

Fathima Begum Vs Karnataka State Transport Authority and Another

Court: Karnataka High Court

Date of Decision: Feb. 3, 1997

Acts Referred: Constitution of India, 1950 " Article 226
Motor Vehicles Act, 1988 " Section 217 (b), 72, 74, 76, 79

Citation: (1998) 1 ACC 506 : AIR 1998 Kar 119

Hon'ble Judges: Hari Nath Tilhari, J

Bench: Single Bench

Judgement

Hari Nath Tilhari, J.

By this petition under Article 226 of the Constitution of India, the petitioner has sought for the issuance of writ of

certiorari setting aside or quashing the resolution passed by the first respondent in Subject No. 103 of 1995, dated 20/21.12.1995, renewing the

State Carriage Permit No. 12/1969-70, for the purpose of the route Bellary to Shimoga and back via Chitradurga, copy of which has been

annexed as Annexure-A to the writ petition.

2. The petitioner's case is that he is an operator on the aforesaid route Bellary to Shimoga and back via Chitradurga, According to the petitioner's

case, respondent 2 in this writ petition has been the holder of the Stage Carriage permit bearing No. 12/1969-70 for the route Bellary to Shimoga

and back via Chitradurga District. The petitioner has further asserted that the said permit which had been granted by renewal from time to time was

effective upto 31.7.1995. The petitioner's case is that second respondent applied for renewal of the said permit on 26.7.1995. According to the

petitioner, she filed objection in the office of the first respondent that is the Karnataka State Transport Authority, to the effect that the application

for renewal of permit was not maintainable and could not be considered in view of the law laid down by their Lordships of the Supreme Court in

the case at Secretary, Quilon Distt. Motor Transport Workers' Co-operative Society Ltd. Vs. Regional Transport Authority and Others, . The

petitioner's case is that this objection was registered in the Register at Sl. No. 2044, dated 17.5.1995. The petitioner's grievance is that in the

meeting held on 20.12.1995 and 21.12.1995, the Counsel appearing on behalf of the petitioner took the objection to that effect as well, but inspite

of written objection and representation made through the Counsel at the time of meeting held, the first respondent did not apply its mind to the

aforesaid objection about the maintainability of the renewal application and without considering that aspect of the matter, respondent 1 passed the

resolution dated 20/21.12.1995 the copy of which is Annexure-A.

3. Having felt aggrieved, therefrom, the petitioner has come up before this Court by way of this petition under Article 226 of the Constitution of

India.

4. In this writ petition counter affidavit has been filed by respondent. The respondent 2 has alleged in the counter affidavit that the writ petition is

not maintainable, as the impugned order was passed by first respondent by order dated 20/21.12.1995 by a resolution renewing the Permit No.

12/1969-70, authorised to operate on route Bellary to Shimoga. The said resolution has been published granting renewal on the notice board and

that the petitioner has got the alternative remedy of filing revision under the Motor Vehicles Act, before the Karnataka State Road Transport

Appellate Tribunal. It has further been alleged that as Permit No. 12/1969-70 was to expire on 31.7.1990 (sic. 31.7.95), the second respondent

filed an application for grant of renewal of aforesaid permit u/s 81 of the Motor Vehicles Act, 1988 and the first respondent after having

considered the application granted renewal of the permit for a period of five years and said endorsement was made on the permit on 12.7.1990,

the copy of which has been annexed by the respondent in the objection as Annexure R3. The case of the respondent is that the petitioner ought to

have mentioned this fact, but the petitioner has not mentioned the same in his writ petition, instead he suppressed it and as such the petition is liable

to be dismissed in limine. The second respondent has further taken the plea that as the permit of the second respondent as stated was renewed

under the Motor Vehicles Act, 1988, in the year 1990, for another period of 5 years, that is for the period upto 31.7.1995, therefore the permit

that was renewed in 1990, was valid, upto 31.7.1995 and that was as such, a fresh permit issued under the Motor Vehicles Act, 1988, and

respondent 2 had been entitled to get the same renewed and the same had rightly been renewed u/s 81 of the Act of 1988. The second respondent

had further taken the plea that the permit issued under the Act of 1939, was replaced by a fresh permit conforming to the provisions of Sections 72

