
(1992) 05 DEL CK 0026

In the Delhi High Court

Case No : CW 2766 of 86 and CM 3798 of 86

Deshmesh Co-operative Transport and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-05-1992

Acts Referred:

Citation : AIR 1992 Delhi 376 : (1992) 23 DRJ 263 : (1993) ILR Delhi 79

Hon'ble Judges : Y.K. Sabharwal, J;Sunanda Bhandare, J

Bench : Division Bench

Advocate : R.K. Jain, S.R. Setia and Lalit Bhardwaj, for the Appellant; M.M. Sareen, A.P. Aggarwal for UOI, R.K. Mehta, Aruneshwar Gupta, K.M.M. Khan, S.K. Dholakia, Bimal Ray, Hemantika Wahi and Ranjan Mukherjee, for the Respondent

Judgement

Sunanda Bhandare, J.—The petitioners are All India Tourist Bus Operators who have been issued permits under S. 63(7) of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act). In the year 1982 one Shri D. P. Sharma, an All India Tourist Bus Operator, filed a writ petition in the High Court of Karnataka praying that the condition imposed by the State Transport Authority while endorsing or Issuing permit under sub-section (7) of S. 63 of the Act, prohibiting the bus operators from entering into any contract of hiring other than the extension or modification of a subsisting contract outside the State of Karnataka be quashed. The Karnataka High Court held that the said condition is void because it does not allow the holders of permit under subsec. (7) of S. 63 of the Act to enter into a fresh contract of hiring even for the purpose of bringing the tourists into the State of Karnataka.

2. An appeal was filed against this judgment of the Karnataka High Court in the Supreme Court. The Central Government had not framed rules at that time though rule making power was provided under S. 63(10) of the Act. During the pendency of the appeal in the Supreme Court, the Central Government published the draft Rules on November 15, 1985. The Supreme Court passed certain

interim orders on 30th January, 1986 directing All India Tourists Bus Permit Holders to follow the said draft Rules. Thereafter, draft Rules were approved and published on 2nd September, 1986 and, Therefore, the Supreme Court by its order dated 12th September, 1986 disposed of all the appeals pending before it as infructuous and did not pronounce on the correctness of the judgment of the Karnataka High Court. The Supreme Court further observed that the motor vehicle operators having All India Tourist Permits will have now to comply with the Rules made by the Central Government and vacated all the interim orders passed by it. By this writ petition under Art. 226 of the Constitution of India, the petitioners have challenged the validity of additional condition No. III of the Tourist Vehicles (Additional Conditions of Permit) Rules, 1986 framed by the Central Government.

3. It was submitted by the learned counsel for the petitioners that Additional Condition No. III which requires the permit holders to either commence its journey or end its journey in the Home State with a further condition, that the vehicle shall not remain outside the home State for a period of more than two months and the proviso which imposes a restriction that when the contracted journey ends outside the home State, the vehicle shall not be piled for hire within that State or from that State to another State except the return journey to any point in home State is violative of the fundamental right guaranteed to the petitioners under Arts. 14, 19(1)(d) and (g) and 301 of the Constitution of India.

4. Learned counsel for the petitioner's further submitted that with the object of permitting and encouraging tourism throughout India the Parliament in its wisdom by Act No.50 of 1969 inter alia amended Section 63 of the Motor Vehicles Act 1939 by adding sub-sec.(7) to S.63 of the Act. Sub-sec. (7) of S. 63 of the Act empowers every State Transport Authority in India to grant in respect of tourist vehicles permits valid for the whole or any part of India. The petitioners applied for permit to the State Transport Authority, Delhi and has been granted All India Tourist Permit. Under the Act the permit holders pay motor vehicles tax in the home State as well as in the State through which they operate since most States have withdrawn the reciprocal exemption originally granted, It is submitted that under the Act the condition that every trip should start And terminate from the home State is not imposed, however in view of additional Condition No. III the permit holders are required to either commence or end their journey in the home State. Thus, if the permit holder, not able to get a contract for circular trip and the contracted journey ends in another State at times the operator is required to bring back the bus empty to the home State because he is unable to get tourists back to the home State. It was submitted that this restriction is unreasonable and has no nexus with the object of the Act and on the contrary results in wastage of fuel and does not in any manner encourage tourism.

5. The petitioners have in addition to Union of India impleaded all the States in India as party respondents. Counter-affidavits have been filed by Union of India

and by some of the States. Counsel appearing for the State of Orissa at the hearing of the writ petition made a statement that though a counter-affidavit supporting the stand of Union of India has been filed on behalf of the State, he has instructions not to address arguments on the validity, of the impugned condition. A similar statement, was made by the counsel for the State of Mizoram. All other States supported the stand of Union of India.

6. Learned counsel for Union of India in the first instance submitted that the draft Rules were promulgated during the pendency of the appeals before the Supreme Court, and the Supreme Court having approved the Rules, it is not open to the petitioners to challenge the virus of the Rules in this Court. He referred to the various orders of the Supreme Court in support of this contention. He further submitted that large number of complaints were received by the Central Government against the misuse of All India Tourist Permits by the operators. The operators illegally operated the buses as "state carriages" in certain areas, in competition with vehicles permitted to ply as stage carriages, mostly by the State Transport Undertakings. This was against the very spirit of the provision for grant of permits to ply as All India Tourist Vehicles. It was, Therefore, thought necessary that conditions be imposed in order to regulate the movement of tourist vehicles throughout India. Learned Counsel submitted that though originally State Transport Authorities were empowered to grant permits for the whole of India or any part of India only for a limited number of vehicles as, specified by the Central Government in respect of each State now the State Transport Authority is given the power, to grant permits to tourist vehicles as per the need of each State and the number is not specified by the Central Government. Each State grants All India Tourist Permits to operators in the State after considering the need of each State depending on the tourist traffic because the very object of grant of All India Permits was conceived with it the idea of encouraging tourism in India. The All India Permits are granted by the various, States to cater to the need of the tourists of that particular State. Thus when it was found that certain Tourist Operators who had been granted All India Tourist Permits operated outside the State all through the year and returned to their home State Only once in a year for the purpose of renewing the permit, thereby affecting the rights of other States and also inconveniencing the tourists of the home State it amended the Rules to provide safeguards and thus impugned additional Condition No. III was added. It was submitted that additional condition No. III puts reasonable restriction on the right of the petitioners and thus is not violative of Arts. 14, 19(1)(d) and (g) and 301 of the Constitution of India as alleged by the petitioners. Learned counsel submitted that the Rules have been framed in order to ensure planned development of tourism and to stop imbalance of transportation in States.

7. The Parliament enacted the Motor Vehicles Act, 1939 which was amended later in the year 1988 and the amended provisions came into force with effect from 1st July, 1989. S. 88 of the Act provides for grant of permits to tourist vehicles. Sub-sec. (9) of S. 88 empowers the State Transport Authority to grant permits in

respect of tourist vehicles valid for the whole of India or in such contiguous States not being less than three in number including the State in which the permit is issued for the purpose of promoting tourism. The grant of such a permit is however subject to rules that may be framed by the Central Government under subsec.(14) of S.88. The Central Government has framed rules imposing conditions for grant of tourist permits. Sub-s. (9) of S. 88 reads thus:

"(9) Notwithstanding anything contained in sub-sec.(1) but subject to any rules that may be made by the Central Government under sub-sec.(14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of Ss. 73, 74, 80, 81, 82, 84, 85, 86 and 89 shall, as far as may be, apply in relation to such permits."

8. Sub-section (14) of S. 88 (corresponding sub-sec. 15 of S. 63 of the 1939 Act) empowers the Central Government to make rules for carrying out the provisions of this section. Sub-sec. (14) of S. 88 reads thus:

"(14)(a) The Central Government may make rules for carrying out the provisions of this section.

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:-

(i) the authorisation fee payable for the issue of a permit referred to in sub-secs. (9) and (12);

(ii) the fixation of the laden weight of the motor vehicles;

(iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;

(iv) the colour or colours in which the motor vehicle is to be painted;

(v) such other matters as the appropriate authority shall consider in granting a national permit.

Explanation ,---In this section-

(a) "appropriate authority", in relation to a national permit means the authority which is authorised under this Act to grant a goods carriage permit;

(b) "authorisation fee" means the annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a State to enable a motor vehicle, covered by the permit referred to in subsecs. (9) and (12) to be used in other States subject to the payment of taxes or fees, if any, levied by the States concerned;

(c) "national permit" means a permit granted by the appropriate authority to

goods carriages to operate throughout the territory of India or in such contiguous States, not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application."

Thus, the Central Government is empowered under sub-sec. 14(a) of S. 88 to make rules to ensure that provisions of S. 88 of the Act are effectively carried out. Accordingly, the Central Government framed the Central Motor Vehicles Rules, 1989. Sub-rule (3) of R. 85 of the Central Motor Vehicles Rules, 1989 provides for additional condition No. III, virus of which is challenged by the petitioners. It reads thus :

"(III) The tourist vehicle shall either commence its journey, or ends its journey, circular or otherwise, in the home State, subject to the condition that the vehicle shall not remain outside the home State for a period of more than two months. The permit holder shall see that the every return of the tourist vehicle to the home State is reported to the Authority which issued the permit:

Provided that where the contracted journey ends outside the home State, the vehicle shall not be offered for hire within that State or from that State to any other State except for the return journey to any point in the home State."

9. Every citizen of India has been granted under Art. 301 freedom of carrying on trade, commerce and intercourse throughout the territory of India. Art. 302 however empowers the Parliament to impose restrictions on trade, commerce and intercourse as may be required in public interest.

10. The case of the petitioners is that the Parliament in its wisdom did not impose any condition in the Act restricting the freedom of movement of tourist vehicles all over India. However, the condition imposed by way of subordinate legislation by framing Additional Condition No. III of Rule 85 restricts free movement of the tourist vehicle of the petitioners throughout the territory of India.

11. The short question, Therefore, for our consideration is whether this condition puts unreasonable restriction on the fundamental right guaranteed to the petitioners under Arts. 14, 19(I)(d) and (g) and 301 of the Constitution of India.

12. The condition imposed by the State Transport Authority of Karnataka while issuing or endorsing the permit under subsec. (7) of S. 63 of the Act was challenged before the Karnataka High Court. That condition prohibited the operators from entering into any fresh contract of hiring other than the extension or modification of a subsisting contract outside the State of Karnataka. In that case, a fresh contract bringing tourists back to the State of Karnataka was prohibited. This resulted in running of empty vehicles back to the State of Karnataka if the journey ended in another State. The Karnataka High Court thus found the condition unreasonable and struck it down. An appeal by way of special leave was filed against this judgment of the Karnataka High Court in the

Supreme Court which was ultimately disposed of by the Supreme Court after the new draft rules were placed before the Supreme Court. The Supreme Court however did not express itself on the judgment of the Karnataka High Court since by then the draft rules were placed before it. We are unable to agree with the contention of the learned counsel for the respondent that the additional condition No. III in the draft rules was upheld by the Supreme Court because the validity of the said rules was not challenged before the Supreme Court. The impugned rule does not suffer from that vice because a fresh contract can be entered provided of course the tourists end the journey in the home State within two months.

13. S. 88(9) of the Motor Vehicles Act empowers the State Transport Authority to grant permits in respect of tourist vehicles valid for the whole of India subject to the Rules made by the Central Government. This power is vested in the State Transport Authority with the sole object of promoting tourism. Under this provision, a State Transport Authority can issue a tourist permit for operating a vehicle throughout the length and breadth of the country without reference to another Transport Authority of other States. The Central Government thus in order to ensure that the provision is effectively carried out and there is planned development of tourism imposes additional condition by way of R. 85. Since the State Transport Authority is given the power to grant unrestricted number of tourist permit as per the need of each State, the Central Government had to ensure that the need of none of the States suffers. Thus, when it was found that certain tourist operators operated outside the home State all-through the year and returned to the home State only for renewal of the permit once in a year it imposed the condition that the vehicle shall commence its journey or end its journey in the home State and shall not remain outside the home State for a period of more than two months. By imposing this condition it is ensured that the bus is available for tourists in the home State. It also ensures that the right of other operators of the other State is not affected. The Transport Authority while granting the permits has to have regard to the need of the traveling public originally in the area under its jurisdiction. Thus, if the vehicle is allowed to operate outside the home State for unlimited period it was unavailable for tourists of the home State. The Union of India has filed an affidavit stating that after taking into consideration all the aspects it was considered that the period of two months was reasonable and accordingly the said condition was incorporated.

14. The proviso to additional condition No. III applies only when contracted journey ends outside the home State. As per the proviso, a vehicle cannot be offered for hire within the State or from that State to any other State except for return journey to any point in the home State. Thus, a vehicle can be offered for hire to tourists who ultimately end their journey in the home State. In other words, if the tourists wish to visit other States but ultimately end their journey in the home State, the vehicle can be offered for hire because it would be catering to the need of the home State, It however cannot be offered for hire merely to other States because that would be catering to the need of other States and that

is to be taken care of by the Transport Authorities of those States. It does not put a total ban on operators to take tourists from the State where the journey ends.

15. It is well settled that a statute under the guise of protecting public interests cannot arbitrarily interfere with private business and impose restriction by way of a regulation unless there is a reasonable relation of the provision to the object or purpose in view.

16. The Supreme Court in *Chintaman Rao Vs. The State of Madhya Pradesh*, has observed (at page 119):

"The phrase "reasonable restriction" connotes that the limitation imposed on a person in the employment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in article 19(1)(g) and the social control permitted by clause (6) of article 19, it must be held to be wanting in that quality."

17. In our view, the condition and restriction imposed by additional Condition No. III does not infringe on the fundamental rights of the petitioners because the permit holders can enter into a fresh contract even when the journey ends in another State provided the journey ultimately culminates in the home State within a period of two months. To our mind, the restriction imposed by additional condition No. III is reasonable and has a direct connection with the object of promoting tourism.

18. In the circumstances, the writ petition is dismissed. No costs.

Petition dismissed.