In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 18096 of 2020 (O&M)

Date of Decision: 23.02.2021

Salasar Bus Transport Company

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jhanji, Advocate
for the petitioner.

Ms. Kirti Singh, Deputy Advocate General,
Haryana, for the respondents.

Anil Kshetarpal, J.

Through this writ petition, the petitioner calls in question the decision dated 30.03.2020 (Annexure P-15) of the Transport Commissioner, Haryana and the stipulations incorporated in the permit, pursuant to the aforesaid policy decision.

The petitioner prays for the following substantive reliefs:

"ii) issue a writ in the nature of certiorari for quashing of the impugned memo no. 14872-893, T-l/ST-ll dated 30.03.2020 (Annexure P/15) issued by the office of Transport Commissioner, Haryana, whereby it has been decided that temporary permits on ad hoc basis will be granted under the Stage Carriage Scheme of 2016, being illegal, arbitrary and against the provisions of Section 81, 98, 99 and 100 of the Motor Vehicles Act, 1988 and the rules framed thereunder;

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iii) Further issue a writ in the nature of certiorari for quashing the NOTE mentioned on the permits (Annexure P/16 to P/16-F) granted to the petitioner i.e. "That this permit is purely on ad hoc basis and this permit will remain in force till the completion of the process of modification of existing Stage Carriage Scheme, 2016. This permit will not give any equitable right to the permit holder for grant of identical permit under the modified scheme. This permit is valid upto the validity of permit or date of modification of Stage Carriage Scheme, 2016 Whichever is earlier", being violative of Section 81, 98, 99 and 100 of the Motor of the Motor Vehicles Act, 1988 and the rules framed thereunder;

iv) Further issue a writ in the nature of Mandamus directing the respondents to grant regular permits to the petitioner for a period of 5 years in view of section 81 of Motor Vehicle Act under the Stage Carriage Scheme of 2016".

Before examining the respective contentions of the parties, it will be appropriate to trace the history of litigation resulting in the decision taken by the Transport Commissioner on 30.03.2020. The Transport Department, Haryana, on 17.02.2017, issued a scheme in accordance with Section 100 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the 1988 Act"), which is commonly called as the Stage Carriage Scheme of 2016. The history of litigation has been traced while deciding Civil Writ Petition No. 14237 of 2020 on 25.09.2020, which is extracted as under:

"The Stage Carriage Scheme of 2016, was

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challenged before this Court in various writ petitions. The lead case was Civil Writ Petition No. 5867 of 2017 ("The Naya Baksh Co-operative Society Limited and Others v. State of Haryana and Others"). On 01.05.2017, a Division Bench passed the following order:

> *"Additional affidavit of Dr. Suprabha Dahiya, Transport Commissioner, Haryana, Chandigarh, dated 1.5.2017, filed in CWP No. 5936 of 2017, in Court, is taken on record. Copy furnished to counsel for the petitioners. It has been stated therein that on re-consideration, the State Government has decided to withdraw the Scheme of 2016 for grant of stage carriage permits to the private transporters.*
>
> *Learned counsel for the State seeks short adjournment to apprise the Court about the status of the applications processed for issue permits under the Scheme 2016, which has been withdrawn.*
>
> *Adjourned to 4.5.2017.*
>
> *A copy of the order be placed on the file of each connected case".*

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

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"11. In the case in hand, a final scheme has already been published on 17.2.2017. In case it is cancelled now, there would be vacuum as no scheme as such will be in force under which anyone can be permitted to ply the buses. Even if on cancellation simultaneously a proposed scheme is to be published under Section 99 of the Act, still fresh permits temporarily will have to be issued in terms of Section 99(2) of the Act, during the pendency of the proposal, which may again have to be on certain basis which can possibly be provisions of the proposed scheme as there would be no other scheme applicable in view of cancellation of 2016 scheme.

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

13. To take care of such a situation, learned counsel for the petitioners submitted that

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prior to the framing of 2016 scheme when draft scheme was issued on 25.2.2016, schemes framed by the State in the year 1993 and 2013 were in force. Even at that stage, the State had issued notification on 25.2.2016 in exercise of powers conferred under Section 99 (1) of the Act proposing to supersede earlier schemes notified in the years 1993 and 2013 by formulating proposed scheme and the same was published in the official gazette as well as in the newspapers.

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

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

16. As 2016 scheme will remain operative till such time new scheme is notified, the State shall be at liberty to issue permits to the applicants, who had already registered on the portal of the Transport Department namely

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"Vahan", under the 2016 scheme on the same terms and conditions as are applicable to the persons, who have been granted permits earlier under the 2016 Scheme, if they fulfill the conditions applicable.

17. The writ petitions are disposed of accordingly".

Certain applicants, who were issued offer of allotment to enable them to make preparation to start operating on the routes after purchasing the buses but failed to fulfill the conditions within the time prescribed, filed a Review Application No. 298 of 2017. The aforesaid review application was disposed of on 21.07.2017. The operative part of the said order is extracted as under:-

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

Be that as it may, in our opinion, that

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

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

With the aforesaid modification in the order passed on 16.5.2017, the review application is disposed of".

