

PETITIONER:
SMT. AFSAR JAHAN BEGUM ETC.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS. ETC.

DATE OF JUDGMENT: 11/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (1) 604 1996 SCALE (1)609

ACT:

HEADNOTE:

JUDGMENT:

WITH

WRIT PETITION (C) NOS. 8430, 8330 & 9521-29, 2497-2500,
8274-8275, 7437-38 OF 1981 AND C.A. NO. 3191, 3192-93 OF
1981.

O R D E R

Substitution allowed in W.P. (C) No. 8330/81.

All these writ petitions and appeal are disposed of by common judgment since common question of law arises for decision in these cases.

Admittedly, the routes on which the petitioners/appellants are seeking to intersect and ply their vehicles are notified routes. The notified routes were published and became final under Chapter IV-A of Act 4, 1939. The Motor Vehicles Act, 1988 introduced Chapter VI as a special provision relating to the State transport undertakings. Section 99 authorises preparation and publication of the proposal regarding road transport service of a State transport undertakings. Section 102 deals with cancellation or modification of the schemes. It provides that the State Government may, at any time, if it consider necessary in the public interest so to do, modify any approved scheme after giving : (i) the state transport undertaking; and (ii) any other person who in the opinion of the State Government is likely to be affected by the proposed modification an opportunity of being heard in respect of the proposed modification.

Under sub-section (2), the State Government shall publish the modification proposed under sub-section (1) in the State Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification together with the date not being less than 30 days from the publication in the official gazette, the time and place at which any representation received in this behalf will be heard by the State Government.

While the appeals are pending, when it was brought to

our notice that a proposal has been made by the State Government for modification of the approved schemes, by our order dated 1.11.1995, we have ordered that the learned counsel appearing for the State should verify and place before the Court whether the draft modification has been approved and published as required under Section 102(2) of the Act and also to file an affidavit by a competent and responsible officer of the necessity to introduce the modification of the approved schemes and the action taken thereon. Pursuant thereto, the additional affidavit has been filed by K.K. Tiwari, R.T.O., Indore who has stated that the Government by notification dated 21.2.1991 relaxed only to distance of 25 kms. on the nationalised route to private operators under certain conditions and restrictions. The appellants are not entitled to the benefit of those corridor shelted now given under the modified scheme and relaxation granted under Section 102(2) of the Act. The petitioners, therefore, cannot claim and benefit of relaxation. The have stated in the notification thus :

"And, Whereas, the State Government in view of additional demand of transport services considers necessary in the public interest to allow private operators to ply on hire or reward stage carriages on routes covered by the said Schemes and for that purpose desires to modify all the said Schemes in the manner as shown in the Schedules below:

SCHEDULE

In each of the said schemes, the following words figures and brackets shall be added at the end, namely :

"Notwithstanding anything contained in this Scheme, the private operators may be permitted to ply Stage-Carriages for hire or reward subject to the following conditions, namely :-

- (1) Limit of exemption on notified route shall not exceed 25 kilometers.
- (2) The Private operators shall ply the stage carriages over the distance, other than the distance of the notified routes which shall not be less than twice, the distance of the notified route covered by the permit ;
- (3) Calculations of limit of exemption of 25 kilometers on notified route shall be made on the basis of total;
- (4) This exemption shall be application to notified routes under all Scheme, even though the Schemes might have been implemented after 1979;
- (5) The Private Operators shall not pick-up or set down passengers on the notified route."

In Adarsh Travels Bus Service vs. State of U.P. & Ors. [(1985) 4 SCC 557] a Constitution Bench of this Court considered Section 68-C, 68-D(3) and 68-FF read with Section 2(28-A of the Act 4, 1939 and had held that :

"Once a scheme is published under Section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may

operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area or the mere ground that the permit as originally granted to him covered the notified route or area"

In this view of the matter, the only relaxation from the frozen notified route or area from the scheme is as provided in the scheme itself. If any operator on any route intersecting the notified route, has of necessity, to ply the vehicle strictly in conformity with the restrictive corridor shelter and no more. The relaxation is not meant to sabotage the approved scheme but to subserve public interest.

Shri Gambhir, learned counsel contended that in view of the relaxation upto a distance of 25 kms. been provided in the Scheme as modified and notified under Section 102(2) of the Act, all the petitioners are entitled to ply in the terms thereof. We cannot give any direction or relief to the petitioners in these writ petitions. It is seen that the Government having approved the routes, have exercised the power under Section 102(2) of the Act and given benefit by intersecting the approved routes only upto a distance of 25 kms. without picking up or setting down the passengers on the modified route, strictly subject to the terms and conditions mentioned therein. Under the terms and conditions mentioned therein, Under those circumstances, the petitioners cannot be given any relief. But if they have any right under the modified scheme, then that would be a matter appropriately to be gone into by the RTA or STA, as the case may be, after due notice to the State Transport Undertaking and all other interested persons.

The writ petitions are accordingly dismissed. Consequently, the appeal is also dismissed. No costs.