

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 4040 of 2021 (O&M)

Date of Decision: 29.07.2021

The Yaduvanshi CTS Limited Hazariwas and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashok Aggarwal, Senior Advocate
with Mr. Mukul Aggarwal, Advocate
for the petitioner(s).

Mr. Ankur Mittal, Additional Advocate General, Haryana
with Mr. Shivendra Swaroop, Assistant Advocate General,
Haryana, for respondent No.1 to 4.

Mr. Rohit Kapoor, Advocate, for respondent No.5 to 7
and 9 to 12.

Mr. Amit Jhanji, Senior Advocate with
Ms. Nitika Garg, Advocate,
for respondent No. 14 to 16.

Anil Kshetarpal, J.

1. The policy paralysis at the hands of public servants is one of the biggest evil faced by our nation in the recent times. Due to delay in decision making, the entire matter is kept in a state of flux, creating opportunities for litigation and corruption. Unfortunately, this writ petition falls in that category. It has been filed only because the State of Haryana has failed to take a decision at an appropriate time. The Central Government, while enacting the Motor Vehicles Act, 1988 (hereinafter referred to as “the 1988 Act”) envisioned simplification of the procedure and the liberalization of policy for private sector operators in the field of road transportation. The

entire objective was to permit the market forces to engage in free play. The Act was enacted with the aim of freeing the transport sector from the shackles of monopolistic tendencies of both the State Transport Undertakings and a few selected private operators. However, the message appears to have little impact at the ground. In the present case, it has been noticed that the policy makers have adopted the practice of taking a U-turn/about face in the Courts of law resulting in the complete reversal of the decision previously taken and consequently, leading to travesty of justice. Even now after having made a statement before the Supreme Court on 20th January, 2020 that the State of Haryana would either cancel or modify the Stage Carriage Scheme of 2016, the matter is hanging fire still awaiting for a final decision. In the meantime, *ad hoc* arrangements have been made, giving rise to multiple litigations. The policy makers appear to be either indecisive or reluctant to take a decision.

2. FACTS

2.1 The aim of enacting the 1988 Act is to provide an efficient, adequate, economical and properly coordinated road transport service to the road transport users. For that purpose, the State of Haryana adopted a Stage Carriage Policy in the year 2016 which in fact, came into force in the year 2017, however, continues to be known as “The Stage Carriage Scheme 2016” (hereinafter referred to as the 2016 Scheme). The operative part thereof is extracted as under:-

“ All the area and routes, whether inter-State or intra-State, except the routes mentioned in the Schedule shall exclusively be reserved for grant of stage carriage permits to

the State Transport Undertaking(s).

2.

- (i) The stage carriage permits on the routes mentioned in the Schedule shall be granted to the State Transport Undertaking(s), any person, or society/firm/company in the State.*
- ii) The permits shall be granted as per the terms and conditions fixed by the State Government.*
- iii) The permit under the Scheme shall be granted to an applicant subject to the clearance of dues in respect of previous permit, if any.*
- iv) Variation in the route as per provision of Motor Vehicles Act, 1988 shall become part of the Schedule. The termini (starting and terminating points of the route) shall not be altered in case of variation. No extension or curtailment shall be allowed in the route.*

3. *The permits already granted under the City Bus Service Scheme, 2004 shall be valid”.*

2.2 The 2016 scheme has previously been made the subject matter of challenge before the High Court, wherein the State of Haryana made a statement at that time that it has already issued a fresh draft Stage Carriage Scheme of 2017 (a new 2017 Draft Scheme) while withdrawing the 2016 Scheme. The writ petitions were accordingly disposed of while directing the State to continue to operate the 2016 Scheme till the draft Stage Carriage

Scheme of 2017 is finalized. However, certain private transporters assailed the correctness of the decision of the High Court before the Supreme Court in which certain interim orders were passed. In the year 2020, the State of Haryana took a U-turn in complete reversal of its earlier stand and made a statement that the draft Scheme of 2017 (a new proposed Scheme) stands withdrawn whereas it will modify/revise the 2016 Scheme, itself. In other words, the 2016 Scheme which stood withdrawn in the year 2017 has again been revived. The Supreme Court permitted the State to do the same. Unfortunately, when after a period of more than 1½ years, the matter is lying at a stand still. The private transporters are operating on the edge because of lack of clarity from the policy makers. In a transitory phase, the State of Haryana took an *ad hoc* policy decision on 30.03.2020, which was again made a subject matter of challenge before the Court. In *Dabra Coop. Transport Society & Ors. Vs. State of Haryana* (Civil Writ Petition No. 8087 of 2020), the aforesaid *ad hoc* decision has been quashed. However, in the appeal, the Division Bench has, in the meantime, permitted the State to continue with the grant of permits to the private operators in accordance with the orders passed by the Supreme Court. The order passed by the Division Bench is extracted as under:-

*“Case has been heard through video conferencing
on account of COVID-19 Pandemic.*

Notice of motion for 6.7.2021.

