

(1976) 09 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No's. 67, 70, 160, 181 and 248 of 1975

Ambala Goods Carriers Pvt. Ltd. etc.

APPELLANT

Vs

Regional Transport Authority etc.

RESPONDENT

Date of Decision : 02-09-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115
Motor Vehicles Act, 1939 — Section 56(2), 63

Citation : AIR 1977 HP 46 : (1977) ShimLC 18

Hon'ble Judges : T.U. Mehta, J;C.R. Thakur, J

Bench : Division Bench

Advocate : Laxmi Grover and H.S. Sawhney, in C.W.P. No. 248 of 1975 and P.N. Nag, in C.W.P. Nos. 67, 70, 160 and 181 of 1975, for the Appellant; Adv.-General, for the Respondent

Final Decision : Allowed

Judgement

T.U. Mehta, J.—All these matters raise a common question of law and seek to challenge a condition In the public carrier's permit issued to the petitioners and counter-signed by the Regional Transport Authority of the State of Himachal Pradesh that they shall not pick-up or set down between two stations of Himachal Pradesh any goods on the route as ultra vires the provisions of Motor Vehicles Act.

2. For the sake of brevity, we shall refer only to the facts relating to C. W. P. No. 248 of 1975 because the facts and points of law involved in all these writ petitions are practically the same. In C. W. P. No, 248 of 1975, the petitioner is M/s. Ambala Goods Carriers Private Limited. This company holds a permit as public carrier issued by the Regional Transport Authority Ambala in respect of vehicles which are mentioned in paragraph 1 of the petition. The petitioner has been plying its vehicles in the State of Haryana and the area covered by the State of Himachal Pradesh ever since the year of 1949. After the formation of the

separate States of Haryana and Himachal Pradesh, the petitioner was required to obtain the counter-signatures of the relevant authorities of the State of Himachal Pradesh for plying its vehicles in the area of this State. According to it, it used to obtain the counter-signature as contemplated by Sections 56 and 63 of the Motor Vehicles Act. However, in the year 1973 the State of Himachal Pradesh and Haryana entered into an agreement by virtue of which it was, inter alia, agreed between them as under;

"No goods shall be picked-up or set down between any two points lying wholly within the jurisdiction of reciprocating State."

Pursuant to this Clause of the agreement the permits held by the petitioner were extended and counter-signed on condition that no goods shall be picked-up or set down between two stations in the State of Himachal Pradesh. So far as the petitioners of C. W. P. No. 248 of 1975 are concerned they are permitted to drop their goods or get down only at one station, namely at Pawaroo within the limits of this State.

3. The petitioners now contend that this particular condition permitting them to pick-up or set down their goods between two stations of Himachal Pradesh State is violative of the provisions of the Motor Vehicles Act and, therefore, even though both the States of Himachal Pradesh and Haryana have imposed this condition pursuant to the agreement arrived at between them on 1-1-1973, the said condition is violative of the statutory provisions of law and, therefore, ultra vires and not binding on them.

4. As against this, it was contended by the learned Advocate-General on behalf of the respondent that the impugned condition has been imposed as a result of mutual agreement between the two States and it was permissible under law for both the States to impose such a condition under Clauses (i) and (iii) of Section 56 (2) of the Act. The learned Advocate-General further contended that the petitioners have suffered such a condition ever since the year 1973 when it was imposed and, therefore, having acquiesced in this condition, they are not entitled now to challenge the same by these writ petitions.

5. Before considering the controversial question it would be necessary to make a short reference to the relevant provisions of law which are contained in Chapter IV of the Motor Vehicles Act which relate to control of transport vehicles. The Chapter contemplates different provisions with regard to different types of vehicles. But so far as, those petitions are concerned we should focus our attention only to those provisions which are relevant to the vehicles known as public carriers. Section 54 contemplates application for public carrier's permit, while Section 55 contemplates the procedure in considering the application for public carrier's permit. It is Section 56 about the grant of public carrier's permit, which is relevant for our purpose. Sub-section (1) of Section 56 says that a Regional Transport Authority, may, on an application made to it, grant a public carrier's permit in accordance with the application or with such modifications as

it deems fit, or refuse to grant such a permit. Sub-section (2) of this section contemplates the conditions which can be imposed by the Regional Transport Authority at the time of granting the required permit. In terms the Sub-section (2) provides as under:

"(2) The Regional Transport Authority, if it decides to grant a public carrier's permit, may grant the permit for one or more goods vehicles of a specified description and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:--

(i) that the vehicle or vehicles shall be used only in a specified area, or on specified route or routes;

(ii) that the laden weight of any vehicle used shall not exceed a specified maximum;

(iii) that goods of a specified nature shall not be carried;

(iv) that goods shall be carried at specified rates;

(v) that specified arrangement shall be made for the housing, maintenance and repair of vehicles and the storage and safe custody of the goods carried;

(vi) that the holder of the permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may, from time to time prescribe;

(vii) that the Regional Transport Authority may after giving notice of not less than one month;

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(viii) that the conditions of the permit shall not be departed from save with the approval of the Regional Transport Authority;

(ix) any other condition which may be prescribed."

6. So, according to this Sub-section (2) the Regional Transport Authority can impose only those conditions which are referred to in clauses (i) to (ix).

7. We shall now proceed to state those provisions which are with regard to the validation of permits for use outside the region in which they are granted. Section 63 makes provision for validation of permits for use outside the particular region. Sub-section (1) thereof says that except as may be otherwise prescribed, a permit granted by the Regional Transport Authority for any one region shall not be valid in any other region, unless the permit has been counter-signed by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless counter-signed by the State Transport Authority of that other State or by the Regional Transport Authority

concerned. Sub-section (1-A) of this section provides that notwithstanding anything contained in Sub-section (1), a permit granted or counter-signed by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be prescribed in the permit Then follow Sub-sections (2), (3), (3A) and (3B) which are relevant for our purpose. They in term provide as under:

"(2) A Regional Transport Authority when counter-signing the permit may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits;

Provided that it shall not be necessary to follow the procedure laid down in Section 57 for the grant of counter-signatures of permits, where the permits granted in any one State are required to be counter-signed by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of Sub-section (3A), or for the grant of counter-signatures of permits in pursuance of any direction issued by the Commission under Clause (c) of Sub-section (2) of Section 63-A.

(3A) Every proposal to enter into an agreement between the States referred to in the proviso to Sub-section (3) and every proposal in such agreement to fix the number of permits which is proposed to be granted or counter-signed in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette 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 such publication on which, and the authority by which, and the time and place at which the proposal and any representations received in connection therewith will be considered:

Provided that no person, association or authority, other than those mentioned hereunder shall have a right to make such representation, namely:--

- (i) any person already providing passenger or goods transport facility by any means in the proposed area or along or near the proposed route;
- (ii) any association representing persons interested in the provision of Road transport facilities recognised in this behalf by the State Government;
- (iii) any local authority or police authority within whose jurisdiction any part of the proposed area or route lies.

(3B) Every agreement arrived at between the States shall, in so far as it relates to the grant of counter-signature of permits, be published in the Official Gazette

by each of the States concerned and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it."

8. A bare perusal of the provisions of Sub-section (2) of Section 63 shows that when a Regional Transport Authority counter-signs the permits it can attach to that permit any condition which it might have imposed if it had itself granted the permit. This sub-section, therefore, makes it abundantly clear that at the time of counter-signing a particular permit the Regional Transport Authority cannot impose any condition which it could not have imposed under the provisions of the law as contained in Section 56: Sub-section (3) of Section 63 also makes this position clear, inasmuch as it specifically provides that the provisions of Chapter IV relating to grant of permits shall apply even to the permits which are counter-signed by the concerned Authority. The only difference which this subsection makes is that when the permits are to be counter-signed it shall not be necessary to follow the procedure laid down in Section 57 for the grant of counter-signatures. It is thus clear that even at the time of putting counter-signatures contemplated by Section 63 the counter-signing authority cannot impose any condition which falls outside the purview of Section 56 of the Act.

9. The learned Advocate-General, however, contended that clauses (i) and (iii) of Sub-section (2) of Section 56 contemplate the condition of the type which is complained against by the petitioners. In view of this contention it is necessary to see what these conditions mentioned in clauses (i) and (iii) of Section 56 (2) are. Clause (i) contemplates a condition to the effect that the vehicle or vehicles should be used only in a specified area, or on specified route or routes. This condition says nothing about the prohibition against loading or unloading of the goods on a particular route or any area. The question whether the permit holder should be allowed to pick-up or set down goods on a particular route or area is quite distinct from the condition as regards the use of the vehicle in a specified area or specified route. We are, therefore, of the opinion that the impugned condition is not at all covered by Clause (i) of Section 56 (2).

10. In so far as Clause (iii) is concerned it stipulates a condition as regards the nature of goods which are required to be carried. Here, there is no question as regards any specified nature of goods because the impugned condition prohibits the picking-up or setting-down of any type of goods irrespective of its nature. It is, therefore, evident that even Clause (iii) does not cover the impugned condition.

11. It is admitted position that Clause (ix) has no application to the facts of the present case because that clause contemplates "any other condition as may be prescribed" and the expression "prescribed", as defined in Clause (21) of Section 2 of the Act means prescribed by rules made under this Act. It is an admitted position that there is no other provision in the Act which would empower the authority concerned to impose the condition like the impugned one.

12. Thus it is clear that at the time of counter-signing the permits of the

petitioner the authority concerned of the State of Himachal Pradesh has imposed a condition which it could not have imposed under the statutory provisions of the Act. Therefore, the imposition of this condition being against the statutory provision of the Act is non-existent in the eye of law.

13. The learned Advocate-General vehemently contended that the impugned condition is imposed as a result of bilateral agreement arrived at between the two States, namely the State of Himachal Pradesh and State of Haryana and since the petitioners have been obtaining counter-signatures and the permits pursuant to the said agreement they are estopped from challenging the impugned condition. We do not find ourselves in agreement with this contention because there cannot be an estoppel against a statute. Even if the States of Himachal Pradesh and Haryana have entered into an agreement, in so far the said agreement goes against the statute the same must be declared as having no legal effect.

14. The learned Advocate-General then pointed out that the impugned condition has been imposed in the year 1973 and since then the petitioners have been plying their carriers subject to this condition and hence they must be held to have acquiesced in that condition. Here also the answer to this argument is the same as above because there cannot be acquiescence to a position which is patently against the provisions of law. Relying upon the decision given by the Rajasthan High Court in *Samarathmal and Others Vs. Jugaldas and Others*, learned Advocate-General contended that the petitioners cannot be allowed to approbate and reprobate. According to him, the petitioners having taken advantage under the permits and counter-signatures put by the Regional Transport Authority of Himachal Pradesh cannot now be allowed to contend that the impugned condition of the said counter-signatures is not binding on them. We find ourselves unable to agree to this contention because there is no question of approbation and reprobation. If a particular action which is impugned falls beyond the purview of statutory provisions, the action which falls outside the statutory provision is non est, and is not existent in eye of law and if one cannot acquiesce in an action which falls outside the purview of law and can also be not estopped on the ground, it is difficult to see how in such a situation the principle of approbation and reprobation could apply.

15. Lastly the learned Advocate-General contended that the petitioners had an alternative remedy u/s 64 (1) (d) which contemplates appeal by an aggrieved person against refusal by the concerned authority to grant the permit or against any condition attached to the said permit at the time of counter-signatures, it is true that the petitioners have a right of appeal which could have been availed of by them. But, it is an established position in law that if an act, which is complained against, falls totally outside the statutory provisions relating thereto, then this Court can exercise its extraordinary powers under Article 226 without insisting on the alternative remedy being taken by the aggrieved party.

16. In these circumstances, we are of the opinion that the petitioners have

proved their stand in showing that the impugned condition could not have been legally incorporated in their permits at the time of counter-signatures u/s 63 of the Act.

17. The petitioners have raised other grounds attacking the impugned condition such as non-publication of the amended agreement entered into in the year 1973. We need not go into the merits of these grounds as only one ground which is discussed above was argued and pressed on behalf of the petitioners at the time of hearing.

18. The result, therefore, is that all these writ petitions should be allowed. We find that the impugned condition is severable from the rest of the conditions of the permits and, therefore, we declare that the impugned condition is illegal and void. This condition is, therefore, struck down. The rule is accordingly made absolute with costs, assessed at Rs. 200/- in one set.