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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 11/09/2019****Judgment Delivered on : 04/10/2019****Writ Petition (C) No. 3146 of 2018**

New Jeevan Bus Service, Through: Proprietor, Akash Deep Singh Gill, Son of Shri Lakhwant Singh Gill, aged about 31 years, Resident of Pagariya Complex, Pandri, Raipur, District Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Transport, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. State Transport Authority, Raipur, District Raipur, Chhattisgarh.
3. Secretary, State Transport Authority, Raipur, District Raipur, Chhattisgarh.
4. Ajay Kumar Banjare, Resident of Ward No. 10, Rajmahal Chowk, Kawardha, District Kabirdham, Chhattisgarh.

---- Respondents**AND****Writ Petition (C) No. 1413 of 2019**

Abdul Shafique S/o Late Abdul Hakim, Aged about 54 years, Transporter, R/o Besides Sahara Battery, Maudhapara, Raipur, 492001 Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: the Secretary, Department of Transport, Indrawati Bhawan, Mantralaya, Naya Raipur, 402002, Chhattisgarh

2. The Chairman, State Transport Authority, Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
3. The Secretary, State Transport Authority, Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
4. Royal Travels, Through its Proprietor Saiyyad Anwar Ali, Bus Stand Complex, Pandri, Raipur, 402002 Chhattisgarh
5. Mohd. Akram Khan S/o Shri Abdul Gaffar Khan, Shop No. 7, Bus Stand Complex, Pandri, Raipur, 402004 Chhattisgarh

---- Respondents

For Petitioners	: Shri Ajay Shrivastava and Shri Shailendra Bajpai, Shri K.R. Nair, and Ms. Veena Nair, Advocates.
For Respondent/State	: Shri S.C.Verma, Advocate General with Shri Gangan Tiwari, Deputy Government Advocate.
For Private Respondents	: Shri Kishore Bhaduri, Shri Ajay Pal Singh, Shri Vipin Tiwari, Advocates.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. Constitutional validity of Rule 66 (a-a) of the Chhattisgarh Motor Vehicle Rules, 1994 (*for short 'the Rules'*), which deals with grant, renewal or rejection of the permits under Section 71 or 81 of the Motor Vehicles Act, 1988 (*for short 'the Act'*), whereby the power to grant permit in respect of certain types/class of Stage Carriage (*Rajdhani Bus Sewa*) stands delegated from the State Transport Authority, notified and brought into force as per the amendment (Annexure P/1 to WPC No. 3146 of 2018 and Annexure P/13 to WPC No. 1413 of 2019) is put to challenge in these writ petitions. The Petitioners also seek to challenge the amendment brought about by introducing sub-rule (h) to Rule 66 of the Rules, which deals with granting or refusal of renewal of the sanctioned permits of inter State route under Section

81 of the Act. The Petitioners further seek to set aside the 'Permits' granted to the private Respondents herein, based on the amended Rules.

2. The main ground of challenge is that the amendments brought about in the Rules are in violation of Section 69 of the Act which confers the power to grant intra-State permit exclusively upon the Regional Transport Authority. According to the Petitioners, no power is vested with the State Transport Authorities (except in the case of inter-State permits) to have it delegated to any other authorities merely by causing amendment to Rule 66 of the Rules, introducing sub-rule (a-a) immediately after sub-rule (a) of the said Rule. It is also contended that the Rule cannot go contrary to the mandate of the provisions in the Act and if at all there is a conflict, it is the former to prevail over the latter.

3. The prayers sought for are sought to be resisted by filing detailed returns/additional returns and supplemental proceedings, producing copies of the relevant documents from the part of the State/private Respondents.

4. The matter was heard elaborately. Shri Ajay Shrivastava, Shri Shailendra Bajpai and Shri K.R.Nair addressed the Court on behalf of the Petitioners, whereas the version of the State was asserted by Shri Gagan Tiwari, learned Deputy Government Advocate. The arguments on behalf of the private Respondents were led by Shri Kishore Bhaduri, the learned counsel representing them in both the cases.