Notice re.: stay as well.

*Needless to observe that in the interregnum, State
would be at liberty to act as per Motor Vehicles Act and issue a*

modified Scheme. As the judgment delivered by learned Single Judge is under challenge and reference has been made to the order dated 21.1.2020 passed by Hon'ble Supreme Court in Civil Appeal No.556 of 2020, the Haryana Co-Operative Transport Society and others v. State of Haryana. State shall be at liberty to act in light of the observations made in the said order. To this extent, judgment passed by learned Single Judge shall remain stayed till the next date of hearing”.

2.3 There is another judgment passed by this Bench in ***Salasar Bus Transport Company v. State of Haryana and Others (Civil Writ Petition No. 18096 of 2020, decided on 23.02.2021)***. In the aforesaid judgment also, the latter patent appeal is pending against this judgment and an interim order has been passed. It is further significant to note that at the time of hearing of the Civil Writ Petition No. 18096 of 2020, the attention of the Court was not drawn to the judgment passed by the Division Bench in ***M/s. Vijayant Travels and others v. State of Punjab and others (Civil Writ Petition No. 15786 of 1999, decided on 20.12.2021)***.

2.4 However, even now the policy makers have not woken up from their slumberous conduct.

3. History of Litigation

3.1 While deciding the Civil Writ Petition No. 14237 of 2020, the history of litigation that followed after the 2016 Scheme was issued, had been traced and is extracted as under:-

The Stage Carriage Scheme of 2016, was challenged before this Court in various writ petitions. The lead case was

Civil Writ Petition No. 5867 of 2017 (“The Naya Baksh Co-operative Society Limited and Others v. State of Haryana and Others”). On 01.05.2017, a Division Bench passed the following order:

“Additional affidavit of Dr. Suprabha Dahiya, Transport Commissioner, Haryana, Chandigarh, dated 1.5.2017, filed in CWP No. 5936 of 2017, in Court, is taken on record. Copy furnished to counsel for the petitioners. It has been stated therein that on reconsideration, the State Government has decided to withdraw the Scheme of 2016 for grant of stage carriage permits to the private transporters.

Learned counsel for the State seeks short adjournment to apprise the Court about the status of the applications processed for issue permits under the Scheme 2016, which has been withdrawn.

Adjourned to 4.5.2017.

A copy of the order be placed on the file of each connected case”.

3.2 On 16.05.2017, the writ petitions were disposed of by the Division Bench. The operative part of the order reads as under:

“11. In the case in hand, a final scheme has already been published on 17.2.2017. In case it is cancelled now, there would be vacuum as no scheme as such will be in force under which anyone can be permitted to ply the buses. Even if on cancellation simultaneously a proposed

scheme is to be published under Section 99 of the Act, still fresh permits temporarily will have to be issued in terms of Section 99(2) of the Act, during the pendency of the proposal, which may again have to be on certain basis which can possibly be provisions of the proposed scheme as there would be no other scheme applicable in view of cancellation of 2016 scheme.

12. As stated by learned counsel for the State, 873 permits had been issued in the State to different operators under the 2016 scheme. In case 2016 scheme is cancelled and proposed scheme is notified under Section 99 (1) of the Act and temporary permits are to be issued under Section 99(2) of the Act, lot of exercise will have to be done. The time can very well be utilized fruitfully in the preparation and finalization of new scheme.

13. To take care of such a situation, learned counsel for the petitioners submitted that prior to the framing of 2016 scheme when draft scheme was issued on 25.2.2016, schemes framed by the State in the year 1993 and 2013 were in force. Even at that stage, the State had issued notification on 25.2.2016 in exercise of powers conferred under Section 99 (1) of the Act proposing to supersede earlier schemes notified in the years 1993 and 2013 by formulating proposed scheme and the same was

published in the official gazette as well as in the newspapers.

14. In our opinion some procedure can be followed now. As a result there will be no vacuum till such time a modified scheme is notified, 2016 scheme will remain in operation.

15. Learned counsel for the State, on instructions from Mr. Suprabha Dahiya, IAS, Transport Commissioner, Haryana, Chandigarh, present in Court, states that the entire exercise to notify the final scheme shall be completed within a period of six months. Let the needful be done.

16. As 2016 scheme will remain operative till such time new scheme is notified, the State shall be at liberty to issue permits to the applicants, who had already registered on the portal of the Transport Department namely "Vahan", under the 2016 scheme on the same terms and conditions as are applicable to the persons, who have been granted permits earlier under the 2016 Scheme, if they fulfill the conditions applicable.

17. The writ petitions are disposed of accordingly".

3.3 Certain applicants, who were issued an offer of allotment to enable them to make preparations to start operating on the routes after purchasing the buses but had failed to fulfill the conditions within the time prescribed, filed a Review Application No. 298 of 2017. The aforesaid review application was disposed of on 21.07.2017. The operative part of the

said order is extracted as under:-

“The grievance of the applicants is that in fact, they had applied for issuance of permits and had been issued offer of allotment in March/ April, 2017. On fulfillment of conditions laid down in the offer of allotment within the specified time, permits were to be issued and the applicants were also required to be considered for allotment of temporary permit treating them to be applicants before the order was passed by this court.

Be that as it may, in our opinion, that issue is not required to be considered for the reason that the stand taken by the State is that the draft scheme has been notified on 23.6.2017 and any applicant can apply for issuance of a temporary permit on the routes, as specified in the draft scheme, or of his choice including the routes mentioned in the offer of allotment. On fulfillment of the conditions required for the purpose, the application so filed shall be considered and final decision shall be taken thereon within a period of one week from the date of filing of the application. Let the needful be done.

The aforesaid interim arrangement is till the final Stage Carriage Scheme is notified in supersession of the 2016 Scheme.

With the aforesaid modification in the order passed

on 16.5.2017, the review application is disposed of”.

3.4 Against the judgment dated 16.05.2017, a Special Leave Petition was filed before the Supreme Court in which, initially, only notice was issued, however, on 04.09.2017, it was directed that in the meantime, status quo, as it existed on that day, shall be maintained by the parties. Subsequently, on 13.10.2017, the Supreme Court modified its interim order, which is extracted as under:-

“Heard Mr. P.S.Patwalia, learned senior counsel for the petitioners and Mr. Tushar Mehta, learned Additional Solicitor General for the respondents.

Having heard learned counsel for the parties, the order of status quo is modified to the following extent:

a) The respondent-State is at liberty to call for objections and offer hearing to the objectors in respect of the Draft Scheme of 2017 but shall not finalize the same.

b) The transporters who are continuing on the basis of the 2016 Scheme shall be allowed to operate and if any permit has expired, the same shall be renewed in accordance with law.

c) If any transporter is eligible to obtain the permit in pursuance of the directions given by the High Court, his case shall be considered and shall not be refused on the ground that a new policy/scheme is coming.

The matters be listed after six weeks”.

3.5 Various applications for impleadment/intervention, filed before the Supreme Court were allowed. Before the Supreme Court, the State Government took a stand that it has decided to withdraw the draft scheme of 2017 and all the dispensations afforded under that scheme. It was stated that the State would take steps as are permissible under Section 102 of the 1988 Act, to cancel or modify the Stage Carriage Scheme of 2016. In view of the aforesaid statement, on 21.01.2020, the Supreme Court disposed of Civil Appeal No. 556 of 2020. The operative part of the order is extracted as under:

“In view of the statement made on behalf of the State Government, referred to above, which we have accepted, nothing remains for consideration in these appeals. However, we make it clear that all future actions be proceeded in accordance with law.

The appellant(s)/applicant(s) or any other eligible person will be free to make application(s) to the concerned authority, if already not made, for registration and for grant of permit within one week from today, and if so made, the competent authority may consider the same as per law expeditiously and in any case before 20th March, 2020.

If the appellants(s)/applicant(s) are aggrieved by any decision taken by the competent authority, it will be open to them to pursue such other remedies as may be permissible in law including under Section 100(2) of the Motor Vehicles Act, 1988.

In view of the above, nothing survives for consideration in these appeals. Accordingly, the appeals and pending applications, if any, are disposed of”.

3.6 It would be noted here that the Supreme Court, vide order dated 28.01.2020, corrected a typographical error in aforesaid order.

4. Decision of the Government

In view of the aforesaid situation, the Transport Commissioner took a decision on 30.03.2020, to consider the applications for grant of permits by dividing them into the following categories:

“To

*All Adcs-cum-Secretaries,
Regional Transport Authorities in the State.*

*Memo No. 14872-893 T-I/ST-II
Dated: 30/03/2020*

Subject: Grant of Stage Carriage Permits under the Stage Carriage Scheme of 2016 in pursuance of orders of the Hon’ble Supreme Court of India dated 21.01.2020 in CWP(C) No. 556 of 2020.

Reference on the subject cited above.

It is stated that Hon’ble Supreme Court of India in its order dated 13.10.2017 in SLP No.22800 of 2017 has restrained the State from finalization of the Stage Carriage Scheme of 2017 the draft of which was notified on 20.06.2017. In compliance of the Orders of Hon’ble Apex Court, the said draft scheme was not finalized by the State Government. The State Government had sought the permission from the Hon’ble Supreme Court in aforementioned SLP to withdraw the draft Stage Carriage Scheme of 2017. A statement was also made

before the Hon'ble Supreme Court to modify the Stage Carriage Scheme of 2016 notified on 17.02.2017.

