

**NON-REPORTABLE
IN THE SUPREME COURT OF INDIA**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11194 OF 2017
(Arising out of SLP(C) No.35947 OF 2010)

U.P. State Road Transport CorporationAppellant

Versus

Sandeep Kumar Jain & Ors. ..Respondents

WITH
CIVIL APPEAL NO.11195 OF 2017
(Arising out of SLP(C) No.69 of 2011)

J U D G M E N T

MOHAN M. SHANTANAGAUDAR, J.

Leave granted.

2. These appeals are filed questioning the validity of the judgment dated 30.7.2010 passed by the High Court of Judicature at Allahabad, Lucknow Bench in W.P. No. 2161 of 2007 by which the Lucknow Bench has allowed the writ petition.

3. Learned counsel for the appellant/corporation argued mainly relying upon the Division Bench judgment of the Allahabad High Court in the case of Smt. Kanchan & Ors. Vs. State Transport Appellate Tribunal and Ors. (in Civil

Miscellaneous Writ Petition No. 48624 of 2002 decided on 4th April 2003) that the matter involved in this petition is fully covered by the aforementioned judgment of the Division Bench which was confirmed by this Court in Civil Appeal Nos. 7305-7306 of 2003 disposed of on 17th January 2006, wherein it is observed that the findings on the Mala fides of the State Transport Authority (STA) are clearly borne out from the records seen by the Tribunal. In the said case the route involved was a notified route, as involved in this matter, i.e. 11 kilometers' stretch lying between Dewal-Bijnor. In Civil Appeal Nos. 7305-7306 of 2003, this Court had confirmed the Order of the High Court by which 48 permits of the State Route issued by the State Transport Authority on the route in question were cancelled.

Per contra, the Learned Counsel appearing on behalf of the operators/respondents contended that they are the existing operators and therefore they are protected under the scheme of the notified route including the portion between Dewal-Bijnor.

4. For the purpose of convenience, the facts in brief are gathered from Civil Appeal arising from SLP Civil No. 35947 of

2010. The facts of the case in brief are that the respondents in SLP (C) No.35947 of 2010 are holders of regular state carriage permits awarded by the State Transport Authority on the route known as Meerut-Mawana-Behsuma-Meeranpur-Bijnore via Dewal Bridge. The permits were granted in favour of the some of the respondents on 4/5-9-1989 and to certain other respondents on 11.5.1994. Meerut-Bijnore was a non-notified route when the permits were granted to the respondents, so also the other route Muzaffarnagar-Bopa-Morna-Revali Ghat-Bijnore was a non-notified route when the permits were granted to the respondents. Muzaffarnagar-Bhopa-Morna-Revali-Ghat-Bijnore route came into existence in 1960 and the operators on the said route had to cover the route through a pantoon bridge which had been constructed on Revali Ghat. The Scheme under Section 68-C of the Motor Vehicles Act, 1939 was published in the year 1962 in respect of the concerned route. However, on 15.11.1977, the Scheme in respect of another route under Section 68-C of the Motor Vehicles Act, 1939 was also published.

5. A pucca bridge was constructed at Dewal in the year 1985 for crossing the Ganga River. In view of the said development, another route i.e., Muzaffarnagar-Bijnore was diverted as

Muzaffarnagar-Bhopa-Morna-Bera Sadat to Bijnore. Thereafter 21 permits were granted by the Regional Transport Authority, Meerut vide order dated 4/5-9-1989 and one permit was granted vide order dated 17.5.1990 which had been challenged before the State Transport Appellate Tribunal, the High Court as well as in this Court. This Court vide its judgment dated 10.5.1993 in SLP (C) No.6625 of 1993 upheld those 21 permits.

6. Subsequently major developments had taken place, as a result of which the Muzaffarnagar-Bijnore route had been diverted to Muzaffarnagar-Jansath-Meeranpur-Dewal Barrage-Bijnore, and in that regard a scheme was published. Pursuant to the newly published scheme, the Regional Transport Authority, Meerut took decisions in its meetings held on 08.05.1995 and 02.06.1995 that the permits granted in pursuance of the scheme dated 03.09.1994 will remain in operation. In respect of permits granted prior to 03.09.1994 by Regional Transport Authority, Meerut after coming into force of the Notification dated 03.09.1994, it was said to have been clarified by the High Court in Civil Misc. Petition No. 37607 of 1995 vide order dated 03.03.1997 with regard to the operation of buses on the portion between Dewal-Bijnore. It is relevant to mention herewith that

