

CASE NO.:
Special Leave Petition (civil) 3128 of 1999

PETITIONER:
M/S NORTHERN EXPRESS HIGHWAYS & ANR.

Vs.

RESPONDENT:
STATE OF HARYANA AND ORS.

DATE OF JUDGMENT: 02/03/2001

BENCH:
A.P. Misra & B.N. Agrawal

JUDGMENT:

D E R
Leave granted.
L...I...T.....T.....T.....T.....T.....T.....T..J

Heard learned counsel for the parties.

The appellants challenge the order passed by the High Court dismissing the writ petition as premature. The grievance of the appellants is that he made an application for the grant of stage carriage permit as far back on the 12th November, 1998 but the same has yet not been disposed of. Thus the rejection of the appellants writ petition by the High Court as premature is unsustainable liable to be set aside. The reply on behalf of the respondent is that the said application for the grant of permit was sent only on the 12th November, 1998, whereas the last date of the receipt of the application was 31st August, 1998, hence it was rejected being time barred. Thus the same was returned to the appellant along with the original bank draft by speed post with A.D. on the 15th February, 1999. Learned counsel for the appellant submits firstly that appellant had not knowledge of this rejection and in any case this rejection in view of Section 80 of Motor Vehicles Act is illegal and a nullity.

Submission on behalf of respondent is that there was a scheme for the unemployed youth by the State of Haryana which is annexed as Annexure R-2 which was published and notified in the year 1998 under which appellant applied which is withdrawn by the State of Haryana through Notification dated 25th February, 2000. Thus apart from the aforesaid fact of the rejection of the application of the appellant, no relief can be granted on the said application. On the other hand learned counsel for the appellant submits that the application was not made under any Scheme but was independently under Section 80 of the said Act. However, this is disputed question of fact which has neither been raised nor adjudicated by the High Court whose order is impugned before us. In view of this proper course open to the appellant was to have moved the High Court on this subsequent cause of action instead in the present proceedings. Such a question cannot be raised for the first

time before this Court in the present proceedings.

Accordingly, the present petition fails and is dismissed without prejudice to the rights of the appellants for moving the High Court or later recourse to any other remedy available to him in accordance with law.

JUDIS