

CASE NO.:

Appeal (civil) 2326-2328 of 2002
Appeal (civil) 2329-2330 of 2002
Appeal (civil) 2331 of 2002

PETITIONER:

SUBHASH CHANDER AND ANOTHER ETC.

Vs.

RESPONDENT:

State transport appellate tribunal & others etc.

DATE OF JUDGMENT: 21/03/2002

BENCH:

M.B. Shah, Bisheshwar Prasad Singh & D.M. Dharmadhikari

JUDGMENT:

Praveen Kumar

Vs

State transport commissioner, Punjab & ors.

Rajwinder Singh

Vs

State transport appellate tribunal, Punjab & others

Shah, J.

Leave granted.

These cases reveal how the persons who got benefit of permit raj are trying to avoid competition despite the liberalised policy introduced by the Parliament under Section 80 of the Motor Vehicles Act, 1988. In our view, the question involved is concluded by the decision rendered by this Court in Jagdip Singh etc. vs. Jagir Chand and Anr. etc. [(2001) 8 SCC 437]. However, to avoid the competition and to have privilege of running mini-buses, operators who were having permits are trying to create all hurdles. As such, State Transport Undertaking as well as the State has no objection with regard to grant of permits to the appellants.

This would be clear from the facts of one of the appeals. For the sake of convenience, we would refer to the facts of Civil Appeals arising out of SLP(c) Nos.18207-18209 of 2001 (Subhash Chander's case). Appellant nos.1 and 2 preferred applications before the State Transport Commissioner, Punjab for grant of mini-bus permits at Dasuya - Jalalpur via Miani route under the liberalised scheme introduced by Section 80 of the Motor Vehicles Act, 1988. That application was rejected on 10th September, 1996. Against that order, appellants preferred an appeal before the State Transport Appellate Tribunal (STAT) and the Tribunal vide its judgment and order dated 3.4.1997 allowed the appeal and remitted the case to State Transport Commissioner, Punjab to conduct survey and decide the application on merits. The State Transport Commissioner, Punjab vide order dated 11.12.1997 again rejected the applications. Against that order, appellants preferred an appeal before the State Transport Appellate Tribunal (STAT). That appeal was allowed.

Against the said judgment, respondents who were holding mini

bus permits preferred Writ Petition No.16579 of 1999 in the High Court of Punjab & Haryana at Chandigarh. That writ petition was heard along with group of other petitions and by a common judgment and order dated 30th March, 2000, the High Court allowed all the appeals and set aside the order passed by the STAT and remitted the matter for consideration afresh.

Before the appellants approached this Court, other aggrieved persons whose matters were remitted back by the High Court approached this Court and this Court allowed those appeals bearing Civil Appeal No.7085 of 2001 etc [Jagdip Singh's case (supra)].

Learned counsel for the appellants submitted that in view of the aforesaid decision, these appeals are required to be allowed. As against this, learned counsel for the respondents - mini-bus permit holders submitted that in the matters decided by this Court, Clause 7 of Scheme framed under Section 99 of Motor Vehicles Act was considered and that Clause 7-A is required to be read along with clause 7 of the Scheme framed by the State Government under Section 99 of the Motor Vehicles Act. According to his contention, Clause-7 applies to all future operators of routes other than routes specified in previous clauses. He referred to Clauses 7 and 7-A of the Scheme, which read as under: -

"7. All future operators of routes other than the routes specified in clauses 2, 3 and 4 on District and other roads shall be undertaken by the State Transport Undertakings and private operators in the ratio of 50:50 on the basis of the passenger road transport needs as so assessed by the State Transport Commissioner, Punjab from time to time.

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."

It is the contention of the learned senior counsel for respondents Mr. Tripathi that by amending the scheme, operation of the mini buses is covered and the ratio determined under clause 7 is 50% for State Transport Undertaking and 50% for private operators and same principle would be applicable to clause 7-A of the scheme.

In our view, this submission is totally misconceived. In Jagdip Singh's case (supra), this aspect was considered and court held as under

"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 a few private operators would operate on a particular route/routes and the 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."

Further, it was made clear in the aforesaid case that before framing of the scheme under Section 99, the State Government has to 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 of

(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.

The aforesaid legislative mandate is to be adhered to before framing the scheme under Section 99 and all the requirements stated

above are to be fulfilled.

Clause 7-A quoted above nowhere provides that State Transport undertaking was to operate on the said routes. As stated above, the State Government is empowered to frame the scheme only in cases where the State Transport Undertaking is to operate particular class of service in relation to any area or a route or a portion thereof. But if the Transport Undertaking is not to operate the said routes, then there is no question of framing any scheme. Further the main purpose of the scheme should be to provide an efficient, adequate, economical and properly coordinated road transport service in public interest. The scheme cannot be vague reserving some routes on the assumption that in future State Transport Undertaking would operate upon such routes. On the contrary, under the Act, the State Government is required to formulate a proposal regarding the Scheme giving particulars of (a) nature of services proposed to be rendered; and (b) the area or route proposed to be covered along with other relevant particulars respecting thereof. Under the scheme also, dominant purpose should be public interest and not to have permit raj through back door, otherwise whole purpose of sub-section (2) of Section 80 would be frustrated. Hence, reading clauses 7 and 7A together also, it would not mean that there was any contemplation by the State Transport Undertaking for operating on the routes linking one village with another village or a town or a municipality in between the aforesaid two villages or a route linking a village with block head quarter or a municipality or city. Hence, as stated in Jagdip Singh's case (supra), clause 7(A) was not in conformity with Section 99 of the Act. Hence, there is no substance in the contention raised by the learned counsel for the respondents-privileged mini-bus operators.

In the result, the appeals are allowed. The judgments and orders passed by the High Court are set aside and the orders passed by the State Transport Appellate Tribunal, Punjab at Chandigarh in favour of appellants are restored. There shall be no order as to costs.

.J.
(M.B. SHAH)

.J.
(BISHESHWAR PRASAD SINGH)

.....J.
(D.M. DHARMADHIKARI)

March 21, 2002.