

(2008) 05 AHC CK 0161
In the Allahabad High Court

U.P. State Road Transport Corporation	Vs	APPELLANT
Shiv Kumar Gupta and Others		RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 102, 103, 2, 90

Citation : (2008) 4 AWC 3288 Supp : (2008) 4 AWC 3288

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri Sameer Sharma, learned Counsel for U.P. State Road Transport Corporation (in short, the Corporation), for the petitioner and Shri R.N. Singh, Sr. Advocate assisted by Shri H.P. Dubey and Shri G.K. Malviya for the private respondents. Learned Standing Counsel appears for State respondents. With the consent of the parties the matter was heard and is being finally decided.

2. The Corporation is aggrieved by the decision of the State Transport Appellate Tribunal, U.P. Lucknow (Appellate Tribunal) in Revision Nos. 88 to 101 of 2005 u/s 90 of the Motor Vehicle Act, 1988 by which the revisions were partly allowed and that while setting aside the order of the State Transport Authority, U.P. Lucknow dated 9.6.2005 the regular stage carriage permits were renewed for another usual term of five years with effect from then expiry, on usual terms and conditions, for the portion not covered under the scheme dated 29.5.1993, after curtailing the portion overlapping the portion under the scheme dated 29.5.1993.

3. The route Meerut-Muzaffarnagar to Bamanhedi was notified for exclusive operation by the Corporation by notification dated 12.5.1951. Similarly the routes Saharanpur-Gagalhedi was notified on 19.6.1962. The route Saharanpur-Haridwar via Gagalhedi was also notified for exclusive operation of the Corporation by notification dated 6.10.1956. In the year 1968 a concrete bridge

was constructed on river Yamuna between Saharanpur and Yamuna Nagar and a reciprocal agreement was notified between State of Haryana and State of U.P. on 15. 11.1969 for plying vehicles on interstate routes between the two states. Clause 13(7) of the agreement provides; "it is agreed that as far as possible, the State Carriage Services, agreed upon in this agreement may be operated by the respective nationalised undertaking of both the States". A writ petition No. 4195 of 1968 was filed against the Clause of reciprocity in which an order was passed on 12.1.1970, the operative portion of which provides:

In the view what has been stated above it is declared that the Regional Transport Authority Meerut and Dehradun, are not bound by, and are not obliged to give effect to, Clause VII of paragraph 13 of the reciprocal agreement and they are directed to exercise their all individual judgment, in accordance with the provisions of the act, in deciding application for permits which are pending before them. In the circumstances of this case, there will be no order as to cost.

Sd/-G.C.M.

4. Shri Sameer Sharma submits that in Mysore State Road Transport Corporation Vs. Mysore State Transport Appellate Tribunal, the Supreme Court held that private operators could not be granted permits on any routes even a part of which overlaps a nationalist route, and that private operators cannot be allowed to ply on the notified routes, even with corridor restrictions. The judgment was followed with approval in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, and Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others, The overlapping and intersection on nationalised route is thus not permissible.

5. A reciprocal agreement between State of Haryana and State of U.P. was notified on 14.10.1983 according to which the private operators were allowed four trips on Meerut-Ambala interstate route. This Meerut-Ambala route overlaps the following nationalist portions i.e. (a) part of Meerut-Muzaffarnagar-Bamanhedi, which overlaps the Delhi Dehradun scheme notified on 12.2.1951; (b) part of Meerut Muzaffarnagar-Bamanhedi overlaps the Delhi Hardwar scheme notified on 12.2.1951; and (c) part of Saharanpur Gagalhedi-Haridwar, which overlaps the scheme notified on 12.2.1951.

6. Shri Sameer Sharma would submit that the scheme of nationalisation is a law and that interstate agreement do not override a scheme of nationalisation, and thus no permits can be issued to private operators on any of the routes, the part of which overlaps the notified routes. Even the reciprocal agreements are not operative in contravention of the nationalised schemes.

