

CWP-6861-1991

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2023:PHHC:119862

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-6861-1991

Date of decision : 12.09.2023

M/s Ambedkar Bus Service Regd. Patiala

... Petitioner

Versus

The State Transport Appellate Tribunal Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Rohit Kapoor, Advocate
for the petitioner.

Mr.Ferry Sofat, Addl.A.G. Punjab.

Mr.Aman Sharma, Advocate
for respondent no.3.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 17.09.1988 (Annexure P-4) passed by the respondent no.2-The State Transport Commissioner, Punjab as well as the order dated 12.10.1990 (Annexure P-5) passed by the respondent no.1-The State Transport Appellate Tribunal vide which the appeal filed by the petitioner and one M/s Patiala Bus Highways Private Limited has been dismissed.

2. Brief facts of the present case are that the petitioner is a partnership firm which is registered under the Indian Partnership Act having its Head Office at Patiala and has two partners, both of whom belong to the scheduled castes community and are citizens of India. The Government of

Punjab in exercise of its powers under sub-section 1-A read with sub-section 1-B of Section 47 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act 1939) was pleased to reserve 25% of the stage carriage permits to be granted in any calendar year for the members of the scheduled castes domiciled in Punjab, vide its notification dated 13.09.1979, a copy of which has been annexed with the present writ petition as Annexure P-1. The State Transport Commissioner, Punjab vide notice dated 22.03.1998 which was published in the Motor Transport Gazette, invited applications for grant of regular stage carriage permits on 5 different routes including the route in question i.e, Sultantpur-Patiala via Saiflabad Bhandal-Kapurthala Jalandhar Ludhiana- Nandpur Kesho for which there were 4 number of permits with two return trips daily. A perusal of the notice (Annexure P-2) would show that the same has been issued in pursuance of the judgment of the Hon'ble Supreme Court dated 27.07.1987 in Civil Appeal no.1522 of 1987 titled as "***M/s Jagjit Bus Service (Regd.) Amritsar vs. The State Transport Commissioner, Punjab and another***" reported as ***AIR 1987 Supreme Court 2272***. In the said notice, specific mention has been made with respect to the government policy which provided for a quota of 25% of the stage carriage permits to be reserved for scheduled castes/scheduled tribes and reference has also been made with respect to the other categories for which the reservations were made. It was provided that the applicants who were claiming reservation, were required to annex necessary documents including a certificate in support of their claim. The petitioner firm which fulfilled the said qualification as it was domiciled in Punjab and also had two partners who belonged to the scheduled castes community, had applied for two permits with one return trip on the route in question.

3. The State of Punjab in exercise of the powers under Section 43-A of the Motor Vehicles Act, 1939 and Rules 4.4-A of the Punjab Motor Vehicles Rules, 1940 was pleased to issue certain directions to respondent no. 1 vide notification dated 13.09.1979 (Annexure P-3). The directions contained in Clause 4 specifically mentioned that in the case of a firm not more than 5 permits shall be granted and thus, the petitioner being a firm could have been granted up to 5 permits. The State Transport Commissioner vide impugned order dated 17.09.1988 considered the case of 22 applicants with respect to the route in question and granted all the 4 permits with two return trips daily to the Pepsu Road Transport Corporation, Kapurthala Depot (respondent No. 3). The claim of the petitioner as well as of the other candidates namely Jullundur-Ludhiana Transport Co. Regd. Jullundur, Kalgidhar Transport Co. Regd. Phagwara and Goraya Bus Service, Goraya, who were also claiming stage carriage permits on the basis of reservation was rejected primarily on the ground that the petitioner and the said firms/societies had already been granted stage carriage permits earlier and thus, were not to be granted stage carriage permits for the route in question in public interest. Neither the *inter se* merits of the four candidates who had applied on the basis of reservation was considered nor the *inter se* merits of the petitioner with the general category or with that of the respondent no. 3 was considered. The fact that the respondent no.3 had temporary permit for the route in question which was not re-issued in their favour beyond 01.08.1979 was noticed in internal Page 3 of the impugned order (Page 20 of the paper book). The petitioner firm and M/s Patiala Bus Highways Private Limited had filed two separate appeals i.e. Civil Miscellaneous Appeal No. 152 and 157 respectively on 02.12.1988 which is prior to 01.07.1999, the date on which the new Motor Vehicles Act, 1988 was

enforced. The State Transport Appellate Tribunal rejected the claim of the petitioner solely on the basis of the fact that the petitioner had already been granted permit on the Patiala Jalandhar route on the basis of scheduled castes reservation.

4. That aggrieved against the order dated 17.09.1988 (Annexure P-4) and 12.10.1990 (Annexure P-5), the present writ petition has been filed.

