

Rasid Javed & Ors vs State Of U.P. & Anr on 5 July, 2010

Equivalent citations: AIR 2010 SUPREME COURT 2275, 2010 (7) SCC 781, 2010 AIR SCW 4079, 2010 (5) ALL LJ 178, (2010) 4 CIVLJ 531, (2010) 5 ALL WC 4375, (2010) 3 RECCIVR 696, (2010) 2 WLC(SC)CVL 573, (2010) 5 ANDHLD 71, (2010) 3 CURCC 169, (2010) 4 ACC 49, 2010 (6) SCALE 227, (2010) 6 SCALE 227

Bench: R.M. Lodha, R.V. Raveendran

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5951 OF 2002

WITH

CIVIL APPEAL NO. 4894 OF 2010
(Arising out of SLP(C) No. 820 of 2003)

WITH

CIVIL APPEAL NO. 4895 OF 2010
(Arising out of SLP(C) No. 21707 of 2002)

Rasid Javed & Ors. etc.etc.

...Appellants

Versus

State of U.P. & Anr. etc. etc.

...Respondents

JUDGEMENT

R.M. Lodha, J.

Delay condoned and leave granted in SLP(C) No.820 of 2003. Leave also granted in SLP (C) No. 21707 of 2002. The applicants in the I.As. for impleadment are allowed to intervene.

Introduction

2. Five writ petitions by various operators came to be filed before High Court of Judicature at Allahabad questioning the Notification dated April 15, 2000 issued by the State of U.P. rescinding the earlier Notification dated April 16, 1999 and for consequential reliefs. The Division Bench of

Allahabad High Court heard these writ petitions together and by a common judgment dated April 23, 2002 dismissed all the writ petitions. It is from this common judgment that these three appeals by special leave arise.

Facts

3. The brief facts in relation to these appeals may be set out first.

A. Appeal by Rasid Javed and others

4. The appellants in this appeal claim that they have been operators on Saharanpur-Karnal route (inter-State route) via Jandhera - Rampur - Gangoh - New Yamuna Bridge. In the Notification published on April 16, 1999 under Section 102(1) of the Motor Vehicles Act, 1988 (for short, 'the 1988 Act'), the State Government proposed to modify the scheme notified on May 29, 1993 by providing that permit holders bearing Nos. 168/94, 169/94, 170/94, 171/94, 172/94, 173/94, 222/94, 233/94, 23/95, 24/95, 25/95, 739/89, 242/94, 764/90, 787/90, 772/90, 800/90 and 784/90 shall be allowed to operate their buses along with the Uttar Pradesh State Road Transport Corporation (UPSRTC) on Saharanpur-Karnal route (via Jandhera-Rampur-Gangoh-New Yamuna Bridge) provided that they get their permits counter-signed by State of Haryana for plying their buses in that State. By the said Notification, objections were invited from the UPSRTC and the persons likely to be affected by the proposed modification and Shri Zamiruddin, Special Secretary and Additional Legal Remembrancer, Uttar Pradesh was appointed Hearing Authority to hear and decide the objections that may be received. Pursuant to the said Notification, objections were received and the Hearing Authority after hearing the affected parties held in its Order dated October 11, 1999 that proposed modification be approved, i.e. private operators be allowed to ply their vehicles. According to the appellants, they are covered by the permits mentioned at Sl. No. 1 [column 4 - (c)(iii)] of the Schedule to the Notification dated April 16, 1999.

B. Appeal by Masood Ahmad and others

5. The appellants in this appeal claim to be permit holders in respect of Saharanpur-Loni route via Shamli- Baghpat-Marginal Bandh Road - ISBT Delhi. According to them, they are covered by Sl. No.1 [column 4 - (c)(i)] of the Schedule to the Notification dated April 16, 1999. By the said Notification, the approved scheme dated May 29, 1993 was sought to be modified and it was proposed to allow these operators to operate their buses along with the UPSRTC on Saharanpur-Loni via Shamli-Baraut-Baghpat-Marginal Bandh Road - ISBT Delhi route.

