

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5238 OF 2009
(Arising out of S.L.P. (C) No.25383 of 2008)

M/s. Buzrak Bus Service Regd.

...Appellant(s)

versus

Addl. State Transport Commissioner & Anr.

...Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The appellant was granted regular stage carriage permit for operating mini bus on Samana - Baladkalan via Kadrabad - Madampur route with four return trips daily. In 2004, the appellant submitted an application for diversion of the route for operating the mini bus via Chhana instead of going via Kadrabad and Madampur and also for extension of route up to Sangrur from Baladkalan via Bhawanigarh. After conducting survey, District Transport Officer, Patiala submitted report with the recommendation that diversion and extension of the route will be in public interest. By an order dated 14.1.2005, the State Transport Commissioner allowed the application of the appellant and granted the desired diversion and extension. In compliance of that order, the concerned authority made an endorsement on the appellant's permit enabling it to operate the bus on the modified route.

...2/-

After one month and seven days, the State Government, in exercise of power vested in it under Section 68(3)(ca) of the Motor Vehicles Act, 1988 (for short, "the Act"), issued notification dated 22.2.2005 whereby certain routes were formulated. In the backdrop of this development, Pepsu State Road Transport Corporation (respondent no.2 herein) filed a revision under Section 90 of the Act with the prayer that order passed by the State Transport Commissioner may be set aside because the same is contrary to notification dated 22.2.2005.

After hearing the representatives of the appellant, respondent no.2 and the State Transport Commissioner, the Tribunal allowed the revision and set aside order dated 14.1.2005 by observing that the same would frustrate the object of the notification issued under Section 68(3)(ca) of the Act. The appellant challenged the Tribunal's order in Writ Petition No. 3108 of 2007, which was dismissed by the Division Bench of the High Court by placing reliance on order dated 12.3.2008 passed in Civil Writ Petition No. 3932 of 2007 [Kesar Singh v. State Transport Commissioner, Punjab, Chandigarh].

Learned counsel for the appellant argued that the Tribunal committed serious error in quashing the order of the State Transport Commissioner on the ground that diversion and extension of the route of the appellant's permit would frustrate the object of notification dated 22.2.2005 ignoring that the said notification is not retrospective in nature. She further argued that even though a specific argument was raised before the Tribunal and the High Court that notification dated 22.2.2005 is not

applicable to the appellant's case, the same has not been dealt with and decided. Learned counsel for the respondents supported the impugned orders and argued that even though notification dated 22.2.2005 was not retrospective in character, the Tribunal did not commit any error by relying upon the same because the diversion and extension sanctioned by the State Transport Commissioner would enable the appellant to operate on the monopoly route, which is legally impermissible.

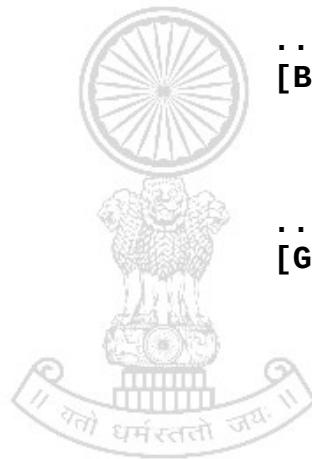
In the context of the submission made by the learned counsel for the respondents, we repeatedly asked him to point out from the pleadings and orders of the Tribunal and the High Court that the question of overlapping of the monopoly route by the appellant was raised and decided, but he could not draw our attention to any such pleading or finding.

A reading of the Tribunal's order makes it clear that diversion and extension of the route sanctioned by the State Transport Commissioner in favour of the appellant was set aside only on the ground that the same would frustrate the object of notification dated 22.2.2005. While doing so, the Tribunal completely overlooked the fact that notification dated 22.2.2005 is not retrospective and the same did not affect the orders passed by the competent authorities prior to that date. In our view, as the order for diversion and extension of the appellant's route was passed by the State Transport Commissioner prior to the date of issue of notification dated 22.2.2005, the Tribunal was not justified in setting aside the order of the State Transport Commissioner on the ground that diversion and

extension granted to the appellant would frustrate the object of the said notification. The High Court too committed an error by confirming the order of the Tribunal without even adverting to the appellant's plea that notification dated 22.2.2005 was not retrospective in character and did not affect the orders passed prior to that date.

Accordingly, the appeal is allowed, impugned orders are set aside and the revision filed by respondent no.2 before the Tribunal is dismissed.

New Delhi,
August 10, 2009.



.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

JUDGMENT