5. The Hon'ble Division Bench of this Court vide order dated 22.07.1992 had allowed the writ petition and after quashing the impugned order with respect to one of the permits granted in favour of respondent no. 3, a direction was given to the State Transport Commissioner to grant the same in favour of the petitioner if the petitioner was otherwise suitable for the same. Respondent no. 3 filed SLP(C) No. 14104 of 1992 (Civil Appeal No. 393 of 1993) and the Hon'ble Supreme Court vide order dated 25.01.1993 remanded the matter to this Court for a fresh decision. It was observed that the allotment has to be seen in conjunction with the other route permits available and had further observed that the case of the 3 other firms/societies who had applied on the basis of schedule caste certificate, were also required to be considered. In pursuance of the said orders, two firms i.e. Goraya Bus Service, Goraya and Kalgidhar Transport Company Regd. Phagwara have been impleaded as respondents no. 4 and 5 in the present writ petition. It would be relevant to note that the fourth firm which was seeking the benefit of reservation on the route in question i.e., M/s Jalandhar Ludhiana Transport Company Regd. Jalandhar had filed a written statement through counsel, which is placed at Page no. 44 of the paper book. The writ petition was admitted vide order dated 25.03.1994. Vide an earlier order dated 05.02.1992, it was ordered to be listed along with CWP-

3317-1991. It would be relevant to note that CWP-3317-1991 titled as *“Amritsar Thein Dam Bus Service (Regd.), Amritsar vs. The State Transport Appellate Tribunal, Punjab, Chandigarh and others”* was decided by a co-ordinate Bench of this Court vide order dated 18.05.2011 and the writ petition which was filed by the petitioner therein on the similar issue as has arisen in the present case, was allowed and the petitioner company therein was granted the necessary relief. Review application filed against the said judgment was also dismissed by the co-ordinate Bench vide order dated 16.07.2019. It is not in dispute that no further challenge has been made to the said judgment.

6. A perusal of the order dated 11.05.2011 passed by a Co-ordinate Bench of this Court in the present writ petition would show that reference was made to writ petitions No. 13086 and 13088 of 1991 which were stated to be connected writ petitions and the registry was directed to produce the said writ petitions while adjourning the matter to 26.07.2011. The said two writ petitions along with CWP-13083-1991 and CWP-13084-1991 in which the issue for consideration was as to whether the grant of permit under schedule castes category under the Motor Vehicles Act would disqualify a candidate for a permit for another route under the same category of reservation, was answered in favour of the petitioner therein and the order passed by the authority was quashed and the respondent authority was directed to consider the claim of the petitioner for grant of permit in the light of the notification issued by the government under Section 47A providing for 25% reservation to members of the scheduled caste domiciled in the State of Punjab.

7. That a perusal of the aforesaid facts, impugned orders and replies filed would reveal that three issues arise for consideration in the

present case:-

- (i) Whether the grant of permit under the scheduled caste category under the Motor Vehicles Act would disqualify the said candidate to apply for another permit in other routes under the scheduled castes category.
- (ii) Whether out of the total numbers of permits available on the route in question, any permit/ permits were to be reserved for the scheduled castes category in the facts and circumstances of the present case.
- (iii) Whether in case issue nos. (i) and (ii) are held in favour of the petitioner, then the *inter se* merits of the 4 firms/ societies who had applied under the scheduled caste category are required to be considered.

Issue no. (i)

8. Learned counsel for the petitioner, with respect to issue no. (i), has submitted that it is a matter of settled law as has been repeatedly held by this High Court in various judgments that even in case an applicant has a permit under the scheduled castes category under the Motor Vehicles Act, then the same would not be a bar for applying again for a permit on other routes under the scheduled caste category. In support of his arguments learned counsel for the petitioner has relied upon the judgment of a Co-ordinate Bench of this Court in *M/s Mohali Bus Service Regd. Jalandhar vs. State Transport Appellate Tribunal, Chandigarh and others* reported as *AIR 1992 Punjab and Haryana 162* and the decision of another coordinate Bench of this Court in *Amritsar Thein Dam Bus Service Regd.'s* case (supra). Further reference has also been made to the judgment

passed by a coordinate bench in a bunch of writ petitions in which the lead

case was CWP-13083 of 1991 decided on 16.05.2014 titled as “***Hazursahib Transport Co. Registered vs The State Transport Appellate Tribunal, Punjab and others and connected matters***”. It is submitted that a reading of the notification dated 13.09.1979 (Annexure P-3) moreso clause 4 would clearly show that with respect to a firm, up to 5 permits could be granted. It is submitted that there is no provision of any law restricting the grant of another permit on the basis of reservation under the scheduled caste category, in case the applicant has already been granted a permit on the basis of the said reservation.

9. Learned counsel for the respondents, on the other hand, has submitted that the permit granted in favour of the petitioner firm on the Jalandhar Patiala route was in the same year i.e 1988, which was overlapping on the present route and thus, the petitioner should not be granted another permit on the basis of reservation with respect to the scheduled castes category.

10. This Court has heard learned counsel for the petitioner as well as the respondents with respect to issue no.(i).

11. The coordinate Bench of this Court while deciding a bunch of writ petitions with the lead case being ***Hazursahib Transport Co. Registered's*** case (supra) has held as under:

“The only point for consideration in these writ petitions is whether the grant of permit under Schedule Caste category under the Motor Vehicle Act will disqualify a permit for another route under the same very category of reservation. This issue has been dealt with in two decisions of this court, one, in M/s Mohali Bus Service Regd. Jalandhar Versus State Transport Appellate Tribunal, Chandigarh and others reported as AIR 1992 Punjab & Haryana 162 and another decision in Amritsar—Thein Dam Bus Service (Regd.), Amritsar Versus The State Transport Appellate Tribunal, Punjab, Chandigarh and others, Civil Writ Petition No. 3317 of 1991 decided on 18.5.2011 which have held that a fact that the person already holds one or more permits is not a necessarily a disqualifying

factor against him. The paramount consideration on all such matters will be only the interest of the public and a permit is to be granted to the applicant belonging to a reserved category. Unless there is a dispute inter-see the candidates belonging to the same class, there is no scope for rejection of a claim under reserved category for the only reason that there was already a permit. The decisions referred to above squarely answer the point referred to above. The orders passed by the authorities are quashed. The petitioners' claim for grant of permit shall be considered in the light of the notification issued by the government under Section 47-A providing for 25% reservation to members of the schedule caste domiciled in the State of Punjab.

The writ petitions are allowed on the above terms.

May 16, 2014”

A perusal of the above judgment would show that a specific reference was made to the judgments of the coordinate Bench of this Court in ***M/s. Mohali Bus Service Regd. Jalandhar’s*** case (supra), and ***Amritsar Thein Dam Bus Service (Regd.), Amritsar’s*** case (supra) and it was observed that even if a candidate/applicant holds one or more permits, it would not necessarily amount to a disqualification and that the claim of the candidate/applicant under the reserved category cannot be rejected solely on the said ground. The issue in the abovesaid case, which was same as the issue no.(i) in the present writ petition, was thus decided in favour of the petitioner therein and the petitioner’s claim for grant of permit was directed to be considered in the light of the notification. It is not in dispute that the said judgment has not been challenged and has attained finality.

12. The coordinate Bench of this Court in ***Amritsar Thein Dam Bus Service (Regd.) Amritsar’s*** case (supra) has held as under:

“The Notification dated 13.9.1979 (Annexure P-1) issued by the Secretary to Government, Punjab, Department of Transport, which is relevant for the present controversy, is reproduced hereunder for facility of reference:-

“In exercise of the powers conferred by sub-section (1A) read with sub-section (1B) of Section 47 of the Motor Vehicles Act, 1939 (Central Act No.4 of 1939), the Governor of Punjab is

pleased to reserve for the members of the Scheduled Castes domiciled in Punjab twenty-five per cent of stage carriage permits to be granted any calendar year"

The above Notification Issued by the Government of Punjab in the Department of Transport clearly provides twenty-five per cent reservation of stage carriage permits to be granted in any calendar year for the members of the Scheduled Castes domiciled in Punjab. In the notice dated 18.2.1988 (Annexure 'P-2), which the State Transport Commissioner, Punjab (respondent No.2) had got published in the issue of Motor Transport Gazette Weekly, Chandigarh, dated 22.2.1988, inviting applications for the grant of two regular stage carriage permits for plying four return trips daily on Dhilwan- Amritsar Via Beas, Rayya, Tangra, Jandiala, Manawala route and in response where to the Government Transport Undertakings and Private Transport Companies/Societies, including the petitioner-Company had sent applications, complete in all respects, to respondent No.2, too, it was mentioned that "as per Government policy, a quota of 25% of the stage carriage permits is reserved for Scheduled Castes/Scheduled Tribes". It is, thus, amply clear that the share for the members of the Scheduled Castes had to be granted to the applicants claiming the grant thereof from out of the said quota and the share of the Scheduled Castes could only be carried forward in the case of non-availability of the applicant belonging to this community. Needless to say, since the petitioner-Company was available for the grant of stage carriage permit from out of the quota reserved for the Scheduled Caste Community, respondent No.2 had committed an error in refusing the grant of such permit to the petitioner-Company and respondent No.1 did not rectify the said error of respondent No.2 while dealing with the appeal of the petitioner-Company.