5. The sum and substance of the case put forth by the learned Counsel for the Petitioners, as above, is that there is no enabling provision under the statute i.e. the Motor Vehicles Act, 1988 which confers power upon the 'State Transport Authority' to grant or renew Stage Carriage Permits within the State and in the said circumstance, no delegation of any power

could have been provided or extended, for want of such power vested with the delegating authority/State Transport Authority. The amended Rule being contrary to the mandate of Section 69 of the Act, is hence sought to be declared as *ultra vires* the Act and the Constitution. When the State Transport Authority itself has no power to grant or renew the permit within the State, which power stands exclusively conferred upon the Regional Transport Authority by virtue of Section 69 of the Act, how comes the question of delegation of power to grant/renew such permits – is the question mooted by the Petitioners. It is also the case of the Petitioners that the amendment is contrary to the mandate of Section 88 of the Act as well; which stipulates the relevant aspects with regard to the necessity for 'counter signature' for inter-regional permits. The Petitioners add that the amendment has been brought about only under Rule 66 of the Rules, which by itself may not be sufficient to have granted the Permit to the private Respondents, and hence, the same is under challenge.

6. In support of the contention of the Petitioners that the Rules cannot amend the provisions of an Act, reliance is sought to be placed on ***Bombay dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group & Others***, (2006) 3 SCC 434. To assert the submission that, if there is a conflict between the Act and the Rules, it is the Act that is to prevail, the Petitioners seek to rely on the verdict passed by the Apex Court in ***ITW Signode India Ltd. v. Collector of Central Excise*** {(2004) 3 SCC 48, paragraph 56}. The Petitioners also contend that, by virtue of the delegation of power as above, if orders are passed by the delegated authority, no appeal can be preferred; as appeal under Section 89 of the Act will lie only in respect of the specific orders passed by the authorities mentioned therein, which does not include the delegated authority.

7. Shri Gagan Tiwari, the learned counsel for the State contends that the challenge raised in the writ petition against the amendment is on a misconceived idea as to the legal provisions contained in the Act as well as the Rules. The learned counsel submits that, by virtue of the urgent necessity to have provided sufficient and convenient measures of conveyance between the State Capital at Raipur and various District Centres, saving much time and in the larger public interest, the Government took a policy decision to start a particular class of service (air conditioned and non stop/limited stop service) under the name and style as '**Rajdhani Bus Sewa**', as a part of the development measures in the State. Objections were called for with regard to the provisions sought to be brought about and the draft Rules in this regard were published on 09.03.2018. No objection was ever raised from the part of the Petitioners and it was after considering all the relevant aspects, that the Rules were finalised and notified. The learned counsel submits that 'specific power' is vested with the State Transport Authority under **Section 68(3)(b)** of the Act to issue/renew permits and perform the duties in respect of any route common to two or more regions. It was by virtue of the said enabling provision, coupled with the power conferred upon the State under **Section 96** of the Act and in particular **clause (xi) and (xxxiii) of sub-section (2)**, that the Rules were framed so as to give effect to the purpose of carrying into effect the provisions of Chapter V of the Act, as spelt under Section 96(1). The learned counsel points out that Section 69 is only a general provision with regard to granting of permits and that the power to grant permit is specifically conferred upon the State Transport Authority in respect of the routes covering two or more regions, under Section 68(3)(b) of the Act. It is pointed out that the legal position in this regard stands declared by the Apex Court by virtue of various judicial pronouncements. Strong reliance is sought to be placed on the verdict passed by the Apex Court in **State of Rajasthan & Others v. Shri Noor Mohammad** {(1972) 2 SCC 454 : AIR 1973 SC 2729,

paragraph 6 and 7}, ***Sher Singh v. State Transport Authority, Gwalior & Others***, {AIR 1969 MP 92, paragraph 7} and ***Sanjit Chakraborty v. State of West Bengal & Others*** {AIR 2007 Cal 252, paragraphs 4 to 10}.

