

PETITIONER:
U.P. STATE ROADWAYS TRANSPORT CORP., LUCKNOW THROUGH ITS GENE

Vs.

RESPONDENT:
ANWAR AHMED & ORS.

DATE OF JUDGMENT: 30/09/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.

Leave granted.

We have heard learned counsel for the parties.

This case has a chequered history of its own. For over three decades, the scheme was not allowed to be finalised, but ultimately by the judgment of this Court in Ram Krishna Verma vs. State of U.P. & Ors. [(1992) 2 SCC 620], the scheme was finalised and published in the Gazette. Two unsuccessful attempts were made subsequently to reopen the issue and thwart the scheme but remained unsuccessful. This is a third occasion. This time a device was employed to carve out a route from two nationalised routes, viz., Bulandshaher to Delhi and Shahdara to Saharanpur. They are now sought to be interjected with temporary permits to be obtained on the carved out route Ghaziabad to Saharanpur. Thereby they sought to entrench upon frozen field through back-door process of forcing the appellant to obtain all permits as per the scheme, lest the temporary permits should be given to them by the State Transport Authority or Regional Transport Authority, as the case may be.

The High Court of Allahabad by order dated June 2, 1995 directed the Regional Transport Authority to consider the grant of temporary permits for the Ghaziabad to Saharanpur route and, in the meanwhile, liberty was given to the appellant-Corporation to lift the permit granted for the route. When the proceedings were taken out before the State Transport Authority to grant permits that necessitated filing of the writ petition. By the impugned order dated November 17, 1995 of the High Court in the contempt proceedings and also orders dated January 10, 1996 and January 16, 1996, temporary permits were directed to be taken by the respondents. Thus, these appeals by special leave.

In view of the settled legal position that once the scheme has been approved and notified, right to ply stage carriages by private operators on the notified area, routes or portions thereof is totally frozen. Therefore, they have no right to claim any grant of stage carriage, temporary or contact carriage permits thereunder on the said notified area, routes or portions thereof except to the extent saved

by the scheme with restrictions imposed thereunder. Shri Harish N. Salve, learned senior counsel, sought to rely upon proviso to Section 104 of the Motor Vehicles Act, 1988 (for short, the 'Act') to justify the orders which provides as under:

"104. Restriction on grant of permits in respect of a notified area or notified route. -- Where a 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 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 permits shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route."

It would, therefore, be seen that where 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 the scheme. Thus, the appellant-Corporation has the exclusive right or monopoly to ply their stage carriages and obtain the required permit as per the scheme. The proviso gives only a limited breath of life, namely, until the Corporation puts the vehicles on the notified routes as per the scheme, temporary permits may be granted to private operators. Thereby, it would be clear that temporary inconvenience to travelling public is sought to be averted till the permits are taken and vehicles are put on the route by the appellant. Therefore, the temporary permits will have only limited breath of life. Private operators are attempting to wear the mask of inconvenience to travelling public to infigure into forbidden notified area, route or portion thereof to sabotage the scheme. The permits were taken by the appellant and the vehicles are put on the route in terms of the scheme. Therefore, the direction given by the High Court at the pain of contempt is obviously illegal. It is stated by Shri V.R. Reddy, Additional solicitor General, on instruction that the appellant is prepared to take all the permits required on the routes.

But the crucial question is: whether a new route can be introduced by fusing two notified routes and temporary permits sought to be obtained on carved out route? This device is obviously impermissible to enter into frozen area or route or portion thereof through back-door. The scheme is law by itself until it is varied according to law no private

operator has any right to camouflage any devise to obtain temporary permits. Under these circumstances, action taken by the respondents to obtain temporary permits is obviously ultra vires and authorities have no jurisdiction to grant such permits. The altered or modified routes are contrary to the approved scheme, since they have been occupied by two notified routes and to be operated as per the scheme.

Under these circumstances, the appeals are accordingly allowed but, in the circumstances, without costs.

JUDIS