

(1977) 10 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 143 of 1976

D.N. Joshi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-10-1977

Acts Referred:

Motor Vehicles Act, 1939 — Section 43(1), 44, 44(3), 44(4)
Orissa Motor Vehicles Rules, 1993 — Rule 65B

Citation : (1977) 44 CLT 635

Hon'ble Judges : S.K. Ray, J; P.K. Mohanti, J

Bench : Division Bench

Advocate : S.C. Parija, for the Appellant; Standing Counsel (Transport), for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Ray, J.—The petitioner is a stage carriage operator on five different routes, indicated in the petition, parts of which are pucca roads and the rest are kutcha and canal embankment roads. By Annexure 1, which is a notification dated 8-8-75 issued in exercise of power conferred by Sub-section (1) of Section 43 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act), the State Government fixed fares and freights (including the maximum end minimum in respect thereof) for stage carriages as required by the proviso to the said subsection. The pre-conditions for issuance of such a notification (Annexure 1) had been satisfied.

2. Pursuant to the said notification (Annexure 1), opposite party No. 2 issued memo No. 3495 RTA dated 20-8-75 to the petitioner to produce his stage carriage permits for endorsements thereon regarding the revised rates of fares and freights. This memo is Annexure 2.

3. The petitioner thereupon submitted a representation against the revised rates of fares to opposite party No. 2. (Annexure 3) who considering the same came to the conclusion that since the rates of fares have been fixed by Government, it

could not lawfully alter the same, though there was some weight in the representation. Opposite party No. 2, it is understood, had, nevertheless, made a reference to the State Government as to whether it would be lawful for it to alter the rates as required by the petitioner. Nothing is known as to the outcome of this reference. Subsequently, however, opposite party No. 2 by its memo No. 740/RTA dated 20-2-76 directed the petitioner to charge fares as per the rates approved by the Government and prohibited him from charging any fare in excess of the same. This memo is Annexure 4.

4. He has, therefore, come to this Court for quashing Annexures 1, 2 and 4 and for a direction injunctioning the opposite parties from giving effect to the said annexures.

5. The contention of Mr. Parija, the learned counsel for the petitioner, is that the State Government cannot fix the rates of fares and freights u/s 43 (1) of the Act but can only issue directions thereunder to the State Transport Authority for fixing minimum and maximum rates of fare and the S.T.A. in its turn is to issue direction to the R.T.A. u/s 44 (4) of the Act and the latter is to fix the actual rates of fares and freights for different routes after observing the procedure laid down in Rule 65-B of the Orissa Motor Vehicles Rules, 1940 (hereinafter referred to as the Rules). As the Government has directly fixed the rates of fares and freights under Annexure 1 which is contrary to law, as indicated above, the same is liable to be quashed. Alternatively, assuming that the State Government has the power to issue the impugned notification, Annexure 1, it not having provided for minimum rates is also liable to be quashed. When Annexure 1 is quashed, Annexures 2 and 4 are bound to be quashed consequently,

6. It is appropriate to extract the relevant provisions of the Act and the Rules. Section 43 (1) (i) of the Act runs as follows :--

"43 (1). A State Government, having regard to--

(a) ... (b) ... (c) ... (d) ...

may, from time to time, by notification in the official Gazette, issue directions to the State Transport Authority--

(i) regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and public carriers.

(ii) ... (iii) ... (iv) ...

Provided that no such notification shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being

heard,"

Sub-sections (3) and (4) of Section 44 of the Act run as follows :--

"(3) A State Transport Authority shall give effect to any directions issued u/s 43 and subject to such directions and save as otherwise provided by or under this Act shall exercise and discharge throughout the State the following powers and functions, namely :--

(a)(b)(c)(d)

(4) For the purpose of exercising and discharging the powers and functions specified in Sub-section (3), a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall in the discharge of its functions under this Act give effect to, and be guided by such directions." Rule 65-B of the Rules is extracted herein below :--

"65-B. (1) Subject to the directions, if any, issued by the State Government under Clause (i) of the Sub-section (1) of Section 43 or by the State Transport Authority under Sub-section (4) of Section 44 of the Act, the Regional Transport Authority may attach to a stage carriage permit the conditions that the stage carriages or service of stage carriages in respect of which the permit is granted shall carry passengers at such fares as the said authority may after giving the holder of the permit an opportunity to make representations and after taking into consideration the matters specified here-under, fix in that behalf from time to time--

(i) the condition of roads on which the stage carriage or the service of stage carriages plies;

(ii) the density of traffic on the routes;

(iii) the cost of operation of the stage carriage or the service of stage carriages; and

(iv) other matters affecting the interest of the public generally."

(The other portions of this rule need not be extracted as they are not relevant.)

