

(2000) 02 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No. 35947 of 1998

APSRTC, Mushirabad, Hyd.

APPELLANT

Vs

Transport Commissioner, Govt. of A.P., Hyd. and another

RESPONDENT

Date of Decision : 07-02-2000

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 8
Constitution of India, 1950 — Article 12, 226
Motor Vehicles Act, 1939 — Section 68D(3)
Motor Vehicles Act, 1988 — Section 68, 86

Citation : (2000) 2 ALD 387 : (2000) 2 ALT 465

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. C.V. Ramulu, SC for APSRTC, for the Appellant; Government Pleader, for Transport and Mr. G. Vidyasagar, for the Respondent

Judgement

1. The writ petition is filed by the A.P. State Road Transport Corporation seeking writ of mandamus declaring the action of the 1st respondent and his subordinates in not stopping unauthorised vehicles plying from the notified route as arbitrary and illegal and contrary to Sections 86 and 207 of Motor Vehicles Act and for consequential direction.

2. The petitioner is the Road Transport Corporation constituted under the provisions of the Road Transport Corporation Act, 1950. It is the case of the Corporation that the Government of Andhra Pradesh notified several schemes to nationalise the bus routes in the State and almost 95 per cent of the bus routes were nationalised conferring mere monopoly to APSRTC to operate the stage carriage on the nationalised routes.

3. It has been operating the buses to the total satisfaction of the commuters. It has also received number of awards for its performance at national level. It is the grievance of the Corporation that number of private jeeps, vans, both stage carriages and carriage contracts are plying on the nationalised routes with or

without permission in violation of the approved schemes. The operators are picking up the passengers and setting them down as a stage carriage on the nationalised route and thus the scheme of nationalisation is being frustrated by the private operators. It is also stated that more than 2,000 jeeps, vans, motor cabs and maxi cabs are plying as stage carriages on the notified route in the each district. The Corporation has been making complaints to the authorities to check and arrest these illegal acts. But, no action is being taken by the authorities and running of unauthorised vehicles continued unabated thereby causing huge loss to the Corporation. It is submitted that u/s 68 of the Motor Vehicles Act (for short "the Act"), the authorities are constituted for proper implementation of the provisions of the Act. The transport authorities required to ensure that the vehicles which are having proper permit are only to be allowed to be plied, failing which they will be dealt with under the relevant provisions of the Acts for breach of statutory provisions. It is stated in the guise of contract carriage permits, the vehicles are being used as stage carriages. Even though the powers have been vested with the authorities to seize and detain the vehicles which do not have certificate of registration and are plying without permit. The authorities are not exercising the power in a proper manner and they have been compounding the offences where the law did not permit. It is further stated that the offences u/s 192-A do not permit compounding the offence u/s 200, yet they are being compounded by the authorities. Therefore, for all these reasons, it is submitted that the authorities may be directed to discharge their duties in accordance with the provisions of the Act.

4. In the counter filed on behalf of the transport authorities, it is stated that the bus ratio with reference to the population is not being maintained properly while it is 278 for lakh of population at Delhi and 109 at Kerala, it is only 38 in Andhra Pradesh. As per the normal estimate of growth of population, the vehicle strength for every year has to be increased between 5 to 10 per cent. The vehicular strength is far below the requirement, while the bus strength ought to have been over 20,000 as on 31-3-1998, it is only 17,800. Since it is not coping up with the transport requirement, the private vehicles are being allowed to operate within the framework of the law. The permits are being granted to the private vehicles only on such routes where the Corporation is not in a position to cater the needs and where the scheme conditions allow overlapping and where there is no prohibition for grant of permits. It is also stated that number of measures have been taken to curb illegal operations of the private vehicles by conducting special drives and surprise checks. During the year 1997-98, nearly 5,000 cases were booked and a penalty of over Rs.2 crores was realised and during 1998-99 more than 7,000 cases were booked and more than Rs.4 crores was realised. Apart from this, wherever the statute permitted compounding, the cases were compounded and the compounding fee was recovered. The following are the details of checks exercised and the compounding fee collected :

