

(2009) 07 SC CK 0086

In the Supreme Court Of India

Case No : Civil Appeal No. 4555 2009 (Arising out of S.L.P. (C) No. 29966 of 2008) and Civil Appeal No's. 4556-4557 of 2009 (Arising out of S.L.P. (C) No's. 520 of 2009 and 783 of 2009)

U.P. State Road Transport Corp.

APPELLANT

Vs

Mohd. Ghilman Sharif and Others

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 68C

Motor Vehicles Act, 1988 — Section 100(3), 100(4), 102, 103, 103(2)

Citation : (2009) 4 AWC 3112 Supp : (2009) 9 JT 665 : (2009) 16 SCC 86 : (2009) 11 SCR 1149

Hon'ble Judges : Cyriac Joseph, J;Altamas kabir, J

Bench : Division Bench

Advocate : Dushyant A. Dave, Shobha Dixit and Ranjit Kumar, Garima Prashad, Neha Goyal, Suchita Sharma, R.K. Gupta, Rajiv Dubey, Kamendra Mishra, Rani Chhabra, Lalita Choudhary, Simran Suresh Chadha and Madhuri Gupta, for the Appellant;

Final Decision : Allowed

Judgement

Altamas Kabir, J.—Leave granted.

2. This appeal has been filed against the judgment and order dated 14.11.2008 passed by the Allahabad High Court in Civil Misc. W.P. No. 47949 of 2008 filed by the Respondent Nos. 1 and 2 herein, inter alia, for the issuance of a Writ in the nature Mandamus upon the Transport Department of the State of U.P. and its authorities to allow the writ petitioners/Respondent Nos. 1 and 2 herein, to ply their vehicles against subsisting permits on the route between Muzaffarnagar-Rohana- Deoband-Nagal-Saharanpur and allied routes. By the said order, the High Court disposed of the writ petition with a direction to the State Transport Authority to decide as to whether the permit of the Respondent No. 1 was subsisting and if the same was found to be subsisting the respondents would not be prevented from plying their vehicles on the route in question. The matter was

to be decided by a speaking order.

3. The facts in brief indicate that the Respondent No. 1 Mohd. Gilman Sharif and Mohd. Ruman Sharif, claimed to be joint permit holders in respect of the aforesaid route. The second petitioner, Vinod Kumar, claims to have had a permit in respect of the said route which had expired and his application for renewal of the same is said to be pending.

4. On 13.2.1986 a Scheme was proposed to notify 38 routes u/s 68C of the Motor Vehicles Act, 1939(hereinafter referred to as 'the 1939 Act'), which would have the effect of totally excluding all private operators from the said routes. While Clause (h) of Section 68C provides for cancellation of permits granted to private operators upon such Notification, Clause (j) provides for grant of compensation if no alternative route could be given to the permit holders. Various objections were filed by the existing operators to the said proposal and in the mean time on 1.7.1989 the Motor Vehicles Act, 1988 (hereinafter referred to as 'the 1988 Act') came into force and the proposed Scheme continued for consideration under the provisions of the 1988 Act. The objections were considered by the Hearing Authority which held that the Scheme had lapsed u/s 100(4) of the 1988 Act. The order of the Hearing Authority was confirmed by the High Court on 16.3.1990. The said view of the High Court was reversed by this Court in Ramkrishna Verma vs. State of U.P. [(1992) 2 SCC 620 upon the finding that the Scheme had not lapsed and that the same was required to be finalized.

5. On 29.5.1993 a Notification was published u/s 100(3) of the 1988 Act finalizing the Scheme of nationalization with exclusive right of operation to the appellant Corporation and total exclusion of private operators. The said Notification was again challenged in several writ petitions which were dismissed by the High Court on 19.11.1999. The various Special Leave Petitions which were filed against such dismissal order were allowed by this Court on 1.5.2001 and the matter was remanded to the Hearing Authority to consider the objections which had been filed by the private operators and which were under consideration when the impugned Notification dated 29.5.1993 had been issued. The Hearing Authority by its order dated 2.11.2001 allowed the existing operators, such as the Respondent Nos. 1 and 2, to ply on the routes in question along with the Corporation.

6. The order was again questioned by the Corporation by filing Writ Petition No. 9332 of 2002 in the High Court and the same was dismissed on 23.7.2002 with the High Court holding that the Scheme had lapsed. The said order of the High Court was also challenged before this Court by the appellant Corporation as well as the private operators. Such challenge was upheld on 29.11.2004 and the matters were remanded to the High Court for re-hearing of Writ Petition No. 9332 of 2002 filed by the appellant Corporation.

7. While Writ Petition No. 9332 of 2002 was still to be heard, the applications for

renewal of the permits of the private operators came up for consideration before the State Transport Authority which by its order dated 9.6.2005 declined to renew the permits on account of the pendency of the said Writ Petition before the High Court. Against such refusal, revision petitions were filed before the State Transport Appellate Tribunal which directed the permits to be renewed subject to the fate of Writ Petition 9332 of 2002. Consequently, on 20.1.2006 the permits were renewed subject to the said condition.

8. On 1.6.2007 the High Court allowed the Writ Petition and set aside the orders passed by the Hearing Authority holding that permit holders who were granted permits prior to 1986 were entitled to get compensation according to the provisions of the Motor Vehicles Act, 1988. The Special Leave Petitions filed against the said order were dismissed by this Court on 16.7.2007.

