
(2013) 11 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7308 of 2000

Gill Bus Service Regd., Amritsar

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 14-11-2013

Acts Referred:

Citation : (2014) 2 ACC 401 : AIR 2014 P&H 13

Hon'ble Judges : Sanjay Kishan Kaul, C.J; Augustine George Masih, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner, a transporter, has filed the present writ petition under Article 226 of the Constitution of India

seeking to assail Notification dated 04.07.1989 (Annexure P-3) whereby the State Transport Commissioner has been appointed as the Regional

Transport Authority also qua three Divisions of Jalandhar, Ferozepur and Patiala. It is the case of the petitioner that in terms of the Notification of

even date (Annexure P-2), the State Transport Commissioner has been appointed as the State Transport Authority and thus the State Transport

Commissioner cannot hold the dual charge of State Transport Authority and Regional Transport Authority, one being superior to the other under

the scheme of the Motor Vehicles Act, 1988 (hereinafter referred to as "the said Act"). We are informed that the Notification dated 04.07.1989

(Annexure P-3) has been superseded by a new Notification dated 02.01.2009 to the extent that there are now four Divisions instead of three and

thus in respect of all the four Divisions the State Transport Commissioner has been appointed as the Regional Transport Authority.

2. Learned counsel for the petitioner has drawn our attention to the provisions of Section 68 of the said Act which reads as under:

68. Transport Authorities:

(1) The State Government shall, by notification in the Official Gazette, constitute for the State a State Transport Authority to exercise and

discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and

discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional

Transport Authority; the powers and functions conferred by or under this Chapter on such Authorities:

Provided that in the Union territories, the Administrator may abstain from constituting any Regional Transport Authority.

(2) A State Transport Authority or a Regional Transport Authority shall consist of a Chairman who has had judicial experience or experience as an

appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law and in the case of

a State Transport Authority, such other persons (whether officials or not), not being more than four and, in the case of a Regional Trans- port

Authority, such other persons (whether officials or not), not being more than two, as the State Government may think fit to appoint; but no person

who has any financial interest, whether as proprietor, employee or otherwise in any transport undertaking shall be appointed, or continue to be. a

member of a State or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any

transport undertaking, he shall within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and

shall vacate office: Provided that nothing in this sub-section shall prevent any of the members of the State Transport Authority or a Regional

Transport Authority, as the case may be, to preside over a meeting of such Authority during the absence of the Chairman, notwithstanding that

such member, does not possess judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent

to pass any order or take any decision under any law:

Provided further that the State Government may,--

(i) where it considers necessary or expedient so to do, constitute the State Transport Authority or a Regional Transport Authority for any region so

as to consist of only one member who shall be an official with judicial experience or experience as an appellate or a revisional authority or as an

adjudicating authority competent to pass any order or take any decision under any law;

(ii) by rules made in this behalf, provide for the transaction of business of such authorities in the absence of the Chairman or any other member and

specify the circumstances under which, and the manner in which, such business could be so transacted:

Provided also that nothing in this sub-section shall be construed as debarring an official (other than an official connected directly with the

management or operation of a transport undertaking) from being appointed or continuing as a member of any such authority merely by reason of

the fact that the Government employing the official has, or acquires, any financial interest in a transport undertaking.

(3) The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued u/s 67 and the State Transport

Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge throughout the State the

following powers and functions, namely:--

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional

Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and

(d) to discharge such other functions as may be prescribed.

(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.

(5) The State Transport Authority and any Regional Transport Authority, if authorized in this behalf by rules made u/s 96, may delegate such of its

powers and functions to such authority or person subject to such restrictions, limitations and conditions as may be prescribed by the said rules.

3. It is thus his submission that as per subsection (1) of Section 68 of the said Act, there is a mandate in the form of shall" to constitute both the

State Transport Authority and the Regional Transport Authority. These two authorities are required to give effect to the directions issued by the

State Government u/s 67 of the said Act as provided under sub-section (3) of Section 68 of the said Act. Under sub-section 4 of the said Act, the

State Transport Authority can issue directions to the Regional Transport Authority. It is thus submitted that as to how same entity can issue

directions to itself under the scheme of sub-section 4 of the said Act.

