

(2005) 12 AHC CK 0165

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 76001 of 2005

Smt. Jameela Begum and District
Motor Operators Association
Registered Office

APPELLANT

Vs

State of U.P. Ministry of
Transport, Transport
Commissioner, The Regional
Transport Authority

RESPONDENT

Date of Decision: Dec. 20, 2005

Acts Referred:

- Constitution of India, 1950 - Article 13, 226
- Evidence Act, 1872 - Section 114
- Motor Vehicles Act, 1939 - Section 47, 47(1), 47(3), 64A, 68F(1)
- Motor Vehicles Act, 1988 - Section 71, 71(1), 71(3), 74, 80(2)

Citation: (2006) 2 ACC 780 : AIR 2006 All 144

Hon'ble Judges: Dilip Gupta, J; B.S. Chauhan, J

Bench: Division Bench

Advocate: S.N. Jaiswal, for the Appellant; Samir Sharma and S.C., for the Respondent

Final Decision: Dismissed

Judgement

B.S. Chauhan, J.

The U.P. State Road Transport Corporation (hereinafter called the UPSRTC) has submitted the application for grant of Permanent Stage Carriage Permits on the routes, namely, Bulandshahr-Sikarpur-Shahaswan and allied routes, which includes (1) Bulandshahr Jahangirabad-Daulatpur-Ashar (2) Bulandshahr-Aroopshahr-Narora (3) Bulandshahr-Bhaisrauli-Saidpur (4) Bulandshahr-Kanpur-Via Lakhaoti (5) Khurja-Pahashu-Atrauli Via Rajghat (6) Khurja-Jewar-Tappal and (7) Bulandshahr-Syanagarh and the petitioners apprehend that the respondent no. 3 The Regional Transport Authority, Ghaziabad (hereinafter

called the RTA) would grant the Permit to the UPSRTC, This petition has therefore been filed.

2. Shri S.N. Jaiswal, learned Counsel appearing for the petitioners has submitted that the UPSRTC cannot apply, and nor can it be permitted to ply its vehicles on a route, which has not been notified under Chapter VI of the Motor Vehicles Act, 1988 (hereinafter called the Act). The RTA is going to grant the Stage Carriage Permits to UPSRTC in contravention of law, and that too without hearing the petitioners. Therefore, it should be restrained to grant any Permit to UPSRTC.

3. On the other hand, Shri Samir Sharma, learned Counsel appearing for the UPSRTC has submitted that the Act does not bar the UPSRTC, to apply for grant of Permit to ply its vehicles on a non-notified route, rather it provides for preference over others if other things are equal by virtue of the provisions of Section 71(3)(d)(i) of the Act. The writ petition cannot be entertained being pre-emptive. Petitioners have no right to be heard at the time of granting the permits to any person on the said routes, as there is no provision analogous to the proviso to Sub-section (3) of Section 47 of the Motor Vehicles Act, 1939 (hereinafter called "the Act 1939"), which stood repealed by the Act. At the most, if permits are granted, the petitioners may have a right to file revisions u/s 90 of the Act and if the revision has to be filed at that stage, the question of entertaining the writ petition at this stage on their behest does not arise. Therefore, the petition is liable to be dismissed.

4. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

5. In [The Secretary, Regional Transport Authority, Guntur and another Vs. E. Rama Rao and Others](#), the Full Bench of Andhra Pradesh High Court considered the effect of having no provision in the new Act corresponding to the Proviso to Section 47(1) of the Act, 1939 and observed as under:

We are of the view that Parliament intended to negative any right to the existing operators either to submit their representations or to a right of hearing u/s 71(1) of Section 80(2) of the new Act. It is, therefore, not open to the Court to imply principles of natural justice and add further restriction than what Parliament has considered sufficient, according to its new legislative policy.

6. A Division Bench of this Court in [Surendra Rao Vs. Regional Transport Authority, Gorakhpur Region, Gorakhpur and others](#), held that in view of the change of law it is not permissible for the R.T.A. to entertain the objection of the existing operators. However they have a right to maintain a revision u/s 90 of the Act 1988. The Court held as under:

Section 90 of the Act empowers the appellate tribunal to call for, on an application made to it, the record of any case in which an order has been passed by the State Transport Authority or the Regional Transport Authority against which no appeal lies

and if it appears to the Appellate Tribunal that the order made by the S.T.A. or R.T.A. Is improper or illegal, it may pass such order in relation to the case as it deems fit. It is true that under the Act the existing operators cannot claim any legal right to file representation or right for hearing at the stage of the grant of permit on his route. Absence of legal right to file representation or to be heard may be relevant considerations for determining as to whether existing operator can be treated to be an aggrieved person for the purpose of filing revision u/s 90 of the Act against the orders of the R.T.A. Granting permit But this is not an exclusive test for determination of the locus standi of an operator to file a revision.

7. While deciding the said case, this Court placed reliance upon the judgment of Hon'ble Supreme Court in [Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another](#), wherein while considering the identical provisions of Section 64-A of Act 1939, it had been held that existing operators being aggrieved persons should be heard at the time of grant of permit as required under the provisions of Section 47(3) of the Act 1939. The remedy for such operators is to file a revision u/s 90 of the Act 1988.

8. Thus, in view of the above, if even the existing operators of a route do not have a locus standi to raise objection at the time of grant of permit, it is beyond imagination that existing operators would have any right to maintain the writ petition restraining the Statutory Authority to consider the applications for grant of permits.

9. The provisions contained in Section 47 of the Act, 1939 enabled the association representing persons interested in provisions of Road Transport Authorities or local authorities or police authorities to make representations at the time of grant of permit on the route. However, there is no provision analogous to the same in the Act Therefore, where the legislature consciously has made a departure and deprived the local authorities and association to raise any grievance at the time of grant of a permit, such a remedy cannot be conferred by judicial interpretation as it would amount to legislation, which is not permissible in law.

10. Thus in view of the above, it is evident that existing operators do not have a right of being heard at the time of grant of permits on their route.

11. The Court has no competence to issue a direction contrary to law. (Vide [Union of India and Another Vs. Kirloskar Pneumatic Company Limited, State of U. P. and others Vs. Harish Chandra and others](#), and [Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others](#),

12. In [State of Punjab and others Vs. Renuka Singla and others](#), dealing with a similar situation, the Hon'ble Apex Court observed as under:

We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the

authorities concerned to violate their own statutory rules and regulations.

13. Similarly, in [Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others](#), the Hon"ble Apex Court has held as under:

The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law.

14. Thus, there is no occasion for this Court to restrain the authorities to consider the applications at this stage or to give an opportunity of hearing to the petitioners before the permits are granted to any person, including the UPSRTC.

15. Every statutory authority knows its duty and function. Granting permits by the RTA is quasi-judicial function. In view of the provisions of Section 114 Illustration (e) of the Evidence Act, there is a presumption that every act of such an authority shall be regularly performed, i.e., carried out in accordance with law.

16. There is a presumption that official acts are regularly performed though such a presumption can be rebutted by adducing evidence. (Vide [Gopal Narain Vs. State of Uttar Pradesh and Another](#), [Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Deo and Others](#), [Ajit Singh Vs. State of Punjab and Another](#), ; [State of Punjab Vs. Satya Pal Dang and Others](#) and [Baldev Parkash and Others](#), [Sone Lal and Others Vs. The State of U.P., Municipal Board, Saharanpur Vs. Imperial Tobacco of India Ltd. and Another Etc.](#), [K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another](#), ; [Kiran Gupta and Others Vs. State of U.P. and Others Etc.](#), ; [Superintendent, Narcotics Central Bureau Vs. R. Paulsamy](#), [The State \(Government of NCT of Delhi\) and Ors. v. Sunil and Anr.](#) (2001) 1 SCC 652 ; and [T. Shankar Prasad v. State of A.P.](#) AIR 2004 SC 1242).

17. In [Narayan Govind Gavate and Others Vs. State of Maharashtra and Others](#), the Hon"ble Supreme Court observed that presumption provided in Illustration (e) of Section 114 of the Evidence Act is based on well-known maxim of law "omnia praesumuntur rite esse acta" (i.e. all acts are presumed to have been rightly and regularly done). The Court further held that this presumption is, however, one of the fact. It is an optional presumption and can be displaced by the circumstances, indicating that the power lodged in an authority or official has not been exercised in accordance with law.

18. There is nothing on record to rebut the said presumption. The petitioners/existing operators cannot have any grievance at this stage. The only remedy to the existing operators/petitioners is to file a revision u/s 90 of the Act, if they are aggrieved of any resolution passed by the RTA.

19. In view of the above, the petition is premature and is liable to be dismissed at this stage.

20. The provisions of Section 71 provide for procedure to be adopted by RTA while considering the applications for Stage Carriage Permits. Proviso to Sub-section (3) (d) (III) provides that if other conditions are equal, preference shall be given to the applications for Permit from State Transport Undertaking.

21. Even in a case for grant of Permits for contract Carriage, proviso to Sub-section (3)(b)(iv) to Section 74 provides for a similar preferential treatment to the State Transport Undertakings.

22. Thus, the Act itself provides for preferential treatment to UPSRTC for grant of permits on a non-notified route.

23. The issue involved herein was considered by the Constitution Bench of the Hon'ble Apex Court in [The Parbhani Transport Co-operative Society Ltd. Vs. The Regional Transport Authority, Aurangabad and Others](#), wherein the Hon'ble Supreme Court while considering the provisions of Act, which contained analogous provisions, held that there are two separate chapters for grant of Permit on a notified route, and non-notified routes. Both party apply separately and independently and they do not overlap each other. In a case of grant of Permit on a notified route, the authorities have to take into consideration the contents of the Scheme and cannot violate the terms thereof, while the grant of permit on a non-notified route is governed under a completely different head, and as it does not contain any prohibition for grant of Permit to the State Transport Undertaking, and it can be granted to it on a non-notified route also. The Court held as under.

Now the position here is different The Government has of course the power to do any business it likes and therefore the business of running stage carriages. We have earlier drawn attention to the change made in Clause (a) of Section 42(3) by the amendment of 1956. Previously, it was not necessary for the Government to obtain permits u/s 42(1) for buses that it intended to run as stage carriages. Since the amendment the Government can no longer run transport vehicles for commercial purposes without obtaining permits u/s 42(1). Now the plying of buses as stage carriages is a commercial enterprise and for such buses, therefore, under the sections as they stand, the Government would require permits as any one else. That being so, the sections clearly contemplate that the Government may apply for and obtain permits for its buses run as stage carriages. The rule applied in AIR 1936 253 (Privy Council) does not permit" the ordinary meaning of Section 42, Sub-section (1) and Sub-section (3), d, (a) to be cut down because of the provisions of Chapter IV A. The Act lays down two independent sets of provisions in regard to the running of buses by the Government, one under Chapter IV and the other under Chapter IV A. Chapter IV A was intended to give the Government, a special advantage. When the Government chooses to proceed under that chapter, it becomes entitled as a matter of right u/s 68F (1) to the necessary permits. Under Chapter IV the Government does not have any such advantage; it has to compete with other applicants, to secure permits to be able to run its buses. The powers under the two Chapters are

therefore, different. To such a case the principle of AIR 1936 253 (Privy Council) cannot be applied.

The learned Counsel for the petitioner also referred to the maxim *expressio unius est exclusio alterius* and contended that since the Act by Chapter IV A provided that the Government would be entitled to run buses under a scheme it impliedly prohibited the running of buses by the Government otherwise. It does not seem to us that this maxim carries the matter further. It is a maxim for ascertaining the intention of the legislature. Where the statutory language is plain and the meaning clear, there is no scope for applying the rule. Section 42(3)(a) appears to us to be perfectly plain in its terms. It contemplates that the Government has to apply for permits u/s 42 (1) to run buses as a commercial enterprise. That being so, the maxim cannot be resorted to for ascertaining the intention of the legislature and implying a prohibition against the Government applying for permits under Chapter IV.

24. In [Capital Multi-purpose Co-operative Society Bhopal and Others Vs. The State of M.P. and Others](#), the Apex Court reiterated the same view observing that State Transport Undertaking may enter into competition with private operators having obtained permits under Chapter of the Act 1939. Similar view has been reiterated in [D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others](#),

25. The matter is squarely covered by the said judgment. Under the Act 1939, there was no prohibition for the UPSRTC to ply its vehicles on a non-notified route, after obtaining the permits.

26. The Judgments referred to and relied upon by Shri Jaiswal, particularly, in the case of [Adarsh Travels Bus Service and Another Vs. State of U.P. and Others](#), and Karnataka State Road Transport Corporation v. Asarfullah Khan (Supra) are distinguishable, as the issue involved therein had been entirely different. Those were the cases where the issue arose as to whether a person not covered by the scheme of rationalisation can overlap the notified route, or apart of it the Apex Court in both the cases, answered in negative. The ratio Of the said judgments is that once the scheme under Chapter VI of the Act to finalised and stands published, it becomes the law within the meaning of Article 13 of the Constitution, and therefore, no permit can be granted in deviation of the terms incorporated in the scheme itself as held by the Constitution Benches of the Supreme Court in [H.C. Narayanappa and Others Vs. The State of Mysore and Others](#), and [Ch. Khazan Singh and Others Vs. State of U.P. and Others](#),

27. Thus, in view of the above, it is evident that on a route which stands notified under Chapter VI of the Act, person who has not been adjusted in the scheme, cannot ply his vehicle. However, it is open to the UPSRTC to apply for grant of a permit on a non-notified route and its application is required to be decided u/s 71 giving preferential treatment The issue of preferential treatment has also been

considered by the Hon"ble Apex Court in [Ishwru Yatayat Co-op. Society Vs. State Transport Appellate Authority and Others,](#) , wherein it has been held that a juristic person who has been given a preferential right for grant of permit under the Act, can claim the grant in accordance with the provisions of the Act.

28. The Act provides for preferential treatment in certain circumstances as provided in the Act itself. Even if the Statute provides for preference in favour of a particular class of applicants, it is to be accorded only and only if the merits of the applicants are equal. (Vide [Government of Andhra Pradesh Vs. P. Dilip Kumar and Another,](#) ; [Executive Officer Vs. E. Tirupalu and others,](#) [C.R. Siva Reddy and another,](#) [T. Venkateswarlu and another,](#) [C. Vani,](#) ; and Secretary, [The Secretary, Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others,](#)

29. In view of the above, we are of the considered opinion that the UPSRTC can apply for grant of permit on a non-notified route, and can ply its vehicles.

30. Petition is devoid of any merit and stands dismissed according However, if any resolution is passed by the Regional Transport; Authority and if petitioners are aggrieved by the said resolution, they may file revisions before the State Transport Appellate Tribunal. No costs.