

202 **RA-CW-301-2012 &
CM-13579-2012 in/and R.A.No.441 of 2012
In CWP-3317-1991**

AMRITSAR THEIN DAM BUS SERVICE (REGD.), AMRITSAR ETC.
VS
STATE TRANSPORT APPELLATE TRIBUNAL, PB., CHD. & ORS.

Present: Mr. Baldev Kapoor, Advocate
 for the petitioner

Mr. Anupam Singla, Advocate
for the applicant (in RA No.301 of 2012)

Mr. Pawan Kumar Mutneja, Advocate
for the applicant (in RA No.441 of 2012).

Ms. Simran Grewal, AAG Punjab

1. The above noted two review applications one filed by the PRTC-respondent No.3 and the second by M/s New Piya Bus Service Pvt. Ltd. through Mr. P.K.Mutneja, Advocate, which the applicant claims to be a necessary party by way of filing an application under Order 1 Rule 10 CPC praying for impleading the company as a respondent along with the review application have been preferred seeking review of the judgment and order dated 18.05.2011 passed in the above noted writ petition. Accordingly, C.M. No.13579 of 2012 is allowed and M/s New Piya Bus Service Pvt. Ltd. is impleaded as respondent No.4. Both the review applications are being disposed of by this common order as the grounds of review taken in both are somewhat similar.

2. Pepsu Road Transport Corporation-respondent No.3 complains that this Court has decided the case mainly on the basis of the Notification dated 13.09.1979 which was issued under the provisions of the Motor Vehicles Act, 1939 and not under the Motor Vehicles Act, 1988. According to notification dated 13.09.1979 issued by the Secretary to Government of Punjab, Department of Transport 25% stage carriage permits were reserved for the members of the Scheduled Castes domiciled in Punjab in any calendar year. Mr. Anupam Singla, learned counsel appearing for PRTC submits that this notification ceased to operate with the coming into force of the Motor Vehicles Act, 1988 Act on 01.07.1989. There is no provision of reservation of stage carriage permits in the new Act for the members of the Scheduled Castes domiciled in Punjab, therefore, in view of the amended provisions of law, the petitioner-Company is not entitled for grant of a stage carriage permit on the basis of notification dated 13.09.1979.

3. Mr. Singla contends further that the route for which the stage carriage permit has been claimed by the petitioner falls on the National Highway and is a monopoly route of the State Transport Undertakings i.e. PRTC & Punjab Roadways and as per Notification dated 09.08.1990 and 21.10.1997, all operations, existing or future, on monopoly routes are to be exclusively undertaken by the State Transport Undertakings and, therefore, the petitioner is not entitled to

operate on the monopoly route of the State Transport Undertakings. He further argues that the State Transport Appellate Tribunal, Punjab rejected the claim of the petitioner on the ground that PRTC was already operating on that route and that is a nationalized route operated by State Transport Undertakings on monopoly basis.

4. Mr. Mutneja, learned counsel appearing in the other review application argues that the review applicant was an objector before the State Transport Commissioner in the case of the petitioner. The applicant had also applied for the said regular stage carriage permit and claiming its right on the ground it is entitled to get one regular Stage Carriage Permit from out of the quota reserved for the members of the Scheduled Caste. He argues that the 1939 Act has since been repealed and amended and the new Act 1988 would apply in this case. Section 71 of the 1988 Act reserves certain number of permits for Scheduled Castes and Scheduled Tribes. The State Government has to reserve these permits and the number of the same has to be specified. After reserving them, the Regional Transport Authority has to see the financial suitability of the applicant, his satisfactory performance and other such matters. He argues that the learned Single Judge has granted relief to the petitioner without examining the condition as specified in Section 72 and therefore, the order deserves to be reviewed and the matter decided afresh.

5. In the order in review, Single Bench did not agree with the

argument and enforced the notification dated 13.09.1979 which reserves twenty-five percent of stage carriage permits to be granted to the members of the Scheduled Castes domiciled in Punjab to ply buses on designated routes. The Notification dated 13.09.1979 is reproduced below:-

“In exercise of the powers conferred by Sub-section (1A) read with sub-section (1B) of Section 47 of the Motor Vehicles Act, 1939 (Central Act No.4 of 1939), the Governor of Punjab is pleased to reserve for the members of the Scheduled Castes domiciled in Punjab twenty-five per cent of stage carriage permits to be granted any calendar year.”

6. Mr. Baldev Kapoor, appearing for the writ petitioner-company has relied on Section 89 (3) of the Motor Vehicles Act, 1988, which is reproduced as under:-

“(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), every appeal pending at the commencement of this Act, shall continue to be proceeded with and disposed of as if this Act had not been passed. Explanation.—For the removal of doubts, it is hereby declared that when any order is made by the State Transport Authority or the Regional Transport Authority in pursuance of a direction issued by the Inter-State Transport Commission under clause (c) of sub-section (2) of section 63A of the Motor Vehicles Act, 1939 (4 of 1939), as it stood immediately before the commencement of this Act, and any person feels aggrieved by such order on the ground that it is not

in consonance with such direction, he may appeal under sub- section (1) to the State Transport Appellate Tribunal against such order but not against the direction so issued.”

7. In the present case, the appeal before the Tribunal was filed on 12.11.1988 while the new Act came into force on 01.07.1989; therefore, it was the Act of 1939 that continued to operate in pending appeals. If that is the legal position, then, the notification dated 13.09.1979 comes into play and protects the rights of the members of the Scheduled Castes domiciled in Punjab to stake legitimate claim to twenty-five percent of stage carriage permits in the calendar year.

8. It is this right which has been declared by the learned Single Judge in the judgment and order dated 18.05.2011 which is tenable. There is another aspect urged by Mr. Kapoor while referring to the provisions of Section 104 of the 1988 Act which deals with restriction on grant of permits in respect of a notified area or notified route. Section 104 is reproduced as under:

“104. Where a scheme has been published under sub-section (3) of section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme ;

Provided that where no application for a permit has been made by the State Transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme,

the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport undertaking in respect of that area or route.”

9. Section 104 refers to the State Transport Authority or the Regional Transport Authority constituted under Section 68 of the Motor Vehicles Act, 1988. The Appellate Tribunal is not constituted under Section 68 and the Parliament was conscious of this fact as it provides constitution of Tribunal under Section 89 (2) the exercise of jurisdiction of which source of power is in the adjudicatory hands of a judicial officer who is not below the rank of a District Judge or who is qualified to be a judge of the High Court and the Tribunal shall exercise jurisdiction within such area as may be notified by the Government.

10. This submission of Mr. Kapoor is without prejudice to his submission that the route in question is not a monopoly route even under the 1988 Act and, accordingly, the PRTC cannot exercise monopoly or exclusivity on the route in question, and, therefore, he argues that the applications deserve to be dismissed. There is substance in the contentions of the non-applicant-petitioner advanced by Mr. Kapoor. The appeal was governed by the provisions of the old Act and the notifications issued by the State of Punjab there under carving out

reservation for the scheduled caste category of contenders in the matter of grant of route permits to the extent allowed.

11. In view of all what has been said above, I do not find any substance in these applications and nor do I find any sufficient reason to review the judgment dated 18.05.2011. Consequently, both the review applications are dismissed.

**(RAJIV NARAIN RAINA)
JUDGE**

16.07.2019
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