and 80(4) of the Motor Vehicles Act, 1988/in the form prescribed for issue of fresh permit under the new Act and the said permit that was issued

was valid up to 31.7.1990. When the said permit was to expire, the second respondent filed an application for grant of renewal of the aforesaid

permit and the same having been renewed in 1990 to be valid up to 31.7.1995, therefore that permit is a fresh permit and is valid as having been

issued under the new Act and so the case of respondent 2 has been that respondent 2 has been entitled to get the same renewed u/s 88 and

respondent 2 has taken the plea that in view of the above there was no question before respondent 1 to take into consideration the objection which

had been sought to be raised by the petitioner as alleged.

5. I have heard Mr.T.R. Subbanna, learned Senior Advocate, assisted by Mr. B.A. Shylendra Kumar an Advocate of this Court for the petitioner

as well as Mrs. Sujatha, learned Government Pleader for respondent 1 and Mr. M.R.V. Achar for respondent 2 for good length.

6. It has been contended by the learned Counsel for the petitioner that the original Permit 12/69-70 was granted under Motor Vehicles Act of

1939, and undisputably as stated by the respondent also it was renewed from time to time and before the enforcement of the Motor Vehicles Act

of 1988, it was last renewed in 1985, and continued to remain valid till 31.7.1990. Learned Counsel submitted that, the permit which was renewed

in 1985 was renewed under the old Act, that is Act No. IV of 1939 and which remained in operation even after the enforcement of the Motor

Vehicles Act of 1988. Learned Counsel submitted that Motor Vehicles Act did come into operation on 1.7.1989. Learned Counsel further

contended that in view of Section 217(b) of the Motor Vehicles Act, the permit renewed in 1985, remained valid and in fact by the provisions of

the New Act to the extent provided u/s 217(2)(b) of the Act, and therefore, it remained in operation till 31st of July, 1990. Thereafter the said

permit really died its death, but it appears the authorities without applying their mind renewed that u/s 81 of the Act of 1988, on the renewal

application. Learned Counsel submitted that some time earlier a view was taken that permits granted under the old Act i.e., the Act No. IV of

1939, could be renewed u/s 81 of the Motor Vehicles Act of 1988. Learned Counsel further submitted that when the permit that was renewed in

July, 1990, had to expire, respondent 2 applied for fresh renewal of that old renewed permit and at that time the law laid down by the Supreme

Court, has been to the effect that it is only permits granted under the Motor Vehicles Act of 1988, those permits could be renewed in exercise of

the powers u/s 81 of the Act of 1988, and as per the petitioner's case, respondents' permit of 1969-70 had really died its death and its life had

expired in 1990, the permit that had been illegally renewed could at the most be treated as temporary permit in the light of the law laid down by the

Supreme Court. The proper course urged by the Counsel for the petitioner, would have been for the respondent to apply for a regular stage

carriage permit u/s 72 of the Act and it is after the expiry of the period of that fresh permit granted u/s 72 of the Act read with Section 80 of the

new Act, the petitioner could have applied for renewal of the permit. Learned Counsel contended that renewal granted in 1990 to the permit

issued in 1969-70 or thereafter under the Motor Vehicles Act of 1939, was illegal and misconceived. Learned Counsel submitted that the permit

which had been renewed even if illegal in the light of the Supreme Court case may be treated as a temporary permit, but there cannot be any

renewal of that permit. So the order of renewal that has been passed in 1995, or even in 1990, was illegal and the permit granted u/s 81 of the

Act, is also illegal and therefore the resolution Annexure-A dated 20/21.12.1995, deserves to be quashed. Learned Counsel further submitted that

the rule of law should be directed to be maintained and as the renewal granted on 12th of July, 1995 is illegal and the permit cannot be treated to

be permit u/s 2(31) of the Act, that may be quashed.

7. The contention of the learned Counsel for the petitioner have hotly been contested by Mr. Achar learned Counsel for the respondent. Mr.

