

(2010) 03 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6446 of 2009 and 5645, 5714, 6145, 6641, 7085, 7792, 7796, 9243, 9937, 10096, 13943, 14174, 7558, 7338 and 6858 of 2009

Anil Jain and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 203, 204, 239, 239(2)(1)

Motor Vehicles Act, 1939 — Section 76, 91

Motor Vehicles Act, 1988 — Section 117, 138, 68, 69(2), 96(1)

Citation : (2010) ILR (MP) 1380 : (2010) 5 MPHT 330

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Singh, J.—These writ petitions are being disposed of by this common order as they are of similar nature and were heard together.

2. The Petitioners come from different districts of the State of Madhya Pradesh and are bus operators by profession. They are, thus, required to use the bus-stands for halting their buses. In these petitions, they have challenged the orders of different District Collectors/District Magistrates passed as Chairman of the respective Bus-Stand Monitoring Committee prescribing the maintenance charges to be paid in respect of motor vehicles halting in the bus-stands.

3. Briefly stated the facts giving rise to these petitions are that, as part of the proceeding for the closure of Madhya Pradesh Road Transport Corporation (in short, "the Transport Corporation") and for proper operation of bus-stands operated by the Transport Corporation, the State Government took a decision on 26-5-2007 to handover all the bus-stands of the Transport Corporation to the local Municipal Authorities (Municipal Corporation or Municipal Council). At the time of taking the decision there were 78 bus-stands which were managed by

the Transport Corporation out of which 34 were under the management of Municipal Authorities and the rest were being managed by the Transport Corporation itself. On the same date the Government also decided that the Transport Corporation will handover the management of all the bus-stands to the concerned Municipal Authorities and it shall be the responsibility of Municipal Authorities to develop basic facilities necessary for the passengers and the vehicles such as cleanliness, clean drinking water, waiting room for passengers, place of stopping the bus (platform), toilet etc. The local authorities shall be at liberty to take charges from the bus owners as per directions that will be separately issued by the Transport Commissioner. The decision of the State Government also provides that in every district there shall be a Bus-Stand Monitoring Committee of which Collector/District Magistrate shall be the Chairman whereas Superintendent of Police, Municipal Commissioner/Chief Municipal Officer, Regional/District Transport Officer and two representatives of passenger and Vehicle Owners" Association will be its members and it shall be the function of such Committee to ensure basic facilities at the bus-stand.

4. Pursuant to the aforesaid decision of Bus-Stand Monitoring Committee has been constituted in different districts. In the districts with which I am concerned in these petitions, Bus-Stand Monitoring Committee through the District Magistrate as its Chairman has taken a decision that the Committee will recover maintenance charges of the bus-stand from the private bus operators in respect of their motor vehicles halting at bus-stand and different rates have been prescribed for different vehicles depending upon their sizes and duration of halt. The decision also provides that in the event of non-payment of such maintenance charges the halting of bus will be considered as unauthorised and the Regional Transport Officer shall cancel the licence of that bus operator.

5. The question which calls for consideration is whether the District Magistrate is empowered under the Motor Vehicles Act to direct for the recovery of maintenance charges of bus-stand from the private bus operators for halting their vehicles at bus- stand.

6. Section 96(1), which occurs in Chapter v. of the Motor Vehicles Act, 1988 (in short "the Act") empowers the State Government to make rules for the purposes of carrying into effect the provisions of the said chapter. Without prejudice to the generality of this power, Section 96(2) authorizes the State Government to make rules on certain enumerated matters. Clauses (xxi) and (xxii) of Section 96(2) read as follow:

(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 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;

(xxii) the requirements which shall be complied with in the construction or use of

any duly notified stand or halting place, including the provision of adequate equipment and facilities for the convenience of all users thereof; the fees, if any, which may be charged for the use of such facilities, the records which shall be maintained at such stands or places, the staff to be employed thereat, and the duties and conduct of such staff, and generally for maintaining such stands and places in a serviceable and clean condition.

7. Section 116, which occurs in Chapter VIII of the Act, deals with the power of the State Government or any authority authorized by it to erect traffic signs. Section 117 refers to parking places and halting stations and read as follows:

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.

8. Section 138(1) authorizes the State Government to make rules for carrying into effect the provisions of Chapter VIII. Section 138(2) empowers the Government to make rules on certain enumerated matters. The relevant Clause (e) of Section 138(2), being one of these matters, reads as under:

(e) the maintenance and management of parking places and stands and the fees, if an, which may be charged for their use.

9. The State Government, in exercise of powers conferred by different sections of the Act, has made Motor Vehicles Rules, 1994 (in short "the Rules"). Rules 203 and 204, which are relevant in these petitions, read as follows:

203. Maintenance and management of parking places.--

(1) The District Magistrate may, in consultation with the Superintendent of Police and the local body, by notification, in the Official Gazette or by the erection of appropriate traffic sign of the Schedule to the Act, declare any place as the parking place for motor vehicles. Different places may be declared as parking places for different category of vehicles.

(2) The District Magistrate may enter into an agreement with or grant a licence to any person or local body for the maintenance of the parking places under certain conditions. The agreement or licence may be terminated forthwith upon the breach of any conditions thereof.

(3) The maximum period for parking of a vehicle may be fixed by the District Magistrate.

(4) The District Magistrate shall prescribe fees for the use of the parking places. Uniform or different fee may be fixed for different vehicles.

204. Maintenance and management of stands.--

(1) The Regional Transport Authority by notification in the Official Gazette, or by the erection of appropriate traffic sign of the Schedule of the Act or both, may in respect of the taking up or setting down the passengers or both by public service vehicles or by specified class of public service vehicles:

(a) Conditionally or unconditionally prohibits the use of any specified place or of any place of a specified nature or class, or

(b) Require that within the limit of any Municipal Corporation, Municipality notified area or cantonment, or with in such other limits as may be specified in the notification, certain specified stands only shall be so used:

Provided that no place which is privately owned shall be so notified except with the previous consent in writing of the owner thereof.

(2) Where a place has been notified or has been demarcated" by traffic signs or both, as being stand for the purpose of this rule, then notwithstanding that the land is in possession of any person, the place shall subject to the provisions of these rules, may be deemed to be a public place within the meaning of the Act and the Regional Transport Authority may enter into an agreement with, or grant a licence to any person or local body or State Transport Undertaking for the purpose of maintenance of the building of works necessary thereto subject to the termination of the agreement or licence forthwith upon the breach of any condition thereof and may otherwise make rules or give directions:

(i) Prescribing the fees to be paid by the owners of public service vehicle using the place and providing for the receipt and disposal of such fees;

(ii) Specifying the Public Service Vehicles or the class of public service vehicles which shall use the place which shall not use the place.

(iii) Appointing a person to be the manager of the place and specifying the power and the duties of the manager;

(iv) Requiring the owner of the land, or the local body or the State Transport Undertaking as the case may be, to erect such shelters, lavatories and latrines and to execute such other works as may be specified in the rules or in the directions and to maintain the same in a serviceable clean and sanitary condition.

(v) Requiring the owner of the land or local body or the State Transport Undertaking as the case may be, to arrange for the free supply of drinking water for passengers including intending passengers;

(vi) Prohibiting the use of such place by specified persons or by other than specified persons.

(3) If the owner of the land, local body or State Transport Undertaking, as the case may be, fails to comply with any rule or direction made or given to him under this Rules, the Regional Transport Authority may prohibit the use of such

place for the purpose of this rule.

10. The above quoted Section 96(2)(xxi) and (xxii) and Sections 117 and 138 of the Act are equivalent to Sections 68(2) (r) and (s), 76 and 91 of the Old Motor Vehicles, 1939. In T.B. Ibrahim Vs. Regional Transport Authority, Tanjore, and Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others, the Supreme Court had the occasion to interpret these sections and while doing so it held that notified halting place or stand referred to in Section 68(2)(r) and (s) meant a bus stand, i.e., the place where the buses stand for commencing their transport services or where they stand after terminating their services. The Supreme Court further held that Section 76 dealt with parking places, for all vehicles and halting stations for public service vehicles and it did not cover a bus stand dealt in Section 68(2)(r) and (s). Further, in the case of Municipal Board, Pushkar v. State Transport Authority, Rajasthan (supra), the Supreme Court while interpreting Rule 134 of the Rajasthan Motor Vehicles Rules, which is identical to the above quoted Rule 204 of the Rules held that the rule empowered the fixation or alteration of bus stand u/s 68(2)(r) and (s) and did not refer to parking places or halting stations or stands dealt with in Section 76 and Section 91(2)(e). The Supreme Court in T.B. Ibrahim v. Regional Transport Authority (supra), while referring to the expression duly notified stand as used in Section 68(2)(r) and (s) observed that the expression 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".

11. Later, a Division Bench of this Court in Madhya Pradesh State Road Transport Corporation v. State of Madhya Pradesh 1981 MPLJ 542, while referring to the decision of the Supreme Court in Municipal Board, Pushkar v. State Transport Authority, Rajasthan (supra), after interpreting the old Rule 239 of the Motor Vehicles Rules, 1974, which is equivalent to the above quoted Rule 204 of the Rules held that the rule does not relate to parking places and halting stations or stands referred to in Section 117 or 138(2)(e). In this case, the Division Bench also held that the State Government cannot delegate its power conferred u/s 68(2)(r) and (s) to the District Magistrate and the power to notify any place as a bus stand can be conferred only on a Transport Authority. On these findings the Division Bench quashed the order issued by the District Magistrate made under Rule 239 (2) (1) prescribing the fees to be paid in respect of motor vehicles halting in the bus-stand. It is interesting to note that the Division Bench even suggested the State Government to amend Rule 239 by vesting power under the Rule in the Regional Transport Authority instead of District Magistrate and that State Government should itself fix the fee in exercise of its power u/s 68(2)(s). The State Government followed the advise while making the new Rule 204 and vested the power in the Regional Transport Authority instead of District Magistrate.

12. From the above discussion, I find the legal position well settled that notified halting place or stand referred to in Section 69(2)(xxi) and (xxii) of the Act

means a bus-stand and Section 117, which deals with parking places and halting stations, does not cover a bus-stand. It is also settled that Rule 204 of the Rules does not relate to parking places and halting stations or stands referred to in Section 117 or 138(2)(e) or Rule 203.

13. Rule 204 of the Rules clearly empowers only the Regional Transport Authority for taking a decision for the purposes of maintenance of bus-stand by prescribing fee, etc. to be paid by the private bus operators. Regional Transport Authority is constituted u/s 68 of the Act by the State Government by notification in the Official Gazette. A Bus-Stand Monitoring Committee constituted by an administrative order of which the District Magistrate is the Chairman cannot be equated with Regional Transport Authority even though the Regional/District Transport Officer may be a member of the Committee. The orders to collect maintenance charges of bus-stands challenged in these petitions have been issued by the District Magistrates as Chairman of the Bus-Stand Monitoring Committee. These orders cannot be construed to be orders issued by the Regional Transport Authority under Rule 204 and, therefore, the orders also cannot be held to be valid.

14. The petitions are allowed and the orders issued by different District Magistrates as Chairman of the respective Bus-Stand Monitoring Committee prescribing the maintenance charges to be paid by the private bus operators in respect of motor vehicles halting in the bus-stands are quashed. No orders as to costs.