C. Appeal by Raghunandan Goyal and Others

6. The appellants claim to have been granted inter- State permits by the State Transport Authority (STA), Uttar Pradesh for an inter-State route known as Meerut-Chandigarh via Baraut-Shamli-Gangoh-Saharanpur-Sarsawa-Yamuna Nagar-Ambala. Their case is that in the draft modification published in the Notification dated April 16, 1999, their permits are mentioned at Sl. No. 1 [column 4 - (c)(ii)] of the Schedule thereof. By the said modification, it was proposed to allow

these operators to operate their buses along with the UPSRTC on Meerut-Chandigarh via Baraut-Shamli-Gangoh-Saharanpur- Sarsawa-Yamuna Nagar-Ambala route provided that the permit holders get their permits counter-signed by the State Government of Haryana for plying their buses in that State. Saharanpur-Delhi route (the 1959 Scheme) and previous litigation

7. On February 26, 1959, a draft scheme was published under Section 68-C of the Motor Vehicles Act, 1939 ('the 1939 Act' for short) in respect of the inter-State route viz; Saharanpur - Delhi proposing to authorize the State Transport Undertaking (STU) of Uttar Pradesh to operate stage carriages on the said route to the exclusion of all other operators.

8. On September 29, 1959 the State Government approved the said draft scheme and published it under sub- section (3) of Section 68-D of 1939 Act (hereinafter referred to as 'the 1959 Scheme'). The 1959 Scheme provided 50 (25 each way) State Road Transport Services or more as may appear necessary from time to time on that route or portion thereof from November 1, 1959 or thereafter. It was provided in the approved scheme that the persons other than the STU will not be permitted in plying any road transport service on the said route or portion thereof except as mentioned therein.

9. A group of writ petitions, one by 32 operators and the other by 18 operators was filed before the High Court of Allahabad questioning the validity of the 1959 Scheme. The High Court vide its judgment dated October 30, 1961 directed the State Government not to enforce the 1959 Scheme against 32 operators who had filed the first batch of writ petitions and it was directed that the State Government should hold a fresh enquiry into the question whether the scheme should be approved or not. Similar judgment was passed in the other batch of writ petitions relating to 18 operators on February 7, 1962.

10. The aforesaid judgments of Allahabad High Court were affirmed by this Court in Jeewan Nath Wahal v. State Transport Appellate Tribunal (C.A. No.1616 of 1968) decided on 03.04.1968. In Jeewan Nath Wahal, it was held that the 1959 Scheme was operative and not affected and its enforcement was prohibited against 50 operators only who approached the High Court. It was further held that the STU has the exclusive right to ply its vehicles on the notified route (Saharanpur - Delhi route).

11. Two writ petitions, one by Shri Chand¹ and the other by Citizen Council for Public Service were directly filed before this Court under Article 32 of the Constitution in the year 1985 challenging the validity of proceedings which were pending before the State Government pursuant to a draft scheme published on February 26, 1959. This Court allowed these writ petitions on August 23, 1985 by the following order :

".....In the instant case the delay is in the order of 26 years. In view of the above decisions we allow these writ petitions and quash the impugned scheme published on February 26, 1959 and the proceedings which have taken place till now pursuant thereto and Shri Chand v. Govt. of U.P., Lucknow & Ors.

Citizen Council for Public Service v. Govt. of U.P. & Anr. [(1985) 4 SCC169] direct the State Government not to proceed with the hearing of the matter. It is now open to the State Transport Undertaking of Uttar Pradesh to publish a fresh draft scheme under Section 68-C of the Act if it is of opinion that it is necessary to do so. We, however, permit the State Transport Undertaking to run the stage carriage vehicles which it is now running on the route in question under permits issued pursuant to the scheme which is now quashed, till February 28, 1986 or till they are replaced by temporary permits to be issued under sub-section (1-A) of Section 68-F of the Act after the publication of a fresh draft scheme or by permits issued under Chapter IV of the Act, whichever is earlier."

12. Pursuant to the aforesaid decision in Shri Chand's case¹, the UPSRTC published a draft scheme on February 13, 1986 for 39 routes; Saharanpur - Delhi (Saharanpur-Nanauta-Thanabhawan-Shamlikandhla - Baraut - Baghpat - Loni-Delhi) being the 1st Item in the draft scheme.

The 1988 Act and matters before this Court in respect of Saharanpur-Delhi route

13. While the said draft scheme was pending, the 1939 Act was repealed and the 1988 Act came into force with effect from July 1, 1989.