the State Transport Authority, U.P. Lucknow granted 48 permits vide order dated 29.9.1989 under the route in question. The said order was challenged in Revision No.68 of 1999 before the State Transport Appellate Tribunal which came to be allowed by the judgment dated 23.10.2002. Consequently, the order passed by the State Transport Authority dated 29.09.1989 was set aside, in effect thereto, the 48 permits granted by the State Transport Authority on the route in question stood cancelled. Aggrieved by the order of the State Transport Appellate Tribunal, the permit holders filed Civil Misc. Writ Petition No.46223 of 2002 (titled M.K. Jain and 27 others vs. State Transport Appellate Tribunal, U.P. Lucknow) as well as Civil Misc. Writ Petition No. 48624 of 2002 (Smt. Kanchan & Ors. Vs. State Transport Appellate Tribunal & Ors.). These writ petitions were dismissed by the High Court on 04.04.2003. The judgment of the High Court was confirmed by this Court in Writ Petition No.7306 of 2003 (Smt. Kanchan & Ors. Vs. State Transport Appellate Tribunal & Ors.) on 17.1.2006. In effect, 48 permits granted on the route in question stood cancelled.

7. In the meanwhile, the Regional Transport Authority, Meerut had issued show cause notices on 26.12.2005 to the

respondents as to why the permits granted in their favour should not be cancelled in view of the another judgment of this Court dated 05.04.2005 in Civil Appeal Nos. 6716-6818 of 1999 (titled U.P. State Road Transport Corporation vs. Omaditya Verma and Ors., 2005 (4) SCC 424). As mentioned supra, the Civil Appeal No. 7306 of 2003 was heard by this Court and was dismissed on 17.1.2006 confirming the judgment passed by the High Court cancelling the 48 permits. This Court concluded that the State Transport Authority while granting 48 permits as per order dated 29.9.1989 on the route in question has mala-fidely exercised its jurisdiction.

8. Pursuant to said judgment of this Court, the Regional Transport Authority as well as the State Transport Authority cancelled the permits of the respondents after hearing them. The orders of the Regional Transport Authority as well as the State Transport Authority were questioned by the respondents before the High Court of Judicature at Allahabad in W.P. No.2161 of 2007 which was allowed by the judgment dated 30.7.2010 and the same is impugned in these appeals.

9. This Court on facts has ruled in the aforementioned judgments particularly in Civil Appeal No.7306 of 2003 that the route in question is a notified route and therefore the permits granted for the same route are bad in law. It is also concluded by this Court in the case of Smt. Kanchan & Ors. Vs. State Transport Appellate Tribunal & Ors. (Civil Appeal No.7306 of 2003) that the exercise of jurisdiction by State Transport Appellate Tribunal in granting 48 permits is mala fide exercise of power based on the judgment of this Court. The action was taken by the Regional Transport Authority as per law issuing show-cause notices etc. for getting 25 permits cancelled which were issued after the year 1985 as was done by this Court in Civil Appeal Nos. 7305-7306/2003. The Regional Transport Authority had rightly cancelled the permits issued on the ground that the route Dewal to Bijnore is a notified route.

10. The Allahabad High Court in the aforementioned judgment in detail on facts had dealt with as to how the private operators were not entitled to ply their vehicles on the notified route i.e. 11 kilometers' stretch lying between Dewal to Bijnor. Though the respondents herein were existing operators they cannot be shown leniency in view of the fact that the route over which they were

plying earlier did not include Dewal to Bijnor. Since they have now been plying the vehicles on the notified route Bijnor-Dewal they cannot be permitted to do so. Though the judgment of the Division Bench of Allahabad High Court mentioned supra is confirmed by this Court in Civil Appeal Nos. 7305-7306 of 2003 on different grounds, the fact remains that the judgment of the Allahabad High Court stood confirmed. Hence, in our opinion, the State Transport Authority is justified in relying upon the judgment of Allahabad High Court mentioned supra in Civil Miscellaneous Writ Petition no. 48624 of 2002 and the judgment of this Court in Civil Appeal Nos. 7305-7306 of 2003 inasmuch as the very route in question that were Dewal-Bijnor was a subject matter.

11. It is well settled law and it is reiterated by this Court in the case of U.P. State Road Transport Corporation vs. Omaditya Verma and Ors., 2005 (4) SCC 424 that the private operators cannot be permitted to ply the vehicles on notified/nationalized route unless permitted by the Scheme. The High Court while passing the impugned judgment had not properly appreciated the impact of the judgment of this Court in the case of U.P. State Road Transport Corporation vs. Omaditya Verma and Ors., 2005

(4) SCC 424. After construction of Ganga Barrage in the year 1985; after diversion of both the routes i.e. Muzaffarnagar-Bijnore and Meerut-Bijnore, the common strip from Dewal to Bijnore i.e. for a portion of 11 km. is being used. As the route has become a notified route pursuant to the Nationalization Scheme dated 05.11.1997, and since it is a settled principle of law that no private operators can be permitted to operate/ply vehicles on the notified route except as permitted by the Scheme, the respondents cannot be permitted to ply the vehicles on the notified route.

12. It would also be relevant to note the conclusions reached by the Constitution bench in the Case of G. T. Venkataswamy Reddy vs State Transport Authority & Ors. (2016) 8 SCC 402 which are as under:

“Having analysed the above referred to decisions and the statutory provisions, before rendering our final answer to the question referred to this Constitution Bench, it will be worthwhile to make a reference and list out the legal propositions which we are able to discern based on our detailed consideration in this reference:

(a) Chapter IV-A supersedes any inconsistent provisions in Chapter IV.

(b) The policy of the Legislature is clear from Section 68-C that the State Transport Undertaking may initiate a scheme for the

purpose of providing an efficient, adequate, economical and properly coordinated road transport service to be run and operated by the State Transport Undertaking in relation to any area or route or portion thereof. It may do so if it is necessary in the public interest.

(c) Grant of variation under Section 57(8) will be as good as grant of a new permit.

(d) Section 57(8) is controlled by Section 68FF falling under Chapter IV-A, by virtue of the superseding effect of Section 68-B also falling under Chapter IVA.

(e) Once a scheme formulated under Section 68-D gets approved under 68-D(3) of Chapter IV-A, then all the permits in the route / area covered by the scheme will get frozen by virtue of operation of Section 68-FF.

(f) The effect of Section 68-FF can be altered / modified / cancelled only in the manner as provided for under Section 68-E and in no other manner.

(g) By virtue of the above, either a grant of a new permit or the variation of an existing permit of private operator cannot be ordered in respect of an area or route covered by an Approved Scheme.

(h) Increase in the number of trips or vehicles which were being run under the existing exempted permit under a Scheme will amount to grant of a new permit to operate one more Stage Carriage which is not permissible under Section 68-FF.

(i) The proposition of law, laid down by this Court in 'JAYARAM' impliedly stood overruled in 'ADARSH TRAVELS'.

(j) The economy and coordination, two of the factors, which govern the Approved Scheme, will be seriously infringed if the variation is to be granted of the existing permit condition.

(k) Even if there is an interstate agreement under Section 63 of the Act for increasing the number of trips, such an agreement cannot override the provisions of Chapter IV-A by virtue of Section 68B of the Act. Section 63 being in Chapter IV of the Act, the Scheme approved under Chapter IV-A will prevail over it.

(l) The Approved Scheme will exclude the operation of other stage carriage services on the Route / Area covered by the Scheme, except those whose names are mentioned in the Scheme and to the extent to which such exception is allowed.

(m) The provisions in Chapter IV-A are devised to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IV-A are clear and complete regarding the manner and effect of the “takeover” of the operation of a road transport service by the State Transport Undertaking in relation to any Area or Route or portion thereof (ADARSH TRAVELS).

(n) A necessary consequence of those provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorized so to do by the term of the scheme itself. He may not operate on any part or portion of the notified Route or Area on the mere ground that the permit as originally granted to him covered the notified Route or Area (ADARSH TRAVELS).

Having regard to the above propositions, which we are able to arrive at, we hold that the judgment reported in Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and others - 1984 (Supp) SCC 244 is no longer a good law and the decision reported in Pandiyan Roadways

Corporation Ltd. Vs. M.A. Egappan - (1987) 2 SCC 47 stands approved which is in tune with the Constitution Bench decision reported in Adarsh Travels Bus Service and another Vs. State of U.P. and others - (1985) 4 SCC 557 and the observations made in R.Raghuram Vs. P. Jayarama Naidu and others – 1990 (supp) SCC 361 stands approved.”

Aforementioned conclusions are applicable to the facts of this case. The Constitution bench while coming to the aforementioned conclusions has considered various judgments on the point including in the case of Adarsh Travels Bus Service vs State of U.P. and Others (1985) 4 SCC 557 (Constitution Bench Judgment) etc.

13. Having regard to the totality of the facts and circumstances of the case, we are of the considered opinion that the High Court is not justified in setting aside the orders passed by the State Transport Appellate Tribunal and Regional Transport Authority. Particularly, when the matter is covered by the judgment of this Court in Civil Appeal Nos. 7305-7306 of 2003 decided on 17.1.2006 cancelling 48 permits on the route in question. Accordingly, the impugned judgment of the High Court is set aside, the judgment and orders of the Regional Transport Authority as well as of the State Transport Appellate Tribunal are

restored. Consequently, Civil Appeal arising out of SLP(C) No.35947 of 2010 is allowed and Civil Appeal arising out of SLP (C) No. 69 of 2011 stands dismissed. No costs.

.....J.
[ARUN MISHRA]

.....J.
[MOHAN M. SHANTANAGOUDAR]

New Delhi.
September 05, 2017.