The Hon'ble Supreme Court of India accepted the submissions made by the State Government and issued further directions to the State in its order dated 21.01.2020 in Civil Appeal No.556 of 2020 arising out of SLP No.22800 of 2017. The operative part of the said order is reproduced as under:-

“The appellant(s)/applicant(s) or any other eligible person will be free to make application(s) to the concerned authority, if already no made for registration and for grant of permit within one week from today, and if so made, the competent authority may consider the same as per law expeditiously and in any case before 20 March, 2020”.

The opinion of Advocate General, Haryana was also sought in the matter. In view of the opinion tendered by the said office and to examine the issue properly, Video Conferences were held on 19.03.2020 and 20.03.2020 at Chandigarh. As per discussions held in the VCs, the detailed information was furnished from your end and on the basis of the same the following position with regard to the categories which are under consideration for grant of permit is to be granted under the Stage Carriage Scheme of 2016 in pursuance of the orders of Hon'ble Supreme Court of India dated 21.01.2020 in Civil Appeal No.556 of 2020 emerged.

Sr. No.	Category	No. of permits to be issued
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		<i>under the Stage Carriage Scheme of 2016</i>
1.	<i>Applicants who have applied from 21.01.2020 to 28.01.2020 along with DDR of Rs.25000/- (Category-A)</i>	328
2.	<i>Applicant to who temporary permits have been granted under draft Stage Carriage Scheme of 2017 (Category-B-I)</i>	93
3.	<i>Applicants who had brought the buses under the Stage Carriage Scheme of 2016 within 90 days of issue of LOI but permits couldn't be granted to them (Category-B-II)</i>	9
4.	<i>Applicants who have purchased the buses for the grant of permit under the Stage Carriage Scheme of 2016 or 2017 but permit was not granted to them (Category-C)</i>	197

*The district wise details of all the categories as complied on the basis of the information received from field offices in at **Annexure-I**.*

In view of the above, approval of the State Government was sought regarding modification of the Stage Carriage Scheme of 2016 as per statement given by the State before Hon'ble Supreme Court of India and grant of permit under the Stage Carriage Scheme of 2016 to the applicants falling in the categories mentioned in the above table. The approval of Hon'ble CM has been obtained. In compliance thereof, registration of any unregistered bus of B-I, B-II and C categories shall be done by 31.03.2020. Also, the permits applied for shall be granted to these B-I, B-II and C categories expeditiously. As for category "A", the decision of the

Government shall be communicated in due course. Accordingly, the following directions are issued for grant of permit to the applicants falling in category B-I, B-II and C:-

- 1. The buses purchased by the applicants for operation under the Stage Carriage Scheme of 2016 or draft Stage Carriage Scheme 2017 and not registered as yet be registered as these are BS-IV pollution norms compliant buses which are to be registered on or before 31.03.2020 positively.*
- 2. The buses purchased by the applicants for operation under the Stage Carriage Scheme of 2016 and 2017, whether registered or not, be given permit under the Stage Carriage Scheme of 2016 after registration on the routes applied for by them in their respective districts. Without a proper application no permit shall be granted.*
- 3. The applicants to whom temporary permits were granted under the draft Stage Carriage Scheme of 2017 be given permits under the Stage Carriage Scheme of 2016 on the routes opted by them in the application(s) in their respective districts. As the draft scheme 2017 is no longer in existence so the permits issued under than scheme have also become non-existent.*
- 4. The applicants who had brought the buses under the Stage Carriage Scheme of 2016 within 90 days of the issue of LOI be given permit on the routes mentioned in*

the LOI issued to them earlier in the said scheme.

5. *A modal LOI having terms and conditions for the issue of the temporary permit on ad hoc basis under the Stage Carriage Scheme of 2016 is enclosed.*
6. *The temporary permits to the eligible applicants shall be granted purely on ad hoc basis with a clear stipulation on the permit that this arrangement will remain in force till the completion of the process of modification of existing Stage Carriage Scheme 2016. The permits must also have a clear stipulation that this arrangement will not give any equitable right to the permit holder for grant of identical permit under the modified scheme.*
7. *The applicants under the erstwhile Stage Carriage Scheme 2017 will be required to pay full application fee under Stage Carriage Scheme 2016, before consideration of their application for grant of permit under 2016 scheme. Full application fee of 2016 scheme will have to be paid irrespective of any amount paid under 2017 scheme.*
8. *The life of the temporary permit issued on ad hoc basis under the Stage Carriage Scheme of 2016 shall be co-terminus with the age of plying of the vehicle.*

The above directions should be adhered to in letter and spirit. Complete record of the issue of permits should be kept duly signed by all concerned and countersigned by the

ADC-cum-Secretary, RTA concerned and this detail should be sent to this office within one week of the issue of the permits.

