

(1959) 01 BOM CK 0005
In the Bombay High Court
Case No : Misc. Application No. 522 of 1958

Amirchand Narayan

APPELLANT

Vs

Divisional Officers Bombay Division and Others

RESPONDENT

Date of Decision : 07-01-1959

Acts Referred:

Motor Vehicles Act, 1939 — Section 68

Citation : AIR 1960 Bom 88 : (1959) 61 BOMLR 1145

Hon'ble Judges : Shelat, J

Bench : Single Bench

Advocate : C.K. Jaisinghani, for the Appellant; R.J. Joshi and M.J. Mistree, for the Respondent

Judgement

(1) This is a petition under Art. 226 of the Constitution to set aside the two orders copies of which have been annexed as Exs. B and C to the petition.

(2) The petitioner carries on business of plying motor buses on a route known as Malad-Marve route. On the 11th of May 1955 the Regional Transport Authority granted to the petitioner a substantive permit for a period of three years to ply his buses on Malad-Marve route. The permit expired on the 11th May 1958. Prior to its expiry the petitioner applied in March 1958 for the renewal of the said permit. The application has not yet been disposed of. But the petitioner has been allowed to ply his buses on the said route under a temporary permit.

(3) On the 11th of May 1955 the Bombay Electric Supply and Transport Undertaking was also granted a permit to ply its buses in Greater Bombay as it then existed. By act LVIII of 1956 the limits of Greater Bombay were extended adding to its the then area 34 villages which were till then situate in the District of Thana. These 34 villages included Malad and Marve. After the limits of Grater Bombay were thus extended, the B. E. S. T. Undertaking applied on the 9th April 1957 for a permit to ply its buses in the area added to the limits of Greater Bombay by Act LVIII of 1956. In pursuance of the provisions of the Motor Vehicles Act IV of 1939 the application of the B. E. S. T. was duly published. The

petitioner filed his objections. On the 29th of November 1957 the application of the B. E. S. T. dated the 9th of April 1957 came on for hearing before the Regional Transport Authority. Amongst other things, it was contended on behalf of the petitioner that the B. E. S. T. Undertaking being a State Transport Undertaking within the meaning of S. 68A(b)(iv), the provisions of Chapter IV-A of the Motor Vehicles Act, which came in force in February 1957, were applicable to its said application. It was submitted that in the circumstances the B. E. S. T. Undertaking was not entitled to file any application under Chapter IV by reason of the overriding effect given to the provisions of Chapter IV-A and the B. E. S. T. Undertaking not having made a scheme as provided for in S. 68-C contained in Chapter IV-A, its application was not maintainable. The Regional Transport Authority upheld this objection and rejected the application of the B. E. S. T. Undertaking.

(4) Aggrieved by this decision the B. E. S. T. Undertaking filed an appeal before the State Transport Authority being Appeal No. 105 of 1958. By an order dated the 26th of March 1958 the State Transport Authority allowed the appeal holding that it was competent for the B. E. S. T. Undertaking to apply for a permit under Chapter IV. In that view the State Transport Authority set aside the order passed by the Regional Transport Authority. The petitioner lodged an appeal to the Government of Bombay against that order. By their order dated 29th October 1958 the State Government dismissed the appeal of the petitioner. It is against the orders passed by the State Transport Authority and the Government of Bombay that the Petitioner has filed the present petition.

(5) It may be observed that the petitioner was not at the material time a holder of a substantive permit. He was holding a temporary permit to ply his buses on the Malad-Marve route pending the decision of his application for the renewal of his permit. He therefore presented this petition not in his capacity as a permit-holder or having any vested rights in plying his buses on Malad-Marveroute but only as an objector.

(6) Mr. Jaisinghani for the petitioner contended that the application of the B. E. S. T. Undertaking dated 9th April 1957 was not maintainable and therefore should have been rejected. In support of his contention has taken me through several provisions of the Motor Vehicles Act. He has however mainly relied upon Chapter IV-A which, as I have said, came into force in February 1957, about two months before the B. E. S. T. Undertaking filed its application. There can be no doubt that if the provisions of Chapter IV-A were to be applicable to the said application then that application must be in consonance with that Chapter. It is admitted that by virtue of the definition contained in S. 68-A(b)(iv) the B.E.S.T. Undertaking is a State Transport Undertaking. The provisions of Chapter IV-A are called special provisions relating to State Transport Undertaking and therefore if the application were to be filed under Chapter IV-A, Mr. Jaisinghani would be right in his contention that unless the provisions of Chapter IV-A are complied with, the application in question would not be maintainable.

(7) In support of his contention as to the non-maintainability of the application in question, Mr. Jaisinghani has laid considerable stress on the provisions of S. 68-C contained in the new Chapter IV-A. It was argued that the application by the B.E.S.T. Undertaking fell under S. 68-C and therefore it was incumbent upon the B.E.S.T. Undertaking to have framed a scheme as envisaged in that section. The failure on the part of the B.E.S.T. Undertaking to make such a scheme and to have it approved by the State Government rendered its application incompetent. Mr. Jaisinghani has sought to argue that under S. 68-C a State Transport Undertaking has mainly to perform two things; (1) it has to come to an opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service it is necessary in the public interest that road transport services in general or in particular in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking; and (2) to prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed and to have such scheme published in the Official Gazette and in such other manner as the State Government may direct. The submission made on behalf of the petitioner was that by reason of S. 68-C the petitioner acquired the right of challenging the scheme so framed by the State Transport Undertaking before the State Government and to persuade the State Government not to sanction such a scheme. The petitioner in that case would also have the right of objecting to the application made by the State Transport Undertaking before the Transport Authority. He contended that if the State Transport Undertaking were to be allowed to make an application without making such a scheme, the effect of that would be to deprive the petitioner of his aforesaid right. Mr. Jaisinghani also contended that Chapter IV-A contained special provisions relating to State Transport Undertaking and that being so, those special provisions would have over-riding effect over the general provisions contained in Chapter IV. He, therefore, argued that it is only under Chapter IV-A that a State Transport Undertaking like the B.E.S.T Undertaking can make an application and not under Chapter IV. In these circumstances he submitted that the application of the B.E.S.T. Undertaking was not maintainable and ought to have been rejected.

(8) It would be expedient to dispose of the first contention raised by Mr. Jaisinghani before I turn to the several provisions of the Motor Vehicles Act to which reference was made in the course of the arguments. As aforesaid, Mr. Jaisinghani urged that the B.E.S.T Undertaking before it made this application had fulfilled its first obligation under S. 68-C and therefore it cannot be heard to say that it would not perform its other obligation under S. 68 viz., to prepare a scheme as envisaged therein. In other words, the contention that since the B.E.S.T. Undertaking had formed an opinion that for the purpose of providing an efficient, adequate, economical etc. Transport service, it was necessary in the public interest that road transport service in Malad-Marve route should be run and operated by it, it was necessary that it should have done the other obligation

set out in that section, viz., to frame a scheme. That contention in my view has no substance. It has not the case of the petitioner either before the Regional Transport Authority or before the Appellate Tribunals that the B.E.S.T Undertaking had come to the opinion as set out in S. 68-C and that therefore it must fulfil the other part of that section. That case had also not been in express terms set out in the present petition. The only case that was f\\laid by the petitioner before the Transport Authorities was that because Chapter IV-A contained special provisions relating to a State Transport Undertaking, it was that Chapter which would be applicable to the B.E.S.T Undertaking and not Chapter IV and that thereofe the application should have been rejected.

(9) The contention that after February 1957 when Chapter IV-A came into force, the Undertaking can apply only under Chapter IV-A and not under Chapter IV has also, in my view, no substance. Nothing has been pointed out to me either from Chapter IV-A or any other provisions of the Motor Vehicles Act which would justify that contention.

(10) In order to appreciate the contentions raised by Mr. Jaisinghani on the provisions of S. 68-C, it would be necessary to view in passing certain sections contained in chapter IV. Section 42 provides for the necessity of permits and lays down that no owner of a transport vehicle shall use or permit theuse of a vehicle in any public place save in accordance with the conditions of permit granted by a Regional or State Transport Authority. Section 43 lays down the power of the State Government to control road transport. Section 45 provides that every application for a permit should be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. Section 46 deals with an application for stage carriage permit and lays down that an application for such a permit shall contain certain particulars laid down in that section. Section 57 then provides the procedure in applying for and in the grant of such permits. It provides that on receipt of an application for stage carriage permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, time and place at which the application and any such representations would be considered. The provisions of Chapter IV thus deal with applications to be made for a stage carriage permit, the procedure by which such applications have to be dealt with including the consideration of objections that might be made in connection with such applications. It may be observed that so far as Chapter IV is concerned, there is no distinction between an individual and a State Transport Undertaking making such an application. Prima facie therefore it would appear that under Chapter IV both an individual and a State Transport Undertaking are entitled to apply for a permit. In order to succeed, Mr. Jaisinghani therefore has to establish that on Chapter IV-A being enacted, the State Transport undertaking, such as the B.E.S.T. Undertaking, has been debarred from making an application under Chapter IV and consequently the only Chapter under which

such an application can be made would be Chapter IV-A. Broadly speaking, there is nothing either in Chapter IV or Chapter IV-A which expressly provides such a bar.

(11) But then it was urged by Mr. Jaisinghani that s. 68-B expressly provides that the provisions of Chapter IV-A and the rules and orders made thereunder "shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force" and that the fact of the provisions of Chapter IV-A having been thus given an overriding effect over the provisions of Chapter IV would mean that a State transport undertaking can make an application only under Chapter IV-A and its right to make an application under Chapter IV has therefore been taken away by the special provisions contained in this new Chapter. It is not possible to accept this contention. Reading Chapters IV and IV-A together and considering the scheme set out in Chapter IV-A, it is easy to see the object of the Legislature in enacting Chapter IV-A. As I have pointed out, an application under Chapter IV could be made either by an individual or by a State transport undertaking. Under that Chapter it would be the duty of the Regional Transport Authority to consider such applications together with the objections raised in respect thereof. Under Chapter IV it is in the discretion of the Authority to grant or refuse a permit applied for. Therefore it would be within the power of Regional Transport Authority either to grant a permit or to refuse an application made by such an undertaking as the B.E.S.T. Undertaking. Chapter IV-A on the other hand, takes away certain powers of the Regional Transport Authority where an application is made after complying with the provisions of that Chapter. Thus under S. 68-C, if a State transport undertaking, such as the B.E.S.T Undertaking, were to come to the opinion that a road transport service in relation to any area or by the State transport undertaking for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it may prepare a scheme as set out therein. Such a scheme, when framed, has to be published in the Official Gazette or in such other manner as the State Government may prescribe. Under S. 68-D a person affected by such a scheme may, within thirty days from the date of the publication of the scheme, file objections thereto before the State Government, and the State Government after considering such objections and after hearing the objector and the State transport undertaking may approve or modify the scheme. When such a scheme is approved or modified by the State Government, it is again to be published in the Official Gazette and there upon the scheme becomes final and would be called "an approved scheme". The area or the route to which such a scheme relates to would be called "notified area" or "notified route". Under S. 68-F where, in pursuance of an approved scheme, any State transport undertaking applies for a stage carriage permit (and it is somewhat important to note that such an application has to be in the manner specified in Chapter IV) in respect of a "notified area" or "a notified route", the Regional Transport authority "shall issue" such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter IV, It is clear that

the words "notwithstanding anything to the contrary contained in Chapter IV" in S. 68-F mean that where a scheme is approved of and notified and an area or route is likewise notified under S. 68-D it does not lie in the discretion of the Regional Transport Authority to refuse a permit though it has to be applied under Chapter IV. In other words, the power of the Regional Transport Authority to refuse the permit in such an application thought made under Chapter IV has been taken away where the provisions of Ss. 68-C and 68-D are applicable. Sub-section (2) of S. 68-F provides that for the purpose of giving effect to the approved scheme in respect of a notified area or route, the Regional Transport Authority may by its order either refuse to entertain an application for the renewal of any other permit or cancel any existing permit or modify the terms of any existing permit so as to render such permit ineffective beyond a specified date, reduce the number of vehicles authorised to be used under such permit or curtail the area or route covered by such permit in so far as such permit relates to the notified area or notified route. Sub-section (3) of S. 68-F then declares that no appeal shall lie against any action taken, or order passed, by the Regional Transport Authority under sub-section (1) or sub-section (2) of S. 68-F. Section 68-G provides for the holder of an existing permit to be entitled to compensation as laid down in sub-section (4) or sub-section (5) of S. 68-G. It is quite clear that what Chapter IV-A does is to confer certain additional rights to a State transport undertaking which such an undertaking did not have before the enactment of Chapter IV-A. In my view, the contention that by the enactment of Chapter IV-A the State transport undertaking lost its right to make an application under Chapter IV cannot be accepted.

(12) Mr. Jaisinghani however contended that the words "State transport undertaking may prepare a scheme" in S. 68-C have a mandatory import and that I should construe the word "may" in the context as having the meaning of "shall". He contended that the power given to the State transport undertaking to prepare a scheme was coupled with its duty to come to an opinion that it must run a road transport service for the purpose of providing an efficient, adequate, economical and properly co-ordinated service and that that power being coupled with a duty cast upon the Undertaking, the provision as to the making of a scheme was mandatory and the word "may" therefore has the effect of the word "shall". In that connection Mr. Jaisinghani relied upon the decision in *Munna Lal Tewary Vs. Harold R. Scott and Others*, . That decision, however, does not deal with the Motor Vehicles Act and therefore cannot be of assistance. The principles of construction where the word "may" can be construed as meaning "shall" are well-settled. "May" does not mean "must"; "may" always means "may". As stated at p. 212 in *Craies on Statute Law*, 5th Ed., "may" is a permissive or enabling expression. There are, no doubt, cases in which for various reasons as soon as a person who is within the statute entrusted with power, it becomes his duty to exercise such power. This rule is laid down in *Julius v. Bishop of Oxford*, (1880) 5 AC 214, where Lord Cairns stated:

"The question has been argued, and has been spoken of by some learned Judges

in the Courts below, as if the words "it shall be lawful" might be differently interpreted in different statutes or in different parts of the same statute. I cannot think that this is correct. The words "it shall be lawful" are not equivocal. They are plain and unambiguous. They confer a faculty or power, and they do not of themselves do more than convey a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."

Lord Blackburn, who was also a party to that decision, thought that all the cases which held that a power of this kind must be used were to be supported on the principle that, although prima facie the donee of the power may either exercise it or leave it unused, yet

"If the object for which a power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power to exercise it for the benefit of those who have that right, when required on their behalf..... The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right." It is difficult to understand as to how the words "may prepare a scheme" used in S. 68-C can be said to be coupled with any duty such as is referred to in 1880 5 AC 214 and may therefore be construed as being of a compulsory or mandatory character. In my view, it is clear that S. 68-C is merely an enabling section. Where therefore a State transport undertaking wishes to take the benefit of the provisions of s. 68-F, it has the power to prepare a scheme, have that scheme approved by the State Government and have a route or an area notified as prescribed in S. 68-D. Where such a scheme is framed, certain benefits would seem to flow to a State transport undertaking such as (1) that the Regional Transport Authority cannot refuse the application so made as provided for under s. 68-F(1), (2) it might acquire in certain circumstances an exclusive right to ply buses in a notified area or route as provided for under S. 68-F (2), and (3) there would be no appeal against an order passed under s. 68-F(2) by the Regional Transport Authority either cancelling or modifying the terms of an existing permit held by a person other than the State transport undertaking.

(13) In the view I take, S. 68-C is merely an enabling section and there is nothing contained in that section which makes it compulsory or mandatory for a State transport undertaking, to prepare a scheme. Therefore the contention that the application made by the B.E.S.T Undertaking dated 9th April 1957 was not maintainable or was bad in law must fail.

(14) For the reasons aforesaid, the petition must fail. The rule is discharged with costs. The 9 and 11 in one set, and to the 10th respondent in another set.

(15) Rule discharged.