The writ petitioners herein, are also identically situated.

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

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which is extracted as under:-

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

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

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

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The matters be listed after six weeks".

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

> *"In view of the statement made on behalf of the State Government, referred to above, which we have accepted, nothing remains for consideration in these appeals. However, we make it clear that all future actions be proceeded in accordance with law.*
>
> *The appellant(s)/applicant(s) or any other eligible person will be free to make application(s) to the concerned authority, if already not made, for registration and for grant of permit within one week from today, and if so made, the competent authority may consider the same as per law expeditiously and in any case before 20th*

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March, 2020.

If the appellants(s)/applicant(s) are aggrieved by any decision taken by the competent authority, it will be open to them to pursue such other remedies as may be permissible in law including under Section 102 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".

It would be noted here that the Supreme Court corrected the typographical order vide order dated 28.01.2020. The corrected order is extracted as under:-

"On a mention being made by the learned counsel for the appellant(s), "Section 100(2) of the Motor Vehicles Act, 1988" referred in the penultimate paragraph at page 3 of the order passed on 21.01.2020 in Civil Appeal No.556 of 2020 and connected cases shall now be read as "Section 102 of the Motor Vehicles Act, 1988".

Order dated 21.01.2020 is corrected to the above extent only".

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

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"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 CWP(C) No. 556 of 2020.

Reference on the subject cited above.

It is stated that Hon'ble Supreme Court of India in its order dated 13.10.2017 in SLP No.22800 of 2017 has restrained the State from finalization of the Stage Carriage Scheme of 2017 the draft of which was notified on 20.06.2017. In compliance of the Orders of Hon'ble Apex Court, the said draft scheme was not finalized by the State Government. The State Government had sought the permission from the Hon'ble Supreme Court in aforementioned SLP to withdraw the draft Stage Carriage Scheme of 2017. A statement was also made before the Hon'ble Supreme Court to modify the Stage Carriage Scheme of 2016 notified on 17.02.2017.

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

"The appellant(s)/applicant(s) or any other eligible person will be free to make application(s) to the

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concerned authority, if already no made for registration and for grant of permit within one week from today, and if so made, the competent authority may consider the same as per law expeditiously and in any case before 20 March, 2020".

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

Sr. No.	***Category***	***No. of permits to be issued under the Stage Carriage Scheme of 2016***
1.	*Applicants who have applied from 21.01.2020 to 28.01.2020 along with DDR of Rs.25000/- (**Category-A**)*	*328*
2.	*Applicant to who temporary permits have been granted under draft Stage Carriage Scheme of 2017 (**Category-B-I**)*	*93*
3.	*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**)*	*9*
4.	*Applicants who have purchased the buses for the grant of permit under the*	*197*

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	*Stage Carriage Scheme of 2016 or 2017 but permit was not granted to them (**Category-C**)*	

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

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

1. *The buses purchased by the applicants for operation under the Stage Carriage Scheme of 2016 or draft Stage Carriage Scheme 2017 and not registered as yet be registered as these are BS-IV pollution norms compliant buses which are to be registered on or before 31.03.2020 positively.*

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2. *The buses purchased by the applicants for operation under the Stage Carriage Scheme of 2016 and 2017, whether registered or not, be given permit under the Stage Carriage Scheme of 2016 after registration on the routes applied for by them in their respective districts. Without a proper application no permit shall be granted.*

3. *The applicants to whom temporary permits were granted under the draft Stage Carriage Scheme of 2017 be given permits under the Stage Carriage Scheme of 2016 on the routes opted by them in the application(s) in their respective districts. As the draft scheme 2017 is no longer in existence so the permits issued under than scheme have also become non-existent.*

4. *The applicants who had brought the buses under the Stage Carriage Scheme of 2016 within 90 days of the issue of LOI be given permit on the routes mentioned in the LOI issued to them earlier in the said scheme.*

5. *A modal LOI having terms and conditions for the issue of the temporary permit on ad hoc basis under the Stage Carriage Scheme of 2016 is enclosed.*

6. *The temporary permits to the eligible applicants shall be granted purely on ad hoc basis with a clear stipulation on the permit that this arrangement will remain in force till the completion of the process of modification of existing Stage Carriage Scheme 2016. The permits must*

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also have a clear stipulation that this arrangement will not give any equitable right to the permit holder for grant of identical permit under the modified scheme.

7. *The applicants under the erstwhile Stage Carriage Scheme 2017 will be required to pay full application fee under Stage Carriage Scheme 2016, before consideration of their application for grant of permit under 2016 scheme. Full application fee of 2016 scheme will have to be paid irrespective of any amount paid under 2017 scheme.*

8. *The life of the temporary permit issued on ad hoc basis under the Stage Carriage Scheme of 2016 shall be co-terminus with the age of plying of the vehicle.*

The above directions should be adhered to in letter and spirit. Complete record of the issue of permits should be kept duly signed by all concerned and countersigned by the ADC-cum-Secretary, RTA concerned and this detail should be sent to this office within one week of the issue of the permits.

Encl.: As above.

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

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

A copy of the above is forwarded to:-

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

2. *PS/TC for kind information of Worthy Principal*

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Secretary, Transport.

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

On the application of the petitioner for various permits, he has been granted temporary permit incorporating condition No.6 of the decision dated 30.03.2020.

As noticed above, the petitioner now prays for quashing of the communication dated 30.03.2020 and the stipulations consequently incorporated.

This Court has heard learned counsel for the parties and with their able assistance, perused the paper book.

Learned counsel representing the petitioner contends that condition No. 6 is illegal and against the provision of Section 81 of the 1988 Act. He further contends that once the permit has been issued under the Scheme 2016, then it has to be valid for a period of five years and further liable to be renewed in accordance with the procedure prescribed under Section 81 of the 1988 Act.

Per contra, Ms. Kirti Singh, Deputy Advocate General, Haryana, has contended that the cancellation/modification of the Stage Carriage Scheme of 2016 is under consideration of the State Government and therefore, in order to grant temporary permits, the decision has been taken on 30.03.2020. Thus, she submits that the petitioner, who has applied pursuant to the decision dated 30.03.2020 and has been granted permit, has no right to challenge the temporary permit.

Having considered the arguments of learned counsel for the

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parties, this Court is of the considered view that there is no substance in the writ petition. The history of litigation has already been traced and needs no reiteration. No doubt, Section 81 of the 1988 Act provides that the permit, so issued, shall be valid for a period of five years, however, there are two exceptions; one is a temporary permit issued under Section 87 and second is a special permit issued under 87(8) of the 1988 Act. Sections 81 and 87 of the 1988 are extracted as under:-

> *"**81. Duration and renewal of permits**.—(1) A permit other than a temporary permit issued under section 87 or a special permit issued under sub-section (8) of section 88 shall be effective 2 [from the date of issuance or renewal thereof] for a period of five years:*
>
> *Provided that where the permit is countersigned under sub-section (1) of section 88, such countersignature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit.*
>
> *(2) A permit may be renewed on an application made not less than fifteen days before the date of its expiry.*
>
> *(3) Notwithstanding anything contained in sub-section (2), the Regional Transport Authority or the State Transport Authority, as the case may be, may entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.*

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(4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely:—

(a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely:—

(i) plying any vehicle—

(1) without payment of tax due on such vehicle;

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle;

(3) on any unauthorised route;

(ii) making unauthorised trips:

Provided that in computing the number of punishments for the purpose of clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account:

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Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

(5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under clause (d) of section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded.

XXXX XXXX XXXX XXXX XXXX

***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:

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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; or

(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

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

On conjoint reading of the aforesaid two provisions, it is apparent that the Regional Transport Authority and the State Transport Authority are entitled to grant temporary permits to be effectual for a limited period. Still further, a policy decision has been taken by the Government in order to get over the present situation in view of the long-drawn litigation. It is also not in dispute that on the application of the petitioner under the decision dated 30.03.2020, he has been granted temporary permits. The petitioner, now, cannot turn around and claim that he should have been granted permit for a period of five years. It is not in dispute that the modification of the existing Stage Carriage Scheme, 2016, is under consideration of the Government and these steps have been taken only till the completion of the process of the modification.

Learned counsel for the petitioner has relied upon the decision of the Supreme Court in ***Punjab Roadways, Moga, through its General Manager v. Panja Sahib Bus and Transport Company and Others (2010) 5 SCC 235*** and ***Kerala State Road Transport Corporation and Others v. Baby P.P. and Others (2018)7 SCC 501***. Both these judgments interpret Section 104 of the 1988 Act. Section 104 provides restrictions on grant of permit in respect of notified area or notified route. It is provided that the State Transport Authority or the Regional Transport Authority shall not grant any permit except in accordance with the provisions of the Scheme. In fact, Section 104 takes its colour from Section 103 of the 1988 Act. Both Sections 103 and 104 of the 1988 Act are extracted as under:-

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*"**103. Issue of permits to State transport undertakings**. — (1) Where, in pursuance of an approved scheme, any State transport undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a goods carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter V.*

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or, as the case may be, the Regional Transport Authority concerned may, by order,—

(a) refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending;

(b) cancel any existing permit;

(c) modify the terms of any existing permit so as to—

(i) render the permit ineffective beyond a specified date;

(ii) reduce the number of vehicles authorised to be used under the permit;

(iii) curtail the area or route covered by the

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permit in so far as such permit relates to the notified area or notified route.

(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the State Transport Authority or any Regional Transport Authority under sub-section (1) or sub-section (2).

***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".

Sections 103 and 104 of the 1988 Act deal with an entirely different eventuality. The Supreme Court, in both the aforesaid judgments, has held that in view of the fact that the specified routes have been

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exclusively reserved for the State Undertakings, the directions issued to grant regular permits to the private transport operators is not justified and only temporary permits could have been granted for the facility of the public. Hence, both the decisions, with greatest respect, have no application.

Further, the decision dated 30.03.2020 is in the realm of the policy decision and in the absence of violation of a statutory provision or the decision being arbitrary, this Court does not find it appropriate to interfere. Hence, the writ petition is dismissed.

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

(Anil Kshetarpal)
Judge

February 23, 2021
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No

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