

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: April 8th, 2021

(1) Civil Writ Petition No.8087 of 2020 (O&M)

Dabra Coop. Transport Society Limited and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

(2) Civil Writ Petition No.7420 of 2020 (O&M)

Ramesh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

(3) Civil Writ Petition No.9661 of 2020 (O&M)

The Dada Shyam Ji Co-operative Transport Society Ltd. Rohtak

.....Petitioner

Versus

State of Haryana and others

.....Respondents

(4) Civil Writ Petition No.9758 of 2020 (O&M)

The Naya Bans Coop. Transport Society Ltd. and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

(5) Civil Writ Petition No.10234 of 2020 (O&M)

Gonder Cooperative Transport Society Ltd. and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Rohit Kapoor, Advocate for the petitioner(s).

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Mr. Pawan Kumar Mutneja and Mr. Nonish Kumar, Advocates for respondents No.5, 6, 8 to 11, 13 to 19, 21 & 22 (in CWP-8087-2020) and for respondents No.4 to 8, 10 to 13 & 15 (in CWP-10234-2020).

MAHABIR SINGH SINDHU, J.

A.V. Dicey in his monumental work “The Law of the Constitution” Ist Edition, Macmillan and co., while explaining the rule of law, stated as under:-

“With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the Courts and made in their personal capacity liable to punishment or to the payment of damages for acts done in their official character but in excess of their lawful authority.”

India, being an ardent supporter of the rule of law, hosted an event of the International Commission of Jurists comprising 185 judges, practicing lawyers and teachers of the law from 53 countries across the world (Declaration of Delhi), on January 5-10, 1959 and Committee on “The Executive and The Rule of Law”, *inter alia*, came to the following conclusions:-

“Clause VI:

A citizen who suffers injury as a result of illegal acts of the Executive should have an adequate remedy either in the form of a proceeding against the State or against the individual wrongdoer, with the assurance of satisfaction of the judgment in the latter case, or both”

Clause VII:

Irrespective of the availability of judicial review to correct illegal action by the Executive after it has occurred, it is generally desirable to institute appropriate antecedent procedures of hearing, enquiry or consultation through which parties whose rights or interests will be affected may have an adequate opportunity to make representations so as to minimize the likelihood of unlawful or unreasonable executive action.”

Clause VIII:

It will further the Rule of Law if the Executive is required to formulate its reasons when reaching its decisions of a judicial or administrative character and affecting the rights of individuals and at the request of a party concerned to communicate them to him.”

The decisions of above declaration were duly affirmed in next session of the International Body, held at Lagos from January (3-7), 1961.

Our country is a parliamentary democracy; Central Government as well as State Government are vested with powers limited under the Constitution and in case such a limit is crossed, the remedy of judicial review can be invoked before the Constitutional Courts to preserve the rule of law. The Hon’ble Supreme Court while emphasizing on the rule of law observed in the following manner:-

“The Constitution of India is the supreme law of the land, having flown from "We, the people of India, i.e., Bharat, having solemnly resolved to constitute India into a sovereign, socialist, secular democratic republic. The sovereign power is distributed among the Legislature, the Executive and the Judiciary with checks and balances but not in water tight rigid would. In our democracy governed by the rule of law, the Judiciary has expressly been entrusted with the power of judicial review as sentinel in qui vive. Basically judicial review of administrative actions as also of legislation is exercised against the action of the

State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to the judicial review. The State, therefore, is subject to etat de droit, i.e. the State is submitted to the law which implies that all actions of the State or its authorities and officials must be carried out subject to the Constitution and within the limits set by the law, i.e., constitutionalism. In other words, the State is to obey the law. The more the administrative action in our welfare State expands widely touching the individuals, the more is the scope of judicial review of State action. Judicial review of administrative action is, therefore, an essential part of rule of law, The judicial control on administrative action, thus, affords the courts to determine not only the constitutionality of the law but also the procedural part of administrative action as a part of judicial review. The constitution has devised permanent bureaucracy as part of the political executive. By operation of Article 53 read with Articles 73 and 74 as well as Article 154 read with Articles 163 and 166, the business of the State is carried on in accordance with the rules of business issued by the President/the Governor, as the case may be, or the rules made for the subordinate officers in that behalf. The normal principle that the permanent bureaucracy is accountable to the political executive is subject to judicial review. The doctrine of "full faith and credit" applied to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is apposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed. It is now settled legal position that the bureaucracy is also accountable for the acts done in accordance with the rules when judicial review is called to be exercised by the Courts. The hierarchichal responsibility for the decision is their in- built discipline. But the head of the Department/designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken. Despite this, if there is any special circumstance absolving him of the accountability or if someone else is responsible for the action, he needs to

bring them to the notice of the Court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law.” [vide (1997) 4 SCC, 430, State of Bihar and others Versus Subhash Singh, para 3].

Since concept of the rule of law is quite germane for adjudication of the present controversy, therefore, the above background was quite necessary.

1. This common order shall dispose off above five writ petitions being identical on facts and law.
2. Petitioners are the existing stage carriage permit holders in terms of an approved Scheme, notified by the State of Haryana under Section 100 (3) of the Motor Vehicles Act, 1988 (*for short ‘the Act’*) and plying their buses on the routes in question. Precisely, their grievance is that private respondents have also been granted/issued impugned temporary permits on those very routes, but illegally, therefore, the same are liable to be set aside by this Court under Article 226 of the Constitution.
3. For brevity, the facts have been noticed from CWP No.8087 of 2020 and prayer clause in nutshell could be summarized as under:-

(i) for issuance of a writ in the nature of certiorari to set aside the impugned Offers of Allotment/Letters of Intent (LOI) dated 08.04.2020 (P-13 to P-31) as well as permits dated 10.04.2020 & 29.04.2020 (P-32 to P-36), issued in favour of private respondents, and information (P-37 to P-50), relating thereto;

(ii) to set aside all orders, instructions, letters or actions of respondent Nos.2 and 3 for grant/issuance of above said permits;

(iii) to issue any other appropriate writ, order or direction as this Court deems fit & proper in the facts and circumstances of the case(s);

(iv) to stay the operation of impugned permits (P-32 to P-36) as well as the information supplied vide Annexures P-37 to P-50 and to restrain respondent No.3 from issuing any time table to operate buses on the routes in question.

It is relevant to mention here that operation of the impugned permits was stayed and that is still continuing.

4. Facts of the case are that:-

In order to provide an efficient, adequate, economical and properly coordinated road transport service, the State of Haryana while exercising powers under Section 99 (1) of the Act issued a proposal, vide Gazette Notification dated 25.02.2016. After consideration of the objections, the above proposal was approved under Section 100 (2) of the Act and thereafter in terms of Section 100 (3) of the Act, it was finally published as an approved Scheme vide Notification dated 17.02.2017 (P-2). Since the initial proposal under Section 99 (1) of the Act was issued in the year 2016, therefore, the approved Scheme is commonly known as the Stage Carriage Scheme of 2016 (*hereinafter referred to as "Scheme of 2016"*).

According to the above Scheme, all the areas and routes whether inter-State or intra-State, except the routes mentioned in the Schedule, shall exclusively be reserved for grant of the stage carriage permits to the State Transport Undertakings (*for short 'STUs'*); however, for the routes mentioned in the Schedule, stage carriage permits can be granted

to the STUs, any person or Society/Firm/Company in the State and the operative part of the Scheme of 2016 reads as under:-

SCHEME

“1. 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 provisions 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.”

Undisputedly, all the petitioners were granted stage carriage permits in pursuance of the Scheme of 2016 during the period 17.03.2017 to 28.03.2017, which are valid for five years.

4 (i) Aggrieved against the Scheme of 2016, some bus operators filed CWP No.5867 of 2017 (***‘Nayabash Coop. Transport Society Ltd. and others Vs. State of Haryana and others’***); during the pendency of the same, the State of Haryana came up with an affidavit dated 16.05.2017, in which *inter alia* stated that upon reconsideration of the matter, it has been decided

to cancel Scheme of 2016 and a fresh draft modified Scheme shall be notified within a period of two weeks. Also stated that till such time, the existing Scheme is not cancelled, all the permit-holders shall be entitled to ply their vehicles as per time-table given in the respective permits and whosoever have got their vehicles registered on the 'Vahan' portal will be entitled for the permit under the Scheme of 2016; but after cancellation of the same, everyone will be entitled to temporary permits as per provisions of Section 99 (2) of the Act (*ibid*).

Taking into consideration the above factual position, the above writ petition was disposed off by the Division Bench of this Court on 16.05.2017 (P-3) while observing in the following manner:-

“that the entire exercise to notify the final scheme shall be completed within a period of six months. Let the needful be done. 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.”

In view of above development, the State Government while exercising powers under Section 99 (1) of the Act issued a fresh proposal, vide Notification dated 20.06.2017 (P-4), known as Draft Scheme of 2017, which was almost identical to the Scheme of 2016, except the change in the number of routes i.e. from 273 to 452, and the relevant part of the Draft Scheme is extracted as under:-

DRAFT SCHEME

“1. 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 provisions 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.

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

4 (ii) Also noteworthy that feeling aggrieved against the order dated 16.05.2017, referred above, some private operators filed Review Application (RA-298 of 2017), but the same was disposed off on 21.07.2017 (P-5) with the following clarification:-

“that the stand taken by the State is that the draft scheme has been notified on 23.06.2017 (sic. 20.06.2017) 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.”

