

Allahabad High Court

Nav Neet Kumar And Another vs State Of U.P. Thru' Principal Sec. ... on 27 July, 2012

Bench: Ashok Bhushan, Abhinava Upadhya

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 37

Case :- WRIT - A No. - 14558 of 2003

Petitioner :- Nav Neet Kumar And Another

Respondent :- State Of U.P. Thru' Principal Sec. Transport Sec. & Ors.

Petitioner Counsel :- Manoj Kr. Rajvanshi, N.C. Rajvanshi

Respondent Counsel :- C.S.C.

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Hon'ble Ashok Bhushan, J.

Hon'ble Abhinava Upadhya, J.

(Delivered by Hon'ble Ashok Bhushan, J.) Heard Sri N.C. Rajvanshi, learned Senior Advocate, assisted by Sri M.K. Rajvanshi for the petitioners and Sri Alok Singh, learned Standing Counsel for the State-respondents.

Counter and rejoinder affidavits have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being finally decided.

This writ petition has been filed by two petitioners. Petitioner No.1 is a private bus owner whereas petitioner No.2 is Private Bus Owners Association, Almaspur through its President.

By means of this writ petition, the petitioners have challenged the order dated 12th March, 2003 passed by District Magistrate, Muzaffar Nagar by which the District Magistrate directed that without prior permission of the District Magistrate all private bus owners and bus unions shall not use any place as parking/halting station within the Muzaffar Nagar area and the places which are being utilised for the above purpose are prohibited. The District Magistrate further directed that parking place/halting station be established across the bridge on Kali Nadi and the private bus owners after selecting their parking place/halting station shall submit an application to the District Magistrate. The petitioners have filed this writ petition praying for following relief:-

"(a) A writ, order and direction in the nature of certiorari quashing the impugned order dated 12.3.2003 (annexure-5 to the writ petition).

(b) A writ of mandamus commanding the respondents not to interfere in the peaceful business of the petitioners at the place from where they are plying their buses.

(c) any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case to meet the ends of justice."

Brief facts of the case as emerge from pleadings of the parties are; the District Magistrate by an order dated 1st April, 1998 directed all private bus owners and office bearers of the private bus unions to establish stand outside the city area of Muzaffar Nagar with effect from 22nd April, 1998. An order was passed by the Regional Transport Authority, Saharanpur dated 5th May, 1999 that no private bus owner/office bearers of Union shall use any place for parking/halting of the buses within the Muzaffar Nagar area. It was also stated in the order that the private buses which are at the route Jansath-Meerapur and Bhopa-Bijnore shall temporarily use halting station/parking place at Almaspur and village Sarvat as per earlier order of the District Magistrate. The order further directed that private bus owners and office bearers of the union shall submit application for bus stand/halting station by 18th May, 1999 before the Regional Transport Authority. The petitioners' case in the writ petition is that the members of the Association had purchased a piece of land in village Almaspur where private bus stand at the cost of the members of the association was established investing considerable amount and the said bus stand at Almaspur is equipped with all facilities. An order dated 12th March, 2003 was issued by the District Magistrate prohibiting the places which were being used as private bus stand/halting station/parking place. The District Magistrate in exercise of power under Section 96(2), (xxi), (xxii), Section 117 of the Motor Vehicles Act, 1988 and Rule 195(1) of the Motor Vehicles Rules, 1998 has passed the order dated 12th March, 2003 prohibiting use of places and directed to shift the halting station/parking place across the bridge of Kali Nadi which order has been challenged by the petitioner by means of the present writ petition.

This Court entertained the writ petition on 24th July, 2003 and passed an interim order

"Until further orders operation of the impugned order dated 12th March, 2003 shall remain suspended"

The said interim order passed by this Court is still continuing to operate.

A counter affidavit has been filed by the State in which it has been stated that the District Magistrate has passed the order dated 12th March, 2003 for shifting the halting places of private buses from congested area of district Muzaffar Nagar to outskirts of district Muzaffar Nagar. It has been stated in the counter affidavit that the place Almaspur is not fit for the use of halt station on account of dense population and construction of house and petty shops. It has further been stated that District Magistrate has not passed order to shift the bus stand as stated by the petitioners, rather its direction was with regard to halting station of private bus operators to pick passengers. Although from 1998 Almaspur area was halting station but from 1998 to 2003 the congestion in the area increased due to which decision has been taken to shift the halting station.

Sri N.C. Rajvanshi, learned Senior Advocate, appearing for the petitioners challenging the order, has raised following submissions:-

(i)The District Magistrate had no jurisdiction to pass impugned order for shifting private bus station. The District Magistrate under Sections 96(2) and 117 of the Act cannot exercise any jurisdiction to shift bus stations.

(ii)The District Magistrate has not consulted even the local authorities of the area before passing the order impugned dated 12th March, 2003. The petitioners were also not given any opportunity of hearing before passing the order.

Learned counsel for the petitioners has placed reliance on a judgment of the Apex Court in the case of Hari Om Gautam vs. District Magistrate, Mathura and another reported in 1987(13) ALR 313.

Sri Alok Kumar, learned Standing Counsel, submits that the District Magistrate has every jurisdiction to pass the order dated 12th March, 2003. He submits that under Rule 195 of Motor Vehicle Rules, 1998, the District Magistrate is fully empowered to prohibit use of any specified place as stand/halting place. It has further been submitted that before passing the order dated 12th March, 2003 all the private bus operators were consulted. He further submits that due to traffic congestion in the city of Muzaffar Nagar, the decision has been taken.

We have heard learned counsel for the parties and have perused the record.

From the submissions of learned counsel for the parties, following issues arise for consideration in this writ petition:-

1.Whether the District Magistrate has jurisdiction to shift a bus stand from one place to another in exercise of power under Section 96(2)(xxi) and (xxii) read with Section 117 of the Motor Vehicle Act, 1988 and under Rule 195(1) of the Motor Vehicle Rules, 1988?

2. Whether the order impugned dated 12th March, 2003 is an order passed for shifting the bus stand or is an order passed for shifting halting station/parking place?

3. Whether the order impugned, which has been passed in exercise of power under Section 117 of the Motor Vehicle Act, 1988 and Rule 195 of the Motor Vehicle Rules, 1998, has been passed in accordance with the procedure as prescribed in the Rule 195 of Motor Vehicle Rules, 1998?

4. Whether the place i.e. Almaspur, which place is being used by the petitioners for halting and parking their buses, is a notified bus stand within the meaning of Section 96(2)(xxi) of the Motor Vehicle Act, 1988?

The issues, which have arisen for consideration in this writ petition, are interrelated and are being taken together for consideration.

Before we proceed to consider the issues, it is necessary to have a look on the statutory provisions governing the bus station/parking place/halting place of the motor vehicles. The Motor Vehicle Act, 1988 and the Rules framed thereunder govern the field. Prior to 1988 Act entire field was covered by the Motor Vehicle Act, 1939 and the Rules framed thereunder. The provisions of Motor Vehicle Act, 1939 in context of bus stand/parking place/halting place came for consideration before the Apex Court in several cases. It is thus relevant to refer to the relevant provisions of the Motor Vehicle Act, 1939 and corresponding provisions of the Motor Vehicle Act, 1988 for considering the issues which have arisen in this writ petition.

The words "bus stand/motor stand" have not been defined in the Motor Vehicle Act, 1939 or Motor Vehicle Act, 1988 or the rules framed thereunder. Under the Motor Vehicle Act, 1939, Chapter-IV dealt with "Control of Transport Vehicles". Section 68 of the said Act provided for power to make rules for the purposes of the Chapter. Section 68(2)(r) of the 1939 Act empowered the State Government to make rules for prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified area or at places other than duly notified stands or halting places. The corresponding provision to Section 68(2) of the Motor Vehicle Act, 1939 is Section 96(2)(xxi) of the Motor Vehicle Act, 1988.

Under the 1939 Act, Section 76 of Chapter VI which dealt with "Control of Traffic" provided for parking places and halting stations. The corresponding of which under the Motor Vehicle Act, 1988 is Section 117. Under the 1939 Act rules have been framed i.e. Motor Vehicle Rules, 1940 which contained Rule 93 providing for "stands and halting places", the corresponding rule of which for State of U.P. is Rule 195 of the Motor Vehicle Rules, 1998. The provisions of the 1939 Act, 1988 Act and the rules framed thereunder, which are relevant for the present case, are given below in tabular form as under:-

Motor Vehicle Act, 1939 Motor Vehicle Act, 1988 Section 68(2)(r). Prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for reasonable time when so required by a passenger desiring to alight

from the vehicle at a notified halting place.

Section 96(2)(xxi). Prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place.

Section 76. Parking places and halting stations.- The State Government or any authority authorised in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

Section 117. Parking places and halting stations.- The State Government or any authority authorised in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

U.P. Motor Vehicle Rules, 1940 U.P. Motor Vehicle Rules, 1998 Rule 93(a). Stands and halting places-(a) District Magistrate authorised by the State Government to take action under Section 76 of the Act and may, in consultation with the local authority having jurisdiction in the area concerned by the creation, of traffic signs of notices-

(i) specify places within the limit of any Municipality, Notified area, Town area or Government or within such other limits as he may define where alone public service vehicle or any specified classes of public service vehicles and or goods vehicles may stand indefinitely or for such period as may be specified or public service vehicle may stop for a longer time than is necessary for the taking up and setting down of passengers; or

(ii) conditionally or unconditionally prohibit the use of any specified place or any place of a specified nature or class as a stand or halting place:

Provided that no place which is privately owned shall be specified as a stand or halting place without the previous consent in writing of the owner thereof.

195(1). Stands and halting places.- (1) District Magistrate are authorised by the State Government to take action under Section 117 of the Act and may, in consultation with the local authority having jurisdiction in the area concerned, by the creation, of traffic signs or notices-

(a) specify places within the territorial area of a municipality or Cantonment Board or within such other limits as he may define where alone public service vehicle or any specified class or classes of public service vehicles and/or goods carriages may stand indefinitely or for such period as may be specified or public service vehicle may stop for a longer time than is necessary for the taking up and setting down of passengers; or

(b) conditionally or unconditionally prohibit the use of any specified place, or any place of a specified nature or class as a stand or halting place:

Provided that no place which is privately owned shall be specified as a stand or halting place without the previous consent in writing of the owner thereof.

It is relevant to note that phrase "parking places and halting stations" have been used in Section 117 of the Motor Vehicle Act, 1988 in Chapter VIII under the heading "Control of Traffic". Section 117 of the Motor Vehicle Act, 1988 when uses two phrases namely "parking places" and "halting stations", the said phrases have been used with different meaning and purpose. Section 96(1) of the Motor Vehicle Act, 1988, which is in Chapter-V under the heading "Control of Transport Vehicles", provides for rule making power of the State Government with regard to prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stand or halting places. The Motor Vehicle Act, 1988 uses three phrases, namely, "notified stands", "halting places" and "parking places". When the Legislature uses three different phrases, those phrases have to be assigned different meanings. The word "notified stands" as used in Section 68(2)(r) of the Motor Vehicle Act, 1939 came for consideration before the Apex Court in the case of T.B. Ibrahim vs. Regional Transport Authority, Tanjore reported in 1953 SCR 290. The Apex Court in the said case interpreting Section 68(2)(r), held that rules can be framed by the State to alter the situation of bus stands. The Apex Court also noticed that the words "duly notified stands" have not been defined in the Act but the duly notified stands must be one which is notified by the transport authority. Following was laid down by the Apex Court in this regard in the said judgment:-

"It was contended that section 68, sub-section 2(r), does not confer the power upon the transport authority to direct the fixing or the alteration of a bus-stand and that rule 268 of the rules framed under that section was, therefore, ultra vires. We are not prepared to accede to this contention. Sub-section 2(r) clearly contemplates three definite situations. It prohibits the picking up or setting down of passengers

(i) at specified places

(ii) in specified areas, and

(iii) at places other than duly notified stands or halting places.

If the power to make rules in regard to these, matters is given to the Government, then it follows that a specified place may be prohibited from being used for picking up or setting down passengers.

This will inevitably result in the closing of that specified place for the purpose of picking up or setting down of passengers. Similarly a specified area may be excluded for the same purpose. The expression "duly notified stands" is not defined in the Act, but it is reasonable to presume that a duly notified stand must be one which is notified by the Transport Authority and by none other."

A constitution Bench of the Apex Court had occasion to interpret the provisions of Section 68(2)(r) and Section 76 of the 1939 Act in the case of Municipal Board, Pushkar vs. State Transport Authority, Rajasthan and others reported in A.I.R. 1965 SC 458. In the said case the question for consideration was as to whether location of bus stand can be changed or altered by the Regional Transport Authority under Section 76 of the 1939 Act. Following was laid down by the Apex Court in paragraphs 17, 18 and 19 of the said judgment which are as under:-

"17. It appears clear to us however that Ibrahim's case is also authority for the proposition that an order fixing or altering a bus stand cannot be made under s. 76. From the summary of 'what was discussed and decided in that case as has been given above, it appears that the Division Bench of the Madras High Court gave a categorical decision in the earlier writ petition that s. 76 did not authorise the Transport Authority to close the bus stand. It appears to us clear that this view was approved by this Court. Indeed, the reasoning which this Court adopted for deciding that s. 68 (2) (r) of the Act contemplates the fixation or alteration of a bus stand would become considerably weakened and would not have been accepted by this Court if it thought that s. 76 itself authorised the Transport Authority to fix or close a bus stand.

18. We may make it clear that even if this binding authority in Ibrahim's Case had not been present we would have had no hesitation in holding that the fixation or alteration of a bus stand is made under a rule made under s. 68 of the Motor Vehicles Act and cannot be made under s. 76. In our opinion, Chapter VI which deals with the question of "Control of traffic" in general has nothing to do with the fixation or alteration of bus stands. Section 76 has no doubt used the words "places at which motor vehicles may stand" and the learned Attorney--General tried to persuade us that this includes the fixation of what is known as bus stands. While the word "bus stand" has not been defined in the Act, we have no hesitation in accepting the contention of the respondents that a bus stand means a place where bus services commence or terminate. It is the place where the buses stand for commencing its transport service or where they stand after terminating their service, that is popularly known as a bus-stand. We do not think the words "places at which the motor vehicles may stand either indefinitely or for a specified period of time" can be reasonably interpreted to include a bus stand in the above sense. When it is remembered that Chapter VI in which s. 76 occurs, is intended to deal with the control of traffic it becomes clear that the determination of places at which the Motor Vehicles may stand either indefinitely or for a specified period of time means the "determination of parking places" while the determination of places at which public vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers means "halting stations for public service vehicles". It is well worth noticing that while the determination of such places for stoppage, in the latter portion of the section can be in respect of public service vehicles only the determination of places of standing in the first part of the section is in respect of motor vehicles in general.

19. All things considered, it appears to us clear that s. 76 has nothing to do with the provision for bus stands. Section 91 (2) (e) which empowers the State Government to make rules for "the maintenance and management of parking places and stands" does not refer, in our opinion, to bus stands but to "stands" for motor vehicles which are in the nature of parking places determined under s. 76."

The judgment on which much reliance has been placed by the learned counsel for the petitioners is Hari Om Gautam's case (supra) also lays down the same proposition. In the said case, the District Magistrate, Mathura has passed an order declaring two plots in town area Baldev as bus stand. The said order of the District Magistrate was challenged in a writ petition which was dismissed by the High Court. An appeal was filed in the Apex Court which was allowed. The Apex Court had considered Sections 68(2)(r) and 76 of the 1939 Act and Rule 93 of the 1940 Rules and held that Section 76 was confined to the question of determination of parking place/halting station which are not the same as bus stand. Following was laid down by the Apex Court:-

"In the instant case reliance is placed by the learned counsel for the Town Area Committee of Baldev on rule 93 of the U.P. Motor Vehicles Rules, 1940 which authorises the District Magistrate to specify places within the limits of any municipality, notified area, town area or cantonment or within such other limits as he may define where alone public service vehicles or any specified class or classes of public service vehicles and/or goods vehicles may stand indefinitely or for such period as may be specified or public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers. We do not think that the Town Area Committee can derive any assistance from this rule. It only authorises the District Magistrate to exercise the powers under section 76 of the Act which is confined to the question of determination of parking places and halting places which are not the same as bus stands which can only be notified by the Regional Transport Authority as held by this Court in T.B. Ibrahim's case (supra). It is not disputed that in the instant case no order has been passed by the Regional Transport Authority, Mathura to determine the area in question as a bus stand and the District Magistrate cannot be equated with the Regional Transport Authority constituted under the Act. The High Court was, therefore, in error in upholding the impugned order passed by the District Magistrate. We, therefore, set aside the judgment of the High Court and quash the order dated 22.5.1986 passed by the District Magistrate. We also quash the letter dated 10.10.1986 written by the Executive Officer of Town Area Committee, Baldev to the President of the Union requiring the bus operators to stop their buses at the bus stand and to start from there and to permit the passengers to get into and to get out of their buses at that bus stand. It is open to the Regional Transport Authority to take action immediately for determining any convenient place or places within the Town Area of Baldev (Mathura) as a bus stand."

In the present case stand taken by the State in the counter affidavit is that District Magistrate has shifted the halting place of private buses from the congested area of district Muzaffar Nagar to the outskirts of district Muzaffar Nagar. The District Magistrate in the present case has exercised the power under Section 117 of the Motor Vehicle Act, 1988 read with Rule 195(1) of the Motor Vehicle Rules, 1998 which specifically provide for halting station and parking place. It is relevant to quote paragraph 18 of the counter affidavit which is to the following effect:-

"18. That the contents of paragraph No.13 of the writ petition are not admitted, hence denied. It is submitted that District Magistrate has shifted the place of halt station from picking up the passengers vide order dated 12.3.2003. It is pertinent to point out here that District Magistrate has not passed order to shift the bus station as stated by the petitioner in paragraph under reply. It is only the halt station of private bus operators to pick passengers."

From the proposition laid down by the Apex Court, it is clear that the District Magistrate has no jurisdiction to shift a duly notified bus stand but the District Magistrate can shift a halting station/parking place.

Learned counsel for the petitioners has contended that Almaspur is a private bus station which is running under an order of the Regional Transport Authority after 5.5.1999 and the jurisdiction, if any, was only with the Regional Transport Authority to shift the bus stand. It has been stated that earlier the bus stand was in Civil Lines, Muzaffar Nagar which was directed to be shifted by the District Magistrate by an order passed in April, 1998 and thereafter the land was purchased by the petitioners and its members at village Almaspur which has been developed as bus stand. It is necessary to find out as to whether the place at Almaspur is a notified bus stand by the Regional Transport Authority as claimed by the petitioners. Copy of the order of the Regional Transport Authority dated 5th May, 1999 has been filed as Annexure-2 to the writ petition. The said order contains following three directions:-

(i) No place within the Muzaffar Nagar City area shall be used for halting/parking of buses without permission of the Regional Transport Authority and the places which are being used are prohibited.

(ii) On temporary basis, the place at village Almaspur as specified by the District Magistrate shall be used as is being done earlier.

(iii) For permanent bus stand/halting place/parking place, the owners of private buses and office bearers of the Union should submit application by 18th May, 1999 before Regional Transport Authority, Saharanpur.

From the aforesaid order, it is clear that village Almaspur was never notified as bus stand by the Regional Transport Authority. The said place was allowed to be used temporarily as per direction of the District Magistrate. The District Magistrate had issued direction in exercise of his power under Section 76 pertaining to halting and parking place. Thus the place at village Almaspur cannot be regarded as notified bus stand by the Regional Transport Authority and the said place was used as halting place/parking place as per direction of the District Magistrate as noticed in the order of the Regional Transport Authority.

Our above view is fully supported by a Division Bench judgment of this Court in Writ Petition No.21854 of 1988 (Allahabad Mini Transport Taxi Owners Association vs. District Magistrate, Allahabad and others) decided on 6th January, 1995. The Union of private bus operators challenged the action of the District Magistrate by which the District Magistrate had not permitted the petitioners to halt or park their motor vehicles at the site adjoining Purshottam Das Tandon Park,

Civil Lines, Allahabad. The petitioners had further prayed for a direction not to enforce letters dated 23rd July, 1979 and 21st September, 1970 written to the State Government by the District Magistrate for not permitting the above site to be used as parking place/halting station for the buses. The petitioner's case was that the State Government or the District Magistrate cannot direct the petitioners to shift buses from the above bus station. It was contended that it only the Regional Transport Authority which can fix and notify a place to be used as bus stand as provided under Section 68(2)(r) of the 1939 Act. Reliance was also placed on the judgment of the Apex Court in Hari Om Gautam's case (supra). The Division Bench also noticed the judgment of the Apex Court in T.B. Ibrahim's case (supra) and held that "halting place" and "bus stand" are two different expressions. It was held that halting place for vehicles can be fixed by the State Government under Section 76 of the 1939 Act whereas the bus stand can be fixed by the Regional Transport Authority under Section 68(2)(r) of the 1939 Act. The Division Bench further held that bus station in the aforesaid case was not a bus station fixed by the Regional Transport Authority, hence the writ petition was dismissed. Following was laid down by the Division Bench in the said judgment:-

"In view of these decisions it is evident that halting places and bus stand are the two different expressions and operate differently. Halting places for vehicles can be fixed by the State Government or by local authority under section 76 of the Act, 1939 whereas bus stand can be fixed by Regional Transport Authority under Section 68(2)(r) of the Act, 1939. Thus, in view of the provisions of Section 76 of the Act, 1939 the State Government is well within its power to issue a direction that no one shall stop their vehicle within a radius of one km. from the bus stand of U.P. State Roadways Transport Corporation.

How we would like to advert on petitioner's right to set up its bus stand on the site adjoining Purshottam Das Tandon Park, Civil Lines, Allahabad. As seen in fore-going paragraph, it is only the Regional Transport Authority which has power to fix bus stand and not the State Government or any local authority. Admittedly the bus stand which is alleged to have been set-up by the petitioner has not been fixed and notified by the Regional Transport Authority, Allahabad in exercise of its power conferred by Section 68(2)(r) of the Act, 1939. In view of this the point on which learned counsel for the petitioner has built up his arguments does not exist in the present case. In fact the petitioner's alleged bus stand is totally unauthorised and illegal and it is liable to be shifted from the present site in view of the direction of the State Government to the District Magistrate, Allahabad.

In view of what has been stated above, we find no merit in the contention raised by the learned counsel for the petitioner. The writ petition fails and is dismissed. The interim order, if any, is hereby vacated."

As observed above, the District Magistrate has ample jurisdiction under Section 117 of the Motor Vehicle Act, 1988 read with Rule 195(1) of the Motor Vehicle Rules, 1998 to change halting place/parking place. Thus the submission of the petitioners that the order dated 12th March, 2003 is beyond the jurisdiction of the District Magistrate cannot be accepted. The District Magistrate has exercised his jurisdiction in passing the order dated 12th March, 2003 for shifting of halting station/parking place which is within his jurisdiction by virtue of Section 117 of Motor Vehicle Act, 1988 read with Rule 195(1) of Motor Vehicle Rules, 1998. It is relevant to note that there is no

challenge to Rule 195(1) of the Motor Vehicle Rules, 1998 in the present writ petition or any of the provisions of Motor Vehicle Act, 1988. Thus the submission of the petitioners that District Magistrate has no jurisdiction to shift the halting station/parking place is rejected.

Now the last submission of the petitioners that local authorities were not consulted by the District Magistrate before passing the order needs consideration. The petitioners have specifically pleaded in paragraph 16 of the writ petition that local authorities have not been consulted. It is useful to quote paragraph 16 of the writ petition which is to the following effect:-

"16. That even if assuming, though not admitting that the District Magistrate has power in respect of private Bus Stand, even then the impugned order is bad in law as same has been passed without consulting the local authority either Nagar Palika Muzaffar Nagar or Gaon Sabha, which is mandatory under Section 117 of the Act and thus is bad in law in view of the provision contained in Section 117 of Motor Vehicle Act, 1988. Nagar Palika and Gaon Sabha Almaspur have not been consulted by the District Magistrate, Muzaffar Nagar before passing the impugned order."

As noticed above, Rule 195(1) of Motor Vehicle Rules, 1998 provides that the District Magistrates are authorised to take action under Section 117 of the Motor Vehicle Act, 1988 in consultation with the local authority having jurisdiction in the area concerned. Paragraph 16 of the writ petition has been replied by the respondents in paragraph 21 of the counter affidavit, which is to the following effect:-

"21. That the contents of paragraph No.16 of the writ petition are not admitted, hence denied. Detail reply has already been given in preceding paragraphs of this counter affidavit."

Thus the specific averments made in paragraph 16 of the writ petition that local authority was not consulted, has not been denied in paragraph 21 of the rejoinder affidavit nor in any other paragraph of the counter affidavit the said averments have been denied. The order of the District Magistrate also does not indicate that the District Magistrate has consulted local authorities. When the statutory provision requires passing of an order after following a particular procedure, passing of the order by the District Magistrate in breach of such procedure is clearly unsustainable. There is a purpose and object of consultation within the local authorities since it is the local authority which can point out to the District Magistrate some relevant factors for taking a decision. In the present case we are satisfied that the order impugned has not been passed after consultation with the local authorities as required by Rule 195(1) of the Motor Vehicle Rules, 1998, hence the order impugned is unsustainable.

There is one more reason which swayed us for quashing the order impugned. The writ petition was filed in the year 2003 and interim order was passed on 4th April, 2003 staying the operation of the order of the District Magistrate. More than 9 years have elapsed from passing the order impugned. Lapse of 9 years is a sufficiently long period requiring a fresh consideration by the District Magistrate taking into account the change situation and circumstances during these period.

In view of the foregoing discussions, we are of the view that the order impugned of the District Magistrate dated 12th March, 2003 is liable to be and is hereby set-aside. The matter is remitted to

the District Magistrate to take a fresh decision in accordance with Section 117 of the Motor Vehicle Act, 1988 read with Rule 195(1) of the Motor Vehicle Rules, 1998. We further observe that it is always open for the competent Transport Authority to take appropriate decision in accordance with the 1988 Act and the 1998 Rules.

In result, the writ petition is allowed. The order dated 12th March, 2003 is set-aside and the matter is remitted to the District Magistrate, Muzaffar Nagar to pass a fresh order in accordance with law after consulting the local authorities.

Parties shall bear their own costs.

Date: July 27, 2012.

Rakesh