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Sanjeev Kumar and Others Vs. State Transport Authority, U.P. and Another

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Court : Allahabad

Decided On : May-23-1995

Reported in : AIR1995All294

Judge : R.A. Sharma and ;M.C. Agarwal, JJ.

**Acts : Motor Vehicles Act - 1988 - Sections 99, 100, 100(3), 104 and 104(1);
Movtor Vehicles Act, 1939 - Sections 68-F(1-C);**

Appeal No. : Civil Misc. Writ Petition No. 39167 of 1994

Appellant : Sanjeev Kumar and Others

Respondent : State Transport Authority, U.P. and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : L.P. Naithani and ;H.P. Dube, Advs.

Judgement :

ORDER

R. A. Sharma, J.

1. Hapur -- Kothor route (hereinafter referred to as the route) was notified under Chapter IV-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the old Act) for exclusive operation of the road transport service by the U. P. State Road

Transport Corporation (hereinafter referred to as the Corporation). Under the approved? Scheme the Corporation is to operate 30 services daily from each side or more according to the need. The Corporation in pursuance of the above Scheme obtained 10 stage carriage permits in 1987 for operating the service on the route. It appears that the Corporation was not plying its vehicles on the route on account of which there was resentment in the public and some complaints we're also made regarding it. The petitioners also made application for temporary stage carriage permits under Section 104 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act). Those applications having been rejected by the State Transport Authority (hereinafter referred to as the S.T.A.) the petitioners have filed the present writ petition.

2. The Corporation has filed a counter-affidavit and the petitioners have filed rejoinder-affidavit in reply thereto. We have heard learned counsel for the parties.

Section 104 of the Act is as under:

'104. Restriction on grant of permits in respect of a notified area or notified route where a scheme has been published under sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant provisions of the scheme:

Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport, Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area for notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of the area or route.'

3. The Transport Authorities cannot grant any permit on the notified route except in accordance with the provisions of the Scheme. If the Scheme is for exclusive operation of the State Transport Undertaking, no permit can be granted to the private operators. This is clear from sub-section (1) of Section 104 of the Act. But

its proviso provides for the grant of temporary permits to the private operators in respect of a notified route where no application for permit has been made by the State Road Transport Undertaking.

4. In paragraphs 7 and 15 of the counter-affidavit filed on behalf of Corporation it has been stated that the Corporation is operating 20 services per day on the route by two buses. This has been denied by the petitioners in the rejoinder-affidavit. Secretary Regional Transport Authority in his survey report dated 5-10-1994 (Annexure-6 to the writ petition) has stated that the Corporation is not plying any vehicle on the route and has also not applied for renewal of its permits granted to it, in 1987. The S.T.A. in its impugned resolution dated 7-10-1994 has taken note of the contents of the above report of the Secretary, Regional Transport Authority and has also observed that although the Corporation has obtained 10 permits for the route in 1987 in pursuance of the Scheme but the representative of the Corporation is not in a position to state as to how many services are being operated on the route by the Corporation. However, the S.T.A. has rejected petitioners' application for temporary permits as not maintainable on the ground that the Corporation has already obtained the permits for the route in pursuance of the approved Scheme.

5. In the instant case the undisputed position is as under:

1. The Corporation is not operating 30 services per day on the route in spite of the fact that it has obtained 10 permits in 1987 in pursuance of the Scheme. Its claim of operating 20 services daily has not been accepted by the S.T.A. and on the other hand the survey report of the Secretary, Regional Transport Authority has clearly demonstrates that it was not operating any service on the route.

2. The Corporation has neither applied for nor has been granted the renewal of its permits granted to it in 1987 in pursuance of the Scheme.

6. It is true that proviso to Section 104 states that temporary permit can be granted to the private operator on notified route if no application for permit, in pursuance of the approved Scheme, has been made by the State Transport Undertaking. But this proviso cannot be read in isolation. According to Sections 99 and 100 of the

Act routes are nationalised 'for the purpose of providing an efficient, adequate, economical and properly co-ordinated transport service.' If the Corporation is unable to provide all road transport services specified in the Scheme, temporary permits can be granted to private operators in respect of those services regarding which Corporation has not applied for permits. In this connection reference may be made to Smt. Praveen Ansari v. State Transport Appellate Tribunal (AIR 1981 SC 516), wherein Section 68-F(1-C) of the old Act came up for consideration. Section 68F(1-C) of the old Act is as under:

'68-F (1-C): If no application for a temporary permit is made under sub-section (1A), the State Transport Authority or the Regional Transport Authority, as the case may be, may grant, subject to such conditions as it may think fit, temporary permit to any person in respect of the area or route or portion thereof specified in the Scheme and the permit so granted shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route or portion thereof.

