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A.P.S.R.T.C ETC. ETC.

v

STATE TRANSPORT APPELLATE TRIBUNAL AND ORS.

AUGUST 11, 1998

B

[S.C. AGRAWAL, S. SAGHIR AHMAD AND M. SRINIVASAN, JJ.]

Andhra Pradesh Motor Vehicles Rules, 1989—Rule 258—Town Service—Meaning of—Motor Vehicles Act, 1985—Section 104.

C

Rules 258 (2)(ii)—Town service routes—Determination of—Power of Transport Commission Limits of—Permission of Transport Commissioner—Whether condition precedent for applying for a permit—Motor Vehicles Act 1985—Sections 100(3) and 104.

Words and Phrases—Grant and Issue—Difference between.

D

Under Section 104 of the Motor Vehicles Act, 1988, if any scheme is published under Section 100(3) of the Motor Vehicles Act, 1988, no permits can be granted in respect of any notified area or notified route except in accordance with the provisions of the said scheme. The Government of Andhra Pradesh, on 20.9.1998, notified a scheme in respect of the certain routes. The said scheme, however, exempted, *inter alia*, the holders of stage carriage permits in respect of town services.

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Under Sub-Rule 2 of Rule 258 of the Andhra Pradesh Motor Vehicles Rules, 1989 the Regional Transport Authority has power to determine which routes are town service routes, subject to certain restrictions. The second restriction to the power of the Regional Transport Authority is that no route which extends more than 8 kilometres beyond the limits of the Municipality or town from which it starts shall be labelled as town service. It is further provided that this restriction would not apply to those routes for which specific permission of the Transport Commissioner is obtained.

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Some bus owners applied to the Regional Transport Authority for grant of permit in respect of the notified routes. The routes for which the permits were sought extended more than 8 kilometres beyond the limits of the Municipality/town from where they started.

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The Regional Transport Authority rejected the applications of the bus

owners for grant of permit for plying buses on the ground that the routes applied for by them extended more than 8 kilometres beyond the limits of the Municipality/town and therefore, were not town service routes. A

On appeal, the State Transport Appellate Tribunal held that the routes applied for were town service routes falling under the exception to the scheme notified by the Government. The Tribunal granted the permit on the condition that permission of the Transport Commissioner is obtained under Rule 258(2)(ii) of the Andhra Pradesh Motor Vehicles Rules, 1989. After the judgment of the Tribunal, the Transport Commissioner granted permission under Rule 258(2)(ii) of the Andhra Pradesh Motor Vehicles Rules, 1989 to the bus owners even though the routes applied for extended more than 12 kilometres beyond the limits of Municipality/town in most of the cases. Thereafter, permits were issued to the bus owners. B C

The Writ Petitions filed by the appellant against the order of the State Transport Appellate Tribunal were dismissed by High Court, Holding: D

(i) That the permission of the Transport Commissioner under Rule 258(2)(ii) of the Andhra Pradesh Motor Vehicles Rules, 1989 was not a condition precedent for filing an application for route permit; and

(ii) That the Transport Commissioner could exercise his power to grant permission under Rule 258(2)(ii) of the Andhra Pradesh Motor Vehicles Rules, 1989 irrespective of the distance by which the route extended more than 8 Kilometres beyond the limits of Municipality/town. E

Allowing the Special Leave Petition against the judgment and order of the High Court, this Court F

HELD: 1. Rule 258 of the Andhra Pradesh Motor Vehicles Rules, 1989 uses the expression "Town Service". The expression "Town Service" has not been used in any other rule or any provision in the Motor Vehicles Act, 1985. The expression has not been defined anywhere. In the normal connotation, "Town Service Route" would mean a route within a town to enable passengers to go from one place to another in the town. But generally people in the peripheral and neighbouring areas would be frequenting the town and to serve them, buses have to ply between a place in the town and a place outside. Hence, the rule provides for an extension of 8 Kms. beyond the limits of the town or municipality. [1116-C] G H

A 2.1. Section 104 of the Motor Vehicles Act, 1985 prohibits the grant of any permit except in accordance with the provisions of the scheme notified under Section 100(3) of the saide Act. Hence for the purpose of Rule 258(2) of the Andhra Pradesh Motor Vehicles Rules, 1989 if there is a scheme in force with reference to the concerned route, the authority has to adhere to the terms of the scheme. If there is any exception provided in the scheme B the applicant for a permit has to satisfy the authority concerned that he would fall within the scope of the exception. [1116-F]

2.2. When the scheme notified under Section 100(3) of the Motor Vehicles Act, 1985 provides an exception for the holder of stage carriage permit in respect of town service, any applicant for permit claiming the benefit thereof has to necessarily satisfy the Regional Transport Authority that the route for which the permit is sought is a town service route. In order to establish the same the applicant for permit has to approach the Transport Commissioner in the first instance if the route for which permit is sought extends more than 8 Kilometres beyond the limits of the municipality or town D from which it starts. In such cases, it is only when the Transport Commissioner grants specific permission for extension of the route for more than 8 kilometers beyond the limits of the municipality or town, the Regional Transport Authority can consider the application for grant of permit and proceed to pass orders. Hence, the permission of the Transport Commissioner contemplated in Rule 258(2) of the Andhra Pradesh Motor E Vehicles Rules, 1989 has to be obtained before an application for permit is filed for a route covered by a scheme notified under the Motor Vhicles Act, 1985. In none of these case such permission was obtained.

[1116-G-H; 1117-A-B]

F 3.1. There is no doubt that Rule 258(2) of the Andhra Pradesh Motor Vehicles Rules, 1989 does not specify or indicate the limits of the power of the Transport Commissioner but it is certainly erroneous to think that the power of the Transport Commissioner is unlimited. If that is so, the very purpose of the rule providing for a limit of 8 kilometres or extension beyond the limits of municipality or town will by defeated. The power of the Commissioner cannot be arbitrarily or indiscriminately exercised.

G [1117-E-F]

H 3.2. In no case the permission granted by the Transport Commissioner should have the effect of converting a town service route into a mufasal service route. In other words a mufasal service cannot be labelled as town service by virtue of the permission granted by the Transport Commissioner though in fact it would be a mufasal service. [1119-H; 1120-A]

3.3. The Transport Commissioner has granted permission for extension of the town service route by not less than 12 Kilometres excepting in one or two cases. Thus it is evident that the Transport Commissioner has not applied his mind to the relevent factors in these cases. [1119-E]

[De Smith's Judicial Review of Administrative Action, 4th edn, pp. 283-285;] Comptroller and Auditor General of India v. K.S. Jagannathan and Another, [1986] 2 SCC 679 and C. Kasturi and Another v. Secretary, Regional Transport Authority and Another; Afsar Jahan Begum and Others v. State of M.P., [1996] 8 SCC 38, referred to.

3. The actual issue of permit is only a ministerial act and it cannot be equated to the grant of permit. It is fallacious to contend that in all cases the actual issue of permit was after the grant of permission by the Transport Commissioner and there was no violation of the rule. The grant of permit in these cases is by the State Transport Appellate Tribunal before the grant of permission by the Transport Commissioner. The Tribunal acted beyond its jurisdiction in granting permits in all these cases. [1117-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3715 of 1998 Etc. Etc.

From the Judgment and Order dated 6.11.97 of the Andhra Pradesh High Court in W.P. No 19258 of 1994.

L. Nageshwara Rao, G.R.K. Prasad, D. Mahesh Babu and G. Prabhakar, for the Appellants.

R. Venugopal Reddy, T.N. Rao and P.P. Singh for the Respondent.

Ms. K. Amreshwari, Ms. N. Annapoorani, K. Ram Kumar, S. Srinivasan, Partaparai Durlabhji for the Respondent in S.L.P. (C) No. 1623/98

The Judgment of the Court was delivered by

SRINIVASAN, J. Leave granted.

The common questions which arise for decision in these cases depend on the interpretation of Rule 258 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short, the 'Rules') which is in the following terms:-

A "RULE 258:- FIXATION OF STAGES FOR CARRIAGES :

1. In the case of stage carriage, the Regional Transport Authority shall, after consultation with such other authority as it may deem desirable, fix stages on all bus routes except town service. The maximum distance of each stage shall not ordinarily exceed 6.4 kilometres. When stages are so fixed, fares shall be collected according to stages.

B Explanation:- When a passenger gets into or gets down from a stage carriage at a place lying in between two stages, he shall pay the fare from the stage preceding the place where he gets into the bus to the stage succeeding the place where he gets down.

C 2. The Regional Transport Authority shall, subject to the following restrictions, determine which are town service routes.

D (i) at least one terminus of every town service shall lie within the limits of a municipality or any built up place notified in the Andhra Pradesh Gazette as 'town' for this purpose by the Regional Transport Authority concerned, with the prior concurrence of the State Transport Authority.

E (ii) No route of town service shall extend more than 8 kilometres beyond the limits of the Municipality or town from which it starts, provided that this restriction shall not apply to any town service routes, which were in existence on the date of coming of these rules into force or in respect of those routes for which specific permission of the Transport Commissioner is obtained.

F (iii) No route shall be determined as both town and mufasal service routes".

G 2. The Government of Andhra Pradesh notified in GOMS No. 695, Transport, Roads & Buildings (P-IV), 20th September, 1988 a Scheme published by the appellant in these cases relating to the route Chilukuru to Gutlapadu. Section 104 of the Motor Vehicles Act, 1988 (for short, the 'Act') prohibits the grant of any permit except in accordance with the provisions of the scheme. The scheme sets out five exceptions and they are:-

H 1. The State Transport Undertakings:

2. The holders of stage carriage permits in respect of town services:

3. The holders of stage carriage permits in respect of inter-State routes overlapping on the notified route; A

4. The holders of stage carriage permits in respect of such route or routes overlapping not more than 8 kms. on the notified route; and

5. The services operated by Devasthanams. B

3. The third respondent in S.L.P(C) NO 21474/97 filed an application for grant of pucca stage carriage permit to ply his buses on the route Bhimavaram old bus stand to Losari. The total length of the said route was 19.2 Kms. comprising 4.3 Kms. within the municipal limits of Bhimavaram and 14.9 Kms. beyond the municipal limits with an overlapping of 12.3 Kms on the notified route under the scheme. The Regional Transport Authority rejected it on the ground that the overlapping exceeded 8 Kms. On appeal, the State Transport Appellate Tribunal held that the route applied for was a town service route falling under the second exception set out in the scheme. The Tribunal allowed the appeal and granted the permit to the third respondent on condition that the Transport Commissioner granted permission as contemplated in Rule 258 (2) (ii) of the Rules. The Tribunal directed the Secretary of the Regional Transport Authority to issue permit on production of permission of the Transport Commissioner. C D E

4. The Tribunal's order was challenged by the appellant in Writ Petition No. 19258 of 1994 in the High Court of Andhra Pradesh. The High Court rejected the contention of the appellant that the permission of the Transport Commissioner under Rule 258(2)(ii) was a condition precedent for filing an application for route permit when there was a scheme governing the route. The High Court also held that the power of the Transport Commissioner under Rule 258(2) (ii) was unlimited. Consequently the writ petition was dismissed. Following that judgment, the writ petitions filed by the appellant against the grants in the other cases were dismissed. F G

5. Though it is not necessary to set out the facts in each case as they are similar, it will be very useful to reproduce the tabular statement furnished by learned counsel for the appellant containing the particulars of the route, total distance, extension beyond municipal limits and the extent of overlapping in each case. H

A PARTICULARS OF THE ROUTE IN SLP 21474/97 & BATCH

SI. NO.	SLP NO.	NAME OF THE PERMITTED RESPONDENT	ROUTE FROM AND TO	TOTAL BEYOND OVER		
				DISTANCE LIMITS	MUNICIPAL LAPP-ING	
B	1. 21474/97	Sri Ch. Nageswararao	Bhimavaram to Lasari.	19.2 km	14.9 km	12.3km
	2. 547/98	M. Sridhar	New Godavari Rly st. to Seeth-anagaram.	22.9 km	19.9 km	22.6km
C	3. 598/98	Sri Ch.V.R. Prasad	Gokavaram Bus Stand to Dwrapudi-Market	23.8 km	17.6 km	21.6km
	4. 1116/98	Sri T. Kasi Annapuraraju	Tanuku Rly St. Attoli Bus Stand.	16.7 km	14.4 km	16.7km
D	5. 1171/98	M. Rama Rao	Bhimavaram New Bus Stand to Lasari	20.4 km	14.9 km	13.5km
	6. 1139/98	Sri B. Bhaskar Rao	Gokavaram Bus Stand to Dwarapudi Market.	23.8 km	17.6 km	21.6km
E	7. 1118/98	Sri Sama Raju	Tadepalligudam DRJ Lomens College to Ravipadu Via Bus dept. Indian Bank centre Vijaya vihar Ce-ntr D.R.D. Govt. College mulanur centre, Chilakarampadu New bridge, Kanipadu, Chintapalli.	16.5 km	12.3 km	15.6km
F						
G	8. 1122/98	Sri M.D.S. R.N. Chandra	Tanuku Rly St. Road to Athili Bus stand	16.7 km	16.7 km	13.4km
	9. 1138/98	Sri I. Surya Rao	Bhimavaram old bus stand to Lasari	19.2 km	14.9 km	12.3km
H	10. 1168/98	Sri Ch. Raja	Rajahmundry	25.0 km	18.6 km	18.6 km

	Rammohan Rao	ladies hospital to Korukonda				A
11. 1128/98	Ch. Nages- wara Rao	Bhimavaram old bus stand to Akiveedu High Bhimavaram Centre.	26.0 km	24.7 km	26.0 km	B
12. 1172/98	Sri B.T. Shyam	Bhimavaram Ke- opella Jakkaram, Kallu, Kaikaluru, Juvvapalem Elurupadu, and Bhimavaram.	26 km	24.7 km	26 km	C
13. 1281/98	Sri Ch. Nagalakshmi	New Godavari Rly. St. to via Goka- varam Bus stand A.P. Paper Mills, Kateru	22.9 km	19.9 km	22.9 km	D
14. 1204/98	G. Shekhar Surya Rao	Palacole Basic School to Burug- upalle	15 km	13 km	12 km	
15. 1623/98	Kum. B. Si- valakshmi	Prodduturu bus stand to Duvvur Das (via) Gopavaram And Kamanuru	15.9 km	1.0 km	3.8 km	E
16. 1628/98	Sri Purna- chandrarao	Bhimavaram New bus stand to Doddanapudi (via) Pedameram Jakkaram and Kalla	17 km	13.8 km	14.8km	F
17. 1642/98	Sri M. Sree ama Murthy	Bhimavaram bus stand to Lasari (via) DNR. College, Yana madururrever, Gollavaripeta, Gutlaparu Rever	19.2 km	14.9 km	12.3 km	G
18. 1887/98	Sri G. Somalakshmi	Tadepallegudem, DJR womens	19 km	15 km	15 km	H

A		college, to Ganap- avaram Panchayat, Office	
	19. 1758/98 Sri C. Adinarayana	Tanuku polyte- chnic Penugonda bus stand via Komavaram, Mahalakshmieruvu, Coteru, Irugovaram Junction Kothapadu, Kakileru Kayetipodu Subbaraidu peta, Penugada.	28.6 km 25.3 km 16.8 km
B			
	20. 2001/98 Sri Rama- chandra rao	Tanuku Bus stand to Attili	23.4 km 22.9 km 22.9 km
C			
	21. 1530/98 M.D.R.S.N. Chowdary	Tanuku Rly. st. Road to Attili Bus Stand via Narendra Centre Velpur Bus stand, Relenji centre, Govaralapalem, A. Samudrapugatta.	16.7 km 14.4 km 16.7 km
D			
	22. 1117/98 A.Venkat- eswara Rao	Tanuku Polytech- nic college to Penugonda Bus stand to Lasari	26 km 1.5 km 16.9 km
E			
	23. 7542/98 Sri K. Srinivasa Murthy	Rajahmundry Goka varam Bus stand to Dwarapudi Mkt. (via) Devi Chowk, Jampeta Gandhi, Statue, Churc- ehate Apsara Theatre, Delux Centre, Kotipalli, Bus stand	23.4 km 17.3 km 0.2 km
F			
	24. 22781/97 Sri M. Gopala Krishna	Dokavaram Bus stand to Dwarapudi Mkt.	23.8 km 17.6 km 21.6 km
G			
H			

25. 22779/97 Sr. A.Sv.	Bhimavaram New	29.5 km	25.5 km	25.1 km	A
Nageswara- rao	Bus stand to Mogalthur				
26.22299/97 Sri B.T.	Bhimavaram to	20.4 km	14.9 km	13.5 km	
Shyam	Lasari				

The S.L.P. in Serial No. 15, that is S.L.P. 1623/98, has been dismissed as 'not pressed' by a separate order B

6. On the above facts, the following questions are debated:-

(i) Whether the permission of the Transport Commissioner contemplated in Rule 258 (2) (ii) of the Rules should be obtained before an application for permit is filed for a route covered by a scheme notified under the Act? C

(ii) Whether the Transport Commissioner's power to extend a town service route more than 8 Kms. beyond the limits of the Municipality or town is unlimited? D

7. Rule 258 uses the expression "town service". Sub-rule (1) enjoins the Regional Transport Authority to fix stages on all bus routes except town service after consultation with such other authority as it may deem desirable. Sub-rule (2) directs the Regional Transport Authority to determine which are town service routes subject to the restrictions mentioned therein. There are three restrictions set out in the sub-rule. E

(a) At least one terminus of every town service shall lie within the municipal limits or any built up place notified in the State Gazette as "town" for the purpose of the rule by the said authority with the prior concurrence of the State Transport Authority. F

(b) The route of town service shall not extend more than 8 kilometres beyond the municipal limits or town limits but such restriction shall not apply to town service routes which already existed on the date of coming into force of the rules or in respect of which routes specific permission of the Transport Commissioner is obtained G

(c) No route shall be determined as both town and mufassal service routes. The expression "town service" has not been used in any other rule or any provision in the Act. The expression has not been defined anywhere. H

A 8. Our attention has been drawn to Sections 70 and 71 of the Act which provide for application for stage carriage permit and prescribe the procedure in considering the said application. Neither section throws any light as to what is a "town service route". On the other hand Section 71(3)(a) refers to city routes in towns with a population of not less than five lakhs. We have also been taken through rules 171 to 174 and 179. There is no guidance in B any of the said rules with reference to the expression "town service". There is no prescribed form of application for permit for a town service route; nor is there any prescribed form of permit.

C 9. In the normal connotation, 'town service route' would mean a route within a town to enable passengers to go from one place to another in the town. But generally people in the peripheral and neighbouring areas would be frequenting the town and to serve them, buses have to ply between a place in the town and a place outside. Hence, the rule provides for an extension of 8 kms beyond the limits of the town or municipality.

D 10. Bearing that in mind we have to construe Rule 258 (2) in the light of Sections 98 to 100 and 104 of the Act. Section 98 provides that the provisions of Chapter VI and the rules and orders made thereunder shall have overriding effect against anything inconsistent in Chapter V or any other law for the time being in force. Section 99 deals with preparation and publication of proposals regarding road transport service of a State Transport Undertaking. E Section 100 deals with publication of proposal and a notification of the scheme after consideration of the objections to the proposal. Section 104 as stated earlier, prohibits the grant of any permit except in accordance with the provisions of the scheme. Hence for the purpose of Rule 258(2), if there is a scheme in force with reference to the concerned route, the authority has to F adhere to the terms of the scheme. If there is an absolute bar in the scheme against the grant of any permit for the notified route or any portion of the route nothing further could be done. On the other hand if there is any exception provided in the scheme the applicant for a permit has to satisfy the authority concerned that he would fall within the scope of the exception. G When the scheme provides an exception for the holder of stage carriage permit in respect of town service any applicant for permit claiming the benefit thereof has to necessarily satisfy the Regional Transport Authority that the route for which the permit is sought is a town service route. In order to establish the same the applicant for permit has to approach the Transport H Commissioner in the first instance if the route for which permit is sought extends more than 8 kilometres beyond the limits of the municipality or town

from which it starts. In such cases, it is only when the Transport Commissioner grants specific permission for extension of the route for more than 8 kilometres beyond the limits of the municipality or town, the Regional Transport Authority can consider the application for grant of permit and proceed to pass orders. It is only on the basis of the Transport Commissioner's permission the Regional Transport Authority can determine the town service routes. Hence our answer to the first question is that the permission of the Transport Commissioner contemplated in Rule 258(2) of the rules has to be obtained before an application for permit is filed for a route covered by a scheme notified under the Act.

11. Admittedly in none of these cases such permission was obtained. Learned counsel for the respondents contended that in all these cases the actual issue of permit was after the grant of permission by the Transport Commissioner and there was no violation of the rule. According to him, grant of permit and issue of permit are the same. The argument is fallacious. The grant of permit in these cases is by the Tribunal before the grant of permission by the Transport Commissioner. The Tribunal itself directed issue of permit by the Secretary to the R.T.A. after receipt of record evidencing Transport Commissioner's permission. The actual issue of permit was only a ministerial act and it cannot be equated to the grant of permit. The Tribunal acted beyond its jurisdiction in granting permits in all these cases.

12. Turning to the second question, there is no doubt that rule 258(2) does not specify or indicate the limits of the power of the Transport Commissioner but it is certainly erroneous to think that the power of the Transport Commissioner is unlimited. If that is so, the very purpose of the rule providing for a limit of 8 kilometres of extension beyond the limits of municipality or town will be defeated. The power of the Commissioner cannot be arbitrarily or indiscriminately exercised. According to learned counsel for the appellant, the power is coupled with a duty.

13. Though there is no direct ruling on the point, learned counsel for the appellant has drawn our attention to two passages in de Smith's Judicial Review of Administrative Action, Fourth Edition, pages 283 and 285 which read as follows:

Page 283:-

"An authority may have a discretion whether to exercise a power, and a discretion in the manner of exercising it. But discretionary powers

A are frequently coupled with duties. A Minister may be empowered to confirm or refuse to confirm a compulsory purchase order. In making his decision he is entitled to exercise a very wide discretion, but he is under a legal duty to determine the application for confirmation one way or the other. Again, to the extent that a discretionary power is not absolute, the repository of a discretion is under a legal duty to observe certain requirements that condition the manner in which its discretion may be exercised.”

Page 285:-

C “The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.”

F 14. Reliance is placed on *Comptroller and Auditor-General of India v. K.S. Jagannathan and another*, [1986] 2 SCC 679 wherein it is said; “It is now necessary to examine the nature of the discretion conferred by the said Office Memorandum dated January 21, 1997 - “whether it is a discretionary power simpliciter or a discretionary power coupled with a duty?” From the provisions of the Constitution referred to above, it is transparently clear that it is a discretion to be exercised in the discharge of the constitutional duty imposed by Article 335 to take into consideration the claim of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.”

H 15. Reference was also made to *C. Kasturi and another v. Secretary, Regional Transport Authority and another*, [1996] 8 SCC 314 decided by a bench of three Judges to which one of us (Justice Saghir Ahmad) was a party.

Dealing with the corresponding old rule namely, Rule 282(2)(ii) of the Andhra Pradesh Motor Vehicles Rules, 1964, the Bench observed: A

“It would, thus, be clear that once a notified draft scheme has been approved and published the private operators operate their services on the notified route strictly in accordance with the scheme only and within the exceptions engrafted thereunder. By necessary implication, the “town service” as defined in Rule 282(2)(ii) has to be read subject to the scheme in Chapter IV-A of the repealed Act. If so read, clauses 2, 3 and 4 are to operate as an exception and they provide only a right to overlap not more than 8 Kms in the notified route. Otherwise, the town service will cease to be town service and would get transformed into a moffussil route and the private operator would run his stage carriage along the line of the notified route which is impermissible. When so read, though under Rule 282(2)(ii) town service extends upto 8 Kms from the municipal limits that does not give any right to a holder of a town service stage carriage permit to run his vehicle beyond 8 Kms on the notified route nor does it extend to 8 Kms overlapping on the notified route from municipal limits.” B C D

16. Learned counsel for the appellant has pointed out rightly that in these cases the Transport Commissioner has granted permission for extension of the town service route by not less than 12 kilometres excepting in one or two cases. The tabular statement reproduced by us earlier shows that the extension is not only much more than 8 kilometres beyond the municipal limits but also the overlapping on the notified route is more than 12 kilometres excepting in one or two cases. Thus it is evident that the Transport Commissioner has not applied his mind to the relevant factors in these cases. E

17. Learned counsel for the respondents has submitted that without making the Transport Commissioner a party to these proceedings the orders passed by him cannot be questioned by the appellant. We do not find any merit in the contention. There is no necessity for the Transport Commissioner to be a party to these proceedings., We are construing Rule 258(2) and deciding the scope of the power to be exercised by the Transport Commissioner under that rule. While doing so it is open to this Court to point out that in the present case the power has been exercised arbitrarily. F G

18. Though we do not propose to fix any specific limit upto which the Transport Commissioner can extend the town service route it must be pointed out that in no case the permission granted by the Transport Commissioner should have the affect of converting a town service route into a muffasal H

A service route. In other words a mufasal service cannot be labelled as town service by virtue of the permission granted by the Transport Commissioner though in fact it would be a mufasal service. Apart from the above guidelines, the Transport Commissioner must also bear in mind that in the case of a route covered by a notified scheme grant of permits to any other person is barred except to the extent permitted by the scheme. The Transport Commissioner should, therefore, take care not to convert an exception into a rule. He must bear in mind the provisions of Chapter VI of the Act and see that they are not made illusory by the permission for extension of town service granted by him.

C 19. Learned counsel for the respondents has submitted that under Section 72 of the Act the Regional Transport Authority can impose conditions while granting permit and it is only such a power which has been exercised by the Tribunal. He placed reliance on *Afsar Jahan Begum and others v. State of M.P. and others*, [1996] 8 SCC 38. In that case it was held that the Court could not give any direction or relief to the petitioners on the basis of a modification of approved scheme during the pendency of the appeal and they directed the parties to approach the RTA or STA for appropriate reliefs if they had any right thereto. The ruling has no relevancy in the present case. Nor does Section 72 of the Act help the respondents in any manner.

E 20. In the result, we answer the second question in the negative and hold that the power of the Transport commissioner to extend a town service route more than 8 Kilometres beyond the limits of the municipality or town is to be exercised in an appropriate manner in accordance with the guidelines set out in para 18 above.

F 21. Consequently, the appeals are allowed and the orders of the High Court as well as those of the State Transport Appellate Tribunal are set aside. The orders of the Regional Transport Authority rejecting the applications of the respondents are restored. There will be no order as to costs.

B.K.M.

Appeal allowed.