4. Learned counsel for the petitioner has also relied upon judgment of the Hon"ble Supreme Court in case State of Rajasthan and Others Vs. Shri

Noor Mohammad, which dealt with the similar provisions under the Motor Vehicles Act, 1939. It has been observed in para No. 6 that two

Transport Authorities are constituted u/s 44 of the Act of 1939 being the State Transport Authority and the Regional Transport Authority. In para

No. 7, it has been observed as under:

7. It is clear from the above provisions that the State Transport Authority is a superior Authority with jurisdiction over the whole of the State while

the Regional Transport Authority is subordinate to it with its jurisdiction generally confined to the region for which it is appointed. It is also clear

from sub-section (3) clause (b) that the State Transport Authority can perform the duties and functions of the Regional Transport Authority under

certain circumstances. The High Court has held on the construction of Clause (b) aforesaid that the State Transport Authority is entitled to perform

the duties of a Regional Transport Authority in only two cases namely (1) Where there is no Regional Transport Authority in a region and the State

Transport Authority thinks it fit to perform the duties of the Regional Transport Authority, and (2) where the Regional Transport Authority is

functioning the State Transport Authority can discharge the functions of the Regional Transport Authority only in respect of inter-regional routes

and on the request of the Regional Transport Authority. In thus construing Section 44(3)(b) the learned Judges have departed from the view taken

by that High Court earlier in Poonam Chand v. State of Rajasthan and Anr. It was held in that case that the provision in Section 44(3)(b)

contemplated three contingencies under which the State Transport Authority can act to perform the duties of the Regional Transport Authority, viz.

(1) where there is no such authority; (2) Where the State Transport Authority itself thinks fit to perform those duties in respect of and route

common to two or more regions; and (3) where the State Transport Authority is so required by the Regional Transport Authority to perform those

duties in respect of any such common route. We do not think that there was any sufficient reason for the learned Judges in the present case to

depart from the view which had been taken by an earlier Division Bench of that court. Moreover, neither grammar nor convenience compels the

construction adopted by the learned Judges. The State Transport Authority is a superior Authority, and if for any reason no Regional Transport

Authority is functioning, one does not see why the duties and functions of the Regional Transport Authority should not be left to be performed by

the State Transport Authority. The provisions in the Act with regard to the issue of permits and the like are made in the public interest and it will

lead to great inconvenience if in the absence of a Regional Transport Authority the public should be entirely left to the mercy of the State Transport

Authority whether it will exercise its discretion to perform the duties and functions of the Regional Transport Authority or not. In our opinion, the

first contingency is the one when a Regional Transport Authority is not functioning. In that contingency, all the duties and functions of the Regional

Transport Authority are expected to be carried out by the State Transport Authority. Then we have two more contingencies in which the State

Transport Authority may take over the duties and functions of the Regional Transport Authority. Both these contingencies arise in a situation where

the duties of the Regional Transport Authority have to be performed in respect of any route common to two or more regions. These two

contingencies are (2) if it thinks fit, or (3) if so required by the Regional Transport Authority, to perform those duties in respect of any route

common to two or more regions. In other words, we have to read the words "to perform those duties etc." once after the word "fit" and a second

time after the words "Regional Transport Authority." That will explain the importance of the conjunction "and" which is found in sub-clause (b) after the words "such authority". The first contingency brooks of no limitation while contingencies (2) and (3) are limited in scope. Since these two types of contingencies--one unlimited and the other limited were combined into one place, the word "and" has been used after the first contingency. The second contingency takes into account the authority of the State Transport Authority to take over the specific duties of Regional Transport Authority with regard to a common route if it thinks fit. Since the State Transport Authority is for the whole State and has a wider jurisdiction than the separate regional authorities, it is only to be expected that the State Transport Authority may, in a fit case, take over the functions of the Regional Transport Authority with regard to any route common to two or more regions. The third contingency is also a matter of convenience. A Regional Transport Authority, though clothed, with the powers to issue permits with regard to a route common to two or more regions, may for several reasons think it appropriate that his function may be more conveniently performed by the State Transport Authority being a superior Authority with jurisdiction over the several regions and in such a case when a request is made by the Regional Transport Authority, the State Transport Authority would be entitled to perform the duties of the Regional Transport Authority. In our opinion, the view which found favour with the learned Judges with regard to the construction of Clause (b) is erroneous, and the State Transport Authority is entitled to perform the duties of the Regional Transport Authority (i) where there is no such authority; (ii) when the State Transport Authority thinks it fit to perform the duties of the Regional Transport Authority in respect of any route common to two or more regions or (iii) where the State Transport Authority is required by the Regional Transport Authority to perform those duties in respect of any route common to two or more regions.

5. With reference to the aforesaid paragraph, learned counsel for the petitioner contends that the State Transport Authority is clearly superior

authority to the Regional Transport Authority. He though acknowledges that Hon"ble Supreme Court has also opined that if no Regional Transport

Authority is functioning, its duty can be performed by the State Transport Authority. He, however, submits that same is the situation where there is

a vacuum as there being no Regional Transport Authority and it will not imply that the State Transport Authority can be constituted as the Regional Transport Authority.

6. A reference has also been made to the judgment of the Supreme Court in *The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another*, to advance the proposition that it is not only where there is misuse of the authority the intervention is called for but where there is breach of statutory authority qua the appointment of the officers, the High Court ought to interfere under Article 226 of the Constitution of India. It is thus his submission that there is a breach of statutory authority to the extent that no appointment has been made to the Regional Transport Authority.

7. On the other hand, Mr. Puri, learned Additional Advocate General, Punjab submits that there is no compulsion to have a separate Regional Transport Authority because the State Transport Authority can exercise powers of Regional Transport Authority. He submits that in the present case the Regional Transport Authorities have been established but the State Transport Commissioner has been appointed both as the State Transport Authority and the Regional Transport Authority. It is his submission that two authorities really operate in different fields qua the said Act as the power to issue intrastate permits vests with the Regional Transport Authority while the power to issue inter-State permits vests with the State Transport Authority. He thus submits that there is no conflict in the performance of duties and sub-section (4) of Section 68 of the said Act has to be read in the context of a situation where the State Transport Authority considers it appropriate to issue directions to the Regional Transport Authority and in that situation there is the hierarchy provided and the State Transport Authority is the superior authority to the Regional Transport Authority. He submits that there were various administrative pulls and pressures arising from the issue of permits at the intra State level and it was deemed expedient qua the administrative reasons that the State Transport Commissioner should perform both the duties. He thus submits that there cannot be a mandate to necessarily have different persons manning two authorities once an appropriate notification has been issued constituting authorities as per the provisions of the said Act.

8. On consideration of the matter, we find that there is no doubt that if there is a State Transport Authority and Regional Transport Authority, in the hierarchy State Transport Authority is superior to the Regional Transport Authority. This is apparent both from the provisions of the said Act as also from the observations made by the Hon"ble Supreme Court in State of Rajasthan v. Noor Mohammad case (supra). The State Transport Authority, if deemed expedient, can issue directions to the Regional Transport Authority under sub-section (4) of Section 68 of the said Act.

9. The aforesaid, however, does not imply that notification Annexure P-3 is bad in law merely because the State Transport Commissioner has been designated as both as the State Transport Authority and the Regional Transport Authority which performs the function of issuing permits qua different matters/areas.

10. In the administrative wisdom of the respondents, they have deemed it expedient to constitute the State Transport Authority and the Regional Transport Authority of the same person. The petitioner is also not without remedy qua any action whether executed in the form of a State Transport Authority or a Regional Transport Authority, as an appeal would lie to the State Transport Appellate Tribunal u/s 89 of the said Act. Section 89 of the said Act envisages that any person may file appeal aggrieved by the refusal of the "State or a Regional Transport Authority" to grant a permit. Thus, it is not as if from a refusal by the Regional Transport Authority an appeal lies to the State Transport Authority. The State Transport Authority is thus not an Appellate Forum in that sense though it is undoubtedly perceived as the superior authority for the purposes of issuing directions u/s 68(4) of the said Act. We may notice that there is no particular action with which the petitioner is aggrieved but he is seeking per se to impugn notification Annexure P-3.

11. We are thus of the view that the challenge is misconceived as there is no overlapping of the powers by the two Transport Authorities as remedy of appeal is available to the petitioner qua any action with which he is aggrieved. Writ petition is accordingly dismissed leaving the parties to bear their own costs.