Section 68-F(1-D) of the old Act prohibited the grant of permit on a route covered by draft Scheme under Section 68-C of that Act, except as provided in sub-sections (1-A) and (1-C). Preferential right to obtain temporary permit for such a route was given to State Transport Undertaking by sub-section (1-A), but if no application for temporary permit is made under sub-section (1-A) the transport authority could grant temporary permit to private operator under sub-section (1-C). Supreme Court, in the case of Smt. Praveen Ansari, in this connection, has held as under:

'If the Corporation is willing to operate vehicles to the maximum strength undoubtedly the State Transport Authority will have to grant permit to the Corporation under Section 68-F (1-A) to the exclusion of others. But if the Corporation was unable to provide vehicles for the optimum strength fixed by the State Transport Authority the remaining permits will have to be granted to any other person willing to obtain temporary permit and ply vehicle because in respect of the remaining strength there would be no application by the Corporation and Section 68-A (1-C) would be squarely attracted. In interpreting the provisions of

Chapter IV-A of Motor Vehicles Act, 1939 it is undoubtedly true that the Corporation enjoys a preferential treatment in the matter of obtaining permits. The authority under the Act must not ever lose sight of the fact that the primary consideration must be the service available to the travelling public.'

It was accordingly laid down that if the Corporation does not apply for all the permits, but only for some, temporary permits can be granted to the other persons against the remaining strength. The proviso to Section 104 has also to be interpreted in the same manner otherwise its very purpose will be frustrated.

7. When a Scheme is framed for providing efficient, adequate, economical and properly co-ordinated road transport service on a route, it is obligatory on the State Transport Undertaking to provide all services specified in the Scheme. If it fails to do so, the very purpose of the Scheme will be frustrated. Therefore, proviso to Section 104 has to be interpreted in the same manner in which provisions of sub-section (1-C) of Section 68F of the old Act were interpreted by the Supreme Court in the case of Smt. Praveen Ansari (AIR 1951 SC 516) (supra), with the result that if the Corporation is unable to provide vehicles for maximum strength fixed by the Scheme, proviso to sub-section (4) will be immediately attracted and the concerned transport authority has to grant temporary permit to private operator against the remaining services.

8. It is also true that the Corporation has not applied for renewal of its permits which were granted to it in 1987, Learned counsel for the Corporation has relied on Rule 10(4) of U. P. State Road Transport Services (Development) Rules, 1974, according to which permits of the Corporation should remain valid till the Scheme remains in force. But this Rule has been declared ultra vires by a Division Bench of this Court in U. P. State Road Transport Corporation v. Regional, Transport Authority, (1991 (17) All LR 426): (AIR 1992 All 51). That apart, Supreme Court in Secretary, Quilon District Motor Transport Workers Co-operative Society Ltd. v. Regional Transport Authority, (1994 (24) All LR 360): (AIR 1995 SC 82) has held that permits granted under the old Act cannot be renewed under the new Act. The result is that the Corporation is not holding any permit, because ten permits granted to it in 1987 came to an end after expiry of five years.

9. In the instant case the Corporation was neither having any permit nor was it providing services on the route up to the optimum strength fixed by the Scheme. Proviso to Section 104 was thus fully attracted. S.T.A. was, therefore, not justified to reject the applications of the petitioners for temporary permits.

10. This writ petition is allowed with costs. The impugned order of State Transport Authority, U. P. Lucknow, dated 7-10-1994 (Annexure-III to the writ petition) is quashed. The State Transport Authority, U. P. Lucknow, is directed to decide petitioners' application for temporary permits under proviso to Section 104 of the Act in accordance with law, within a period of one month from the date of presentation of certified copy of this order before it.

11. Petition allowed.

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