
AIR 1993 Raj 134 : (1992) 2 RLW 391 : (1993) 1 WLC 359 : (1992) 2 WLN 218

Rajasthan High Court

Case No: Civil Writ Petition No"s. 6224 and 6225 of 1992

Charanjit and Others

APPELLANT

Vs

R.T.A., Bikaner

RESPONDENT

Date of Decision: Dec. 7, 1992

Acts Referred:

Motor Vehicles Act, 1988 " Section 80

Citation: AIR 1993 Raj 134 : (1992) 2 RLW 391 : (1993) 1 WLC 359 : (1992) 2 WLN 218

Hon'ble Judges: Jasraj Chopra, J

Bench: Single Bench

Advocate: B.L. Maheshwari and Sunil Maheshwari, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Jasraj Chopra, J.

These two writ petitions involve common question of law and so, they were heard together and are being disposed of by

a common order.

2. The facts necessary for the disposal of these two writ petitions briefly stated are:

(1) FACTS OF CHARANJITS CASE:

The petitioner is an existing permit holder covering Bus No. RSK 493 on Hanumangarh to Sirsa via Shergarh Surewali route which is an inter-state

route, which has not now been curtailed upto Surewali route. His permit is valid upto 31-8-1993.

It is alleged that the Rajasthan State Road Transport Corporation, Jaipur (hereinafter to be referred as "RSRTC") prepared a draft scheme u/s

68C of the Motor Vehicles Act, 1939 (for short "the old Act") (since repealed) vide Notification No. F.4 plan/RSRTC/Tr.483 in respect of four

routes including Hanumangarh to Sangaria via Shergarh, Nagrana and portions thereof. The said draft scheme came to be published in Part VII of

the Rajasthan Gazette (Annexure-1) dated July 25, 1986 for inviting objections. Clause (4) of the said draft scheme provided that the RSRTC or

any other States Transport Undertaking in pursuance of any reciprocal agreement would be exclusively entitled to provide passengers transport

service and no other person would be authorised to provide any stage carriage or contract carriage services on the said draft scheme or portions

thereof. According to the petitioner, the draft schemes published u/s 68C of Chapter IV-A of the repealed Act is a law and it has overriding effect

over Chapter IV of the repealed Motor Vehicles Act, 1939.

3. It was further submitted that in Ram Krishna Verma and Others Vs. State of U.P. and Others, their Lordships of the Supreme Court have

observed as under (at p. 1892 of AIR):

Draft scheme u/s 68C and approved u/s 68D of Chapter IVA of the Repealed Act (Chapter VI of the Act), is a law and it has overriding effect

over (Chapter IV) of the repealed Act (Chapter V of the new Act of 1988). It operates against everyone unless it is modified. It excludes private

operators from the area or route or a portion thereof covered under the scheme except to the extent excluded under that scheme itself. The right of

private operators to apply for and to obtain permits under Chapter IV of the repealed Act (Chapter V of the Act) has been frozen and prohibited."

On the basis of this judgment, it was submitted that the respondent R. T. A. Bikaner patently lacks jurisdiction to entertain any application for the

grant of any permit temporary or non-temporary, on the said Hanumangarh to Sangaria draft scheme route as it forms part and parcel of the

Hanumangarh to Surewali via Shergarh route. The R.T.A. patently lacks jurisdiction to entertain any application for the grant of a permit,

temporary or non-temporary, on the said Hanumangarh to Surewali route and to grant any permit thereon.

4. It was submitted that the Motor Vehicles Act, 1988 does not provide for Sections like 47 and 57 of the old Act. It was further submitted that

since the route of the petitioner is overlapped by the draft scheme, he is interested in seeing that proper consideration should be made in respect of

the applications that have been filed before the RTA for grant of permits on this route which is overlapped by a notified scheme.