Achar submitted that this is purely a technical argument. Mr. Achar submitted that the permit that had been granted to the respondent 2, that was

replaced in 1990, u/s 80(4) of the Act and thereafter it was renewed u/s 81 of the Act, was therefore a fresh permit. He further submitted that

renewal of a permit is tantamount to grant of a fresh permit and even if power has been exercised under a wrong provision of law, if the Act could

be done and covered under a right or correct provision, it should not be taken to be an Act without jurisdiction or a nullity, at the most it may be a

case of irregularity and that may be directed to be regularised, keeping in view the interest of justice. In addition thereto in the alternative Mr.

Achar submitted that really the case was governed by Section 217(1)(a) of the Motor Vehicles Act of 1988, and not by Section 217(b) of the

Motor Vehicles Act, 1988, and therefore the permit granted earlier and the rights acquired thereunder continue to operate. Learned Counsel for

the respondent submitted that as the counter affidavit and rejoinder have already been entertained, therefore, in the present writ petition, he does

not think it proper to press the plea that the writ petition should be dismissed on the ground of alternative remedy, as that may only delay the

process. As such the plea of alternative remedy was not pressed during arguments though it was raised in the counter affidavit.

8. Thus the only question that has to be examined is-whether the application for renewal u/s 81 of the Act, was maintainable, which was filed by

respondent 2, or could respondent 1 grant or pass the order of renewal u/s 81 of the Act in the present case?

9. Before I proceed any further, it appears just and proper to refer to the definition of expression "permit" in the Act, for the purpose of

understanding the scope of Section 82 of the Act.

Section 2(31) defines permit as under: "Permit means a permit issued by a State or Regional Transport Authority or an authority prescribed in this

behalf under this Act authorising the use of a motor vehicle as a transport Vehicle.

The definition is very clear, it refers to permit issued by the Authorities competent and refer therein under this Act authorising use of motor vehicles

as transport vehicles. The expression "under this Act" very clearly indicates that the expression permit" which is used, unless context to the contrary

is there, it means a permit, issued under this Act that is Motor Vehicles Act of 1988. Sections 72, 74, 76 and 79, make provisions for the grant of

permits such as stage carriage permits, contract carriage permits, private service vehicles permit and goods carriage permit. Section 80 of the Act

of 1988, prescribes the procedure for, the moving of an application for grant of permit and the granting of permit. Section 81 of the Act deals with

the duration and renewal of permits. As per Sub-section (1) of Section 81, every permit other than a temporary, permit issued u/s 87 or a special

permit issued u/s 88(8) of the Act, shall without renewal be operative and effective for a period of five years.

Sub-section (2) of Section 81

provides-

A permit may be renewed on an application made not less than fifteen days before the date of its expiry.

10. Sub-section (3) of Section 81 makes provision for entertainment of application for renewal even after the expiry of the period mentioned in

Sub-section (2) provided sufficient or good cause is shown. Sub-section (4) of Section 81 provides the grounds on which the renewal application

may be rejected and it provides that it shall not be rejected without opportunity being given to the applicant on being heard. The expression

"permit" as used in this section for the renewal of which the provision has been made u/s 81 refers to and applies to the permit as defined by

Section 2(31) of the Act. That application for renewal can be given u/s 81 of the Act for the renewal of a permit granted u/s 72 or 74 or 76 or 79

of the Act of 1988. There is nothing in the definition which may indicate that it includes the permit which had been granted under the old Act i.e.,

Motor Vehicles Act, 1939 and that it can be got renewed under the new Act, nor is there anything in Section 81 which is to the contrary, which

may indicate that in the context of that thing, the definition given therein may not control.

11. In my opinion application for renewal could be made u/s 81 of the Act of 1988, only with reference to the permit granted under the Motor

Vehicles Act of 1988. The contention of the learned Counsel for the respondent has been that the permit which had been granted under the Act of

1939, had been replaced by permit issued u/s 80(4) of the Act. No such permit had been placed on record nor its date has been given. What

respondent 2 has stated is that old permit was renewed on 12.7.1990 for a further period of 5 years and earlier to that the permit was issued for a

period from 1985-90. This being the position, according to respondent 1's case what was renewed in 1990, was nothing but the permit, that had

been granted as a fresh permit or as a renewed permit under the Motor Vehicles Act of 1939. When that permit, that has been renewed in 1990

may be illegal or under misapprehension of law, whatever may be the reason, when it was going to expire on July 31, 1995, respondent 2 made

application for renewal of that very permit before the authority. The authority according to the grievance of the petitioner did not apply its mind to

the objection that has been raised by the petitioner before respondent 1 that no renewal could be granted in view of the decision of the Supreme