7. The respondent Nos. 1 to 14 were granted permits to ply their vehicles on the interstate route; Meerut-Ambala via Muzaffarnagar-Deoband-Saharanpur lying within the State of U.P. and within the State of Haryana. A scheme proposing to nationalised Saharanpur-Sahadara-Delhi route was published in the gazette on 26.2.1959 u/s 68-C of the Motor Vehicle Act, 1939. It was approved u/s 68-D(3)

of the Act after obtaining previous approval of the Central Government. The validity of the scheme was challenged in Writ Petition No. 3104 of 1959, Aftab Ahmad Siddiqui v. Government of India and other writ petitions. These writ petitions were allowed only with respect to the 50 operators with direction that their objections be considered and decided. The scheme was thereafter upheld by the Supreme Court in J.N. Wahal's case in Civil Appeal No. 1614 and 1617 of 1966. The Delhi-Saharanpur route was not available thereafter to any operator except 50 operators, who had challenged the scheme.

8. It is contended that for almost 25 years the proceedings with regard to these 50 operators were pending in the High Court and in the civil courts. They had obtained injunction orders and continued to ply their vehicles. Ultimately the Supreme Court in Writ Petition No. 11744 of 1985, Sri Chand and Ors. v. Govt. of U.P. and Ors.; Writ Petition No. 11951 Citizen Council for Public Services v. Govt. of U.P. and Ors., vide its judgment dated 23.8.1985 reported in Shri Chand Vs. Government of U.P., Lucknow and Others, held that civil courts have no jurisdiction to grant injunction, quashed the scheme dated 26.2.1959 on the ground of delay, making it open to the State to issue a fresh draft scheme u/s 68-C of the Motor Vehicle Act, 1939, if it is of the opinion that it was necessary to do so. The State Transport Undertaking published a scheme u/s 68-C of the Act proposing to nationalise Delhi-Saharanpur along with 38 allied routes on 13.2.1986. The private operators again challenged the scheme. The Supreme Court in Ram Krishna Verma and Others Vs. State of U.P. and Others, held that the scheme dated 13.2.1985 has not lapsed and be approved within 30 days. The scheme was approved and published vide notification dated 29.5.1993.

9. Shri Sameer Sharma appearing for the Corporation submits that from the notification dated 29.5.1993 it will be seen that route Meerut-Ambala overlaps the route mentioned at Sl. No. 28 (Muzaffarnagar-Phona-Deoband-Nagla-Saharanpur-Sarsawan-Yamuna Bridge).

10. The private operators again challenged the notification dated 29.5.1993. The entire bunch of the writ petition with leading Writ Petition No. 24470 of 1993, was dismissed by the Court vide judgment and order dated 19.11.1999. The Supreme Court in SLP No. 18520 of 1999, Gajraj Singh v. State of U.P., partly allowed these appeals and while setting aside the judgment dated 19.11.1999 held that the scheme with regard to Delhi-Saharanpur route has received final approval in terms of Supreme Court's direction in Ram Krishna Verma's case. With regard to the remaining 38 routes a direction was issued that if objections are filed against approved scheme dated 29.5.1993, they shall be heard and disposed of by the competent authority on merits provided they are filed within 30 days. The scheme was thereafter approved by the authority on 3.11.2001 with certain modifications.

11. The Corporation filed Writ Petition No. 9332 of 2002 challenging the order of the authority dated 3.11.2001. The private operators also filed their writ petition and by judgment dated 23.7.2002 the order of the hearing authority was partly

quashed and that scheme dated 29.5.1993 as stood modified by order dated 3.11.2001 of the hearing authority was approved to the extent they related to the routes, which were mentioned at Sl. Nos.2 to 39 in the notification.

12. The scheme of nationalisation dated 29.5.1993 was quashed by this Court in its judgment dated 23.7.2002 in Writ Petition No. 9332 of 2002. A SLP against the judgment filed by the Corporation was allowed by the Supreme Court on 29.11.2004 and the matter was remanded to the High Court. The said Writ Petition No. 9332 of 2002 was allowed by the Division Bench of this Court on 1.6.2007. The order of the hearing authority dated 3.11.2001 was quashed and the notification/scheme dated 29.5.1993 was upheld. All the connected writ petitions were dismissed. A SLP No. 10859-of 2007 against the judgment was dismissed by the Supreme Court on 16.7.2007.

13. The upshot of the background is that the scheme notified on 29.5.1993 was confirmed and that no private operator could be allowed to operate on the notified scheme, or could be given permits to overlap the route in the notified scheme.

14. The permits of respondent Nos. 1 to 14 on Meerut-Ambala via Muzaffarnagar-Deoband-Saharanpur had expired in the year 2005. They applied for renewal. The State Transport Authority refused to renew the permanent permits on 9.6.2005, and instead granted temporary permits to respondent Nos. 1 to 14. Against this order the revisions were filed. The State Transport Appellate Tribunal, Lucknow by its order dated 29.8.2005 set aside the order of the State Transport Authority and directed the permits to be renewed for five years. Against this order the Corporation preferred Writ Petition No. 2438 (M/S) of 2006 before Lucknow Bench, which was decided on 22.2.2007 and the matter was again remanded to the Appellate Tribunal, which again heard these matters and while allowing the revisions renewed the permits for another usual term of five years, for the portion not covered under the scheme dated 29.5.1993, and after curtailing the portion overlapping the portion under the scheme dated 29.5.1993 giving rise, to these writ petitions.

15. Shri Sameer Sharma would contend that Section 2(38) of the Act defines "route" means a line of travel, which specifies the highway, which may be traversed by motor vehicle between one terminus and another. In the present case by curtailment of the notified portion, the Appellate Tribunal has created two routes having four termini, which is not permissible in law. He submits that in Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others, the overlapping on the nationalised routes was not permitted. If the line of travel is the same, as in the present case, the renewal of permit would necessarily overlap the route over the nationalised route. There is no other motorable road from Meerut to Ambala and that overlapping between Muzaffarnagar and Sarsawan cannot be avoided.

16. Shri Sameer Sharma submits that the word "curtailment" u/s 103(2)(c)(iii)

of the Act, permits curtailing the area or route covered by the permits, in so far as such permits relate to the notified area or notified route. The word "curtailment" is defined as cutting short, abbreviate, lessen or reduce. It thus means reduction of a route to the extent it overlaps the notified route. He submits that result of the curtailment would be that a route may be curtailed at its ends, as it is not possible for a vehicle to ply from one part of route and then to another, if the notified route is in between. In such case it would not be curtailment and should result in cancellation of the permit.

17. Shri Sameer Sharma then contends that on the route Meerut-Ambala the notified portion as per the scheme dated 29.5.1993 falls in between said route i.e. from Muzaffarnagar-Sarsawan (Yamuna Bridge) and thus if the said portion is curtailed, private operators cannot possibly ply from Meerut to Ambala. Shri Sharma submits that Appellate Tribunal has acted in contravention of the scheme of nationalisation dated 29.5.1993 and the judgment dated 1.6.2007 passed in Writ Petition No. 9332 of 2002. He has also filed contempt petition in this regard impleading Shri S.S. Raudra, the Chairman, State Transport Appellate Tribunal being Contempt Petition No. 3735 of 2007. By order dated 29.10.2007 the Hon"ble Single Judge hearing contempt matter has directed the contempt petition to be connected with this writ petition and thus both the matters have come up for hearing, with the judicial order passed by the Court.

18. Shri Sameer Sharma submits that respondent No. 9 was a party in Adarsh Travel's case and that the order of the Appellate Tribunal to allow to renew the permits after curtailing the portions is an inoperative order, which in view of the judgment of the Supreme Court, which does not permit overlapping, cannot be of any benefit to the respondents. He submits that Shri S.S. Raudra, the Chairman has circumvented the orders passed by the Supreme Court and has thus made himself liable to an action in contempt.