(2) FACTS OF BANWARILAL & QRS CASE:

5. The petitioners are existing permit holders covering Bus No. RSK 493 on Hanumangarh to Abhore via Satipura, Dholipal, Inderpura, Seruwala,

Sadulsahar, Rajpura (Rajasthan Border), Ramsara route, which is an inter-State route. It is alleged that vide Notification (Annexure-1), the

RSRTC prepared a draft scheme u/s 68C of the old Act in respect of four routes including Hanumangarh to Rajpura (Rajasthan Border) via

Satipura, Inderpura, Seruwala, Sadulsahar and portions thereof and the said draft scheme (Annexure 1) came to be published in Rajasthan Gazette

dated July 25, 1986 for inviting objections, if any. It was contended that on the basis of the decision of their Lordships of the Supreme Court in

Ram Krishna Verma and Others Vs. State of U.P. and Others, the respondent RTA Bikaner patently lacks jurisdiction to entertain any application

for the grant of any permit temporary or non-temporary, on the said Hanumangarh to Rajpura (Rajasthan Border) via Satipura, Inderpura,

Seruwala, Sadulsahar and portions thereof as it forms part and parcel of Hanumangarh to Abhore via Satipura, Dholipal, Inderpura, Seruwala,

Sadulsahar, Rajpura Rajasthan Border), Ramsara route.

6. I have heard Mr. B.L. Maheshwari assisted by Mr. Sunil Maheshwari, the learned counsel appearing for the petitioners in detail at the admission

stage.

7. While relying on a decision of their Lordships of the Supreme Court in S.M.D. Kiran Pasha Vs. Government of Andhra Pradesh and Others, it

was contended by Mr. B.L. Maheshwari, the learned counsel appearing for the petitioners that the petitioners can bring writ petitions not only for

the enforcement of right but for protection of rights from its threatened or imminent violation. Pre-violation protection differs from post-violation

and restoration of right and, therefore, right can be enforced at both the stages through a writ petition.

8. He has further placed reliance on a decision of their Lordships of the Supreme Court in Ram Krishna Verma and Others Vs. State of U.P. and

Others, wherein it has been held that a draft scheme u/s 68C and approved u/s 68D of Chapter IVA of the Repealed Act (Chapter VI of the Act),

is a law and it has overriding effect over Chapter IV of the repealed Act (Chapter V of the new Act of 1988). It operates against everyone unless

it is modified. It excludes private operators from the area or route or a portion thereof covered under the scheme except to the extent excluded

under that scheme itself, The right of private operators to apply for and to obtain permits under Chapter IV of the repealed Act (Chapter V of the

Act) has been frozen and prohibited.

9. It was, therefore, argued by Mr. B.L. Maheshwari, the learned counsel appearing for the petitioners that the petitioners being private operators

of the aforesaid routes, they are highly interested in seeing that applications filed by private operators should not be entertained and considered. I

am unable to accept this contention of Mr. B. L. Maheshwari, the learned counsel appearing for the petitioners and I am firmly of the view that

such a writ petition on behalf of the private operators in relation to grant of permits about routes which are wholly or partly covered by notified

routes are not entertainable on behalf of the private operators because they are not aggrieved persons as per the provisions of the Motor Vehicles

Act, 1988. Even as per the provisions of the old Act, paramount consideration for grant of permit was the public interest, the interest of the existing

operators was held to be sufficiently well taken care of and slight inconvenience which was evitable was sought to be reduced to a minimum.

However, when the Motor Vehicles Act, 1988 came into force, it made a provision in the shape of Section 80 whereby, the policy of grant of

permits was made highly liberalised and it was, inter alia, provided that an application for a permit of any kind may be made at any time and a RTA

shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act. The RTA may summarily refuse the

application if the grant of any permit in accordance with the application would have the effect of increasing the number of stage carriage as fixed

and specified in a notification in the official Gazette under Clause (a) of Sub-section (3) of Section 71 or of contract carriages as fixed and

specified in a notification in the official Gazette under Clause (a) of Sub-section (3) of Section 74. It has been further provided that where a RTA

refuses a temporary permit, by the inclusion of a new route or routes, or a new area or by altering the route or routes of area covered by it, in the

case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the

route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit. It has been further provided that

where a RTA refuses an application for the grant of a permit of any kind under this Act, it shall give to the applicant in writing its reasons for the

refusal of the same and an opportunity of being heard in the matter. Thus, according to Section 80 of the Motor Vehicles Act, 1988, grant of a

permit, is a rule, and its refusal is an exception and; that too in very exceptional circumstances provided in Section 80 of the Act. The validity of

Section 80 of the Motor Vehicles Act, 1988 came to be challenged in a number of writ petitions before their Lordships of the Supreme Court and

recently in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, their Lordships of the Supreme Court have held that the liberal policy of grant of

permits u/s 80 of the Act is directed to eliminate corruption and favouritism in the process of granting permits, eliminate monopoly of few persons

and making operation on a particular route economically viable and encourage healthy competition to bring about efficiency in the trade. Of course,

this provision made in Chapter V of the Motor Vehicles Act, 1988 was made subject to the provisions of Chapter VI of the Motor Vehicles Act,

which is equivalent to Chapter IVA of the old Act. Chapter VI of the Act (Act of 1988) pertains to the nationalisation of the routes by the State

Transport Undertakings. Chapter VI does not confer any right to perform (prefer) objection to the grant of a permit by any private operator. That

right is conferred on RSRTC or the State Transport Undertaking. Thus a private operator cannot object to the grant of permit. The entertainment

of an application for grant of such a permit even in regard to a route, the portion of which is covered by a notified route cannot be objected to by

the private operators because he is not an aggrieved party as per Section 80 of the Act. If anybody who is aggrieved by the grant of such a permit,

it is the State Transport Undertaking and not a private operator.

10. It was contended by Mr. B. L. Maheshwari, the learned counsel appearing for the petitioners that such an application cannot be entertained

much less be considered. I am unable to accept this contention. In Mysore State Road Transport Corporation Vs. Mysore State Transport

Appellate Tribunal, their Lordships of the Supreme Court have held that where a private transport owner makes an application to operate on a

route which overlaps even a portion of the notified route then that application has to be considered only in the light of the scheme as notified. Thus,

entertainment of application and its consideration is not prohibited but it Can only be considered and decided in the light of the scheme as notified,

which by itself is a law. The provisions of Chapter IVA of the old Act are devised to override the provisions of Chapter IV of the old Act and it is

expressly so enacted. The provisions of Chapter IVA are clear and complete Code regarding the manner and mode to the take-over of the

operation of a road transport service by the State Transport Undertaking in relation to any area or route or portion thereof, which forms part of an

approved notified or a draft scheme. Thus, it is the State Road Transport Undertaking which can be said to be an aggrieved party by the grant of

such a permit as regards the route, which is overlapped wholly or partly by a portion of the notified route and not a private operator. Earlier, the

private operator could have been held to be an aggrieved party as per the provisions of the old Repealed Act because their applications had to be

notified and objections had to be invited and therefore, the existing private operators could raise objections regarding grant of permit on such

routes but with the introduction of Section 80 in the Motor Vehicles Act, 1988, as regards any route which is notified or approved under Chapter

VI, a private operator does not remain to be an aggrieved party. Even the perusal of the provisions of Sections 68-C, 68-D and 68-FF of the old

Act in the light of the definition of "route" as defined in Section 2(28-A) of the old Act make it manifestly clear that once the scheme is published

u/s 68-D in relation to any area, route or a portion thereof, whether to the exclusion, complete or partial, of other persons or otherwise, no person

other than the State Road Transport Undertaking may operate on the notified or nationalised route except as provided by the scheme itself. A

necessary consequence of these provisions is that no private operator can operate any vehicle on any part or a portion of a notified route unless

authorised so to do by the terms of the scheme itself. Thus this submission of Mr. Maheshwari cannot be countenanced that even application for

grant of permit on a notified route cannot be entertained and considered. No law prohibits entertainment and consideration of such an application.

It is for the permit granting authority to consider the applications on merit and refuse to grant permit if it is so prohibited by a notified approved or

draft scheme.

11. In Ram Krishna Verma and Others Vs. State of U.P. and Others, their Lordships of the Supreme Court have held that a draft scheme

published u/s 68-C of the old Act would stand lapsed only if it is not approved within one year from the date when the Act came into force i.e.

with effect from July 1, 1989. It has not been contended before me that this scheme has been approved within one year (sic) Act, 1988 and

therefore, unless some material is brought on record to show that this scheme is still alive, it has to be accepted that it has already lapsed and when

it has been lapsed, the applications for grant of permits on such routes can be entertained, considered and granted. A similar view has been

expressed by their Lordships of the Supreme Court in Krishan Kumar Vs. State of Rajasthan and others,

12. The upshot of the discussion made hereinabove is that the petitioners have no locus standi to object to the grant of a permit on a portion of the

notified route or draft scheme because it is the RSRTC or an State Road Transport Undertaking which alone is an aggrieved party, and it can

object to the grant of such permit on a portion of the notified route or a route covered by an approved or a draft scheme. This writ petition is

totally premature because the RTA is not debarred from entertaining and considering such applications. If these applications are accepted against

the provisions of law then an aggrieved party can certainly file a writ petition before this Court.

13. In the result, I find no force in these writ petitions and therefore, they are dismissed summarily.