It is necessary to mention here that the order dated 16.05.2017, passed by the Division Bench was also challenged in SLP (C) No.22800 of 2017 by the Haryana Cooperative Transport Society Ltd. along with other private operators and Hon’ble Supreme Court, vide order dated 04.09.2017,

granted *status quo*, but the same was modified on 13.10.2017. For reference, operative part of both these orders read as under:-

“Order dated 04.09.2017:

Let the matter be listed on 22.09.2017.

In the meantime, status quo, as it exists today, shall be maintained by the parties.”

“Order dated 13.10.2017:

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..”*

4 (iii) Pursuant to the order dated 16.05.2017, passed in CWP No.5867 of 2017, respondent No.2 issued a Circular dated 07.02.2018 to all the Secretaries of the RTAs for grant of temporary permits under the Draft Scheme of 2017 and Circular reads as under:-

*“ Government of Haryana
Transport Commissioner, Haryana, Chandigarh*

To

All Secretaries

Regional Transport Authorities in State of Haryana

No.9334-9356/T-1/ST-II

Dated: 07.02.2018

Sub: Grant of temporary permit under the draft State Carriage Scheme 2017.

In reference to above.

It is to inform you that the Haryana Govt. has published the draft of new Stage Carriage Scheme 2017 vide notification No. 17/10/2011-3T(II) dated 20.06.2017. The Department has taken the decision to issue the temporary permits under Stage Carriage Scheme 2017 for which the terms and conditions have been made which is sent for favour of further action.

You are hereby directed that the issuance of temporary permits under the Draft of Stage Carriage Scheme 2017 be made keeping in view the terms and conditions attached as also in view of the following:-

- 1. It be made sure that the entry be made in the register as per the proforma sent for seeking the details of the applications.*
- 2. On every application, the Sr.No. of the application be made.*
- 3. Incomplete application will not be accepted and in case of unacceptance the reasons be given to the applicant in writing.*
- 4. The details of the draft received as fee enclosed with the application, be kept and without any delay be got deposited as per the directions of the department.*
- 5. The recipient official will affix its stamp and name.*
- 6. Permanent time table of the buses on the route will be given within 60 days and till then temporary time table will be issued at the time of grant of permit.*

*Sd/-
For Transport Commissioner,
Haryana, Chandigarh.”*

The above communication was challenged in CWP No.4345 of 2018 (***Bhanu Cooperative Transport Society Limited and others Vs. State of Haryana and others***), wherein operation of the same was stayed by the Single Bench of this Court, vide order dated 23.02.2018.

Also necessary to mention here that while disposing of a bunch of cases along with CWP No.7671 of 2018, another Single Bench of this Court vide order dated 22.07.2019 granted permission for temporary permits in terms of Section 99 (2) of the Act for a period of one year as an interim measure without creating any right to ply buses on regular basis subject to the directions of Hon'ble Supreme Court in SLP(C) No. 22800 of 2017.

While taking into consideration the order dated 22.07.2019, CWP No.4345 of 2018 challenging the circular dated 07.02.2018 was also disposed off by the same Bench on 24.09.2019 and against that, LPA No.2052 of 2019 was filed.

Another writ petition i.e. CWP 6343 of 2018 (***'Chahal Cooperative Transport Society Ltd. and others Vs. State of Haryana and others'***), similar to CWP No.7671 of 2018, was also disposed off on 21.11.2019, which was also challenged in LPA No.1974 of 2019. This LPA was clubbed with LPA No.2052 of 2019 and the Division Bench restrained the State of Haryana from taking any further steps in the matter vide order dated 04.12.2019 and the same reads as under:-

"Issue notice of motion to the respondents.

Mr. Sharad Aggarwal, Assistant Advocate General, Haryana accepts notice on behalf of respondents No.1 to 4. Necessary extra sets of petition be supplied to enable him to submit response within a period of four weeks.

In the meanwhile, it is clarified that the parties shall strictly comply with the interim order passed by the Supreme Court dated 13.10.2017 in Special Leave Petition (Civil) No. 22800 of 2017 "The Haryana Cooperative Transport Society Ltd. and others v. State of Haryana and others".

It is further clarified that no steps would be taken by the respondents or any of the parties in purported compliance of the order passed by the learned Single Judge which would

ultimately result in violation of the interim order passed by the Supreme Court.”

Also necessary to mention here that both the above LPAs are stated to be pending for 20.05.2021.

The order dated 24.09.2019, passed in CWP No. 4345 of 2018, was also challenged in SLP (C) No.26446 of 2019 and which was ordered to be heard along with SLP (C) No.22800 of 2017.

4 (iv) Hon’ble Supreme Court, after granting leave in the above SLPs, disposed off the same on 21.01.2020 while passing the following order:-

*“Applications for impleadment/ intervention are allowed.
Leave granted.*

These matters were heard on 13.10.2017 when this Court passed the following order:-

“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.”*

In response to the above order, the State Government has examined the matter at the highest level and it is stated across the Bar by the counsel for the State that the State Government has decided to withdraw the Draft Scheme of 2017 and all the dispensations afforded under that Scheme. In other words, the Draft Scheme of 2017, which was the subject matter of

challenge in the present proceedings stands completely nullified. We accept this statement.

The State Government has sought permission to take lawful, permissible action under Section 102 of the Motor Vehicles Act, 1988 to cancel or modify the Stage Carriage Scheme 2016 by following the prescribed procedure under the law in order to remove all the defects therein.

We find no reason to refuse this permission. The State Government may proceed in the matter in accordance with law after giving due opportunity to all concerned.

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 appellant (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.”

Thereafter, on 28.01.2020, upon mentioning by the appellants, Hon’ble Supreme Court ordered for minor correction in the penultimate paragraph of the order dated 21.01.2020 to the effect that “Section 100 (2) of the Motor Vehicles Act, 1988” be read as “Section 102 of the Motor Vehicles Act, 1988”.

4 (v) Despite the specific directions in the order dated 21.01.2020, reproduced hereinabove, there was no progress in the matter. Ultimately, at the fag end of the time limit fixed by the Hon’ble Supreme Court, respondent No.2 conducted Video-Conference with the District Headquarters on 19.03.2020 & 20.03.2020 and while issuing Memo dated 20.03.2020 (P-11) directed all the Secretaries of RTAs to provide the information regarding the LOI to be issued to the eligible applicants by next day up to 10.00 a.m., positively, in the proforma specified therein and which reads as under:-

“GOVERNMENT OF HARYANA
TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH
To

All ADCs-cum-Secretaries,
Regional Transport Authorities in the State.
Memo No.14711-733/T1/ST-11
Dated: 20.03.2020.

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

- 1. This is with reference to the hearing of the applicants in the subject cited matter, held through Video Conferencing from Chandigarh to all District Headquarters on 19.03.2020 and 20.03.2020.*
- 2. The information regarding the letter of intent (LOI) to be issued to the eligible applicants should be provided to this office in the following proformas by tomorrow upto 10.00 AM positively:-*

Proforma A *(The applicants who have applied between 21.01.2020 to 28.02.2020 along with the DD of Rs.25000/-).*

<i>Sr. No.</i>	<i>Name and address of the applicant</i>	<i>Details of the route applied for under the State Carriage Scheme of 2016</i>

Proforma B (The applicants who were granted temporary permits under the draft carriage scheme and those to whom LOIs were issued under the Stage Carriage Scheme 2016 and the bus was bought within 90 days of the issue of LOIs).

Sr. No.	Name and address of the applicant	Details of the route applied for under the State Carriage Scheme of 2016

Proforma C (The applicants who have purchased the bus under the draft Stage Carriage Scheme of 2017 but the permits were not granted to them)

Sr. No.	Name and address of the applicant	Details of the route applied for under the State Carriage Scheme of 2016

The aforementioned information be furnished to this office within stipulated time mentioned above in a soft copy and in hard copy through the dealing hand of the case.

Please treat it as **Most Urgent**.

Sd/-Varinder Sharma,
Superintendent
For Transport Commissioner,
Haryana, Chandigarh.”

The desired information was supplied by the respective Secretaries of all RTAs and according to which, total 627 applications were received seeking permits for different routes.

4 (vi) Upon receipt of the above details, the matter was considered at the level of Transport Minister for grant of permits, which was duly approved by the Chief Minister and ultimately, the decision was communicated to all the Secretaries of RTAs by respondent No.2, vide Memo dated 30.03.2020 along with its Annexure-I (P-12).

Since the above Memo is most relevant for adjudication of the matter in controversy, therefore, the same is reproduced hereasunder:-

“GOVERNMENT OF HARYANA
TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH

To

*All ADCs-cum-Secretaries,
Regional Transport Authorities in the State.
Memo No.14872-893 T-1/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 WP(sic SLP) (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 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 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 under the Stage Carriage Scheme of 2016
1.	<i>Applicants who have applied from 21.01.2020 to 28.01.2020 along with DDA of Rs.25000/- (Category-A)</i>	328
2.	<i>Applicant to whom 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 officers is 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 or 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 that scheme also have 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 permit.

Encl: As above.

(Virender Singh Sehrawat)
Addl. Transport Commissioner,
Haryana, Chandigarh.

Endst. No.14894-895 T-1/ST-II dated 30/03/2020.

A copy of above is forwarded to:-

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

(Virender Singh Sehrawat)
Addl. Transport Commissioner,
Haryana, Chandigarh.

Annexure-I

The district wise details of all the categories as complied on the basis of the information received from field offices.

<i>Name of the District</i>	<i>Applicants who have applied from 21.01.2020 to 28.01.2020 along with DDA of Rs.25,000/- (Category-A)</i>	<i>Applicant to whom temporary permits have been granted under draft Stage Carriage Scheme of 2017 (Category B-I)</i>	<i>Applicants who had brought the buses under the Stage Carriage Scheme of 2016 within 90 days of issue of LOI but could not be granted to them (Category B-II)</i>	<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>
<i>Ambala</i>	<i>NIL</i>	<i>1</i>	<i>NIL</i>	<i>1</i>
<i>Bhiwani</i>	<i>16</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
<i>Ch. Dadri</i>	<i>9</i>	<i>NIL</i>	<i>NIL</i>	<i>10</i>
<i>Faridabad</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
<i>Fatehabad</i>	<i>44</i>	<i>4</i>	<i>1</i>	<i>6</i>
<i>Gurgaon</i>	<i>3</i>	<i>NIL</i>	<i>NIL</i>	<i>19</i>
<i>Hisar</i>	<i>39</i>	<i>15</i>	<i>NIL</i>	<i>60</i>
<i>Jhajjar</i>	<i>46</i>	<i>11</i>	<i>NIL</i>	<i>10</i>
<i>Jind</i>	<i>43</i>	<i>17</i>	<i>NIL</i>	<i>21</i>
<i>Kaithal</i>	<i>28</i>	<i>5</i>	<i>NIL</i>	<i>18</i>
<i>Karnal</i>	<i>1</i>	<i>17</i>	<i>NIL</i>	<i>17</i>
<i>Kurukshetra</i>	<i>25</i>	<i>NIL</i>	<i>NIL</i>	<i>2</i>
<i>Narnaul</i>	<i>5</i>	<i>1</i>	<i>NIL</i>	<i>1</i>
<i>Nuh</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
<i>Palwal</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>7</i>
<i>Panchkula</i>	<i>10</i>	<i>NIL</i>	<i>NIL</i>	<i>2</i>
<i>Panipat</i>	<i>1</i>	<i>NIL</i>	<i>5</i>	<i>5</i>
<i>Rewari</i>	<i>9</i>	<i>7</i>	<i>1</i>	<i>4</i>
<i>Rohtak</i>	<i>43</i>	<i>14</i>	<i>NIL</i>	<i>12</i>
<i>Sirsa</i>	<i>NIL</i>	<i>1</i>	<i>NIL</i>	<i>NIL</i>
<i>Sonipat</i>	<i>6</i>	<i>NIL</i>	<i>2</i>	<i>2</i>
<i>Yamunagar</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
<i>Total</i>	<i>328</i>	<i>93</i>	<i>9</i>	<i>197</i>

In pursuance of the above Memo, all the private respondents were granted/issued impugned offer of allotment/ LOIs and temporary permits for a period of one year on those very routes, where the petitioners are plying their buses.

5. Hence, the present writ petition(s).

6. **ARGUMENTS ON BEHALF OF THE PETITIONERS**

- (i) The impugned offer of allotment / LOIs and permits have been issued by respondent No.3 in violation of the order dated 21.01.2020, passed by the Hon'ble Supreme Court;
- (ii) All the private respondents were granted impugned permits on the basis of the applications, which were submitted after the cut-off date i.e. 28.01.2020, fixed by the Hon'ble Supreme Court and reference in this regard is made to offer of allotment/LOIs (Annexures P-13 to P-31);
- (iii) While passing the order dated 21.01.2020, Hon'ble Supreme Court directed the competent Authority to consider the applications for grant of permits as per law, expeditiously, but in any case before 20.03.2020; however, in the present case(s), there is no consideration of the applications at all by the competent Authority; rather the impugned permits were granted/issued merely in compliance of the Government decision despite the fact that the State Government has no power or authority in law to issue such directions;
- (iv) That as on today, the approved Scheme of 2016 is valid in law and this proposition is duly acknowledged by the respondents as well; therefore, in such a scenario, the provisions of Section 104 of

the Act clearly debars the grant of temporary permits except in accordance with the proviso incorporated there. But, in the case(s) in hand, this aspect of the matter has been ignored all together, therefore, the action of the respondent No.3 suffers from grave error of law;

- (v) That neither under the Act; nor as per the Haryana Motor Vehicle Rules, 1993 (*for short 'Rules of 1993'*) or in terms of the Scheme of 2016, the State Government has any legitimate authority or power to take the decision dated 30.03.2020 thereby directing the Secretaries of the RTAs for grant of permits. Thus, the action of the Government has interfered in the independent functioning of the transport authorities and as such, the entire exercise while granting the impugned permits is vitiated;
- (vi) The petitioners were granted stage carriage permits during 17.03.2017 to 28.03.2017, for a period of five years and they are plying their buses on the routes in question to the entire satisfaction of general public as well as of authorities concerned. They are also paying taxes, thus, fairly contributing to the State exchequer; but their rights to carry on business emanating from Article 19 (1) (g) of the Constitution have been infringed by the private respondents under the garb of illegal temporary permits and as such, the

actions of the official respondents are not sustainable in law;

(vii) Since 1993, the State Government has come up with one after another Scheme under the Act, but due to non-application of mind, they are not able to put in place the proper Scheme. It is a matter of record that on 16.05.2017, respondent No.2 while filing an affidavit before the Division Bench of this Court stated that the Government has decided to cancel the Scheme of 2016 and as a result thereof, Draft Scheme of 2017 was issued, but, now on 21.01.2020, the Government has withdrawn the Draft Scheme of 2017 along with all its dispensations with an assurance to the Hon'ble Supreme Court to cancel or modify the Scheme of 2016; however, till date, no concrete steps have been taken in this regard;

(viii) The State of Haryana itself has withdrawn the Draft Scheme of 2017 along with all its dispensations on 21.01.2020, therefore, the stand of the official respondents that applications of the private respondents were pending under the said Scheme is wholly erroneous. When the Draft Scheme of 2017 itself has been withdrawn, then there is no occasion for the respondents to contend that applications, submitted under that Scheme are still valid in law for grant of permits under the Scheme of 2016. Also

submitted that under the Draft Scheme of 2017, the applicant(s) was/were required to deposit a fee of Rs.2000/-, whereas under the Scheme of 2016, an application should be accompanied by way of demand draft of Rs.25,000/- and in the absence thereof, the same cannot be entertained. It is a matter of record that demand drafts submitted by all the private respondents pertain to the period 29.01.2020 to 20.03.2020 i.e. subsequent to the dead-line fixed by the Hon'ble Supreme Court, therefore, by no stretch of imagination, it could be construed that impugned permits were granted/issued on the basis of applications submitted under the Draft Scheme of 2017;

- (ix) Although, State of Haryana tried to justify the grant of impugned permits on the premise that private respondents have purchased buses after making huge investment and paying taxes to the Government, but that would not be treated as a vested right to ask for permits as a matter of course without following the provisions of law. Since in the present case, there is absolute non-compliance of the provisions of Section 104 of the Act inasmuch as no order at all has been passed by respondent No.3 while granting/issuing the impugned permits; rather, it is clearly admitted in their reply that impugned permits were granted in compliance with the Government

decision dated 30.03.2020. Also submitted that despite repeated asking of the petitioners, no order(s) regarding consideration of the applications of the private respondents has been supplied by respondent No.3 and reference in this regard was made to para Nos.21 and 22 of the writ petition;

- (x)** The moment petitioners came to know about the issuance of the impugned permits, they immediately objected the actions of official respondents, but due to COVID-19, petitioners were not able to get the receipts regarding their objections, however, a copy of one such representation dated 20.02.2020, made by Ramesh Kumar (petitioner in CWP No. 7420 of 2020) has been appended as P-10 and reference in this regard is made to para 14 of the writ petition;
- (xi)** If there was any doubt in the mind of the official respondents regarding the import of the order dated 21.01.2020 on the point for consideration of the pending applications under the Draft Scheme of 2017, then appropriate course open for them was to move an appropriate application before the Hon'ble Supreme Court for clarification or modification of the above order, but certainly at their own, it cannot be interpreted in a manner they wanted;
- (xii)** The actions of the official respondents while issuing Memo dated 30.03.2020; consequent offer of allotments/ LOIs as well as impugned permits are

totally illegal, arbitrary, unconstitutional and without jurisdiction, thus, the petitioners are entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution. Reference in this regard is made to judgment of the Hon'ble Supreme Court in '**Sai Chalchitra Vs. Commissioner, Meerut Mandal and others**', (2005) 3 SCC 683;

(xiii) Undisputedly, the petitioners were operating their buses on the routes in question where private respondents have been granted temporary permits in a secret manner inasmuch as the information was sought by respondent No.2 from all the Secretaries regarding total applications for seeking permits, within one day in terms of letter dated 20.03.2020 (P-11) without affording any opportunity of hearing to the petitioners being the affected parties, thus, the action of official respondents violated the principle of natural justice.

7. ARGUMENTS ON BEHALF OF THE STATE:

(i) The Hon'ble Supreme Court while passing the order dated 21.01.2020, neither prohibited the competent authority to grant permits to the applicant(s), who submitted their applications after 28.01.2020; nor there was any such observation to the effect that the applications received between 21.01.2020 to 28.01.2020 would “only” be considered.

Since in the present case(s), private respondents submitted their applications prior to the order dated 21.01.2020 either under the Scheme of 2016 or Draft Scheme of 2017, therefore, there was nothing wrong while granting/issuing impugned permits in their favour.

- (ii) Just for safer side, the applicants, who had submitted their applications either under Draft Scheme of 2017; or Scheme of 2016, but could not be granted permits due to operation of the interim stay, were asked to submit fresh applications along with demand draft of Rs.25,000/- in terms of Scheme of 2016, therefore, the same cannot be construed that their applications were received after the cut-off date i.e. 28.01.2020;
- (iii) The Hon'ble Supreme Court while passing the order dated 21.01.2020 disposed off matter on the basis of proposal given by the State Government while permitting the appellants/applicants or any other eligible person to make applications within one week i.e. up to 28.01.2020, if not already made; but in the cases in hand, as submitted above, the applications of the private respondents were already pending before the Authorities, therefore, it is wrong to allege that they were granted permits based on the applications submitted after above deadline.

- (iv) All the petitioners have been granted permits under the Scheme of 2016, which is open for all being valid as on today. Any person or Society/ Firm/ Company in addition to the STUs can apply for permits and there is no ceiling fixed regarding the number of such permits on the notified routes and as such, the State Government has rightly followed the equality clause enshrined under Article 14 of the Constitution while granting impugned permits to the private respondents;
- (v) The petitioners being the existing operators want to create their monopoly and wish to obstruct the plying of buses by the private respondents despite the fact that they have also been issued the valid temporary permits. While concealing true facts, petitioners obtained an interim stay from this Court and stopped the plying of buses of private respondents without there being any cause of action; rather they have completely misused the process of the Court in the wake of public interest to secure their private interest;
- (vi) The petitioners have selectively impleaded the private respondents as parties and deliberately, did not challenge the permits granted in favour of some other persons for the reasons best known to them, thus, they have not approached the Court with clean hands, rather this shows their *mala fide* intention;

- (vii) The actions of the official respondents while granting the impugned permits are perfectly in accordance with the Act, Rules of 1993 and Scheme of 2016; but on the other hand, petitioners have miserably failed to show the violation of any relevant provisions of law or infringement of their legal right, thus, they have no *locus standi* to invoke the jurisdiction of this Court under article 226 of the Constitution;
- (viii) Although, there is no violation of the order dated 21.01.2020, referred above, but even if it is found, then appropriate course for the petitioners would be to file a Contempt Petition before the Hon'ble Supreme Court, instead of invoking the jurisdiction of this Court by way of the present writ petition(s);
- (ix) Private respondents after making huge investment purchased buses; paying taxes to the Government as well as salaries to the drivers & conductors and they were granted temporary permits for a period of one year, thus, in case the same are invalidated by this Court, the general public would suffer;
- (x) Petitioners have merely annexed the copy of Memo dated 30.03.2020 with their writ petition(s), but there is no specific prayer for setting aside of the same and as such, they cannot be permitted to challenge the above Memo during the course of arguments.

8. ARGUMENTS ON BEHALF OF PRIVATE RESPONDENTS

- (i) Apart from supporting the contentions raised on behalf of the State, it is submitted by learned counsel for the private respondents that petitioners have concealed the availability of alternative remedies by way of an Appeal as well as Revision under Sections 89 and 90 of the Act, respectively, therefore, the writ petitions are liable to be dismissed only on this ground.

Further submitted that petitioners did not approach this Court with clean hands and obtained the interim stay order against the impugned temporary permits by concealing true facts of the case(s).

Also submitted that the State of Haryana on 21.01.2020 while making a statement before Hon'ble Supreme Court has withdrawn the Draft Scheme of 2017 along with all its dispensations, but that will not include the pending applications submitted thereunder. Learned counsel while relying upon the definition of word 'dispensation' from 'Oxford Dictionary' submitted that 'dispensation' means "*the action of distributing or supplying something*"; therefore, according to him, the term 'dispensation' is to be construed with reference to the permits only and not regarding the pending applications under the Draft Scheme of 2017. Thus

at best, the State Government decided to withdraw the permits granted under Draft Scheme of 2017 and not the pending applications. In other words, the contention of learned counsel for the private respondents is that the Government has never withdrawn the applications pending under the Draft Scheme of 2017; rather only the permits issued thereunder were sought to be withdrawn and nothing beyond that.

9. Heard learned counsel for the parties and perused the paperbook as well as the photocopies of the records supplied by learned State Counsel.

10. The points for consideration to decide the matter in controversy would be as under:-

- (A) Whether in view of the facts and circumstances of the present case(s), the State Government was empowered in law to take the purported executive decision communicated vide Memo dated 30.03.2020?
- (B) Whether impugned offer of allotments/LOIs and permits granted/issued in favour of the private respondents are legally sustainable?

11. POINT 'A':

Although, learned State Counsel seriously objected to the contention raised on behalf of the petitioners to challenge the Memo dated 30.03.2020, but the same is liable to be rejected due to the following reasons:-

- (a) In the present case(s), apart from challenging the impugned offer of allotment/ LOIs and permits, specific prayer has been made on behalf of the petitioners for setting aside “*all orders, instructions, letters or actions*”, thus, the prayer clause as summarized in para No.3 (*supra*) of this order will cover Memo dated 30.03.2020 as well.
- (b) Respondent No.2 while circulating above decision of the State Government directed all the Secretaries for its compliance and in response thereto, the impugned permits were granted/issued, therefore, it would be most relevant to examine the legality of the above said Memo, which will go to the root of the case(s).

Concededly, the Draft Scheme of 2017 was only a proposal issued under Section 99 (1) of the Act, which has been withdrawn by the State Government along with all the dispensations afforded thereunder and in view of the order dated 21.01.2020, passed by the Hon’ble Supreme Court, the above Draft Scheme stands nullified.

This is an admitted position that till date, the State Government has neither cancelled; nor modified the Scheme of 2016 and all the impugned permits have been issued under this very approved Scheme.

12. Under the Act, there are three different provisions, which deal with the grant of temporary permit viz. Sections 87, 99 & 104 and the same read as under:-

“Section 87. Temporary permits.—(1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section 80, grant

permits to be effective for a limited period which shall, not in any case exceed four months, to authorise the use of a transport vehicle temporarily—

- (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or*
- (b) for the purposes of a seasonal business, or*
- (c) to meet a particular temporary need, or*
- (d) pending decision on an application for the renewal of a permit, and may attach to any such permit such condition as it may think fit:*

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year.

(2) Notwithstanding anything contained in sub-section (1), a temporary permit may be granted thereunder in respect of any route or area where—

- (i) no permit could be issued under section 72 or section 74 or section 76 or section 79 in respect of that route or area by reason of an order of a court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained;*
- (ii) as a result of the suspension by a court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension:*

Provided that the number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of

the permits have been restrained or, as the case may be, the permit has been suspended.

Section 99. Preparation and publication of proposal regarding road transport service of a State transport undertaking.—(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.]

Section 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.”

Perusal of sub-Section (1) of Section 87, *inter alia*, reveals that Regional Transport Authority and the State Transport Authority, (*for short ‘RTA’ and ‘STA’, respectively*), may without following the procedure laid down in Section 80 grant permits temporarily to be effective for a limited period which shall not in any case exceed four months to authorize the use of a transport vehicle in the circumstances enumerated from Clause (a) to (d), above, i.e. on special occasions for fair and religious gatherings, seasonal business, temporary need and pending decision on an application for renewal of a permit.

Sub-Section (2) of Section 87 also talks about grant of temporary permit where no permit could be issued under Sections 72, 74, 76 and 79 on account of some restraint order passed by a Court or other competent Authority.

Since in the case(s) in hand, the impugned temporary permits are purported to have been granted under the approved Scheme of 2016 for a period of one year, but the same are not falling under Clauses (a) to (d) of sub-Section (1) of Section 87; nor there was any restraint order on the date of granting the impugned temporary permits, therefore, the provisions of Section 87 are not attracted.

Perusal of sub-Section (2), Section 99 of the Act reveals that when a proposal is published under sub-Section (1), then from the date of publication of proposal, no permit shall be granted to any person except a temporary permit during the pendency of such proposal and the same shall be valid only for a period of one year from the date of its issuance or till the date of final publication of the Scheme under Section 100 (3), whichever is earlier.

Undisputedly, the approved Scheme of 2016 published under Section 100 (3) of the Act is already in existence and as on today, there is no proposal pending under Section 99 (1), therefore, the provisions of Section 99 (2) are also not relevant to decide the matter in controversy.

Upon consideration of Section 104 of the Act, it is clearly discernible that where a Scheme has been published under Section 100 (3) in respect of any notified area or notified route, the STA or RTA, as the case may be, shall not grant any permit except in accordance with the provisions of the Scheme. However, proviso to Section 104 says that where no application for a permit has been made by the STU in respect of any notified area or notified route in pursuance of an approved Scheme, the STA or RTA, 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 STU in respect of the area or route.

In view of the above, it has clearly emerged that provisions of Section 104 of the Act were most relevant for consideration before granting the impugned temporary permits under the Scheme of 2016, but this aspect of the matter has completely been ignored by respondent No.3.

12 (i) Parties are *ad-idem* that in view of the provisions of Section 100 (3) of the Act, the Scheme of 2016 is valid as on today.

The Hon'ble Supreme Court in the case of **Gajraj Singh etc. vs. State Transport Appellate Tribunal, AIR 1997 SC 412**, held that "*it is settled law that scheme approved under Chapter IVA, which is equivalent to Chapter VI of the Act, is a self-contained and self-operative scheme and is a law by itself. The scheme operates to the exclusion of private operators with non-obstante clause that the STU should obtain permits to run stage carriages in the notified area, routes or a portion thereof to provide coordinate efficient, adequate and economical road transport service. Thereby the right to apply for and obtain a stage carriage permit has been frozen to all private operators, except as saved under the scheme itself. Until the scheme gets modified or cancelled by the State it would continue to be in operation*" (vide para 48).

12 (ii) Section 104 of the Act came up for consideration before the Hon'ble Supreme Court in case '**UP State Roadways Transport Corpn., Lucknow through its General Manager Vs. Anwar Ahmed & ors.'** (1997) 3 SCC 191 and in para 7 thereof, it was held that:-

"It would, therefore, be seen that where the 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. Thus, the appellant-Corporation has the exclusive right or monopoly to ply their stage carriages and obtain the required permit as per the scheme. The proviso gives only a limited breath of life, namely, until the Corporation puts the vehicles on the notified routes as per the scheme, temporary permits may be granted to private operators. Thereby, it would be clear that temporary inconvenience to travelling public is sought to be averted till the permits are taken and vehicles are

put on the route by the appellant. Therefore, the temporary permits will have only limited breath of life. Private operators are attempting to wear the mask of inconvenience to travelling public to infigure into forbidden notified area, route or portion thereof to sabotage the scheme. The permits were taken by the appellant and the vehicles are put on the route in terms of the scheme. Therefore, the direction given by the High Court at the pain of contempt is obviously illegal.”

It is relevant to mention here that Section 104 (*ibid*) is covered under Chapter VI of the Act and in view of the mandate of Section 98, the provisions of Chapter VI and rules & 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 and reference can be made to para 14 of the judgment of Hon’ble Supreme Court in **(1992) 2 SCC 620-Ram Krishna Verma and others Vs. State of UP and others**, which reads as under:-

“It is true as contended by Shri Salve that in Mithilesh Garg v. Union of India, this court held that the liberal policy of grant of permits under Section 80 of the Act is directed to eliminate corruption and favouritism in the process of granting permits, eliminate monopoly of few persons and making operation on particular route economically viable and encourage healthy competition to bring about efficiency in the trade. But the free ply is confined to grant of permits under Chapter V of the Act. By operation of Section 98 of the Act, Chapter VI overrides Chapter V and other law and shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or any other law for the time being in force or any instrument having effect by virtue of such law. The result is that even under the Act the existing scheme under the repealed Act or made under Chapter VI of the Act shall have over-riding effect on Chapter V notwithstanding any right given to private operators in Chapter V of the Act. No corridor protection to private operators is permissible.”

Although, learned State Counsel tried to justify that powers of RTAs have been delegated to the respective Secretaries in terms of Rule 114 (2) of the Rules of 1993 for issuance of the permits, however, there is nothing on record to suggest that powers of STAs or RTAs, which are multi-members bodies, constituted under Section 68 (2) of the Act, were ever delegated to the Secretaries for the purposes of Section 104 as well. Still further, Section 104 nowhere provides that the powers of RTA can be delegated to the Secretary for grant of permits while exercising the powers by way of delegation conferred under Section 68 (5), which concededly is the part of Chapter V of the Act and as a result thereof, the same cannot be construed that powers of RTAs were delegated to the Secretaries, including respondent No.3, to exercise the jurisdiction under Section 104 of the Act while granting the impugned permits. Be that as it may, it can be observed with certainty that the State Government was having no powers or authority in law to take the purported executive decision communicated vide Memo dated 30.03.2020, thereby directing the transport authorities to grant the impugned LOIs/permits.

Moreover, this is an admitted fact by respondent No.3 also in the reply filed on behalf of respondent Nos.1 to 3 that impugned temporary permits were issued in compliance of the above Memo.

12 (iii) This Court has gone through the photocopy of the records produced by learned State Counsel, which clearly indicate that after passing of the order dated 21.01.2020, the matter for grant of permits was submitted for consideration of the Transport Minister by the Principal Secretary, which he agreed on 20.03.2020; it was approved by the Chief Minister on 27.03.2020 and ultimately, the decision has been communicated by respondent No.2 vide Memo dated 30.03.2020 to all concerned.

Perusal of the above Memo clearly reveals that all the applications were categorized by the Government under four different categories i.e. A, B-I, B-II & C and all the Secretaries were intimated by respondent No.2 regarding the grant of stage carriage permits under the Scheme of 2016 while directing that:-

“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 permits to applicants falling in categories B-I, B-II and C....”.

12 (iv) Although the above executive decision is not expressed to have been taken in the name of Governor as per Article 166 (1) of the Constitution, but in substance, it is duly established that after receipt of complete information, the decision for grant of permits was taken by the Transport Minister, which was duly approved by the Chief Minister and ultimately, conveyed the all Secretaries in the State. Thus, the Memo will amount to an executive decision by the State Government, but without any legitimate source of powers at their end.

The law is well settled by the Constitution Bench judgment of Hon’ble Supreme Court in **AIR 1964 SC 1823 (Chitralekha vs. State of Mysore)**, that provisions of Article 166 (1) are only directory and not mandatory. Reference in this regard can be made to paras 4 & 5 of the above judgment, which read as under:-

“4. The next contention advanced is that Annexure IV was invalid as it did not conform to the requirements of Article 166 of the Constitution. As the argument turns upon the form of the

said Annexure it will be convenient to read the material part thereof.

“Sir,

Sub: Award of marks for the “interview” of the candidates seeking admission to Engineering Colleges and Technical Institution.

With reference to your letter No. AAS. 4. ADW/63/2491, dated the 25th June 1963, on the subject mentioned above, I am directed to state that Government have decided that 25% of the maximum marks.....

Yours faithfully,

*Sd/- S. Narasappa,
Under Secretary to Government
Education Department.”*

Ex facie this letter shows that it was a communication of the order issued by the Government under the signature of the Under Secretary to the Government, Education Department. Under Article 166 of the Constitution all executive action of the Government of a State shall be expressed to be taken in the name of the Governor, and that orders made in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order which is so authenticated shall not be called in question on the ground that it is not an order made by the Governor.

If the conditions laid down in this Article are complied with, the order cannot be called in question on the ground that it is not an order made by the Governor. It is contended that as the order in question was not issued in the name of the Governor the order was void and no interviews could be held pursuant to that order. The law on the subject is well settled. In Dattatraya Moreshwar Pangurkar v. State of Bombay, 1952 SCR 612 at p. 625: (AIR 1952 SC 181 at pp. 185-186). Das, J., as he then was, observed:

“Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State.

This, however, does not vitiate the order itself.....

Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not under section 11(1).”

The same view was reiterated by this Court in State of Bombay v. Purushottam Jog Naik, 1952 SCR 674: (AIR 1952 SC 317) where it was pointed out that though the order in question there was defective in form it was open to the State Government to prove by other means that such an order had been validly made. This view has been reaffirmed by this Court in subsequent decisions: see Ghaio Mall and Sons v. State of Delhi, 1959 SCR 1424: (AIR 1959 SC 65) and it is, therefore, settled law that provisions of Article 166 of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor. The judgment of this Court in Bachhittar Singh v. State of Punjab (1962) Supp 3 SCR 713: (AIR 1963 SC 395) does not help the appellants, for in that case the order signed by the Revenue Minister was not communicated to the party and, therefore, it was held that there was no effective order.

(5) In the light of the aforesaid decisions, let us look at the facts of this case. Though Annexure IV does not conform to the provisions of Article 166 of the Constitution, it ex facie says that an order to the effect mentioned therein was issued by the Government and it is not denied that it was communicated to the selection committee. In neither of the affidavits filed by the appellants there was any specific averment that no such order was issued by the Government. In the counter affidavit filed by B.R. Verma, Deputy Secretary to the Government of Mysore, Education Department, there is a clear averment that the Government gave the direction contained in Annexure IV and a

similar letter was issued to the Selection Committee for admission to Medical Colleges and this averment was not denied by the appellants by filing any affidavit. In the circumstances when there are no allegations at all in the affidavit that the order was not made by the Government, we have no reason to reject the averment made by the Deputy Secretary to the Government that the order was issued by the Government. There are no merits in this contention.”

12 (v) Also necessary to observe here that official respondents are not disputing the decision taken by the State Government vide Memo, referred above; rather in their reply to para Nos.21 & 22, specifically stated that *“permits have been granted to respondents No.4 to 22 as per rules and in compliance of the orders of the Hon’ble Supreme Court and directions issued by the respondent No.1 in memo dated 30.03.2020”*.

(emphasis supplied)

In view of the above, there remains no doubt that issuance of Memo dated 30.03.2020 would be the purported executive decision of the Government, but at the same time, it is observed that neither under the Act; nor as per Rules of 1993 or in terms of Scheme of 2016, the Government was empowered or authorized to take such a decision, thereby directing the transport authorities to grant the impugned LOIs/permits.

This Court has also perused the Rules of Business of the Government of Haryana, 1977 as well as the Business of the Haryana Government (Allocation) Rules, 1974 (*for short 'Business Rules and Allocation Rules', respectively*), but neither under the Business Rules; nor under the Allocation Rules, Transport Minister or Chief Minister are having any power or authority to intervene in the working of transport authorities in such a manner.

12 (vi) The State Government under the garb of above Memo virtually assumed the power of superior authority over the transport authorities and as such, negated the entire concept of adjudication by *quasi* judicial bodies in such like matters. All the Secretaries including respondent No.3 were directed that permits be issued to Category B-I, B-II & C despite the fact that the State Government was not competent to issue such a mandate for grant of impugned permits. If the course as suggested by the Government is allowed to prevail, then the whole purpose of establishing the transport authorities would be frustrated and that would amount to complete negation of the rule of law.

12 (vii) Under the Act, the provisions have been made to constitute the transport authorities as well as for exercise of powers (administrative or *quasi* judicial) as the case may be. These authorities are free to decide the matter for grant of permits in accordance with law, but the Government decision has interfered in their jurisdiction and vitiated the entire exercise for grant of impugned permits. There remains no doubt that the impugned offer of allotments/ LOIs and permits were issued in compliance of Government decision and as such, the extraneous pressure was created in the mind of respondent No.3 to hamper the working with fairness, thus, by no stretch of imagination, it could be construed that competent authority has taken the independent decision in the matter.

Transport authorities while granting permits are supposed to discharge the *quasi* judicial functions, but in the present case, the State Government virtually seized the matter and controlled the actions of the authorities at the strength of the executive decision. As a result thereof, there remains no doubt to observe that above Memo has vitiated the action of the

respondent No.3 and contravened the provisions of Section 104 of the Act as well as the Scheme of 2016 while granting the impugned permits.

12 (viii) It is quite distressing to note that neither the Principal Secretary to the Transport Minister; nor the Officer, who was advising the Chief Minister, adverted to the provisions of the Act, including Section 104 or the Scheme of 2016; rather it seems that just as a routine, assisted the high level Government functionaries without realizing that the State Government has no role for taking the executive decision regarding the consideration of the matter pertaining to grant of impugned permits.

12 (ix) It is well settled that Statutory Body, constituted under the Act, is supposed to discharge the *quasi* judicial functions fairly and independently without being influenced by the extraneous powers, but as discussed above, in the present case, it is clearly established that impugned permits were granted merely in compliance of the directions of the State Government and respondent No.3 did not think it appropriate to ignore the same; rather followed the course as suggested by the Government, thus, the same is in utter disregard of the rule of law.

12 (x) The judgment of Hon'ble Supreme Court in **(2008) 7 SCC 117, 'Pancham Chand and others Vs. State of HP and others'**, relied upon by learned counsel for the petitioners, is quite valuable being a binding precedent on the point that for grant of permits, the State Government has no say and the Chief Minister or any other Authority could not entertain an application for grant of permit, nor could they issue any order in this regard. Hon'ble Supreme Court in the above case also observed that *quasi* judicial authority has no business even to defend the State or the Chief Minister except to place the facts borne out of the record

and para Nos. 22 & 28 of the judgment, being relevant, are extracted hereunder:-

“22. In the matter of grant of permit to individual applicant, the State has no say. The Chief Minister or any authority, other than the statutory authority, therefore, could not entertain an application for grant of permit nor could issue any order thereupon. Even any authority under the Act, including the appellate authority cannot issue any direction, except when the matter comes up before it under the statute.....

28. We also fail to understand as to how an independent quasi judicial body, like the respondent No.3, could affirm an affidavit together with the State. Its duty before the High Court, in response to the rule issued by it, was to place the facts as borne out from the records. It was not supposed to take any stand one way or the other. It had no business to defend the State or the Chief Minister.”

As a result thereof, it can be safely concluded that the action of the State Government while taking the purported executive decision, communicated to all Secretaries by respondent No.2 vide Memo dated 30.03.2020 is found to be without any legitimate source of powers or lawful authority and as such, resulted into gross interference in the process for grant of the impugned permits in favour of the private respondents.

13. POINT ‘B’

As already discussed under point ‘A’ that Scheme of 2016 is valid as on today. In view of the provisions of Section 104 of the Act, there is an embargo for the STA or RTA, as the case may be, for grant of permits on the notified routes except in accordance with the provisions of the Scheme and the only course open for grant of temporary permits would be the proviso to Section 104, but in any case, the State Government was not competent to take the executive decision dated 30.03.2020 in this regard.

It is a matter of record that after passing of the order dated 21.01.2020 by the Hon’ble Supreme Court, all the private respondents submitted their applications along with the demand draft of Rs.25,000/- (each) and details of which are as under:-

<i>Respondent No.</i>	<i>Date of Application</i>	<i>Date of Demand Draft</i>	<i>Date of issuance of permit</i>
4.	18.03.2020	17.03.2020	13.04.2020
5.	18.03.2020	09.03.2020	10.04.2020
6.	31.03.2020	12.03.2020	10.04.2020
7.	18.03.2020	09.03.2020	10.04.2020
8.	18.03.2020	17.03.2020	10.04.2020
9.	29.01.2020	29.01.2020	10.04.2020
10.	18.03.2020	09.03.2020	10.04.2020
11.	20.03.2020	20.03.2020	10.04.2020
12.	18.03.2020	09.03.2020	10.04.2020
13.	18.03.2020	09.02.2020	10.04.2020
14.	18.03.2020	11.03.2020	10.04.2020
15.	18.03.2020	17.03.2020	29.04.2020
16.	31.03.2020	07.02.2020	10.04.2020
17.	18.03.2020	09.03.2020	10.04.2020
18.	18.03.2020	17.03.2020	10.04.2020
19.	01.04.2020	17.03.2020	24.04.2020
20.	18.03.2020	09.03.2020	10.04.2020
21.	20.03.2020	20.03.2020	10.04.2020

Perusal of above details clearly indicate that private respondents submitted their applications between 29.01.2020 to 01.04.2020 along with respective demand drafts dated 29.01.2020 to 20.03.2020, thus, the applications were made after the cut-off date i.e. up to 28.01.2020 and they were granted permits on the basis thereof.

Although respondents argued and tried to justify that applications for grant of permits were submitted much prior to the order dated 21.01.2020 either under Draft Scheme of 2017 or Scheme of 2016; but the same is not supported by way of any material in this regard except tabulation (R-1). On the other hand, this contention is belied by the impugned offer of allotment / LOIs (P-13 to P-31), which clearly reveal that impugned permits were granted on the basis of applications, submitted after 28.01.2020 along with the requisite bank draft of Rs.25,000/- (each) and for

reference, relevant part of LOI (P-13), issued by respondent No.3, is
extracted as under:-

From

*Additional Deputy Commissioner-cum-Secretary,
Regional Transport Authority,
Karnal*

To

*Sh. Mahinder Singh,
Anmol Motors, Shop No.52, Mahlla Ashram Complex,
Behind Bus Stand, District Karnal.*

Memo No.24/RTA

Dated: 08.04.2020

*Sub.: Issuance of offer of allotment/LOI for the grant of permit
under the State Carriage Scheme of 2016 in pursuance of
orders of Hon'ble Supreme Court of India dated
21.01.2020 in W.P. (C) No.556 of 2020.*

*Please refer to your application dated 18.03.2020
regarding allotment of route/permit under the Stage Carriage
Scheme, 2016 notified on 17.02.2017, which alongwith
application fees of Rs.25,000/- through DD No.828496 dated
17.03.2020 has been received in this office on 18.03.2020.*

*You are hereby issued offer of allotment /LOI for the grant
of temporary stage carriage permit on adhoc basis under the
above mentioned Scheme as per details given below:-*

Name of the District	Sr. No. of route	Name of route (in full)	No. of single trips to be operated.
Karnal	140	Karnal to Radaur via Samora, Indri, Ladwa)	

*The offer of allotment/LOI for the grant of temporary
stage carriage permit is subject to the following terms and
conditions in addition to the provisions prescribed in the
approved Scheme, 2016:-*

- 1. The temporary permit will remain in force till a new
stage carriage scheme replaces Stage Carriage Scheme of
2016.*
- 2. xxxxx*

3. xxxxx

4. xxxxx

In view of the above, there remains no doubt that the private respondents were granted impugned permits on the basis of applications, which were submitted after the cut-off date i.e. 28.01.2020.

13 (i) Grant of permits by the transport authorities under the approved Scheme is not to be taken as a matter of course; rather it would require due consideration of an individual application in accordance with law and for that purpose, each case is to be examined carefully. However, in the case(s) in hand, despite repeated asking by the petitioners, no order has been supplied by respondent No.3 regarding the grant of impugned permits; rather it simply acted in terms of the directions of the State Government and issued the tailor made permits. Since there is neither any order passed by respondent No.3 while considering the applications of private respondents; nor any reasons has been assigned except following the mandate of the State Government to issue permits to three categories i.e. B-I, B-II & C under which all the private respondents are covered. Still further, there is no consideration of the claim of the private respondents in terms of proviso to Section 104 of the Act read with Scheme of 2016, therefore, plea of the equality clause under Article 14 of the Constitution raised in support of the private respondents is totally misplaced.

13 (ii) As a matter of propriety, respondent No.3 ought to have considered the claim of the private respondents for grant of permits on the basis of respective merits, but it simply followed the Government directions, thus, performed the ministerial act for issuance of the impugned permits, hence the same are without jurisdiction. As a result thereof, it is clearly

established that respondent No.3 instead of following the order of the Hon'ble Supreme Court preferred to embrace the Memo dated 30.03.2020.

13 (iii) That in para 21 of the writ petition, it is specifically averred by the petitioners that despite repeated asking from the office of respondent No.3, no copy of the order has been supplied till date; rather verbally told that no order was passed. Even information was sought under the Right to Information Act, 2005, (*for short 'RTI Act'*), but despite that, no copy of order has been supplied to the petitioners. Even the averments, made in para 21 of the petition, are also not denied by the respondents.

Para 21 of the writ petition along with its reply, being relevant, are extracted as under:-

"21. That as stated hereinabove, the petitioners have repeatedly been approaching the office of respondent No.3 for supplying the copies of the permits granted in favour of respondent No.4 to 21 and for the supply of certified copy of any order passed while issuing the said permits. However, the office of respondent No.3 has failed to provide the same and had verbally communicated that no order has been passed while issuing the permits, other than the offers of allotment dated 08.04.2020 and thus petitioner No.2 was constrained to submit an application dated 02.06.2020 under the Right to Information Act for the supply of the copies of permits, applications, demand drafts and the orders passed while issuing the permits in favour of respondents 4 to 21, on the routes in question. True copy of the RTI application dated 02.06.2020 along with its English translation and the postal receipt dated 02.06.2020, are appended herewith as Annexures P-53 & P-54, respectively.

Reply by official respondents:

21. That in reply to para No.21 of the writ petition, it is submitted that permits have been granted to the respondents No.4 to 22 as per rules and in compliance of the orders of the

Hon'ble Supreme Court and directions issued by the respondent No.1 in memo dated 30.03.2020.

Reply of private respondents:

21. That the contents of para No.21 of the writ petition are not relates to the answering respondents and hence need no reply."

Perusal of para 21 of writ petition and its reply make it apparently clear that no order at all was passed by respondent No.3 while granting the impugned permits, therefore, actions of the official respondents are totally illegal, arbitrary and unconstitutional.

As a result thereof, there is no doubt while observing that petitioners have the cause of action as well as *locus standi* for protection of their lawful rights by way of the present writ petition(s).

13 (iv) Also noteworthy that as per averments made in para No.14 of the writ petition, attempts were made by the petitioners to file objections against the grant of impugned permits, but due to COVID-19, they were not able to get the receipt in this regard; however, a true copy of one such representation dated 20.02.2020 made by Ramesh Kumar (petitioner in CWP No.7420 of 2020) has been attached as P-10. Para 14 of the writ petition as well as its reply being relevant are extracted as under:-

"14. That when the petitioners came to know that certain applications have been entertained by the office of respondent No.3 even beyond the period permitted by the Hon'ble Supreme Court of India, they made several attempts to file objections against the grant of permits on the basis of such illegal applications. However, due to the unprecedented situation arising out of the Covid-19 situation, they were unable to get the same diarized in the office of Respondent no.3. A true copy of one of the representation dated 20.02.2020, submitted in the office of respondent no.2, by a similarly situated operator, is attached herewith as Annexure P/10."

Para 14 of the reply of official respondents:-

“14. That in reply to para no.14 of the writ petition, it is submitted that permits have been rightly granted to the respondents no.4 to 22, and any objections raised by the petitioner is totally meritless.”

Para 14 of the reply by private respondents:-

“14. That the contents of para no.14 of the writ petition are wrong and hence denied. The permits have been granted to the answering respondents in accordance with the order passed by the Hon’ble Apex Court. As far as the contents with regard to the representation is matter of record and need no reply. That the letter dated 20.03.2020 (Annexure P-11) is rightly issued by the authority after considering the matter in view of the order of the Hon’ble Supreme Court.”

Perusal of replies of respondents clearly reveal that there is no denial to the factum of representation dated 20.02.2020 (P-10) while raising the objections against the grant of impugned permits. Still further, para No.3 of the above said representation is also important as it talks about the number of permits already granted in favour of Haryana Roadways (STU) and other operators on the routes in question in the following manner:-

“The undersigned has now come to know that the authority is now considering 32 applications on the route in question for the grant of stage carriage permits under the 2016 scheme and would like to humbly point out that no permits should be granted without first conducting a survey/assessment of the requirement of stage carriage services on the route in question, the number of existing services already plying on the route, the availability of road infrastructure and parking areas, Traffic congestion, likelihood of violation of provisions of the Act including speed limits, the possibility of unhealthy competition between operators etc. Besides the fact that it is necessary to fix the number of minimum and maximum trips to be operated on a notified route under the Scheme, the Hon’ble

Supreme Court of India in its judgment reported as AIR 1992 SC page 443, 'Mithilesh Garg Vs. UOI' has clearly held that the aforementioned factors are required to be considered by the transport authorities while considering any application for the grant of a permit. Thus it is absolutely imperative that a survey/assessment be got done on the route in question before considering any application from any 'eligible' applicant. In the instant case already 123 times are being operated on the route in question which includes 51 times of Haryana Roadways and 72 being operated by the private operators, as is clearly borne out from the perusal of the Time Table approved by the competent authority. A copy of the Time Table is attached as Annexure III. Under the circumstances, addition of 96 more times (32 X 3) would result in the collapse of the entire operation on the route in question and would result in chaos, congestion, violation of speed limits, unhealthy completion etc."

Perusal of para 3, extracted hereinabove, clearly reveals that on the routes in question, the Haryana Roadways (STU) is running lot of buses apart from other private operators, but this aspect of the matter has not at all been considered by respondent No.3. Had there been any consideration to the objections filed by the petitioners, then there was no occasion to grant the impugned permits in terms of proviso to Section 104 of the Act read with Scheme of 2016; thus, the actions of the official respondents are not legally sustainable.

13 (v) Petitioners are running their buses at the strength of valid permits; paying requisite taxes to the Government, but their rights to carry on business have been invaded by the private respondents under the garb of impugned permits, which are found to be issued on the same very routes without any legal basis.

To make the factual position clear, details of permits of the petitioners as well as of the private respondents in CWP 8087 of 2020 are tabulated as under:-

<i>Petitioner No(s).</i>	<i>Route No.</i>	<i>From via To</i>	<i>Over-lapped by Respon- dent No(s).</i>	<i>Date of permit</i>	<i>From To</i>	<i>Category</i>
1.	145	<i>(Karnal to Assandh via Chirao Mor, Jundla, Jalmana)</i>	5	13.04.2020	<i>(Karnal to Assandh via Chirao Mor, Jundla, Jalmana)</i>	C
			6	10.04.2020		B1
			7	10.04.2020		B1
			8	10.04.2020		B1
			9	10.04.2020		B1
			10	10.04.2020		C
2.	152	<i>(Indri to Pehowa via Bhadson, Pipli, Kurukshetra, Jyotisar).</i>	21	10.04.2020	<i>(Indri to Pehowa via Bhadson, Pipli, Kurukshetra, Jyotisar).</i>	C
			22	10.04.2020		B1
3.	146	<i>(Karnal to Pundri via Manjura, Nissing, Rasina).</i>	14	10.04.2020	<i>(Karnal to Pundri via Manjura, Nissing, Rasina).</i>	B1
			15	10.04.2020		C
			16	29.04.2020		C
			17	10.04.2020		C
			18	10.04.2020		B1
4.	143	<i>Karnal to Dhand via Kachhwa, Sitamai, Kaul.</i>	11	10.04.2020	<i>Karnal to Dhand via Kachhwa, Sitamai, Kaul.</i>	B1
			12	10.04.2020		B1
			13	10.04.2020		C
5.	140	<i>Karnal to Radaur via Samora, Indri, Ladwa)</i>	4	29.04.2020	<i>Karnal to Radaur via Samora, Indri, Ladwa)</i>	C
			5	13.04.2020		C
			11	15.04.2020		C
6.	150	<i>(Assandh to Panipat via Salwan, Ballah, Munakpul, Kohand)</i>	20	24.04.2020	<i>(Assandh to Panipat via Salwan, Ballah, Munakpul, Kohand)</i>	C
7.	148	<i>(Karnal to Shahabad via Nilokheri, Pipli.</i>	19	10.04.2020	<i>(Karnal to Shahabad via Nilokheri, Pipli.</i>	C
			10	15.04.2020		B1

In view of the above, plea of the official respondents that in case the impugned permits are set aside, the public at large will suffer is liable to be rejected.

It is more than clear that the rights of the petitioners emanating from Article 19 (1) (g) have been infringed under the garb of the impugned permits; thus, they have genuinely challenged the same. Allegations of concealment leveled against the petitioners are without any basis; rather they were forced to approach this Court by way of the present writ petitions for claiming their legal rights and as such, the recourse adopted by them is quite *bona fide*.

13 (vi) Although, learned counsel for the respondents tried to vehemently oppose the writ petitions on the point of *locus standi*, but since fundamental rights of the petitioners to carry on business are found to have been violated, therefore, the plea of *locus standi* is also liable to be rejected outrightly.

Lord Diplock, while dealing with the point of *locus standi* in **R. v. Inland Revenue Commissioners, [1982] AC 617**, opined that “*it would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rule of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.*”

Even otherwise, it is duly established that the impugned permits were granted merely in compliance of the Government decision, which is found to have been taken without any lawful authority, thus, the Court will not remain as a mute spectator in such a scenario. If the glaring violation as

noticed above is allowed to go unchallenged on the plea of *locus standi*, the same would amount to travesty of justice and not in the interest thereof.

Still further, the judgment of the Hon'ble Supreme Court in '**Sai Chalchitra's case** (*supra*) is also fully supporting the case of the petitioners on the point of *locus standi* and para 5 of the same reads as under:-

“After hearing the counsel for the parties, we are of the opinion that the High Court clearly erred in dismissing the writ petition filed by the appellant on the ground of locus standi. The appellant being in the same trade as Respondent 3 has a right to seek the cancellation of the licence granted to Respondent 3 being in violation of the Act and the Rules.”

13 (vii) Although, learned State counsel at the time of arguments did not press the plea of alternative remedy, but the same has been emphatically raised by private respondents while making reference to the remedy of an appeal provided under Section 89 of the Act; but that is not acceptable for the simple reason that remedy of appeal is provided only in a case where the permit has been refused by the transport authority, but since in the present case, there is no refusal order and as such, the plea of alternative remedy of appeal is liable to be rejected.

Still further, learned counsel for the respondents pressed into service the provisions of Section 90 of the Act regarding the remedy of revision, but again, that is also not acceptable in view of the fact that revision would be maintainable against an order made by the STA or RTA, where no appeal lies and if the order is improper or illegal. As already discussed, there is no order at all passed by either STA or RTA or even by respondent No.3 while granting permits to the private respondents, therefore, the plea of alternative remedy by way of revision under Section 90 of the Act is also not helpful to the private respondents.

13 (viii) Although it is strenuously argued by learned counsel for the respondents that private respondents have spent huge amount and paying taxes for the buses purchased by them, but that cannot be a ground to ask for the permit as a matter of right; rather the same is to be granted by the transport authorities in accordance with law. If this plea of the respondents is accepted, then everyone will purchase a bus and can ask for issuance of the permit and there would be a chaotic situation *de hors* the provisions of Section 99 of the Act i.e. to provide an efficient, adequate, economical and properly coordinated transport service.

13 (ix) Law is also well settled since long that “*when a statutory power is conferred for the first time upon a Court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted*”. (**Taylor Vs. Taylor**), (1875) 1 Ch. D 426).

The above legal proposition was duly followed by the privy council in ‘**Nazir Ahmad versus K Emperor 63 Indian Appeals 372**’ in the following manner:-

“where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

Reference can also be made to the judgment of the Hon’ble Supreme Court, reported as ‘**Babu Verguese Vs. Bar Council of Kerala**’, (1999) 3 SCC 422, wherein it was held as under:-

“it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all”.

13 (x) Facts and circumstances of the case clearly reveal that State Government is more interested in utilizing their precious time while taking the executive decision for grant of permits without any lawful authority,

thereby intervening in the functioning of *quasi* judicial authorities, instead of bringing the proper Scheme at the place so as to avoid the perennial litigation and this fact is clearly discernable from the chequered history of various Schemes framed by the State Government right from 1993 uptil date, which in brief are as under:-

Sr. No.	Date of Scheme	Challenged in	Decision
1.	3 rd November, 1993	CWP No. 6163 of 2004(Shiv Cooperative Transport Society Limited Gheer vs. The State Trasnport Controller Haryana and others) and other connected matter	Allowed and clause 2 on scheme was struck down by Division Bench on 11.01.2005.
2.	18 th June, 1998 (Rescinded by state government on 25 th February, 2000)		
3.	19 th January, 2001 “Private Bus Service Scheme”	CWP No. 17112 of 2001 (The Shivani Adarsh Cooperative Transport Society Limited Vs. State of Haryana and others)	Allowed by Single Bench on 2 nd December, 2008
		LPA No. 93 of 2009 titled as Sadhu Ram through Rajesh Kumar vs State of Haryana and others	Dismissed on 10 th February, 2010
		SLP (Civil) No. 23590 of 2010	Dismissed on 09.08.2010.
4.	2003 Scheme. (Withdrawn by State Government)		

5.	<i>3rd May, 2011</i>	<i>CWP No. 9421 of 2011 (The Rania Bratch Cooperative Transport Society Limited and others Vs. State of Haryana and others)</i>	<i>Set aside by Full Bench on 3rd April, 2012 .</i>
6.	<i>12th August, 2013</i>	<i>CWP No. 20869 of 2013 titled as Som Prakash and another v. State of Haryana and another</i>	<i>Disposed off on 28th October, 2014, as state government vide circular dated 28.07.2014 decided to revisit the scheme.</i>

Apart from the above details, a bunch of cases were decided/disposed off by the Division Bench of this Court on 20.12.2012, reported as '*M/s. Vijayant Travels and others v. State of Punjab and others*', **2013(3) R.C.R. (Civil) 518** while considering the Schemes of 03.11.1993 and 18.06.1998, but till date, State Government is not able to do needful in the matter despite giving clear assurance to the Hon'ble Supreme Court on 21.01.2020 for the reasons best known to them.

13 (xi) The plea of the respondents that petitioners have adopted the pick and choose policy while not impleading some of the permit holders as party respondents is also not acceptable for the following reasons:-

- (i)** petitioners are the master of their case(s) and they cannot be forced to implead each and every permit holders as party respondents;
- (ii)** it is the specific case of the petitioners that whatever information was received by them, have been attached with the writ petitions and on the basis thereof, challenge was made against the impugned permits;

- (iii) petitioners have duly explained in the writ petition(s) regarding the non-impleadment of other permit holders and that is found to be quite satisfactory.

13 (xii) The plea raised on behalf of the private respondents regarding the literal interpretation of word 'dispensation' will not serve any purpose for the simple reason that there is no material on record to indicate that private respondents were granted permits on the basis of their applications, submitted under the Draft Scheme of 2017; rather it is duly established that all the impugned permits were granted on the basis of applications, which were submitted subsequent to the cut-off date i.e. 28.01.2020. Moreover, all dispensation afforded under the Draft Scheme of 2017 have been withdrawn and that will include the Circular dated 07.02.2018 as well and that was the only basis for grant of temporary permits under that Scheme. Therefore, once the Scheme as well as Circular dated 07.02.2018 have been withdrawn, then there is no reason to accept that the applications submitted under that Scheme are still valid in law. Consequently, the above plea of the private respondents is also rejected.

CONCLUSIONS:

In view of the facts and circumstances, discussed hereinabove, the irresistible conclusions are as under:-

- i) The State Government was not legally empowered to take the executive decision communicated by respondent No.2 vide Memo dated 30.03.2020, thus, their actions are found to be without legitimate authority;

- ii) As on today, Scheme of 2016 is valid in law; all the petitioners were granted stage carriage permits under this very Scheme on the routes in question for a period of five years i.e. up to March, 2022; plying their buses and paying the requisite taxes to the Government. On the other hand, private respondents have been granted the impugned temporary permits on these very routes in breach of the provisions of the Act including proviso to Section 104 as well as the approved Scheme of 2016;
- iii) The private respondents were granted the impugned temporary permits on the basis of applications submitted between the period 29.01.2020 to 31.03.2020 and as such, the same were not submitted within the deadline fixed by Hon'ble Supreme Court. There is no material available on record either by way of an order or otherwise except tabulation (R-1) that the impugned permits were granted on the basis of pending applications of the private respondents made prior to 28.01.2020;
- iv) The respondent No.3 issued the impugned permits merely in compliance of the Government decision, but without application of mind or in accordance with law, thus, violated the order dated 21.01.2020, passed by the Hon'ble Supreme Court;
- v) Despite repeated asking by the petitioners, respondent No.3 did not produce even a single copy of order showing that applications of the private respondents were considered at all much less in accordance with law while granting the impugned permits, thus, the entire exercise to that effect is vitiated being without jurisdiction;

- vi) The State Government while directing the Secretaries including the respondent No.3 has interfered in the independent functioning of the transport authorities, thus, the process for grant of the impugned permits has been influenced, resulting into the complete negation of the rule of law;
- vii) The petitioners have already been granted the permits to ply their buses on the routes in question; but the private respondents invaded their lawful rights under the garb of the impugned permits, which are found to be legally unsustainable and as a result thereof, the rights of the petitioners flowing from Article 19(1)(g) of the Constitution have been infringed;
- viii) The petitioners while approaching this Court have shown not only sufficient, but genuine interest in the subject matter under challenge for the purpose of *locus standi* and as such, they have rightly invoked the jurisdiction of this Court under Article 226 of the Constitution;
- ix) That all actions of the official respondents are found to be in violation of order of the Hon'ble Supreme Court while not proceeding in accordance with law.

In view of the discussions, made hereinabove, this Court has no option except to allow the present writ petitions.

Consequently, the writ petitions are allowed; the Government decision communicated by respondent No.2 vide Memo dated 30.03.2020 as well as all the impugned offer letters/ LOIs along with temporary permits granted/issued in favour of the private respondents are quashed and set aside.

Photocopies of the records be returned back to learned State
counsel forthwith.

April 8th, 2021
Sachin M. /Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes