
(2010) 07 AHC CK 0333
In the Allahabad High Court
Case No : Writ Petition No. 2161 of 2007

Sandeep Kumar Jain & Ors.

APPELLANT

Vs

State Transport Appellate Tribunal, U.P., Lucknow.

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 100(3), 104, 72

Citation : (2010) 07 AHC CK 0333

Hon'ble Judges : Narayan Shukla, J

Final Decision : Allowed

Judgement

1. Heard Mr. R.C. Singh, learned counsel for the petitioner as well as Mr. S.K. Kalia, Senior Advocate assisted by Mr. Y.K. Mishra, learned counsel for opposite party no.3 and Mr. Mahesh Chandra, learned counsel for U.P. State Road Transport corporation.

2. The petitioners have challenged the order dated 9th March, 2006 passed by the opposite party no.2 i.e. Regional Transport Authority, Meerut (In short referred to as RTA); whereby the petitioners' regular stage carriage permits on the route MeerutMawanaBaisummaMeerapurDewalBijnore (Hereinafter referred to as route in question) were cancelled as also the order dated 5th March, 2007 passed by the opposite party no.1 i.e. State Transport Appellate Tribunal U.P. Lucknow (In short referred to as STAT) in revision upholding the order passed by the opposite party no.2.

3. Apart from route in question two other routes are relevant for consideration to decide the controversy which are known as (a) MuzaffarnagarBhopaMornaRawalighatBijnore (Hereinafter referred to as "old route") (b) MeerutMawanaBaisummaRamrajTarapurChohapurVidurkutiBijnore (hereinafter referred to as route of opposite parties)

4. Briefly the facts of the case are that in 1989 the petitioners submitted an application for grant of regular stage carriage permits on the route in question

before opposite party no.2. At that time the said regular stage carriage permits were not notified route. The opposite party no.2 by means of order dated 45th September, 1989 granted 21 regular stage carriage permits on the route in question and one more regular stage carriage permit to the petitioner no. 18 on 17.5.1990. Thus 22 regular stage carriage permits were granted to the petitioners.

5. One Mr. Om Prakash Gupta who is one of the old operator of the route "MeerutMawanaBaisummaRamrajTarapurChopurVidurkuti Bijnore" challenged the said permits through Revision nos. 5 of 1992 and 52 of 1992 before opposite party no. 1, who allowed the same by means of judgment and order dated 6.2.1993, being aggrieved with which different writ petitions were filed before this Court at Allahabad, the leading of which is writ petition no. 7008 of 1993 (Manzoor Ahmed Vs. State and others). This Court by means of judgment and order dated 18.3.1993 allowed the same and other writ petitions were allowed following the terms of judgment passed in Manzoor Ahmed's case (Supra). Thereafter challenging the order passed by this Court in those writ petitions the several Special Leave petitions were filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court by means of judgment and order dated 10.5.1993 dismissed all the Special Leave Petitions. Thus, it upheld the judgment passed in Manzoor Ahmed's case (Supra). One fact is also necessary to mention that the U.P. State Transport Corporation also filed Special Leave Petition before Hon'ble Supreme Court challenging the order passed by this Court, that too was dismissed.

6. The State Government in exercise of power provided under section 68D (3) of the Motor Vehicles Act, 1939 framed a nationalised scheme by notification dated 15th October, 1962 and notified the route i.e. MuzaffarnagarBhopaMornaRawalighat Bijnore. Again by means of subsequent notification dated 28.9.1977 it notified the earlier scheme, whereby it provided that State Transport Service shall be provided on the route Bijnore to Muzaffarnagar of Meerut Region and persons other than RTC will be permitted to provide existing transport route on the portion of MuzaffarnagarBhopaMornaRawalighatBijnore. After construction of pucca bridge over the river Ganges at Dewal barrage in 1985, the pantoon bridge constructed at Rawalighat was dismantled and the regular stage carriage permits of the said route started operating from MuzaffarnagarBhopaMornaBedasadatDewal (pucca bridge)Bijnore since 1986.

7. Keeping in view the aforesaid diversion the State Government proposed modification in the scheme and published the proposal by means of notification dated 6.3.1993 to the public. Ultimately in exercise of powers provided under Section 102 of Motor Vehicles Act, 1988 (Hereinafter referred to as the Act) it issued notification on 3.9.1994 modifying MuzaffarnagarBijnore route in the following manner.

"The approved scheme mentioned in column 3 is modified to cover the route

between Bijnore and Muzaffarnagar via JansathMeerapurDewal instead of route via Bhopa and Morna."

8. Thus the State Government notified the portion of the route "MuzaffarnagarBijnore" from Dewal to Bijnore. The effect of the notification dated 3rd September, 1994 came into consideration before Hon"ble Supreme Court in the case of U.P. State Transport Corporation Vs. Omaditya Verma and others (2005) 4 SCC 424 : (2005 All LJ 1477)

9. It appears that keeping in view the observation of Hon"ble Supreme Court made in Omaditya Verma's case (Supra), the opposite party no.2 issued show cause notice dated 26th December, 2005 to the petitioners as to why their permits should not be cancelled in view of the judgment and order of Hon"ble Supreme Court passed in Civil Appeal nos. 67166719 of 1999 (U.P.State Road Transport Corporation Vs. Omaditya Verma and others) reported in (2005) 4 Supreme Court Cases 424 : (2005 All LJ 1477)

10. It is stated that the permits granted to the petitioners stood upheld by the Hon"be Supreme Court in Manzoor Ahmed's case (Supra). Further notification dated 3.9.1994 has only prospective effect as the U.P. State Road Transport Corporation itself admitted through its counter affidavit filed in writ petitions No. 21908 of 1994 and 31725 of 1994 with modification dated 6th March, 1993 modifying the scheme MuzzaffarnagerBijnore via JansathMeerapur do not disturb the existing operators of MuzzaffarnagerBaisumma, KhatauliRamraj and MeerutBijnore route. The STAT in its judgment and order dated 16.4.2004 passed in Revision No. 61 of 2001 held that route from Meerapur to Bijnore was not a notified route at the relevant time. The RTA, Meerut had also resolved on 2.6.1995 and held that route from Meerapur to Bijnore is not a notified route. The RTA, Meerut in its order dated 8.6.1994 also held that route from Dewal to Bijnore is not a notified route and created 10 vacancies for fresh permit.

11. It is also the case of the petitioners that on 6th March, 2006 they came to know that one Mr. Hazi Mohd. Ilias (opposite party no.3) had given an application to the RTA, Meerut for cancellation of the petitioners' permits in the light of the judgment of the Hon"ble Supreme Court rendered in the case of Kanchan and others Vs. State Transport Appellate Tribunal, Lucknow and others (Civil Appeal No. 7305 of 2003). The petitioners also contested the case before RTA, Meerut stating therein that operators/petitioners, who are operating on the modified route i.e. MeerutMawanaBaisummaMeerapurDewal (pucca bridge)Bijnore, are authorised under law to operate in question, however, RTA, Meerut cancelled their permits by means of the order impugned.

12. In the counter affidavit filed on behalf of State as well as private opposite parties it has been submitted that controversy involved in the present case has already been settled by this Court in Civil Misc. Writ Petition No. 48623 of 2002 : (2004 All LJ 406) (M.K.Jain and 27 others Vs. State Transport Appellate Tribunal, Lucknow and others) along with connected Civil Misc. Writ Petition No. 48624 of

2002 (Smt. Kanchan and others Vs. State Transport Appellate Tribunal, Lucknow and others). Considering the effect of the notification dated 3rd September, 1994 this Court in M.K.Jain's case (Supra) observed that the scheme was subsequently modified by the notification dated 3rd September, 1994, which only reasserted the fact that the State Government always intended that the line of travel from Bijnore to Muzaffarnagar in Meerut Region has been the notified route. This Court further observed that modification did not notify any fresh route, but only the change in the line of travel which was by way of necessity. It could not, therefore, be treated as fresh notification but a modification on account of a necessity due to construction of Gangas Barrage at Dewal in 1985, and dismantling of pontoon bridge at Rawalighat.

13. I am informed that this Court at Allahabad by means of judgment and order dated 28.2.2008 passed in Civil Misc.Writ Petition No. 2617 of 2007 (Smt. Rajneesh Jaiswal and another Vs. State of U.P. and others) dismissed the writ petition as all the parties agree that the legal provisions and the ratio laid down in M.K.Jain Vs. State Transport Appellate Tribunal, AIR 2004 Alld. 33, against which Civil Appeal No. 7306 of 2003 was dismissed by Hon"ble Supreme Court squarely covers the issue. However, learned counsel for the petitioners submits that the petitioners' case does not cover under that very order as the petitioners were not party in the said writ petition, rather the petitioners relied upon the judgment in Manzoor Ahmed's case (Supra), the relevant para 15 is reproduced hereinunder:

"Para15 Thus the proviso to section 68E(1) could not be applicable and the existing scheme published under Sections 68D could not be modified except by following the procedure laid down in Section 68C and 68D of the Old Act and the corresponding provision of the New Act. Section 68C and 68D contain provision for objection and hearing before a route is notified for exclusive operation by State Transport Undertaking. In my opinion, in the situation like the present one this valuable right could not be taken away without following the procedure prescribed by law. If such a view is taken it would be in violation of the right guaranteed under article 19 (1) (g) of the Constitution. The petitioner has been granted permit for independent and separate route. The sharing of the small patch started in 1985, it was not subject matter of consideration when the scheme was prepared, published and approved by the State Government in 1977. Even after 1985 no effort has been made by the State Government or the U.P. State Road Transport Corporation to get the scheme modified under Section 68E. The Corporation has not even objected against the grant of permits to petitioner and others by the orders which were challenged before the Tribunal. The revision was filed by the respondent no. 3 who himself is operating stage carriage on the same route MeerutBijnore via MeerapurDewal barrage."

14. Mr. SK.Kalia, learned Senior Advocate appearing for opposite party no.3 in the light of the decision rendered in the case of Omaditya Verma (2005 All LJ 1477)(Supra) vehemently argued that the Hon"ble Supreme Court has already

settled the controversy as to what would be effect of the notification dated 3rd September, 1994. The relevant portion of the observation of the Hon"ble Supreme Court in Omaditya Verma's case (Supra) is reproduced hereinunder:

"We are regret to say that the Division Bench of the High Court has overlooked this aspect of the matter and proceeded to decide the matter on the assumption that the effect of this notification dated 3.9.1994 has already been taken into consideration. We failed to appreciate this aspect. Once the route from Muzaffarnagar to Bijnore via Jansath Meerapur and Dewal has already been notified on 391994 how can the High Court direct the appellant to grant permit on the aforesaid route. It is true that when resolution which was passed on 14/1561993, by then the notification dated 391994 had not come into operation but once the scheme under notification dated 391994 came into operation and the whole route from Muzaffarnagar to Bijnore stood notified and the route from Bijnore to Noorpur was already notified by notification dated 1221951, how can mandamus be issued by the High Court directing the authorities to grant permits to the 38 operators. In Omaditya Verma's case the route BijnoreNoorpurChandpur was notified on 12.2.1951. However, through resolution dated 14/15.6.1993, 38 regular stage carriage permits were granted on the route; namely; MuzaffarnagarChhajlet via BijnoreNoorpur including the portion of route i.e. Bijnore to Noorpur notified in 1951."

15. The order passed by the authority concerned was challenged before this court through several writ petitions. The matter was remanded to STAT for decision who allowed the appeals and set aside the order passed by STAT. The matter reached to this court. This Court observed that "It was was held by the Tribunal that original permits in pursuance of the resolution dated 14/15.6.1993 were granted via JansathMeerapur. Till that time, the notification dated 391994 had not come into force notifying the route MuzaffarnagarBijnore via JansathMeerapur as a notified route and the impugned resolution passed by the Regional Transport Authority was not hit by the notified route. But it appears that perhaps inadvertently all the parties were totally oblivious of the fact that BijnoreNoorpurChandpur route was notified under the scheme on 1221951. Therefore, no permit could have been granted covering BijnoreNoorpur route up to Chhajlet. Be that as it may, the resolution was passed by the Regional Transport Authority granting permit on the route MuzaffarnagarJansath, Meerapur, Dewal, Bijnore and Chhajlet covering Bijnore to noorpur notified route. It is notified since 1951. We fail to understand how permit could be granted by the resolution dated 14/1561993 from Muzaffarnagar to Chhajlet in face of the notified scheme of 1951 from Bijnore to Noorpur. The scheme was of total exclusion. In fact the resolution dated 14/1561993 is totally unmindful of the 1951 notification that the route from Bijnore to Noorpur which falls on the route from Muzaffarnagar to Chhajlet is notified route."

16. In the light of the aforesaid observation, the Hon"ble Supreme Court further observed that "It is true that when the resolution dated 14/15.6.1993 was

passed at that time the route from Muzzafarnagar to Bijnore via Jansath, Meerapur and Dewal was not notified but the route from Bijnore to Noorpur was already notified on 12.2.1951 and we do not understand how the Regional Transport Authority and the State Transport Authority could ignore this fact that the portion from Bijnore to Noorpur which falls on the route from Muzaffarnagar to Chhajlet was notified, permits were granted on this notified route. The Hon"ble Supreme Court further observed that it is needless to state that once it is a nationalised route, there is prohibition to permit any private vehicle to ply except by amending the scheme. It is the mandate of the law and that cannot be ignored."

17. Ultimately the Hon"ble Supreme Court concluded the matter in the following manner:

Para 10 "In view of the fact that the route from Bijnore to Noorpur was notified way back in 1951, no permit could have been issued in pursuance of the resolution dated 14/1561993 and likewise under notification dated 391994 when the route from Muzaffarnagar to Bijnore had been notified. No permit could have been granted on the aforesaid route as both schemes are of total exclusion. Therefore, in view of the law laid down by this Court in the case of Karnatak SRTC, the question no more remains res integra and it is settled principle of law that no private operators could be permitted to operate on a notified route except by modifying scheme and after making provisions for the same."

18. In order to appreciate the controversy involved in the present case it is appropriate to mention the relevant schemes framed by the State Government from time to time by means of notification dated September 28, 1977. The State Government framed scheme to the effect that the State Road Transport Services shall be provided on the route Bijnore to Muzaffarnagar route of Meerut Region. Thereafter, by means of notification dated 6th March, 1993 it proposed to modify the said scheme to cover the route between Bijnore and Muzaffarnagar via JansathMeerapur, Dewal instead of the route of BhopaMorna. Schedule of scheme as proposed is reproduced hereinunder:

SCHEDULE

SL.

No.

Notification No. and date by which the scheme was approved

Name of the approval scheme in which the modification is proposed

Modification

proposed

No. 479/XXX2B60 Dated Oct.15,1967 & No. 4517/XXX2429/86 Dt. Sept. 28, 1977

Scheme regarding Bijnore to Muzaffarnagar, route of Meerut Region

The approved scheme of Bijnore Muzaffarnagar mentioned in column No.3 covers the route between Bijnore and Muzaffarnagar via Bhopa & Morna. Now it is proposed to be notified to cover the route between Bijnore and Muzaffarnagar via Jansath Meeranpur Dewal instead of the route via Bhopa Morna.

After approval of the said scheme the route was modified accordingly and State Government published the same by means of notification dated 3rd September, 1994. The schedule of the aforesaid notification is reproduced hereinunder:

SL.

No.

Notification No. and date by which the scheme was approved

Name of the approval scheme in which the modification was proposed

Modification

No. 4790TXXX2B6 dated October 16, 1962 and no. 4617/XXX2429/65 dt. September 28, 1977

Scheme regarding Bijnore to Muzaffarnagar, route in Meerut region

The approved scheme mentioned in column is modified to cover the route between Bijnore and Muzaffarnagar via Jansath Meerapur Dewal instead of the route via Bhopa and Morna.

20. The aforesaid notifications reveal that earlier route Muzaffarnagar to Bijnore through Bhopa to Morna was notified in 1977 but after construction of pucca bridge at Dewal (Ganges river) the route Muzaffarnagar to Bijnore was notified via Jansath Meerapur Dewal in 1994. In the meantime, in 1989 the petitioners were granted permits for the route in question i.e. Meerut to Bijnore via Mawana Baisumma Meerapur Dewal. Accordingly since 1989 they had been plying their state carriage on the part of the route Muzaffarnagar to Bijnore i.e. from Meerapur to Bijnore via Dewal. This fact is not disputed that in 1985 after construction of pucca bridge at Dewal (Ganges river) the route Muzaffarnagar Bijnore via Bhopa Morna Rawalighat was diverted as Muzaffarnagar Bijnore via Jansath Meerapur Dewal as is evident from the aforesaid notifications. After issuance of notification in 1994 the part of the petitioners' route i.e. Meerapur Dewal Bijnore became notified route.

21. The opposite parties' objection is that once it became notified route by means of notification issued in 1994 it came into effect from 1977 in the light of the notification issued in 1977, therefore, the permits issued for the part of notified route Meerapur Dewal Bijnore lost its force and it should be treated as there is no permit at all after 1977 as after issuance of notification in 1977 no permits could have been granted to the petitioners/private operators on the notified route.

22. To substantiate his arguments Mr. Kalia, learned Senior Advocate appearing for opposite party no.3 has relied upon the judgment of the Hon'ble Supreme Court rendered in Omaditya Verma's case (Supra). After going through the judgment rendered in Omaditya Verma's case (Supra) by the Hon'ble Supreme Court I find that the Hon'ble Supreme Court keeping in view the notification issued in 1951 on the route Bijnore to Noorpur held that once the portion of the route Muzaffarnagar to Chhajlet had already been notified in 1951, there was no occasion for the Regional Transport Authority to grant permit for the route Muzaffarnagar to Chhajlet as the part of the route was already notified route.

23. However, in the present case the position is different. It is not in dispute that in 1989 when the petitioners were granted permits on the route in question MeerutMawanaDewal no any portion of the route was notified.

24. Mr. Kalia, learned Senior Advocate also relied upon the judgment of this Court rendered in the case of of M.K.Jain (AIR 2004 All 33)(Supra) and submitted that in the light of the said decision on the diversion of route made in 1985 due to construction of pucca bridge at Dewal the route from Muzaffarnagar to Bijnore became notified route through JansathMeerapurBijnore which was diverted under the necessity since 1977 itself, therefore, in 1989 no permits to the private operators could have been granted by the Regional Transport Authority. The relevant portion of consideration made in paragraph 16 is reproduced hereinunder:

"para 16 The definition of route has under gone a significant change. Section 2(38) of the Motor Vehicles Act, 1988 defines "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. The emphasis in the new definition is on the line of travel between one terminus to an other. Section 104 provides that whether the scheme has been published under sub section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of scheme. With the dismantling of Pantoon bridge at Rawalighat, the line of travel of the notified route from the terminus of Muzaffarnagar to the terminus of Bijnore underwent a slight change by diversion through Ganga barrage at Dewal. The notification dated 5.11.1977 notifying the route did not specify any points through which the route may be traversed except the terminus at Muzaffarnagar and Bijnore. There was no other line of travel available after 1985, to traverse this route. Taking the definition of the route as it is provided in the New Act, the MuzaffarnagarBijnore route was notified and this route will mean the line of travel between MuzaffarnagarBijnore. With the change of line travel even for small portion which in the present case is about 11 Kms. That portion of the route will not become denotified. It will continue to be the same route covered by the notification. This interpretation supports that the purpose of notifying the route namely that for State Road Transport Corporation to operate exclusively or with the existing operator under

the notified scheme for a public purpose to be achieved."

25. This court further observed that the fact that the scheme was subsequently modified by notification dated 3.9.1994 only reasserted the fact that the State Government always intended that the line of travel from Bijnore to Muzaffarnagar in Meerut Region has been the notified route. The scheme notified on November 5, 1977 notified BijnoreMuzaffarnagar route. After modification the scheme described in column 4 the route between ""Bijnore and Muzaffarnagar via Jansath MeerapurDewal, instead of route via Bhopa and Morna". Ultimately this Court concluded the matter in the following manner:

"I, therefore, find that the diversion in 1985 of necessity diverted the notified route from Muzaffarnagar to Bijnore as the line of travel underwent a change. The modification by notification dated 3.9.1994 did not amount to notifying any new route between Dewal to Bijnore or a fresh route but it only clarified by reasserting that the route between the terminals namely Muzaffarnagar and Bijnore was a notified route and thus no fresh permits could be granted on the overlapping portion on account of the restriction placed by section 104 of the New Act."

26. However, upon perusal of scheme notified in 1994 I find that it speaks that approved scheme mentioned in column 3 is modified to cover the route between Bijnore and Muzaffarnagar via JansathMeerapurDewal instead of the route via Bhopa and Morna which reveals that earlier notification was notified for the terminals Muzaffarnagar to Bijnore in Meerut Region though it did not speak to notify route from Muzaffarnagar to Bijnore via BhopaMorna, but subsequent notification issued in 1994 clarified the same which has now been diverted from one terminal to another terminal through Meerapur via Dewal

27. I fortify this view for the reason also that if on account of necessity diversion the route in question became notified route in 1985 itself, due to construction of pucca Bridge at Dewal, there was no occasion to propose a new scheme for the said route and issue a fresh notification.

28. In this connection, some provisions of the Motor Vehicles Act, 1988 are also relevant.

29. Section 104 of the restricts the grant of permits in respect of notified route, which is quoted hereinunder:

"Section 104 Restriction on grant of permits in respect of a notified area or notified route: Where a scheme has been published under subsection (3) of section 100 in respect of any notified area or notified route, the State transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional

Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of permit to the State Transport Undertaking in respect of that area or route."

30. Section 100(3) of the Act which is referred in the aforesaid section is also relevant for consideration and the same is quoted hereinunder:

"Sub section (3) The scheme relating to the proposal as approved or modified under subsection (2) shall then be published in the Official Gazette by the State Government making such scheme and in not less than one news paper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the Official Gazette and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

Provided that no such scheme which relates to any interState route shall be deemed to be an approved scheme unless it has the previous approval of the "Central Government".

31. Upon perusal of subsection 3 of section 100 it is evident that only on the date of publication of scheme in the Official Gazette it shall be called the approved scheme and the route to which it relates shall be called the notified route.

32. There is no deeming clause to treat the route deemed notified under the necessity diversion of the route, therefore, the notification dated 3rd September, 1994 cannot relate back to the date of notification issued in 1977.

33. The other question which is relevant for consideration is whether after issuance of notification in 1994 the petitioners are entitled to ply the stage carriage on the part of the notified route or not?

34. Section 72 of the Act deals with the grant of stage carriage permit and authorises the Regional Transport Authority to grant stage carriage permit; whereas section 104 imposes the restriction for grant of permit in respect of a notified route but it does not annul the permit granted prior to notification of route in pursuance of approved scheme. Therefore, I am of the view that notification issued under Section 104 of the Act notifying the route cannot restrain the petitioners to ply their vehicles.

35. The petitioners' permits have been cancelled in the light of the decision of Hon'ble Supreme Court rendered in the case of Omaditya Verma (2005 All LJ 1477) (Supra). Keeping in view the observations made hereinabove, I am of the view that the present case is distinguishable to Omaditya Verma's case (supra). I am of the considered view that the petitioners' permits cannot be cancelled under the strength of the judgment of Hon'ble Supreme Court rendered in the case of Omaditya Verma (Supra).

36. Therefore, I hereby quash the order dated 9th March, 2006 passed by the opposite party no.2 and order dated 5th March, 2007 passed by the opposite party no.1.

37. In the result, the writ petition is allowed.