

(1969) 05 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 357 of 1968

Baikuntha Jha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-05-1969

Acts Referred:

Motor Vehicles Act, 1939 — Section 64A, 68F, 68G

Citation : (1969) 17 BLJR 901

Hon'ble Judges : Shambhu Prasad Singh, J;N.L. Untwalia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—The petitioner applied for a stage carriage permit for the route Bhagalpur to Mahagama via Dacomore, Barabat, Maharanamore, Mandar Vidyapith, Sabalpur, Panjwara, Godda, Bandanwar, Barkope, Pathargama: and Mohanpun The total length of the - route is 56 miles. It has not been in dispute that portions of this route have a common road sector with two nationalised routes notified under Chapter IVA of the Motor Vehicles Act, 1939 (Central Act 4 of 1939), hereinafter called "the Act". Such common portions are a distance of four miles from Dacoa-more to Maharanamore and that of six miles from Pathargama to Molianpur. It is also not in dispute that the scheme for the two nationalised routes did not provide for allowing any private operator to operate on the said routes or any portion thereof. The scheme as finally approved and published was in total exclusion of the private operator from the nationalised routes aforesaid or any portion thereof.

2. The Bihar State Road Transport Corporation (hereinafter called "the Transport Corporation") objected to the grant of the permit to the petitioner on the ground that the permit asked for could not be granted as the stage carriage could not be allowed to pass through the portions of the nationalised routes as no private operator could be allowed to ply his bus even on a portion of the road or the highway through which the nationalised routes passed. The East Bihar Regional

Transport Authority, respondent No. 2, over-ruled the objection of respondent No. 4 on the ground that "the portion Dacoamore to Maharanamore and Pathargama to Mohanpurmore of small distances could perhaps be ignored for the larger good of larger number of travelling public". The matter was taken up in appeal by the Transport Corporation to the State Transport Appellate Authority, respondent No. 3. The Appeal Board of that Transport Authority allowed the appeal, upheld the objection of respondent No. 4 and set aside the order of respondent No. 2. a copy of which is Annexure 1 to the writ application. The order of the Appeal Board dated 5-7-1967 is Annexure 2. The petitioner preferred a revision u/s 64A of the Act, as it stands under the Bihar amendment, to the Transport Minister of the Government of Bihar. A copy of the application in revision is Annexure 3 to the writ application. The State Transport Minister rejected the revision by his order dated 15-1-1968 which was communicated to the petitioner under a forwarding memo dated 9-2-1968, Annexure 4. The petitioner filed this application in this Court on 17-5-1968 annexing therewith a copy of the order of the same Transport Minister dated 25-12-1967 us Annexure 5 by which under similar circumstances he had over-ruled an identical objection of the Transport Corporation and granted a permit to one Ram Sanehi Singh. Apart from the other grounds, one of the grounds of attack on the order of the Minister was that he had not passed consistent order under similar circumstances. The petitioner obtained a rule from this Court against the respondents out of whom the State of Bihar is respondent No. 1 to show cause why the impugned orders, Annexures 2 and 4, of respondents 3 and 1 be not quashed by grant of a writ of certiorari. A counter-affidavit had been filed on behalf of the Transport Corporation and cause had been shown at the time of the hearing of the rule on its behalf by the learned Advocate General.

3. At the outset it may be stated that the Transport Corporation had filed C. W. J. C. No. 150 of 1968 from the order of the Transport Minister a copy of which is Annexure 5 to the writ application. The same Transport Minister under similar circumstances had refused permit to one Gauri Shankar Sharma and he had preferred C. W. J. C. No. 86 of 1968 in this Court to quash the order of the Transport Minister and to grant a permit to him. Both these cases were heard by a Bench of this Court of which I was a member. By the judgment delivered on 20th August, 1968, C. W. J. C. No. 86 of 1968 was dismissed and C. W. J. C. No. 150 of 1968, was allowed. The point which has been pressed again vehemently by Mr. Saptami Jha in this case was not accepted in the earlier decision even though it had been pressed with equal vehemence in that case also. The Bench decision- of this Court in the cases of Gauri Shankar Sharma and Ram Sanehi Singh applies on all fours to the instant case. On a consideration of several Supreme Court decisions, it was pointed out that after the scheme had been finalised the grant of stage carriage permit to the State Transport undertaking under Sub-section (1) of Section 68-F and the consequential orders on the private operators under Sub-section (2) of that section were mechanical. In other words, the necessary consequences of giving effect to the approved and final

