

U.P.State Road Transport Corporation ... vs Omaditya Verma & Ors on 5 April, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2250, 2005 AIR SCW 2097, 2005 ALL. L. J. 1477, (2005) 4 JT 62 (SC), 2005 (3) SLT 612, 2005 (3) SCALE 636, 2005 (4) SCC 424, 2005 (4) JT 62, 2005 (5) SRJ 205, 2005 (2) ALL CJ 1313, 2005 ALL CJ 2 1313, (2005) 4 MAD LJ 43, (2005) 3 SCJ 403, (2005) 3 SUPREME 521, (2005) 3 ALL WC 2343, (2005) 3 SCALE 636, (2005) 2 WLC(SC)CVL 81, (2005) 4 CIVLJ 121, (2005) 2 CURCC 137, (2005) 2 ACC 400

Author: A.K. Mathur

Bench: Ashok Bhan, A.K. Mathur

CASE NO.:

Appeal (civil) 6716-6719 of 1999

PETITIONER:

U.P.State Road Transport Corporation through its Chairman

RESPONDENT:

Omaditya Verma & Ors.

DATE OF JUDGMENT: 05/04/2005

BENCH:

ASHOK BHAN & A.K. MATHUR

JUDGMENT:

J U D G M E N T A.K. MATHUR, J.

In all these four appeals, the questions of law and facts involved are common, as such they are disposed of by this common order.

This case has a chequered history. But before we enter into the chequered history, a few important facts may be noticed. The route from Bijnore Noorpur-Chandpur was notified under a scheme which was published in the Official Gazette of the State of U.P. on February 12,1952. Thereafter, by another Gazette Notification dated October 15,1962, a scheme was prepared from Bojnore to Muzaffarnagar route of Meerut region. It was directed that the State Road Transport service shall commence operation from November 15,1962 or thereafter. Thereafter, on September 28,1977, another route was notified from Muzaffarnagar to Bijnore via Bhopa, Morna and Rawalighat. This was again modified by another Notification dated 3rd September, 1994 after hearing objections, Muzaffarnagar to Bijnor route of Meerut region i.e. Muzaffarnagar via Jansath, Meerapur, Dewal

instead of via Bhopa and Morna and Rawlghat. As a result of these two aforesaid schemes the entire route, Muzaffarnagar Jansath, Meerapur, Dewal to Bijnore stood notified. Therefore, these two schemes are the subject matter of the present litigation. Relevant portions of these two notifications i.e. Notification dated February 12, 1952 and September 3, 1994 are reproduced herein below.

NOTIFICATION DATED FEBRUARY 12, 1952.

REGION	NAME OF THE ROUTE	DATE OF COMMENCEMENT OF OPERATION OF STATE ROAD TRANSPORT	OF SRT SERVICES	Number CAPACITY OF VEHICLES STATE EXCLUSIVELY	TYPE AND CARRYING OPERATED BY OTHERS ON THE ROAD OTHER

BAREILLY					
XX	XX	XX	XX	XX	XX
18. Bijnor-Noorpur-chandpur		1.2.49	2 25-40 Seater.	Stage Carriage	Nil
Xx	xx		xx	xxxx	xx

NOTIFICATION DATED SEPTEMBER 3, 1994.

Serial	No. Notification no. and date By which the scheme was Approved	Name of the approved scheme in which the modification is proposed.	
1	2	3	4
1.	4790-T-XXX-2-B-60, dated October 15, 1962 and no. 4517/XXX-2-429-86, dated September 28, 1977	Scheme regarding to Bijnore route to Muzaffarnagar of Meerut Region.	The approved mentioned in Col Is modified route
	Muzaffarnagar via Jansath-Meerapur-Dawal instead of the Route via Bhopa and Morna		

These civil appeals on grant of special leave have been filed against the common order passed by the Division Bench of the Allahabad High Court dated September 26, 1997 whereby the High Court allowed four writ petitions i.e. Civil Misc. Writ Petition Nos. 9990, 15746, 20187 & 23496 of 1997 and set aside the order dated July 17, 1990 and quashed the same and directed the Secretary, State Transport Authority, State of Uttar Pradesh, Lucknow to issue permit to all grantees who have not been issued permits on the basis of the resolution dated June 14-15, 1993 forthwith and without any delay. Aggrieved against this common order the present appeals were filed by the Uttar Pradesh State Road Transport Corporation (hereinafter to be referred to as "UPSRTC").

At the INITIAL stage, notice was directed to be issued on November 13, 1998 on the application for condonation of delay as well as on the SLP but no interim order was passed. Thereafter, leave was granted on November 18, 1999. On May 11, 2000 Interlocutory applications were dismissed. Now, the appeals have been set down before us for hearing. Office report dated February 21, 2005 shows that in CA 6716 of 1999, all the 23 respondents were served, excepting Respondent Nos. 17 & 18 who are represented by Ms. Abha Jain and M/s. Mitter & Mitter & Co., the rest of the respondents have not chosen to enter appearance. In Civil Appeal No. 6717 of 1999 there are 21 respondents, all of them though served by dasti, Respondent Nos. 1 to 12, 14 and 16 to 21 have not chosen to appear and contest the proceedings. Respondent Nos. 13 and 15 are represented through M/s. Mitter & Mitter & Co. and Mr. Sunil Kumar Jain, Advocate respectively. In Civil Appeal No. 6718 of 1999 there are three respondents and all of them have been served by dasti. But they have not entered appearance. In Civil Appeal No. 6719 of 1999 there are three respondents. All of them have been served but they have not chosen to enter appearance. Hence, all these appeals are before us.

The State Transport Authority of U.P. by resolution dated June 14-15 of 1993 granted 38 regular stage carriage permit in the route, namely, Muzaffarnagar- Chhajlet via Gangabridge, Bijnor and Noorpur. Out of 38 persons, 11 persons were issued with necessary permits in the month of July, 1993. Thereafter, series of writ petitions were filed in the High Court. The first writ petition was filed by Sh. Harpal Singh being Writ Petition No. 3511 of 1993 before the Lucknow Bench of the High Court in which an interim stay order was passed on August 16, 1993 restraining the State Transport Authority from issuing permits on the route, in question. The Secretary, State Transport Authority, Lucknow passed an order on July 31, 1993 directing 11 permit holders to ply their vehicles on Muzaffarnagar- Chhajlet via Jolly-Jarwar- Katia route. The Chairman, State Transport Authority, U.P., Lucknow passed another order on February 2, 1995 directing the said 11 permit holders to ply their vehicles on Muzaffarnagar-Chhajlet route via Jansath-Meerapur. The order passed by Secretary, State Transport Authority, U.P., Lucknow on July 31, 1993 was challenged by one Smt. Saima Jamal in a writ petition being Writ Petition No. 4250 of 1994 at Lucknow Bench of the High Court. Another writ petition being Writ Petition No. 7875 of 1994 was filed by one Sanjeev Kumar challenging the order passed by the Secretary, State Transport Authority, U.P., Lucknow on July 31, 1993. A subsequent writ petition being Writ Petition No. 6774 of 1995 was also filed by one Smt. Shashi Goel challenging the order passed by the Chairman, State Transport Authority, U.P., Lucknow on February 2, 1995. The two writ petitions i.e. Writ Petition No. 7875 of 1994 and Writ Petition No. 6774 of 1995 filed before the Allahabad High Court were decided by the Division Bench by its order dated May 5, 1995 and order dated July 31, 1993 passed by the Secretary, State Transport Authority, U.P., Lucknow and the order dated February 2, 1995 passed by the Chairman,

State Transport Authority, U.P. were quashed and the State Transport Authority was directed to pass a specific order indicating the route for which the permit was granted in the meeting of June 14-15, 1993. This order dated May 5, 1995 passed in Writ Petition No.7875 of 1994 and Writ Petition No.6774 of 1995 was challenged in Special Leave Petition) No. 13594 of 1995 which was decided by this Court by order dated July 21, 1995. The following order was passed by this Court:

" Heard the counsel for both the parties.

Leave granted.

We are of the opinion that there are several disputed questions of facts and law which require a clear and comprehensive investigation. For example, one of the questions is whether the original permit granted to the petitioners on the route Muzaffarnagar to Chajlet via Meerapur, Ganga Bridge & Noorpur runs along the route Muzaffarnagar, Joli, Behra Sadar, Jadwad Katia & Meerapur. There is also a controversy as to whether the route Muzaffarnagar to Meerapur is nationalized or not and further whether there are any High Court orders precluding the grant of permit on the sector Muzaffarnagar to Meerapur. In all these circumstances, we are of the opinion that all these matters should be sent to S.T.A.T. , which shall treat the writ petitions filed in High Court as appeals and after hearing all the parties, dispose of the matters in accordance with law."

Therefore, by this order the matter stood remanded to the State Transport Appellate Tribunal for its decision. In pursuance of the aforesaid order passed by this Court, three other writ petitions being Writ Petition No.4250 of 1994 filed by one Saima Jamal before the Lucknow Bench of the High Court, Writ Petition No.6774 of 1995 filed by Smt. Shashi Goel and Writ Petition No.7875 of 1994 filed by Sanjiv Kumar were transferred to the Tribunal and they were registered as Appeal Nos. 127, 142 and 143 of 1995 respectively. The S.T.A.T. by its order dated January 27, 1996 allowed the appeals and set aside the orders dated July 31, 1993 & October 25, 1994 passed by the Secretary, State Transport Authority, U.P., Lucknow; and order dated February 2, 1995 passed by the Chairman, State Transport Authority, U.P., Lucknow. It was held by the Tribunal that the original permits in pursuance of the resolution dated June 14-15, 1993 were granted via Jansath-Meerapur. Till that time, the notification dated September 3, 1994 had not come into force notifying the route Muzaffarnagar- Bijnore via Jansath-Meerapur as a notified route and the impugned resolution passed by the Regional Transport Authority was not hit by the notified route. But it appears that perhaps inadvertently all the parties were totally oblivious of the fact that Bijnor- Noorpur-Chandpur route was notified under the scheme on February 12, 1952. Therefore, no permit could have been granted covering Bijnor- Noorpur route up to Chajlet. Be that as it may, the resolution was passed by the Regional Transport Authority granting permit on the route Muzaffarnagar Jansath, Meerapur. Dewal, Bijnor and Chajlet covering Bijnor to Noorpur notified route.

The order passed by the Tribunal on January 27, 1996 after remand was again challenged by Smt. Shashi Goel by filing two writ petitions in the High Court at Allahabad. Both the writ petitions were dismissed by the High Court of Allahabad by its judgment dated April 30, 1996 and the order of the

Tribunal was upheld. The said order dated April 30, 1996 passed by the High Court of Allahabad was again challenged before this Court in Special Leave Petition) Nos. 14269 and 14270 of 1996. However, both the Special Leave Petitions were dismissed after hearing counsel for the parties by order dated August 5, 1996. The litigation did not stop here. One Dharmendra Singh filed Writ Petition No.37607 of 1995 before the High Court at Allahabad challenging grant of 38 permits by resolution dated June 14-15, 1993. This writ petition was dismissed by the High Court on March 3, 1997. Again a review application was also filed before the High Court which was also dismissed by the High Court by its order dated July 24, 1997. Since permits were not granted to 21 grantees, another writ petition being Writ Petition No. 9990 of 1997 was filed by Omaditya Verma and 20 others before the High Court of Allahabad seeking direction against the Chairman, State Transport Authority and Secretary, State Transport Authority, U.P., Lucknow for issuing permits in their favour in pursuance of the resolution dated June 14-15, 1993. That writ petition was heard and Shri M.P.Dubey, Standing Counsel sought time to file impleadment application and Shri A.D.Saunders also moved an application for impleadment on behalf of Dharmendra Singh as a respondent. However, the High Court directed learned counsel for the writ petitioners to implead the U.P. State Road Transport Corporation - present appellant as a respondent. However, in the meanwhile on July 10-11, 1997, 16 permits were issued in favour of grantees. An objection was filed before the Secretary, State Transport Authority, U.P.Lucknow, requesting him not to issue permits because of the stay order passed by High Court at Lucknow bench in Writ Petition No. 2600 of 1993, same were not vacated by the High Court nor modified, therefore, issuance of permit on July 10-11, 1997 in pursuance of the resolution passed by the State Transport Authority on June 14-15, 1993 was not correct. The Secretary, State Transport Authority, U.P. Lucknow passed an order on July 17, 1997 directing the writ petitioners to deposit their permits and stop plying the vehicles. The said order dated July 17, 1997 ultimately formed subject matter of the present writ petition before the High Court. The Division Bench after hearing the parties at length held that there was no justification for the Secretary, State Transport Authority, U.P., Lucknow to pass the aforesaid order when the resolution dated June 14-15, 1993 has traveled right up to the Apex Court and attained the seal of approval, The stay order passed in Writ Petition No.2600 of 1993 should not have been utilized by the Secretary, State Transport Authority to recall the permits issued in favour of the writ petitioners. It was further observed by the High Court that in fact objections were frivolous and non-existent because the resolution of the Regional Transport Authority passed on June 14-15, 1993 has traveled through series of litigations and final order was passed by the High Court of Allahabad and subsequently affirmed by the Apex Court, as such, it was not proper for the State Transport Authority to have disturbed that order. Secondly, it was also observed by the High Court that no opportunity was afforded to the persons whose permits were recalled without hearing them or without giving them notice. It was further observed that the impact of the notification dated September 3, 1994 had been considered at length and no illegality was found on that basis and the resolution dated June 14-15, 1993 granting permits to the writ petitioners. It was further observed by the High Court that it was not open to be considered. The attention of the High Court was also invited to an order passed in Writ Petition No.2576 of 1997 by the Lucknow Bench of the High Court on August 12, 1997. In that writ petition it was observed that in view of the notification dated September 3, 1994 it would not be advisable to grant permit as the route has been notified. Learned Division Bench held that in view of the earlier decision of the Apex Court in these proceedings the controversy could not be reopened. In this connection a reference was made by the High Court to a

decision of this Court in the case of State of Maharashtra and Anr. vs. Prabhakar Bhikaji Ingle reported in JT 1996 (3) SC 567. In that case it was observed that when self- same order was confirmed by the Apex Court then the order of the Tribunal stood merged with the order passed by this Court. A similar view was also expressed in the case of Narayana Bharna Sangal Trust vs. Swami Prakashananda & Ors. reported in JT 1997 (5) SC

100. In the light of above facts the Division Bench held that it is not open to the respondents to challenge the grant of permits on the basis of the notification dated September 3, 1994 when the matter was remanded back to the Tribunal by the Apex Court by order dated July 21, 1995 and it was also observed that it finally decided the issues and operates as res judicata. It was observed that the resolution passed on June 14-15, 1993 granting 38 permits more than four years have passed yet permission has not been granted. Therefore, direction was issued to implement the resolution dated June 14-15, 1993. Hence, the present appeals on grant of special leave petition by this Court.

In fact, we have reproduced the relevant portions of the two notifications in the beginning of this judgment. The main purpose of reproduction of both notifications was to show that the route in question i.e. Muzaffarnagar to Chajlet covers the notified route from Bijnor to Noorpur which is notified route since 1952. We fail to understand how permit could be granted by the resolution dated June 14-15, 1993 from Muzaffarnagar to Chajlet in face of the notified scheme of 1952 from Bijnor to Noorpur. The scheme was of total exclusion. In fact the resolution dated June 14-15, 1993 is totally unmindful of the 1952 notification that the route from Bijnor to Noorpur which falls on the route from Muzaffarnagar to Chhjet is notified route. This fact was nowhere brought to the notice of the authorities either before the Regional Transport Authority or State Transport Authority or before the High Court of Allahabad or for that matter to the Apex Court. This Court by order dated July 21, 1995 only remanded the matter back to the Tribunal for its decision. In those appeals before the State Transport Appellate Tribunal, the present appellant i.e. UPSRTC was not a party. The dispute before this court was between the operators and the authorities and the UPSRTC was not made a party when the whole matter was remanded before the Tribunal. Had the UPSRTC been made a party before the Apex Court they would have brought to the notice of the Apex Court that a portion of the route from Bijnor to Noorpur is notified route. When the entire matter was remanded back to the Tribunal by the Apex Court by Order dated 21.7.1995, another notification was issued on September 3, 1994 whereby the route from Muzaffarnagar to Bijnor via Jansath, Meerapur and Dewal was also notified. Strangely enough UPSRTC was not party before Apex Court or before STAT. It is for the first time in 1993 before High Court the UPSRTC was impleaded as a respondent. It is true that when the resolution dated June 14-15, 1993 was passed at that time the route from Muzaffarnagar to Bijnor via Jansath Meerapur & Dewal was not notified but the route from Bijnor to Noorpur was already notified on February 12, 1952 and we do not understand how could the Regional Transport Authority and State Transport Authority ignore this fact that the portion from Bijnor to Noorpur which falls on the route from Muzaffarnagar to Chajlet was notified, permits were granted on this notified route. This ignorance appears to be bona fide as nobody seems to have been cognizant of the notification dated February 12, 1952. The appellant UPSRTC could have been alive to the situation and should have moved the Tribunal and should have brought this fact to their notice but the appellant did not choose to take any step. We cannot appreciate their lack of vigilance. Be that as it may, the authorities issuing permits from Muzaffarnagar to Chajlat should have at least

known that a portion of the route falling from Bijnor to Noorpur is a notified route. It is true that this matter has traveled up to the Apex Court and it has gone through various litigation but nobody brought to the notice of the authorities that the route from Bijnor to Noorpur is notified one and no permit could be granted on this route. It is needless to state that once it is nationalized route, there is prohibition to permit any private vehicle to ply except by amending the scheme. It is the mandate of the law and that cannot be ignored. More so, at the time when this order was passed by the Division Bench of the High Court the route from Muzaffarnagar to Bijnore via Jansath, Meerapur and Dweal stood notified on September 3, 1994. We regret to say that the Division Bench of the High Court has overlooked this aspect of the matter and proceeded to decide the matter on the assumption that the effect of this Notification dated September 3, 1994 has already been taken into consideration. We fail to appreciate this aspect. Once the route from Muzaffarnagar to Bijnor via Jansath, Meerapur and Dweal has already been notified on September 3, 1994 how can the High Court direct the appellant to grant permit on the aforesaid route. It is true that when resolution which was passed on June 14-15, 1993 by then the notification dated September 3, 1994 had not come into operation but once the scheme under notification dated September 3, 1994 came into operation and the whole route from Muzaffarnagar to Bijnore stood notified and the route from Bijnore to Noorpur was already notified by notification dated February 12, 1952, how can mandamus be issued by the High Court directing the authorities to grant permits to the 38 operators. This Court while remanding the matter did not go into all these questions. This Court only remanded the matter to the Tribunal as disputed questions of facts were involved. The other special leave petitions were dismissed in limine. That does not amount to merger of the High Court order with that of this Court's order. The dismissal in limine does not amount to upholding of the law propounded in the decision sought to be appealed against . This is a settled proposition of law now. Reference may be made to Indian Oil Corporation Ltd. vs. State of Bihar reported in 1986 (4) SCC 146 "Held:

The dismissal of a special leave petition in limine by a non-speaking order does not justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by Supreme Court. The effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that Supreme Court had decided only that it was not a fit case where special leave should be granted. It cannot be assumed that it had necessarily decided by implication all the questions in relation to the merits of the award, which was under

challenge before Supreme Court in the special leave petition.

A writ petition is a wholly different and distinct proceeding. Although questions which can be said to have been decided by Supreme Court expressly, implicitly or even constructively while dismissing the special leave petition cannot be reopened in a subsequent writ proceeding before the High Court, but neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of Supreme Court dismissing the special leave petition operate to bar the trial of

identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by Supreme Court at least by implication. The exercise of discretionary jurisdiction of the High Court to grant leave under Article 226 is to be guided by established legal principles. It will not be a sound exercise of that discretion to refuse to consider a writ petition on its merits solely on the ground that a special leave petition filed by the petitioner in the Supreme Court had been dismissed by a non-speaking order."

Supreme Court Employees' Welfare Association Vs. Union of India and Anrs. Reported in 1989 (4) SCC 187 " Articles 226 and 136 Res judicata Supreme Court dismissing SLP in limine Held, decision of High Court against which the SLP had been filed would not thereby operate as res judicata Civil Procedure Code, 1908, Section 11"

P. Nallammal and Anr. Vs. State Represented by Inspector of Police reported in 1999 (6) SCC 559 " - Arts. 136 and 141 Effect of grant/dismissal of SLP Dismissal of SLP does not amount to upholding of the law propounded in the decision sought to be appealed against"

Commissioner of Income Tax, Bangalore Vs. Shree Majunatheaware Packing Products & Camphor Works , reported in 1998 (1) SCC 598 " - Art. 136 Summary dismissal of SLP Effect Held, does not mean approval of the view taken by the High Court"

This Court while remanding the matter to the Tribunal categorically stated that all these matters should be sent to the State Transport Appellate Tribunal which shall treat the writ petitions filed in the High Court as appeals and after hearing all the parties, dispose of the matters in accordance with law. This Court never expressed any opinion on the merits of the case whatsoever. Therefore, the dismissal of SLPs pertaining to the route in question by various orders of this Court neither amounts to res judicata nor does it amount that order passed by the High Court amounts to upholding the law propounded in the decision sought to be appealed against. More so, the effect of these two notifications i.e. February 12, 1952 and September 3, 1994 were not considered by this Court or High Court or Tribunal or STA.

Once a scheme is notified it prohibits the plying of private vehicle except as permitted by Scheme. Both Schemes nowhere permit operation by private operators. This is a settled proposition of law that in notified Scheme private operator can operate except permitted by the Scheme. In this connection reference may be made to the decision of this Court in the case of Karnataka State Road Transport Corporation vs. Ashrfulla Khan & Ors. reported in (2002) 2 SCC 560 wherein Their Lordships after considering earlier decisions of the Constitution Benches observed as under :

" This means that even in those cases where the notified route and the route applied for run over a common sector, the curtailment by virtue of the notified Scheme would be by excluding that portion of the route or, in other words, the 'road' common to both. The distinction between 'route' as the notional line and 'road' as the physical track disappears in the working of Chapter IV-A, because you cannot curtail the route without curtailing a portion of the road, and the ruling of the Court to which we have referred, would also show that even if the route was different, the area at least would be the same. The ruling of the Judicial Committee cannot be made applicable to the Motor Vehicles Act, particularly Chapter IV-A, where the intention is to exclude private operators completely from running over certain sectors or routes vested in State Transport Undertakings. In our opinion, therefore, the appellants were rightly held to be disentitled to run over those portions of their routes which were notified as part of the Scheme. Those portions cannot be said to be different routes, but must be regarded as portions of the routes of the private operators, from which the private operators stood excluded under Section 68-F(2)) (iii) of the Act.

In *S.Abdul Khader Saheb v. Mysore Revenue Appellate Tribunal* it was held by this Court that once a Scheme is for total exclusion of operation of stage carriage services by operators other than the State Transport Undertaking, the authorities cannot grant permit under Chapter IV of the Motor Vehicles Act on any portion of a notified route. In *Mysore SRTC v. Mysore State Transport Appellate Tribunal* it was held that it is not permissible to grant permit on a portion of a notified route which has an effect to ply a stage carriage on the same line of the notified route excepting an intersection."

In view of the fact that the route from Bijnor to Noorpur was notified way back in 1952, no permit could have been issued in pursuance of the resolution dated June 14-15, 1993 and likewise under notification dated September 3, 1994 when the route from Muzaffarnagar to Bijnor had been notified, no permit could have been granted on the aforesaid route as both schemes are of total exclusion.. Therefore, in view of the law laid down by this Court in the case of *Karnataka State Road Transport Corporation (Supra)*, the question no more remains *res integra* and it is settled principle of law that no private operators could be permitted to operate on a notified route except by modifying Scheme and after making provisions for the same.

As a result of our above discussion, we are of the opinion that the view taken by the High Court of Allahabad cannot be sustained and accordingly we allow all these appeals and set aside the impugned order dated September 26, 1997 passed by the High Court of Allahabad in Writ Petition Nos. 9990, 23496, 15746 and 20187 of 1997 and dismiss the same with no order as to costs.