14. It appears that immediately after the 1988 Act came into force, two things happened viz; (one) some operators were granted permits for Saharanpur to Ghaziabad via Shahdara routes and (two) the Hearing Authority held that the draft scheme published on February 13, 1986 by the UPSRTC under the 1939 Act had lapsed by operation of Section 100 (4) of the 1988 Act. Ram Krishna Verma and few others filed writ petitions in the High Court of Allahabad challenging the grant of permits for Saharanpur to Ghaziabad via Shahdara route while the UPSRTC challenged the order of the Hearing Authority by a separate writ petition. The writ petition filed by the UPSRTC was dismissed by Allahabad High Court on March 16, 1990. The writ petitions filed by Ram Krishna Verma and others were also dismissed by the Allahabad High Court on July 23, 1990. Special leave petitions were filed against the aforesaid judgments before this Court in which leave was granted. These appeals (Ram Krishna Verma and Ors. v. State of U.P. & Ors.²) were allowed vide judgment dated March 31, 1992. This Court held that the nationalization of Saharanpur - Delhi route by the 1959 Scheme is operative to the total exclusion of every operator except UPSRTC and 50 operators whose objections were upheld by the High Court. In the operative order, this (1992) 2 SCC 620 Court quashed the permits granted to the private operators under Section 80 of the 1988 Act on the respective routes, parts or portions of the nationalized routes or February 13, 1986 draft scheme.

15. After decision of this Court in Ram Krishna Verma², the competent authority approved the Scheme and directed the same to be published. On May 29, 1993, the approved scheme (for short, 'the 1993 Scheme') was published in the Gazette. At Serial No. 1 of the 1993 Scheme is Saharanpur-Delhi route.

16. The controversy with regard to the extent and effect of the draft scheme dated February 13, 1986 and the 1993 Scheme vis-à-vis the 1959 Scheme relating to Saharanpur- Delhi notified route reached this Court on more than one occasion. We have noticed some of these decisions in earlier part of the judgment and shall consider this aspect further a little later. Suffice it to state here that the 1993 Scheme came to be published pursuant to decision of this Court in Ram Krishna Verma².

Present controversy

17. By a Notification published on April 16, 1999, the State Government, in exercise of the powers under sub-section (1) of Section 102 of the 1988 Act proposed to make modification in the 1993 Scheme to the extent mentioned in column 4 of the Schedule appended thereto. In respect of Saharanpur-Delhi route modification proposed was as follows :

"Sl. Notification Name of the Modification proposed No. No. and date notified route
By which the in which the Routes were modification Notified. Is proposed.

1. 2. 3. 4.

1. No. 1635/30.2.93 Saharanpur-Delhi & 38 In the said scheme after 565'85 dated Delhi & 38 Clauses (b) of the May 29, 1993 other routes following clause shall be inserted, namely :

(c) Notwithstanding anything contained in clauses (a) and (b) the private bus operator;

(i) holding permit numbers P.S.T.P./MPMV 1/89, 2/89, 3/89, 4/89, 5/89, 6/89, 7/89, 8/89, 9/89, 10/89, 11/89, 12/89, 13/89, 14/89, 16/89, 17/89, 18/89, 19/89, Shall be allowed to operate their buses alongwith U.P.S.R.T.C. on the route namely, Saharanpur-Loni Via-

Shamali-Baraut-Baghpat

-Marginal Bandh Road-

ISBT Delhi.

(ii) holding permit numbers P.S.R.T.P. 303/89, P.S.T.P. 304/89 and P.S.T.P. 305/89, shall be allowed to operate their buses alongwith U.P.S.R.T.C. on the Route namely Meerut-

Chandigarh via Baraut-

Shamli-Gangoh-

Saharanpur - Sarsawa-

Yamuna - Ambala; and

(iii) holding permit numbers 168/94, 169/94, 170/94, 171/94, 172/94, 173/94, 222/94, 233/94, 23/95, 24/95, 25/95, 739/89, 242/94, 764/90, 787/90, 772/90, 800/90, 784/90, shall be allowed to operate their buses alongwith U.P.S.R.T.C. on the route namely :-

Saharanpur-Karnal via Jandhera-Rampur-

Gangoh - Nea Yamuna Bridge :

Provided that the permit Holders sub-clauses (ii) and

(iii) above shall get their permits counter-signed by the State Government of Haryana for plying their buses in the State of Haryana. "

18. The Notification provided that the UPSRTC and any other person likely to be affected by the proposed modification may make representations within 30 days from the date of publication of the Notification in the Gazette and that the representations so received will be heard by the Hearing Authority Shri Zamiruddin, Special Secretary and Additional Legal Remembrancer, Uttar Pradesh.

19. In pursuance thereof various representations were received. The Hearing Authority after hearing the concerned parties who made the representations passed an order on October 11, 1999 approving the notified proposed modification and the objections presented by the UPSRTC and other objectors were dismissed.

20. The State Government, however, by a Notification dated April 15, 2000 in exercise of the powers under Section 102 of 1988 Act read with Section 21 of General Clauses Act, 1897 rescinded the Notification dated April 16, 1999. Main submissions of the parties

21. Mr. Dinesh Dwivedi, learned senior counsel led the arguments on behalf of the appellants. He argued that it was not open to the State Government to withdraw the Notification dated April 16, 1999 after it had been approved by the Hearing Authority by his order dated October 11, 1999. According to him, the order passed by the Hearing Authority on October 11, 1999 is the order of the State Government under Section 102(1) and (2) of the 1988 Act. It is so because in the draft Notification dated April 16, 1999, Shri Zamirudeen, Special Secretary and Additional Legal Remembrancer was appointed as the Authority to hear the objections and he was acting as the State Government under the U.P. Rules of allocation of business. In this regard, learned senior counsel placed reliance on three decisions of this Court, viz., *Samsher Singh v. State of Punjab* and another³; *Capital Multi-purpose Co- operative Society Bhopal and others v. State of M.P. and others*⁴ and *A. Sanjeevi Naidu, Etc. v. State of Madras* and (1974) 2 SCC 831 (1967) 3 SCR 329 another⁵. Mr. Dinesh Dwivedi also submitted that decision under Section 102(1) of the 1988 Act has to be by the same Authority who heard the objections and there could not be divided responsibility of a quasi judicial act. He sought support from a decision of this Court in *Gullapalli Nageswara Rao and others v. Andhra Pradesh State Road Transport Corporation and another*⁶). He further argued that once

the decision has been taken by the Competent Authority then the State Government cannot modify that decision because it is a quasi judicial decision. He placed reliance on M/s. Nehru Motor Transport Co-operative Society Ltd. & Ors. v. State of Rajasthan & Others⁷. In the alternative, learned Senior Counsel submitted that even otherwise the material on record demonstrated that the order of modification dated October 11, 1999 was approved by the Principal Secretary of the Department.

22. Mr. Dinesh Dwivedi, learned senior counsel would also contend that approval order passed under Section 102(1) (1970) 1 SCC 443 AIR 1959 SC 308 AIR 1963 SC 1098 and (2) was not required to be published in the Official Gazette. He invited our attention to Section 68-E of 1939 Act and Sections 100(3) and 102 of 1988 Act to indicate the difference in the two provisions. He further submitted that Section 21 of the General Clauses Act, 1897 is not at all attracted as the power that was sought to be exercised has been expressly provided in Section 102 of the 1988 Act.

23. While dealing with the effect of the draft proposal dated April 16, 1999 and whether the 1993 Scheme superseded the 1959 Scheme, Mr. Dinesh Dwivedi submitted that there could not be operation of two notified schemes in respect of Saharanpur-Delhi route and consequently the judgment of this Court in Ram Krishna Verma² has to be read in the light of the provisions of law and not in contravention of the provisions of law. Learned senior counsel submitted that the 1959 Scheme has been superseded by the 1993 Scheme and that is what the State Government also understood. He also assailed the judgment of the High Court and submitted that writ petitions have been dismissed on the grounds contrary to law. Learned senior counsel submitted that the appellants have been granted permits validly in the year 1989 which have been renewed in the year 1994 and the High Court overlooked the fact that revocation of permits by virtue of the decision of this Court in Ram Krishna Verma² implied only revocation to the extent of only overlapping portion of Delhi-Saharanpur route. He, thus, submitted that appellants' permits are valid as far as non-notified portion is concerned.

24. Mr. Nagendra Rai, learned senior counsel appearing for the appellants in Civil Appeal No. 5951 of 2002 adopted the arguments of Mr. Dinesh Dwivedi and submitted that the 1959 Scheme stood modified by the 1993 Scheme published on May 29, 1993 and that for the same route, there could not be two approved schemes. He submitted that the approval order dated October 11, 1999 by the Hearing Authority is not passed by virtue of any delegation of power nor any right of appeal is available against the said order and as such the order dated October 11, 1999 is a final order of the State Government in terms of Section 102 of 1988 Act and required no publication in the Official Gazette.

