
(1989) 01 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 979 of 1986

Bhanwar Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-01-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 42, 51, 68, 68D, 68F

Citation : AIR 1990 Raj 73 : (1989) WLN 382

Hon'ble Judges : R.S. Verma, J;K.S. Lodha, J

Bench : Division Bench

Advocate : R.R. Vyas, for the Appellant; R.N. Munshi, for Rajasthan State Road Transport Corporation and Niyajuddin Khan, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Verma, J.—The facts giving rise to this appeal lie in a narrow compass. Appellant Bhanwar Singh holds one contract carriage permit for the whole of Rajasthan being P. Co. P. 1716 of 1983. According to him, he is entitled to ply buses against the aforesaid permit in the whole of Rajasthan. Rajasthan State Road Transport Corporation (R. S. R. T. C.) is running stage carriages on a number of routes, State as well as inter-Statel. With the introduction of Chapter 4A in the Motor Vehicles Act (hereinafter called "the Act"), a large number of schemes for stage carriages as well as contract carriages for various routes in Rajasthan have been approved and notified. It is alleged that the Corporation has not implemented these schemes in spite of the fact that a period of more than 29 years has elapsed since the coming into force of the aforesaid schemes. For Jodhpur region itself, there was a scope of 200 contract carriage permits yet the R. S. R. T. C. did not obtain a single contract carriage permit against the aforesaid scope. The case of the appellant is that R. S. R. T. C. is interfering with the appellant's plying of the contract carriages on the various nationalised routes, even though appellant is entitled as of right to ply his buses on such nationalised routes

against the said permit.

2. On the basis of the aforesaid contentions, the appellant instituted S. B. Civil Writ Petition No. 2474/85 in this Court, inter alia, praying for a writ of prohibition directing the R. S. R. T. C. not to implement the schemes of contract carriages duly approved and notified, right from the year 1956 up to date. In addition, it prayed for quashing of Notification Annexure P/7 dated 12-5-73 whereby certain officials of the R. S. R. T. C. were authorised to exercise powers u/s 129A of the Act.

3. The writ petition was opposed by the R. S. R. T. C. which pleaded that after schemes of nationalisation of various routes were passed, the appellant-petitioner was not entitled to ply any bus on a route covered by a scheme approved u/s 68(D)(3) of the Act. It was denied that the Corporation had not implemented the various schemes, which had been duly approved. It was submitted that the Corporation had in fact implemented the schemes regarding contract carriages. It has been in fact providing contract carriage services by vehicles having stage carriage permits so far as the notified routes are concerned. It was submitted that whenever there was a demand for a vehicle to be provided to a point which does not lie on a notified route, the Corporation was obtaining contract carriage permits for the unnotified portion of the route for the purpose of providing contract carriage service from a point which lies on a notified route to the other point. It was submitted that the Corporation had obtained 31 contract carriage permits under which it was entitled to provide contract carriage service. It was submitted that it was not necessary for the Corporation to obtain contract carriage permit against scope of 200 contract carriage permits in the aforesaid circumstances.

4. The learned single Judge, who heard this writ petition was of the view that the contract carriage schemes had in fact been implemented by the Corporation and it was wrong to say that the Corporation had not implemented the contract carriage schemes for more than 29 years. Upon such view of the matter, he dismissed the writ petition vide judgment dated 7-2-86. Aggrieved, the petitioner has filed this appeal.

