

A AMBALA BUS SYNDICATE PVT. LTD.

v.

CHANDIGARH ADMINISTRATION & ORS.

(Civil Appeal No. 10002 of 2018)

B SEPTEMBER 26, 2018

[KURIAN JOSEPH AND SANJAY KISHAN KAUL, JJ.]

C *Motor Vehicles Act, 1988 – Chapters V & VI; ss. 88 and 98 –*
Overriding effect provided u/s.98 – Operation of – Appellant, private
operator of non-air conditioned bus, was issued inter-State permit
by State of Punjab – Appellant claimed counter-signatures on the
said permit from the authority of Union Territory (U.T) of Chandigarh
for operation of non-air conditioned bus in the said U.T. – Allowed
by Single Judge – Division Bench overturned the said view holding
that the appellant cannot operate its stage carriages beyond the
territory of Punjab in view of the 1998 Scheme of the U.T. of
Chandigarh framed under Chapter VI which excludes operation of
private operators altogether – On appeal, held: Division Bench
missed the crucial relevance and effect of the Reciprocal Agreement
of 2008 contemplated u/s.88, Chapter V which specifically provides
for counter signature for non-A.C. buses – There is no dispute that
despite the Scheme of 1998, the appellant operated its stage carriage
up to 2008 – Scheme is unilateral, whereas the Reciprocal
Agreement is bilateral – Despite the availability of Scheme, the U.T
of Chandigarh and the State of Punjab consciously entered into a
Reciprocal Agreement permitting the non-A.C. buses, for which the
State of Punjab had issued permits prior to 1966 and it continued
to be renewed by the State of Punjab to operate in the Union
Territory of Chandigarh – Unless the Reciprocal Agreement is
superseded by a fresh agreement or unless there is a new scheme
framed by the U.T of Chandigarh specifying the provisions to the
contrary, the buses operated by the appellant, which had permits
issued prior to 1.11.1966 and so long as they are renewed by the
State of Punjab, the U.T of Chandigarh cannot refuse counter
signature – Based on s.98, it was contended that Scheme framed
under Chapter VI has overriding effect over the Reciprocal

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Agreement contemplated u/s.88 (Chapter V) – However, overriding effect provided in s.98 operates only in case of an inconsistency on a legal position – There is no such situation in the present case – On the contrary, the Reciprocal Agreement is on mutually beneficial terms – Impugned order passed by the Division Bench set aside – Order of Single Judge restored.

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Disposing of the appeal, the Court

HELD: 1.1 There is no dispute that despite the Scheme of 1998, as amended in 2001, the appellant operated their stage carriage up to 2008. [Para 5] [461-G-H]

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1.2 The Scheme is unilateral, whereas the reciprocal agreements are bilateral. Despite the availability of Scheme, the Union Territory of Chandigarh and the State of Punjab have consciously entered into a reciprocal agreement permitting the non-A.C. buses, for which the State of Punjab had issued permits prior to 1966 and it continued to be renewed by the State of Punjab to operate in the Union Territory of Chandigarh. It has also come in the affidavit of the State of Punjab that such mileage has been taken into consideration for the mileage entitlement of the Union Territory of Chandigarh, in the reciprocal agreement which has come into effect on 04.06.2008. Therefore, unless the reciprocal agreement is superseded by a fresh agreement or unless there is a new scheme framed by the Union Territory of Chandigarh specifying the provisions to the contrary, the buses operated by the appellant, which had permits issued prior to 01.11.1966 and so long as they are renewed by the State of Punjab, the Union Territory of Chandigarh cannot refuse counter signature for the reason that the permits already issued in 1966 had outlived its life after five years of the reorganization. The overriding effect provided in Section 98 of the said Act operates only in case of an inconsistency on a legal position. There is no such situation in the present case. On the contrary, the reciprocal agreement is on mutually beneficial terms. Therefore, the impugned order passed by the Division Bench is set aside and that of the Single Judge of the High Court is restored. [Paras 8, 9] [460-G-H; 461-A-E]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10002 of 2018.

From the Judgment and Order dated 21.04.2011 of the High Court of Punjab and Haryana at Chandigarh in Letter Patent Appeal No. 1098 of 2010.

B P.S. Patwalia, Sr. Adv., Rohit Kapoor, Ms. Neelam Kalsi, Mrs. Rani Chhabra, Ms. Priyal Agarwal, Advs. for the Appellant.

Sudhir Walia, Ms. Niharika Ahluwalia, Abhishek Atrey, Ms. Uttara Babbar, Ms. Bhavana Duhoon, Ms. Deboshree Mukherjee, Jagjit Singh Chhabra, Advs. for the Respondents.

C The Judgment of the Court was delivered by

KURIAN, J. 1. Heard learned counsel for the parties.

2. Leave granted.

D 3. The appellant is aggrieved by the judgment dated 21.04.2011 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal No.1098 of 2010, whereby the Division Bench overturned the view taken by the learned Single Judge of the High Court and held that the appellant cannot operate its stage carriages beyond the territory of Punjab in view of the 1998 Scheme, as amended in 2001. The relevant consideration in the impugned order reads:-

F “The 1998 Scheme and the modified Scheme of 2001 does not permit non-air conditioned buses of the private operators (persons/ agencies) to operate in the U.T., Chandigarh. Section 66 of the 1988 Act prohibits an owner of the motor vehicle to permit use of his vehicle as a transport vehicle in any public place whether or not carrying any passengers or goods without permit granted or counter-signed by the competent authority. This Section necessitates a permit for a vehicle to be used as a transport vehicle. Section 88 of the 1988 Act provides counter-signatures of a permit granted in any one State to be valid in any other State. Since the 1998 Scheme of the U.T. Chandigarh excludes the operation of private operators altogether, which Scheme has been framed under Section 99 read with Section 100 of the 1988 Act falling in Chapter VI of the 1988 Act, the same shall have an over riding effect. If

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that be so, the respondent-Company, a private operator, has no right to claim counter-signatures from the Authority of U.T. Chandigarh on the permit issued to it by the Authority of the State of Punjab under the Reciprocal Agreement dated 4.6.2008 also. A

In the light of the above conclusions reached by us, the respondent-Company cannot claim counter-signatures on an inter-State permit from the Authority of U.T., Chandigarh to operate a non-air conditioned bus in the territory of U.T. Chandigarh.” B

4. Unfortunately, the Division Bench has missed the crucial relevance and effect of the reciprocal Agreement of 2008, which came into effect on 04.06.2008, which specifically provides for counter signature of non-A.C. buses. The relevant paragraph is set out below:- C

“The routes mentioned in Annexures A,B,C & D shall always mean the shortest direct route connecting the two terminals lying in the two states through the places mentioned therein. Any discrepancy discovered later in the name or length of route shown in the said annexure shall promptly be corrected through correspondence between the reciprocating States/UT and shall not be treated as any modification of the agreement. The Air conditioned and Non-air conditioned buses owned and operated by STU’s of both the State/UT shall only be allowed subject to the counter signatures. Integral Air Conditioned Buses of the private operator shall be allowed on the routes covered in annexure D to this agreement subject to countersignatures, provided that permits for such Buses shall not be extended beyond Chandigarh except in Punjab area. Non air conditioned buses of the private operators having permits issued before 01.11.1966 may be allowed after verification of the original permits and countersignatures provided that such permits shall be countersigned only if they fall in the scope and terms of Section 74 of the Punjab Reorganization Act, 1966 and provisions of Motor Vehicles Act, 1988.” D E F

5. There is no dispute that despite the Scheme of 1998, as amended in 2001, the appellant operated their stage carriage up to 2008. According to the learned counsel appearing for Respondent Nos.1 and 3, reciprocal Agreement of 2008 specifically contains the provision to deny the counter signature of the bus operated by the appellant in the Union Territory of Chandigarh. G

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A 6. Despite the persuasive arguments advanced by the learned
counsel for Respondent Nos.1 and 3, we find it difficult to appreciate
the contention. Learned counsel has specifically referred to Chapter VI
of the Motor Vehicles Act, 1988 (for short, 'the said Act') and has invited
our attention to Section 98 of the said Act to canvass the point that the
B Scheme under Chapter VI of the said Act has overriding effect over the
reciprocal Agreements contemplated under Section 88, coming under
Chapter V of the said Act. Section 98 of the said Act reads as follows:-

C "98. Chapter to override Chapter V and other laws.- The
provisions of this Chapter and the rules and 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."

7. Section 88 (5) and (6) under Chapter V read as under:-

D "88 (5) Every proposal to enter into an agreement between the
States to fix the number of permits which is proposed to be granted
or countersigned in respect of each route or area, shall be published
by each of the State Governments concerned in the Official
Gazette and in any one or more of the newspapers in regional
E language circulating in the area or route proposed to be covered
by the agreement together with a notice of the date before which
representations in connection therewith may be submitted, and
the date not being less than thirty days from the date of publication
in the Official Gazette, on which, and the authority by which, and
the time and place at which, the proposal and any representation
F received in connection therewith will be considered.

G (6) Every agreement arrived at between the States shall, insofar
as it relates to the grant of countersignature of permits, be published
by each of the State Governments concerned in the Official
Gazette and in any one or more of the newspapers in the regional
language circulating in the area or route covered by the agreement
and the State Transport Authority of the State and the Regional
Transport Authority concerned shall give effect to it."

H 8. There cannot be any dispute that the Scheme is unilateral,
whereas the reciprocal agreements are bilateral. Despite the availability
of Scheme, the Union Territory of Chandigarh and the State of Punjab

have consciously entered into a reciprocal agreement permitting the non- A
A.C. buses, for which the State of Punjab had issued permits prior to
1966 and it continued to be renewed by the State of Punjab to operate in
the Union Territory of Chandigarh. It has also come in the affidavit of
the State of Punjab that such mileage has been taken into consideration
for the mileage entitlement of the Union Territory of Chandigarh, in the B
reciprocal agreement which has come into effect on 04.06.2008.
Therefore, unless the reciprocal agreement is superseded by a fresh
agreement or unless there is a new scheme framed by the Union Territory
of Chandigarh specifying the provisions to the contrary, the buses operated
by the appellant, which had permits issued prior to 1.11.1966 and so long C
as they are renewed by the State of Punjab, the Union Territory of
Chandigarh cannot refuse counter signature for the reason that the
permits already issued in 1966 had outlived its life after five years of the
reorganization. The overriding effect provided in Section 98 of the said
Act operates only in case of an inconsistency on a legal position. There
is no such situation in the present case. On the contrary, the reciprocal D
agreement is on mutually beneficial terms.

9. Therefore, we set aside the impugned order passed by the
Division Bench and restore that of the learned Single Judge of the High
Court.

10. The appeal is, accordingly, disposed of. The consequences E
will follow and needful shall be done within four weeks from today.

11. Pending applications, if any, shall stand disposed of.

12. There shall be no orders as to costs.