scheme have got to follow. The scheme may provide for partial exclusion of the private operators and as pointed out by the Supreme Court in *Ramnath Verma Vs. State of Rajasthan*, one of those methods of partial exclusion may be that a private operator will be permitted to ply his stage carriage on a portion of the notified route but upon the condition that he cannot pick up any passenger on that portion of the route. It was expressly said thereafter in the judgment of this Court in the previous cases "But if the scheme does not provide any such partial exclusion, or, to put it in other words, does not permit a private operator to ply its stage carriage on a portion of the notified route even by imposing the condition of not picking up of the passengers, it is not open to any authority to allow a private operator to ply his stage carriage on a portion of the notified route even by imposing such a condition". It was pointed out further in clear terms that no other view seems to be possible in this regard and the authorities, who took a contrary view while granting such an extension of the route to a private operator a portion of which had a common road sector with a notified route committed an error of law which could not be allowed to stand.

4. The same view which was expressed by the Bench earlier is apt to be reiterated by a brief reference to two or three cases of the Supreme Court. In the case of *Nilkanth Prasad and Others Vs. State of Bihar*, *Hidayatullah, J.*, as he then was, held at page 1139, column 1. "This means that even in those cases where the notified route and the route applied for run over a common sector, the curtailment by virtue of the notified scheme would be by excluding that portion of the route or, in other words, the "road" common to both. The distinction between "route" as the notional line and "road" as the physical track disappears in the working of Chap. IVA, because you cannot curtail the route without curtailing a portion of the road, and the ruling of the Court to which we have referred, would also show that even if the route was different, the area at least would be the same.

5. I would like to quote a passage from the judgment of *Wanchoo, J.*, as he then was, in *Ramnath Verma Vs. State of Rajasthan*, which occurs at page 607, column 2. In some cases permits of the objectors had been cancelled with respect to the overlapping-part of the routes while in other cases the objectors were allowed to ply even on the overlapping part but forbidden to pick up passengers on such part for destinations within that part. This method was called making the permits ineffective for the overlapping part. The grievance of those whose permits had thus been rendered ineffective for the overlapping part was two-fold, one of which was that such objectors whose permits had been made ineffective for the overlapping part will not be entitled to compensation u/s 68-G read with Section 68-F of the Act. This argument was repelled by his Lordship saying "Making the permits ineffective for the over-lapping part only amounts to partial exclusion of the private operators from that route. In the circumstances an order making the permit ineffective for the over-lapping part would be justified u/s 68-C. As to the second point, there is no doubt that where the permit is made ineffective the permit-holder would not be entitled to any

compensation u/s 68-G:...

In any case, if any permit-holder feels that he would rather have his permit cancelled for the overlapping route and get compensation it is for him to raise that objection before the State Government or the officer hearing objections. If he does not do so, he cannot be heard to say that there is discrimination because his permit has been rendered ineffective and he gets no compensation, for it may very well be that he is still better off than the person whose permit has been cancelled for the overlapping part of the route." This case illustrates that if the scheme as approved and finalised totally excludes the private operators from the route or any portion thereof, granting permits even by imposing the conditions upon the permit-holders not to pick up passengers on the overlapping part of the route will not be permissible as that would be tantamount to partial exclusion of the private operators. It will go directly against the scheme which excludes the private operators completely.