In this view of the matter and without dilating upon the controversy at hand any further, the petitioner-Company is, of course, entitled to the relief claimed and the order dated 14.9.1988 (Annexure P-4) passed by the State Transport Commissioner, Punjab (respondent No.2) and the order dated 29.8.1990 (Annexure P-5) passed by the State Transport Appellate Tribunal, Punjab (respondent No.1), in so far as they rejected the claim of the petitioner-Company, deserve to be quashed. Ordered accordingly.

For the aforesaid reasons, this writ petition is allowed, the Impugned orders (Annexures P-4 and P-5), in so far as they rejected the claim of the petitioner-Company, are set aside and respondent No.2 is directed to grant the relief claimed by the petitioner-Company in view of the clear-cut instructions of the Government as contained in Notification (Annexure P-1) and observations made above. Respondent No.2 is

directed to extend the necessary relief to the petitioner-Company within a period of three months from the date of receipt of a copy of this judgment.”

A perusal of the above judgment would show that the same notification (Annexure P-1) was also under consideration in the said case and the issue was also similar. Learned Single Judge after taking into consideration the said notification and the policy in which it was mentioned that “as per Government policy, a quota of 25% of the stage carriage permits is reserved for scheduled castes and scheduled tribes”, as is done in the present case, observed that the share for the members of the scheduled castes had to be granted to the petitioner therein and the claim of the schedule caste candidate should not be carried forward moreso when the scheduled castes candidates had applied and accordingly the said petition was allowed. The review filed against the said order i.e. RA-CW-301-2012 and CM-13579-2012 in/and RA-CWP-441-2012 was dismissed by the coordinate Bench of this Court vide order dated 16.07.2019. It is not in dispute that the said order has also attained finality. The Single Bench of this Court in ***M/s Mohali Bus Service Regd. Jalandhar’s*** case (supra) has held as under:

“The Tribunal was, thus, not justified in remanding the matter to the State Transport Commissioner but it should have at its own considered the claim of the petitioner viz-a- viz the other scheduled caste applicants, if any. In the instant case, the petitioner was the only scheduled caste candidate before the Tribunal whose claim should have been considered objectively in accordance with law instead of directing new applications to be invited. There was, of course, another scheduled caste applicant before the State Transport Commissioner but he did not prefer any appeal against the refusal of the grant of the permit to him. The mere fact that the petitioner is the only candidate left in the field or that he already holds another permit is by itself no ground to refuse a permit to him or to invite fresh applications.”

It is not in dispute that the said judgment has also attained

finality.

A perusal of the above said judgment would show that the issue no.(i), which arises for consideration in the present case, is no longer *res integra* and it has been repeatedly held by this Court that merely because an applicant has been issued a permit under the scheduled castes category, then the same would not debar/disqualify him for grant of another permit on the basis of reservation in the said category and thus, issue no.(i) is decided in favour of the petitioner. Moreover a perusal of the notification dated 13.09.1979 (Annexure P-3) moreso Clause 4 would also show that a firm like the petitioner firm can be granted upto 5 permits. Clause 4 of the said notification is reproduced hereinbelow:-

“More than one permit shall not be granted to the members of the same family and in the case of cooperative society or a firm, not more than five permits shall be granted.”

13. It is not in dispute that the appeal filed by the petitioner has been rejected solely on the ground that the petitioner was previously granted the permit on the Patiala Jalandhar route on the basis of reservation under the scheduled castes category. The said reasoning is against law and the impugned order dated 12.10.1990, thus, deserves to be set aside on the said ground alone.

Issue no.(ii)

14. Learned counsel for the petitioner, with respect to the second issue, has submitted that a reading of Annexure P-2, which is the notification dated 22.03.1988 calling for the applications for grant of regular stage carriage permits, would clearly show that a specific reference to the government policy regarding reservation of 25% for scheduled castes / scheduled tribes has been made in the same and a certificate in

