tribunal. Petitioner's case is that he had been continuing plying his vehicles during the pendency of the appeal by virtue of an order passed u/s 134 (1-A) of the Motor Vehicles Act, 1939.

3. Writ Petition No. 22377 of 2009, has been filed by Shri Rajendra Prasad Singhal challenging the order dated 19/3/2009, passed by STA by which the application of Rajendra Prasad Singhal for transfer of the permit has been rejected. By the same order temporary permit was granted to Shri Vikram Singh, i.e. respondent No. 5. The petitioner Rajendra Prasad Singhal after the death of his father on 01/11/1985, had applied for transfer of the permit. The issue of renewal/transfer of the permit was considered by the STA in its meeting on 20/21-2-1987, by which order the renewal of the permit was refused. Against which Appeal No. 59/87 was filed which was dismissed by the Appellate Tribunal on 30/5/1996 against which the Writ Petition No. 24006 of 1997 was filed. A decision was taken on 18/12/2008, by the STA that after expiry of the permit on 15/10/1985, the permit was not in existence, hence there is no justification for transfer of non-existing permit, hence subject to orders passed in writ petition No. 24006/1997, the transfer of permit is refused. By the writ petition, the petitioner has challenged the Resolution dated 18/12/2008, refusing the transfer of the permit as well as the order dated 19/3/2009, by which temporary permit was granted to Shri Vikram Singh. This Court granted interim order on 28/4/2009, staying the order dated 19/3/2009 as well as the resolution dated 18/12/2008. Writ Petition No. 29531 of 2009, has been filed by Shri Vikram Singh, challenging the order dated 26/5/2009, passed by the Secretary, State Transport Authority, by which temporary permit granted to the petitioner (Vikram Singh) was cancelled due to interim order of this Court on 28/4/2009 passed in writ petition No. 22377/2009.

4. The Writ Petition No. 24006 of 1997, is the writ petition which was filed earlier in point of time and fate of the other two writ petitions shall depend on the decision taken in this writ petition.

5. Learned Counsel for the petitioner challenging the order contended that renewal application was refused by the STA on non-existent ground. Appellate Tribunal had held in the appeal filed by the petitioner that the permit holder was never convicted of any offence, hence the basis for refusal of the renewal was knocked out. He further submits that the appellate authority wrongly relying on the judgment of the Supreme Court in Secretary, Quilon Distt. Motor Transport Workers' Cooperative Society Ltd. (supra) has held that permits were not capable for renewal after enforcement of Motor Vehicles Act, 1988.

6. Learned Counsel for the petitioner submits that the petitioner's case is fully covered by the judgment of the Supreme Court in M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others, In a subsequent judgment of the Apex Court in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., the ratio laid down by the Apex Court in Gurcharan Singh Baldev Singh (supra) was approved, thus the renewal application of the petitioner which was pending before enforcement of the Act, 1988 was required to be considered on merit and the view taken by the appellate authority that permit was not capable of renewal was erroneous.

7. Shri S.N. Jaiswal, Learned Counsel appearing for the respondents submits that Vikram Singh who has been granted temporary permit on 19/3/2009 since the permit granted to the petitioner's father expired on 15/10/1985 and no renewal having been granted the same could not have been renewed after enforcement of Act, 1988. He submits that it was open for the petitioner to apply for fresh permit in accordance with the provisions of Act, 1988. He submits that the judgment of the Apex Court in Secretary, Quilon Distt. Motor Transport Workers' Cooperative Society Ltd. (supra) is fully attracted and the permit was not capable of renewal and no error was committed in dismissal of the appeal filed by the petitioner. He further submits that the permit being non-existing the transfer of the permit has rightly been refused.

8. We have heard learned Counsel for the parties and have perused the record.

9. The main issues which have cropped up for consideration in these writ petitions are:

1. whether the permit which was granted to the petitioners' father and was valid up to 15/10/1985 was capable of renewal on the basis of renewal application dated 15/10/1985 after enforcement of 1988, Act;

2. whether the refusal to renew the permit by STA was justified;

3. whether the order of the Appellate Tribunal dated 30/5/1996 holding that the appeal had become infructuous in view of the Act, 1988 having commenced from 01/7/1989, is correct.