8. Shri Kishore Bhaduri, the learned counsel representing the private Respondents submits that it is for the State, to control the road transport under Section 67 of the Act. It is by virtue of the power under Section 67(1) (a), that a new system of conveyance, for catering to the needs of the public/passengers was introduced between the State Capital and the different District Centers by way of 'Rajdhani Bus Sewa'. Supplemental to the submissions made on behalf of the State, the learned counsel submits that the Rules were notified after complying with all the procedural requirements in accordance with law. It is stated that both the Petitioners had participated in the proceedings held in this regard, as revealed from the minutes of the meeting held on 27.02.2017 produced as Annexure R-4/3 to WPC No. 1413 of 2019. It is further pointed out that, both the Petitioners had not made any application for running the 'Rajdhani Bus Sewa' in the routes in question, where the private Respondents are operating and had they submitted the applications satisfying the requirements, it could have been caused to be considered. Without making any such application, it is not open for them to come and challenge the *vires* of the provision, having no locus, which hence is only with a malicious intent.

9. The learned counsel for the private Respondents submits that the Petitioner in Writ Petition (C) No. 1413 of 2019, is a chronic defaulter in respect of one of the Stage Carriages belonging to him; by virtue of which he was not in a position to apply for granting the 'Rajdhani Bus Sewa' permit. The learned counsel also points out that the Scheme, as envisaged by the State, is to promote and develop the transportation system in the best interest of the general public and it was with intent to provide the best

available service, that the nature and conditions of the vehicles were prescribed (stipulating the maximum age, the necessity to have it air conditioned and such other aspects). It was to attract the operators that the State, as a matter of policy, declared 50% tax remission in terms of the Chhattisgarh Motoryan Karadhan Adhiniyam, 1991. One of the documents sought to be relied on by the Petitioners to contend that the route in question for which permit has been granted to the private Respondents was not a notified route, is actually not a notification as to formulation of the route for 'Rajdhani Bus Sewa'; but it deals with the routes which are notified as eligible for 'tax exemption' to an extent of 50%. The learned counsel adds that the non-inclusion of the particular route in the said notification only denotes that the private Respondent is not eligible for 50% tax exemption (which made him to satisfy the entire tax) and that, it is not a pointer to hold that the route was not formulated or notified for operating the 'Rajdhani Bus Sewa'. Specific reference is made to the notification issued in this regard (which has been produced and forms part of the record), wherein the route in question has been specifically mentioned. Learned counsel for the private Respondents further submits that, absence of any provision to file an appeal, by itself, is not a good ground to challenge the *vires* of a provision. It is however added that, right of 'Appeal' is very much there under Section 89 and that apart, power of 'Revision' is also there under Section 90, in respect of the situations envisaged therein.

10. The learned counsel for the State submits that the order to be passed by the delegated authority, in exercise of the power conferred under the amended Rule i.e. Rule 66 (a-a) of the Rules, is virtually an order to be passed by the State Transport Authority. In the other words, the order passed by the delegated authority is by stepping into the shoes of the State Transport Authority, in exercise of the delegated power. In the said circumstance, it has

to be deemed as an order passed by the original authority who delegated the power. As it stands so, appeal is very much maintainable before the State Transport Appellate Tribunal, as envisaged under Section 89 of the Act. We find considerable force in the said submission.

11. The learned counsel representing the State submits with reference to the additional documents produced alongwith the 'covering memo' dated 07.09.2019, that 'Document-A' is copy of the order dated 23.02.2017 which is with regard to the notification of the 'Rajdhani Bus Sewa' and the relevant particulars in this regard. 'Document-B' is a copy of the order dated 18.05.2017 issued by the Additional Transport Commissioner, Chhattisgarh, Raipur, to the Regional Transport Authority-cum-Commissioner, Raipur, Bilaspur, Ambikapur and Jagdalpur, mentioning the different routes. Coming to 'Document-C', it is an advertisement issued in a daily (newspaper 'The Hitavada') dated 19.10.2017 inviting applications from the bus operators for various routes (Raipur to Rajnandgaon, Raipur to Saraipali, Raipur to Bilaspur, Raipur to Kabirdham and Raipur to Kanker) as part of 'Rajdhani Bus Sewa'. 'Document-D' is a copy of the public notice dated 21.03.2018 and at serial No. 2, it mentions the route 'Raipur to Saraipali' with a stop at Nandimod.

12. Shri Bajpai, learned counsel for the Petitioner in WPC No. 1413 submits that a specific provision was added to the statute under Section 68(3) by way of sub-clause (c-a) as per the Act 54 of 1994 w.e.f. 14.11.1994, which stipulates that the Government has to 'formulate the route' for plying the Stage Carriages. It is stated that no such route has been formulated or notified in accordance with law, in respect of the 'Rajdhani Bus Sewa' and the route of the 4th Respondent (Raipur to Saraipali) is not mentioned in the gazette notification dated 09.03.2018 (see Annexure P/12 to WP(C) No. 1413 of 2019, at page 45).

