

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6026 OF 2004
(From the judgement and order dated 04/03/2004 in WP No. 6234/2001 of
The
HIGH COURT OF JUDICATURE AT ALLAHABAD AT LUCKNOW BENCH)

U.P.S.R.T.C. & ANR.

Petitioner(s)

VERSUS

SANJIDA BANO & ORS.

Respondent(s)

(With prayer for interim relief)(For Final Disposal)

Date: 04/03/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Petitioner(s)

Mr. Pradeep Misra,Adv.

For Respondent(s)

Mr. Jayant Bhushan, Sr. Adv.

Mr. Kumar Rajesh Singh, Adv.

for Mr. B.B. Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(D.P. WALIA)

(SHELLY SEN GUPTA)

COURT MASTER

COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1540 OF 2005

[arising out of SLP(C) No. 6026 of 2004]

U.P.S.R.T.C. & Anr.

... Appellants

vs.

Sanjida Bano & Ors.

... Respondents

O R D E R

Leave granted.

The dispute in this case relates to Lucknow-Kursi-Tikaitganj

Route in the State of Uttar Pradesh. It is not disputed that a Scheme was published under Section 68-D of the Motor Vehicles Act, 1939, which is equivalent to sub-section (3) of Section 100 of the Motor Vehicles Act, 1988, in respect of this route and it is a notified route. It is also not disputed that the State Transport Undertaking is operating on this route as per the notified Scheme.

It appears that this route was sought to be de-notified by the State

Government. The notification proposing to de-notify the route was

challenged in the High Court by filing a writ petition which is

pending in the High Court. During the pendency of the petition, the

High Court has by an interim order directed the de-notification to

remain stayed. Thus, factually as on the day, the Scheme as to the

above-said notified route stands and is in operation.

The respondents herein filed an application before the

Regional Transport Authority for the grant of temporary permit on

this route. The prayer was declined, whereupon the respondents filed

a writ petition in the High Court. The High Court has disposed of

the writ petition by directing the Secretary of the Regional Transport Authority to make a survey of the route within a week from the date of the order and if the survey reveals the need for the grant of additional permits then the same shall be issued to the applicants. It is this order of the Division Bench of the High Court which has been put in issue by the U.P. State Road Transport Corporation by filing this appeal by special leave.

Having heard the learned counsel for the parties, we are satisfied that the impugned order of the High Court cannot be sustained.

Section 104 of the Motor Vehicles Act, 1988, reads as under :

"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."

The respondents seek protection under the proviso. The applicability

of proviso is attracted "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". It is

not disputed that the State Transport Undertaking has certainly made

an application for permit in accordance with the Scheme and is

operating on the route. Whether or not the number of buses and the

trips operated by the State Transport Undertaking were enough to

cater to the volume of need of the commuting public, is not germane

to the applicability of the proviso. The Scheme provides for as many

permits as needed being lifted by the State Transport Undertaking.

The State Transport Undertaking was operating 36 trips on the date of

the order of the High Court and is now operating 40 trips, as stated

by the learned counsel for the appellants at the Bar. However, the learned senior counsel for the respondents has disputed the correctness of this statement and submitted that the Secretary, Regional Transport Authority had found only 25 trips being in operation. Be that as it may, we are not inclined to hold that in spite of the appellant-Corporation operating on the route resort can be had to the proviso to Section 104 of the Act for granting temporary permits.

The appeal is allowed. The impugned order of the High Court dated 4.3.2004 is set aside.

Before parting, we would like to invite the attention of the High Court to the interim order dated 6.9.2004 of this Court wherein we had requested the High Court to take up Writ Petition No. 1312/2001 (M/B) for hearing as a short point arises for decision therein. It is stated at the Bar that the High Court has not been able to accommodate that writ petition for hearing till now. We reiterate our request to the High Court and allow the parties liberty of making a mention in the High Court.

.....CJI
(R.C. LAHOTI)

.....J
(D.M. DHARMADHIKARI)

New Delhi;

March 4, 2005.