

## **Nisar Ahmad And Ors vs State Of U.P. And Ors on 9 September, 1994**

**Equivalent citations: AIR 2006 ALLAHABAD 1600, AIRONLINE 1994 SC 285 1994 SCC (SUPP) 3 460, 1994 SCC (SUPP) 3 460**

**Bench: K. Ramaswamy, N. Venkatachala**

CASE NO.:

Appeal (civil) 6283-88 of 1994

PETITIONER:

Nisar Ahmad and Ors.

RESPONDENT:

State of U.P. and Ors.

DATE OF JUDGMENT: 09/09/1994

BENCH:

K. Ramaswamy & N. Venkatachala

JUDGMENT:

JUDGMENT 1994 Supp(3) SCR 357 and Civil Appeals 6289-90 of 1994 ORDER

1. Leave granted. Application for intervention allowed. Heard Counsel for appellants and the respondents.

2. The case has chequered history the facts of which have been traced by this Court in Rama Krishna Verma and Ors. v. State of U.P. AIR (1992) 2 SC

620. This Court in that judgment held that the draft scheme published on February 26, 1959 and the fresh draft scheme published pursuant to the directions by this Court on February 13, 1986 had not lapsed. The 50 operators to whom this Court in Jeevan Nath Wahal's Case gave the right of hearing, by resorting to the abuse of the process of the Court, forfeited their right of hearing and they no more would be entitled to the hearing before the approving authority. It was also declared in Jeevan Nath Wahal's case that this Court had already approved the Shaharanpur-Shahdra-Delhi scheme published under Section 68C except to the extent of hearing the objections of the 50 operators. The hearing being only a procedural formality, the objections filed by the 50 operators outlived their purpose. Accordingly this Court gave direction as under:

...The grant of permits to all the respondents/private operators and respondents Nos. 7 to 285 in C.A. No. 1198/92 (SLP No. 9701/90) under Section 80 of the Act or any others on the respective routes, parts or portions of the nationalised routes on

February 13, 1986 draft scheme are quashed. The hearing authority shall lodge the objections of the 50 operators including the appellants herein. The competent authority shall approve the draft scheme of 1986 within a period of 30 days from the date of receipt of the judgment, and publish the approved scheme in the gazette. The permits granted to the 50 operators or any other shall stand cancelled from that date, if not having expired in the meanwhile. No permit shall be renewed. Appropriate action should be taken by respondent 3 to in C.S. No. 1198/92 (SLP 9701/90) to see that all the permits granted to the 50 operators including the appellants are seized and cancelled. The U.P. State Transport Corporation shall obtain required additional permits, if need be, and put the stage carriages on the routes to provide transport service, to the travelling public immediately on publication of the approved draft scheme in the State gazette. The appeal arising out of SLP No. 2033/91 is allowed with costs thought against respondent Nos. 4 to 13. The appeals arising out of SLP Nos. 6300/91, 9701/90 and 9702/90 are allowed without costs.

3. Thereafter the approved scheme was published by the Government on May 29, 1993. The appellants filed the Writ Petition in High Court not only questioning the correctness of the judgment of this Court but also the approved scheme published by the Government on May 29, 1993. In our view quite rightly High Court declined to accede to the contention made by the appellants on the correctness of the Judgment of this Court. The directions issued by this Court under Section 142(1) are binding on all the parties including the 50 operators and were declared to be bound by the orders passed by this Court in Rama Krishna Verma's case. Therefore, they are bound by the order passed by this Court in the above judgment.

4. The only contention raised by Shri G. Ramaswami, the learned senior counsel, is that by operation of Section 100(3) proviso of the Motor Vehicle Act, 1988 (for short the Act), the prior approval of the Central Government relating to the scheme on the inter-state route is mandatory and this Court never intended to violate that mandatory requirement in proviso to Sub-section 3 of Section 100. It is also contended that if the Scheme was not published under Sub-section 4 of Section 100 within a period of one year from the date of the publication of the proposed draft scheme under Sub-section 4 of Section 100, the draft scheme stood lapsed this Court did not intend to revive the lapsed draft scheme. We find no force in the contentions. As regards prior approval of the Central Government under proviso to Sub-section 3 of Section 100 is concerned the Central Government had approved the draft scheme dated February 26, 1959 which was upheld not only in Jeevan Nath Wahal's case but also in Rama Krishna Verma's case. It is not in dispute that the Central Government had given its prior approval on September 9, 1959 and the scheme was approved, thereafter, by the State Government on September 29, 1959. Therefore, as regards the approval of the Central Government is concerned under Act 4 of 1939, the mandatory requirement was complied with. What is required by the proviso to Sub-

section 3 of Section 100 is to a scheme proposed under the Act. The present one is not a scheme proposed under the Act and that, therefore, the prior approval of the Central Government under the Act is not necessary. It is also to be seen that Sub-section 4 of Section 100 is clearly inapplicable in the facts of this case. The scheme published by the State Government on February 13, 1986 was under the Act 4 of 1939. That draft scheme was pursuant to the directions issued by this Court, in consequence to the closing of hearing directed by this Court in Jeevan Nath Wahal's case became final. The hearing was delayed due to dilatory tactics adopted by the operators and as per the directions of this Court in Ramakrishna Verma's case the draft scheme was approved. In view of that matter and since this Court has already approved the draft scheme not only dated February 26, 1959 but also of February 13, 1986, the question of the lapse under Sub-section 4 of Section 100 does not arise. The appeals are accordingly dismissed with a cost of Rs. 1 lakh.