Encl.: As above.

*Sd/-
(Virender Singh Sehrawat)
Addl. Transport Commissioner,
Haryana, Chandigarh.*

Endst. No. 14894-95T-1/ST-II dated: 30/03/2020

A copy of the above is forwarded to:-

- 1. PS/PST for kind information of Worthy Principal Secretary, Transport.*
- 2. PS/TC for kind information of Worthy Principal Secretary, Transport.*

*Sd/-
(Virender Singh Sehrawat)
Addl. Transport Commissioner,
Haryana, Chandigarh”.*

5. The Relief Sought

5.1 This writ petition has been filed by as many as four Co-operative Transport Societies with the following substantive prayers:-

“i) set aside orders/permits dated 10.09.2020 (Annexure P-18) in respect of Route from Rewari to Kosli, permits dated 16.10.2020 & dated 31.03.2020 (Annexure P-19 to P-24) in respect of Route from Rewari to Manesar, permits dated 10.09.2020 & 16.10.2020 (Annexure P-25 to P-30) in respect of Route from Rewari to Ateli and permits dated 16.09.2020 & 07.07.2020 (Annexure P-31 to P-33) in respect of route from Mahendergarh to Rewari, being in violation of Section 99 of Motor Vehicles Act, 1988 read with Rule 115 of the Haryana

Motor Vehicles Rules, 1993 and also in violation of the order/directions dated 21.01.2020 (Annexure P-14) passed by the Hon'ble Supreme Court of India in Civil Appeal No. 556 of 2020.

- ii) set aside memo dated 30.03.2020 (Annexure P-17), dated 06.05.2020 (Annexure P-34) and dated 15.05.2020 (Annexure P-35) issued by respondent No.2 being in violation of Section 99 of Motor Vehicles Act, 1988 read with Rule 115 of the Haryana Motor Vehicles Rules, 1993 and also in violation of the order/directions dated 21.01.2020 (Annexure P-14) passed by the Hon'ble Supreme Court of India in Civil Appeal No. 556 of 2020.*
- iii) stay the operation and implementation of the impugned permits (Annexure P-18 to P-33) during the pendency of the present petition before this Hon'ble Court.*
- iv) stay the operation and implementation of the impugned memo dated 30.03.2020 (Annexure P-17), dated 06.05.2020 (Annexure P-34) and dated 15.05.2020 (Annexure P-35) during the pendency of the present petition before this Hon'ble Court”.*

5.2 It would be important to note here that all these permits, which are the subject matter of challenge in this writ petition, have been issued in pursuance to an order passed by the Supreme Court on 21.01.2020, which was given effect to by the State by adopting an *ad hoc* policy decision dated 30.03.2020.

5.3 Learned counsel for the parties have also filed the synopsis along with the gist of their arguments pursuant to the order of the Court.

6. **Judgment of the Supreme Court elucidates the aims and objects of the Motor Vehicles Act, 1988**

6.1 Before this Bench proceeds further, it is important to note that the objects with which the Central Government enacted the 1988 Act have been summed up in two judgments passed by the Supreme Court. In the judgment of *Mithilesh Garg and Others v. Union of India and Others (1992) 1 SCC 168*, the Supreme Court has held as under:-

“4. A comparative reading of the provisions of the Act and the old Act makes it clear that the procedure for grant of permits under the Act has been liberalised to such an extent that an intended operator can get a permit for asking irrespective of the number of operators already in the field. Under Section 57 read with Section 47(1) of the old Act an application for a stage carriage permit was to be published and kept for inspection in the office of the Regional Transport Authority so that the existing operators could file representations/objections against the said application. The application, along with objections, was required to be decided in a quasi-judicial manner. Section 47(3) of the old Act further permitted the imposition of limit on the grant of permits in any region, area or on a particular route. It is thus obvious that the main features of Chapter IV "control of transport vehicles" under old Act were as under :

1) *The applications for grant of permits were published and were made available in the office of the Regional Transport Authority so that the existing operators could file representations;*

2) *The applications for grant of permits along with the representations were to be decided in quasi judicial manner; and*

3) *The Regional Transport Authority was to decide the applications for grant of permits keeping in view the criteria laid down in Section 47(1) and also keeping in view the limit fixed under Section 47(3) of the Act. An application for grant of permit beyond the limited number fixed under Section 47(3) was to be rejected summarily.*

5. *The Parliament in its wisdom has completely effaced the above features. The scheme envisaged under Sections 47 and 57 of the old Act has been completely done away with by the Act. The right of existing operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of bringing, in the Act was to liberalize the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have*

regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalisation, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision under Section 71(3) (a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs”

