

CASE NO.:
Appeal (civil) 2676 of 2002

PETITIONER:
ABDUL HAI KHAN

Vs.

RESPONDENT:
SUBAL CHANDRA GHOSE & ORS.

DATE OF JUDGMENT: 12/04/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

With
Civil Appeal No.2677/2002 @ SLP No.6612/2000
Civil Appeal No.2678/2002 @ SLP No.8908/1999
Civil Appeal No.2679/2002 @ SLP No.6693/2000
Civil Appeal No.2680/2002 @ SLP No.11231/2000
Civil Appeal No.2681/2002 @ SLP No.12365/2000
Civil Appeal No.2682/2002 @ SLP No.19665/2000
Civil Appeal No.2683/2002 @ SLP No.5242/2002
Civil Appeal No.2684/2002 @ SLP No.5243/2002
Civil Appeal No.2685/2002 @ SLP No.5245/2002
Civil Appeal No.2686/2002 @ SLP No.5246/2002

J U D G M E N T

D.P. MOHAPATRA, J.

Leave is granted in all the special leave petitions.

These appeals filed by certain private stage carriage operators in Calcutta region of the State of West Bengal are directed against the judgment of the Division Bench of the High Court of Calcutta disposing of a batch of appeals filed by some private operators challenging the judgment passed by single Judges declining to grant any relief to the petitioners. Since all these appeals have been heard together, the facts in S.L.P.(Civil) No.8634/99 are being referred for the sake of convenience.

The Division Bench of the High Court disposed of the appeals by passing the order operative portion of which reads as follows:

"For the reasons aforementioned these appeals and the Writ applications are disposed of with the direction upon the Regional Transport Authority to consider grant of permit as if the 1980

Scheme is no longer in force and for that purpose applications filed by the concerned operators may be considered strictly in accordance with law. In the facts and circumstances of this case there will be no order as to costs."

From the discussions in the impugned judgment it is clear that the Division Bench took the view that the scheme formulated under the Notification issued on 10.4.1980 was ultra vires the provisions of Chapter IVA of the Motor Vehicles Act, 1939 since it was contrary to the intent and purport of provisions in the said chapter. The Division Bench observed :

"Ex-facie, therefore the said 1980 Notification is ultra vires Section 68C of 1939 Act. Any notification issued contrary to the Statute shall be invalid and inoperative."

It was further held in the judgment that since the 1980 scheme was not in operation for a long time and the Court had been passing orders directing the authorities concerned to consider applications for grant of stage carriage permit and pursuant to such orders a large number of stage carriage permits had been granted to private operators; in such a situation the doctrine of 'Desuetude' should be applied in the case. The Division Bench observed that the main scheme notified in 1963 which was subsequently amended had not been placed before the Court. The Division Bench took note of the statements made by the counsel appearing on behalf of the State and made the following observations :

"It may further be placed on record that both Mr. Dey and Mr. Khan appearing on behalf of the State specifically stated before us that although in the affidavit-in-opposition the State had taken a stand that 1980 Notification still exists, the fact remains that the same had not been adhered to and State Carriage permits had been granted in favour of a large number of operators."

Referring to certain decisions of the Supreme Court and of different High Courts the Division Bench rendered the judgment operative portion of which has been quoted earlier.

Analysing the facts of the case appearing from the records and arguments placed by learned counsel appearing for the parties the following factual position emerges:

Initially the passenger transport services in Calcutta region were operated by holders of stage carriage permits issued by the Regional Transport Authority, Calcutta. By the Notification issued on 19.8.1963 the State of West Bengal published a scheme nationalizing certain routes

in the Calcutta and Howrah regions under Section 68-D of the Motor Vehicles Act, 1939 (for short the 'Old Act'). In the said Scheme provision was made to permit the existing private operators to continue their services on the routes specified in the permits. The previous notification dated 2.5.62 published in the Calcutta Extra-ordinary Gazette was modified in terms of the Scheme notified in 1963. Subsequently, the 1963 Scheme was modified in 1964, 1970 and in 1980, permitting private operators to operate certain routes within the region. The writ petitioners who are the appellants herein, were issued stage carriage permits on the routes included in the notification. They have been operating on the nationalized routes. Their grievance appears to be that the Regional Transport Authority, Calcutta has granted permits to private operators on routes overlapping the nationalized routes on which they are operating under the modified scheme ignoring the notification issued in 1963 as modified in 1980. It is the contention of the appellants that the nationalization scheme has been given a complete go-bye by indiscriminate grant of permits to private stage carriage operators on routes overlapping the nationalized routes. In essence the contention of the appellants is that they have a right to operate on the nationalized routes on which they have been granted permits to the exclusion of any other private operator on the entire route or on a portion of it.