Period	No. of cases	Compounding fee collected Rs.
--------	--------------	-------------------------------

20-3-1997 to 31-3-1997 15,617 41,27,700/-

24-5-1997 to 31-7-1997 6,493 14,91,660/-

01-08-1997 to 31-8-1997 21,574 50,62,087/-

01-10-1997 to 31-3-1998 6,913 21,16,290/-

21-09-1998 to 27-9-1998 7,068 16,40,847/-

02-11-1998 to 30-11-1998 14,718 31,94,469/-

It is also stated that no permits were granted to the private operators in violation of the conditions of the notified scheme. In fact Maxi cabs are also not being granted permits to protect the interest of the Corporation. The officials have been invoking Section 207 of the Act and also Section 8 of the A.P. Motor Vehicles Taxation Act and seizing the vehicles in accordance with law and the provisions of the Act are being strictly implemented. It is also stated that unless the Corporation improves their services, the situation would continue and that transport authorities are taking all the possible steps to check unauthorised plying of the vehicles.

5. The APSRTC Union was impleaded as party respondent and it is supporting the case of the Corporation.

6. The learned Standing Counsel for the Corporation Mr. L. Nageshwar Rao submits that the authorities are bound to implement the statutory provisions as contained in the Motor Vehicles Act. On account of non-implementation of the provisions of the Motor Vehicles Act, the Corporation is put to heavy financial losses. Even though, it was brought to the notice of the Corporation various irregularities committed by the private operators by giving the vehicle numbers and the routes on which unauthorised plying was resorted to, no action is being taken and thus this is a case where the authorities failed to discharge their duties enjoined by the law and therefore writ of mandamus shall be issued by this Court to the transport authorities to discharge their legal duty.

7. On the other hand, the learned Government Pleader submits that the duties and responsibilities as assigned to the transport officers under the Act are being implemented, special checks are being conducted and every possible steps is being taken to arrest the illegal plying of the vehicles of the private operators. The details is given in the counter would itself show that the officers are sparing no efforts in curbing the illegal plying of the vehicles. The vehicles are being seized and the offences for which no compounding is permitted are being dealt with in accordance with law.

8. The question that calls for consideration is whether the transport authorities can be mandamussed to implement the statutory provisions. It is no doubt true that the transport authorities have categorically stated in the counter that the provisions are being implemented and every effort is being made to see that unauthorised plying is arrested. But, on the other hand, they are finding fault

with the Corporation, which failed to provide the buses to meet the requirement of the public. Under those circumstances, the private operators are granted permits to ply the vehicles on the permitted routes in accordance with law.

9. The learned Counsel for the Corporation Mr. Nageshwar Rao to submits that on account of ineffective action by the department, the Corporation is losing heavy amounts and the Supreme Court in such circumstances impressed upon the authorities to discharge their duties strictly. He drew inspiration from the judgment of Supreme Court in *Ishwar Singh Bagga and Others Vs. State of Rajasthan*, . It was a case where the State of Rajasthan issued notification authorising the officials of the Rajasthan State Road Transport Corporation to exercise in respect of all stage carriages and contract carriages on the notified routes u/s 68-D(3) of the Motor Vehicles Act, 1939 that could be exercised by a police officer u/s 129-A of the Act. The Supreme Court quashed the said notification holding that the employees of the State Road Transport Corporation are not employees of the Government and that when the statute empowers State Government to appoint persons to administer the provisions of the statute, the Government has to appoint only such persons who are appointed in connection with the affairs of the State. However, to the similar contention raised before the Supreme Court, it observed thus :

"It was argued that on account of unauthorised use of motor vehicles as stage carriages or contract carriages on the notified routes over which the Corporation has got exclusive right to operate its vehicles, the Corporation is losing a large amount of revenue and therefore it was necessary to empower the officers of the Corporation to exercise the powers u/s 129-A of the Act. We do not find it as satisfactory ground to uphold the impugned notification. The police officers and the officers of the Motor Vehicles Department are expected to discharge their duties properly and diligently and if they discharge their duties in accordance with law with the amount of diligence which is required of them, there should be no difficulty in plugging any kind of unauthorised running of stage carriages or contract carriages on the notified routes. We have to impress upon the police officers and the officers of the Motor Vehicles Department of the State of Rajasthan not to allow the confidence vested in them to be eroded. We hope and trust that they would discharge the duties to be performed by them strictly and ensure that the provisions of the Act are obeyed by the motor vehicle operators."

