

except where it is violative of any of the fundamental rights guaranteed under the Constitution. No such violation has been projected. Hence, no direction can be issued to the State to grant exemption from appearing in the examination/test. So far as the quashing of the Rules is concerned, Rules do not suffer from any voice of *ultra vires* nor can the Rules be said to be illegal in any manner. These rules have been framed under Article 309 of the Constitution of India and the Governor of the State has the competence to frame such transitory rules by introduction of the test for promotion. By introduction of the examination/test for the post of Assistant, the service conditions of the petitioners have not been changed in any manner.

(7) In view of the above, I find no merit in the present petition and the same is hereby dismissed with no order as to costs.

R.N.R.

Before Kanwaljit Singh Ahluwalia, J.

**THE SHIVANI ADARSH COOPERATIVE TRANSPORT
SOCIETY LTD., SHIVANI, DISTRICT BHIWANI,—Petitioner**

versus

STATE OF HARYANA & OTHERS,—Respondents

C.W.P. No. 17112 of 2002

2nd December, 2008

Constitution of India, 1950—Arts. 226—Government notifying scheme for allotment of route permits on basis of bid—Whether violates Arts. 14 and 19(1) (g)—Granting of permits by bid not only create monopoly but detrimental to public interest—Allotment of route permits on basis of bid alone held to be bad and not sustainable—However, those who participated in bidding process cannot escape from paying bid amount—State directed to formulate a new policy.

Held, that in case the system of granting permits by bid is allowed, it would not only create monopoly but will be detrimental to

the public interest, as those enjoying financial muscle shall usurp all route permits. Furthermore, the concern of the State that an efficient and adequate transport system is evolved, will also be a casualty. Grant of permits on the basis of bid will become a mode of revenue generation. It was incumbent upon the State of determine the merits of each applicant, taking into consideration antecedents and verification of the past performance track. Punctuality, adherence to the route, condition of the vehicle, customer care, past satisfactory performance, financial stability, issuance of tickets and non-evasion of tax, are various factors, which can be taken into consideration while allotting permit. These factors cannot be put in water tight jackets. Depending upon each area route, safety of passengers, amenities and facilities to be provided by the operator ought to have been the concern of the State, than to allot permits on the basis of maximum bid without ensuring providing of better service to the passengers. Say, for example, hardened criminals cannot be permitted to be the drivers and conductors on the routes, which are to be used by the girls to reach educational institutions. Since the sole criteria is, to give maximum bid, that being contrary to the provisions of the Act, cannot be upheld. Therefore, allotment of the route permits on the basis of bid alone, being bad cannot be sustained.

(Para 16)

Further held, that the petitioners cannot be permitted to say that having obtained the permits on the basis of bid, simply because the scheme was bid, they are absolved of their responsibility to pay the bid amount. If the argument of the petitioners is accepted that State cannot enrich itself by levying bid amount, petitioners can also not enrich themselves by participating in the bidding process and then later to run away from their financial commitment. Therefore, it is held that the grant of the permits on the basis of bid cannot be sustained. However, those who participated in the bidding process, cannot escape from paying the amount of bidding, which they are bound to pay.

(Paras 17 and 18)

Baldev Kapoor, Advocate, H. S. Sawhney, Sr. Advocate with
Rajinder Sharma, Advocate *for the petitioner*.

H. S. Hooda, Advocate General, Haryana with Suresh Monga,
Addl. A.G., Haryana *for the respondents.*

KANWALJIT SINGH AHLUWALIA (ORAL).

(1) By this common order, a bunch of writ petitions being Civil Writ Petition Nos. 17112, 17111, 17113, 17114, 17115, 17116, 17117, 17118, 17119 of 2002; 14262 of 2007 and 9673, 9674 of 2008 can be decided together. Parties are in agreement that for facility of reference facts can be taken from Civil Writ Petition No. 17112 of 2002.

(2) Petitioner has sought a writ in the nature of certiorari seeking declaration that Private Bus Service Scheme published by the respondent-State on 19th January, 2001, Annexure P-2 is violative of Articles 14 and 19(1) (g) of the Constitution of India and is, therefore, liable to be quashed.

(3) A reference can be made to the facts in nut shell that in pursuance to Annexure P-2, the Government had invited bids for non notified routes, for allocation of the same to the highest bidder and this according to the petitioner is not permissible, being without any authority of law, as Motor Vehicles Act, 1988 (hereinafter to be referred as, 'the Act') envisages no such procedure or course of action on the part of the State. It has been pointed out that under Section 99 which forms part of Chapter VI of the Act, State Government for providing an efficient adequate and properly co-ordinated road transport service in the public interest can operate stage carriage permits exclusively in favour of State Transport Undertaking to the exclusion of all other or in a partial manner i.e. to both State Transport Undertaking and private operators. In other words both can simultaneously operate the vehicles on the routes specified by the State Government in consonance with the provisions of Section 99 of the Act. It has been further stated that in pursuance of the provisions of sub-section (2) of Section 100(2) of the Act, State Government published a scheme on 3rd November, 1993 which has been attached with the writ petition as Annexure P-1. A reference has been made to para 2 of the scheme wherein it has been stated that all intra-district routes which do not cover more than a total of 10 Kms. on National/State Highway, would be offered for private

operation and Haryana Roadways Buses will not ply on those routes. The offer made to the private operators was made conditional that the routes offered for private operators will be determined as per policy by suitable committees to be constituted by the Chief Minister for each district so that the work of determining the routes could be completed expeditiously and permits would be issued to registered co-operative societies of unemployed youths having atleast five members. Educational qualification was also determined. Para 4 of the scheme reads as under :—

“Permits would be issued to registered co-operative societies of unemployed youth having atleast five members. The minimum educational qualifications of members in case of Scheduled Castes and Backward Classes would be Middle pass and for others, it would be Matric pass. However, there would be no minimum educational qualifications in case of persons having, driving licence for heavy vehicles with five years experience. The age of the members of the Society should be between 18 to 40 years and each member should give an affidavit and a certificate of registration with an Employment Exchange, in proof of the fact that he is unemployed.”

A reference can be made to Annexure to the scheme, according to which all inter-district routes and all routes within a district which cover total of 10 Kms. in length on State and National Highway combined were totally notified in favour of State Transport Undertaking. It will be apposite to reproduce the same :—

ANNEXURE

Sr. No.	Area/Routes	Extent
1.	All Inter-State routes which fall in share of Haryana as per inter-State agreement	100%
2.	All Inter-District routes	100%
3.	All routes within a District which cover more than a total of 10 Kms. in length on State and National Highway combined	100%

(4) As per scheme notified on 19th January, 2001, Annexure P-2, all intra-district routes and routes within the district and the routes allotted to the unemployed youths through their co-operative transport societies were also given to the Haryana Roadways to the exclusion of other persons. Petitioners are concerned herein to para 3 of 2001 Scheme which reads as under :—

“however, with a view to make the operation of transport services more efficient, the routes generally from one town to another, without a third town intervening but, however, linking some village routes, as shown in Annexure A of this Scheme, shall be allotted to the persons and societies found eligible under the present scheme. The term “town” here includes a large village.”

(5) In the present writ petition, para 7 of the Scheme has been assailed whereby routes were allotted by inviting bids and they were allocated to the highest bidders. Para 7 reads as under :—

“The five years permit and the right of operation shall be given to the operators on lease by inviting bids and the route shall be allotted to the highest bidder. A floor lease amount of 25 paise per kilometer shall be fixed for a bus running 250 kilometers per day. The monthly amount shall come to Rs. 1875 approximately.”

(6) Mr. Baldev Kapoor appearing for the petitioners has read various provisions of the Act and has stated that for plying of the stage carriage, Act envisages two different applications, one for the State Transport Undertaking and another for the private operators. He has read Chapter VI which contains special provisions relating to State Transport Undertaking as to how State Transport Undertaking and private operators are to be regulated if both operate on notified route. Chapter VI does not envisage and control over the private operators. He has stated that on the roads which are notified or the area which has been notified exclusively for the State Transport undertaking, are to be governed by Chapter VI. He further contend that if there is any provision for the notified area or notified route that private operators have to ply, their vehicles partially alongwith State Transport

Undertaking, they will be bound by the provisions of Chapter VI. Referring to various provisions, he has stated that Sections 97 to 108 of the Act have been enacted in such a manner and fashion that they cannot provide mechanism, regulation or any proposal for private operators on non-notified routes or area. He has stated that,—*vide* Scheme Annexure P-2 the routes which have been allocated to the private operators, are to be exclusively governed by Chapter V of the Act.

(7) Referring to Chapter V, Section 66 it has been urged that once necessity of permits is envisaged, then the State Government in reference to Section 67 can control road transport. For this, Mr. Kapoor has referred to Section 67(d) of the Act, to say that one of the guiding factor for allotting routes is, the desirability of preventing uneconomic competition amongst holders of the permits. He has also referred to sub-section (2) of Section 67 whereby State Government can fix fares and freights for stage carriages. Emphasis has been laid on sub-section (2) of Section 80 of the Act that a Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of Section 66 shall not ordinarily refuse to grant an application for permit of any kind made under the Act. He has further stated that under Section 71 sub-section (3) (a) for the city permits where population is more than five lacs, State Government can be guided by the criteria, otherwise same criteria can apply as a directory.

(8) Mr. Kapoor has stated that under sub-section (2) of Section 80 after the enactment of the Act, grant of permits have been liberalised to ensure better services to the consumers. He has placed reliance upon judgments of Hon'ble Apex Court in **Jagdip Singh versus Jagir Chand and another (1)**, and **Subash Chander and Another versus State Transport Appellate Tribunal and Others (2)**, to contend that any scheme enacted which prohibits, regulates control on the private operators for grant of permit, is not permissible and same is liable to be quashed. He has further stated that by inviting the bid, the State Government has throttled the fair competition for the persons who want to ply on the non-notified routes, therefore, better service to consumers has been

(1) J.T. 2001(8) S.C. 559

(2) J.T. 2002(3) S.C. 239

causality. It was further urged that once the State Government enacted the scheme and invited the bids, there was no other option for the operators except to make a bid as they have to succumb to such kind of scheme because no other avenue was kept open by the State and in this manner the very intent that permits shall be granted ordinarily under sub-section (2) of Section 80 of the Act has been set at naught. It has been stated that for rejecting the application for permit, reasons are to be stated and rejection of the permit can be assailed by the person rejected by invoking his right to appeal. Having adopted the course of allotting permits on basis of bid, the State has taken away all the mandatory safeguards given to a person who apply under Section 80(2) of the Act. It has been further submitted that by non-participating in the bid or by non-succeeding in the bid, the very object of the Act that State Government shall not ordinarily refuse the permit stand defeated. It has been further stated that it is fundamental right of the operator to carry his avocation business or trade has been subjected to unreasonable classification as same is motivated by the profit, for the State and by enacting such a scheme, one has to give the bid, and the fundamental right of the individual granted under Article 19(1)(g) has been defeated. It has been further stated that granting of the permits on the basis of bid has no reasonable nexus to the object sought to be achieved. It has been further canvassed that by evolving the method of participating in the bid, State has un-authorisedly and illegally devised a mechanism to collect the revenue for which they were not empowered. Mr. Kapoor has further stated that during the pendency of these writ petitions, duration of period of five years had elapsed and, therefore, the right of the petitioners to renew the permits has been eclipsed as under Section 74(2)(b)(ii) it can be construed against the petitioners that they have not paid the bid amount, therefore, they can be held ineligible.

(9) Mr. Kapoor after reading the various provisions which form the entire Chapter V of the Act has stated that by allotting permits only on the basis of the bids, the State Government has thrown away all the necessary provisions regarding passengers' safety, facilities and amenities to the passengers, adherence to time table (punctuality) such like many factors and only course to collect the maximum revenue has been adopted. Mr. Kapoor placing reliance on a judgment of Hon'ble Apex

Court rendered in **Mithilesh Garg and others versus Union of India and others (3)** has read the following portion again and again :—

“.....More operators mean healthy-competition and efficient transport system. Over-crowded buses, passengers standing in the aisle, clinging to the bus-doors and even sitting on the roof-tops are some of the common sights in this country. More often one finds a bus which has noisy engine, old upholstery, uncomfortable seats and continuous emission of black-smoke from the exhaust pipe. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter-public to board the vehicles of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favoritism in the process of granting permits. Restrictd licensing under the old Act led to the concentration of business in the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest. The apprehensions of the petitioners, that too many operators on a route are likely to affect adversely the interest of weaker section of the profession is without any basis. The transport business is bound to be ironed-out ultimately by the reationale of demand and supply. Cost of a vehicle being as it is the business requires huge investment. The intending operators are likely to be conscious of the economics underlying the profession. Only such number of vehicles would finally remain in operation on a particular route as are economically viable. In any case the transport system in a state is meant for the benefit and convenience of the public. The policy to grant permits liberally under the Act is directed towards the said goal.....”

(10) Mr. Sawhney, appearing for the petitioners to support this argument has further stated that State Transport Authority is a quasi judicial authority and, therefore, no leeway or discretion remain vested with the authority, as only sole criteria is to garner maximum revenue,

(3) AIR 1992 S.C. 443

therefore, to succeed in the auction to get the permits, one has to bid maximum amount. Mr. Sawhney has placed reliance upon **Rajni Bala Das versus Regional Transport Authority, Cuttack and others (4)**, and has stated that competition amongst the persons should be on the touch stone of competition of efficiency and not on the financial strength. It would be apposite here to reproduce paras 5 and 6 of the judgment of **Rajni Bala Das's case (supra)** :—

“5. There is no dispute that the R.T.A. is a quasi judicial functionary and is required to consider and deal with the applications in accordance with law. It is required to decide the lis between or amongst the competing applicants. In considering the merits of the applications, it has to keep in view the interest of the public generally. Competition amongst the intending operators is a competition for efficiency. This being the legal position, the R.T.A., Cuttack has clearly fallen into error in abdicating the quasi judicial power vested in it to the facts of the outcome of lottery system. Such a procedure adopted by it is wholly foreign to the scheme of the Act.

6. It is an undisputed fact that in a lottery method, element of chance or luck is inherent and is within the boundaries and gambling. Its consequences are pernicious because by sheer luck an intending applicant whose financial stability is in the doldrums, or whose performance as a stage carriage operator is unsatisfactory or who is in arrears in the matter of payment of tax might come out as a successful applicant in the lottery process.”

(11) It has been further stated by Mr. Kapoor that even, once the bid money has been collected and even though the petitioners have paid the same and since the State had no authority or legitimacy, therefore, act of the State being without the justifiable command of law, the petitioners are entitled to refund of the amount paid and non payment cannot visit them unfavourably. A reference has been made to Article 265 of the Constitution to say that State shall levy no tax without the authority of law.

(12) On the intervention of Mr. Hooda that bid made cannot be termed as a tax, Mr. Kapoor has not followed this argument with all vigour. However, Mr. Kapoor has stated that grant of permits cannot be a mode for the State to enrich itself. He has further stated that even though the petitioners have participated in the bid and after operating for few months has stopped to deposit the amount, they were well justified for doing so as neither there was any legislation to this effect nor there was any contractual obligation or law raise promissory estoppel. Both Mr. Kapoor and Mr. Sawhney have relied upon on the general maxim that if the enrichment has accrued or any amount has been collected, by stating that it was due to the imposition of certain obligations that collection being without the command of law, same being void *ab initio*, petitioners cannot be made to suffer for that, and it cannot termed that they had profited as State Transport undertaking and the private operators were made to charge uniform fares. For sake of emphasis, it has been canvassed that while determining fares for State Transport Undertaking and for private operators, amount of bid to be paid was not taken into consideration as fare per kilometer for both State Transport undertaking and private operators were same.

(13) Mr. Suresh Monga, Additional Advocate General, Haryana assisting Mr. H. S. Hooda, Advocate General, Haryana, on instructions from Mr. O. P. Arya, Superintendent, working in the office of State Transport Controller has stated that till now validity or the Scheme of 2001 whereby bids were invited has not been determined by the High Court or the Hon'ble Apex Court and no writ petition has been decided. To counter this, Mr. Sawhney has stated that a similar scheme in 2003 was introduced which was challenged in various writ petitions and before this question could be adjudicated, the State Government had withdrawn the scheme. Therefore, there is no judicial pronouncement on the issue of competence of State to invite bids as provided in the scheme.

(14) Mr. H. S. Hooda, Advocate General, Haryana appearing for State has drawn my attention to 1993 Scheme and stated that it cannot be said that the scheme has no reasonable nexus to the object sought to be achieved as specified in the Act. He has stated that Act was enacted for liberalisation of the scheme for grant of permits on non

nationalised routes. By introducing 1993 Scheme provision that route permits shall be issued to registered co-operative societies for unemployed, by prescribing minimum qualifications, the scheme has also taken into consideration interest and benefits which can accrue to the Scheduled Castes and Backward Classes, therefore, para 8 of 2001 Scheme recognises that permits shall be allotted to the societies who had already applied under 1993 Scheme. He submits that State in order to provide permits to unemployed youths has reserved permits for them. He has stated that bid was introduced amongst the societies of unemployed youths. One who gave maximum bid was declared successful so that discretion in the hands of the State authorities is not exercised arbitrarily in whimsical manner, therefore, any unemployed youth to obtain permit was the one, who has given maximum bid. Therefore, the plea of the petitioners that there is a violation of fundamental right, cannot be sustained as a promotion of a class of person, the State can create a class and this rationlisation cannot be violative of Articles 14 and 19(1)(g) of the Constitution of India.

(15) Mr. Hooda has stated that out of 65 persons who had made the bid, 39 are regularly paying the bid amount and regarding others which include petitioners a serious attempt was made to recover the amount of bid money but because of stay granted in the years 2005 and 2006, the process of recovery came to stand still.

(16) I have noticed the rival submissions made by the counsel for the parties. As per Section 80(2) of the Act, Regional Transport Authority or State Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. The word '*shall*' assume importance, as the same has been followed by '*not ordinarily refuse*'. So, the mandate of law is apparent. It is only for the reasons, due to which transport system for the benefit and convenience of the public is to suffer, permit can be refused. Therefore, the authorities, while refusing, are to be guided by the words of wisdom provided by the Hon'ble Apex Court in **Mithilesh Garg's case** (*supra*). A portion of the judgment has already been reproduced above. Hon'ble Apex Cuort was of the view that the new Act has brought liberalization and has given go by to concentration of business in the hands of few persons, as monopoly was adversely affecting

public interest. In case the system of granting permits by bid is allowed, it would not only create monopoly but will be detrimental to the public interest, as those enjoying financial muscle shall usurp all route permits. Furthermore, the concern of the State that an efficient and adequate transport system is evolved, will also be a causality. Grant of permits on the basis of bid will become a mode of revenue generation. It was incumbent upon that State to determine the merits of each applicant, taking into consideration antecedents and verification of the past performance track. Punctuality, adherence to the route, condition of the vehicle, customer care, past satisfactory performance, financial stability, issuance of tickets and non-evasion of tax, are various factors, which can be taken into consideration while allotting permit. These factors cannot be put in water tight jackets. Depending upon each area route, safety of passengers, amenities and facilities to be provided by the operator ought to have been the concern of the State, than to allot permits on the basis of maximum bid without ensuring providing of better service to the passengers. Say, for example, hardened criminals cannot be permitted to be the drivers and conductors on the routes, which are to be used by the girls to reach educational institutions. Examples and illustrations can be many. Since the sole criteria is, to give maximum bid, that being contrary to the provisions of the Act, cannot be upheld. Therefore, allotment of the route permits on the basis of bid alone, being bad, cannot be sustained.

(17) Having held the allotment of permits on the basis of bid to be bad, second limb of the argument that the operators, who had obtained route permits on the basis of the bid, be absolved of their financial liability to pay the bid amount, is to be dealt with. It has been submitted that since awarding of the permits on the basis of bid was bad in law, therefore, those operators/petitioners, who have obtained permits on the basis of bid, cannot be made to pay the bid amount. This argument is fallacious. In the present case, operators, knowing fully well, for promotion of their business, had made the bid and obtained the permits. To participate in the bid was their conscious decision. They had the choice not to participate in the bid. Once, knowing fully well the terms and conditions spelt out in the scheme, they came forward to bid and obtain the permits, they cannot now turn their back and say

of Haryana shall formulate a new policy within three months from today. Till then on the routes where the buses are operating on the basis of bid, may continue to operate. It is further held that if because of stay granted by this Court or otherwise, bid money has not been paid, taking into consideration long pendency of the writ petitions, bid money may be deposited by the bus operator in two installments within six months. Otherwise, the State shall be at liberty to recover the bid money as arrears of land revenue, in accordance with law. The State shall also be at liberty to construe non-deposit of bid money as disability for renewal of the permit for operating buses on the notified routes. However, in case an undertaking is furnished by the bus operator within one month from today that he shall deposit the amount of bid money in two installments within six months, such a disability shall not be construed against the bus operator and their application for renewal of the permit shall be considered in accordance with law.

(20) In view of the observations made above, writ petitions stands disposed off.

R.N.R.

Before M. M. Kumar and Augustine George Masih, JJ.

JITESH DEMBLA,—Petitioner

versus

STATE OF HARYANA & OTHERS,—Respondents

C.W.P. No. 14364 of 2004

12th December, 2008

Constitution of India, 1950—Art. 226—Haryana Compassionate Assistance to Dependents of the Deceased Government Employees Rules, 2003—Rls.3(k) and 18—Parents of petitioner expired—On attaining majority applying for exgratia employment—Rules provide that claim of such orphans shall remain alive till one child attains majority or minimum eligible age for entry into Government service—Younger brother of petitioner selling vegetables as a street hawker—Petition allowed.