7. On a perusal of the aforesaid provisions it is clear that the power to fix the rates of fares and freights vests exclusively in the State Government u/s 43 (1) (i). Sub-section (3) of Section 44 imposes an obligation on the State Transport Authority to give effect to any directions issued by the State Government u/s 43. For the purpose of giving effect to such directions issued under S 43, the S.T.A. has been empowered under Sub-section (4) of Section 44 of the Act to issue directions to any R.T.A., subject to such conditions as may be prescribed, and the R.T.A. shall in discharge of its functions under the Act give effect to, and be guided by, such directions of the S.T.A. As will be seen from Rs. 65-B, the R.T.A. is to determine the rates of fare for stage carriages in respect of which a permit

has been granted after giving an opportunity to the permit holder to make representations regarding the rates and after taking into considerations matters specified in Clauses (i) to (iv) of Sub-section (1) and shall attach the condition of the rates of fares so determined to the stage carriage permit. This power, however, is to be exercised subject to the directions, if any, issued by the State Government under Clause (i) of Sub-section (1) of Section 43 or by the S.T.A. under Sub-section (4) of Section 44 of the Act. Thus, where the minimum and maximum rates of fare have been fixed by the Government u/s 43 (1) (i), the R.T.A. in determining the actual fare must be bound by those two limits and by any other directions of the S.T.A. which must also be consistent with the directions of the State Government issued u/s 43. The R.T.A. is subordinate to the S.T.A. which, in turn, is subordinate to State Government. If directions as to fare have been given by the State Government u/s 43 (1) or by the S.T.A. under Sub-sections (3) and (4) of Section 44, the R.T.A. is bound to act in accordance with those directions. In the absence of any such direction either by the State Government or by the S.T.A., the R.T.A. is to fix the fares under Rule 65-B of the Rules. Where, therefore, as in the instant case, the State Government has determined a range of fares as to the maximum and minimum, it is open to the S.T.A. or R.T.A., as the case may be, to fix the actual fare for any particular stage carriage and in respect of any specific routes within that range. My conclusion as to the respective jurisdictions and powers of the State Government u/s 43 (1) of the S.T.A., under Sub-sections (3) and (4) of Section 44 and of the R.T.A. u/s 44 (4) of the Act and Rule 65-B of the Rules, as indicated above, gets support from the cases of *Amarnath S. Nanda Vs. State Transport Authority and Another*, ; *N. Sathianathan, N.S. Motor Service Ltd., Salem Vs. Secretary, Regional Transport Authority, Salem and Another*, , and *Radha Gobinda Paul, Secretary, Dist. Transport Organization, Midnapore and self Vs. Regional Transport Authority, Midnapore*, . Reading Section 51 of the Act along with Section 43 thereof it is clear that the Regional Transport Authority has jurisdiction to fix specified fares or rates of fares for motor carriages only, while the State Government has exclusive power to fix specified fares or rates of fares for stage carriages.

8. In view of the aforesaid legal position Annexure 1 cannot be impeached either on the ground of lack of power on the part of the State Government or on the ground that pre-conditions to issuance of notification u/s 43 (1) have not been complied with as required by the proviso to that sub-section. The only ground left on which the validity of Annexure 1 is challenged is that it has not fixed the minimum rates of fare. But such a contention is obviously erroneous because on the face of the notification the Government has fixed both the maximum and the minimum rates of fare to be charged in respect of different types of stage carriages. For ordinary bus maximum rate is 4.5 paise per kilometer and minimum is 40 paise per passenger irrespective of kilometer-age. As regards express bus and delux bus the maximum rates are 5 paise per kilometre and 6.5 paise per kilometre per passenger and the minimum rate of those two categories of buses is Rs. 1.50 per passenger irrespective, of kilometer-age. The

inescapable conclusion is that Annexure 1 is valid and cannot be quashed.

9. As regards Annexures 2 and 4, the complaint is that the directions contained therein are meaningless until and unless the R.T.A. has fixed the specified rate for each category of bus for any particular route in respect of which the permit has been granted. Under Rule 65-B the R.T.A. is bound to fix the specified rate whereafter only the fare so determined has to be endorsed on the back of the permit. Such determination of specified fare has to be made after hearing¹ the concerned operators. That does not appear to have been done. The R.T.A. cannot endorse the entire range of rates specified by the State Government under Section 43 (1), leaving it open to the operator to pick and choose any specified fare within that range. Such a situation is not contemplated within the four corners of the Act or of the Rules framed thereunder. The endorsement that can be made on the permit is what is contemplated in Rule 65-B and that rule contemplates endorsement of a fare as the R.T.A. may, after giving the holder of a permit an opportunity to make representations and after taking into consideration the matters specified thereunder, fix in that behalf. Until such a determination has been made after giving an opportunity to the permit holder to be heard in the matter, the R.T.A. cannot call upon the petitioner to produce his permit for endorsement. Therefore, in my opinion, Annexures 2 and 4 cannot be given effect to and must, accordingly, be quashed. It will, however, be open to the Regional Transport Authority to fix a specified fare subject to the directions of the State Government as to the rates of fare (maximum and minimum) given u/s 43 (1) (i) after following the procedure laid down in Rule 65-B of the Rules.

10. In result, therefore, this writ application succeeds in part, Annexure 1 is held to be valid and cannot be quashed. Annexures 2 and 4 are, however, quashed which will not affect the power and jurisdiction of the Regional Transport Authority (opposite party No. 2) to fix a specified fare in accordance with the manner envisaged in Rule 65-B and then call upon the petitioner to produce his permit for endorsement. In view of this partial success of the petitioner, there will be no order for costs.