4. whether the Apex Court judgment in the case of Secretary, Quilon Distt. Motor Transport Workers" Cooperative Society Ltd. (supra) was attracted in the facts of the present case. Appeal No. 59/87 was filed by the petitioner against the order dated 20/21/2/1987 before the enforcement of Act, 1988. Section 89 of the Motor Vehicles Act, 1988 provides for appeal. Sub-section 3 of Section 89 which is relevant is quoted below:

89 (3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), every appeal pending at the commencement of this Act, shall continue to be proceeded with and disposed of as if this Act had not been passed.

10. Thus, the appeal which was filed under the 1939 Act had to be decided according to the provisions of Act, 1939.

11. In the present case, the application for renewal was also filed during the pendency of the Act, 1939 which was rejected on 20/21-2-1987 which order was under challenge in the appeal. Reliance by the Appellate Tribunal has been placed on the judgment of the Apex Court in Secretary, Quilon Distt. Motor Transport Workers" Cooperative Society Ltd. (supra). In the said case, permit was granted on 23/12/1987 for a period of 3 years. In the meanwhile Motor Vehicles Act, 1988 came into force w.e.f. 01/7/1989. On 04/1/1991, application was filed for renewal of the permit which was rejected holding that there is no power under the Act, 1988 to grant renewal to a permit granted under the Act, 1939. The matter was carried to State Transport Authority Tribunal which confirmed the same, the High Court by the learned Single Judge and the Division Bench upheld the rejection of renewal application. Appeal was filed in the Supreme Court and the Supreme Court in the said judgment took the view that right to renew under the Act, 1939 stands repealed with the expiry of period granted for permit and since the application was not made for fresh grant under the Act, 1988, the rejection of the renewal application is perfectly legal. Following was laid down in paragraphs 3 and 4 of the said judgment:

3. It is contended for the appellant that renewal is in continuation of the permit granted by the Regional Transport Authority on December 23, 1987. By operation of Section 217(2)(b), it is a permit granted under the old Act and continued in its operation and that, therefore, by deeming fiction the appellant is entitled to the renewal as a substantive right and it cannot be rejected on the ground that after the Act has come into force the appellant cannot seek the renewal under the Act by operation of the statutory deeming fiction granted by Clause (b) of Sub-section (2) of Section 217. We find no force in the contention. Clause (31) of s3 defines permit means permit issued by a State or Regional Transport Authority or an Authority prescribed in this behalf under this Act authorising the use of Motor Vehicle as a transport vehicle. Section 72 gives substantive right to grant the permit and Section 81 deals with duration and renewal of the permit. Sub-section (1) provides that a permit other than a temporary permit issued u/s 87 or a special permit issued under Sub-section (8) of Section 88 shall be effective without renewal for a period of five years. The proviso is not necessary.

Therefore, it is omitted. Sub-section (2) provides that a permit may be renewed on an application made not less than fifteen days before the date of expiry; Permit granted under Sub-section (1) of Section 72 of the Act shall have, therefore, the duration of five years by operation of Sub-section (1) of Section 81 and renewal shall be under Sub-section (2) in the prescribed manner. In other words, the permit granted u/s 72 may be renewed for a further period of five years and in an appropriate case it may be refused- The condition precedent is that the initial grant of permit must be under the Act.

4. Section 217(2)(b) speaks of only the existing certificate of fitness or registration or licence or permit issued or granted under the repealed enactments and notwithstanding the repeal of the Motor Vehicles Act IV of 1939, by operation of Sub-section (1) of Section 217. the permit shall continue to have effect after such commencement from 1.7.89 under the repealed Act as if that Act was in operation. Under the same conditions and for the same period, as if the Act had not been passed. In other words, notwithstanding the repeal of the Act IV of 1939, the permit issued under the repealed Act will continue to be operative for the period for which it was issued as if this Act had not been passed and the repealed Act continues to be in operation. With the expiry of the period of grant given in the permit under the repealed Act, by necessary implication the operator has to make fresh application in the prescribed manner to the Concerned Regional Transport Authority or State Transport Authority and seek a grant u/s 72. The grant of renewal is no more than a fresh permit to operate the transport service for a fresh period mentioned in (the renewed permit. Therefore, the operation of the permit issued u/s 58 of the repealed Act IV of 1939 is a terminus with the expiry of the period of the grant and the operation of the Act IV of 1939 ceases to have effect from that date. Any right to run the permit, therefore, must be under the permit granted under the Act as per its provisions. Harmonious construction of the relevant provisions would lead to the above conclusion lest any other construction would fly in the face of the express provisions of the Act. By necessary implication of Section 217(2)(b) the right to renewal under the Act IV of 1939 stands repealed with the expiry of the period of grant of the permit made under the repealed Act. Since the application was not made for fresh grant under the Act, the rejection of the renewal application under Act IV of 1939 or under the Act is perfectly legal. The High Court is right in its conclusion. The application for the renewal would not lie under the Act.

12. Another judgment which is relevant is Gurcharan Singh Baldev Singh (supra). In the said case, renewal application was filed on 18/10/1988 i.e. much before the commencement of the Act, 1988. The renewal application was allowed by the Regional Transport Authority and the application of the respondent for permit was rejected. The matter was carried to the Supreme Court. The Supreme Court considered the effect of Repeal of Act, 1939. The question was posed before the Supreme Court that whether the application for renewal ceased to exist after repeal of Act, 1939. The Apex Court after considering the provisions of 217 of the Act, 1988 as well as Section 6 of the General Clauses Act, held that renewal

application was required to be decided in accordance with law. Following was laid down in paragraph 3 of the said judgment which is quoted below:

3. Is this correct? Could the application for renewal be dismissed, only, because of enforcement of 1988 Act or the right of the appellant to get his application under the earlier Act decided in accordance with law subsisted and survived under the new Act as well. The answer shall depend on construction of Section 217, "the repealing and saving provision, in 1988 Act read with Section 6 of the General Clauses Act. Sub-section (1) of Section 217 of 1988 Act repeals 1939 Act. But Sub-section (2) saves certain notifications, rules, regulations, Acts etc. Clause (b) of Sub-section (2) reads as under:

217(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments, -

(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been passed.

13. On strength of this it was urged on behalf of the respondents that the only saving was in respect of unexpired period of a permit. However what is relevant is Sub-section (4) of Section 217 which provides as follows:

217(4) - The mention of particular matter in this Section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

14. It should be noticed that phraseology of Section 658 of the Companies Act and Sub-section (4) of Section 217 of the Motor Vehicles Act 1988 is identical. Therefore the reasoning given in the decision squarely applies for construction of Sub-section (4) of Section 217. Consequently it could not be, successfully, argued that Sub-section (2) of Section 217 is exhaustive and Sub-section (4) should be read by way of abundant caution and applied only to the field which is already covered by Sub-section (2). Section 6 of the General Clauses Act may now be extracted:

6. - Effect of repeal - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:

(a)

(b)

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;

(d)

(e)

Although the Section uses the word "may" but read with proviso it creates a preference in favour of a permit holder to claim renewal if other conditions were equal. A holder of a permit thus stands on a better footing. The preference created by Sub-section (2) of Section 58 for consideration of the permit and its grant cannot be said to be a mere inchoate right, or a right which does not exist in law. It may not be a vested right or a fundamental right but it certainly is civil right which could be enforced in a court of law and any authority acting in contravention of it can be forced to act in accordance with it. For instance, if a Regional Transport Authority under the old Act refused renewal even though the person applying for renewal was in all respects similar to other new applicants then it could be corrected either by the tribunal or by way of writ petition under Article 226. Therefore. It is a right which is enforceable in law. This right accrued to appellant as he had already applied for renewal and his application had been notified. The legal machinery was set in motion by him. He therefore had a right to get his application for renewal processed and considered in accordance with 1939 Act. It would be too artificial to say that it was not a right or it had not accrued under 1939 Act. Therefore, in our opinion, by virtue of Section 6(c) of the General Clauses Act the right of the appellant to get his application considered and decided in accordance with law was saved by Sub-section (4) of Section 217 of Motor Vehicles Act.

15. Subsequently, a Larger Bench was constituted to consider the issue as to whether there is any conflict between the ratio laid down in the cases of Gurcharan Singh Baldev Singh (supra), Secretary, Quilon Distt. Motor Transport Workers' Cooperative Society Ltd. (supra) and in Gajraj Singh etc (supra). In Gajraj Singh's case the Apex Court considered the provisions of Act, 1939, and the General Clauses Act 1897. The Apex Court in paragraph 47 had laid down that grant of renewal of stage carriage permit should necessarily be preceded by a grant of permit to stage carriage u/s 72 in accordance with the procedure laid down in Sections 70 and 71. Following was laid down in paragraph 47 which is quoted below:

47. We, therefore, hold that grant of renewal of the stage carriage permit should necessarily be preceded by a grant of a permit to stage carriage u/s 72, in accordance with the procedure laid down in sections 70 and 71. This should be made before the expiry of the period prescribed in the permit granted under the Repealed Act. Therefore, for stage carriage permits granted under Chapter IV of the Repealed Act, if they stand to expire or expired after 1 st July, 1989, without any pending application for renewal having been made u/s 58 as on 1st July, 1989, fresh applications u/s 70 should be filed and after consideration u/s 71, permits be obtained as per law u/s 72. If there is any delay to obtain permits pending consideration, by operation of Section 76, to avoid hiatus in continued operation of providing stage carriage service, Section 87 gives power to grant temporary permit without following the procedure laid down in Section 70. In

Mithilesh Garg, Vs. Union of India and others etc. etc., this Court had laid down different criteria for grant of inter-region, intra-region and inter-State permits under the Act under Sections 88 and 80 of the Act which did not find place in the Repealed Act. It was held that such distinction was neither discriminatory nor violative of Article 14 of the Constitution. Thus considered, the argument of arbitrariness, discrimination or avoidable inconvenience to the holders of permits etc. under the Repealed Act and to the travelling public would be hypothetical and without force.

16. A perusal of para 47 quoted above indicates that the said proposition was to be applied if any application for renewal is pending on the enforcement of the Act, 1988.

17. In the present case, renewal application was filed under the Act, 1939 which was rejected and the appeal was filed which was pending on 01/7/1989. The effect would be that the renewal of the application was to be considered in accordance with Act, 1939. However, in paragraphs 59 and 60, the Apex Court considered both the cases of Gurcharan Singh Baldev Singh (supra) and Secretary, Quilon Distt. Motor Transport Workers' Cooperative Society Ltd. (supra) and it was held that there is no conflict between both the cases. Thus, the view taken in Gurcharan Singh Baldev Singh's case (supra), was approved. The present is a case which is fully covered by Gurcharan Singh Baldev Singh's case (supra), since it is not a case of filing any renewal application after enforcement of Act, 1988, rather application was pending when the Act, 1988 was enforced.

18. In view of the foregoing discussions, we are of the view that the renewal application of the petitioner which was filed before the enforcement of the Act, 1988 was to be decided in accordance with law. The appellate authority relying on the judgment of the Supreme Court in Secretary, Quilon Distt. Motor Transport Workers' Cooperative Society Ltd. (supra) refused to consider the renewal application on merit, although it was observed that the reason given by the STA for refusing the renewal was erroneous. The appeal being pending was to be decided in accordance with the Act, 1939 and the appellate authority was required to consider the renewal application on merits, thus the view of the appellate authority that the appeal had become infructuous and the renewal could not be granted after enforcement of the Act, 1989 is erroneous. The appellate authority has not adverted to the ratio laid down by the Apex Court in the case of Gurcharan Singh Baldev Singh (supra). The view of the appellate authority that the appeal had become infructuous is thus not correct. The renewal of the permit was to be considered on merits and the appellate court committed error in dismissing the appeal as infructuous, whereas, the appellate court had found that the reason given by the STA for refusal of renewal was erroneous since the petitioner was not convicted of any offence under the Act, 1939.

19. In view of the aforesaid, we are of the view that the STA needs to consider

the question of renewal of the permit. The order of the appellate authority dated 30/5/1996, in so far as it dismissed the appeal No. 59/87 is set-aside and the matter is remitted to the appellate authority to consider the question of renewal of the permit of the petitioner since the application was filed before the enforcement of the Act, 1988.

20. Writ petition No. 22377/2009, challenges the decision dated 18/12/2008 of STA. A perusal of the decision indicates that the prayer of transfer of the vehicle was refused subject to decision in Writ Petition No. 24006/1997. The Writ Petition No. 24006 of 1997 being allowed by this order the order of the STA dated 18/12/2008 is to be set-aside and the question of transfer of permit in the name of the petitioner after the death of the petitioner's father needs also to be considered afresh while deciding the question of renewal as directed above.

21. The order dated 19/3/2009 granting permit to the respondent No. 2 being consequent to the resolution dated 18/12/2008 deserves to be set-aside.

22. The third writ petition i.e. Writ Petition No. 29531/2009 has been filed against the consequential order dated 26/5/2009 passed by the STA in pursuance of the interim order dated 28/4/2009 in Writ Petition No. 22377/2009. This writ petition deserves to be dismissed in view of the order which we are passing in Writ Petition No. 22377/2009.

23. In the result Writ Petition No. 24006/1997 and Writ Petition No. 22377/2009 are allowed. The matter of renewal of permit as well as the transfer of the permit is remanded to the STA to consider it on merit. Writ Petition No. 29531 of 2009 is dismissed. The parties shall bear their cost.