19. Shri R.N. Singh, learned Counsel for the respondents on the other hand submits that the scheme dated 29.5.1993 does not impose any restriction at all for operation of private operators on the route with the curtailed portion. The private operators may not have a right to ply their vehicles on the notified route or the overlapping portion. They can, however, be allowed to operate on non-notified route. The appellate authority has curtailed the notified portion from the routes of the respondents and have made them entitled to operate their vehicles only on the non-notified portion of the route. It is not for the Corporation to suggest as to in what manner the respondents may operate their vehicles, so long as they do not operate on the notified route. They may either operate between Meerut to Muzaffarnagar, or from Sarsawan (Jamuna Bridge) to Ambala or may make an arrangement or propose the trips in accordance with their convenience. The Corporation does not get a right in such case to suggest that their permits could not be renewed at all. Shri R.N. Singh then submits that in the meantime the State Government has changed its policy and that by the notification dated December 12th, 2007 the State Government has in public

interest permitted the private operators on the notified routes including the notified routes in the present case. After hearing the objections to the notification, the final notification allowing private operators to operate on the notified routes was issued by taking a decision u/s 102(1) of the Motor Vehicle Act, 1988. The decision of the State Government with certain amendments regarding to those routes, which had fallen in the State of Uttaranchal, was made by the Hearing Authority on February 28th, 2008, a copy of which has been annexed with the counter affidavit of Shri Vinod Kumar Gupta. He submits that in writ petition subsequent events can be considered by the Court. With this notification now the restriction of plying Stage Carriage Permits on notified routes is no longer valid and that the mandate in M/s Adarsh Travels case has been relaxed in public interest. Shri R.N. Singh would submit that objections raised by Shri Sameer Sharma that the decision has been stayed by the Lucknow Bench of this Court is not a correct statement. There is no stay of the policy by the Court. In a writ petition filed by U.P. Roadways Karmchari Sanyukta Parishad and Shri Girish Chandra Misra, Deputy Secretary of the Parishad, the locus of which to challenge the policy is seriously in doubt, the Addl. Advocate General on 5.3.2008 made a statement that permits are not to be granted till 19th March, 2008 and that on 19.4.2008 this statement was reiterated, and by an incorrect treatment of this statement as an undertaking on the statement of Shri H.P. Srivastava, Addl. Chief Standing Counsel, the purported undertaking was extended till the next date of listing. Shri R.N. Singh submits that the statement of the Addl. Advocate General that the permits are not to be granted till 19th March, 2008 was a statement of fact, which was neither an undertaking nor was treated to be a restriction over policy. The further statement of Shri H.P. Srivastava on 19.4.2008 was not appropriately given to the Court. In any case the Court has not granted an interim order. The permits, which have been renewed on the route as such would not cause any restriction on plying on these routes, which are notified under the policy.

20. On merits the Appellate Tribunal has clearly found that the notification, notifying the scheme dated 29.5.1993 is intact. The history of the litigation would show that the scheme was operating and that no overlapping could be permitted over the portion notified in the scheme. The route, however, starts from Meerut to Ambala and that even if overlapping is not permitted, and restriction to that effect is made by curtailing the route, it cannot be said that the private operators cannot ply on the route. They could only be restricted by curtailing the portion overlapping the portion under the scheme dated 29.5.1993. The manner in which the respondents would operate their Stage Carriages, is not an issue. It, however, cannot be said that by curtailment of the route, the operators holding permit would not be in position to operate over the route. There may be various ways and means by which these operators may ply their vehicles on the Meerut Ambala route with curtailment of the notified route. They may either join together and agree that some of the operators will operate between Meerut to Muzaffarnagar and others from Sarsawan(Yamuna Bridge) to

Ambala. The private operators may enter into any other arrangement permissible in law. The objections that by curtailment of the route Muzaffarnagar to Sarsawan (Yamuna Bridge) the private operators would not be able to ply from Meerut to Ambala, cannot be accepted. The Corporation may have only one way of looking at the matter. The respondents on the other hand can have many options to ply their vehicles without violating the law.

