

CASE NO.:
Appeal (civil) 7085-7088 of 2001

PETITIONER:
JAGDIP SINGH

Vs.

RESPONDENT:
JAGIR CHAND AND ANOTHER

DATE OF JUDGMENT: 10/10/2001

BENCH:
M.B. SHAH & R.P. SETHI

JUDGMENT:

Shah, J.

Leave granted.

Despite the legislative intent under the Motor Vehicles Act, 1988 to increase the number of buses on different routes for the convenience and benefit of travelling public, there is reluctance on the part of the authorities to implement the same. Having reached at a saturation point wherein Permit Raj caused lot of inconvenience to the bus operators as well as to the general public to a large extent, the same is sought to be continued. There cannot be any doubt that there can be certain restrictions on the bus operators for providing facilities to the passengers, but when Legislature provides that permit should not, ordinarily, be refused and has brought about a complete change in the policy of granting permit, it would be unreasonable and unjust on the part of the State Authorities to continue their old practice. Further, in these days of liberalization in all fields, that too when we are talking of globalization, it would be unjust to put fetter on the exercise of fundamental rights of those persons who intend to carry on the business as transport operators.

In these appeals, the order passed by the High Court of Punjab and Haryana at Chandigarh setting aside the orders passed by the State Transport Appellate Tribunal granting permits to operate mini buses on certain routes to the appellants, is challenged. Orders passed by the State Transport Appellate Tribunal were not challenged by the State Transport Undertaking or the State Government but were challenged by the Permit Holders who were running mini buses. It is true that those who are having permits to operate on certain routes would object to the grant of permit to other operators as it is likely to affect their monopoly. This is bound to be there in all fields of industry or business. At the same time, grant or refusal of such permits is required to be governed by the provisions of law.

The objects and reasons of the Motor Vehicles Act, 1988 inter alia provides that to take care of:-
(a) the fast increasing number of both commercial vehicles and personal vehicles in the country; and

(b) simplification of procedure and policy liberalizations for private sector operations in the road transport field;

the provisions are made under the Act.

This legislative policy is reflected in Section 80 (2) of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) which inter alia provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act.

As early as 1974, this Court in case of *Hans Raj Kehar v. State of U.P.* [(1975) 1 SCC 40] emphasised the need of having more and more buses for the public convenience and observed thus: -

.The notification removes the bar created by the limit on the number of permits for buses which could be issued and facilitates the issue of such permits to fresh applicants if they satisfy the requirement of eligibility. It hardly needs much argument to show that the larger number of buses operating on different routes would be for the convenience and benefit of the travelling public and as such would be in the public interest. Any measure which results in larger number of buses operating on various routes would necessarily eliminate or in any case minimise long hours of waiting at the bus stands. It would also relieve congestion and provide for quick and prompt transport service. Good transport service is one of the basic requirements of a progressive society. Prompt and quick transport service being a great boon for those who travel, any measure which provides for such an amenity is in the very nature of things in the public interest.

Further in *Mithilesh Garg and Others v. Union of India and others* [(1992) 1 SCC 168], the existing bus operators challenged the validity of Section 80 of the Motor Vehicles Act, 1988 on the ground that they were adversely affected in exercise of their right under Articles 14 and 19 of the Constitution of India. The Court negatived the said contention by holding that it is only the State which can impose reasonable restrictions within the ambit of Article 19(6) of the Constitution of India on the guaranteed rights of every citizen whether rich or poor, to take up and carry on, if he so wishes, the motor transport business. Further, after considering the provisions of the Repealed Act with regard to the grant of permit and sections 71, 72 and 80 of the new Act, the Court observed thus: -

The scheme envisaged under Sections 47 and 57 of the old Act has been completely done away with by the Act. The right of existing operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Sections 47 and 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of bringing in the Act was to liberalise the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit, the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of liberalization, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act

and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision under Section 71(3)(a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs.

The learned counsel for the respondent bus operators relied upon the provisions of Section 99 of the Act and submitted that under scheme framed by the State Government, the competent authority can restrict grant of permits to the bus operators and therefore, the Transport Authority was justified in rejecting the application for grant of permit to mini buses operators on a particular route.

Hence, the question is whether the State Government has framed any such scheme. It is true that under Chapter VI, there are Special provisions relating to State Transport Undertakings. Section 98 also provides that the provisions of Chapter VI and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V which includes Section 80. Thereafter sub-section (1) of Section 99 reads as under: -

99. Preparation and publication of proposal regarding road transport service of a State Transport Undertaking.(1) Where any State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit.

From the aforesaid section, it is apparent that before framing the scheme, the State Government should arrive at a conclusion that: -

- (1) for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service;
- (2) it is necessary in the public interest;
- (3) that the road transport services in general or in particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking;
- (4) to the exclusion, complete or partial of other persons or otherwise;
- (5) the State Government is required to formulate a proposal regarding the scheme giving particulars

- (a) nature of services proposed to be rendered,
 - (b) the area or route proposed to be covered and;
 - (c) other relevant particulars respecting thereto.
- (6) and the State shall publish such proposal

(a) in the Official Gazette of the State formulating such proposal;

(b) in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme; and

(c) in such other manner as the State Government formulating such proposal deem fit.

Main purpose of the aforesaid section is to have some routes/area reserved for the State Transport Undertaking, that too, for the purpose of providing an efficient, adequate, economical and properly coordinated Road Transport service. Further, such scheme must be in public interest, that is to say, larger number of buses operating on different routes for the convenience and benefit of travelling public at a cheaper rate. In such a scheme, some routes can be reserved exclusively or partially for the State Transport Undertakings.

In the rejoinder affidavit it has been pointed out that in the State of Punjab, the State Transport Undertakings are not running mini buses linking one village with another and as the State Transport Undertaking is not running any mini bus linking the villages, the Regional Transport Authority is bound by the provisions of Section 80 to grant permit.

At this stage we would refer to the alleged scheme upon which reliance is placed by the learned counsel for the respondents. As such, the State Government or the bus operators have not produced on record properly modified scheme, but they have referred to the Notification dated 21st October, 1997 which seeks to modify the previous Scheme which was framed on 9th August, 1990 by substituting some clauses. The relevant parts of the said clauses are as under:-

(2). All Inter-state routes shall be operated by the State Transport Undertakings and operations of private operators whose permits were valid for a period of three years from the date of the publication of the scheme, shall remain unaffected.

Provided that the route operated by a private operator, which became Inter-state route as a result of reorganization of the State of Punjab in the year 1966, shall not be affected by the Scheme.

Provided further that the operations of any State other than State of Punjab or any Union Territory including their private operators operating on any route by virtue of the reciprocal agreement or permits granted by such other states and countersigned by the State Transport Authority or by the Regional Transport Authority concerned as the case may be, shall remain

unaffected.

Provided further that a permit may be granted to a private operator for operations of Air-conditioned buses from the District Headquarter and important towns in the State of Punjab to the Union Territory, Chandigarh.

(4). All future operations on monopoly routes shall be operated by the State Transport Undertakings:

Provided that a private operator may be allowed to operated on a portion of twenty per cent of the monopoly route or up to the distance of fifteen kilometers of the said route, whichever is less, where it is necessary or is in public interest to do so:

Provided further that the permits granted by the Regional Transport Authority before coming into force of the scheme to the private operators for operating on monopoly routes, wholly or on portion thereof or on the routes in which the monopoly routes fall, shall remain unaffected.

(7-A) While granting permits for operations on routes, linking one village with another village without any city or a town or municipality, in between the aforesaid two villages, or a route linking a village with the block headquarter or a municipality or city the use of the mini buses may be allowed on the basis of passenger road transport needs as assessed by the State Transport Commissioner, Punjab from time to time.

Provided that: -

(e) The total length of each such route does not exceed 25 kilometers and the total operation per bus, does not exceed 250 kilometers per day.

(f) Not more than half of the total routes length runs across a National Highway or State Highways.

(g) At least one of the terminal of the route shall be a village and shall not include more than one municipality except on a local route falling within the municipal limits of a town, municipality or city wherein both the starting and the terminating points may be the same or may fall within the same town, municipality or city, as the case may be, and

(h) It shall be ensured that the interest of the State Transport Undertakings are not affected adversely on such routes.

For the purpose of these appeals, clauses 2 and 4 are not at all relevant. Clause (2) provides for all Inter-state routes and clause (4) provides for future operators on monopoly routes which are to be operated by the State Undertakings. Relevant clause is clause (7-A) and it nowhere reveals that it is in conformity with Section 99 of the Act. Under Section 99 of the Act if the State Transport Undertaking is to operate on a particular route, then only the scheme could be made applicable. The aforesaid Scheme does not provide that the routes mentioned in Clause 7(a) are to be covered and operated completely or partially by the State Transport Undertaking. In such cases,

Section 80(2) would be applicable as under Section 99, the State Government is not empowered to provide that only few private operators would operate on a particular route/routes and Regional Transport Authority or other prescribed authority cannot ordinarily refuse to grant an application for permit of any kind made at any time under the Act.

It is to be stated that in the present case, the order passed by the Appellate Tribunal was not challenged by the State Government or by the State Transport Undertaking, but was only challenged by the private bus operators. However, in these appeals, it is not necessary to consider whether they were having any locus standi to file petitions before the High Court.

In the result, the appeals are allowed. Impugned orders passed by the High Court are set aside. Orders passed by the Presiding Officer, State Transport Appellate Tribunal, Punjab are restored. There shall be no order as to costs.

J.
(M.B. Shah)

J.
(R.P. Sethi)

October 10, 2001.