Allahabad High Court
General Manager, U.P. Govt. ... vs State Transport Appellate ... on 30 January, 1970
Equivalent citations: AIR 1971 All 263
Author: J Lal
Bench: J Lal
JUDGMENT Jagmohan Lal, J.

1. Under this judgment, I propose to dispose of Writ Petitions Nos. 110, 111 and 112 of 1969 which all raise similar questions of fact and law.

2. The petitioners in each of these writ petitions are the General Manager, U. P. Government Roadways, Bareilly Region and the Transport Commissioner, U. P. Opposite Parties Nos. 1 and 2 in each of the writ petitions are the State Transport Appellate Tribunal and the Regional Transport Authority, Bareilly Region. Opposite Party No. 3 in Writ Petition No. 110 is Daulat Ram, in Writ Petition No. 111 is Ramesh Chand Gupta who is successor-in-interest of one Ram Sanehi Lal and in Writ Petition No. 112 is Smt. Bimla Devi and Manzoor Ahmad who succeeded to the interest of one Abdul Wahid. It appears that originally Ram Sanehi Lal and Abdul Wahid were operators of stage carriages on Bareilly-Shishgarh route and each of them held a permit for a stage carriage. Daulat Ram was an operator on Moradabad-Kanth route and also held a stage carriage permit. The route Bareilly-Shishgarh was notified under Chapter IV-A of the Motor Vehicles Act (hereinafter to be referred to as the Act) on 15-7-1961, while the other route Morada-bad-Kanth was notified on March 25, 1963.

After these notifications the permits of these permit-holders were cancelled under Section 68-F of the Act. In lieu of compensation for the cancellation of these permits, these displaced operators were however given permits on a route known as Budaun-Sahawan-Babrala route under the provisions of Section 68-G. It may be stated at this place that according to the petitioners a portion of this route from Budaun to Sahawan was also a notified route. The permits on this route which were originally granted by the Regional Transport Authority Bareilly to these three persons, namely. Daulat Ram, Ram. Sanehi Lal and Abdul Wahid, in April, 1963, did not, however, contain any restriction so as to prohibit them from picking up or setting down the passengers between Badaun and Sahawan.

Later on, when the Transport Commissioner detected this irregularity he wrote a letter through his Assistant Transport Cora-missioner to the Regional Transport Officer Bareilly as Secretary of the Regional Transport Authority pointing out this irregularity committed in granting these permits and directing him that at the time or next renewal these permits should be renewed only for the non-notified portion of the route but the permit-holders may be allowed to ply one up and one down trip daily with corridor restrictions and that such permission should be given in four monthly periods. A copy of this letter is Annexure 3 to each of these writ petitions.

3. The permit-holders applied for renewal of their permits in 1966. Their applications were duly published in the Gazette and they were considered by the Regional Transport Authority in its meeting held on 27th May, 1966. The Regional Transport Authority renewed their permits only for the don-notified portion of the route i.e., Sahsawan to Babrala with a further condition that these

permit-holders would be allowed to operate on the notified portion also on a temporary basis with the permission of the Transport Commissioner to be granted in four monthly periods subject to corridor restrictions, which meant that they will not pick-up or set down any passenger from or on any point on this route. A copy of this resolution of the Regional Transport Authority is contained in Annexure 4. The permit-holders were not satisfied with this order of the transport authority placing this restriction in their permits. They therefore filed appeals before the State Transport Appellate Tribunal under Section 64 of the Act.

4. The Appellate Tribunal under the impugned order dated 9-9-1968 (Annexure 6) while maintaining the order of the Regional Transport Authority that the permits issued to the appellants in respect of the Badaun-Babrala route shall be subject to corridor restrictions on the notified portion of the route i.e., from Badaun to Sahs-wan, modified that order in so far as the permit-holders were required to obtain fur-ther special permission of the Transport Commissioner to ply their buses on this notified route after every four months. It is against this order that these writ petitions have been filed. The writ petitions were contested on behalf of the permit-holders i.e., opposite party No. 3. I heard the learned counsel for the parties.