25. Mr. P.N. Gupta, learned counsel while adopting the arguments of Mr. Dinesh Dwivedi and Mr. Nagendra Rai contended that once the final order of approval was passed on October 11, 1999, the proposal for modification as provided in Notification dated April 16, 1999 could not have been cancelled or rescinded as the draft Notification dated April 16, 1999 merged in the final order dated October 11, 1999. According to him, the proposal for modification of the approved scheme under Section 102 of the 1988 Act and its approval by the State Government are not legislative in nature and consequently Section 21 of the General Clauses Act, 1897 has no application. Learned counsel

would submit that even if it be assumed that the impugned Notification amounts to modify the approved scheme and Section 21 of the General Clauses Act has application, in that event the impugned Notification dated April 15, 2000 is vitiated because it has to be issued in the same manner as provided under Section 102 of 1988 Act which was not done. He also contended that once the modification was approved as per order dated October 11, 1999, the valuable rights accrued in favour of the appellants and that could not be taken away except after giving an opportunity of hearing and on this ground also the impugned Notification dated April 15, 2000 is bad in law.

26. Mr. Ratnakar Dash, learned senior counsel for the State of U.P. and Ms. Garima Prashad, learned counsel for the UPSRTC supported the impugned judgment. The thrust of their submission is that both approved schemes, namely, the 1959 Scheme and the 1993 Scheme are effective and in operation to make the Saharanpur-Delhi route fully nationalized for the exclusive operation by the STU and no private operator can operate on this route and, therefore, notified route viz; (Saharanpur-Delhi route) could not have been modified without modifying the 1959 Scheme. Learned senior counsel for the State as well as counsel for the UPSRTC contended that the order of the Hearing Authority after hearing objections of the affected parties is a quasi-judicial order and is not the final order of the State Government. They contended that it was open to the State Government to modify the order of the Hearing Authority before publication of the modified scheme. Reliance in this connection was placed upon a decision of this Court in *Afsar Jahan Begum (Smt) And Others v. State Of M.P. And Others*⁸. Learned counsel for the UPSRTC also contended that the appellants did not have permits on the route in question either in 1959 or 1986 or even in 1993 and that the permits given to the private operators under the draft scheme of 1986 as well as under the 1993 scheme have been quashed by Allahabad High Court and that appellants have no permits at all. She submitted that a total of 124 permits have been granted to UPSRTC on Saharanpur-Delhi route which are valid till the scheme remains in force and that the UPSRTC has been plying exclusively on the Saharanpur-Delhi route and there is no operation by the private operators. Learned counsel for the UPSRTC placed reliance upon the decisions of this Court in *Mysore State Road Transport Corporation v. Mysore State* (1996) 8 SCC 38 Transport Appellate Tribunal⁹; *C.P.C. Motor Service, Mysore v. State of Mysore and Another*¹⁰; *Adarsh Travels Bus Service and Another v. State of U.P. and Others*¹¹ and *Karnataka State Road Transport Corporation v. Ashrafulla Khan And Others*¹² and submitted that no private bus can be allowed to overlap fully or partially on nationalized route if there is no mention of that in the scheme of nationalization of the said route itself. The issue

27. In light of the contentions outlined above, the core question that falls for consideration is : whether the Notification dated April 15, 2000 is invalid and vitiated by any legal flaw?

28. Insofar as the factual aspect is concerned, it does not seem to be in dispute that the permits granted to the appellants related to routes which overlapped the Delhi- Saharanpur notified route.

Our appraisal (1974) 2 SCC 750 AIR 1966 SC 1661 (1985) 4 SCC 557 (2002) 2 SCC 560 (A) The effect of publication of a scheme under Section 68D

29. The expression "route" is defined in Section 2(28- A) of 1939 Act as follows :

"S. 2 (28-A) "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another;"

30. Chapter IV-A of the 1939 Act makes special provisions relating to the STUs. Particularly Section 68-C provides for preparation and publication of scheme of road transport service by an STU. The objections to the draft scheme published under Section 68-C may be filed under Section 68-D. Sub-section (2) of Section 68-D provides that the State Government after considering the objections and hearing the objectors and the STU may approve or modify the scheme. Sub-section (3) of Section 68-D provides that the scheme as approved or modified under sub-section (2) shall be published in the Official Gazette by the State Government and the same shall then become final and called 'approved scheme'. Once the scheme has been published under sub-section (3) of Section 68-D, Section 68-FF imposes restriction on grant of permits in respect of notified area or notified route. From these provisions, it is apparent that once a scheme is published under Section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the STU may operate on the notified area or notified route except as provided in the scheme itself. In *Adarsh Travels Bus Service*¹¹, this Court held that a necessary consequence to these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorized so to do by the terms of the scheme itself.

31. A definite legal position has been crystalised by this Court in *Mysore State Road Transport Corporation*⁹ that any route or area either wholly or partly can be taken over by a State Undertaking under any scheme published, approved and notified under the provisions of Chapter IV-A of 1939 Act and that if the scheme prohibits private transport operators to operate on the notified area or route or any portion thereof, the Regional Transport Authority (RTA) cannot either renew the permit of such private operators or give any fresh permit in respect of a route which overlaps the notified route.

32. That the scheme framed under Section 68-C of 1939 Act is a 'law' is settled by a Constitution Bench decision of this Court in the case of *H.C. Narayanappa and Ors. v. State of Mysore and Others*¹³. This position has been reiterated by this Court in *Ram Krishna Verma*². *H.C. Narayanappa*¹³ also holds that the scheme framed under Section 68-C of 1939 Act excludes the private operators from notified routes or areas.

(B) The status of appellants' permits

33. Insofar as Saharanpur-Delhi route is concerned, it became a notified route under the 1959 Scheme. The controversy regarding the 1959 Scheme reached this Court initially in *Jeewan Nath Wahal* case wherein a three-Judge Bench of this Court upholding the order of the High Court held in unambiguous terms that Saharanpur-Delhi route approved in the 1959 Scheme stood nationalized to the complete exclusion (1960) 3 SCR 742 of private operators except 50 operators against whom it was held not be operative till their objections are heard and decided by the Hearing Authority. The decision of this Court in *Shri Chand*¹ has been explained in subsequent decision in the case of *Ram Krishna Verma*² by holding that nationalization of Saharanpur-Delhi route in the 1959 Scheme

cannot be said to have been quashed in *Shri Chand*¹ except to the extent of 50 operators and in any case the decision of a Bench of two- Judges in *Shri Chand*¹ cannot have the effect of overruling the decision of a Bench of three-Judges in *Jeewan Nath Wahal*. This Court further held in *Ram Krishna Verma*² that the fresh draft scheme published on February 13, 1986 must be construed to be in relation to 50 existing operators only. The same position was reiterated by this Court in *Nisar Ahmad and Ors. v. State of U.P. and Ors.*¹⁴ and *Gajraj Singh and Ors. v. State of U.P. & Ors.*¹⁵. In *Gajraj Singh*¹⁵, it was clearly stated that insofar as Saharanpur-Delhi route is concerned, it shall be deemed to have been approved and maintained in terms of this 1994 Suppl. (3) SCC 460 (2001) 5 SCC 762 Court's decision in *Ram Krishna Verma*². In light of these decisions of this Court, there is no scope of any doubt that Saharanpur-Delhi route on its nationalization stood frozen under the 1959 Scheme against everyone except 50 operators. The draft scheme published on February 13, 1986 was confined to those 50 operators alone and not to other private operators. By the 1993 Scheme, Saharanpur-Delhi route stood frozen against 50 operators as well. The effect of these two schemes (1959 Scheme and 1993 Scheme), thus, has been that the entire Saharanpur-Delhi route became fully nationalized for the exclusive operation by the STU i.e., UPSRTC and no private operator could operate on the said route. As a matter of fact, consequent upon decision of this Court in the case of *Ram Krishna Verma*² and the settled legal position that RTA cannot either renew the permit of such private operators or give any fresh permit in respect of a route which overlaps the notified route, the appellants' permits stood cancelled and in any case these permits lost their legal significance and sanctity. In this backdrop, the whole exercise undertaken by the State Government under sub- section (1) of Section 102 of 1988 Act proposing to modify the 1993 Scheme relating to Saharanpur - Delhi notified route was misconceived as the permits specified in that Notification did not exist in law. The finding of the High Court in the circumstances that the modification proposal dated April 16, 1999 proceeded on the misconception that petitioners (appellants herein) were holding permits on the concerned route cannot be said to be unjustified. Moreover, in the absence of any proposal to modify the 1959 Scheme, the modification proposed in the 1993 Scheme vide Notification dated April 16, 1999 was meaningless. The contention that the 1959 Scheme merged in the 1993 Scheme has no merit. It is true that 1959 Scheme was approved under 1939 Act and even after repeal of 1939 Act by 1988 Act, the State Government was competent to prepare fresh scheme by following the procedure contemplated in Sections 99 and 100 or modify that scheme under Section 102 of the 1988 Act but the proposed modification published in the Notification on April 16, 1999 does not seek to modify the 1959 scheme at all. Since the Notification dated April 16, 1999 is, ex facie, misconceived and meaningless as regards Saharanpur-Delhi route, the proceedings taken pursuant thereto by the Hearing Authority and his decision dated October 11, 1999 also have no legal effect.

