

PETITIONER:
ANNA TRANSPORT CORPORATION LTD., SALEM

Vs.

RESPONDENT:
SAFE SERVICE LTD. AND OTHERS

DATE OF JUDGMENT 22/08/1991

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
RAMASWAMY, K.

CITATION:
1992 AIR 64 1991 SCR (3) 708
1992 SCC Supl. (1) 401 JT 1991 (6) 306
1991 SCALE (2) 499

ACT:
Motor Vehicles Act, 1939--Sections 68F(1-D) Proviso,
68C, 68D(3), and 134(1-A)--Permit--Grant of--Draft scheme
u/s. 68C pending--Effect of--Continuing permits--Renewal of.

HEADNOTE:

In Civil Appeal No. 937 of 1980 the Regional Transport Authority, out of two permits, Wanted one permit on the route Salem to Poolambadi to the appellant-State Transport Undertaking and the other to the first respondent.

In Civil Appeal No. 938 of 1980 there was only one permit for the route Salem to Pallipatti, which was Wanted to the State Transport Undertaking, denying the second respondent.

In Civil Appeal No. 939 of 1980, on the route Salem to Poolambadi, out of two permits, one permit was granted to the State Transport Undertaking and the other to another private operator, denying the permit to the respondent therein.

In Civil Appeal No. 940 of 1980, on the route Salem to Erode, the objection of the State Transport Undertaking on the renewal sought by the respondent was sustained and the permit was granted to the State Transport Undertaking.

In Civil Appeal No. 941 of 1980, on the route Salem to Tiruchangode, the renewal application of the respondent was declined on objection by the State Transport Undertaking, who in turn, on its application, was granted the permit.

All the aggrieved parties preferred appeals before the State Transport Appellate Tribunal, which dismissed the appeals, holding that since a draft scheme under Section 68C of the Motor Vehicles Act, 1939 had been published by the State Government and was under consideration at the time when the matter was pending in appeal, subsection (1-D) of Section 68-F of the Act stood in the way for any relief being granted to the private operators.

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The High Court allowing the revision preferred by the private operators, upset the orders of the Appellate Authority, directing the Regional Transport Authority to reconsider the matters on merit against which the State Transport Undertaking approached this Court by Special Leave.

The appellants-the private operators in C.A. Nos. 940-

941 of 1980 contended that Section 68(F)(1-D), proviso of the Motor Vehicles Act, 1939 was applicable to their cases on the strength of orders in terms of Section 134(1-A), as valid permits were continuing and were capable of being renewed for a limited period, so as to cease being effective on the publication of the final scheme under section 68D(3).

Allowing C.A. Nos. 937-939 of 1980 unqualifiedly and C.A. Nos. 940-941 of 1980 qualifiedly, this Court, HELD 1. To the cases of non-grant of permits to the aggrieved private operators, sub-section (1-D) of Section 68F of the Act was clearly attracted. No permit could be granted on their asking in the presence of the draft scheme. And when none could be granted the exercise of consideration of the claim of the private operators on merit, was itself a futility. When the law forbade the grant of a permit, merits of grant stood nowhere. [711F-G]

2. The private operators in C.A. Nos. 940-941 of 1980 were functioning and had sought renewal of their existing permits on the routes in question and, on denial of the same, and corresponding grant thereof to the State Transport Undertaking, grievance arose to those private operators to take the matter in appeal. Their cases fail within the proviso to sub-section (1-D) to Section 68F of the Act. Their permits were capable of being renewed for a limited period provided they had expired after the publication of the draft scheme under Section 68C of the Act, [712B-C]

3. Even though the two appeals in C.A. Nos. 940-941 of 1980 shall also meet the same fate as that of C.A. Nos. 937-939 of 1980, they shall remain subjected to an alternate that in the event of orders under sub-section (1-A) of Section 134 being existent the Appellate Authority shall examine the question and pass such orders in relation to the appeals of these private operators in accordance with law; but in case there were no such orders earlier, the view of the Appellate Authority dismissing the appeals shall stand affirmed. [712G-713A]

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K.A. Natarajan v.M. Naina Mohammed & Ant., AIR 1978 Madras 280, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 93794 1 of 1980.

From the Judgment and Order dated 22.2.1980 of the Madras High Court in C.R.P. Nos. 934/78, 602/77, 110/78 and 111/78 and dated 29.2.1980 in C.R.P. No. 601 of 1977.

A.V. Rangam for the Appellant.

S. Srinivasan for the Respondents.

The following Order of the Court was delivered:

These are five Civil Appeals by Special Leave against identical orders of a learned Single Judge of the Madras High Court.

In relation to Civil Appeal No. 937 of 1980 the Regional Transport Authority, out of two permits, granted one permit on the route Salem to Poolambadi to the appellant State Transport Undertaking and the other to the first respondent, Safe Service Ltd. In Civil Appeal No. 938 of 1980 there was only one permit for the route Salem to Pallipatti which was granted to the State Transport Undertaking. In other words, it was denied to the Second respondent, R.P. David. In Civil Appeal No. 939 of 1980, on the route Salem to Poolambadi, out of two permits, one permit was granted to the State

Transport Undertaking and the other to another private operator, Suganeswara Motor Service denying the permit to R.P. David-respondent herein. In Civil Appeal No. 940 of 1980, on the route Salem to Erode, the objection of the State Transport Undertaking on the renewal sought by Parsuraman Pillai-respondent was sustained and the permit was granted to the State Transport Undertaking, leaving the private operator aggrieved. In Civil Appeal No. 941 of 1980, on the route Salem to Tiruchangode, the renewal application of K. Ramaswamy-respondent operator was declined on objection by the State Transport Undertaking, who in turn, on its application, was granted the permit leaving the private operator K. Ramaswamy-respondent aggrieved. All the aggrieved parties preferred appeals before the State Transport Appellate Tribunal. The Tribunal identically in all these cases took the view that since a draft scheme under Section 68C of the Motor Vehicles Act, 1939 had been published by the State Government and was under

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consideration at the time when the matter was pending in appeal, sub-section 1-D of Section 68-F of the Act stood in the way for any relief 'being granted to the private operators and thus dismissed the appeals. That provision forbids permits being granted or renewed during the period intervening between the date of publication of any draft scheme under Section 68-C of the Act, and the date of publication of the approved or modified scheme, in favour of any person, or for any class of road transport service, in relation to an area, or route, or portion thereof, covered by such scheme. However, the proviso thereto permits that where the period of operation of a permit in relation to any area, route or portion thereof specified in the scheme published under Section 68-C expires after such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under sub-section (3) of Section 68-D of the Act.

As is evident, the Appellate Authority applied sub-section(1-D) of Section 68F to all the five cases and not the proviso. The High Court on revision preferred by the private operators upset the orders of the Appellate Authority directing the Regional Transport Authority to re-consider the matter on merit. While doing so it relied on a judgment of the Madras High Court in K.A. Natarajan v.M. Naina Mohammed & Anr., AIR 1978 Madras 280 to the effect that appeal before the Appellate Authority was maintainable even though a draft scheme within the terms of Section 68C of the Act had appeared on the scene. The State Transport Undertaking being aggrieved is before us by Special Leave.

We have heard learned counsel on both sides. So far as Civil Appeal Nos. 937-939/80 are concerned, these are cases of non grant of permits to the aggrieved private operators. To their cases sub-section (D) of Section 68F of the Act was clearly attracted. No permit could be granted on their asking in the presence of the draft scheme. And when none could be granted the exercise of consideration of the claim of the aggrieved. private operators on merit, was itself a futility. When the law forbade the grant of a permit in the aforesaid duration, merits of grant stood nowhere. In this view of the matter, we are inclined to take the view that the High Court was in error in accepting the related revision petitions of the private operators and remitting their cases to the Appellate Authority for reconsideration on merits. And as a consequence it was further in error in ordering that till such orders were passed by the Appellate Authority, both the State Transport Under-

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taking and private operators could be allowed to run, in view of the facts which glare out on the record.

So far as Civil Appeal Nos. 940-941 of 1980 are concerned, the respective private operators were functioning and had sought renewal of their existing permits on the routes in question and, on denial of the same, and corresponding grant thereof to the State Transport Undertaking, grievance arose to those private operators to take the matter in appeal. Theirs were cases which could perhaps fall within the proviso to sub-section (1-D) to Section 68F of the Act. Their permits were capable of being renewed for a limited period provided they had expired after the publication of the draft scheme under Section 68C of the Act. The controverted plea of the State Undertaking however is categorical that the renewal application was rejected on 30th August, 1974 in one case and on 19th October, 1974 in the other, and on such rejection both the permits were granted to the State Transport Undertaking, and when the matter was in appeal before the Appellate Tribunal, the draft scheme was, much later, published on 4.6.1976.

Mr. S. Srinivasan, learned counsel appearing for the private operators in Civil Appeal NOS. 940-941 of 1980 contends that when an appeal was taken to the Appellate Authority, the provisions of subsection (1-A) of Section 134 of the Act were invoked and orders were obtained, notwithstanding the expiration of the term of the permit, so as to continue the permit to be valid until the appeals before the Appellate Authority were disposed of. On that basis it is contended that the proviso to sub-section (1-D) of Section 68F of the Act comes to his rescue, on the strength of orders in terms of sub-section (1-A) of Section 134 of the Act, as valid permits were continuing and were capable of being renewed for a limited period, so as to cease being effective on the publication of the final scheme under sub-section (3) of Section 68D of the Act. It may not require examining the contention because it is fractionally factual. The necessary factual data has not been placed before us in the form of a counter or the suggestive orders as such. We are thus left in the dark. Still, lest we cause any injustice to Mr. S. Srinivasan's clients, we are goaded to take the view that even though these two appeals shall also meet the same fate as that of Civil Appeal Nos. 937-939 of 1980 they shall remain subjected to an alternate that in the event of orders under sub-section (1-A) of Section 134 being existent, the Appellate Authority shall examine the question and pass such orders in relation to the appeals of these private operators in accordance with law; but in case there were no such

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orders earlier, the view of the Appellate Authority dismissing the appeals shall stand affirmed.

In view of what has been said above, we allow Civil Appeal Nos. 937-939 of 1980 unqualifiedly and Civil Appeal Nos. 940-941 of 1980 qualifiedly in the terms above stated. Parties shall bear their own costs in all these appeals.

V.P.R.

Appeals al-

lowed.

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