5. Learned counsel for the appellant has submitted that under the scheme of the Act, separate permits are issued for stage carriages and likewise, separate permits are issued for contract carriages. He submits that a large number of routes have been nationalised and schemes there for have been approved in accordance with the provisions of Chapter 4A of the Act. According to him, these schemes are composite schemes for stage carriage and contract carriages but separate scope has been provided for contract carriages. According to him, the Corporation has implemented only that part of the schemes, which pertains to stage carriages but has failed to implement the schemes so far as contract carriages are concerned. He submits that plying of buses for contract carriages under permits issued for stage carriages was not legal. At any rate, merely by providing contract carriage service under the stage carriage permits issued to the

Corporation, it could not be said that the schemes for contract carriages had been implemented . He vehemently submits that without obtaining stage carriage permits in pursuance of the scope provided for such services, it cannot be said that the various schemes have been implemented. He submits that since the schemes have not been implemented for a period of more than 29 years so far as contract carriages are concerned, the schemes should be quashed and the Corporation be restrained from interfering with the plying of the buses of the appellant on nationalised routes, since under the contract carriage permits granted to him, he is entitled to ply his buses throughout the State.

6. Learned counsel for the R. S. R. T. C. seriously opposes the appeal and submitted that the judgment of the learned single Judge is absolutely correct and calls for no interference. He submits that under the existing provisions of the Act, a contract carriage service can be provided even against a permit granted for a stage carriage and no separate permit is required for providing a contract carriage service. The Corporation has placed on record material to show that in fact contract carriage service was being provided by the Corporation against permits issued to it for stage carriages and as such, there had been a substantial implementation of the scheme of nationalisation. In view of these facts, the appellant could not claim that the various schemes duly approved in Chapter 4A of the Act should be quashed.

7. We have given our earnest consideration to the arguments advanced at the Bar and have carefully perused the material available on record.

8. This is an undisputed fact that various State and inter-statal routes have been nationalised in accordance with the provisions of Chapter 4A of the Act. This is also not disputed that the various schemes of nationalisation provide for plying of stage carriages as well as contract carriages. Thus, the schemes are composite ones. Now we have to see if learned counsel for the appellant is right in making the submission that a contract carriage service can be plied only if a permit is exclusively issued for such purpose and a contract carriage service cannot be plied under a stage carriage permit issued under the provisions of Section 42 of the Act. Section 42 falls under Chapter 4, which is captioned "Control of Transport Vehicles." This section reads as follows:--

"42 Necessity for permits.-- (1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, whether or not such vehicle is actually carrying any passenger or goods save in accordance with the conditions of a permit granted or countersigned by Regional State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a good vehicle

either when carrying passengers or not:

Provided further that a public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) In determining, for the purposes of this Chapter, whether a transport vehicle is or is not used for the carriage of goods for hire or rewards.--

(a) the delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport,

(b) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of a trade or business carried on by him, or

(c) the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes, shall not be deemed to constitute a carrying of the goods for hire or reward; but the carriage in a transport vehicle of goods by a person not being a dealer in such goods who has acquired temporary ownership of the goods for the purpose of transporting them to another place and there relinquishing ownership shall be deemed to constitute a carrying of the goods for hire or reward.

(3) Sub-section (1) shall not apply --

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleaning, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpse;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(ee) to any transport vehicle owned by a manufacturer of automobiles and used solely for such purposes as may be approved by the Central Government;

(f) to any transport vehicle used for any other public purpose prescribed in this behalf;

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behalf or builds bodies for attachment to chassis solely for such purposes and in accordance with such condition as the Central Government may, by notification in the official Gazette, specify in this behalf;

(g) to any transport vehicle owned by and used solely for the purposes of any educational institution which is recognized by the State Government or whose managing committee is a society registered under the Societies Registration Act, 1860 (XXI of 1860);

(i) to any goods vehicle which is a light motor vehicle and does not ply for hire or reward, or to any two-wheeled trailer with a registered laden weight not exceeding 800 kilograms drawn by a motor car;

(j) subject to such conditions as the Central Government may, by notification in the official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered u/s 25, while proceeding empty to any place for the purpose of registration of the vehicle u/s 24;

(l) to any transport vehicle used for such purposes (other than plying for hire or reward) as the Central Government may, by notification in the official Gazette, specify;

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination; or

(n) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of Sub-section (3), Sub-section (1) shall, if the State Government by rule made u/s 68 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver."

9. A bare perusal of first proviso to Sub-section (1) of this section goes to show that a stage carriage permit subject to any conditions that may be specified in the permit, authorises the use of vehicle as a contract carriage also. This means that when a permit has been issued for a stage carriage under the provisions of Section 42, the vehicle covered by such a permit may also be plied as a contract carriage, subject, of course, to conditions that may be specified in the permit. There is nothing in this section, which may go to show that separate permits should be obtained for plying a vehicle as a contract carriage service, even though it is authorised to be so plied by a permit in accordance with the provisions of 1st proviso to Sub-section (1).

10. Learned counsel for the appellant submitted that separate application forms have been provided for obtaining stage carriage permits and contract carriage

permits. He likewise submits that permit for contract carriage is issued on form P. Co. P. while permit in respect of a stage carriage is issued in form P.S.T.P. This fact goes to show that separate permits are required for stage carriages and contract carriages and a stage carriage cannot be plied as contract carriage.

11. This is true that contract carriage permits are issued on form P. Co. P. while stage carriage permits are issued on form P.S.T.P. but this does not mean that in respect of a stage carriage, which is also authorised to be plied as a contract carriage, a separate permit must be obtained. Condition 13 incorporated in permits in respect of a stage carriage in form P.S.T.P. is as follows :--

"13. The vehicle above described may be used by the user of this permit as a contract carriage, within the areas hereinafter specified and subject to the following conditions....."

This condition is in conformity with the first proviso of Sub-section (1) of Section 42 of the Act and goes to show that a vehicle covered by a permit in form P.S.T.P, can also be plied as a contract carriage within the areas specified under such permits and subject to such conditions as may be specified. It has not been shown to us that vehicles covered by stage carriage permits and plied by the Corporation are in any way forbidden from being used as contract carriages on the nationalised routes.

12. Learned counsel for the appellant submitted that under the provisions of Rajasthan Motor Vehicles Taxation Act, 1951, separate special road tax was payable on stage carriages while a different special road tax was leviable on contract carriages. He submits that for this reason also, a stage carriage cannot be used as a contract carriage unless special road tax in accordance with the provisions of Section 4B of the aforesaid Act has been paid. To our mind, Rajasthan Motor Vehicle Taxation Act, 1951, is not relevant for deciding whether the Corporation has implemented the schemes of nationalisation in respect of contract carriages. It is true that a different road tax is payable in respect of a contract carriage than it is payable on stage carriages. It is, however a fiscal matter between the Corporation and the State and if the State finds that the Corporation has been plying its stage carriages also as a contract carriages then it is for the State to realise proper special road tax from the Corporation on such buses, which have been plied as contract carriages in addition to being plied as stage carriages. The taxation provision contained in Section 4B of this Act would not nullify the provisions of first proviso to Sub-section (1) of Section 42 of the Rajasthan Motor Vehicles Act, nor it can be construed as nullifying the condition 13 incorporated in the permit issued for stage carriages enabling an transporter to use of stage carriage as a contract carriage.

13. Learned counsel for the appellant has not been able to show us any direct or indirect authority on the point that a stage carriage covered by first proviso of Sub-section (1) to Section 42 of the Act is not eligible to be plied as a contract carriage.

14. We find that the finding of the learned single Judge that the Corporation has in fact implemented the nationalisation schemes is based on proper material and we do not find any reason to differ from the finding arrived at by the learned single Judge on this aspect of the matter. We find that the Corporation has filed photostat copies of its entries in various registers showing that in fact it has provided contract carriages to various parties on various occasion. Learned counsel for the appellant submitted that the Corporation should have produced the original agreements entered into by it with various persons with whom it had entered into contracts for providing contract carriages and in the absence of such original agreements, it should not be held that the Corporation had in fact provided contract carriages to various persons. In our opinion, it was not necessary for the Corporation to produce the original agreements which it might have entered into with various travelling parties. The entries in the various registers substantially go to show that in fact the Corporation has been providing contract carriages to various persons on appropriate payment. We, therefore, do not find any reason to differ from the finding of fact arrived at by the learned single Judge and the contention of the learned counsel for the appellant in this behalf fails as being devoid of any merit.

15. Learned counsel for the appellant relied upon certain rulings to show that non-implementation of nationalisation schemes for inordinate long periods should furnish a good ground for quashing them. May be, it is so. In *Onkar Singh and Others Vs. Regional Transport Authority, Agra and Others*, it was found that draft scheme u/s 68C was published on June, 25, 1960 yet it had not been approved even after lapse of 25 years. Following the previous decisions, discussed in this ruling, their Lordships of the Supreme Court held that since the schemes published u/s 68C of the Act had not been approved by the authority concerned u/s 68D within a reasonable time, the scheme deserves to be quashed.

In *Yogeshwar Jaiswal Vs. State Transport Appellate Tribunal and Others*, failure of Govt. to dispose of objections u/s 68D of the Motor Vehicles Act for a period of 14 years was deprecated and the Govt. was directed to pass orders u/s 68D (2) of the Act within a specified period.

In *Phool Chand Gupta Vs. Regional Transport Authority, Ujjain and Others*, there was unreasonable delay in publication of the scheme approved u/s 68D of the Act. The apex Court found that there was no justification to keep the proceedings pending even though a period of 20 years has lapsed since the publication of the draft scheme. It was observed that there had been a lot of development in or around the area or routes covered by the scheme and it could no longer be said that the proposal in the draft scheme would satisfy the requirements of Section 68C of the Act. In these circumstances, the draft scheme was quashed.

In *Shri Chand Vs. Government of U.P., Lucknow and Others*, also there was inordinate delay in passing the orders u/s 68D. The delay was to the tune of 26 years. It was in these circumstances that quashing of the impugned scheme was ordered.

16. In our opinion, these rulings have no applicability to the facts of the present case. In the present case, contention of the appellant is that the R.S.R.T.C. has failed to implement the various schemes of nationalisation by not obtaining separate permits for contract carriages in accordance with the scope laid down for such services and hence such schemes deserve to be quashed; we find that this contention is not correct. In fact, when R.S.R.T.C. has obtained permits to ply stage carriage vehicles on all nationalised routes and has been plying contract carriages by providing such vehicles it cannot be said that the schemes have not been implemented.

17. Shrinivasa Reddy and Others Vs. State of Mysore and Others, learned counsel for the appellant submitted that it was not open to the Corporation to implement the scheme piecemeal as it would be possible for it to abuse the powers of implementation and to favour some operators and disfavour others. We do not think that the schemes of nationalisation are being implemented by the Corporation piecemeal. Merely because the Corporation is not obtaining contract carriage permits for the entire scope and is utilising its stage carriage vehicles as contract carriages it cannot be said that the Corporation is implementing the scheme of nationalisation piecemeal.

18. Learned counsel for the appellant vehemently contended that its permit entitled it to ply its vehicle throughout Rajasthan and merely because nationalisation schemes were in force, the area of the appellant could not be curtailed unless the Corporation obtained contract carriage permits for such area. In our opinion, this contention has no legs to stand upon. This very question came up for consideration before their Lordships of the Supreme Court in Shri Roshanlal Gautam Vs. State of Uttar Pradesh and Others, In this case, the apex Court explained the difference between a stage carriage and a contract carriage as follows (para 8) :--

"The distinction between the two is this : the contract carriage is engaged for the whole of the journey between two points for carriage of a person or persons hiring it but it has not the right to pick up other passengers en route. The stage carriage, on the other hand, runs between two points irrespective of any prior contract and it is boarded by passengers en route who pay the fare for the distance they propose to travel."

After having explained the difference, the Hon^{ble} apex Court addressed itself to the effect of nationalisation of a particular route. It observed as follows:--

"(10) In our judgment, the argument of the respondents must be accepted. If u/s 51 (2)(i) a permit for a contract carriage could be limited to specified route or routes notwithstanding that the petition for such a permit must be for an area there is no difficulty in accepting a scheme which cuts down the area by subtracting a few routes. By the taking over of the routes the area is as effectively cut down as when an area is included in the permit but routes are indicated on which alone the contract carriages can ply.

(11) There are two other arguments which support the contention of the respondents.

Under Section 68B the provisions of Chapter IV A apply notwithstanding anything inconsistent therewith contained in Chapter IV of the Act. Sections 46 to 49 are in Chapter IV and no inconsistency between a scheme framed u/s 68C and any provision of Chapter IV can be made a ground of attack. Secondly, u/s 68F when the permits are issued to a State transport undertaking for stage carriages or contract carriages it is provided that the Regional Transport Authority may modify the terms of any existing permit so as to curtail the area or routes covered by the permit in so far as such permit relates to the notified area or notified route. This would indicate that power is reserved to modify the existing permits either by curtailing the area or by curtailing the routes. The taking over of certain route exclusively for the State undertakings renders that portion of the area ineffective for a private operator such as the appellant who holds a permit for the whole area including those routes. The High Court was, therefore, right in holding that by the notified scheme the routes which were mentioned must be taken to have been subtracted from the area to which the permit applied."

In our opinion, the appellant is not right when he says that he is entitled to ply his buses throughout Rajasthan irrespective of the fact that certain routes have already been nationalised in pursuance of the provisions of Chapter IVA of the Act.

19. One limb of the contentions raised by the learned counsel for the appellant was that though it was holding a proper contract carriage permit, yet it was being required to obtain temporary permits for plying its vehicle on nationalised routes on contract carriage basis and he was thus made to pay tax twice. To our mind, this contention is fallacious. When there has been a curtailment of nationalised routes from the area of the permit held by the appellant, it follows as a necessary corollary that in case he wants to ply a contract carriage vehicle on such nationalised route, his permit does not enure for such route and, therefore, there is nothing wrong if he is required to obtain temporary permit for plying on such route in case such a temporary permit can be validly issued.

20. Learned counsel for the appellant relied upon certain observations made by a Division Bench of this Court in D. B. Civil Writ Petition No. 350 of 1980. *Latif Mohd. v. S.T.A.T.*, decided on 18-7-80 and submitted that contract carriages were not covered by nationalisation schemes. This is true that certain observations made therein do lend support to this contention but suffice it to state that the observations were purely obiter. That case pertained to tourist taxi cabs which stand on an entirely different footing. Hence, this decision really does not afford any assistance. Suffice it to say, with due respect that we do not subscribe to the view that private operators are entitled to ply contract carriages on nationalised routes, as of right, of course, temporary permits may be issued to them, in case R.S.R.T.C. does not have a vehicle to ply on a particular route at a particular point of time. We are informed that this is, in fact, being done after obtaining

NOC from the R.S.R.T.C. Hence, the argument is of no avail.

21. Learned counsel for the appellant vehemently contended that the interest of the travelling public is supreme and nationalised schemes are really putting fetters or hurdles in the way of the travelling public inasmuch as private contract carriage vehicles are not being permitted to be plied on nationalised routes, even if only a small portion of such route is to be covered while travelling from a place outside the nationalised route again to a place outside such route. Suffice it to say that no material was placed before the learned single Judge nor has been placed before us to substantiate the charge that the travelling public has been facing serious inconvenience. This argument has, therefore, no legs to stand and deserves to be rejected.

22. Though in the writ petition a reference was made to Annexure P 7 and a request was made for quashing the same, no arguments have been addressed to us on this aspect of the matter. According to the petitioner himself. Annexure P 7 has been rendered void by the decision of the Hon"ble Supreme Court in Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and Others, In view of this submission made in the writ petition, no orders appear to be necessary with regard to Annexure P 7, the law laid down by the apex Court being binding on all concerned.

23. No other submission has been made before us.

24. In view of what we have stated above, this appeal is devoid of all merits and is dismissed.