13. The learned counsel for the 4th Respondent submits, as mentioned already, that the Petitioners have not understood the scope of the said notification, which is only in respect of granting 'exemption' from payment of tax under the Taxation Act. With reference to the routes given under Table 'A', the Government has provided tax exemption to an extent of 50% only in respect of such routes and non-mentioning of the route 'Raipur-Saraipali' only disentitles the 4th Respondent from claiming such tax exemption. It is only in the said circumstances, that the 4th Respondent has paid the full tax in respect of the route 'Raipur to Saraipali'. It is further pointed out that the route Raipur-Saraipali has been formulated and notified for 'Rajdhani Bus Sewa' as evident from the proceedings dated 17.10.2017 and also the newspaper publication effected in 'The Hitawada' dated 19.10.2017.

14. It is pointed out that public notice was given by the State Transport Authority on 17.10.2017, also stipulating the conditions, which was ordered to be published in the newspapers as well. This accordingly was published in the newspapers as above; pursuant to which application was preferred by the private Respondents, which were considered and permits were granted by the competent authority. This being the position, there is no violation of the procedural formalities and the challenge raised against grant of Permits to the private Respondents is not correct or sustainable.

15. After hearing both the sides and after going through the materials on record, we find that the dispute on the factual aspects, particularly with regard to the introduction of the particular class of service i.e. 'Rajdhani Bus Sewa', the formulation and notification of the routes concerned and the requirements to be satisfied before granting the permits have been fully complied with. It is evident that the Petitioners also had an opportunity to participate in the minutes of the meeting held on 27.02.2017 in connection with the 'Rajdhani Bus Sewa' and they participated as well. That apart, the

draft Rules with regard to the amendment were notified on 09.03.2018 and objections were called for; despite which the Petitioners did not submit any objection. This being the position, the challenge raised against the alleged non-satisfaction of the procedural formalities in connection with the formulation and notification of the routes, inviting of applications and such other incidental requirements before granting the permits is not supported by any valid or tenable ground. No interference is required on factual aspects, as above.

16. Now comes the more crucial aspect i.e. the challenge raised against the validity of the amendment to the Rules {Rules 66(a)} contending that it is *ultra vires* the Act and the Constitution.

17. There cannot be any dispute to the law declared by the Supreme Court in ***Bombay dyeing & Mfg. Co. Ltd.*** (supra), sought to be relied on the part of the Petitioners to contend that the Rules cannot amend the provisions of the Act. Same is the position with regard to the reliance sought to be placed on ***ITW Signode India Ltd.*** contending that, if there is any conflict between the Act and the Rules, it is the Act that is to prevail, and not the Rules. The question is, whether any such encroachment is made by the Rule so as to have it branded as without authority or to hold that it is in contravention of the specific provisions of the Act. In other words, whether the State Transport Authority is conferred with any power to grant permit of this nature, so as to have it delegated to any other authority by virtue of the amendment brought about by way of Rule 66 (a-a) of the Rules, and whether it comes within the purview of the 'rule making power' of the State under Section 96 of the Act, is the question to be considered and answered.

18. So as to have an effective adjudication of the issue, it is necessary to have a survey of the relevant provisions of the Act. **Chapter V** of the Act

commencing from Section 66 to Section 96 deals with the Control of Transport vehicles. **Section 66** stipulates the necessity for obtaining 'Permit' to use a transport vehicle in a public place. **Section 67** deals with the power of the Government to control road transport by giving directions under sub-section (2) to the State Transport Authority and the Regional Transport Authority as per notifications in the official gazette from time to time, with regard to the specific aspects mentioned under sub-section (1). **Section 68** refers to the constitution of the State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3); simultaneously providing for constitution of Regional Transport Authority. Sub-sections (3) and (5) of Section 68 are relevant; which read as follows:

"(3) The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued under section 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge through out the State the following powers and functions, namely :-

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State ;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and

(ca) Government to formulate routes for plying stage carriages;

(d) to discharge such other functions as may be prescribed.