support of the claim of reservation was required to be submitted by the applicants who were claiming the said benefit. It is further submitted that a reading of the said notice / notification would clearly show that the said policy was to be made applicable with respect to the route in question as in case the same was not to be done, then there was no purpose in mentioning the policy which provided for reservation. It is stated that the stand now taken by the State in its written statement to the effect that there was a 60:40 scheme and out of 505 permits, 303 permits are to be issued to State Transport Undertakings and it is only out of the balance permits that 25% is to be given to the scheduled castes, is a stand which cannot stand the test of judicial scrutiny. Learned counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court of India in *M/s Jagjit Bus Service (Regd.) Amritsar's* case (supra) to highlight the fact that it was noticed in the said judgment that the scheme which provided for the said 60:40 ratio upto 30.06.1977 in Pepsu Territory and upto 18.11.1976 in the Punjab State and no further scheme was announced by the government under the 1939 Act and thus, on the relevant date of consideration i.e., year 1988, there was no such scheme. It is further stated that since it is the stand of the respondent-State themselves that there are 505 permits, out of which 70 permits have been granted to the scheduled caste categories whereas 25% of 505 permits would come out to be 126 permits and thus, even by the end of the calendar year, there was short fall of 56 permits in the scheduled castes category. It is submitted that even a perusal of the impugned order (Annexure P-5) passed by the State Transport Appellate Tribunal would show that the said 60:40 scheme, which is now sought to be propounded by the respondent State, was neither referred to by any of the parties nor was considered by the State Transport Appellate Tribunal. It is highlighted that

even in the order (Annexure P-4) passed by the State Transport Commissioner, there is no reference of the said scheme providing for 60:40 ratio between the State Transport Undertakings and private operators. It is further submitted that the coordinate Bench of this Court in ***Amritsar-Thein Dam Bus Service (Regd.)'s*** case (supra) after considering the same notification i.e. Annexure P-1 and similar notice i.e, P-2, had come to the conclusion that it was necessary for the authorities to grant permit from the quota of the scheduled castes community instead of carrying forward the same.

15. Learned counsel for the respondents, on the other hand, have submitted that since in the scheme, which was prevalent in 1969-70, the said ratio was followed, thus, by necessary implication, the same was required to be followed further and in case the said ratio is taken into consideration, then the scheduled castes candidates could only be entitled to 50 permits whereas they have been granted 70 permits.

16. This Court has heard learned counsel for the parties on the second issue.

17. The stand now sought to be taken by the State in its reply is reproduced hereinbelow:-

“That in the year of 1988, in Jalandhar Region as much as 505 permits were granted on regular basis, in compliance with the Hon'ble Supreme Court's Judgement dated 27.7.87 in Civil Appeal No. 1522 of 1987, which were being issued on temporary basis earlier. Applying the ratio provided by the scheme (s) of the year 1969/1972 of 60:40, out of 505 permits 303 permits were to be issued in favour of the State Transport Undertakings, whereas rest were to be issued to private operators. It was only the share of private operators which was to be taken into account for the grant of 25% permits to the scheduled caste applicants in view of the notification dated 13.9.79, which is annexed as Annexure R-I. From this, it comes out that the total number of permits which were to be reserved and granted to the scheduled caste candidates were 50 permits only, whereas

in fact they have been granted 70 permits. It is also relevant to mention here that out of 505 permits, total number of permits which have been granted to private operators is 269 and 70 permits which have been granted in favour of the scheduled caste is even more than 25% of this number. The split of 505 permits issued in the year of 1988 is as under:-

<u>Sr. No.</u>	<u>Name of the grantees</u>	<u>No. of permits.</u>
1.	Punjab Roadways.	191
2.	P.R.T.C.	43
3.	Nigam Transport.	2
4.	Scheduled Caste.	70
5.	E.W.S.	21
6.	General (Private)	178

In view of the above cited figure the scheduled caste applicants have so far taken much more than the quota which comes to their share.”

A perusal of the same would show that for the year 1988, which is the relevant year, a total of 505 permits were granted on regular basis, out of which 70 permits have been granted to the members of the scheduled castes category. It is the case of the petitioner that the scheme of 60:40 was not applicable in the year 1988. Reference has been made to the judgment of the Hon’ble Supreme Court in ***M/s Jagjit Bus Service (Regd.)’s*** case (supra). Two separate schemes with regard to grant of stage carriage permit which provided for 60% reservation for Punjab Roadways and Pepsu Road Transport Corporation and 40% reservation for private operators in Pepsu territory were referred to in the affidavit filed by the State Transport Commissioner before the Hon’ble Supreme Court and as per the said affidavit, the said schemes were upto 18.11.1976 in the State of Punjab and upto 30.06.1977 in the Pepsu territory and it was further specifically stated in the said affidavit that no new scheme has been announced by the government and that the transport operations were

continuing on the basis of granting/ issuing permits on temporary basis.

Apart from the fact that the said scheme was no more in existence in the year 1988, in paragraph 6 it was further observed by the Hon'ble Supreme Court that even the scheme which was applicable upto 1976/1977 did not specify any notified rules or any notified areas and thus, it was not possible to find out from the said scheme whether private operators have been excluded from any particular area of route or not and the said schemes appear to be incomplete and therefore, are ineffective. It was observed that the State Government cannot have any policy different from or independent of the provisions contained in Chapter IV and Chapter IV-A of the Act and after taking into consideration all the said aspects, a direction was issued to the Regional Transport Authorities in the State of Punjab to take immediate steps to invite applications suo motu under Section 57(2) of the Act 1939 for issuing regular permits to deserving candidates and to grant stage carriage permits to deserving applicants and the said steps were required to be taken within a period of 4 months. The relevant portion of the said judgment is reproduced hereinbelow:-

"5. When, the Special Leave Petition came up for hearing on September 16, 1986 notice was issued to the State Transport Commissioner requiring him to show cause as to why he should not be directed to take action on applications made under [section 46](#) of the Act for granting permits to ply stage carriages instead of issuing temporary permits under [section 62](#) of the Act periodically, even though there was permanent need to grant regular stage carriage permits. In reply to the said notice the 1st Respondent has filed a counter- affidavit, the relevant portion of which is as follows:

" In the State of Punjab two separate schemes with regard to the grant of stage carriage permits in favour of the State Transport Undertakings and the Private Operators were approved by the Government of Punjab under sub-section (2) of [section 68\(D\)](#) of the Motor Vehicles Act, 1939. Out of the two schemes one is called 'Punjab Roadways Scheme' operative in the erstwhile Punjab areas and the other is called 'Pepsu Road Transport Corporation Scheme' operative in the erstwhile Pepsu areas. The schemes for Punjab Roadways and Pepsu Road Transport Corporation were

published on 19.11.1969 and 18.2.1972 respectively. A copy of both the schemes are exhibited as Annexure R1 and R2.

According to the above notifications the Punjab Government had announced that:

(i) 60% operation will be undertaken by the Punjab Roadways and the remaining 40% by the existing private operators and new entrants in the ratio of 30: 10, respectively in the areas of erstwhile Punjab State.

(ii) 60% operation will be undertaken by the Pepsu Road Transport Corporation and 40% by the private operators in Pepsu territory.

(iii) Notifications further provided that the schemes will have the effect for a period of 7 years (upto 18.11.1976) in Punjab State and will last till 30th June 1977 in the Pepsu territory.

(iv) After the expiry of 7 years (upto 18.11.1976) in the case of Punjab Scheme and from 1st July, 1977 in the Pepsu territory, 1/3rd operations of the private operators will be taken over by the Punjab Roadways/Pepsu Road Transport Corporation every year to complete the take over in three years.

Neither the Punjab Roadways nor the Pepsu Transport Corporation have taken over the operations from the private operators in the terms of above mentioned notifications nor new schemes have been announced by the Government. The transport operations have, however, to be continued as at present to save the public from inconvenience. At the same time it will not be advisable to grant regular permits on long terms basis in the absence of any transport policy announced by the Punjab Government. Under these circumstances I am granting/issuing permits on temporary basis after following the prescribed procedure laid down under [section 47](#) of the Motor Vehicles Act, 1939 and after giving due hearings to all the applicants at the time of initial grant. As soon as the new transport policy is finalised by the Government all the stage carriage permits granted on temporary basis due to non-finalisation of transport policy will be granted on regular basis after following the procedure as laid down under [sections 57\(2\) and 57\(3\)](#) of the Motor Vehicles Act, 1939. It may, however, be added here that the State Government is in the process of finalising a new Transport policy."

6. *A reading of the counter-affidavit filed by the State Transport Commissioner, Punjab practically does not set-up any defence at all to the prayer made by the appellant. The counter-affidavit refers to two schemes, namely, the Punjab Roadways Scheme and the Pepsu Road Transport Corporation Scheme approved under [section 68-D](#) of the Act, which were published on 19.11.1969 and 18.2.1972 respectively. It is, however,*

admitted that neither the Punjab Roadways nor the Pepsu Road Transport Corporation have taken over the operations from the private operators in terms of the above- mentioned notifications nor any new scheme has been announced by the Punjab Government. The 1st Respondent further states that since there was general inconvenience, the temporary permits were being issued after following the prescribed procedure laid down under the Act. The affidavit further says that due to the non-finalisation of the transport policy by the State Government it was not possible to issue regular permits to run stage carriages by following the procedure prescribed under [sections 57\(2\) and 57\(3\)](#) of the Act. We are of the view that the entire policy followed by the State Government and the 1st Respondent is contrary to the general scheme of the Act. The schemes said to have been published under [section 68-D](#) of the Act do not specify any notified routes or any notified areas. It is not possible also to find out from the said scheme whether private operators have been excluded from any particular area of route. The schemes appear to be incomplete and, therefore, are ineffective. In the above situation the Regional Transport authorities whose functions have been delegated under the Act to the State Transport Commissioner, Punjab, cannot decline to grant stage carriage permits on applications properly made to them by intending operators only because the State Government has not announced its transport policy. The State Government cannot have any policy different from or independent of the provisions contained in Chapter IV and Chapter IV-A of the Act. The Transport Authorities which are statutory authorities have to discharge the duties imposed on them by the Act without waiting for any policy to be announced by the State Government. In doing so primary consideration should be given to the public interest and also to the fundamental right of the citizens to carry on motor transport business in accordance with law. It is not denied that there is a permanent need to grant permits to ply stage carriages on the several routes in the State of Punjab. In the circumstances, the policy adopted by the 1st Respondent, namely, issuing of temporary permits from time to time, appears to be a highly irregular one. It is against the language and spirit of [section 62](#) of the Act, which provides for the grant of temporary permits. This Court has observed in several decisions that a Regional Transport Authority would be failing in its duty if it grants repeatedly temporary permits to ply stage carriages on routes even though it is aware of the fact that there is a permanent need for granting regular permits in respect of the said routes. The fact that the State of Punjab is thinking of finalising a new transport policy can have no bearing on the question in issue.

7. We are, therefore, of the view that the 1st Respondent cannot successfully resist the writ petition out of which this appeal arises. In the circumstances we feel that it is appropriate to issue a writ in the nature of mandamus to the Regional Transport authorities in Punjab, whose duties are being discharged by the State Transport Commissioner, Punjab, to take immediate steps to invite applications suo motu under [section 57\(2\)](#) of the Act for issuing regular stage carriage permits to deserving applicants, to grant stage carriage permits to deserving applications who make applications for the stage carriage permits in accordance with law and to dispose of the applications for renewal, if any, made under [section 58](#) of the Act by the holders of stage carriage permits. We accordingly direct the Regional Transport authorities in the State of Punjab to take immediate steps to invite applications suo motu under [section 57\(2\)](#) of the Act for issuing regular permits to deserving applicants to ply stage carriages in respect of the routes where there is a permanent need, to dispose of the applications made by persons who wish to ply stage carriages on the said routes in accordance with law and to dispose of the applications that may be pending before the Regional Transport authorities for renewal of stage carriage permits under [section 58](#) of the Act. All these steps should be taken within four months from today. The temporary permits which are now in force shall cease on the expiry of the period of four months and the Regional Transport authorities are directed not to issue any fresh temporary permits where there is permanent need for granting a stage carriage permits after four months.

From a bare reading of the abovesaid judgment, it is apparent that in the year 1988, no such scheme of 60:40 for Punjab Roadways / Private operators was in operation and thus, the division of 505 permits which have been issued in the year 1988 in the said 60:40 proportion, as per the reply filed by the respondent, is prima-facie illegal and without any basis. The facts which emerge from the reply are in fact in support of the petitioner inasmuch as, as per the stand of the State, 70 permits have been issued to the applicants for reservation under the scheduled castes category which do not add upto 25% requirement of the total 505 permits which were required to be issued in the year 1988. A perusal of the notification dated 13.09.1979 clearly shows that it has been mandated that 25% of the

stage carriage permits to be granted in any calendar year should be reserved for the members of scheduled castes, domiciled in Punjab. The said scheme of 60:40 ratio has not been relied upon by the parties even in the impugned orders (Annexure P-4 and P-5) which also clearly shows that in the year 1988, no such scheme was in vogue. In fact the government policy with respect to reservation of 25% of the permits for scheduled castes category was applicable with respect to the notification dated 22.03.1988 (Annexure P-2) calling for applications on various routes including the route in question which is further apparent from a bare reading of Annexure P-2 in which a specific reference to the said policy has been made. A perusal of Annexure P-2 would also show that the applicants were required to support their applications for preference / reservation by annexing the necessary certificate. In case, the authorities had intended not to apply the said reservation policy to the regular stage carriage permits which are in issue, then the authorities would have either stated so or at any rate would not have made a reference to the said policy nor would have asked the applicants to support their applications with respect to the reservation/ preference by annexing a certificate.

18. In *Amritsar Thein Dam Bus Service (Regd.)*, *Amritsar's* case (supra), the coordinate Bench of this Court was dealing with a similar notice/ notification as Annexures P-1 and P-2 and even in the notice which was published in the Motor Transport Gazette dated 22.02.1988 inviting the applications for grant of two regular stage carriage permits in the said case, a similar line was incorporated in the same manner as has been done in the present case to the effect that “as per government policy, a quota of 25% of the stage carriage permits is reserved for scheduled castes/ scheduled tribes”

and the coordinate Bench of this Court, after taking into consideration the

said line in the notice, observed that the shares of the member of scheduled castes had to be granted to the applicants and the same could not have been permitted to be carried forward. The review against the said judgment has been dismissed and it is not in dispute that the same has not been further challenged. Thus, on the basis of the abovesaid facts and circumstances, this Court is of the prima-facie view that the plea raised by the petitioner is meritorious and the stand taken by the respondent-State is not in accordance with law and the said issue was never raised before the transport authorities, but in view of the finding on issue no.(iii) requiring this Court to remand the matter, the said issue no.(ii) is kept open for final adjudication by the State Transport Appellate Tribunal to whom the matter is being remanded.

Issue no.(iii)

19. A perusal of the impugned order (Annexure P-4) would show that four firms/ societies had applied on the basis of reservation in scheduled castes category. The first being the petitioner, the second being M/s Jalandhar Ludhiana Transport Co. Regd. Jalandhar, who has already filed a written statement (which is placed at page 44 of the paper book), the third being Kalgidhar Transport Co. Regd. Phagwara (respondent no.5) and the fourth being Goraya Bus Service, Goraya (respondent no.4). As per the record, Goraya Bus Service (respondent no.4) was served with the summons on 27.01.1994 but it was observed by the Process Server that respondent no.4 had refused to receive the summons. Said Goraya Bus Service did not file any appeal against the order (Annexure P-4) and has not appeared before this Court in spite of the fact that the matter has been pending since 1991. Even when the writ petition was allowed by the Hon'ble Division Bench of this Court in the first round of litigation, no challenge had been made by the said Goraya Bus Service to the said order. Kalgidhar Transport

Company (respondent no.5) is also similarly placed as the respondent no.4 inasmuch as, as per the service report, a copy of the writ petition was stated to have been handed over to the representative of the respondent no.5 on 02.02.1994 but none has appeared on behalf of respondent no.5 also, nor the said respondent no.5 had filed an appeal against the order dated 17.09.1988 nor had challenged the order of the Hon'ble Division Bench allowing the writ petition of the petitioner in the first round of litigation. Jalandhar Ludhiana Transport Company Regd. Jalandhar, on whose behalf, Mr. Ramesh Kumar, Advocate, had appeared and filed the written statement and had also appeared on several dates including 18.02.1994 and 25.03.1994, has not appeared since the year 2011. Learned counsel appearing for the parties have very fairly submitted that since the authorities have rejected the claim of the petitioner and the other three candidates, who had applied in the scheduled castes category, without considering their *inter se* merits and solely on the ground that they already had stage carriage permits on other routes, thus, neither before the authorities nor before this Court, there is any data to show the *inter se* merits of the petitioner and the said three candidates (firms / societies) who had applied under the scheduled castes category. Since the said candidates other than the petitioner did not file an appeal before the appellate authority and had not chosen to appear before this Court in spite of having been served, thus, this Court is not in a position to adjudicate upon issue no.(iii). In the said circumstances, the best course is to keep the said issue of *inter se* merits open, to be determined by the State Transport Appellate Tribunal in the proceedings after remand.

20. Thus, while deciding issue no.(i) positively in favour of the petitioner, issues no.(ii) and (iii) are kept open for final adjudication by the

State Transport Appellate Tribunal.

21. Keeping in view the above said facts and circumstances and the findings on the said three issues, the present writ petition is partly allowed and the order dated 12.10.1990 (Annexure P-5) passed by the State Transport Appellate Tribunal, Punjab is set aside with the following directions:-

- i) The petitioner as well as respondents no.2 and 3 would appear before the State Transport Appellate Tribunal on 21.09.2023.
- ii) The State Transport Appellate Tribunal would after impleading Goraya Bus Service, Goraya, Kalgidhar Transport Co. Regd. Phagwara, and Jalandhar Ludhiana Transport Company Regd. Jalandhar as parties to the appeal, would issue notice to the said parties.
- iii) The State Transport Appellate Tribunal would finally adjudicate issues no.(ii) and (iii), in accordance with law and after taking into consideration the order passed by the Hon’ble Supreme Court in Civil Appeal no.393 of 1993 arising from the SLP(C) no.14104 of 1992 titled as *“The Pepsu Road Trasnport Corporation, Kapurthala vs. M/s Ambedkar Bus Service Regd., Pataila and others”* and also the observations made by this Court and after considering the pleas raised by the petitioner, respondent-State, respondent no.3 and the parties as mentioned in direction no.(ii) in case the said parties choose to appear.
- iv) Issue no.(i) stands decided by this Court in favour of the petitioner.
- v) Since the present case is a very old case, thus, the State Transport Appellate Tribunal is directed to decide the appeal afresh as expeditiously as possible.

(VIKAS BAHL)
JUDGE

September 12, 2023.
Davinder Kumar

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