5. On behalf of the contesting opposite party, a preliminary objection was raised that these writ petitions are barred by limitation. This preliminary objection is, however, devoid of any force for the simple reason that no limitation for filing a writ petition is prescribed by any law. It is only discretionary with the Court not to entertain a writ petition on the ground of laches, if the petitioner approaches the Court after an undue delay of the passing of the impugned order. In the present case, the Bench while admitting the writ petitions was satisfied that the delay had been explained and that there were no laches on the part of the petitioners. Hence, this objection is no more open to the contesting opposite party at this stage.

6. The first point that was urged on behalf of the petitioners was that the Appellate Tribunal before passing the impugned order did not give any hearing to the petitioners though it was at the instance of the Transport Commissioner, petitioner No. 2, that the Regional Transport Authority had imposed the impugned condition in their permits which condition was set aside by the Appellate Tribunal, This argument is met by the learned Counsel for the opposite party by pointing out that when the apj plication for renewal of these permits were published, no objection was filed on behalf of these petitioners and so none of the petitioners had any right of being heard either before the Regional Transport Authority or the Appellate Tribunal. In my opinion, the argument and the counter-argument are both beside the point in this case. The stand taken up on behalf of the petitioners is that the Transport Commissioner as the head of the State Transport Undertaking had a statutory right under Rule 9 (1) (c) of the U. P. State Transport Services (Development) Rules, 1958 (hereinafter to be referred to as the Rules) to issue a direction in the nature contained in Annexure 3 and neither the Regional Transport Authority nor the Appellate Tribunal was competent to ignore this direction while renewing the permits of these opposite parties.

So, it was immaterial whether the petitioners filed any formal objection or not before these applications for renewal were considered by the Regional Transport Authority so long as that authority abided by the direction given by the Transport Commissioner. On the other hand, the

stand taken up on behalf of the opposite parties is that the said direction given by the Transport Commissioner, is unwarranted by the terms of Rule 9 (1) (c) of the Rules, and as such, the Appellate Tribunal was competent to ignore that direction and to renew their permits subject to such restrictions as were legally permissible and in this view of the matter it was immaterial whether he gave a; hearing to the Transport Commissioner or not before passing the impugned order. Under the circumstances, the order passed by the Appellate Tribunal if it is otherwise a valid order, is not vitiated simply for the reason that no hearing was given to the Transport Commissioner before passing this order.

7. We now pass on to the consideration of the question whether a direction of the nature contained in Annexure 3 could validly be given by the Transport Commissioner under Rule 9 (1) (c) of the Rules, This rule provides that the Transport Commissioner or an officer authorised by him, may specify the number of transport vehicles, if any, for which temporary permits may be granted or countersigned in favour of persons other than the State Transport Undertaking to meet a temporary need. This shows that all that the Transport Commissioner can do as head of the State Transport Undertaking is that whenever he finds that there is more traffic on a notified route than can be catered by the Transport Undertaking, he can, to meet a temporary need, specify the number of transport vehicles for which temporary permits may be granted in respect of the notified route. After this has been specified by him, the temporary permits have, of course, to be issued by the Regional Transport Authority under the provisions of Chapter IV. A temporary permit cannot be issued for a longer period than four months as provided by Section 62 of the Act.

It is manifest that the purpose of this rule is to provide additional transport facilities to meet the temporary need on the notified route itself in addition to the transport services provided by the State Transport Undertaking. This rule does not contemplate that if a regular permit of which the duration can-not be less than three years under Section 58 is granted by the Regional Transport Authority on a through route which partly overlaps a notified route subject to corridor restrictions so as to make the permit ineffective with respect to that notified route, the Transport Commissioner can still make that permit as a temporary permit so as to require his periodical special permission from time to time The two things are inconsistent. While the rule contemplates the addition of the transport services on the notified route itself to meet the temporary nepd, the corridor restrictions placed in a regular permit on a through route prohibit the operators from providing such service on the notified route. I am therefore of the opinion that a direction of the nature contained in Annexure 3 was beyond the competence of the Transport Commissioner.

