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RA-CW-187-2004 in CWP-12417-2000

R S BUS SERVICE V/S STATE OF PUNJAB AND ORS

Present: Mr. Paramjit Batta, Addl. A.G., Punjab
for the review applicants.

None for the non-applicant/petitioner.

No one appears for the non-applicant/petitioner. Earlier too, no one had appeared for the non-applicant/petitioner.

This is review petition filed by the State seeking review of the order dated 02.02.2004 whereby this Court disposed of the writ petition in terms of the judgment delivered by the Supreme Court in *Subhash Chander and another vs. State Transport Appellate Tribunal and others reported in JT 2002(3) SC 239*.

The review petition has been filed with the contention that the case of the petitioner is not similar to that of *Subhash Chander* (supra), and therefore, the same ought not have been decided in terms of the *Subhash Chander's* case (supra).

This Court notices that the State Government after having received the judgment of this Court, took opinion of the Advocate General and has passed a detailed order stating that the route claimed by the petitioner was also covered by the State transport and therefore the judgment of *Subhash Chander* (supra) granting relief to the said petitioners for consideration of granting of route could not be applied to the facts of the petitioner's case.

In the opinion of this Court, the view taken by the respondent/State is an independent cause of action for which the writ

petitioner would be free to approach the appropriate forum. Review petition by the State in the circumstances was not warranted, as there is no order adverse to the State transport nor there is any quashing of the modified scheme dated 21.10.1997.

This Court finds that the scheme dated 09.08.1990 and the modified scheme issued by the State Transport Department dated 21.10.1997 were examined to certain extent by the Supreme Court in ***Subhash Chander*** (supra), wherein the Apex Court observed as under:

“Further, it was made clear in the aforesaid case that before framing of the scheme under Section 99, the State Government has to arrive at a conclusion that (1) for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service;

(2) it is necessary in the public interest;

(3) that the road transport services in general or in 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;

(4) to the exclusion, complete or partial of other persons or otherwise;

(5) the State Government is required to formulate a proposal regarding the scheme giving particulars of

(a) nature of services proposed to be rendered,

(b) the area or route proposed to be covered, and

(c) other relevant particulars respecting thereto;

(6) and the State shall publish such proposal

(a) in the Official Gazette of the State formulating such proposal;

(b) in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme; and

(c) in such other manner as the State Government formulating such proposal deem fit.

The aforesaid legislative mandate is to be adhered to before framing the scheme under Section 99 and all the requirements stated above are to be fulfilled.

Clause 7-A quoted above nowhere provides that State Transport undertaking was to operate on the said routes. As stated above, the State Government is empowered to frame the scheme only in cases where the State Transport Undertaking is to operate particular class of service in relation to any area or a route or a portion thereof. But if the Transport Undertaking is not to operate the said routes, then there is no question of framing any scheme. Further the main purpose of the scheme should be to provide an efficient, adequate, economical and properly coordinated road transport service in public interest. The scheme cannot be vague reserving some routes on the assumption that in future State Transport Undertaking would operate upon such routes. On the contrary, under the Act, the State Government is required to formulate a proposal regarding the Scheme giving particulars of (a) nature of services proposed to be rendered; and (b) the area or route proposed to be covered along with other relevant particulars respecting thereof. Under the scheme also, dominant purpose should be public interest and not to have permit raj through back door; otherwise whole purpose of sub-section (2) of Section 80 would be frustrated. Hence, reading clauses 7 and 7A together also, it would not mean that there was any contemplation by the State Transport Undertaking for operating on the routes linking one village with another village or a town or a municipality in between the aforesaid two villages or a route linking a village with block head quarter or a municipality or city. Hence, as stated in Jagdip Singh's case (supra), clause 7(A) was not in conformity with Section 99 of the Act. Hence, there is no substance in the contention raised by the learned counsel for the respondents-privileged mini-bus operators.

In the result, the appeals are allowed. The judgments and orders passed by the High Court are set aside and the orders passed by the State Transport Appellate Tribunal, Punjab at Chandigarh in favour of appellants are restored. There shall be no order as to costs."

Keeping in view that in the present case, the State Transport Undertaking was to operate on the said route for which the claim has been set up, and also considering that the applicants have already rejected the claim of the petitioners which can be independently challenged, no orders are required to be passed in the review petition filed by the State.

Disposed of in the aforesaid terms.

All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

30.11.2023
mohit goyal