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ANNA TRANSPORT CORPORATION LTD.

v.

REGIONAL TRANSPORT AUTHORITY, DHARMAPURI & ORS.

July 23, 1980

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[N. L. UNTWALIA, P. N. SHINGHAL AND V. D. TULZAPURKAR, JJ.]

Motor Vehicles Act, 1939 (4 *of* 1939), *S* 68*F*(1*D*) *and Proviso—Scope and applicability.*

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Section 68F(1D) of the Motor Vehicles Act, 1939 provides that no permit shall be granted or *renewed* during the period intervening between the date of publication, under section 68C of any scheme and the date of publication of the approved or modified scheme, in favour of any person in relation to an area or route or portion thereof covered by that scheme.

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Respondent No. 2 was a private operator operating a Stage carriage route. Its permit was due to expire on October 9, 1974 and it applied for its renewal. The application was notified on June 5, 1974 under section 57(3) of the Motor Vehicles Act. Objections to the renewal application were filed by the appellant Corporation on June 25, 1974 which also simultaneously applied for the grant of a permit to itself. The Regional Transport Authority fixed December 21, 1974 for hearing and the case was adjourned.

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In the meanwhile, respondent no. 2 filed a Writ Petition and challenged the validity of Rule 155A of the Motor Vehicles Rules and obtained stay of the hearing of the matter which was pending before the Regional Transport Authority. The validity of the said rule was upheld by the High Court and the writ petition was dismissed.

A draft scheme of road transport service of the appellant corporation was published on June 4, 1976 under section 68C of the Act and that scheme overlapped a section of the route operated by respondent no. 2.

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The Regional Transport Authority rejected the application of respondent No. 2 on October 30, 1976 and granted a permit to the appellant, which order was confirmed by the State Transport Appellate Tribunal.

The High Court, however in revision took the view that the matter fell within the purview of sub-section (1D) of section 68, but held on a reading of the decision in *Cheran Transport Co. Ltd.* v. *Kanan Lorry Service & Anr.* (1977) 2 SCR 389, that the case fell within the purview of the "rider" to proposition no. 2 set out in that judgment with reference to the proviso to section (1D) of section 68F of the Act and allowed the revision petitions.

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Allowing the appeals to this Court,

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HELD : (i) By virtue of the clear provision of sub-section (1D) of section 68F of the Act, no permit could be granted or renewed during the period intervening between the date of publication of the scheme under section 68C, and the date of publication of the approved or modified scheme, in favour of any person in any class of road transport service. [72E]

A (ii) The High Court clearly went wrong in thinking that the case fell within the purview of the proviso to sub-section (1D) and it consequently erred in taking into consideration the so-called rider to proposition 2 mentioned in the judgment in *Cheran's* case. [72F]

(iii) The proviso would have been applicable only if the period of operation of the permit of the respondent had expired after the publication of the scheme prepared under section 68C; but that was not so in this case. [72F]

B In the instant case, it was respondent no. 2 who filed a fruitless writ petition and prevented the disposal of the renewal application for a long time by obtaining a stay order. [72G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2780-2782 of 1977.

C Appeals by Special Leave from the Judgment and Order dated 22-8-1977 of the Madras High Court in C.R.P. Nos. 559-561/77.

K. Parasaran, Solicitor-General of India and *A. V. Rangam* for the Appellant.

T. S. Krishnamurthy Iyer, S. Srinivasan and *A. T. M. Sampath* D for the Respondent.

The Judgment of the Court was delivered by

SHINGHAL, J. These appeals by special leave are directed against a common judgment of the Madras High Court dated August 22, 1977, in three revision petitions against the orders of the State Trans- E port Corporation, Madras, dated February 16, 1977, by which the High Court allowed the revision petitions and remitted the cases to the Regional Transport Authority for fresh consideration in the light of its observations. The High Court directed further that the revision petitioners before it as well as the present appellant Corporation would continue to provide transport facilities on the route in question until F the disposal of the renewal applications of the revision petitioners.

The facts of the three appeals are quite simple and are not in controversy. They have been heard together at the instance of the learned Counsel for the parties and will be disposed of by this common judgment.

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The controversy relates to the plying of vehicles on the Salem-Krishnagiri route. The facts of one of the three cases have been placed for our consideration by the learned Counsel for the parties and they have informed us that they are sufficient for the adequate disposal of all the appeals.

H Balkrishna Bus Service and Company, respondent No. 2, was a private operator on the aforesaid route. Its permit was due to expire on October 9, 1974, and it applied for its renewal within the time

prescribed by law. Its application was notified on June 5, 1974, under section 57(3) of the Motor Vehicles Act, hereinafter referred to as the Act. Objections to the renewal application were filed by the Anna Transport Corporation Limited, which is the present appellant, on June 25, 1974. The Corporation, at the same time, also applied for the grant of a permit to it. A controversy therefore arose in the matter and the Regional Transport Authority fixed December 21, 1974, for its hearing. The case was, however, adjourned. Balakrishna Bus Service and Co., in the meantime, filed a writ petition and challenged the validity of rule 155-A of the Motor Vehicle Rules of the State and obtained a stay of the hearing of the matter which was pending before the Regional Transport Authority. A draft scheme for the route from Mettur to Kallakurichi via Omalur and Salem was published on June 4, 1976, and it formed a sector of the Salem-Krishnagiri route. The validity of aforesaid Rule 155-A was finally upheld by the High Court on June 29, 1976. It therefore dismissed the writ petition and directed the Regional Transport Authority to dispose of the pending application for renewal within a month. The Regional Transport Authority rejected that application on October 30, 1976, and granted a permit to the present appellant. The State Transport Appellate Tribunal confirmed that order. The matter was taken to the High Court in revision and that led to the passing of the impugned judgment.

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The facts are, therefore, quite simple. There is no controversy about them, and they are sufficient for the disposal of the present appeals by special leave.

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It is not disputed before us that the section applicable to the controversy is section 68F of the Act. The High Court, in fact, not only decided the revision petitions with reference to that section but rightly took the view that the controversy before it fell within the purview of sub-section (1D) thereof. It, however, held on a reading of this Court's decision in *Cheran Transport Co. Ltd.* v. *Kanan Lorry Service & Anr.*,(1) that the case fell within the purview of the so-called "rider" to proposition No. 2 set out in that judgment with reference to the proviso to sub-section (1D) of section 68F of the Act. The sub-section reads as follows,—

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> (1D) Save as otherwise provided in sub-section (1A) or sub-section (1C) no permit shall be granted or renewed during the period intervening between the date of publication, under section 68C of any scheme and the date of publication of the approved or modified scheme, in favour of any person for any class

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(1) [1977] 2 S.C.R. 389.

A of road transport service in relation to an area or route or portion thereof covered by such scheme :

Provided that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published under section 68C expires after such publication, such permit may be renewed for a limited period, but the permit so B renewed shall cease to be effective on the publication of the scheme under sub-section (3) of section 68D.

It is not in controversy that sub-section (1A) or sub-section (1C) of section 68F are not applicable to the controversy. The rest of sub-section (1D) provides that no permit shall be granted or "renewed" during the period intervening between the date of publication under C section 68C of any scheme and the date of publication of any approved or modified scheme, in favour of any person in relation to an area or route or portion thereof covered by that scheme.

As has been stated, a draft scheme of road transport service of the appellant Corporation was published on June 4, 1976, under section 68C of the Act and, as has been mentioned, that scheme overlapped a section of the Salem-Krishnagiri route. It follows, therefore, that by virtue of the clear provision of sub-section (1D) of section 68F of the Act, no permit could be granted or renewed during the period intervening between the date of publication of the aforesaid scheme under section 68C, that is, after June 4, 1976, and the date of publication E of the approved or modified scheme, in favour of any person for any class of road transport service. The High Court therefore clearly went wrong in thinking that the case fell within the purview of the proviso to sub-section (1D) and it consequently erred in taking into consideration the so-called rider to proposition No. 2 mentioned in this Court's F judgment in *Cheran's* case (supra). The proviso would have been applicable only if the period of operation of the permit of the respondents had expired after the publication of the scheme prepared under section 68C; but that was not so in this case. It has also to be remembered that in this case it was the respondent (private operator) who filed a fruitless writ petition and prevented the disposal of the renewal appli- G cation for a long time by obtaining a stay order. On a plain reading of sub-section (1D) of section 68F of the Act, we have therefore no hesitation in allowing the appeals with costs. We may however add that if no approved or modified scheme has been published so far, the proper course for the Regional Transport Authority would be to keep the three renewal applications pending and not to treat them as H dismissed. The stay orders are vacated.

N.V.K. *Appeals allowed.*