21. The normal rule that in litigation the rights and obligations and adjudicated upon as they obtain at the commencement of the lis, is subject to the exception of subsequent events of facts and law which have material bearing on the entitlement of the parties to the relief. The Court is not precluded from taking "a cautious cognizance" of the subsequent changes of facts and law, to mould the relief. In Ram Kumar Barnwal Vs. Ram Lakhan (dead), , the Supreme Court noted this principle of law and followed the dictum in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, Om Prakash Gupta Vs. Ranbir B. Goyal,

22. Taking into account subsequent developments, and the policy of the State Government, the objections to the curtailment of the route is no longer valid. A look at the orders passed by the Lucknow Bench of this Court in Writ Petition No. 398 of 2008 shows that there is no interim order passed by the Court and that there was no undertaking given on 5.3.2008 by the Addl. Advocate General, which could be extended by the Addl. Chief Standing Counsel on 19.4.2008. An interim order to be granted by the Court must be clear and unambiguous and should not admit any doubt. The directions given by the Court should be positively ascertained. The statement that permits are not granted or issued is not an interim order by the Court. The authority of the Addl. Advocate General and the Addl. Chief Standing Counsel giving statements contrary to the policy of the State Government, could be questioned by the Court. They do not appear to have given any undertaking to that effect to the Court. The orders dated 5.3.2008 and 19.4.2008 are quoted as below:

05.03.2008

On the request of the parties counsel list this matter on 19th of March, 2008.

Shri Jaideep Narain Mathur, learned Additional Advocate General says that till 19th of March, 2008 the permits are not to be granted.

19.04.2008

Shri Shaurabh Lavaniya, learned Counsel for the Sue says that counter affidavit could not be prepared. He seeks ten days time for the purpose.

Ten days time as prayed is granted to the learned Counsel for the State.

List in first week of May, 2008 before regular Bench.

Shri H.P. Srivastava, learned Addl. Chief Standing Counsel says that the undertaking given by the State that the permits shall not granted or issued, is extended till the next date of listing.

23. The argument that the curtailment of the route will create two routes and four termini, violating the definition of route u/s 2(38) of the Act and that Section 103(3)(c)(iii) of the Act permits curtailment of area or route covered by permits, relate to notified area or notified route, admits a narrow view of only one option. The private operators may have many other option to ply the stage carriage on the route. The new liberal policy, now completely takes away the privilege of the Corporation to raise such an argument. After the judgment was reserved on 1.5.2008, Shri Samir Sharma filed an affidavit annexing the minutes of State Transport Authority dated 3.5.2008 by which certain decisions were taken to invite Expression of Interest from fleet operators of atleast 1000 buses of modem technology. The State Transport Authority has decided to give preference to such fleet operators in cooperative society/institution/company to ply on the 460 nationalised routes made open to private operators. The permits are not to be invited until the assurance given by the Addl. Advocate General to High Court at Lucknow in Writ Petition No. 398 (M/B) of 2008 is operative. The 460 nationalised routes are thus open to private operators. The ground of permits and the policy to allow only fleet operators to ply with modem buses is still in the formative stage. The writ petition, however, is to be decided on the basis of the law as it stands and not on the law as it may unfold itself in future.

24. I do not find any good ground to interfere in the renewals of the permits with curtailment of the notified route and that in the subsequent developments, the grounds taken by the Corporation in the writ petition have also lost their efficacy.

25. The Chairman, State Transport Appellate Tribunal, U.P. had taken care to curtail the notified portion at the time of renewal of the permits. The order does not provide for any overlapping on the route. Shri S.S. Raudra, Chairman, State Transport Appellate Tribunal did not commit any legal error, in renewing the permits. The application alleging that he committed contempt of the order passed by this Court and the Apex Court as such does not merit consideration.

26. The writ petition as well as the contempt petition are dismissed.