(4) xxx xxx xxx

(5) The State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made under section 96, may delegate such of its powers and functions to such authority or person

subject to such restrictions, limitations and conditions as may be prescribed by the said rules."

19. **Section 69** of the Act is a general provision as to the application of the Permits. What shall be the contents of such application and what documents shall accompany the said application, are mentioned under sub-sections (1) and (2) respectively of Section 70. The procedure to be followed by the Regional Transport Authority in considering the application for State Carriage Permit is mentioned in Section 71 and granting of Permit in this regard is specified in Section 72; subject to the one or more conditions to be incorporated under sub-section (2) therein.

20. As mentioned already, the amendment is sought to be challenged mainly by contending that it violates Section 69 of the Act, as the power to grant Permit within the State is exclusively conferred upon the Regional Transport Authority and not the State Transport Authority. **Section 69** reads as follows:

"69. General provision as to application of permits. - (1) Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles:

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles:

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, by notification in the Official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States, the application under that sub-

section shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business..."

21. As mentioned already, Section 69 of the Act is only a general provision as to the submission of application for Permit. The other relevant aspects in this regard are specifically mentioned under Section 70, 71 and 72 of the Act (insofar as the Stage Carriage Permit is concerned) as discussed above. The above provisions do not stipulate or places any bar or hurdle, prohibiting consideration of the application for Stage Carriage Permit by the State Transport Authority under the given circumstances. Reference to Section 88, and in particular, sub section (1) and (2) is relevant and hence it is extracted below:

"88. Validation of permits for use outside region in which granted.-

(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned :

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State, shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned :

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State :

Provided also that –

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State.

(2) Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit."

22. Sub-section (1) of Section 88 of the Act clearly shows that, unless counter signed by the State Transport Authority/Regional Transport Authority, as mentioned therein, a Permit granted by a Regional Transport Authority of any one region shall not be valid in any other region. Sub-section(2) starts with a 'non-obstante clause', which clearly mentions that notwithstanding anything contained in sub-section (1) of Section 88, a **permit granted** or countersigned by the State Transport Authority shall be valid in the whole State or in such regions within the State, as may be specified in the Permit. This by itself is sufficient to infer that the law makers/Parliament, while framing the statute, was very much conscious of the rights, liberties and powers of the different authorities to be constituted under the Act and the power was clearly vested upon the State Transport Authority under sub-section (2) of Section 88 to grant permit or counter signing the same, to be operative in the whole State or such regions within the State, as may be specified in the Permit, dispensing with the counter-signature of any other authority. As mentioned already, the scheme of introduction of 'Rajdhani Bus Sewa' was envisaged and introduced by the State with an intent to provide better transportation facility to the general public, so as to connect the State

Capital at Raipur with different District Centers situated in different regions and with an intent to dispense with the necessity to have counter signature. The contention of the Petitioners, that no power is vested with the State Transport Authority under the Act to grant Permit within the State, is wrong and misconceived.

23. The statutory mandate is further discernible from Section 68(3)(b) of the Act (extracted above). Section 68(1) enables the State Government to issue notification in the official gazette, to constitute for the State, a Transport Authority to exercise and discharge the functions specified in sub-section (3) (besides the power to constitute Regional Transport Authority to exercise such powers as specified in respect of each Regional Transport Authority). Sub-section (3) of Section 68 confers power upon the State Transport Authority, making it obligatory, that it shall give effect to any direction issued under Section 67. Section 67(1)(a) of the Act speaks about the power of the State Government to control the road transport by giving directions to the State Transport Authority/Regional Transport Authority, by way of notification issued in the official gazette from time to time, having regard to the circumstances under clause (a) to (d); sub-clause (a) being one in respect of the advantages offered to the public, trade and industry by the development of motor transport. Commencement of 'Rajdhani Bus Sewa' by the State is one such instance, coming within the purview of Section 67(1)(a) and this being the position, it is obligatory for the State Transport Authority to give effect to such directions issued under Section 67 of the Act. Clause (b) of Section 68(3) of the Act specifically deals with the power and functions of the State Transport Authority 'to perform the duties of a Regional Transport Authority'; where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more region.

24. There is a contention for the Petitioners, that Section 68(3)(b) of the Act has only 'two limbs' i.e. the power can be exercised by the State Transport Authority only (i) if there is no Regional Transport Authority or; (ii) if so required by a Regional Transport authority and if it thinks fit. This is sought to be rebutted by the Respondents/State pointing out that, Section 68(3)(b) actually contains 'three limbs' and not two limbs; i.e. the State Transport Authority can exercise the power and functions if: (i) **there is no Regional Transport Authority**; (ii) **if it thinks fit** (in appropriate cases); and (iii) **if so required by a Regional Transport Authority**.

25. It is pointed out that a dispute came up for consideration before the Apex Court, arising from the State of Rajasthan, in respect of the then existing provision as contained in Section 44 (3) of the Motor Vehicles Act, 1939 (which now stands replaced as Section 68(3) of the Motor Vehicles Act, 1988). The matter was considered elaborately by a 'Three-Member Bench' of the Apex Court and the legal position was declared in **State of Rajasthan & Others** (supra) in crystal-clear terms. To have a clear understanding, sub-sections (3) and (4) of Section 44 of the Motor Vehicles Act, 1939 are extracted below:

"(3) A State Transport Authority (shall give effect to any directions issued under Section 43, and subject to such directions and save as otherwise provided by or under this Act) shall exercise and discharge throughout the State the following powers and functions, namely:-

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decides all matters on which differences of opinion arise between Regional Transport Authorities; and

(d) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall (in the discharge of its functions under this Act, give effect to and) be guided by such directions."

After a threadbare analysis of the provisions of the law, the Apex Court categorically held that the State Transport Authority is entitled to perform the duties of the Regional Transport Authority (i) where there is no such authority; (ii) when the State Transport Authority "thinks it fit" to perform the duties of the Regional Transport Authority in respect of any route common to two or more regions; or (iii) where the State Transport Authority is required by the Regional Transport Authority to perform those duties in respect of any route common to two or more regions.

26. It is relevant to note in this context, that a similar contention with reference to sub-section (3) and (4) of Section 44 of the Motor Vehicles Act, 1939 had come up for consideration before a Division Bench of the Madhya Pradesh High Court, even before the declaration of law by the Apex Court in ***State of Rajasthan & Others*** (supra). In the case before the Division Bench of the Madhya Pradesh High Court, the State Transport Authority had directed the Regional Transport Authority, Gwalior to consider the application for permit submitted to the Regional Transport Authority, Rewa and to have it finalised, which was contended as beyond the power and jurisdiction of the State Transport Authority, as envisaged under sub-section (3) and (4) of Section 44 of the Motor Vehicles Act, 1939. Since the factual dispute does

not have much relevance, the 'conclusion' as given in 'paragraph 16' alone requires to be looked into, as extracted below:

"16. We have already expressed the view that it was open to the State Transport Authority, if it thought fit so to do, to have exercised its power under section 44(3) (b) and to have assumed jurisdiction for granting permits on the inter-regional route. Had this course been adopted and suitable direction issued under sub-section (4), all applications for permits could have been decided by the State Transport Authority itself. This course would have also been in public interest and fair to all the applicants. It would still be open to the State Transport Authority, if it so thinks fit, to act under sub-sections (3)(b) and (4) of Section 44. On the conclusion reached by us that the State Transport Authority had no jurisdiction to direct that the application for permits made to Regional Transport Authority, Rewa be also decided by the Regional Transport Authority, Gwalior, this petition fails and is dismissed. In the circumstances of this case we do not make any orders as to costs. The security amount shall be refunded to the petitioner."

From the above, it can be seen that the power and authority of the State Transport Authority to grant the Permit in terms of the provisions under Section 44(3)(b) of the Motor Vehicles Act, 1939 was affirmed, though in the circumstances of the said case, it was held that the State Transport Authority had no jurisdiction to direct that the application for Permits made to the Regional Transport Authority, Rewa be also decided by the Regional Transport Authority, Gwalior; which made the Court to decline interference, in turn dismissing the writ petition.

27. The issue had come up for consideration before a Division Bench of the Calcutta High Court as well in **Sanjit Chakraborty** (supra). The Division Bench made a reference to Section 44(3)(b) of the Motor Vehicles Act, 1939 and Section 68(3)(b) of the Act, 1988 and after placing reliance on the law declared by the Apex Court in **State of Rajasthan & Others** (supra), held that the State Transport Authority had jurisdiction to grant Permits under three circumstances (not on two limbs) i.e. (i) if there is no Regional

Transport Authority, (ii) **if it thinks fit** and (iii) if so required by the Regional Transport Authority.

28. In the light of the above discussion, the power of the State Transport Authority to grant Permits **if it thinks fit** in terms of Section 68(3) (b) of the Act, stands settled. The Petitioners are not correct in contending that no such power is vested with the State Transport Authority, to be delegated by virtue of the power invoking the Rule under challenge.

29. The next point to be considered is the 'power to delegate', exercised by the State Transport Authority. Sub-section (5) of Section 68 of the Act reads as follows:

"5. The State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made under Section 96, may delegate such of its powers and functions to such authority or person subject to such restrictions, limitations and conditions as may be prescribed by the said rules."

It has been explicitly made clear in the above provision, that the State Transport Authority, if authorised in this behalf by Rules, made under Section 96, may delegate such of its powers and functions to such authority or persons, subject to restrictions/conditions/ limitations prescribed under the said Rules. As it stands so, the question is, whether Section 96 stipulating the 'rule making power', takes care of the situation involved herein as well. As mentioned already, Section 96(1) of the Act clearly says that the State Government may make rules for the purpose of carrying into effect the provisions of Chapter V, which deals with the Control of Transport Vehicles and dealing with the Permits in this regard. Sub-section (2) of Section 96 says that, without prejudice to the generality of the power under sub-section (1), rules could be made with respect to all or any of the matters specified under (i) to (xxxiii) mentioned therein. The situations covered by clauses (xi) and (xxxiii), being relevant, are extracted below:

"96. Power of State Government to make rules for the purposes of this Chapter.- (1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters namely; -

xxx

xxx

xxx

(xi) the conditions subject to which, and the extent to which, a permit granted in one region shall be valid in another region within the State without counter-signature;

xxx

xxx

xxx

(xxxiii) any other matter which is to be or may be prescribed."

30. Section 96(2)(xi) of the Act clearly deals with the rule making power, as to the conditions and the extent to which a 'Permit' granted in one region shall be valid in any other region within the State without counter-signature; whereas sub-clause (xxxiii) deals with any other matter which is to be or may be prescribed. The above provisions confer the power upon the State to prescribe the rules, so as to make the Permit granted in one region to be valid in another region within the State, without counter signature. As in the instant case, 'Rajdhani Bus Sewa' is in respect of the service connecting the State Capital at Raipur, with different District Centers situated in different Regions within the State. Normally, when the route is situated in different regions, counter signature may be necessary in terms of Section 88(1) of the Act. But by virtue of the above specific provision in the statute *i.e.* Section 96(2)(xi) and also sub-section (2) of Section 88, it is quite open for the State to prescribe the rules in this regard and it is accordingly that '**Rule 66(a-a)**' has been introduced as per the relevant notification {Annexure P/1 to WP(C) No.3146 of 2018 and Annexure P/13 to WP(C) No. 1413 of 2019}. This satisfies the requirement of sub-section (5) of Section 68 dealing with the 'power to delegate'.

31. In so far as the exercise sought to be pursued is quite 'authorised' as per the Rules made under Section 96 of the Act, it is open for the State Transport Authority to delegate its powers and functions to such other authority or person, subject to the restriction/limitations/conditions as prescribed in the Rules. In the above circumstance, the power of the State Transport Authority sought to be delegated by virtue of Rule 66(a-a) of the Rules (brought into effect as per the amendment under challenge) is in conformity with the statutory provisions and there is no encroachment or violation of any of the provisions of law or binding precedents in this regard. As it stands so, the challenge raised by the Petitioners against the amended provision i.e. 'Rule 66(a-a)' of the Rules stating that it is in violation of Section 69 and Section 88 of the Motor Vehicles Act, 1988 or such other provisions mentioned in the proceedings, is without any pith or substance. We hold that the Petitioners have failed to substantiate the challenge raised in these writ petitions.

32. The writ petitions are devoid of merit and they are dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE