

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.7925 of 2020 (O&M)

Date of decision: April 8th, 2021

Kulbir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vikas Bahl, Senior Advocate assisted by
Mr. Bikramjit Patwalia, Advocate for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Mr. Prateek Gupta, Mr. Rajat Khanna and
Mr. Ashutosh, Advocates for respondent Nos.4, 6 to 12.

MAHABIR SINGH SINDHU, J.

1. Petitioner is the existing stage carriage permit holder in terms of an approved Scheme, notified by the State of Haryana under Section 100 (3) of the Motor Vehicles Act, 1988 (*for short 'the Act'*) and plying his bus on the routes in question. His grievance is that private respondents have also been granted/issued impugned temporary permits on his route, but illegally, therefore, the same are liable to be set aside by this Court.

2. The prayer clause in nutshell is as under:-

- (i) for issuance of a writ in the nature of certiorari to set aside the impugned permits Annexure P-16 (Colly.), issued in favour of the private respondent Nos.4 to 12;

- (ii) to stay the operation of impugned permits (P-16 Colly.) and further restrained official respondents from issuing any time-table to operate buses on the routes in question;
- (iii) to issue any other appropriate writ, order or direction as this Court deems fit & proper in the facts and circumstances of the case.

It is relevant to mention here that operation of the impugned permits was stayed and that is still continuing.

3. Facts of the case are that:-

In order to provide an efficient, adequate, economical and properly coordinated road transport service, the State of Haryana while exercising powers under Section 99 (1) of the Act issued a proposal, vide Gazette Notification dated 25.02.2016. After consideration of the objections, the above proposal was approved under Section 100 (2) of the Act and thereafter in terms of Section 100 (3) of the Act, it was finally published as an approved Scheme vide Notification dated 17.02.2017 (P-1). Since the initial proposal under Section 99 (1) of the Act was issued in the year 2016, therefore, the approved Scheme is commonly known as the Stage Carriage Scheme of 2016 (*hereinafter referred to as "Scheme of 2016"*).

According to the above Scheme, all the areas and routes whether inter-State or intra-State, except the routes mentioned in the Schedule, shall exclusively be reserved for grant of the stage carriage permits to the State Transport Undertakings (*for short 'STUs'*); however, for the routes mentioned in the Schedule, stage carriage permits can be granted to the STUs, any person

or Society/Firm/Company in the State and the operative part of the Scheme of 2016 reads as under:-

SCHEME

“1. All the area and routes, whether inter-State or intra-State, except the routes mentioned in the Schedule shall exclusively be reserved for grant of stage carriage permits to the State Transport Undertaking(s).

2. (i) The stage carriage permits on the routes mentioned in the Schedule shall be granted to the State Transport Undertaking(s), any person, or society/firm/company in the State.

(ii) The permits shall be granted as per the terms and conditions fixed by the State Government.

(iii) The permit under the Scheme shall be granted to an applicant subject to the clearance of dues in respect of previous permit, if any.

(iv) Variation in the route as per provisions of Motor Vehicles Act, 1988 shall become part of the Schedule. The termini (starting and terminating points of the route) shall not be altered in case of variation. No extension or curtailment shall be allowed in the route.

3. The permits already granted under the City Bus Service Scheme, 2004 shall be valid.”

Undisputedly, petitioner was granted stage carriage permit in pursuance of the Scheme of 2016 on 29.05.2018, which is valid for five years.

4. Aggrieved against the Scheme of 2016, some bus operators filed CWP No.5867 of 2017 (***Nayabash Coop. Transport Society Ltd. and others Vs. State of Haryana and others***’); during the pendency of the same, the State of Haryana came up with an affidavit dated 16.05.2017, in which *inter alia*

stated that upon reconsideration of the matter, it has been decided to cancel Scheme of 2016 and a fresh draft modified Scheme shall be notified within a period of two weeks. Also stated that till such time, the existing Scheme is not cancelled, all the permit-holders shall be entitled to ply their vehicles as per time-table given in the respective permits and whosoever have got their vehicles registered on the 'Vahan' portal will be entitled for the permit under the Scheme of 2016; but after cancellation of the same, everyone will be entitled to temporary permits as per provisions of Section 99 (2) of the Act (*ibid*).

Taking into consideration the above factual position, the above writ petition was disposed off by the Division Bench of this Court on 16.05.2017 (P-3) while observing in the following manner:-

“that the entire exercise to notify the final scheme shall be completed within a period of six months. Let the needful be done. As 2016 scheme will remain operative till such time new scheme is notified, the State shall be at liberty to issue permits to the applicants, who had already registered on the portal of the Transport Department namely “Vahan”, under the 2016 scheme on the same terms and conditions as are applicable to the persons, who have been granted permits earlier under the 2016 Scheme, if they fulfill the conditions applicable.”

In view of above development, the State Government while exercising powers under Section 99 (1) of the Act issued a fresh proposal, vide Notification dated 20.06.2017 (P-4), known as Draft Scheme of 2017, which was almost identical to the Scheme of 2016, except the change in the number of routes i.e. from 273 to 452, and the relevant part of the Draft Scheme is extracted as under:-

DRAFT SCHEME

“1. All the area and routes, whether inter-State or intra-State except the routes mentioned in the Schedule shall exclusively be reserved for grant of stage carriage permits to the State Transport Undertaking(s).

2. (i) The stage carriage permits on the routes mentioned in the Schedule shall be granted to the State Transport Undertaking(s), any person, or society/firm/company in the State.

(ii) The permits shall be granted as per the terms and conditions fixed by the State Government.

(iii) The permit under the Scheme shall be granted to an applicant subject to the clearance of dues in respect of previous permit, if any.

(iv) Variation in the route as per provisions of Motor Vehicles Act, 1988 shall become part of the Schedule. The termini (starting and terminating points of the route) shall not be altered in case of variation.

3. The permits already granted under the City Bus Service Scheme, 2004 shall be valid.”

5. Also noteworthy that feeling aggrieved against the order dated 16.05.2017, referred above, some private operators filed Review Application (RA-298 of 2017), but the same was disposed off on 21.07.2017 (P-5) with the following clarification:-

“that the stand taken by the State is that the draft scheme has been notified on 23.06.2017 (sic. 20.06.2017) and any applicant can apply for issuance of a temporary permit on the routes, as specified in the draft scheme, or of his choice including the routes mentioned in the offer of allotment. On fulfillment of the conditions required for the purpose, the application so filed shall be considered and final decision shall be taken thereon within a period of one week from the date of filing of the application.”

It is necessary to mention here that the order dated 16.05.2017, passed by the Division Bench was also challenged in SLP (C) No.22800 of 2017 by the Haryana Cooperative Transport Society Ltd. along with other private operators and Hon'ble Supreme Court, vide order dated 04.09.2017, granted *status quo*, but the same was modified on 13.10.2017. For reference, operative part of both these orders read as under:-

“Order dated 04.09.2017:

Let the matter be listed on 22.09.2017.

In the meantime, status quo, as it exists today, shall be maintained by the parties.”

“Order dated 13.10.2017:

Heard Mr. P.S. Patwalia, learned senior counsel for the petitioners and Mr.Tushar Mehta, Learned Additional Solicitor General for the respondents.

Having heard learned counsel for the parties, the order of status quo is modified to the following extent:

- a) The respondent-State is at liberty to call for objections and offer hearing to the objectors in respect of the Draft Scheme of 2017 but shall not finalize the same.*
- b) The transporters who are continuing on the basis of the 2016 Scheme shall be allowed to operate and if any permit has expired, the same shall be renewed in accordance with law.*
- c) If any transporter is eligible to obtain the permit in pursuance of the directions given by the High Court, his case shall be considered and shall not be refused on the ground that a new policy/ scheme is coming..”*

6. Pursuant to the order dated 16.05.2017, passed in CWP No.5867 of 2017, respondent No.2 issued a Circular dated 07.02.2018 to all the Secretaries

of the RTAs for grant of temporary permits under the Draft Scheme of 2017 (Mark 'X'), which reads as under:-

*“ Government of Haryana
Transport Commissioner, Haryana, Chandigarh*

To

All Secretaries

Regional Transport Authorities in State of Haryana

No.9334-9356/T-1/ST-II

Dated: 07.02.2018

Sub: Grant of temporary permit under the draft State Carriage Scheme 2017.

In reference to above.

It is to inform you that the Haryana Govt. has published the draft of new Stage Carriage Scheme 2017 vide notification No. 17/10/2011-3T(II) dated 20.06.2017. The Department has taken the decision to issue the temporary permits under Stage Carriage Scheme 2017 for which the terms and conditions have been made which is sent for favour of further action.

You are hereby directed that the issuance of temporary permits under the Draft of Stage Carriage Scheme 2017 be made keeping in view the terms and conditions attached as also in view of the following:-

- 1. It be made sure that the entry be made in the register as per the proforma sent for seeking the details of the applications.*
- 2. On every application, the Sr.No. of the application be made.*
- 3. Incomplete application will not be accepted and in case of unacceptance the reasons be given to the applicant in writing.*
- 4. The details of the draft received as fee enclosed with the application, be kept and without any delay be got deposited as per the directions of the department.*
- 5. The recipient official will affix its stamp and name.*

6. *Permanent time table of the buses on the route will be given within 60 days and till then temporary time table will be issued at the time of grant of permit.*

Sd/-
For Transport Commissioner,
Haryana, Chandigarh. ”

The above communication was challenged in CWP No.4345 of 2018 (*Bhanu Cooperative Transport Society Limited and others Vs. State of Haryana and others*), wherein operation of the same was stayed by the Single Bench of this Court, vide order dated 23.02.2018.

Also necessary to mention here that while disposing of a bunch of cases along with CWP No.7671 of 2018, another Single Bench of this Court vide order dated 22.07.2019 granted permission for temporary permits in terms of Section 99 (2) of the Act for a period of one year as an interim measure without creating any right to ply buses on regular basis subject to the directions of Hon'ble Supreme Court in SLP(C) No. 22800 of 2017.

While taking into consideration the order dated 22.07.2019, CWP No.4345 of 2018 challenging the Circular dated 07.02.2018 was also disposed off by the same Bench on 24.09.2019 and against that, LPA No.2052 of 2019 was filed.

Another writ petition i.e. CWP 6343 of 2018 (*Chahal Cooperative Transport Society Ltd. and others Vs. State of Haryana and others*), similar to CWP No.7671 of 2018, was also disposed off on 21.11.2019, which was also challenged in LPA No.1974 of 2019. This LPA was clubbed with LPA No.2052 of 2019 and the Division Bench restrained the

State of Haryana from taking any further steps in the matter vide order dated 04.12.2019 and the same reads as under:-

“Issue notice of motion to the respondents.

Mr. Sharad Aggarwal, Assistant Advocate General, Haryana accepts notice on behalf of respondents No.1 to 4. Necessary extra sets of petition be supplied to enable him to submit response within a period of four weeks.

In the meanwhile, it is clarified that the parties shall strictly comply with the interim order passed by the Supreme Court dated 13.10.2017 in Special Leave Petition (Civil) No. 22800 of 2017 “The Haryana Cooperative Transport Society Ltd. and others v. State of Haryana and others”.

It is further clarified that no steps would be taken by the respondents or any of the parties in purported compliance of the order passed by the learned Single Judge which would ultimately result in violation of the interim order passed by the Supreme Court.”

Also necessary to mention here that both the above LPAs are stated to be pending for 20.05.2021.

The order dated 24.09.2019, passed in CWP No. 4345 of 2018, was also challenged in SLP (C) No.26446 of 2019 and which was ordered to be heard along with SLP (C) No.22800 of 2017.

7. Hon’ble Supreme Court, after granting leave in the above SLPs, disposed off the same on 21.01.2020 while passing the following order:-

“Applications for impleadment/ intervention are allowed.

Leave granted.

These matters were heard on 13.10.2017 when this Court passed the following order:-

“Having heard learned counsel for the parties, the order of status quo is modified to the following extent:

- a) *The respondent-State is at liberty to call for objections and offer hearing to the objectors in respect of the Draft Scheme of 2017 but shall not finalize the same.*
- b) *The transporters who are continuing on the basis of the 2016 Scheme shall be allowed to operate and if any permit has expired, the same shall be renewed in accordance with law.*
- c) *If any transporter is eligible to obtain the permit in pursuance of the directions given by the High Court, his case shall be considered and shall not be refused on the ground that a new policy/scheme is coming.”*

In response to the above order, the State Government has examined the matter at the highest level and it is stated across the Bar by the counsel for the State that the State Government has decided to withdraw the Draft Scheme of 2017 and all the dispensations afforded under that Scheme. In other words, the Draft Scheme of 2017, which was the subject matter of challenge in the present proceedings stands completely nullified. We accept this statement.

The State Government has sought permission to take lawful, permissible action under Section 102 of the Motor Vehicles Act, 1988 to cancel or modify the Stage Carriage Scheme 2016 by following the prescribed procedure under the law in order to remove all the defects therein.

We find no reason to refuse this permission. The State Government may proceed in the matter in accordance with law after giving due opportunity to all concerned.

In view of the statement made on behalf of the State Government, referred to above, which we have accepted, nothing remains for consideration in these appeals. However, we make it clear that all future actions be proceeded in accordance with law.

The appellant (s)/ applicant (s) or any other eligible person will be free to make application (s) to the concerned authority, if already not made, for registration and for grant of permit within

one week from today, and if so made, the competent authority may consider the same as per law expeditiously and in any case before 20th March, 2020.

If the appellant (s)/ applicant (s) are aggrieved by any decision taken by the competent authority, it will be open to them to pursue such other remedies as may be permissible in law including under Section 100 (2) of the Motor Vehicles Act, 1988.

In view of the above, nothing survives for consideration in these appeals. Accordingly, the appeals and pending applications, if any, are disposed of.”

Thereafter, on 28.01.2020, upon mentioning by the appellants, Hon’ble Supreme Court ordered for minor correction in the penultimate paragraph of the order dated 21.01.2020 to the effect that “*Section 100 (2) of the Motor Vehicles Act, 1988*” be read as “*Section 102 of the Motor Vehicles Act, 1988*”.

8. Despite the specific directions in the order dated 21.01.2020, reproduced hereinabove, there was no progress in the matter. Ultimately, at the fag end of the time limit fixed by the Hon’ble Supreme Court, respondent No.2 conducted Video-Conference with the District Headquarters on 19.03.2020 & 20.03.2020 and while issuing Memo dated 20.03.2020 (P-12) directed all the Secretaries of RTAs to provide the information regarding the LOI to be issued to the eligible applicants by next day up to 10.00 a.m., positively, in the proforma specified therein and which reads as under:-

*“GOVERNMENT OF HARYANA
TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH
To*

*All ADCs-cum-Secretaries,
Regional Transport Authorities in the State.
Memo No.14711-733/T1/ST-11
Dated: 20.03.2020.*

Subject: Grant of Stage Carriage Permits under the Stage Carriage Scheme of 2016 in pursuance of orders of Hon'ble Supreme Court of India dated 21.01.2020 in WP (C) No.556 of 2020.

1. *This is with reference to the hearing of the applicants in the subject cited matter, held through Video Conferencing from Chandigarh to all District Headquarters on 19.03.2020 and 20.03.2020.*
2. *The information regarding the letter of intent (LOI) to be issued to the eligible applicants should be provided to this office in the following proformas by tomorrow upto 10.00 AM positively:-*

Proforma A *(The applicants who have applied between 21.01.2020 to 28.02.2020 along with the DD of Rs.25000/-).*

<i>Sr. No.</i>	<i>Name and address of the applicant</i>	<i>Details of the route applied for under the State Carriage Scheme of 2016</i>

Proforma B *(The applicants who were granted temporary permits under the draft carriage scheme and those to whom LOIs were issued under the Stage Carriage Scheme 2016 and the bus was bought within 90 days of the issue of LOIs).*

<i>Sr. No.</i>	<i>Name and address of the applicant</i>	<i>Details of the route applied for under the State Carriage Scheme of 2016</i>

Proforma C *(The applicants who have purchased the bus under the draft Stage Carriage Scheme of 2017 but the permits were not granted to them)*

<i>Sr. No.</i>	<i>Name and address of the applicant</i>	<i>Details of the route applied for under the State Carriage Scheme of 2016</i>

The aforementioned information be furnished to this office within stipulated time mentioned above in a soft copy and in hard copy through the dealing hand of the case.

*Please treat it as **Most Urgent**.*

*Sd/-Varinder Sharma,
Superintendent
For Transport Commissioner,
Haryana, Chandigarh."*

The desired information was supplied by the respective Secretaries of all RTAs and according to which, total 627 applications were received seeking permits for different routes.

9. Upon receipt of the above details, the matter was considered at the level of Transport Minister for grant of permits, which was duly approved by the Chief Minister and ultimately, the decision was communicated to all the Secretaries of RTAs by respondent No.2, vide Memo dated 30.03.2020 along with its Annexure-I (P-13).

Since the above Memo is most relevant for adjudication of the matter in controversy, therefore, the same is reproduced hereasunder:-

*"GOVERNMENT OF HARYANA
TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH*

To

*All ADCs-cum-Secretaries,
Regional Transport Authorities in the State.*

Memo No.14872-893 T-1/ST-II

Dated: 30/03/2020.

Subject: Grant of Stage Carriage Permits under the Stage Carriage Scheme of 2016 in pursuance of orders of the Hon'ble Supreme Court of India dated 21.01.2020 in WP(sic SLP) (C) No.556 of 2020.

Reference on the subject cited above.

It is stated that Hon'ble Supreme Court of India in its order dated 13.10.2017 in SLP No.22800 of 2017 has restrained the State from finalization of the Stage Carriage Scheme of 2017 the draft of which was notified on 20.06.2017. In compliance of the orders of Hon'ble Apex Court, the said draft scheme was not finalized by the State Government. The State Government had sought the

permission from the Hon'ble Supreme Court in aforementioned SLP to withdraw the draft Stage Carriage Scheme of 2017. A statement was also made before the Hon'ble Supreme Court to modify the Stage Carriage Scheme of 2016 notified on 17.02.2017.

The Hon'ble Supreme Court of India accepted the submissions made by the State Government and issued further directions to the State in its order dated 21.01.2020 in Civil Appeal No.556 of 2020 arising out of SLP No.22800 of 2017. The operative part of the said order is reproduced as under:-

“The appellant(s)/applicant(s) or any other eligible person will be free to make application(s) to the concerned authority, if already not made, for registration and for grant of permit within one week from today, and if so made, the competent authority may consider the same as per law expeditiously and in any case before 20 March, 2020.”

The opinion of Advocate General, Haryana was also sought in the matter. In view of the opinion tendered by the said office and to examine the issue properly, Video Conferences were held on 19.03.2020 and 20.03.2020 at Chandigarh. As per discussions held in the VCs, the detailed information was furnished from your end and on the basis of the same, the following position with regard to the categories which are under consideration for grant of permit is to be granted under the Stage Carriage Scheme of 2016 in pursuance of the orders of Hon'ble Supreme Court of India dated 21.01.2020 in Civil Appeal No.556 of 2020 emerged.

<i>Sr. No.</i>	<i>Category</i>	<i>No. of permits to be issued under the Stage Carriage Scheme of 2016</i>
1.	Applicants who have applied from 21.01.2020 to 28.01.2020 along with DDA of Rs.25000/- (Category-A)	328
2.	Applicant to whom temporary permits have been granted under draft Stage Carriage Scheme of 2017 (Category B-I)	93

3.	Applicants who had brought the buses under the Stage Carriage Scheme of 2016 within 90 days of issue of LOI but permits couldn't be granted to them (Category B-II)	9
4.	Applicants who have purchased the buses for the grant of permit under the Stage Carriage Scheme of 2016 or 2017 but permit was not granted to them (Category C)	197

The district wise details of all the categories as complied on the basis of the information received from field officers is at **Annexure-I**.

In view of the above, approval of the State Government was sought regarding modification of the Stage Carriage Scheme of 2016 as per statement given by the State before Hon'ble Supreme Court of India and grant of permit under the Stage Carriage Scheme of 2016 to the applicants falling in the categories mentioned in the above table. The approval of Hon'ble CM has been obtained. In compliance thereof, registration of any unregistered bus of B-I, B-II and C categories shall be done by 31.03.2020. Also, the permits applied for shall be granted to these B-I, B-II and C categories expeditiously. **As for category 'A', the decision of the Government shall be communicated in due course.** Accordingly the following directions are issued for **grant of permit to the applicants falling in category B-I, B-II and C:-**

1. The buses purchased by the applicants for operation under the Stage Carriage Scheme of 2016 or draft Stage Carriage Scheme 2017 and not registered as yet, be registered as these are BS-IV pollution norms compliant buses which are to be registered on or before 31.03.2020 positively.
2. The buses purchased by the applicants for operation under the Stage Carriage Scheme of 2016 or 2017, whether registered or not, be given permit under the

Stage Carriage Scheme of 2016 after registration on the routes applied for by them in their respective districts.

Without a proper application no permit shall be granted.

3. The applicants to whom temporary permits were granted under the draft Stage Carriage Scheme of 2017 be given permits under the Stage Carriage Scheme of 2016 on the routes opted by them in the application(s) in their respective districts. As the draft scheme 2017 is no longer in existence so the permits issued under that scheme also have become non-existent.

4. The applicants who had brought the buses under the Stage Carriage Scheme of 2016 within 90 days of the issue of LOI be given permit on the routes mentioned in the LOI issued to them earlier in the said scheme.

5. A modal LOI having terms and conditions for the issue of the temporary permit on ad hoc basis under the Stage Carriage Scheme of 2016 is enclosed.

6. The temporary permits to the eligible applicants shall be granted purely on ad hoc basis with a clear stipulation on the permit that this arrangement will remain in force till the completion of the process of modification of existing Stage Carriage Scheme 2016. The permits must also have a clear stipulation that this arrangement will not give any equitable right to the permit holder for grant of identical permit under the modified scheme.

7. The applicants under the erstwhile Stage Carriage Scheme 2017 will be required to pay full application fee under Stage Carriage Scheme 2016 before consideration of their application for grant of permit under 2016 scheme. Full application fee of 2016 Scheme will have to be paid irrespective of any amount paid under 2017 Scheme.

8. The life of the temporary permit issued on ad hoc basis under the Stage Carriage Scheme of 2016 shall be co-terminus with the age of plying of the vehicle.

The above directions should be adhered to in letter and spirit. Complete record of the issue of permits should be kept duly signed by all concerned and countersigned by the ADC-cum-Secretary, RTA concerned and this detail should be sent to this office within one week of the issue of the permit.

Encl: As above. *(Virender Singh Sehrawat)*
Addl. Transport Commissioner,
Haryana, Chandigarh.

Endst. No.14894-895 T-1/ST-II dated 30/03/2020.

A copy of above is forwarded to:-

- 1. PS/PST for kind information of Worthy Principal Secretary, Transport.*
- 2. PS/TC for kind information of Worthy Transport Commissioner.*

(Virender Singh Sehrawat)
Addl. Transport Commissioner,
Haryana, Chandigarh.

Annexure-I

<i>The district wise details of all the categories as complied on the basis of the information received from field offices. Name of the District</i>	<i>Applicants who have applied from 21.01.2020 to 28.01.2020 along with DDA of Rs.25,000/- (Category-A)</i>	<i>Applicant to whom temporary permits have been granted under draft Stage Carriage Scheme of 2017 (Category B-I)</i>	<i>Applicants who had brought the buses under the Stage Carriage Scheme of 2016 within 90 days of issue of LOI but permits could not be granted to them (Category B-II)</i>	<i>Applicants who have purchased the buses for the grant of permit under the Stage Carriage Scheme of 2016 or 2017 but permit was not granted to them (Category C)</i>

<i>Ambala</i>	<i>NIL</i>	<i>1</i>	<i>NIL</i>	<i>1</i>
<i>Bhiwani</i>	<i>16</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
<i>Ch. Dadri</i>	<i>9</i>	<i>NIL</i>	<i>NIL</i>	<i>10</i>
<i>Faridabad</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
<i>Fatehabad</i>	<i>44</i>	<i>4</i>	<i>1</i>	<i>6</i>
<i>Gurgaon</i>	<i>3</i>	<i>NIL</i>	<i>NIL</i>	<i>19</i>
<i>Hisar</i>	<i>39</i>	<i>15</i>	<i>NIL</i>	<i>60</i>
<i>Jhajjar</i>	<i>46</i>	<i>11</i>	<i>NIL</i>	<i>10</i>
<i>Jind</i>	<i>43</i>	<i>17</i>	<i>NIL</i>	<i>21</i>
<i>Kaithal</i>	<i>28</i>	<i>5</i>	<i>NIL</i>	<i>18</i>
<i>Karnal</i>	<i>1</i>	<i>17</i>	<i>NIL</i>	<i>17</i>
<i>Kuruk-shetra</i>	<i>25</i>	<i>NIL</i>	<i>NIL</i>	<i>2</i>
<i>Narnaul</i>	<i>5</i>	<i>1</i>	<i>NIL</i>	<i>1</i>
<i>Nuh</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
<i>Palwal</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>7</i>
<i>Panchkula</i>	<i>10</i>	<i>NIL</i>	<i>NIL</i>	<i>2</i>
<i>Panipat</i>	<i>1</i>	<i>NIL</i>	<i>5</i>	<i>5</i>
<i>Rewari</i>	<i>9</i>	<i>7</i>	<i>1</i>	<i>4</i>
<i>Rohtak</i>	<i>43</i>	<i>14</i>	<i>NIL</i>	<i>12</i>
<i>Sirsa</i>	<i>NIL</i>	<i>1</i>	<i>NIL</i>	<i>NIL</i>
<i>Sonipat</i>	<i>6</i>	<i>NIL</i>	<i>2</i>	<i>2</i>
<i>Yamuna-nagar</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>	<i>NIL</i>
Total	328	93	9	197

In pursuance of the above Memo, all the private respondents were granted/issued impugned offer of allotment/ LOIs and temporary permits for a period of one year on those very routes, where the petitioner is plying his bus.

10. Hence, the present writ petition.

11. ARGUMENTS ON BEHALF OF THE PETITIONER

(i) As per the order dated 21.01.2020, passed by the Hon'ble Supreme Court, only one week time was granted for submission of the applications i.e. up to 28.01.2020;

(ii) The State Government on 21.01.2020 has withdrawn the Draft Scheme of 2017 along with all its dispensations with an assurance to cancel or modify the Scheme of 2016 while removing all the defects

under Section 102 of the Act, but till date, no positive steps have been taken in the matter;

- (iii) The State Government while issuing Memo dated 30.03.2020 categorized the applicants in four different categories i.e. A, B-I, B-II and C; which was never the import of order dated 21.01.2020, passed by the Hon'ble Supreme Court, nor such a course is permissible in law;
- (iv) As on today, the approved Scheme of 2016 is valid in law and this proposition has not been disputed by the respondents as well; therefore, in such a scenario, the only course open for grant of temporary permit(s) would be the proviso to Section 104 and except that, there is no other provision under the Act, but this aspect of the matter has completely been ignored by respondent No.3 while granting the impugned temporary permits;
- (v) The provisions of Chapter VI of the Act are having the over-riding effect over the provisions of Chapter V and as such, under the provisions to Section 104, only STA or RTA are the competent authority to grant the temporary permits; but the impugned permits have been granted by the respondent No.3 (Secretary to RTA), thus, the actions are without jurisdiction;

- (vi) Respondent No.3 neither considered the applications of the private respondents; nor passed any order in this regard, rather simply issued the impugned temporary permits while performing the ministerial act in compliance of decision dated 30.03.2020 and as such, there is no application of mind at all;
- (vii) The petitioner was granted stage carriage permit on the route in question, which is valid as on today; plying his bus and paying taxes to the Government, however, to his detriment, the impugned temporary permits have been issued without any lawful authority by respondent No.3. Resultantly, the rights of the petitioner to carry on business emanating from Article 19 (1) (g) of the Constitution have been violated, thus, he has the cause of action as well as *locus standi* to file the present writ petition;
- (viii) Although, official respondents tried to justify the impugned permits on the premise that private respondents have also purchased buses after making huge investment; paying taxes, but it cannot be treated as a vested right for grant of the permit(s) as a matter of course;
- (ix) If there was any doubt in the mind of the official respondents regarding the import of the order dated 21.01.2020 and for consideration of pending

applications, then the appropriate course open would have been to move an application before the Hon'ble Supreme Court for clarification or modification of the above order, but certainly they cannot interpret the same as per their choice.

12. ARGUMENTS ON BEHALF OF THE STATE:

- (i) The Hon'ble Supreme Court while passing the order dated 21.01.2020 did not prohibit the competent authority to grant permits to the applicant(s), who submitted their applications after 28.01.2020; nor there was any such observations to the effect that the application(s) received between 21.01.2020 to 28.01.2020 would "*only*" be considered.

Since the private respondents submitted applications prior to 21.01.2020, therefore, there was nothing wrong while granting the impugned permits in their favour;

- (ii) The applicants, who had submitted their applications either under Draft Scheme of 2017; or Scheme of 2016, but could not be granted permits due to operation of the interim stay order, were asked for safer side to submit fresh applications along with demand draft of Rs.25,000/- (each) under the Scheme of 2016, therefore, the same cannot be construed that

their applications were received after the cut-off date
i.e. 28.01.2020;

(iii) The Hon'ble Supreme Court while disposing off the matter on 21.01.2020 permitted the appellants/ applicants or any other eligible person to make application(s) within one week, if not already made; but since the applications of the private respondents were already pending before the authorities, therefore, it is wrong to allege that they were granted the impugned permits on the basis of applications submitted after cut-off date i.e. 28.01.2020;

(iv) The petitioner has been granted the stage carriage permit under the Scheme of 2016, which is open for all being valid in law. Any person or Society/ Firm/ Company in addition to the STUs can apply for permits and there is no ceiling regarding the number of permits on the notified routes and as such, the State Government has rightly followed the equality clause of Article 14 of the Constitution while granting the impugned temporary permits to the private respondents;

(v) The petitioner being existing operator wants to create his monopoly and wishes to obstruct the plying of buses by the private respondents despite the fact that they have also been granted valid temporary permits

for one year. The petitioner obtained stay order while concealing the true facts from this Court and stopped the plying of buses by private respondents without there being any cause of action to that effect;

(vi) The petitioner has selectively impleaded the private respondents as parties and deliberately did not challenge the permits granted in favour of some other persons for the reasons best known to him; thus, he has not approached the Court with clean hands, rather it shows their *mala fide* intention;

(vii) The action of the official respondents while granting the impugned permits is perfectly in accordance with provisions of the Act, Rules of 1993 and Scheme of 2016; but on the other hand, petitioner has miserably failed to show the violation of any law or infringement of his legal rights and as such, he has no *locus standi* to file the present writ petition;

(viii) Although, there is no violation of the order dated 21.01.2020, yet, if it is found, then the appropriate course for the petitioner would be to file a Contempt Petition before the Hon'ble Supreme Court instead of invoking the jurisdiction of this Court under Article 226 of the Constitution;

(ix) The private respondents have made huge investments; paying taxes to the Government as well as salaries to

the drivers & conductors and they were granted the impugned temporary permits for a period of one year; in case the same are invalidated by this Court, that would not be in the interest of justice.

13. ARGUMENTS ON BEHALF OF PRIVATE RESPONDENTS

Learned counsel for the private respondents fully supported the contentions raised by learned State counsel, but no other argument was raised.

14. Heard learned counsel for the parties and perused the paper-book along with the photocopies of the records supplied by learned State Counsel.

15. The point for consideration to decide the matter in controversy would be as under:-

“Whether in view of the facts and circumstances of the present case(s), the impugned permits granted/issued in favour of the private respondents are legally sustainable?”

16. Concededly, the Draft Scheme of 2017 was only a proposal issued under Section 99 (1) of the Act, which has been withdrawn by the State Government along with all the dispensations afforded thereunder and in view of the order dated 21.01.2020, passed by the Hon’ble Supreme Court, the above Draft Scheme stands nullified.

Also agreed by both sides that till date, Scheme of 2016 is valid in law; the State Government has neither cancelled, nor modified the approved Scheme and all the impugned temporary permits have been granted under this very Scheme.

17. Under the Act, there are three different provisions, which deal with the grant of temporary permit viz. Sections 87, 99 & 104 and the same read as under:-

“Section 87. Temporary permits.—*(1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section 80, grant permits to be effective for a limited period which shall, not in any case exceed four months, to authorise the use of a transport vehicle temporarily—*

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit, and may attach to any such permit such condition as it may think fit:

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year.

(2) Notwithstanding anything contained in sub-section (1), a temporary permit may be granted thereunder in respect of any route or area where—

(i) no permit could be issued under section 72 or section 74 or section 76 or section 79 in respect of that route or area by reason of an order of a court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained;

(ii) as a result of the suspension by a court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit in

respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension:

Provided that the number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of the permits have been restrained or, as the case may be, the permit has been suspended.

Section 99. Preparation and publication of proposal regarding road transport service of a State transport undertaking.—(1)

Where any State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any 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, whether to the exclusion, complete or partial, of other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit.

(2) Notwithstanding anything contained in sub-section (1), when a proposal is published under that sub-section, then from the date of publication of such proposal, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal and such temporary permit shall be valid only for a period of one year from the date of its issue of till the date of final publication of the scheme under section 100, whichever is earlier.]

Section 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.”

SECTION 87:-

Perusal of sub-Section 1 of Section 87, *inter alia*, reveals that Regional Transport Authority and the State Transport Authority, (*for short* ‘RTA’ and ‘STA’, *respectively*), without following the procedure laid down in Section 80 of the Act may grant permits temporarily to be effective for a limited period which shall not in any case exceed four months under the circumstances enumerated in Clauses (a) to (d) i.e. on special occasions for fair and religious gatherings, seasonal business, temporary need and pending decision on an application for renewal of a permit.

Sub-Section (2) of Section 87 talks about grant of temporary permits for particular period where no permit could be issued under Sections 72, 74, 76 and 79 on account of some restraint order by a Court or other competent authority.

Since the impugned temporary permits are purported to have been granted under the approved Scheme of 2016 and as such, the same are not covered within the stipulation under Clauses (a) to (d) of sub-Section (1) of Section 87; nor there was any restraint order by any Court or competent authority on the date of granting the impugned temporary permits, therefore, the provisions of Section 87 are not attracted to the present controversy.

SECTION 99:-

Sub-Section (2), Section 99 of the Act reveals that when a proposal is published under sub-Section (1), then from the date of publication of proposal, no permit shall be granted to any person except a temporary permit during the pendency of such proposal and the same shall be valid only for a period of one year from the date of its issuance or till the date of final publication of the Scheme under Section 100 (3), whichever is earlier.

Undisputedly, the approved Scheme of 2016 published under Section 100 (3) of the Act is already in existence and as on today, there is no proposal pending under Section 99 (1), therefore, the provisions of Section 99 (2) are also not applicable to the facts of the case(s).

SECTION 104:-

Upon careful consideration of Section 104, it is clearly discernible that where a Scheme has been published under Section 100 (3) of the Act in respect of any notified area or notified route, the STA or RTA, as the case may be, shall not grant any permit except in accordance with the provisions of the Scheme. However, the proviso to Section 104 envisages that where no application for a permit has been made by the STU in respect of any notified area or notified route in pursuance of an approved Scheme, the STA or RTA,

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 STU in respect of the area or route.

It is necessary to mention here that Sections 70 and 71 of the Act also talk about application for stage carriage permits as well as for consideration of the same by the RTA. Section 80 deals with the procedure to apply and for granting permits; but since none of these Sections deal with the grant of temporary permits, therefore, not relevant to the point in issue.

The Hon'ble Supreme Court in **(1992) 2 SCC 620-Ram Krishna Verma and others Vs. State of UP and others**, while dealing with Section 80 and the overriding effect of Chapter VI of the Act, in para 14, held as under:-

“It is true as contended by Shri Salve that in Mithilesh Garg v. Union of India, this court held that the liberal policy of grant of permits under Section 80 of the Act is directed to eliminate corruption and favouritism in the process of granting permits, eliminate monopoly of few persons and making operation on particular route economically viable and encourage healthy competition to bring about efficiency in the trade. But the free ply is confined to grant of permits under Chapter V of the Act. By operation of Section 98 of the Act, Chapter VI overrides Chapter V and other law and shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or any other law for the time being in force or any instrument having effect by virtue of such law. The result is that even under the Act the existing scheme under the repealed Act or made under Chapter VI of the Act shall have over-riding effect on Chapter V notwithstanding any right given to private operators in Chapter V of the Act. No corridor protection to private operators is permissible.”

18. Concededly, Scheme of 2016 framed under Section 100 (3) of the Act is valid as on today and in such a scenario, the Hon'ble Supreme Court in para 48 of **Gajraj Singh etc. vs. State Transport Appellate Tribunal, AIR 1997 SC 412**, held that:-

“it is settled law that scheme approved under Chapter IVA, which is equivalent to Chapter VI of the Act, is a self-contained and self-operative scheme and is a law by itself. The scheme operates to the exclusion of private operators with non-obstante clause that the STU should obtain permits to run stage carriages in the notified area, routes or a portion thereof to provide coordinate, efficient, adequate and economical road transport service. Thereby the right to apply for and obtain a stage carriage permit has been frozen to all private operators, except as saved under the scheme itself. Until the scheme gets modified or cancelled by the State it would continue to be in operation.”

Section 104 of the Act also came up for consideration before the Hon'ble Supreme Court in case '**UP State Roadways Transport Corpn., Lucknow through its General Manager Vs. Anwar Ahmed & ors.**' (1997) 3 SCC 191 and in para 7 thereof, it was held that:-

“It would, therefore, be seen that where the 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. Thus, the appellant-Corporation has the exclusive right or monopoly to ply their stage carriages and obtain the required permit as per the scheme. The proviso gives only a limited breath of life, namely, until the Corporation puts the vehicles on the notified routes as per the scheme, temporary permits may be granted to private operators. Thereby, it would be clear that

temporary inconvenience to travelling public is sought to be averted till the permits are taken and vehicles are put on the route by the appellant. Therefore, the temporary permits will have only limited breath of life. Private operators are attempting to wear the mask of inconvenience to travelling public to infigurate into forbidden notified area, route or portion thereof to sabotage the scheme. The permits were taken by the appellant and the vehicles are put on the route in terms of the scheme. Therefore, the direction given by the High Court at the pain of contempt is obviously illegal.”

It is relevant to mention here that Section 104 is covered under Chapter VI of the Act and in view of the mandate of Section 98, the provisions of Chapter VI and rules & orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law; but this aspect of the matter has not at all been taken into consideration by the competent authority or respondent No.3 while granting the impugned permits.

19. The State Government under the garb of Memo dated 30.03.2020 virtually assumed the powers of superior authority over the transport authorities and as such, negated the entire concept of adjudication by *quasi* judicial bodies in such like matters. All the Secretaries including respondent No.3 were directed that permits be issued to Category B-I, B-II & C despite the fact that the State Government was not empowered to issue such mandate for grant of the impugned permits. This Court, vide order of even date passed in connected matters (CWP No.8087 of 2020 along with four other cases) in para 12 (x), held as under:-

“As a result thereof, it can be safely concluded that the action of the State Government while taking the purported executive decision, communicated to all the Secretaries by respondent No.2 vide Memo dated 30.03.2020 is found to be without any legitimate source of powers or lawful authority and as such, resulted into gross interference in the process for grant of the impugned permits in favour of the private respondents.”

20. Under the Act, the provisions have been made to constitute the transport authorities as well as for exercise of their powers. These authorities are free to decide the matter for grant of permits in accordance with law, but the decision of the Government has interfered in their jurisdiction and vitiated the entire exercise for grant of the impugned permits. There remains no doubt that the impugned permits were issued in compliance of Government decision and as such, the extraneous pressure was created in the mind of respondent No.3 to hamper the working with fairness, thus, by no stretch of imagination, it could be construed that the competent authority has proceeded in accordance with law.

21. The judgment of Hon’ble Supreme Court in **(2008) 7 SCC 117, 'Pancham Chand and others Vs. State of HP and others'**, relied upon by learned counsel for the petitioner, is quite valuable being a binding precedent on the point that for grant of permits, the State Government has no say and the Chief Minister or any other authority could not entertain an application for grant of permit, nor could they issue any order in this regard. The Hon’ble Supreme Court in the above case also observed that *quasi judicial* authority has no business even to defend the State or the Chief Minister except to place the facts borne out of the record and para Nos.22 & 28 of the judgment, being relevant, are extracted hereunder:-

“22. In the matter of grant of permit to individual applicant, the State has no say. The Chief Minister or any authority, other than the statutory authority, therefore, could not entertain an application for grant of permit nor could issue any order thereupon. Even any authority under the Act, including the appellate authority cannot issue any direction, except when the matter comes up before it under the statute.....

28. We also fail to understand as to how an independent quasi judicial body, like the respondent No.3, could affirm an affidavit together with the State. Its duty before the High Court, in response to the rule issued by it, was to place the facts as borne out from the records. It was not supposed to take any stand one way or the other. It had no business to defend the State or the Chief Minister.”

22. It is a matter of record that after passing of the order dated 21.01.2020 by the Hon’ble Supreme Court, all the private respondents submitted their applications along with the demand draft of Rs.25,000/- (each) and details of which are as under:-

<i>Respondent No.</i>	<i>Date of Application</i>	<i>Date of issuance of permit</i>
4.	31.03.2020	11.05.2020
5.	21.03.2020	21.05.2020
6.	03.04.2020	05.05.2020
7.	03.04.2020	21.05.2020
8.	02.04.2020	11.05.2020
9.	15.04.2020	15.04.2020
10.	16.04.2020	16.04.2020
11.	16.04.2020	16.04.2020
12.	16.04.2020	16.04.2020

Perusal of above details clearly indicate that private respondents submitted their applications between 21.03.2020 to 16.04.2020 and on the basis thereof, they were granted the impugned permits.

Although respondents argued and tried to justify that applications for grant of permits were submitted much prior to the order dated 21.01.2020 under Draft Scheme of 2017 or Scheme of 2016, but the impugned permits have been granted in violation of Section 104 of the Act and there is no evidence on record to suggest that the impugned permits were granted on the basis of applications submitted by the private respondents prior to cut-off date i.e. 28.01.2020. Thus, in view of the above, the contention of the respondents that their applications were pending prior to 28.01.2020 will pale into insignificance.

23. Grant of permits by the transport authorities under the approved Scheme is not to be taken as a matter of course; rather it would require due consideration of each application in accordance with law. However, in the present case, no order has been passed by the competent authority including respondent No.3, thus, the entire process while granting the impugned permits is vitiated and *non-est* in law.

24. Petitioner is running the bus at the strength of valid permit; paying requisite taxes to the Government, but his rights to carry on business have been invaded by the private respondents under the garb of the impugned permits, which are found to be issued on the same very route without any legal basis.

To make the factual position clear, details of permits of the petitioner as well as of the private respondents are tabulated as under:-

Petitioner	Route No.	From To via	Overlapped by respondent	Date of permit	From To	Category
1.	127	(Jind to Panipat Via Pillukhera, Jamni Chowk, Safidon, Matloda)	4 5 6 7 8 9 10 11 12	11.05.2020 21.05.2020 05.05.2020 21.05.2020 11.05.2020 15.04.2020 16.04.2020 16.04.2020 16.04.2020	(Jind to Panipat Via Pillukhera, Jamni Chowk, Saifadon, Matloda)	C C C C C B1 B1 B1 B1

In view of the above, plea of the official respondents that in case the impugned permits are set aside, the public at large will suffer, is liable to be rejected.

It is duly established that rights of the petitioner emanating from Article 19 (1) (g) of the Constitution have been infringed under the garb of the impugned permits, thus, he has genuinely challenged the same. Allegations of concealment leveled against the petitioner are without any basis; rather he was forced to approach this Court by way of the present writ petition for claiming his legal rights and as such, the recourse taken is quite *bona fide*.

25. Although, learned counsel for the respondents tried to vehemently oppose the writ petition on the point of *locus standi*, but since fundamental rights of the petitioner to carry on business are found to have been violated, therefore, the plea of *locus standi* is also liable to be rejected.

Even otherwise, it is clearly discernible that the impugned permits were granted merely in compliance of the Government decision, which is found to have been taken without any lawful authority, thus, the Court will not remain as a mute spectator in such a scenario. If the glaring violation as noticed above is allowed to go unchallenged on the plea of *locus standi*, the same would amount to travesty of justice.

Still further, the judgment of the Hon'ble Supreme Court in **Sai Chalchitra Vs. Commissioner, Meerut Mandal and others'**, (2005) 3 SCC 683, is also fully supporting the case of the petitioner on the point of *locus standi* and para 5 of the same reads as under:-

“After hearing the counsel for the parties, we are of the opinion that the High Court clearly erred in dismissing the writ petition filed by the appellant on the ground of locus standi. The appellant being in the same trade as Respondent 3 has a right to seek the cancellation of the licence granted to Respondent 3 being in violation of the Act and the Rules.”

26. Although, respondent No.3 in the reply raised the plea of alternative remedy of an appeal under Section 89 of the Act, but learned State counsel fairly did not press the same during arguments in view of the fact that there is no order at all passed by respondent No.3, therefore, the provisions of Section 89 are not attracted to the facts of the present case.

27. Although it is strenuously argued by learned State counsel that private respondents have spent huge amount and paying taxes for the buses purchased by them, but the same cannot be a ground to ask for the permit as a matter of right; rather the same is to be granted by the transport authorities in accordance with law. Even otherwise, if such a plea is accepted, then everyone after purchasing a bus will ask for issuance of a permit and that would be a chaotic situation, *de hors* the provisions of Section 99 of the Act which talk about an efficient, adequate, economical and properly coordinated transport service.

28. Law is also well settled since long that “*when a statutory power is conferred for the first time upon a Court, and the mode of exercising it is*

pointed out, it means that no other mode is to be adopted". (Taylor Vs. Taylor), (1875) 1 Ch. D 426).

The above legal proposition was duly followed by the privy council in '**Nazir Ahmad versus K Emperor 63 Indian Appeals 372**' in the following manner:-

"where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

Reference can also be made to the judgment of the Hon'ble Supreme Court, reported as '**Babu Verguese Vs. Bar Council of Kerala**', (1999) 3 SCC 422, wherein it was held as under:-

"it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all".

29. The plea raised on behalf of the respondents that the applications of the private respondents, submitted under the Draft Scheme of 2017, were pending on 28.01.2020 is also not acceptable for the reasons that all dispensation afforded under the Draft Scheme of 2017 have been withdrawn. Meaning thereby, Circular dated 07.02.2018, which was the only basis for grant of temporary permits under the Draft Scheme has also been withdrawn by the State Government. Therefore, once the Draft Scheme as well as Circular dated 07.02.2018 have been withdrawn, then there is no occasion to accept that the applications submitted thereunder are still valid in law. Consequently, the above plea of the respondents is also rejected.

CONCLUSIONS:

30. In view of the facts and circumstances, discussed hereinabove, the irresistible conclusions are as under:-

- i) In view of the conclusion recorded in the order of even date while deciding CWP No.8087 of 2020 and other connected matters [para 20 (*supra*)], the State Government was not legally empowered to take the executive decision dated 30.03.2020;
- ii) It is clearly established that respondent No.3, instead of applying his mind, merely followed the Government decision dated 30.03.2020 and issued the impugned temporary permits in favour of private respondents as a matter of course;
- iii) The provisions of Chapter VI of the Act are having an over-riding effect over Chapter V thereof; as on today, Scheme of 2016 framed under Section 100 (3) of the Act is in existence and in such a scenario, the temporary permits could be granted only under proviso to Section 104 of the Act, but there is nothing on record to suggest that competent authority or respondent No.3 have recorded any finding(s) regarding the satisfaction of pre-condition stipulated under the above said proviso while granting the impugned permits;
- iv) That all the private respondents submitted their applications between 21.03.2020 to 16.04.2020 and on the basis thereof, were granted the impugned temporary permits, but there is no order passed by the competent authority or respondent No.3 to that effect;
- v) Once the Draft Scheme of 2017 as well as Circular dated 07.02.2018 have been withdrawn, then there is no occasion for the respondents to contend that the applications of private respondents submitted under Draft Scheme were still pending on 28.01.2020;
- vi) Respondent No.2 while issuing Memo dated 30.03.2020 directed the Secretaries including respondent No.3 for grant of the temporary

permits in favour of private respondents; thus, the whole process to that effect has been grossly effected by the decision of the Government and that has resulted into negation of the rule of law;

- vii) The petitioner has already been granted the permit to ply his bus on the route in question and the private respondents invaded his lawful rights under the garb of the impugned temporary permits, which are found to be legally unsustainable and as such, the rights of the petitioner flowing from Article 19(1)(g) of the Constitution have been infringed; thus, he has the *locus standi* to file the present writ petition;
- viii) The petitioner while approaching this Court has shown sufficient as well as genuine interest in the subject matter under challenge, thus, he has every right to invoke the jurisdiction of this Court under Article 226 of the Constitution;
- ix) Since respondent No.3 while granting the impugned temporary permits did not proceed in accordance with law, therefore, he has violated the orders of the Hon'ble Supreme Court.

In view of the discussions, made hereinabove, this Court has no option except to allow the present writ petition.

Consequently, the writ petition is allowed; impugned temporary permits (Annexure P-16 colly.) granted/issued in favour of the private respondents are quashed and set aside.

April 8th, 2021
Sachin M. /Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes