

(1974) 07 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 147 of 1973

Bihar State Road Transport Corporation

APPELLANT

Vs

State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 26-07-1974

Acts Referred:

Road Transport Corporations Act, 1939 — Section 2, 20, 63, 63(1)

Citation : AIR 1975 Patna 179

Hon'ble Judges : S.N.P. Singh, J;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, General and Lakshman Sharan Sinha, for the Appellant; Basudeva Prasad, Radha Mohan Prasad, Saptmi Jha, Narendra Prasad, Anil Kumar Sinha and R. Sharma, for the Respondent

Judgement

Nagendra Prasad Singh, J.—This is an application by the Bihar State Road Transport Corporation (hereinafter referred to as the "Corporation") under Articles 226 and 227 of the Constitution of India for quashing an order, dated the 21st November, 1972, passed by the State Transport Appellate Tribunal, Bihar (hereinafter referred to as the "Appellate Tribunal"), in exercise of its powers u/s 64 of the Motor Vehicles Act, 1939, setting aside a resolution of the Chota Nagpur Regional Transport Authority (hereinafter referred to as the "Regional Transport Authority") granting renewal of a permit in favour of the Corporation for the route Jamshedpur-Hazaribagh via Chas, Peterwar, Gola and Ramgarh. A copy of the order of the Appellate Tribunal is Annexure "1" to the writ application.

2. For the aforesaid route applications were invited for grant of a stage carriage permit. The Corporation was an applicant for the same, and, after due consideration, the permit was granted in favour of the Corporation for the said route in the year 1965 for a period of five years. The permit was duly counter-signed by the State Transport Authority of West Bengal in accordance with the provision of Section 63 (1) of the Motor Vehicles Act, because a portion of the route lies in West Bengal. The route starts from Jamshedpur, in the territory of

Bihar and, passing through Adardih, Purulia, Sardih Border, Chas and Ramgarh, terminates at Hazaribagh. The length of the route is about 152 miles. The portion between Adardih and Sardih Border, covering a distance of about 36 miles, lies within the State of West Bengal. Before the expiry of the term of the permit, the petitioner Corporation made an application for renewal of the said permit in accordance with the provisions of Section 58 of the Motor Vehicles Act. The said application was duly published in the prescribed manner and objections were filed by several persons, including respondent No. 3. Respondent No. 3 also filed a separate application for grant of a fresh permit for the said route. The Regional Transport Authority, after hearing the parties concerned, rejected the applications filed for grant of fresh permit and renewed the permit in favour of the Corporation by its resolution (Annexure "2" to the writ application).

3. Being aggrieved by the said resolution of the Regional Transport Authority, respondent No. 3 filed an appeal before the Appellate Tribunal, which was ultimately decided in favour of respondent No. 3 holding that the renewal of the permit in favour of the Corporation was illegal due to the non-compliance with the provisions of Section 20 of the Road Transport Corporations Act, 1950 (hereinafter referred to as the "Corporation Act") inasmuch as the route in question was an inter-State route. The Tribunal further held that respondent No. 3 was entitled to get a permit for the said route.

4. Learned Advocate-General, appearing for the petitioner-Corporation, has submitted that the aforesaid findings of the Appellate Tribunal were misconceived in law and, on the facts and in the circumstances of the case, there was no question of applicability of Section 20 of the Corporation Act. He further submitted that the route in question is not an inter-State route, as wrongly held by the Appellate Tribunal, rather, it is an intra-State route.

5. u/s 3 of the Corporation Act, the State Government, having regard to the advantages to the public and the desirability of co-ordinating any form of road transport with any other form of transport, and the desirability of extending and improving the facilities for road transport to any area, "may by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the State under such name as may be specified in the notification".

6. Section 18 of the Corporation Act provides the general duty of the Corporation, and it reads as follows:--

"It shall be the general duty of a Corporation so to exercise its powers as progressively to provide or secure or promote the provision of an efficient, adequate, economical and properly co-ordinated system of road transport services in the State or part of the State for which it is established and in any extended area:

Provided that nothing in this section shall be construed as imposing on a Corporation, either directly or indirectly, any form of duty or liability enforceable by proceedings before any Court or Tribunal to which it would not otherwise be

subject."

7. Section 19 of the Corporation Act prescribed the powers of the Corporation. Sub-section (1) (a) of this section which is relevant for our purpose, reads thus:

"(1) Subject to the provisions of this Act, a Corporation shall have power--

(a) to operate road transport services in the State and in any extended area,

* * *"

This sub-section empowers the Corporation to operate road transport services in the State and in any "extended area". The expression "extended area" has been defined in Section 2(c) of the Corporation Act in these words:

" "extended area" means any area or route to which the operation of any road transport service of a Corporation has been extended in the manner provided in Section 20."

8. Section 20 of the Corporation Act prescribes the procedure by which, if a Corporation considers it to be expedient in the public interest, it can extend the operation of any of its road transport services to any route or area situated within another State and that area will be deemed to be an extended area within the meaning of Section 2(c) of the Corporation Act. Section 20 reads as under:

"20 (1) If a Corporation considers it to be expedient in the public interest to extend the operation of any of its road transport services to any route or area situated within another State, it may, with the permission of the State Government, negotiate with the Government of the other State regarding the proposed extension.

(2) If the Government of the other State approves the proposed extension, the Corporation shall prepare a scheme for the purpose and forward the same to the other Government for its consent, and after such consent has been received, the Corporation may, with the previous approval of the State Government, sanction the scheme.

(3) After the scheme has been so sanctioned, it shall be competent for the Corporation to extend the operation of its road transport service to such route or area and when the operation of such service is so extended, the Corporation shall operate the service on that route or in that area subject to the provisions of any law in force in the other State within which such route or area is situated.

(4) The Corporation may, from time to time, alter or extend the scheme sanctioned under Sub-section (2) by a supplementary scheme prepared and sanctioned in the manner provided in the foregoing provisions of this section."

9. According to the Appellate Tribunal, as a part of the route in the instant case was in another State, that is, West Bengal, it was incumbent on the Corporation to negotiate, with the permission of the State Government of Bihar, with the Government of West Bengal regarding the proposed extension, and if the

Government of West Bengal approved the proposed extension, the Corporation had to prepare a scheme for the purpose and forward the same to the Government of West Bengal for its consent, and, after such consent, with the previous approval of the Government of Bihar, it had to sanction the scheme. Admittedly, this formality has not been complied with. Now, the question is as to whether, on the facts and in the circumstances of the present case, the provisions of Section 20 of the Corporation Act were attracted.

10. Learned Advocate-General, appearing for the petitioner, contended that Section 20 of the Corporation Act can be applicable when a Corporation considers it to be expedient to extend the operation of its transport services to any route or area situated within another State. In the present case, learned Advocate-General submitted, the Corporation never wanted to extend the operation of its transport services to any route or area situated within the State of West Bengal rather, the Regional Transport Authority advertised the route which, in part, falls within the State of West Bengal, the Corporation was an applicant for the said route, along with others, and, on a consideration of the relative merits of the applicants, a permit had been granted in favour of the Corporation in accordance with the provisions of Section 57 of the Motor Vehicles Act. It has been further contended that when both the termini of the route are within the State of Bihar, it cannot be said that the Corporation has extended the operation of its road transport services to an area which may be deemed to be an extended area within the meaning of Section 2(c) of the Corporation Act, because the expression "extended area" means that one of the termini must be in another State. According to the petitioner, the route in question is not even an inter-State route as both the termini are within the same State, namely, Bihar. In this connection a reference was made to the case of B.H. Aswathanarayan Singh and Others Vs. State of Mysore and Others, . One of the points urged in that case was that the scheme framed by the Corporation in question could not be deemed to have been approved as it related to inter-State route and the approval of the Central Government had not been taken, as required under the proviso to Section 68-D (3) of the Motor Vehicles Act. Repelling such an argument, their Lordships observed as follows:--

"We are of opinion that there is no substance in this contention. An inter-State route is one in which one of the termini is in one State and the other in another State. In the present case both the termini are in one State. So it does not deal with inter-State routes at all. It is urged that part of the scheme covers roads which continue beyond the State and connect various points in the State of Mysore with other States. Even if that is so that does not make the scheme one connected with inter-State routes, for a road is different from a route. For example, the Grand Trunk Road runs from Calcutta to Amritsar and passes through many States. But any portion of it within a State or even within a District or a sub-division can be a route for purposes of stage carriages or goods vehicles. That would not make such a route a part of an inter-State route even though it lies on a road which runs through many States. The criterion is to see

whether the two termini of the route are in the same State or not. If they are in the same State, the route is not an inter-State route and the proviso to Section 68-D (3) would not be applicable. The termini in the present case being within the State of Mysore, the scheme does not deal with inter-State routes at all, and the contention on this head must be rejected."

11. The same view was taken in *S. Abdul Khader Saheb Vs. The Mysore Revenue Appellate Tribunal, Bangalore and Others*, on the contention raised regarding the non-compliance with the proviso to Section 68-D (3) of the Motor Vehicles Act in these words:--

"8. Sub-section (3) of Section 58-D of the Act has also been relied upon by Mr. Setalvad. According to that provision the scheme as approved or modified shall be published in the official gazette and the same shall thereupon become final. The proviso, however, says that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the official gazette with the previous approval of the Central Government. No scheme in the present case has been approved under the proviso relating to the inter-State route in question. We are unable to see how the proviso to Section 68-D (3) can be of any avail to the appellant. The aforesaid provision becomes material only when a scheme covers an interstate route. The Bellary scheme provides for nationalisation of an intra-State route and not an inter-State route and the aforesaid provision can have no applicability."

12. In *Ch. Khazan Singh and Others Vs. State of U.P. and Others*, , the contention raised on behalf of the appellant that the State Government could not have approved a scheme for an inter-State route u/s 63-D of the Motor Vehicles Act as the powers of the State Government could operate within its own territory and could not operate in an area beyond its territorial limits was repelled, because in that case the route being an inter-State route previous approval of the Central Government had been obtained. In that connection it was observed as follows:--

"An inter-State route is one of which one of the termini falls in one State and the other in another State. Agra-Dholpur route is admittedly an inter-State route as the termini of the route are situated in two different States. In the face of the proviso to Sub-section (3) of Section 68-D of the Act, we find it difficult to accede to the submission that the Uttar Pradesh Government was not competent to approve and publish the impugned scheme relating to Agra-Dholpur route."

13. Mr. Basudeva Prasad, learned counsel appearing on behalf of respondent No. 3, however, while supporting the decision of the Appellate Tribunal, has submitted that Section 20 of the Corporation Act is a special provision for Corporations constituted u/s 3 of the Corporation Act, when such Corporations purport to extend the operation of their road transport services to any route or area situated within another State. According to him, any part of the route which is in another State will be deemed to be an extended area attracting the

provisions of Section 20 once the applicant is a Road Transport Corporation constituted under the Corporation Act. He has drawn our attention to Section 3 of the Corporation Act which says that the State Government may establish a Road Transport Corporation "for the whole or any part of the State", and has laid much stress on the words "for the whole or any part of the State" in support of his contention that, as a rule, the power of the Corporation to operate its transport services is limited only to the areas within the State, and not beyond it, and only by way of exception, after following the provisions of Section 20 it can extend its operation beyond the territory of a particular State. In this connection he has referred to the aforesaid Sub-section (1) (a) of Section 19 of the Corporation Act, which says that a Corporation shall have power to operate road transport services "in the State and in any extended area". According to learned counsel for respondent No. 3, in view of the aforesaid provision, a Corporation cannot extend operation of its road transport services beyond the territorial limits of a particular State without complying with the formalities of Section 20. In my opinion, every part of the route which lies in another State cannot be deemed to be an extended area within the meaning of Section 20, read with Section 2(c), of the Corporation Act. Section 2(c) defines "extended area" to mean "any area or route to which the operation of any road transport service of a Corporation has been extended in the manner provided in Section 20". Section 20 is attracted, as I have already observed, when a Corporation in the public interest wants to extend the operation of its road transport services to a route or area outside the State. That means that the initiative must be of the Corporation and then only the formalities of Section 20 have to be observed. The provisions of Section 20 will have no application if the area over which, the transport services of the Corporation are to operate, though lying outside a particular State, is a part of the route, that is to say, in the instant case the Corporation had nothing to do with the extension of the route and it was the Regional Transport Authority which advertised the route and invited applications in accordance with the provisions of the Motor Vehicles Act. The Corporation was one of the applicants along with the general public, the Regional Transport Authority had to consider the cases of the different applicants for the route and it might or might not have granted the permit to the Corporation for the said route. In that view of the matter, it cannot be said that the Corporation purported to extend the operation of its road transport services within the meaning of Section 2(c) of the Corporation Act over an area which was beyond the territory of the State of Bihar at the time of the initial grant of the permit or at the time of its renewal.

14. The question as to whether a Corporation can apply, along with other private operators, for a permit in accordance with Chapter IV of the Motor Vehicles Act for a route which had not been nationalised in accordance with Chapter IV-A had been the subject-matter of controversy. But since it has been decided that Chapter IV-A, which is a special provision for nationalised routes over which the Corporation has a monopoly, does not debar the Corporation from applying for any route which has not been nationalised according to the provisions of Chapter

IV. In this connection reliance may be placed on the cases of *Raja Khangarjee and Others Vs. State of Bihar and Others*, and *Parbhani Transport Co-operative Society Ltd. v. G. V. Bedekar* AIR T 960 Bom 278), where it was held that there was nothing in the language of any of the provisions of the new Chapter IV-A of the amended Act to suggest that the right of a transport undertaking to make an application for State carriage permit u/s 37 (2) of the Motor Vehicles Act has been taken away expressly or by necessary implication. Section 63 which is within Chapter IV, is a specific provision for granting a permit for a route which is within the jurisdiction of different transport authorities within the State as well for a route which is partly in another State. Sub-section (1) of Section 63 reads as follows:--

"Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned.""

From the above sub-section it is clear that a permit granted by any Regional Transport Authority to be valid for a part of the route outside the State has to be countersigned by the State Transport Authority of the other State or by the Regional Transport Authority concerned. Second proviso to Sub-section (1) of Section 63 is in these words ;

"Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State."

From the aforesaid proviso it is apparent that in a case in which the starting point and the terminal point of the route are situate within the same State, but a part of such route lies in any other State, but the length of which part does not exceed sixteen kilometres, no such countersignature is required. In the instant case, as will appear from the statements in the writ application itself, the portion which falls within the State of West Bengal is about 36 miles. As such, the proviso is not attracted. But, then, reading the substantive Sub-section (1), along with the proviso, the permit in such cases to be valid will necessitate countersignature by the State Transport Authority of the West Bengal Government or the Regional Transport Authority of the area concerned. Admittedly, this formality has been complied with in the instant case at the initial stage as well as at the time of renewal. In that view of the matter, there is no substance in the contention of the learned counsel for respondent No. 3 that the initial permit as well as the renewed permit granted in favour of the Corporation

were invalid.

15. In face of the aforesaid decisions of the Supreme Court, there is no difficulty in holding that the route in question is not an inter-State route, but an intra-State route. In my opinion, the 36 miles of the route lying in the State of West Bengal will neither make the route an inter-State route nor will it be deemed to be an "extended area" within the meaning of Section 2(c) of the Corporation Act. Section 63 (1) of the Motor Vehicles Act, read with its second proviso, specifically covers the present case inasmuch as the starting point as well as the terminal point of the route are within the State of Bihar and the permit for the route has been countersigned by the State Transport Authority of West Bengal. It necessarily follows that there is no question of the applicability of Section 20 of the Corporation Act. In my opinion, therefore, in the instant case, the Appellate Tribunal took an erroneous view regarding the applicability of the provisions of Section 20 of the Corporation Act.

16. The Appellate Tribunal has, however, also held, although without proper consideration of the materials before it, that the Corporation, during the subsistence of the original permit granted in the year 1965, was not plying the buses for the last nine months. Although the Regional Transport Authority had rejected such objection raised against the grant of the renewal of the permit by saying that from the documents produced by the representatives of the Corporation it had been established that their services did ply regularly, the Appellate Tribunal has simply referred to Memo. No. 5292, dated the 16th September, 1970, of the Superintendent of Police, Jamshedpur, the gist whereof is mentioned in the resolution of the Regional Transport Authority before the order portion. Section 47 of the Motor Vehicles Act lays down that a Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the interest of the public in general. If the Appellate Tribunal wanted to reject the claim of the Corporation for the renewal, then it should have examined the case in detail keeping in view the considerations enjoined by Section 47 and it could have rejected the application of the Corporation after recording a categorical finding that the renewal of the permit in favour of the Corporation was not in the interest of the public in general. That being the position, the order of the Appellate Tribunal has to be set aside by a writ of certiorari and the case has to be remitted to the Appellate Tribunal for a reconsideration and proper decision in the light of the observations made above.

17. In the result, the application is allowed, the order of the Appellate Tribunal (Annexure "1") is quashed and the case is sent back to it for a reconsideration of the materials on record and for recording a fresh decision in accordance with law. It is expected that the Tribunal will dispose of the appeal at an early date because the renewal itself was granted in the year 1971. On the facts and in the circumstances of the case, there will be no order as to costs.

S.N.P. Singh, J.

I agree.