

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RA-CW-263-2016;
Along with
CM Nos.10350, 10348, 10349,
10351, 10352-CWP of 2016 in
RA-CW-263-2016;
CM Nos.10477-78-CWP-2016 in
CWP-5611-2011;**

**M/s Gurmit Singh Sardara Singh and
Ali Shah
Versus
State of Punjab & Ors.**

RA-CW-266-2016;

**CM-10499-CWP-2016 in/and
RA-CW-274-2016;**

**CM Nos.10773-75, 10952, 10891,
10897, 10898, 10904, 11010, 11352,
11375, 11411, 12398, 12399, 12807,
11487, 12173, 12283, 12423, 12062-
CWP of 2016 in CWP-5611-2011;**

**CM-10570-71-CWP-2016 in/and
RA-CW-270-2016;
CM-10669&10670-CWP-2016
in/and RA-CW-272-2016 in
CWP-5591-2011**

CWP-19109-2016;

**Ranbir Pal Singh
vs. State of Punjab etc.**

**CM-10407, 10409, 10414, 10430,
10407, 11319, 10860, 10870, 10932,
12701-CWP-2016 in CWP-15786-
1999**

**M/s Vijayant Travels
vs. State of Punjab etc.**

Date of Decision: 20.12.2016

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

<i>1. Whether speaking/reasoned?</i>	<i>Yes / No</i>
<i>2. Whether reportable?</i>	<i>Yes / No</i>
<i>3. Whether Reporters of local papers may be allowed to see the judgment?</i>	<i>Yes / No</i>
<i>4. To be referred to the Reporters or not?</i>	<i>Yes / No</i>
<i>5. Whether the judgment should be reported in the Digest?</i>	<i>Yes / No</i>

**Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Vijay Pal, Advocate;
Mr. RS Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate;
Mr. CM Chopra, Advocate;
Mr. Rajive Sharda, Advocate;
Mr. Ajay Sharma, Advocate;
Mr. Raj Kaushik, Advocate;
Mr. Rajinder Sharma, Advocate;**

Mr. PS Bawa, Advocate;
Mr. Mukesh Gandhi, Advocate;
Mr. Anuj Thakur, Advocate;
Mr. Anupam Singla, Advocate;
Ms. Nidhi Sharma, Advocate;
for the applicant(s)/petitioner

Mr. Anupam Singla, Advocate for PUNBUS & PRTC

Mr. Kamal Sehgal, Addl. AG Punjab

Mr. Rohit Kapoor, Advocate;

Mr. DS Kamra, Advocate

SURYA KANT, J.

(1) The above captioned review applications seek to recall/modify the order dated 20.12.2012 vide which a bunch of writ petitions challenging the validity of Schemes formulated by the States of Punjab and Haryana in purported exercise of their powers under Section 99 of the Motor Vehicles Act, 1988, were disposed of in terms of the conclusions and directions contained in para 136 of the said order. Though it was a common order but the validity of Schemes of States of Punjab and Haryana were separately considered.

(2) The instant review applications relate to the conclusions or directions issued in 'Punjab cases', which comprised the following five different groups:-

- (i) cases in which the Scheme dated 09.08.1990 was challenged;
- (ii) PIL case in which prayer was made to unearth the alleged malpractices prevailing in the office of the State Transport Commissioner, Punjab;
- (iii) cases in which besides seeking to strike down the Scheme dated 09.08.1990, restrain orders against advertising route permits

and/or granting permits by adopting pick and choose, were sought;

- (iv) cases seeking to set aside the orders passed by State Transport Authority refusing to consider the application for grant of Stage Carriage Permits; and
 - (v) writ petitions with a prayer to quash the Punjab Mini Bus Service Scheme, 2010 notified on 19.05.2010.
- (3) Some of the conclusions that this Court drew were:-
- (a) a Scheme formulated under Section 99 of the 1988 Act would always be to the 'complete' or 'partial' exclusion of private operators;
 - (b) a Scheme formulated under Section 99 in itself is law and shall have overriding effect on the liberal regime envisaged under Chapter-V or any other law for the time being in force;
 - (c) the 1988 Act embodies two facets of the legislative policy i.e.
 - (i) liberalization of permits to be issued on demand under Chapter-V so as to infuse a healthy competition *inter se* amongst private or State-run operators, and (ii) suspension of liberalized policy and creation of monopoly in favour of STUs on the notified routes and in public interest by formulating a Scheme under Chapter-VI;
 - (d) when a Scheme is formulated to the partial exclusion of the private operators, the permits in respect of the exempted routes or area or portion thereof shall also be granted under the Scheme only and not under Chapter-V;

