

## SUMER CHAND SHARMA &amp; ANR.

v.

## STATE OF U.P. &amp; ANR. ETC. ETC.

APRIL 24, 1986.

[O. CHINNAPPA REDDY AND E.S. VENKATARAMIAH, JJ.]

Uttar Pradesh Motor Vehicles Special Provisions Act, (Act XXVII of 1976), 1976, sections 1(3) and (5), scope of - Operation of stage carriages by private operators over common sectors of nationalised routes, provided they did not set down or pick up passengers at any point on the common sectors despite total ban after the nationalisation of bus routes in 1950 by virtue of section 10(1)(c) of U.P. Act IX of 1955 and even after statutory prohibition with effect from 1.4.1971 by section 76 of Central Act 56 of 1969, by "practice", - Whether such operators are entitled for renewal of their authorisations under sections 1(3) and (5) of U.P. Act, 27 of 1976 - Motor Vehicles 1939, section 135(2) and Uttar Pradesh Road Transport Services (Development) Act, 1955.

After the nationalisation of bus routes in the Fifties, it was not permissible to permit any private operator to ply a stage carriage on any sector of the nationalised routes as the schemes of nationalisation did not provide for it. However, by virtue of section 10(1) (c) of Uttar Pradesh Road Transport Services (Development) Act, (Act IX of 1955), 1955 private operators were allowed to ply the stage carriages on the whole of their routes including the common sectors. U.P. Act (IX of 1955) was repealed by Central Act LXVI of 1969. By virtue of section 76 inserted as section 135 of Motor Vehicles Act, the permission granted to them being inconsistent with the provisions of the MV Act ceased to be effective from 1.4.71, the date of repeal of the 1955 Act. Despite this statutory prohibition, in the State of Uttar Pradesh, a "Practice", grew whereby private operators were continued to be permitted to ply their stage carriages over common sectors of nationalised routes provided that they did not set down or pick up passengers at any point on the common sectors. In 1976 the Uttar Pradesh Legislature enacted the Uttar Pradesh Motor Vehicles Special Provisions Act, 1976 to provide for the grant

of authorisation to holders of stage carriage permits to ply their stage carriages over common sectors. When the applications moved by such private operators for renewal of their authorisation, were rejected on the ground that they did not possess permits on the dates of the nationalisation notifications, some of them moved the High Court of Allahabad under Article 226 and after the dismissal of their writ petitions have come up by way of special leave, while some others have filed their petitions directly under Article 32 of the Constitution.

Dismissing the petitions, the Court

**Held:** 1. Where a route is nationalised Chapter IV-A of the Motor Vehicles Act, 1939 to the total exclusion of private operators, a private operator with a permit to ply a stage carriage over another route which has a common overlapping sector with the nationalised route cannot be permitted to ply his vehicle over that part of the overlapping common sector, even if he did not pick up or set down passengers on that part of the route. While permissions granted under section 10(1)(c) of Uttar Pradesh Road Transport Services (Development) Act, Act IX of 1955 were patently inconsistent with the provisions of Chapter IV-A of the Motor Vehicles Act, 1939 and therefore, ceased to be effective from 1.4.1971, the date of the repeal of 1955 Act, the "Practice" of permitting private operators to ply their stage carriages over common sectors of nationalised routes, subject to conditions was wholly unauthorised and without any legal sanctions whatsoever. Hence, the plying of stage carriages by the private operators before the commencement of 1976 Act pursuant to such unauthorised and unlawful "practice" which had grown up in Uttar Pradesh, or under interim orders of a Court will disentitle them to obtain. Authorisation under section 5 of the Uttar Pradesh Motor Vehicles Special Provisions Act, 1976 (Act 27 of 1976). [770 A-D]

**Adarsh Travels v. State of Uttar Pradesh**, [1985] 2 Scale 880 followed.

**Hindustan Transport Company v. State of Uttar Pradesh**, A.I.R. [1984] S.C. 953 referred to.

ORIGINAL JURISDICTION : Writ Petition (Civil) No. 255 of 1986 etc.

(Under Article 32 of the Constitution of India.)

S.N. Kacker, K.K. Venugopal, R.K. Jain, Ms. Abha Jain, Gaurav Jain, Mohd. Iqbal, R.A. Sharma and B.S. Chauhan for the Petitioners.

The Order of the Court was delivered by

**CHINNAPPA REDDY, J.** The petitioners in these writ petitions and special leave petitions held permits to ply stage carriages over various routes in Uttar Pradesh, sectors of which routes were parts of routes which were nationalised in the Fifties. The nationalisation schemes made no provision for any private operator plying any stage carriage over any part of the nationalised routes. Operation of stage carriages by private operators was totally excluded. The result was that from the respective dates of nationalisation, it was not permissible to permit any private operator to ply a stage carriage on any sector of the nationalised route. However, by virtue of sec. 10(1)(c) of Uttar Pradesh Road Transport Services (Development) Act, IX of 1955, these several petitioners were allowed to ply their stage carriages on the whole of their routes including the common sectors. The Uttar Pradesh Road Transport Services (Development) Act, 1955 was repealed by Central Act 56 of 1969. Act 56 of 1969 came into effect from April 1, 1971. Section 76 of Act 56 of 1969 (which was inserted into the Motor Vehicles Act 1939 as s. 135) saved permissions or exemptions granted as well as things done or actions taken under the repealed enactment so far as they were not inconsistent with the provisions of the Act. The permission granted under sec. 10(1)(c) of U.P. Act IX of 1955 was patently inconsistent with the provisions of Chapter IV A of the Motor Vehicles Act, 1939 and the permission, therefore, ceased to be effective from 1.4.1971, the date of repeal of the 1955 Act. Therefore, it was no longer permissible for the private operators to ply their vehicles on the common sectors from 1.4.1971 onwards. Despite the statutory prohibition against any private operator plying a stage carriage on any part of the nationalised route in the absence of a provision in the scheme of nationalisation, it appears that a practice grew up (we have borrowed the word 'Practice' from one of the judgments of Allahabad High Court which was cited before us) in Uttar Pradesh of permitting private operators to ply their

stage carriages over common sectors of nationalised routes provided they did not set down or pick up passengers at any point on the common sectors. The "Practice" was wholly unauthorised and without any legal sanctions whatsoever. However in 1976, the Uttar Pradesh Legislature enacted the Uttar Pradesh Motor Vehicles Special Provisions Act, 1976 to provide for the grant of authorisation to holders of stage carriage permits to ply their stage carriages over common sectors. This was provided by sec. 5 of the Act. Sec. 5 was interpreted by the court in **Hindustan Transport Company v. State of Uttar Pradesh**, A.I.R. [1984] S.C. 953 to mean that the operator seeking an authorisation should hold a permit on the date of notification. Section 1(3) of the Act makes the provisions of the Act applicable 'only in relation to schemes approved or purporting to be approved, areas and routes notified or purporting to be notified under Chapter IV A of the Motor Vehicle Act, 1939 as amended in its application to Uttar Pradesh (hereinafter referred to as Principal Act) and to permits issued under Principal Act before the commencement of this Act.' Basing their submissions on s.1(3) of the 1976 Act, Shri S.N. Kacker and Shri K.K. Venugopal learned counsel for petitioners urged that the petitioners were entitled to obtain authorisations from the competent authorities under s.5 of the Act, if they had permits to ply stage-carriages on the routes having common sectors on July 1, 1976 the date of commencement of Act 27 of 1976. They complained that on the basis of the observations of this court in **Hindustan Transport Company v. State of Uttar Pradesh**, (supra) their applications for renewal of their authorisations had been wrongly rejected on the ground that they did not possess permits on the dates of the nationalisation notifications. We do not see any force in the submission of the learned counsel. As pointed out by us, on the repeal of Act 9 of 1955 it was no longer permissible for the transport authorities to permit the private operators to ply their stage carriages over the common sectors, in the case of areas and routes which were nationalised to the complete exclusion of private operator. If by reason of the unauthorised and unlawful practice which had grown up in Uttar Pradesh, private operators had been allowed to ply vehicles over common sectors, despite statutory prohibition, that would surely not entitle the operators to obtain authorisations under s.5 of the 1976 Act. Whatever doubts there might have been earlier, it is now settled by the decision of Constitution Bench in

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**Adarsh Travels v. State of Uttar Pradesh**, [1985] 2 scale 880 that where a route is nationalised under Chapter IV A of the Motor Vehicles Act to the total exclusion of private operators, a private operator with a permit to ply a stage carriage over another route which has a common overlapping sector with the nationalised route cannot be permitted to ply his vehicle over that part of the overlapping common sector, even if he did not pick up or set down passengers on that part of the route. The law as declared by the court in **Adarsh Travels v. State of Uttar Pradesh**, (supra) must be considered to have always been the law under the Motor Vehicles Act. The plying of stage carriages by the private operators before the commencement of 1976 Act pursuant to the alleged practice which has grown up in Uttar Pradesh or under interim orders of a court must be considered to be unauthorised so as to disentitle the private operator from seeking the benefit of s.5 of Uttar Pradesh Act 27 of 1976. The writ petitions and special leave petitions are, therefore, dismissed.

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Petitions dismissed.