6.2 Similarly, in ***Jagdeep Singh v. Jagir Chand and Another*** (2001) 8 SCC 437, the Supreme Court has held as under:-

“2. Despite the legislative intent under the Motor Vehicles Act, 1988 to increase the number of buses on different routes for the convenience and benefit of travelling public, there is reluctance on the part of the authorities to implement the same. Having reached at a saturation point wherein Permit Raj caused lot of inconvenience to the bus operators as well as to the general public to a large extent, the same is sought to be continued. There cannot be any doubt that there can be certain restrictions on the bus operators for providing facilities to the passengers, but when Legislature provides that permit should not, ordinarily, be refused and has brought about a complete change in the policy of granting permit, it would be

unreasonable and unjust on the part of the State Authorities to continue their old practice. Further, in these days of liberalization in all fields, that too when we are talking of globalization, it would be unjust to put fetter on the exercise of fundamental rights of those persons who intend to carry on the business as transport operators.

3. *In these appeals, the order passed by the High Court of Punjab and Haryana at Chandigarh setting aside the orders passed by the State Transport Appellate Tribunal granting permits to operate mini buses on certain routes to the appellants, is challenged. Orders passed by the State Transport Appellate Tribunal were not challenged by the State Transport Undertaking or the State Government but were challenged by the Permit Holders who were running mini buses. It is true that those who are having permits to operate on certain routes would object to the grant of permit to other operators as it is likely to affect their monopoly. This is bound to be there in all fields of industry or business. At the same time, grant or refusal of such permits is required to be governed by the provisions of law.*

4. *The objects and reasons of the Motor Vehicles Act, 1988 inter alia provides that to take care:-*

- (a) the fast increasing number of both commercial vehicles and personal vehicles in the country; and*
- (b) simplification of procedure and policy liberalizations*

*for private sector operations in the road transport field;
the provisions are made under the Act.*

5. *This legislative policy is reflected in Section 80(2) of the Motor Vehicles Act, 1988 (hereinafter referred to as "The Act") which inter alia provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act”.*

7. Arguments of Learned Counsels

7.1 Learned senior counsel representing the petitioner, after taking the Bench through various provisions of the 1988 Act and the Haryana Motor Vehicles Rules, 1993 (hereinafter referred to as “the 1993 Rules”) contends that Section 98 of the 1988 Act gives an overriding effect to the provisions of Chapter-VI over the provisions of Chapter-V and the other laws. As per Section 99 of the 1988 Act read with Rule 115 of the 1993 Rules, the Stage Carriage Scheme adopted by the State of Haryana is not valid as the Scheme neither discloses the total number of permits nor the number of trips to be operated on the specified route. The State itself admits that the 2016 Scheme is defective and had undertaken either to cancel or modify the same. He, hence, contends that unless the deficiencies in the Stage Carriage Scheme of 2016 were removed, no further permit(s), whatsoever, could have been granted. The Supreme Court, in its order dated 21.01.2020, has not issued any direction to grant permit(s) under the defective Scheme. Continuing with his submissions, he contends that as per Section 102 of the 1988 Act, it is mandatory for the State to grant an opportunity of hearing to the affected person before modification of the

Stage Carriage Scheme. He contends that the decision taken by the Government on 30.03.2020 amounts to modification of the 2016 Scheme because the number of permits on different routes run by the petitioners have been substantially increased and therefore, the same is illegal. He further contends that unlimited number of permits are being granted on each route which is illegal and since the petitioners are directly affected, therefore, they have the *locus standi* to file the present petition.

7.2 On the other hand, learned counsel for the respondents have submitted that the petitioners have been granted the permits under the 2016 Scheme. They further contend that till the revised Stage Carriage Scheme is issued, the permits are being issued in accordance with the orders passed by the Supreme Court on 21.01.2020. Continuing with their submissions, they contend that the order dated 30.03.2020 is an *ad hoc* arrangement in order to tide over the situation. The 2016 Scheme is under revision and the same shall be finalized, shortly.

7.3 At this stage, it is appropriate to extract Section 98, 99, 102 and 104 of the 1988 Act as under:-

“98. Chapter to override Chapter V and other laws.—*The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law.*

99. Preparation and publication of proposal regarding road transport service of a State transport undertaking.—*1 [(1)]*

Where any State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit.

[(2) Notwithstanding anything contained in sub-section (1), when a proposal is published under that sub-section, then from the date of publication of such proposal, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal and such temporary permit shall be valid only for a period of one year from the date of its issue of till the date of final publication of the scheme under section 100, whichever is earlier”.

100 & 101 XXXX XXXX XXXX XXXX

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

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

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

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104. **Restriction on grant of permits in respect of a notified area or notified route.**—*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”.

8. Analysis by the Bench

8.1 It is apparent that Section 98 provides that the provisions of Chapter-VI and the Rules or Orders made thereunder shall have an overriding effect notwithstanding anything inconsistent therewith contained in Chapter-V or any other law or instrument. Section 99 enables the State Government to frame a Stage Carriage Scheme if it is of the opinion that in the interest of an efficient, adequate, economical and properly co-ordinated road transport service, the framing of the Scheme is necessary. On a careful reading of Section 99, it is apparent that the Scheme can be framed in general or with respect to a particular class of such service in relation to any area or route or portion thereof where the Government considers that it should be run and operated by the State Transport Undertaking, whether to the exclusion, complete or partial of other persons or otherwise. Thus, it is

apparent that it is not necessary for the State Government to frame and notify a Scheme. It is also not necessary that the Scheme should be with respect to the entire State or with respect to all the classes or categories of road transport services. The Scheme can be restricted to any particular class of such service or in relation to any restricted area or route or portion thereof. If the State Government considers that the State Transport Undertakings are to be run and operated whether in the exclusion, complete or partial of other persons or otherwise, only then the Government is required to frame a Scheme. It is further apparent that the 1988 Act does not require the Government to specify the number of services/permits/trips proposed to be operated in such area or on such routes.

8.2 Keeping in view the aforesaid Scheme of the 1988 Act, the Rules framed by the State Government are required to be observed. Learned counsel relies upon Rule 115 of the 1993 Rules, which reads as under:

“115. Particulars of the scheme. [Section 99 and 107(2)(a) and (2)].-- The proposal regarding a scheme formulated under section 99 shall be in the form of memorandum and shall contain the following particulars:-

- (i) name of the State Transport Undertaking;*
- (ii) area or route proposed to be covered under the scheme alongwith full details of such area or route in the form of an annexure appended thereto;*
- (iii) purpose of the scheme;*
- (iv) number of service proposed to be operated in such area or on such route;*

- (v) *whether the scheme is to be exclusion, complete or partial of other persons or otherwise; and*
- (vi) *in case of partial exclusion of other persons --*
 - (a) *the extent of the same in favour of the State Transport Undertaking; and*
 - (b) *mode of grant of remaining services to be operated by other persons or otherwise”.*

8.3 On a careful reading of Rule 115 of the 1993 Rules, it is apparent that the Rule provides that the Scheme shall contain the particulars noted therein.

8.4 Learned counsel representing the petitioners relies upon Clause (iv) to contend that in the absence of number of services proposed to be operated in any such area or on such routes, the Scheme itself is invalid. This Bench is afraid that the arguments of learned senior counsel representing the petitioners do not deserve acceptance for more than one reason. Firstly, the petitioners themselves have been granted permits under the 2016 Scheme. Hence, they cannot be permitted to approbate and reprobate at the same time. Secondly, the Scheme is under revision as per the statement given by the State before the Supreme Court as well as according to the stand taken in this Court. Thirdly, the Court, before forming any opinion on the validity of the Scheme or the Rules, is required to make a distinction between the substantive and procedural provisions of law. If the provision is procedural in nature, then a mere irregularity in carrying out the Rules shall not effect the validity of the Scheme, which is otherwise framed in accordance with the Act and its objects. Once it is apparent that Section

99 and 107(2)(a)&(e) of the 1988 Act do not provide that the Scheme must contain a number of services proposed to be operated in any such area or any such route, the Rules cannot be read in the manner to defeat the soul of the Act. The Rules are a subordinate legislation framed by the competent authority in exercise of the powers conferred under the 1988 Act. They are made in the exercise of delegated legislation. Therefore, the Rules are required to be read in accordance with the intent of the Act.

8.5 The Constitutional Courts have more than one interpretative Rules to interpret a particular provision of the delegated legislation. They are required to be purposively construed in consonance with the object sought to be achieved by the principal Act. No doubt, the word “shall”, though *prima facie* gives an impression of being mandatory in nature, however, it is the duty of the Constitutional Courts to interpret it in the light of the intention of legislature by making sincere efforts to harmonize the various provisions of the delegated/subordinate legislation in accordance with the object sought to be achieved and the mischief sought to be curbed by the Parliamentary Act. Reliance in this regard can be placed on the observations made in para 26 of the judgment of the Supreme Court in ***Mohan Singh v. International Airport Authority of India (1997) 9 SCC 132***, which is extracted as under:-

“Thus, this Court, keeping in view the objects of the Act, had considered whether the language in a particular section, clause or sentence is directory or mandatory. The word "shall", though prima facie gives impression of being mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of

the statute, its nature ad design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the Court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provided for any contingency for non-compliance; if the word "shall" is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory. If an object to the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice”.

8.6 In accordance with the aforesaid observations, the word “shall” in Rule 115 is required to be read as “may” in order to give effect to the provisions of the 1988 Act.

8.7 This matter can be examined from another perspective. It is apparent that there is no provision which makes the Scheme invalid only because one of the terms as provided in the Rules is missing or has not been specified. Still further, the intent with which the 1988 Act was enacted itself provides that ordinarily the permit should not be refused if the applicant fulfills the requirements. No doubt, the State Government has the enabling power to exclude the private operators from operating on particular routes or areas completely or partially. However, that does not require that on each route, the State Government must specify the number of permits to be operated and the number of trips per permit. Once the 1988 Act itself envisages that let the market forces operate and the State has been given power only to regulate and manage the operations, then the provisions of the Rules cannot be read in a manner, that goes to defeat the very object sought to be achieved by the 1988 Act, which can infact be achieved by upholding the 2016 Policy. It would be noted here that learned senior counsel representing the petitioners, during the course of arguments, in the alternative, submitted that he abandons the challenge to the Scheme since the matter is pending before the Division Bench. In the writ petition, the petitioners have not assailed the validity of the 2016 Scheme.

8.8 Still further, this matter can be examined from yet another perspective. As per the orders passed by the Supreme Court on 21.01.2020, as an *ad hoc* arrangement, the buses are being permitted to run on stage carriage. As already noted, the situation has arisen due to lack of decision making, intentional or otherwise, on the part of the policy makers. It would be in the public interest to allow the buses to continue to operate. The object

of the petitioners is to restrict the entry of the new operators which is clearly against the intent of the 1988 Act. If on a particular route, the number of service providers or transporters are limited or only limited services are allowed, not only the public would face harassment, but it would also lead to chaos and uncertainty. The transporters would indulge in overloading the vehicles, which can lead to accidents. This would not be an ideal situation, in the interest of general public.

8.9 At the time of arguments, learned counsel has questioned the validity of the Scheme only on the ground that failure in fixing the number of permits and trips makes the Scheme bad. The same has been questioned in the written arguments as well. Hence, this Bench has examined the validity of the Scheme only in this context.

8.10 The next argument of the learned counsel, representing the petitioners, is with regard to the alleged admission of the State before the Supreme Court to the effect that the Stage Carriage Scheme 2016 is defective and therefore, no permit can be issued under the aforesaid defective Scheme. It would be noted here that the State of Haryana has sought permission to take lawful, permissible action under Section 102 of the 1988 Act to cancel or modify the Stage Carriage Scheme 2016. At the most, such statement would mean that the Stage Carriage Scheme 2016 does require modifications. However, till those modifications are made, the issuance of fresh permits cannot be stopped. The Supreme Court in its order dated 21.01.2020 has specifically given an option to the appellants/applicants or any other eligible person to make an application to the concerned authority, if not made already, for grant of permits. Hence,

this argument of learned senior counsel, representing the petitioners, cannot be accepted. Still further, in any case, if fresh permits are not granted, the public would suffer and the real object sought to be achieved by bringing the new Act in the year 1988, shall stand defeated.

8.11 With regard to the next argument of learned senior counsel that the order dated 30.03.2020 results in modifications of the Stage Carriage Scheme and the same could not have been done without granting any opportunity of hearing to the affected persons. It would be noted here that the decision of the Government dated 30.03.2020 is only an *ad hoc* arrangement to tide over the situation. On careful reading of the decision dated 30.03.2020, which has already been extracted, it is clear that the 2016 Scheme has not been modified. Hence, Section 102 of the 1988 Act is not applicable to the decision dated 30.03.2020. It would be noted here that the petitioners have been granted permits under the 2016 Scheme and while the permits were issued to the petitioners, there was no assurance from the authority that a particular number of permits or trips shall only be issued. The petitioners are, accordingly, plying their buses on the routes in question on the strength of such permits. Hence, the petitioners have no right to complain that others should not be issued permits under the same Scheme.

8.12 It would be noted here that the petitioners are operating on the routes in question for decades. They do not allow other private operators to enter in order to avoid competition and monopolize the field. As per the provisions of the 1988 Act, the competent authority is required to issue permits if the applicant is found eligible. The 1988 Act was enacted in order to allow the private operators to freely operate by getting permits and

prevent the monopolization of trade in the field of road transport. If the prayer made by the petitioners is allowed, it would defeat the very object with which the Act was enacted.

9. Conclusion

9.1 In these circumstances, this Bench is of the considered view that the situation can be best resolved by directing the State to take a final decision in the matter within a period of three months from the date of this judgment, positively. These observations are being made in view of the fact that the State has taken contradictory stands before this Court in the previous round and before the Supreme Court and has given a statement to this effect before the Supreme Court of India. The Courts have already allowed enough indulgence to the State.

9.2 The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

July 29, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No