6. In a recent case of the Supreme Court in *M/s Standard Motor Union Private Ltd. v. The State of Kerala* AIR 1969 SC 273 the facts were that the appellant before the Supreme Court challenged the scheme of nationalisation of road transport services in respect of nine routes in the districts of Eernakulam and Kottayam. The contention was that the impugned scheme was a complete exclusion scheme and should have been in form I and as it was in form II it was in contravention of Rule 3 of the Kerala Motor Vehicles (State Transport Undertaking) Rules, 1960, read with Section 68-C of the Act and it was, therefore, invalid. The argument was rejected by pointing out that there were 33 existing routes partially overlapping the notified routes. The 33 existing routes and the notified routes had many common road sectors. The scheme did not interfere with the services on the 33 routes. Hence it was a scheme of partial exclusion and not of complete exclusion. In that connection, Bachawat, J. delivering the judgment on behalf of the Court said that "the route includes the highway over which it runs. If other existing services are allowed to continue over a part of the highway relating to the notified route, the scheme is not one of complete exclusion" and "the impugned scheme does not exclude the road transport services of the 33 existing routes over many sections of the highways relating to the notified routes. It follows that the scheme is not in complete exclusion of existing road transport services in respect of the notified routes and is not required to be in form I. "The decision of the Supreme Court in the case of *Standard Motor v. Kerala State* AIR 1969 SC 273 also supports the view which had been taken earlier, and is reiterated today.

7. Mr. Saptami Jha stressed two more points for our consideration in this case. He submitted that the exclusion of the transport service by the private operators on the portions of, the notified routes would mean and come into operation only if the Transport Corporation plies a separate stage carriage on that portion of the route. Learned Counsel submitted that then and then only it will be a separate service on the portion of the route otherwise not. I am unable to accept this

contentions. Service can not mean between two termini only. It would mean service during the course of the transit of the passengers between two termini even on portions of the route. If the argument so put forward by learned Counsel is accepted, it would lead to anomalous result and almost nullify the scheme of complete exclusion of the private operation from the portions of the route. To illustrate my point take for instance the plying of stage carriage by the Transport Corporation on a route, say of 100 miles, when the scheme provided for complete exclusion of private operators from that route or any portion thereof. Private operators may come forward to apply for permit for plying their buses from one terminus to a destination on that route which may be say 80 miles, 60 miles, 30 miles, 20 miles or even 10 miles from that terminus. They may contend on such an argument that unless the Transport Corporation provides separate service in the sense of plying separate buses from the first terminus to all those terminus lying at the distance of 10, 20, 30, 60 or 80 miles, the private operators cannot be excluded. The illustration itself demonstrates the fallacy in the argument. It must be rejected.

8. Learned Counsel then submitted that in the past the authorities have been giving permits to the private operators to ply their stage carriages ignoring the overlapping of small portions of the common road sector. It may also be so as the petitioner pointed out certain instances in his revision petition before the Minister in Annexure 3, but the other view was also prevailing before the authorities as is clear not only from the order of the Appeal Board in this case but also from the orders of the Appeal Board in the two other cases which came to this Court in which the Transport Minister had passed the inconsistent order but the Appeal Board had passed the consistent order upholding the objection of the Transport Corporation. If the law was not clearly understood by the authorities it cannot induce us to accept the argument of learned Counsel that the law should be interpreted as had been understood wrongly some-times by the authorities. This argument has absolutely no substance and has been stated merely to be rejected.

9. Before I part with this case, I would like to observe that if the facts stated by the petitioner are correct then to provide a direct service to the public from Bhagalpur to Mahagama via Daccamore, Barahat State Maharanamore, Mandar Vidyapith, Sa-balpur, Panjwara, Godda, Bandanwar, Barkope, Patharjama and Mohanpur, the places indicated in paragraph 1 of the petition, the Transport Corporation may consider the advisability of modifying the scheme u/s 66-F of the Act, specially when no such direct services had been provided by the Corporation over that route so as to allow the private operators to ply their buses even through the common road sector by imposing the condition on them of not picking up passengers over that portion. It is for the petitioner or the other operators to agitate this matter before the Transport Corporation. If and when such a move is made, it will deal with this matter as it thinks fit and proper in accordance with law.

10. In the result, I see no merit in this writ application. It is accordingly dismissed with costs to respondent No. 4; hearing fee Rs. 100/-.

Shambhu Prasad Singh, J.

11. I agree.