9. While the SLP against the order of the High Court dated 1.6.2007 allowing Writ Petition No. 9332 of 2002 was pending hearing, the State Transport Authority on 26.6.2007 prevented the private operators from operating on the routes in question. After the SLP was dismissed on 16.7.2007 the Government took a decision on 9.8.2007 to allow private operators to operate on the routes in question along with the appellant Corporation. On 28.3.2008 the State Government issued a final Notification allowing private operators to operate on the notified route in question along with the appellant-Corporation. The said Notification dated 28.3.2008 was challenged by the U.P. Roadways Karamchari Union in W.P. No. 398 of 2008 and the Lucknow Bench of the Allahabad High Court by its order dated 7.5.2008, restrained the authority from issuing permits on the notified routes. The private respondents also filed W.P. No. 47949 of 2008 in the High Court for a direction upon the respondent Authority to allow them to ply on the routes in question on the strength of the permits held by them as no action had been taken either under the Scheme or in terms of Section 103 of the 1988 Act or even under Sections 104 and 105 thereof. The said Writ Petition No. 47949 of 2008 was allowed by the High Court on 14.11.2008 and the State Transport Authority was directed to consider the applications filed by the respondents in the light of the Notification dated 28.3.2008 by which private operators had been permitted to operate on the routes in question along with the appellant-Corporation.

10. It is against the said order of remand that the present appeal has been filed by the U.P. State Road Transport Corporation.

11. Mr. Dushyant Dave, learned senior counsel appearing for the appellant-Corporation, while narrating the above-mentioned facts confined his submissions to the issue regarding renewal of the permits upon the orders of the State Transport Appellate Tribunal, subject to the decision in Writ Petition No. 9332 of 2002. The said Writ Petition was, in fact, disposed of by the Allahabad High Court on 1.6.2007 in favour of the appellant Corporation upon negating the stand that the Corporation was not in a position to cater to the needs of the travelling public on account of suffering huge losses and insufficient number of buses which

disabled them from providing sufficient, adequate, economical and properly coordinated transport service to the travelling public. Mr. Dave pointed out that the order of the Hearing Authority in so far as it modified the approved Scheme dated 29.5.1993, could not be sustained, and was set aside by the High Court. Mr. Dave also pointed out that while disposing of the said writ petition the High Court had categorically held that permit holders who had been granted permit before 13.2.1986 i.e., before the date of publication of the Scheme, whose permits were going to be affected by the approved Scheme on 29.5.1993, were only entitled to compensation in terms of the provisions of the Act.

12. Mr. Dave submitted that after such decision there was no scope for the private operators, including the Respondent Nos. 1 and 2 herein, to be given any further opportunity of hearing regarding their claim to operate on the route in question on the basis of their permits which had been cancelled.

13. Mr. Ranjit Kumar, learned senior counsel appearing for Respondent Nos. 1 and 2, submitted that all that the said respondents wanted was an opportunity to place their respective cases before the State Transport Authority in order to establish their eligibility on the strength of the permits issued to them earlier to operate on the routes in question. Mr. Ranjit Kumar urged that the permits issued to the respondents did not stand cancelled as per the procedure u/s 103(2) of the 1988 Act, but merely became inoperative.

14. He also urged that after a survey conducted in June 2007, the State Transport Authority had arrived at a conclusion that the appellant- Corporation was not in a position to provide appropriate service on the notified routes which caused the State Government to issue a Notification on 12.12.2007 proposing to modify the exclusive Scheme in terms of Section 102 of the 1988 Act. It was urged that even on a notified route, when a notified operator was unable to provide adequate service, the State Transport Authority and the State Government were vested with powers u/s 102 of the 1988 Act to modify the Scheme. Mr. Ranjit Kumar referred to the Constitution Bench decision of this Court in *A.P. State Road Transport Corporation vs. Regional Transport Authority and another* [(2005) 4 SCC 391] wherein, while considering a similar question it was held that it was for the State Government to consider what is suitable for public service. The State Government has the power to modify the Scheme in case of a need since the Scheme is after all intended for the benefit of the public and if any step was required to be taken in that regard the State Government could always do so by modifying the Scheme.

15. We are afraid, we are unable to agree with Mr. Ranjit Kumar on the question of further hearing to be given to Respondent Nos. 1 and 2 on their claim to be allowed to operate on the notified routes in question on the basis of the permits which according to the said respondents were dormant and were capable of being reviewed in the existing circumstances.

16. As we have indicated earlier, the permits of the private operators on the said

routes were renewed by the State Transport Appellate Authority by its order dated 20.1.2006 which made it very clear that such renewal would be subject to the fate of W.P. No. 9332 of 2002. The said writ petition was disposed of on 1.6.2007 by the Allahabad High Court and the said judgment has been reported in 2001 5 ALJ 255. After considering the entire matter in detail, the Division Bench of the High Court has allowed the said writ application filed by the appellant-Corporation and has negated the contentions of the private operators who, it was held, were only entitled to compensation in terms of the provisions of the 1988 Act.

17. In that view of the matter, the present appeal has to be allowed. The directions given by the High Court in Civil Misc. Writ Petition No. 47949 of 2008 are hereby set aside and the prayer made by Respondent Nos. 1 and 2 herein for being given a hearing to establish their claims is also refused. This will not, however, prevent the said respondents from claiming compensation u/s 105 of the Motor Vehicles Act, 1988.

18. The appeal is accordingly allowed in the above terms.

19. There will, however, be no order as to costs.

CIVIL APPEAL Nos. 4556, 4557 OF 2009 (Arising out of S.L.P.(C) Nos. 520 of 2009 and 783 of 2009)

20. In view of the aforesaid, leave is also granted in these two special leave petitions, which are also allowed and disposed of accordingly.