- (e) as regard to the notified routes under a Scheme there is no discretion vested with any Authority except to grant permits for such routes in favour of STUs only, save where the STUs have failed to apply for permits then a temporary permit can be issued to the private operators under *proviso* to Section 104 of the Act.
- (4) On the question of challenge to the *vires* of Punjab Mini Bus Service Scheme, 2010, this Court looked deeper into the very inception of the Scheme and found out that a ‘Scheme’ to favour the Mini Bus operators was formulated for the first time on 18.06.1980 in purported exercise of powers under Section 68-C of the Motor Vehicles Act, 1939. After the 1988 Act came into force, w.e.f. 01.07.1989 and the 1939 Act stood repealed, State of Punjab formulated the Scheme dated 09.08.1990 and under its Clause 8(ii) the operation of Mini Bus services were protected notwithstanding anything contained in the new Scheme. The 1990 Scheme was modified on 21.10.1997 which defined the “Mini Bus” to mean “a stage carriage the body of which shall be fabricated on a Chassis, the wheelbase of which does not exceed 137 inches and which does not carry more than thirty passengers besides the driver and the conductor”. Clause 7 of the original Scheme was also substituted with a new Clause 7A pertaining to Mini-Bus operators.
- (5) Clause 8(ii) of the Scheme dated 09.08.1990 protecting Mini Bus operators of 18.07.1980 ‘Scheme’, was declared illegal and inoperative on 21.05.1993 by a Division Bench of this Court in CWP No.11995 of 1992 (Amarjit Singh vs. State Transport Appellate Tribunal, Punjab & Ors.).

(6) Similarly, Clause-7A of the modified Scheme dated 21.10.1997 which gave advantage to the Mini Bus Operators for the grant of permits for operation on routes linking villages without any city, town or municipal area in between, was also struck down by the Hon'ble Supreme Court in **Jagdip Singh v. Jagir Chand & Anr., (2001) 8 SCC 437** and **Subhash Chander & Anr. Vs. State Transport Appellate Tribunal & Ors. (2002) 4 SCC 168,** laying down that when the STUs were not to operate on the routes covered under the offending clause then there was no question of framing any Scheme.

(7) State of Punjab then proposed Punjab Mini Bus Service Scheme, 2007 and invited objections through notification dated 23.08.2007. The final Scheme was then published on 14.11.2008. A Division Bench of this Court in **CWP No.4646 of 2009 (Gurdip Kaur vs. State of Punjab & Ors.)** decided on 16.07.2009, declared the above-stated Scheme to have lapsed under Section 100(4) of the 1988 Act as it was not published within the mandatory period of one year. Pertinently, *proviso* to Clause (3) of the said lapsed Scheme contained a sweeping Clause to the effect that “*the existing Mini Bus permit holders shall be allowed to continue to operate their mini buses on the same terms and conditions on which they were operating prior to the publication of this Scheme*”.

(8) It was thereafter that the 2010 Scheme was formulated and published on 19.05.2010.

(9) The 2010 Scheme has been struck down by this Court vide order under review for the following reasons:-

- (i) no Scheme under Section 99 of 1988 Act can be formulated unless the areas or routes covered under such Scheme are to be

exclusively or partially run and operated by STUs. None of the STUs in the State of Punjab own Mini Buses and are not in a position to operate even on a single route;

- (ii) neither the proposal to formulate the Scheme was sent by any STU nor their opinion was sought by the State Government before formulating the Scheme. Thus the Scheme was formulated in utter disregard of mandatory procedure contemplated under Section 99 of the 1988 Act;
- (iii) though the Scheme became operational in the year 2010, not a single permit was granted to any STU till the time the decision was delivered. Thus all the routes were being operated upon by private Mini Bus operators;
- (iv) the phrase “Mini Bus” is unknown to the legislative scheme of 1988 Act and it does not fall within the definition of any type of vehicle;
- (v) the Scheme refers to ‘future’ Mini Bus operations by STUs when nothing was being operated *in preasentia*. No Scheme for ‘uncertain future operations’ can be formulated;
- (vi) the oblique motive behind formulation of the Scheme was to benefit the Mini Bus private operators to run and operate to the exclusion of any competitors. All the important clauses of the Scheme were meant for undue favour to the private operators;
- (vii) the State Government’s plea that Mini Buses are also Stage Carriage Permits of smaller sizes was self-contradictory, for there was already a Scheme regarding Stage Carriage Permits

and there was thus no reason to have a second Scheme for the same purpose.

(10) This Court in para 136(xi), thus, finally quashed the Punjab Mini Bus Service Scheme, 2010 and the Mini Bus permits issued or renewed, were declared illegal, null and void.

(11) Various SLPs were filed in Hon'ble Supreme Court against the judgment of this Court dated December 20, 2012, including the one by Mini Bus Operators Association and some by the individual Mini Bus operators. The other SLPs were dismissed but so far as the SLPs preferred by the Mini Bus operators or their Association are concerned, Hon'ble Supreme Court disposed of the same vide order dated 02.08.2016 [in *SLP(C) Nos.17238-17251/2013 and SLP(C) No.17252/2013*] in the following terms (relevant extracts only):-

“It is very fairly stated by the learned senior counsel appearing on behalf of the State and other respondents that the petitioners have not been heard by the High Court while passing the aforesaid operative portion of the Order, which is affecting their rights insofar as they are operating Mini Buses under the Policy of 1980, which has been subsequently superseded/amended by such similar Scheme.

Since the petitioners have not been made parties and heard by the High Court and their rights have been affected, they are at liberty to approach the High Court and seek appropriate relief. If such an application is filed by the petitioners within a month, the High Court shall consider the same and pass appropriate order. The operative portion, which is extracted hereinabove, is kept in abeyance for one month from today.”

(12) Hence these review applications and/or fresh writ petitions by those Mini-Bus operators who were not heard by this Court.

(13) Learned counsel for the parties have been heard at length. The records have been perused.

(14) The foremost contention raised on behalf of Mini Bus Operators is founded upon Section 43-A of the Motor Vehicles Act, 1939 which was inserted by State of Punjab by way of Punjab Act No.34 of 1978 notified on 03.11.1978. The said provision reads as follows:-

“43-A (1) The State Government may issue such directions of a general character as it may consider necessary or expedient in the public interest in respect of any matter relating to road transport to the State Transport Authority or to any Regional Transport Authority, and such Transport Authority shall give effect to all such directions.

(2) Without prejudice to the generality of the provisions of subsection (1), such directions may be given in respect of any of the following matters, namely:-

(a) the number of new permits for stage carriages or contract carriages that may be granted in respect of any route or area;

(b) the reservation of such permits for members of Scheduled Castes in the ratio of their population in the State;

(c) the preference or the order of preference to be given in granting such permits to the following other specially deserving categories of persons or to the co-operative societies of such persons:-

(i) members of Backward Classes;

(ii) education unemployed (matriculates and above);

(iii) ex-serviceman; and

(iv) political sufferers;

(d) the procedure for grant of such permits, and for selection from among the applicants, including selection by drawing of lots from among person belonging to the same category:

Provided that the number of such permits granted in any calendar year as a result of reservation or preference shall not exceed fifty per cent of the total number of such permits granted in that year.

(3) When any direction is issued under sub-section (1) to any Transport Authority then any appeal or revision filed before the State Transport Appellate Tribunal shall also be decided in such manner as to give effect to such direction.

(4) The provisions of this section shall have effect notwithstanding anything contained in sections 47, 50 and 57 or in any scheme published under sub-section (3) of section 68-D.

Explanations. –

1. *“Backward Class” means a class of persons notified as such by the State Government on the basis of its social and educational backwardness.*
2. *“political sufferer” means a person who in the opinion of the State Government or of an officer authorized by it in this behalf has suffered loss of health by harassment or incarceration or loss of profession by reason of his participation in any movement specified by the State Government as national movement.*
3. *For determining the ratio referred to in clause (b) of sub-section (2) the latest census report shall be taken into consideration.”*

(emphasis applied)

(15) It was urged that in purported exercise of powers under Section 43-A(1), Government of Punjab vide notification dated 18.06.1980 (A2) [which was later on referred to as a “scheme”] ‘directed’ that “*the Regional Transport Authorities in Punjab or the officer exercising powers and*

discharging functions in lieu of such authorities under Section 44-A of the

Motor Vehicles Act, 1939, shall ensure that while granting permits for further operations on the following types of routes preference is given for use of Mini Buses:-

All routes linking one village with another without a city or a town in between or linking villages with the block headquarters or nearby towns or mandis, provided

(a) The total length of each such route does not exceed twenty five kilometers.

(b) Not more than half of the total route length runs across a National or State Highway, and

(c) One of the termini of the route is a village.

Explanation. – Mini Bus means a stage carriage, the body of which shall be fabricated on the chassis the wheel base of which does not exceed 136 and which does not carry more than thirty passengers besides the driver and the conductor.”

(emphasis by us)

(16) The review-applicants/Mini Bus operators thus contended that they were granted permits under Section 43-A read with the notification dated 18.06.1980 and not under a Scheme formulated in exercise of powers under Section 68-C of the 1939 Act or the corresponding provision contained in Section 99 of the 1988 Act. They urged that this Court's order dated 20.12.2012, neither touches nor has any effect on the permits issued pursuant to the statutory 'directions' referred to above. They further urged that there was no Scheme in force in the State of Punjab when Section 43-A came into force in the year 1978 or when the notification dated 18.06.1980 was issued.

(17) It was argued that the directions contained in the notifications dated 18.06.1980 remained valid till the 1939 Act was repealed and 1988 Act came into force w.e.f. 01.07.1989. Thereafter, State of Punjab notified for the first time the Scheme dated 09.08.1990 under Section 99 of the 1988 Act and its Clause-8(ii) expressly recited that “*the operation of Mini Bus services shall be undertaken in accordance with the Scheme notified vide Government of Punjab, Department of Transport, Notification No.S.O. 37/C.A. 4/39/S, 43-A/80, dated the 18th June, 1980*”. The successive Schemes, modifying the original one have also protected the Mini Bus operators. It was thus contended that the Mini Bus operations are not creation of any such Scheme which have been partially or fully struck down by this Court or the Hon’ble Supreme Court in the cited decisions, on the basis of which this Court has held that the permits granted or renewed in the past under those Schemes are illegal, null and void.

(18) The review applicants clarified that since their permits have not originated under the Mini Bus Service Scheme, 2010 and as such the decision of this Court, to the extent it strikes down the said Scheme, does not affect them but the declaration that all the Mini Bus permits issued or renewed in the past are illegal, null and void, has severely prejudiced them. They maintained that neither the *vires* of Section 43-A of the 1939 Act nor the notification dated 18.06.1980 issued thereunder were under challenge.

(19) Having given our thoughtful consideration to the rival submissions, we do not find any merit in these review applications or the writ petition for the reasons briefly stated hereinafter.

(20) The review applicants are primarily harping upon Section 43-A of 1939 Act, inserted by the State of Punjab in the year 1978. The said

provision was admittedly a part of Chapter-IV containing provisions for the “Control of Transport Vehicles” and it related to the powers of the State Government “to issue directions to Transport Authorities”.

(21) On the other hand, Parliament inserted Chapter IV-A containing “Special Provisions Relating To State Transport Undertakings” in the 1939 Act by way of Motor Vehicle (Amendment) Act, 1956 (No.100 of 1956). Section 69-B of this Chapter (corresponding to Section 98 of 1988 Act) contained an overriding clause to the effect that the provisions of Chapter IV-A and the rules and orders made thereunder shall have effect *“notwithstanding anything inconsistent therewith contained in Chapter IV) of 1939 Act or any other law for the time being in force or in any instrument having effect by virtue of any such law”*.

(22) Once Section 43-A inserted by the State Legislature is juxtaposed against Section 68-B of the Central Act, it stands crystallized that sub-Section (4) of Section 43-A was totally repugnant and in head-on collision with Section 68-B of the 1939 Act. Had the 1939 Act not been repealed, we would have unhesitatingly struck down sub-Section (4) of Section 43-A as inserted by the State of Punjab, it being hit by Article 251 read with Article 254 of the Constitution. The petitioners, therefore, cannot draw any mileage out of a provision which was unconstitutional and void from its very inception. Since the directions issuable under Section 43-A could not be inconsistent with or in derogation of the provisions contained in Chapter IV-A, the notification dated 18.06.1980 too had no legal sanctity and the directions contained therein were just *brutum fulmen*. Further, the very source of power of Notification dated 18.06.1980 being unconstitutional, all actions taken thereunder were also null and void.

(23) Assuming that the directions dated 18.06.1980 emanated out of a valid source of power, yet it is undeniable that the 1939 Act stood repealed w.e.f. 01.07.1989. There was no Scheme in force formulated under Chapter IV-A of 1939 Act to grant or renew any Mini Bus permits. The first Scheme in the State of Punjab was formulated only on 09.08.1990 under Section 99 of the New Act. There existed no legitimate source of power to grant any permit from 01.07.1989 till the first Scheme was notified on 09.08.1990. The permits granted to Mini Bus operators under the notification dated 18.06.1980 indisputably lost their lives and became non-existent on 01.07.1989 and hitherto such permits could not operate on any route or area.

(24) State of Punjab attempted to revive and revalidate the permits of Mini Bus operators through Clause 8(ii) of the Scheme dated 09.08.1990 which declared that *“the operation of Mini Bus services shall be undertaken in accordance with the Scheme notified vide Government of Punjab, Department of Transport, Notification No.S.O. 37/C.A. 4/39/S, 43-A/80, dated the 18th June, 1980”*.

(25) It is an admitted fact that Clause 8(ii) of the Scheme dated 09.08.1990 was struck down by this Court in CWP No.11995 of 1992 (Amarjit Singh vs. State Transport Appellate Tribunal, Punjab & Ors.) decided on 21.05.1993. The said judgment attained finality.

(26) The State of Punjab made a second attempt through its modified Scheme notified on 21.10.1997 when it substituted Clause 7 of the original Scheme by way of a new Clause 7-A to provide that *“while granting permits for operation on routes, linking one village with another village without any city or a town or Municipality, in between the aforesaid two villages, or a route linking a village with the block headquarter or a*

municipality or town or mandi or city, or for service within a town, municipality or city, the use of Mini Buses may be allowed on the basis of passenger road transport needs as assessed by the State Transport Commissioner, Punjab from time to time”.

(27) The above-reproduced modified Clause 7-A notified on 21.10.1997 was also struck down, this time by the Hon’ble Supreme Court in the cases of Jagdip Singh and Subhash Chander & Anr. (supra).

(28) Thereafter came the draft Punjab Mini Bus Service Scheme, 2007, which was finally published on 14.11.2008. That Scheme was also declared to have lapsed as it was not published within the mandatory time-period of one year. [please see CWP 4646 of 2009 (Gurdip Kaur vs. State of Punjab & Ors.) decided on 16.07.2009].

(29) There has thus never been a valid and enforceable Scheme since the new Act came into force on 01.07.1989, under which permits could be granted or renewed in favour of Mini Bus operators.

(30) The last ditch effort made by the State of Punjab in favour of Mini Bus operators was the Punjab Mini Bus Service Scheme, 2010 which too has been struck down by this Court vide order under review for the reasons recorded in para 121 to 123 of the order.

(31) Seen in this backdrop, there can be no exception to the conclusion drawn in para 136(xi) of the order under review dated 20.12.2012 that not only the 2010 Scheme was rightly quashed, it being totally illegal, but the repeated efforts made by the State of Punjab to renew the Mini Bus permits, which are born illegitimate, have also been rightly declared illegal, null and void.

(32) We may reiterate at the cost of repetition that the facts or conclusions recorded in para 115 to 123 or the reasons given by this Court for quashing the 2010 Mini Bus Scheme have never been challenged or disputed by the review applicants.

(33) In all fairness, learned counsel for review applicants also relied upon Section 217-A of the 1988 Act whereunder a permit issued or granted under the 1939 Act is permitted to be renewed under the new Act. Such a plea, in our considered view, is misconceived for the reasons that firstly, Section 43-A(4) of 1939 Act relied upon by the review applicants itself was unconstitutional and no valid permit could be granted under the provisions of the said Act. Secondly, the provisions of different schemes under which renewal of such permits was attempted have been struck down in one or the other cited decisions. Thirdly, no scheme was formulated under Chapter IV-A till the 1939 Act was in force, hence the question of granting permit thereunder does not arise. Fourthly, State of Punjab did not resort to the liberal regime of granting permits under Chapter-V of the 1988 Act. Rather, it formulated a Scheme under Chapter-VI on 09.08.1990 as modified from time to time and once the said Scheme became operative, it had an overriding effect on Chapter-V. Further, such Scheme being in partial exclusion of the STUs, the permits, if any, can be granted/renewed under such Scheme only as the provisions relating to the Mini Bus operations in the original or modified Schemes have not withstood the test of judicial scrutiny.

(34) Similarly, the half hearted plea taken by the review applicants that the permits granted to them could be cancelled only under Section 86 of the 1988 Act and not otherwise, is misdirected as the powers of a

Constitutional Court cannot be controlled, regulated or restricted through statutory means.

(35) For the reasons afore-stated we do not find any merit in these review applications which are accordingly dismissed.

(36) Photocopy of this order be placed on the record of other connected case(s).

(Surya Kant)
Judge

20.12.2016
vishal shonkar

(Sudip Ahluwalia)
Judge

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