

*Before M. M. Kumar, Ajay Kumar Mittal &
Augustine George Masih, JJJ.*

**RANIA BRATCH COOPERATIVE TRANSPORT SOCIETY
LTD. AND OTHERS,—Petitioners**

versus

STATE OF HARYANA,—Respondent

C.W.P. No.9421 of 2011

03rd April, 2012

Constitution of India - Art. 226 - Motor Vehicles Act, 1988 - S.100(1)(4) - State vide notification dated 11th March, 2010 published proposal in official Gazette which was in suppression of earlier notifications dated 3.11.1993 & 19.01.2001 - Whole scheme not published - On 4.5.2010 few amendments made in notification dated 11th March, 2010 - Final scheme published on 3.5.2011 - Challenge in writ petition that scheme had lapsed - Challenge upheld - Held that scheme had lapsed as it was published after one year i.e. on 3.5.2011- Publication of corrigendum with a few amendments would not amount to publication of draft scheme.

Held, That the most crucial provision for settling the controversy raised in these petitions is sub-section (4) of Section 100 of the Act. Significantly it commences with 'non-obstante' clause using the expression 'Notwithstanding'. In other words it provides for an overriding effect and postulates that if a Scheme is not published as an approved Scheme under sub-section (3), in the official gazette within a period of one year crucially from the date of publication of the proposal regarding Scheme in official gazette under sub-section (1), then the proposal must be deemed to have lapsed. This provision has omitted the date of publication of Scheme in the newspaper or corrigendum etc. In categorically terms the non-obstante provision provides for counting of one year from the date of publication of the proposal concerning Scheme in the official gazette as the cut off date and none else. It is well settled that when prefatory words like 'Notwithstanding anything contained in this section' would occur, then it exclude the application of any other provision in that Section.

(Para 8)

Further held, That the provisions of sub-section (4) of Section 100 of the Act are not encumbered by any other provision of that Section. It follows then that the period of one year is to commence from the date of publication of the proposal concerning Scheme in the official gazette.

(Para 10)

Further held, That scheme was published in the official gazette on 11.3.2010 (P-1) and final Scheme was published on 3.5.2011 (P-4), which is obviously after one year. The publication of corrigendum on 4.5.2010 (P-2) with a few amendments in the notification dated 11.3.2010 (P-1) would not amount to publication of draft Scheme. Its publication in the 'newspapers' on the same day would not have any impact. This time complete Scheme was not published and the official gazette only contained the extracts of the Scheme. The final Scheme was published on 3.5.2011 (P-4). On the plain language of Section 99 read with Section 100(4), it cannot be accepted that the period of one year would commence from the date of corrigendum published in the official gazette on 4.5.2010. Firstly, the corrigendum published only 'excerpts' of the Scheme. Secondly, the submission made by Shri Hooda is not acceptable when he argued that after publication of the proposal concerning Scheme in the 'newspapers', the objections started pouring in because under Section 100(1) of the Act, objections are to be filed by an objector within thirty days from the date of publication of the notice under Section 99(1), in the official gazette. It does not talk of the date of publication of notice in the newspapers and counting of thirty days from that date. Therefore, the argument has no substance and we have no hesitation to reject the same.

(Para 11)

Further held, That we hold that the Scheme, dated 3.5.2011, as published in the official gazette has lapsed. The same is accordingly set aside. We further hold with utmost deference that the Division Bench in Parveen Kumar's case (supra) did not lay down the correct law as it did not consider various aspects of Section 100(4) of the Act.

(Para 12)

M.S. Khaira, Senior Advocate with Dharminder Singh Randhawa,
Advocate.

H.S. Sawhney, Senior Advocate with B.S. Giri, Advocate.

Anmol Rattan Sidhu, Senior Advocate with Avtar Singh, Advocate.

N.K. Malhotra, Advocate.

L.R. Sharma, Advocate.

Rajinder Sharma, Advocate.

Inder Pal Goyat, Advocate.

Vikas Singh, Advocate.

H.S. Hooda, Advocate General, Haryana, with Mr. Gagandeep Wasu,
Addl. AG, Haryana, *For the respondent.*

M.M. KUMAR, J.

(1) A short question of law referred to this Full Bench in this bunch of petitions* is whether the Transport Scheme, as finally notified on 3.5.2011, has been published within a period of one year from the date of its proposal in the official gazette as per the provisions of sub-sections (1) and (4) of Section 100 of the Motor Vehicles Act, 1988 (for brevity, 'the Act'). The reference order made by the Division Bench dated 21.9.2011 reads as under:

“Mr. H.S. Hooda, learned Advocate General, Haryana has brought to our notice a Division Bench judgment of this Court rendered in the case of **Parveen and another v. State of Haryana and others** (CWP No. 14777 of 2011, decided on 12.08.2011), which upholds the notification/scheme dated 03.05.2011. The aforesaid scheme is also subject matter of challenge in the instant petitions. The principal argument raised by learned counsel for the petitioner is that the scheme has to be published in the official gazette within a period of one year from the date of publication of the proposal regarding the scheme in the official gazette under sub Section (1) of Section 100 of the Motor Vehicles Act, 1988 (for brevity, 'the Act'), failing which the proposal would be deemed to have lapsed. Clause 4

of Section 100 of the Act opens with non obstante clause by using the expression 'notwithstanding'. Moreover, the aforesaid issue with regard to effect of notification of the Scheme within one year as per provisions of Sub Section (4) of Section 100 of the Act, has not been considered by the Division Bench in Parveen Kumar's case (supra). Therefore, it would be just and proper to make a reference to the Larger Bench so that the issue may be taken up and the Division Bench judgment is reconsidered."

(2) Few facts would be necessary for deciding the substantive question. The respondent State of Haryana vide notification No. S.O. 46/C.A.59/1988/S.99/2010, dated 11.3.2010 (P-1), published a proposal in the official gazette in compliance with the provisions of Section 99 of the Act, which was in supersession of earlier notifications dated 3.11.1993 and 19.1.2001. However, two months later, without publishing the whole scheme in the official gazette, few amendments in the notification dated 11.3.2010 were published on 4.5.2010 (P-2). It is appropriate to mention that the notification dated 4.5.2010 only contained the extracts of the scheme which were published in the newspapers as well. As per the provisions of law, objections were received and the scheme was published on 3.5.2011 (P-4) in pursuance of the provisions of subsection (2) of Section 100 of the Act. In these facts and circumstances it has been pointed out that the final scheme published on 3.5.2011 (P-4) is beyond the period of one year from the date of issuance of notification dated 11.3.2010 (P-1). The respondent State has insisted that the period of one year is to count from the date of amendment published on 4.5.2010 (P-2).

(3) Mr. M.S. Khaira, Mr. H.S. Sawhney, Dr. Anmol Rattan Sidhu, Mr. N.K. Malhotra, Mr. L.R. Sharma, Mr. Rajinder Sharma, Mr. Inder Pal Goyat and Mr. Vikas Singh, learned counsel for the petitioner(s) have submitted that the scheme, in fact, has lapsed and it could not have been published after 10.3.2011. They have submitted that according to the mandatory requirement of Section 100 (4) of the Act, the period of one year has to commence from the date of publication of the 'Draft Scheme' in the official gazette. According to the learned counsel, the publication of the 'Draft Scheme' later on in the newspapers would have no bearing for reckoning the period of one year because Section 100 (4) does not admit of any other mode of publication of the 'Draft Scheme' except the official

gazette. Learned counsel have drawn our attention to sub-section (4) of Section 100 of the Act and argued that the legislature has put the reckoning of period beyond any reasonable doubt and the period of one year is to be reckoned from the date of publication of notification in the official gazette. Therefore, the corrigendum or publication in the newspapers is wholly immaterial.

(4) Mr. H.S. Hooda, learned Advocate General, Haryana, has however argued that firstly the 'Draft Scheme' as published on 11.3.2010 could not be regarded as publication within the meaning of Section 99 as it was incumbent upon the State to publish the 'Draft Scheme' as per the requirement of Section 99 in one of the vernacular newspaper also. According to the learned counsel the publication in the newspaper was made on 4.5.2010 and the 'Draft Scheme' must be deemed to have been published for the first time on that date. Learned Advocate General has maintained that there is no violation if the date of publication in the newspaper is regarded as commencing point of limitation. Mr. Hooda has further submitted that it was only after the publication in the newspaper that objections by the parties started pouring in, as is evident from the record of this case. It is, thus, maintained by the learned Advocate General that there would be no substantive benefit by reckoning the period of one year from the date of publication in the official gazette because the notification dated 11.3.2010 cannot be regarded as publication of 'Draft Scheme' under Section 99 of the Act. He has also placed reliance on the Division Bench judgment upholding the scheme in the case of Parveen Kumar (Parveen supra) and argued that serious consequences would flow if the scheme is declared to have lapsed. Accordingly, he has submitted that a purposive interpretation must be adopted, which tends to achieve the object of the scheme.

(5) In order to appreciate the respective contentions of the parties, it would be apposite to first read Sections 99 and 100 of the Act, which are reproduced as under:-

“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 subsection (1), when a proposal is published under that subsection, 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 or till the date of final publication of the scheme under section 100, whichever is earlier.

100. Objection to the proposal.-

- (1) On the publication of any proposal regarding a scheme in the Official Gazette and in not less than one newspaper in the regional language circulating in the area or route which is to be covered by such proposal any person may, within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.
- (2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter, if they so desire, approve or modify such proposal.

- (3) The scheme relating to the proposal as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government making such scheme and in not less than one newspaper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the Official Gazette and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route: Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has the previous approval of the central Government.
- (4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under sub-section (1), the proposal shall be deemed to have lapsed.

Explanation.— In computing the period of one year referred to in this sub-section, any period or periods during which the publication of the approved scheme under subsection (3) was held up on account of any stay or injunction by the order of any Court shall be excluded.”

(6) A bare perusal of Section 99(1) of the Act makes it patent that where the State Government feels the necessity of providing road transport services by State Transport Undertakings into any area or route then it is required to formulate a proposal regarding a Scheme giving specified particulars. Such proposal concerning Scheme has to be in larger public interest and to provide the general public efficient, adequate, economical and properly coordinated road transport service. It is mandatory requirement to publish such a proposal in the official gazette of the State. It should also be published in not less than one newspaper in the regional language.

Sub-section (2) of Section 99 of the Act makes it further clear that no permit is to be granted to any person except the temporary permit during the pendency of the proposal. Such temporary permit is valid only for a period of one year or till the date of final publication of Scheme under Section 100, whichever is earlier.

(7) Section 100(1) of the Act contemplates filing of objections before the State Government within thirty days from the date of publication of any proposal in the official gazette. Then the State Government with modification or without any modification of such proposal may approve the proposal. The Scheme shall attain finality on the publication in the official gazette and then it is called approved Scheme. The area or route to which it relates would be known as 'notified area' or 'notified route' subject to approval by the Central Government if the Scheme has inter-State ramifications.

(8) The most crucial provision for settling the controversy raised in these petitions is sub-section (4) of Section 100 of the Act. Significantly it commences with 'non-obstante' clause using the expression 'Notwithstanding'. In other words it provides for an overriding effect and postulates that if a Scheme is not published as an approved Scheme under sub-section (3), in the official gazette within a period of one year crucially from the date of publication of the proposal regarding Scheme in official gazette under sub-section (1), then the proposal must be deemed to have lapsed. This provision has omitted the date of publication of Scheme in the newspaper or corrigendum etc. In categorically terms the nonobstante provision provides for counting of one year from the date of publication of the proposal concerning Scheme in the official gazette as the cut off date and none else. It is well settled that when prefatory words like 'Notwithstanding anything contained in this section' would occur, then it exclude the application of any other provision in that Section. For example, in 11-Judge Bench judgment rendered in the case of **H. H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur versus Union of India (1)**, the question concerning interpretation of Article 363 of the Constitution arose, which

(1) 1971 (1) SCC 85

deals with bar to interference by Courts in disputes arising out of certain treaties, agreements etc. The provision opens with 'Non-obstante' clause viz. 'Notwithstanding anything in this Constitution'. By majority it was observed as under:

“Article 363 is a non-obstante clause. It is a constitutional mandate. The prefatory words in Article 363 “notwithstanding anything in the Constitution” exclude all other provisions of the Constitution from being attracted in disputes which fall within Article 363.....”

(9) Likewise, in another 5-Judge Constitution Bench judgment rendered in the case of **State of West Bengal versus Kesoram Industries Limited (2)**, the provisions of Article 253 of the Constitution came up for interpretation, which also comprised of a 'non-obstante' clause. The pertinent observations of their Lordships' are as under:

“238. It can be seen that Article 253 contains non obstante clause. Article 253, thus, operates notwithstanding anything contained in Article 245 and Article 246. Article 246 confers power on Parliament to enact laws with respect to matters enumerated in List I of the Seventh Schedule to the Constitution. Entries 10 to 21 of List I of the Seventh Schedule pertain to international law. In making any law under any of these entries, Parliament is required to keep Article 51 in mind.

239. Article 253 of the Constitution provides that while giving effect to an international treaty, Parliament assumes the role of the State Legislature and once the same is done the power of the State is denuded.”

Same view has been followed in the case of **State of West Bengal versus Committee for Protection of Democratic Rights (3)**.

(10) The necessary corollary which emerges from the aforesaid discussion is that the provisions of sub-section (4) of Section 100 of the Act are not encumbered by any other provision of that Section. It follows then that the period of one year is to commence from the date of publication of the proposal concerning Scheme in the official gazette.

(2) 2004 (10) SCC 201
(3) 2010 (3) SCC 571

(11) In the present case Scheme was published in the official gazette on 11.3.2010 (P-1) and final Scheme was published on 3.5.2011 (P-4), which is obviously after one year. The publication of corrigendum on 4.5.2010 (P-2) with a few amendments in the notification dated 11.3.2010 (P-1) would not amount to publication of draft Scheme. Its publication in the 'newspapers' on the same day would not have any impact. This time complete Scheme was not published and the official gazette only contained the extracts of the Scheme. The final Scheme was published on 3.5.2011 (P-4). On the plain language of Section 99 read with Section 100(4), it cannot be accepted that the period of one year would commence from the date of corrigendum published in the official gazette on 4.5.2010. Firstly, the corrigendum published only 'excerpts' of the Scheme. Secondly, the submission made by Shri Hooda is not acceptable when he argued that after publication of the proposal concerning Scheme in the 'newspapers', the objections started pouring in because under Section 100(1) of the Act, objections are to be filed by an objector within thirty days from the date of publication of the notice under Section 99(1), in the official gazette. It does not talk of the date of publication of notice in the newspapers and counting of thirty days from that date. Therefore, the argument has no substance and we have no hesitation to reject the same.

(12) As a sequel to the above discussion, we hold that the Scheme, dated 3.5.2011, as published in the official gazette has lapsed. The same is accordingly set aside. We further hold with utmost deference that the Division Bench in **Parveen Kumar's case (supra)** did not lay down the correct law as it did not consider various aspects of Section 100(4) of the Act. The permits, if any granted under that Scheme would stop operating after April 30, 2012. The State Government may in the meantime notify a fresh draft Scheme in accordance with the provisions of Section 99(1) and grant temporary permit in accordance with the provisions of Section 99(2) of the Act. The reference and writ petitions stand disposed of.

(13) A photocopy of this order be placed on the files of all the connected petitions.

J. Thakur