In this connection, reliance was placed on behalf of the opposite parties on an un-reported decision of this Court in Kanhaiya Lal Gupta v. The Transport Commissioner, U, P., (Special Appeal No. 654 of 1969 (Allahabad Bench) decided on September 11, 1969, in which the learned Judges had occasion to interpret the provisions of Sec-tion 10 (1) (c) of the U. P. Road Transport Services (Development) Act, 1965 which provided that upon the publication of the scheme under Section 8 of the said Act and for so long as it remains in force, the State Government may specify the number of transport vehicles, if any, for which the permits may be granted or countersigned in favour of person other than the State Government. Under the rules the State Government was authorised to act through the Transport Commissioner. From this provision, it appears that in respect of the scheme

framed under that Act, the Transport Commissioner had a say in the matter of grant of regular permits also on a notified route if it was decided that besides the State Transport Undertaking some private operators would also be allowed to ply their buses on that route.

It appears that, as a matter of practice, the individual permit-holders who were permitted to operate their buses on a through route overlapping a notified route, had been obtaining the special permission of the Transport Commissioner also besides the regular permit granted to them by the Regional Transport Authority subject to corridor restrictions. While dealing with this matter, it was observed by the Bench in this case--

"..... It appears that as an abundant caution they were further asked to obtain the permission of the Transport Commissioner so far as the plying of their buses on the notified route was concerned. It was in pursuance of the above direction that respondents Nos. 2 to 5 had to approach the Transport Commissioner and obtain the required permission. In our opinion, Sri Ki. L. Misra learned counsel for the respondents Nos. 2 to 5 is right when he says that this condition which has been attached to the permit was by virtue of the general power possessed by the Authority concerned rather than under Section 10 (1) (c) of the 1955 Act."

I therefore hold that the direction of the nature contained in Annexure 3 issued by the Transport Commissioner was beyond the purview of Rule 9 (1) (c).

8. The learned counsel for the petitioners then contended that in fact on a notified route which was to be operated by the State Transport Undertaking exclusively no permit for plying any bus on that notified route alone or on any portion thereof which is overlapped by a large through route, could be granted by the Regional Transport Authority even subject to corridor restric-tions so as to make a permit ineffective with respect to the notified route or portion thereof. His argument was that to grant such a permit would go against the scheme itself framed under Chapter IV-A and such scheme having the force of law which shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Motor Vehicles Act as provided in Section 68-B of the said Act. In support ol his contention, he cited some decisions including a Full Bench decision of Mysore High Court in Mysore State Road Transport Corporation v. Mysore Revenue Appellate Tribunal, AIR 1968 Mys 1 (FB) and thr decision of Madhya Pradesh High Court in Madhya Pradesh State Road Transport Corporation, Bhopal v. Regional Transport Authority, Indore, AIR 1969 Madh Pra 182 and Madhya Pradesh State Road Transport Corporation, Bhopal v. Regional Transport Authority, Rewa, AIR 1969 Madh Pra 183.

So far as the decision reported in AIR 1969 Madh Pra 182 is concerned, the report does not show whether the permits that were proposed to be granted by the Regional Transport Authority in respect of through routes partly overlapping notified routes were meant to be comprehensive permits under which the permit-holders could operate on the entire route including the overlapping notified route or they were subject to corridor restrictions. While the Regional Transport Authority had only invited tile applications for permits on some through routes which overlapped notified routes and before any applications could be considered or permits could be granted, the order of the Regional Transport Authority was challenged and the High Court of Madhya Pradesh following a

Supreme Court ruling in H. C. Narayanappa v. State of Mysore, AIR 1960 SC 1073 held that since a scheme framed under Chapter IVA is finally made by an order of the State Government approving it, it is also an 'order' within the meaning of that word as it occurs in Section 68-B, and in terms of that section has effect notwithstanding anything inconsistent therewith contained in Chaptofer IV of the Act. It was further observed that "a route referred to in Chapter IV-A Or in any scheme made thereunder does not merely mean a notional line between two points on the road, but also the actual road over which the omnibuses run. A notified route, which falls within the scheme, thus includes the road within the two points of the route and an approved scheme cannot be evaded by including this road or any portion of it between two other points and thus giving it a colour of a new route."

9. The reasoning in the other Madhya Pradesh decision reported in AIR 1969 Madh Pra 183 also proceeded on the assumption that the scheme provided for exclusive operations of the route by the State Transport Undertaking and it was held that in face of such a scheme it was not permissible for the Regional Transport Authority to grant a permit on a through route which overlapped some portion of the notified route even subject to corridor restrictions. This decision which purports to follow the Full Bench decision of Mysore High Court talces an extreme view of the matter. The question that was referred to the Full Bench of Mysore High Court was whether it is competent for the authorities under the Motor Vehicles Act to grant to a private operator in respect of a route which overlaps any part of a notified ronte in an approved scheme a permit or renewal of a7 permit subject to the condition that he should not pick up or set down passengers on the notified route.

The answer which the Pull Bench returned to this question after considering the relevant cass law on the subject was that it depends upon the nature and extent of the exclusion of private operators brought about by a scheme. It was held that when the approved scheme provides for the complete or total exclusion of private operators from the notified area or route, the authorities under the Act have no jurisdiction to grant them a permit even with the restriction of making it ineffective in respect' of the overlapping part of the notified route. If, however, the scheme does not exclude private operators completely and the manner of partial exclusion is also incorporated in the scheme itself, any grant or renewal of permit by the authorities under the Act to a private operator in respect of a notified route should conform to the said provision for partial exclusion. So, both Mysore High Court and Madhya Pradesh High Court appear to be of the view that if the scheme completely excludes private operators, then no private operator can ply his bus on any portion of that route which is overlapped by a through route even though not picking up or setting down any passenger from or on any point on this notified route.

According to this view, if there is a through route that overlaps only a small portion of the notified route in the middle having on both its sides unnotified routes of considerable lengths, no bus can ply on such through route. The passengers travelling on such route must change their buses thrice. First they will have to travel in a privately operated bus on the first portion of this route, then in a bus plied by the State Transport Undertaking on the overlapping portion of the notified route and then again in a privately operated bus on the last portion of the route which is also pnnotified even though it may cause serious inconvenience to them. On the other hand, the view taken by this Court in the Special Appeal No. 654 of 1969 (All) cited above appears to be that if a permit is granted on a through route which overlaps a notified route in whole or part, subject to the restriction that the

stage carriages plying on the through route could not pick up passengers on the notified route it is permissible for a Regional Transport Authority to do so and it does not imply any modification of the scheme. It was observed as follows in this case:

"..... As long as a stage carriage passes and repasses over any portion of the notified route without picking up any passenger on the said portion, it does not pro-Vide any transport service on the said portion. Accordingly there is no modification of the scheme. The monopoly service of the State remains intact ....."

The learned counsel for the petitioners tried to distinguish this decision by contending that the scheme with respect to the notified route involved in this Special Appeal had been framed under the U. P. Act of 1955 and not under Chapter IV-A of the Act though the provisions of the two are not dissimilar. In the second place, it was contended that the circumstances in which that question was raised in that Special Appeal were entirely different. The grant of the permits to the private operators on the notified portion of the route subject to corridor restrictions and obtaining special permission of the Transport Commissioner was not being objected to on behalf of the State Transport Undertaking. On the other hand, the dispute was between two sets of private operators who had been issued permits on the through route part of which overlapped a notified route subject to corridor restrictions.

One set of operators who had been operating on this through route even prior to the framing of the scheme had been allowed to continue to do so subject to corridor restrictions which were imposed under the terms of this scheme itself, and the other set of the operators who were the respondents in that special appeal had subsequently been granted permits on that through route when its strength was increased subject to the same conditions. The first set of operators who were adversely affected by other rivals going in the field raised an objection that neither the Regional Transport Authority nor the Transport Commissioner was competent to permit these new permit-holders to ply their buses on the notified portion of the route even subject to corridor restrictions. This contention was not accepted by this Court. He further argued that if this decision is considered to nave the effect of laying down a proposition of law that even in a case where the scheme provided for exclusive operation by the State Transport Undertaking, it is competent for the Regional Transport Authority to grant permit on a through route covering a portion of the notified route sub-feet to corridor restrictions, it needs reconsideration and it should be referred to a Bench.

If this question had been directly involved in the present case, I would have liked to refer the case to a Bench in view od its importance and the views expressed by the Mysore High Court and Madhya Pra-desh High Court. I am, however, of the opinion that the case which is before us is not of complete exclusion under the scheme.

10. It was contended by the opposite parties in their counter-affidavits that even Badaun-Sahsawan route is not a notified route in view of the decision of this Court dated 23rd July, 1963 in Writ Petition No. 2526 of 1961 (Allahabad Bench) in which this scheme as notified in the Gazette dated 9-4-1960 was quashed. Learned counsel for the petitioners, however, showed me a copy of the decision of that case and he pointed out that under this scheme the permits of a large number of

operators who had been operating on this route had been cancelled or modified. Out of these permit-holders four filed writ petitions in the High, Court and one of the grounds taken by them was that they had not been given a proper hearing by the authority which heard their objections filed under Section 68-D. This objection of the petitioners was upheld and the scheme was quashed with respect to these four, petitioners and at the same time the State Government was directed to make proper arrangement for re-hearing of tha objections of these petitioners under Section 68-D and their disposal in accordance with law by a competent authority.

I am told that these objections have not so far been decided and it is by virtue of the order of the High Court that those four petitioners are also operating on this notified route Badaun-Sahaswan. He, however, argues that this does not in any manner detract from the exclusiveness of the scheme, and when the objections of these four permit-holders are also decided, they would also be excluded from operation oil this route after making necessary modification in the scheme. In any case, the existing position with regard to this route is that besides the State Transport Undertaking these four private permit-holders are also operating on this route.

11. There is, however, another factor which shows that the scheme provides only for partial exclusion and not for complete exclusion. "When this scheme was notified in April, 1960, five permit-holders were already operating their buses on the through route from Badaun to Babrala via Sahsavan. With respect to these permits, the original scheme as published in the Gazette dated 9th April, 1960 read with the corrigendum dated June 16, 1960 which was published in the Gazette dated 25th June, 1960, provided that these permit-holders will ply their buses right from Badaun but they will not be entitled to pick up or set down any passengers between. Badaun and Sahsawan from any point to another. This provision was contained in para 3 of the scheme. Para 4 of the scheme provided that no person other than the State Transport Undertaking will be permitted to provide any road transport services on the route or portions thereof specified in clause (2) above except those mentioned in Clause (3) above. Para 5 then provided that all the road transport services shall subject to the provisions made in the subsequent Clauses be provided by the State Government exclusively.

It is on paras 4 and 5 that the learned counsel for the petitioners takes his stand for the contention, that except for lie five permit-holders who had been allowed to ply their buses from Badaun to Babrala subject to the restrictions mentioned above, no other person was entitled to ply a bus on that route even subject to those restrictions. In my opinion, this contention is not correct. The scheme clearly provides for the overlapping of the notified route by the permit-holders of the stage carriages plying on the through route from Badaun to Babrala subject to corridor restrictions. If at a subsequent stage, the Regional Transport Authority thinks necessary to increase the strength of this through route, it cannot be said that the new permit-holders are not entitled to pass over this route from Badaun to Sahsa-wan, even though they do not pick up or set down any pasengers from any point to another point.

So long as need of the travelling public for a through transport service between Badaun and Babrala is recognised and the provision of such service is left to private operators in the scheme itself, it is for the Regional Transport Authority to determine how many stage carriages are required to cater to that need, and if for that purpose it increases the strength on that route by granting some fresh

permits, that Authority cannot be said to act in a manner inconsistent with the scheme provided it excludes the new permit-holders from operating on the notified portion of the route in the same manner as laid down in the scheme itself. It was held by the Supreme Court in Standard, Motor v. Kerala State, AIR 1969 SC 273 that if other existing services are allowed to continue over a part of the highway relating to the notified route the scheme is not one of complete exclusion.

Again, in Ram Nath Verma v. State of Rajasthan, AIR 1967 SC 603 it was held that under Section 68-C, it is open to the authorities to frame a scheme in which there is a partial exclusion of private operators. Making the permits ineffective for the overlapping part by allowing the private operators to ply on the overlapping part but forbidding them to pick up passengers on the overlapping part for destination within overlapping part, only amounts to partial exclusion of the private operators from that route. Even in the Full Bench decision of the Mysore High Court on which great reliance has been placed on behalf of the petitioners, it had been held on page 4 of the report that if it is a scheme or partial exclusion and the manner of exclusion is also provided in the scheme itself, it is not inconsistent with the provisions of such a scheme for the Regional Transport Authority to renew or even grant permits subject to the condition as to render them ineffective in respect o£ the overlapping part.

12. It may be pointed out that in this case when these displaced operators as part of their compensation for ..... being displaced from those routes which had been notified, were granted permits on this through route from Badaun to Babrala in April, 1963, even these corridor restrictions were not imposed on their permits. It was perhaps in view of the fact that four of the private operators who had filed their writ petitions, which were subsequently allowed by this Court had also been operating on this notified route. Subsequently on an objection being taken on this score by the Transport Commissioner, the corridor restrictions were placed in those permits at the time of their renewal in 1966. The permit-holders have not raised any objection so far as these corridor restrictions are concerned. They were, however, dissatisfied with the further condition imposed by the Regional Transport Authority that for plying their buses on the notified portion of the route even subject to these restrictions, they will have to obtain special permission on a temporary basis from the Transport Commissioner at an interval of four months.

This condition was set aside by the Appellate Tribunal, and in my opinion rightly, because as pointed out above it was unwarranted by the provisions of Rule 9 (1) (c) or any other provisions contained in the Motor Vehicles Act. In fact, Section 58 specifically requires that if a regular permit is granted for a stage carriage on a particular route, the duration of the permit shall not be less than three years. In face of this requirement once it is conceded that a permit could be granted in this case by the Regional Transport Authority on the entire route Badaun to Babrala subject to corridor restrictions, this condition of getting the permit renewed every four months with regard to the notified portion of the route i.e., from Badaun to Sahsawan, is indefensible.

13. The last point that was raised on behalf of the petitioners was that the appeal itself was not maintainable before the Appellate Tribunal in view of the provisions contained in Section 68-F (3), and for that reason the petitioners besides praying for the quashing of the order of the Ap-pellate Tribunal had also sought for a man-perarnus restraining the Tribunal from entertaining and

disposing of such appeal. But in my opinion, the provisions of Sub-section (3) of Section 68-F have no application to this case. The scheme had been notified in 1960 and at that time these opposite parties had not been operating either on the notified route or on a through route overlapping a part of the notified route. It was only in the year 1960 that they had been granted these permits. These permits were granted to them under the provisions of Chapter IV read with Section 6S-C. Of course, the permits could not be granted in a manner so as to modify or to be inconsistent with the scheme and it may be considered an irregularity if in the original permits no corridor restrictions had been placed. This is not a matter of dispute before us because the period o£ the original permits had already run out. In 1966 when these permit-holders applied for renewal of then permits, their case would fall under Chapter IV and the Regional Transport Authority was required to renew these permits in accordance with the provisions of this Chapter. As held above, it could renew their permits subject to placing corridor restrictions which would not in any manner be inconsistent with the scheme. But since the Regional Transport Authority imposed another condition which was not justified, the permit-holders who felt aggrieved by this condition had a right of appeal before the Tribunal.

14. In view of the above, all these three writ petitions are dismissed with costs to the contesting opposite party.