Court. No counter affidavit has been filed on behalf of respondent 1. It should be taken note of by the Authorities that law laid down by the

Supreme Court is binding on all Authorities in India. When there is no denial on behalf of respondent 1 or 2 of the allegations made in the petition,

that the objection was raised by the petitioner's Counsel before respondent 1, to the effect that in view of the Supreme Court decision in the case

of Secretary, Quilon District Motor Transport, (supra), the application u/s 81 of the Act of 1988 was not maintainable, the allegation has to be

taken to be true that the Authority ignored the law and such a breach of law by the Authorities cannot be appreciated, but it requires to be

deprecated. That disobedience of law laid down by the Supreme Court of India unless the case may be said to be distinguishable, may be of

serious consequences. Any way this is a note of caution issued to the authorities that such efforts should not be made in future. The Authority ought

to have considered that objection and ought to have taken into consideration the decision of the Supreme Court. It may be that avoiding or

ignoring of the law laid down by the Supreme Court and non consideration of the same without any reason or distinction, may apart from rendering

the decision or order impugned illegal, have consequence of serious nature.

12. That as regards the principal question, it will also be profitable to refer to provisions of Section 217. Section 217 is the repealing and saving

clause. Learned Counsel for the petitioner had placed much reliance on Clause (b) of Sub-section (2) of Section 217 of the Act, while learned

Counsel for the respondent placed reliance on Clause (a) of Section 217(2) of the Motor Vehicles Act, 1988.

217. Repeal and savings.-(1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately

before the commencement of this Act in that State (hereinafter in this section referred to as the repealed enactments) are hereby repealed.

(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactment-

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made or exemption granted, or any confiscation

made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments,

and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been

issued, made, granted, done or taken under the corresponding provision of this Act;

(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after

such commencement under the same conditions and for the same period as if this Act had not been passed;

(c) any document referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to this Act, or to the

corresponding provision of this Act;

(d) the assignment of distinguishing marks, by the Registering Authority and the manner of display on motor vehicles in accordance with the

provisions of the repealed enactments shall, after the commencement of this Act, continue to remain in force until a notification under Sub-section

(6) of Section 41 of this Act is issued;

(e) any scheme made u/s 68-C of the Motor Vehicles Act, 1939 (4 of 1939) or under the corresponding law, if any, in force in any State and

pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of this Act;

(f) the permits issued under Sub-section (1-A) of Section 68-F of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding

provisions, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved

scheme under Chapter VI of this Act is published.

(3) Any penalty payable under any of the repealed enactments may be recovered in the manner provided by or under this Act, but without

prejudice to any action already taken for the recovery of such penalty under the repealed enactments.

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General

Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.

13. It is one of the well-settled principles of interpretation of statute that if there is a general provision and there is a special provision in an

enactment or even in two parts of a section, in other words if a section contains two provisions-one dealing with the special situation and the other

with the general and there appears to be some irreconcilable conflict, then special will prevail and operate that deals with that situation or with that

circumstance. Clause (a) of Sub-section (2) deals with general notifications, rules, regulations, orders or notice issued or any appointment or

declaration made or exemption granted, or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing

done or any other action taken under the repealed enactments and in force immediately before such commencement of the new Act and that under

this clause it has been provided that the same shall unless and until it is not inconsistent with the provisions of this Act and to the extent it is not

inconsistent with the provisions of the new Act, that shall be deemed to have been issued, made or granted or done under the corresponding

provision of the Act. Clause (b) of Sub-section (2) of Section 217 of the Act deals with certificates of fitness, registration or licences granted or

issued under the repealed enactments and it provides that such certificate of fitness or registration or licence or permit shall continue in effect after the

commencement of the new Act under the same conditions and for the same period for which it has been granted under the Act of 1939, as if the

new Act had not been passed. So, Clause (b) of Section 217(2) appears to deal with permits. That how far the permit will be deemed to have

been a scrap, on account of the repeal of the provisions of the Act has to be seen. The fact of repeal ordinarily would scrap out provision of the

Act and with the exception and to the extent to which they are saved by repeal and saving clause. As regards permits, Clause (b) of Section

217(2) provides that permit granted under the old Act of 1939, shall continue to have effect even after the commencement of the Act for a period

for which it has been granted under the old Act. It means that the permit will expire and its life will come to an end on the expiry of the period

provided in the permit, even if it lives after the repeal of the old Act for the unexpired period of the permit. But once the period had expired its life

span came to an end, Clause (b) does not provide that old permit will continue to be operative and effective. When a permit has been granted for.

a specified period under the law, a right definitely had accrued under that law and that right for the limited period for which the permit had been

granted, the repeal clause does not take away that right, but it does not mean that the period will automatically be deemed to have been extended

or permit will be deemed to have been extended or permit will be deemed to have continued, even after the expiry of his life span. Under Clause

(a) what has been provided is that all actions referred to under sub-section shall be deemed to have been done and taken under the corresponding

provision of this Act means until and unless those provisions are, by act of the Legislature or Competent Authority replaced, modified, repealed

specifically those notifications, orders, rule, etc., shall continue and be deemed to have been issued under the Act as part of the law enacted under

the new Act, but with reference to certificate of fitness, registration or permit, etc., the intention of the Legislature is not like that. It has only saved

their life for the period for which original permit had been granted and for the reminder period of that permit from the date of enforcement of the

Act for the entire period, till the date of expiry, the holder of the permit was to enjoy irrespective of the new Act having been enforced and that

nothing more has been conferred under this section.

14. Such distinction has also been taken note of by their Lordships of the Supreme Court. It will be just and proper at this juncture to refer to the

decisions of their Lordships of the Supreme Court in the two cases. In case of Secretary, Quilon District Motor transport, (supra), their Lordships

observed as under:

Section 217(2)(b) speaks of only the existing certificate of fitness or registration or licence or permit issued or granted under the repealed

enactments and notwithstanding the repeal of the Motor Vehicles Act IV of 1939, by operation of Sub-section (1) of Section 217, the permit shall

continue to have effect after such commencement from 1.7.1989 under the repealed Act as if that Act was in operation. Under the same conditions

and for the same period, as if the Act had not been passed. In other words, notwithstanding the repeal of the Act IV of 1939, the permit issued

under the repealed Act will continue to be operative for the period for which it was issued as if this Act had not been passed and the repealed Act

continues to be in operation. With the expiry of the period of grant given in the permit under the repealed Act, by necessary implication the

operator has to make fresh application in the prescribed manner to the concerned Regional transport Authority or State Transport Authority and

seek a grant u/s 72. The grant of renewal is no more man a fresh permit to operate the transport service for a fresh period mentioned in the

renewed permit Therefore, the operation of the permit issued u/s 58 of the repealed Act IV of 1939 is a terminus with the expiry of me period of

the grant and the operation of the Act IV of 1939, ceases to have effect from that date. Any right to run the permit, therefore, must be under the

permit granted under the Act as per its provisions. Harmonious construction of the relevant provisions would lead to the above conclusion, lest any

other construction would fly in the face of the express provisions of the Act. By necessary implication of Section 217(2)(b) the right to renewal

under the Act IV of 1939 stands repealed with the expiry of the period of grant of the permit made under the repealed Act. Since the application

was not made for fresh grant under the Act, the rejection of the renewal application under Act IV of 1939, or under the Act is perfectly legal. The

High Court is right in its conclusion. The application for the renewal would not lie under the Act.

15. In case of Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., , their Lordships of the Supreme Court observed:

16. Clause (b) of Section 217(2) provides that any certificate of fitness or registration or licence or permit issued or granted under the repealed

enactment shall continue to have effect after such commencement under ""the same conditions and for the same period"" as if the Act had not been

passed. In an emphatic manner, the saving provision provides that, notwithstanding the repeal of Act 4 of 1939, or any corresponding law, the

permit issued under, the repealed Act should continue to operate propria vigore till its life expires under the same conditions and for the same

period as if the Act was not passed. Other clauses are not relevant. Hence they are not dealt with.

In paragraph 34, dealing with the effect of Clause (b) of Section 217(2), their Lordships further observed:

...This is the fiction of law by which, though Act 4 of 1939, was wiped out, its operation gets revived. The intention, thereby, appears to be that the

Act breaths life into the dead permits etc., and allows full play to the permits granted under the Repealed Act, even if inconsistent, till their period

expired by efflux of time.

16. In paragraph 47 of the Gajraj Singh's case, supra, their Lordships further observed:

We, therefore, hold that grant of renewal of the stage carriage permit should necessarily be preceded by a grant of a permit to stage carriage u/s

72, in accordance with the procedure laid down in Sections 70 and 71. This should be made before the expiry of the period prescribed in the

permit granted under the repealed Act. Therefore, for stage carriage permits granted under Chapter IV of the repealed Act, if they stand to expire

or expired after 1st July, 1989, without any pending application for renewal having been made u/s 58 as on 1st July, 1989, fresh applications u/s

70 should be filed and after consideration u/s 71, permits be obtained as per law u/s 71....

17. Distinction between the provisions of Sections 217(2)(a) and 217(2)(b) has been clearly mentioned and pointed in this Gajraj Singh's case,

(supra) vide, paragraph 61, which reads:

61. ...However, notifications etc issued under the repealed Act and saved by Clause (a) of Sub-section (2) of Section 217, as mentioned earlier,

are distinct from the permits issued in furtherance of the orders passed by State Transport Authority or Regional Transport Authority, as the case

may be. The further contention that such a construction creates and brings about invidious discrimination offending Article 14 of the Constitution is

without force. Section 217(2)(a) Section 6 of the General Clauses Act read with Section 217(4) of the Act manifest the distinction between the

acts done or actions taken consistent with the provisions of the repealed Act but inconsistent with the Act. The Act saves only acts done or actions

taken etc., which are consistent with the provisions. By implication, all inconsistent acts done or actions taken, except those completed and closed,

would not be considered to be done or taken under the Act and consequently could not be operative under the Act. They are obliterated

completely from statute as if they never existed except to the extent of limited operation provided in the appropriate clauses in Sub-section (2) of

Section 217 of the Act.

18. To meet such a situation, their Lordships of the Supreme Court have laid down the law in para 63 of the judgment and the proposition laid

down clearly meets such a situation, as follows:

63. Since the appellant, had obtained permits by mistake of the law and misconception of law on the part of the Competent Authorities, applied u/s

81 and had been granted renewal of their respective permits u/s 81, after July 1, 1989, such grant of renewal of the permits should be treated to be

temporary permits u/s 87 of the Act. Therefore, the private operators, be they covered by Chapter V or VI, should apply for and obtain afresh

permit before the expiry of the period mentioned in their respective permits or renewed for consideration u/s 71 and grant u/s 72 of the permits

afresh consistently with Section 2(31) of the Act. Such permit alone would be a permit defined in Section 2(31) of the Act. Thereafter, before

expiry thereof, they shall apply for and the concerned STA/RTA person, Authority may grant or refuse renewal of permit for reasons to be

recorded u/s 81 of the Act.

19. Observations in paragraph 59 of that judgment to the effect that:

It is true that some renewals of stage carriage permits to the holders of permits or renewed permits under the repealed Act were granted u/s 81.

Some of them are still in operation. With a view to prevent hiatus in operational efficacy we would declare that though renewals of stage carriage

permits were granted u/s 81, they must be deemed to be temporary permits granted u/s 87, till regular permits are granted or refused....

20. These above observations of their Lordships of the Supreme Court very clearly reveal that law with reference to the permits granted under the

Act of 1939, is that if the life span of the permit is continued after the enforcement of the Act of 1988, that is after 1.7.1989 and if after 1.7.1989

the permit expires or had expired (the permit that had been granted under the old Act) and no application had been made for renewal of the permit

on or before 1.7.1989, then there is no other course open to the permit holder under the old Act, except to apply for grant of a fresh permit u/s 70

read with Sections 71 and 72 of the Motor Vehicles Act, 1988, in the matters of stage carriage permits and similarly with respect to other carriage

permits under Sections 74 to 76 or 79 of the Act/read with Section 81. Unless the application having been made in such a fashion for grant of

permits, unless a permit under the new Act has been granted under the Act of 1988, under Sections 72 to 76 or 79, the application for renewal is

not maintainable and the Authority had got no jurisdiction to renew the permit, because the permit granted under the old Act, that is Act of 1939,

had been given life even after the enforcement of the new Motor Vehicles Act, for the unexpired period of the permit, taking as if the old Act was

continuing for that purpose and for no other purpose. Therefore, the provisions of the old Act to renewal could not apply and renewal under new