(C) Section 102 of the 1988 Act and the extent of authority to the Hearing Authority

34. Chapter VI of the 1988 Act contains special provisions relating to the STUs. Section 99 thereof makes a provision for preparation and publication of proposal by the State Government regarding road transport service of an STU. As per sub-section (1) of Section 100, on the publication of such proposal, the objections may be filed before the State Government within 30 days therefrom. Sub-section (2) of Section 100 provides that the State Government may approve or modify such proposal after hearing the objectors and the representatives of the STU. Sub-section (3) of Section

100 makes a provision that the scheme relating to the proposal as approved or modified under sub-section (2) shall be published in the Official Gazette in at least one newspaper in the regional language circulating in the area or route covered by such scheme. On publication of the said scheme in the Official Gazette, it becomes final. Section 102 of the 1988 Act empowers the State Government to modify the approved scheme in the public interest. Since the controversy relates to this Section, it is appropriate that we reproduce Section 102 of the 1988 Act as it is. The said Section reads thus:

"S.102. Cancellation or modification of scheme.- (1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving -

(i) the State transport undertaking; and

(ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification, an opportunity of being heard in respect of the proposed modification.

(2) The State Government shall publish any modification proposed under sub-section (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government."

35. A close look at Section 102 would make it manifestly clear that modification of the approved scheme may be done by the State Government in the public interest after giving opportunity of being heard in respect of proposed modification to the STU and the persons likely to be affected by the proposed modification. The modification proposed is required to be published in the Official Gazette and in one of the newspapers in the regional languages circulating in the concerned area under Section 102(2). On behalf of the appellants, it was contended that in the proposed modification published in the Official Gazette on April 16, 1999, the authority to hear the objections/representations was given to Shri Zamirruddin, Special Secretary and Additional Legal Remembrancer and the said Hearing Authority after hearing the objections of the affected persons and the UPSRTC approved the proposed modification and rejected the objections received in this regard and the approval by the Hearing Authority of the proposed modification by his order dated October 11, 1999 is the approval of the State Government. Is the order dated October 11, 1999 of the Hearing Authority approving the proposed modification published in the Official Gazette dated April 16, 1999, an order of the State Government modifying the approved scheme of 1993 under Section 102(1) of the 1988 Act? The answer has to be in the negative because Shri Zamirruddin was given authority to hear the representations received by the State Government to the proposed modification but no authority was given to him to approve the proposed modification or modify the approved scheme. The Notification dated April 16, 1999 does not empower the Hearing Authority to approve or modify the scheme; he has only been empowered to hear the objections. That a person who hears must decide and that divided responsibility is destructive of the concept of judicial

hearing is too fundamental a proposition to be doubted. This settled principle has also been highlighted by this Court in Gullapalli Nageswara Rao⁶ but based on such principle the limited authority of hearing given to the Hearing Authority by the State Government cannot be treated as enlarged in its scope. A delegatee must confine his activity within four corners of the powers invested in him and if he has acted beyond that, his action cannot have any legal sanction unless ratified by the delegator.

36. A distinction must be maintained where the hearing authority is empowered by the State Government to hear objections and approve the proposed modification or modify the approved scheme and a case where the hearing authority is authorized to hear the objections/representations relating to the proposed modification to the approved scheme. In the latter case, the authority delegated to the Hearing Authority is limited and he is not authorized to approve the proposed modification or modify the approved scheme. The present case falls in the latter category and accordingly the order of the Hearing Authority dated October 11, 1999 is in excess of the authority given to him and cannot be construed as a final order of approval under Section 102 (1) of the 1988 Act. Whether such limited authority of hearing to the Hearing Authority makes any legal sense is an aspect for consideration by the State Government. Suffice, however, to say that it was not open for the Hearing Authority to approve the proposed modification or modify the proposed scheme.

(D) Invocation of Section 21 of General Clauses Act :

whether valid

37. Having already held that the order of the Hearing Authority dated October 11, 1999 is in excess of the authority given to him and that the said order has no legal effect, we do not find that there was any impediment for the State Government in exercising its power under Section 102 of the 1988 Act read with Section 21 of the General Clauses Act, 1897 to rescind the Notification dated April 16, 1999.

38. Section 21 of the General Clauses Act, 1897 provides thus:

"S.21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.

- Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

39. The aforesaid provision came up for consideration before the Constitution Bench of this Court in Kamla Prasad Khetan & Another v. Union of India¹⁶ way back in 1957. The majority opinion stated:

"It is to be remembered that S.21 of the General Clauses Act embodies a rule of construction, and that rule must have reference to the context and subject-matter of

the particular statute to which it is being applied....".

40. It seems to be fairly settled that under Section 21 of the General Clauses Act, an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in the like manner. In the instant case, there is no doubt that the Notification dated April 15, 2000 has been made in the same manner as the earlier Notification dated AIR 1957 SC 676 April 16, 1999. Since the order of the Hearing Authority dated October 11, 1999 is not an order of approval under Section 102(1) of the 1988 Act and cannot be treated as such, the power of the State Government to rescind the Notification dated April 16, 1999 did not get exhausted. The argument that the draft Notification dated April 16, 1999 merged in the order dated October 11, 1999 is fallacious and devoid of any substance.

41. Mr. Dinesh Dwivedi, learned senior counsel urged on behalf of the appellants that even otherwise the material on record demonstrated that the order of the modification dated October 11, 1999 was approved by the Principal Secretary of the Department and, thus, there was an approval by the State Government. We are unable to accept this submission. In the first place, except the decision of the Hearing Authority dated October 11, 1999 there is nothing on record to conclude that the State Government had approved the proposed modification as notified on April 16, 1999. Secondly, even if we assume that an executive action not expressed to be made in the name of the Governor as contemplated under Article 166(1) of the Constitution may not vitiate such action as nullity and as held by this Court in *Dattatraya Moreshwar Pangarkar v. The State of Bombay and Others*¹⁷ the non-compliance with the provisions of either of clauses of Article 166 would lead to the result that order in question would lose the protection which it would otherwise enjoy had the proper mode for expression and authentication been adopted, but then there has to be some formal order by the State Government under Section 102(1) of the 1988 Act. Moreover, there is nothing on record even to indicate that the order dated October 11, 1999 of the Hearing Authority was communicated to the appellants or any of the affected parties. For all these reasons, the only conclusion that can be drawn is that the order dated October 11, 1999 is not an order as contemplated under Section 102 (1) of the 1988 Act by the State Government approving the modification proposed in the Notification dated April 16, 1999.

42. In view of our finding that the order of the Hearing Authority dated October 11, 1999 cannot be treated as an order of the State Government under Section 102(1) of the (1952) 1 SCR 612 1988 Act, it is not necessary to consider the question as to whether the order of the State Government under Section 102(1) of the 1988 Act is required to be published in the Official Gazette or not.

43. The contention of Mr. P.N. Gupta, learned counsel for some of the appellants that the opportunity of hearing was required to be given to the appellants before issuance of Notification dated April 15, 2000 has no merit for more than one reason. For one, this contention is founded on the premise that the order of the Hearing Authority dated October 11, 1999 is the order of the State Government. Secondly, what Section 21 of the General Clauses Act requires is that the authority empowered to issue notification must exercise its power to rescind such notification in the like manner. We have already noticed in the preceding discussion that the Notification dated April 15, 2000 has been made in the same manner as the earlier Notification dated April 16, 1999. Conclusion

44. For the reasons given above, we hold that the Notification dated April 15, 2000 is valid and does not suffer from any legal flaw and, accordingly, dismiss these appeals with no order as to costs. Interlocutory applications for impleadment stand disposed of, as indicated above.

.....J. (R.V. Raveendran)J. (R.M. Lodha) New Delhi July 5, 2010