It was not a case where the writ was sought by the Corporation. Yet it was emphasised that the appropriate authorities are enjoined upon to perform their duty as provided under the statute. In this case the respondents had categorically state that the statutory provisions are being strictly implemented.

10. He also relied on the decision of the Division Bench of this Court reported in *P. Ravindranath Reddy v. Government of Andhra Pradesh* 1993 (1) ALT 589 (DB), wherein the Division Bench of this Court observed as follows :

"The object behind providing for composition of offences will be totally defeated if

composition is resorted to as a matter of course every day for violation of the provisions of the Act. If the authorities really feel that in respect of a particular vehicle there has been regular violation of the provisions of the Act, they must initiate other measures, like suspension or cancellation of the permit or prosecution with or without seizure, to curb the routine breaches of law. Instead of doing so, if, as a matter of course, every day they collect compounding fee, it amounts to abuse of the power of composition of offences u/s 200 of the Act. As we have already observed, the object of composition is not to augment the public revenues of the State, it is intended to be a sort of deterrence while at the same time relieving the State of unnecessary burden of launching prosecution in respect of non-serious offences committed occasionally. Resorting to successive composition without setting in motion the other provisions of law relating to prosecution, cancellation or suspension of the permits, et cetera, impairs effective implementation of the provisions of the Act and thereby places premium on lawlessness. This situation deserves to be depreciated."

There is no dispute about the contention raised by the Corporation that the respondent transport authorities are required to discharge the duties as assigned to them under the provisions of the Motor Vehicles Act and in fact in the counter it is not denied and on the other hand, they have clearly stated that the provisions are being strictly implemented and unauthorised operators are being penalised and in some cases vehicles are being seized. In such a situation, it would not be appropriate for this Court to issue any further direction. In the normal course, this Court could have closed the case in view of the counter filed by the transport authorities. But, however, the most important question that would arise for consideration is whether the transport authorities can be mandamus to perform, the statutory duties assigned to them under the Act and whether the Corporation can seek writ of mandamus being a rival motor transport operators.

11. The learned Government Pleader submits that the Corporation is one of the operators granted with appropriate permits to ply the vehicles subject to the provisions of the Motor Vehicles Act and it cannot seek writ of mandamus for implementation of the provisions of the Motor Vehicles Act on the ground that it is losing heavy revenues on account of improper and ineffective implementation of the provisions of the Act. It is true that the APSRTC is one of the operators with certain privileges as conferred under the Act. It is equally subject to the supervision and control by the transport authorities on par with those private operators. The Supreme Court in *Ishwar Singh Bagga's case* (supra) observed as follows :

"Having regard to the provisions of the Transport Corporation Act, the officers and servants of the Corporation are not holders of civil posts under the State Government, but they are employees of the Corporation. The Corporation is not a department of the Government but it is an independent body corporate established under the statute. It is just another operator of motor vehicles which

is entitled to run motor vehicles in accordance with law after obtaining permits. Barring what is provided in Chapter IV-A of the Motor Vehicles Act and some other liabilities from which the Corporation is expressly exempted under the Act, the Corporation is subject to all the obligations and responsibilities which are imposed on other private operators by the Motor Vehicles Act. It is subject to the powers of supervision and control of the transport authorities under the Act and to the Rules governing the proper maintenance of transport vehicles. It is also subject to the jurisdiction of the Motor Vehicles Department which is established u/s 133-A of the Motor Vehicles Act and its vehicles are liable to be inspected and checked by the officers appointed under that section in the interests of the travelling public."

Thus it was made clear by the Supreme Court that the Corporation cannot be put on high pedestal inter se motor transport operators. May be that it is being run by the Corporation established under the Road Transport Corporation Act. But, that would not make any difference in the eye of law. Therefore, in such a situation, would it be appropriate for the Corporation to seek writ of mandamus directing the transport authorities to discharge the statutory duty under the Act. The Supreme Court in the very same case observed that the authorities would diligently discharge the duties to eliminate the unauthorised running of the stage carriage or contract carriages.

12. The learned Government Pleader, however raises a substantial question as to the locus standi of the Corporation to file the writ petition. He submits that the Corporation is one of the operators may be with some privileges under Chapter VI of the Act and a writ of mandamus cannot be issued at the instance of the Corporation, as it is a rival operator.

13. The question that calls for consideration is whether the Corporation being "statute" under Article 12 of the Constitution of India can approach the High Court for writ of mandamus seeking implementation of the provisions of the Motor Vehicles Act on the ground that on account of non-implementation of the provisions, it is incurring huge financial loss. Normally, a prerogative writ like mandamus is issued at the instance of the aggrieved citizen or in a public interest litigation where the authorities failed to discharge the public duties under the Act which caused irreparable loss to the public. But, here a case where the Corporation itself is approaching the Court for writ of mandamus. The parameters of the writ of mandamus are well settled by the Supreme Court in catena of decisions. It is issued to public authority for the enforcement of public duty and at times it is also issued under the public interest litigation cases. But can a writ be issued for the benefit of the petitioner alone is a moot question that calls for consideration.

14. The writ of mandamus is a valuable and essential Constitutional remedy in the administration of justice. It is a command directing any person, Corporation, inferior Court or Government requiring them to perform a particular thing specified in the order which relatable to his office and which is in the nature of

public duty. The said duty may be one imposed by the Constitution, statute, common law or the Rules or orders having the force of law. (See : K.N. Guruswamy Vs. The State of Mysore and Others, , State of Mysore v. Chandrasekhara AIR 1965 SC 532 and The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, . Therefore, the existence of a legal right in the petitioner and corresponding legal duty on the respondent are condition precedent for issuing a writ of mandamus. It is no doubt true that the mandamus would lie against a public servant or the Government to compel the Government or its officers to carry out the mandate which the Legislature has given and if the Court finds that the mandate is not carried out or is being violated the Court will compel them to obey the mandate. It is normally issued only when an officer or authority by compulsion of statute is required to perform a duty and which despite demand in writing has not been performed. This Court is entitled to issue prerogative writ including the writ of mandamus under Article 226 of the Constitution of India or pass an order or direction for enforcement of Constitutional right or any legal right and performance of legal duty. It also cannot be disputed that the Corporation can approach the High Court for appropriate direction if its legal right is infringed and seek a direction to compel the performance of the legal duty. Mr. Nageshwar Rao, the learned Counsel for the Corporation quite rightly relied on the following passage from Wade's Administrative Law, Seventh Edition, Page 643 :

"Like the other prerogative remedies, it is normally granted on application of a private litigant, though it may equally well be used by one public authority against another."

It is filed by the aggrieved person and this principle was relaxed in cases where the public interest was involved and where a public injury was committed by a State or public authority or by Act or omission, which is contrary to the Constitution or the law. In such an event, any member of public can maintain an action for redressing the public injury provided he acts bona fide not for personal or private gain or out of political/ other considerations.

15. In the instant case, the Corporation has approached this Court by filing writ petition seeking direction to the authorities to implementation of the provisions of the Motor Vehicles Act on principal ground that inaction on the part of the authorities, resulting heavy losses by allowing the private operators to ply the vehicles unauthorisedly or in contravention of the permits granted to them. It is no doubt true that the authorities of transport department have a legal duty, but at the same time, the Corporation should have a legal right. The right to seek implementation of the provisions of a statute is a general right and it is not a specific right which is acquired by the Corporation. The Corporation is one of the operators in the motor transport field except with some privileges, as observed by the Supreme Court in Ishwarsingh Bagga's case (supra), which is extracted supra. It is no doubt that a writ of mandamus can be granted only where a statutory duty is imposed upon the officer concerned and there is failure on the

part of such officer to discharge the statutory obligation. As already observed that even the respondents have not denied this and on the other hand, they are taking every step to illegal plying of the buses. Therefore, it is open to this Court to refuse mandamus where a public authority has done all that is reasonably can to fulfil its duty (R v. Bristol Corporation ex.P Hedy (1974) 1 ANWR 503). But the larger question as already noticed is, can the Corporation approach for such a general relief ? The Motor Vehicles Act is enacted with a view to provide better transport facilities to the public and the operators are persons who are liable to render the services. Therefore, the Act is conceived of in the interest of the citizens. The Corporation may bring it to the notice of the authorities, if any illegalities are committed by the rival operators and it is the discretion of the authorities to proceed to take action as per law. It cannot seek the authorities to be compelled to perform the legal duty in a particular manner, only with a view to ensure that it is saved from the heavy losses. If that is the case, every rival business man would stake a claim for writ of mandamus in every commercial transaction where element of profit is there, for implementation of the provisions of the particular enactment on the ground that the authorities are not discharging their legal duties and he is denied of the profits. For instance, a licensee under an Excise Act, can seek directions to the authorities to implement the provisions of the Acts strictly as he is made to suffer heavy losses on account of manufacture of illicit liquor and such manufacture is not arrested by the excise authorities under the Act. Similarly in cases of leases and licences, such petitions could be made. Therefore, the relief claimed in the writ namely writ of mandamus directing implementation of the particular statute can be issued only in the interest of public and not in the interest of individual business enterprises. The Act enjoins upon the authorities to grant permits and to check illegal operation of the transport vehicles. But, it would be rather impossible for them to detect each and every illegal transportation. That would not constitute inaction on the part of the authorities in not discharging their legal duties. Even though the Corporation brought it to the notice of the authorities, the instances where the alleged illegal transportations are taking place, yet, it cannot be granted to seek the direction. If it is a case that public is being put to inconvenience on account of non-granting permits to the operators to run the vehicles or heavily loading the vehicles on account of rival competition, a member of public as a *pro bona publico* can maintain a writ for proper implementation of the provisions in the interest of the travelling public. But, the writ cannot be filed by a rival operator to implementation of the provisions of the Act on the ground of sustaining heavy losses. There is no dispute that a writ can be filed by a Corporation or other authority answering to the definition of the State against the other authority, but such disputes are deprecated by the Supreme Court in 1992 (61) ELT 3 (SC) . In the said case, dispute arose between the Government departments and the public sector undertakings of the Union of India. In Oil and Natural Gas Commission's case (*supra*), the matter was closed by the Supreme Court on the basis of the report of the Cabinet Secretary, who stated that the public sector undertakings of Central Government and the Union of India should

not fight their litigations in the Court by spending the monies on the fee of the Counsel, Court fee, etc. and a committee was set up to amicably resolve the disputes on the basis of the report submitted by the Cabinet Secretary, The matter was disposed of with the following directions :

"We direct that the Government of India shall set up a Committee consisting representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and Public Sector undertaking of the Government of India and Public Sector Undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior Officers only should be nominated so that the Committee would function with status, control and discipline.

It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

The Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from 1st January, 1992."

Again similar issue was arose before the Division Bench of Allahabad High Court in Union of India v. Nagar Mahapalika, Gorakhpur, which was disposed of in terms of the principles decided in the decision referred to above.

16. Thus, in such a case, where there are disputes between the State Corporation and the State Government, it is always desirable that they should constitute an appropriate committee under the Chairmanship of such concerned Ministers. In this case, admittedly, Minister for Transport is the incharge before whom such matter can be brought and can be decided amicably and it is desirable that the State Government shall constitute appropriate grievance cell for resolving the disputes arising either between two departments of the Government or between the State Public Sector Undertakings or the Corporation and the State Government.

17. With the above observations, the writ petition is dismissed. No costs.