The following reliefs were sought in the petition :

- a) A writ of and/or in the nature of Mandamus commanding the respondents, each one of them, their agents, subordinates and/or assigns to forbear from granting any stage carriage permit (bus) on route No.210 which is overlapping the notified route no.76/76A and also without complying with the provisions of Chapter VI of the Motor Vehicles Act 1988 in any manner whatsoever.
- b) A Writ of and/or in the nature of Certiorari to issue directing the respondents, their agents, subordinates and/or assigns to transmit the entire record of the case forming the basis of the purported grant of stage carriage (bus) permits in respect of route No.210 which is overlapping the notified route No.76/ 76A before this Hon'ble Court and to certify them and on being so certified quash the same.
- c) A writ of and/or in the nature prohibition prohibiting the respondents, their agents, servants subordinates and/or assigns from granting any stage carriage permits on route no.210 which is overlapping the notified route no.76/76A and also

without complying with the provisions of the Motor Vehicles Act 1988 in any manner whatsoever.

d) Rule NISI in terms of prayers (a) to (c) as above.

e) An order of Injunction to issue restraining the respondents, each one of them, their agents, subordinates, servants and/or assigns from granting any stage carriage permits to private operators in respect of route no.210 which is over-lapping the notified route no.76/76A without following the provisions of Chapter VI of the Motor Vehicles Act 1988 in any manner whatsoever.

f) Ad-interim order in terms of prayer (e) as above.

g) And to pass such further other order or orders and/or direction or directions as to Your Lordship may seem fit and proper"

(Emphasis supplied)

We have heard Sri Rakesh Dwivedi, learned senior counsel appearing for the appellants and Shri Altaf Ahmad, learned Additional Solicitor General for the respondents. The main thrust of the arguments of Shri Dwivedi is that the Notification issued under Chapter IV A of the old Act which has not been cancelled after the said Act was repealed by the Motor Vehicle Act, 1988 (for short the "new Act") is binding on all parties, the private operators, the State Undertakings and the Transport Authorities under the Act. The authorities are not entitled to ignore the modified scheme or render it otiose by indiscriminately granting permits to private operators on routes overlapping the nationalized routes. The further submissions of Shri Dwivedi was that the High Court erred in holding that the modified scheme notified in 1980 is against the intent and purport of nationalization of transport services and it is contrary to Section 68-D. The learned counsel contended that the High Court erred in applying the doctrine of desuetude to the case.

Per contra Shri Altaf Ahmad while accepting the position of law that the notified scheme is the law which is binding on the parties contended that the 1963 scheme which has undergone modifications from time to time (1964, 1970 and 1980) clearly shows that it is not a total exclusion scheme but only a partial exclusion scheme. In such a case submitted Shri Ahmad there is no legal bar for the RTA to issue permits to private operators on routes other than the nationalized routes even if such routes overlap portions of any nationalized route. Shri Altaf Ahmad further contended that the scheme for granting permits to operators under the Motor Vehicles Act has

undergone a sea change. In the new Act Section 47 of the old Act which required the RTA to fix a limit of number of permits to be granted before considering any application for permit has been done away with in the new Act. In the said Act no restriction is placed on the Transport Authority for granting stage carriage permit if it is satisfied that issue of such permit is required in public interest. Shri Altaf Ahmad fairly accepted the position that on the facts and circumstances of the case, the Notification issued in 1980 cannot be held as ultra vires Chapter IV-A of the Motor Vehicles Act, 1939. He strenuously contended that after the new Act has come into force the appellants are only entitled to contend that no other private operator can be granted permit on the notified routes or other routes overlapping the notified routes.

From the contentions raised by the learned counsel for the parties it is clear to us that there is no dispute about the position of law that the notified scheme whether totally excluding private operators or partially excluding them is binding on all concerned so long as it remains in force. At the same time it is also clear that the scheme as framed in 1963 does not totally exclude private operators. Indeed it permits operation of stage carriage service by private operators. Therefore, the scheme is only a partial exclusion scheme. In such a case it is not open to a private operator who is himself operating on a nationalized route on account of modification of the scheme is entitled to seek a writ of mandamus to the authority not to grant permit to any other private operator on that route or a route overlapping a portion of the route. To put it differently he is not entitled to enjoy a monopoly of operation of the route. It is up to the Authority to consider whether the application filed by a private operator for permit on that route or another route overlapping that route should be issued or not. In case the private operator who is operating on the nationalized route has a grievance that the number of private operators specified in the notified scheme is being exceeded then the permit issued to the operator/operators in excess of the specified limit, may be challenged before the statutory fora in accordance with provisions of the Act. In any view of the matter, the writ petition seeking the relief quoted earlier is not maintainable particularly when neither the private operators who are alleged to have got the permits in excess of the number specified in the Notification nor the State Undertaking have been impleaded as parties in the case. In such a case a prayer for a declaration in the form as sought in the writ petition could not be granted.

On consideration of the relevant aspects of the matter we are of the view that the single Judge was right in declining to grant relief to the writ petitioners and the Division Bench was in error in interfering with the judgment. Accordingly the judgment of the Division Bench is set aside and that passed by the learned single Judge in each case is restored. The appeals are disposed of accordingly. No costs.

.J.
(D.P. MOHAPATRA)

.J.
(BRIJESH KUMAR)

April 12, 2002

JUDIS