Act could be made only under the terms granted under the new Act. Therefore, the permit when died of its death or on the expiry of the span of

the period, for which it has been granted under Act of 1939, originally, though period had expired after coming into force of the new Act. The

provisions could not infuse the life in some thing which is dead or the life span of which had already expired. That is why unless until there is a

special provision, expressly or necessary implication provided, Section 81 prescribes that during the life span of the permit issued u/s 72 of the

Act, at least 15 days earlier to the date of its expiry, application for renewal has got to be made. Sub-section (3) no doubt creates special

exception and offers special powers that in case somebody has failed to make application within 15 days earlier to the date of expiry of the permit

the law provides that if sufficient cause or good cause has been shown for not moving the application; as required by Section 81(2) within 15 days

period or earlier to the date of expiry and the Authority is satisfied that the cause is sufficient, it may entertain the application and condone the delay

and in that case application may be treated as made accordingly. Apart from these exceptions, Section 81 of the Act, does not provide that any

permit issued under the old Act of 1939, can also be renewed u/s 81 of the new Act. There is no expression used in Section 81 and it does not

indicate such an intention and therefore the definition of permit given in Section 2(31) of the Act will control the definition of permit, which means

that application for renewal of the permit granted under Sections 72, 74, 76 or 79 of the Act of 1988, can be made.

21. The next question is that earlier to the Supreme Court case, in very many case it has been held as pointed by learned Counsel, that permit can

be renewed, but how the law has been laid down by the Supreme Court that the renewal could not be granted. It is well-settled principle of law

that no party or persons should be made to suffer because of the mistake of the Court or mistake of the Authorities, given certain powers to act

judiciously and in the interest of public. The permit in this case has been renewed by Authorities. In some cases it had been held that the permit

could be renewed, but in view of the law laid down by the Supreme Court it could not be. Such a situation had also arisen in the case of Gajraj

Singh (supra).

22. Taking this view of the matter and the principle of law laid down by the Supreme Court in Gajraj Singh's case, (supra), in my opinion it is just

and proper to hold that the permit that had been renewed in July, 1990 or even in July, 1995, that cannot be taken to be a permit granted u/s 72,

instead it may be treated and be held to be nothing but as a temporary stage carriage permit and not a regular stage carriage permit, for a period of

5 years. It will be deemed to be temporary stage carriage permit. It is open to the respondents to make application for grant of regular stage

carriage permit u/s 70 read with Section 72 of the Act. The respondents may make application before the Authority concerned within a period of 2

months from today. The State Transport Authority is directed to consider afresh the application which will be moved for grant of fresh regular

stage carriage permit u/s 70 read with Section 72 and dispose of that application in accordance with law under the Motor Vehicles Act, 1988 and

the provisions of the Act, within a period of 7 months from the date of moving of the application, positively. During this period the permit which has

been granted on 31st of July, 1990, will be deemed to be temporary permit granted u/s 87 of the Act. Section 87 of the Act, prescribes 4 months

period. Therefore applicant if applies for a temporary permit, during this period on the expiry of 4 months period from today, he may also be

granted temporary permit to continue, for operation of his vehicle after the expiry of the abovementioned period of 9 months. If permit is not

granted or on the failure of the applicant to move the application within the period of two months as mentioned above, as the case may be, the

renewal permit granted from 31st July, 1995, shall stand automatically expired.. The permit granted on 31.7.1995, shall continue in operation and

under this permit the petitioner will be entitled to ply his vehicle for the period available u/s 87 of the Act, for 4 months, and thereafter a fresh

temporary permit may be granted till the disposal of the application.

23. The stay order granted earlier shall stand vacated.

24. With these observations, the writ petition is hereby finally disposed of. The operation of this order Annexure-A is subject to what has been

mentioned in this judgment and order. Costs of the petition are made easy.