

(1960) 03 AHC CK 0005

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 2848 of 1957

Harish Chandra Sah

APPELLANT

Vs

Regional Transport Authority and Others

RESPONDENT

Date of Decision : 21-03-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) 30 AWR 469

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; K.B. Asthana, for the Respondent

Final Decision : Allowed

Judgement

D.S. Mathur, J.—This is a petition Under Article 226 of the Constitution of India by Harish Chandra Shah for the issue of a writ of mandamus, or an order or direction in the nature of mandamus, to direct the Regional Transport Authority, Kumaun Region, Respondent No. 1, to renew the Petitioner's permit No. 28/PTE: Carr: for his private carrier and also for the issue of a writ of certiorari to quash the order dated 19-10-1957 of the Regional Transport Authority, which was communicated, to the Petitioner under its letter dated 28-10-1957, whereby the Authority refused to renew his licence.

2. The Respondents, the Regional Transport Authority and the State Transport Commissioner have not filed any counter affidavit. It can, therefore be presumed that the facts of the case as given by the Petitioner are not challenged by them. These admitted facts are that the Petitioner and his two younger brothers jointly own an extensive orchard of apples, apricots, plums, peaches and pears, known as "Amravati Orchard Estate," in the district of Nainital and in the orchard they also carry on potato cultivation. They have to transport fruits and vegetables to Nainital or to Kathgodam and Haldwani railway stations and they have also to transport to their orchard implements, seeds, chemicals, fertilizers, manures, ration for labour, building materials and shocks in connection with their business

They, therefore purchased a goods vehicle and duly obtained a permit in 1954. The vehicle was subsequently replaced. The permit of the private carrier was renewed from time to time and the last renewal was upto 4-7-1957. The Petitioner in due course applied for the renewal of the permit, but on account of a part of the road being notified under the UP Road Transport Services (Development) Act, 1955, UP Act No. IX of 1955 (hereinafter to be referred as the Act), the Regional Transport Authority issued temporary permits and later on declined to issue even a temporary permit. It was then that the Petitioner moved writ petition No. 2357 of 1957 before this Court to direct the Regional Transport Authority to pass orders on the application for renewal of permit. On becoming aware of the interim order issued by the High Court, the Regional Transport Authority considered the application of the Petitioner in its meeting held on 19-10-1957 and decided not to renew the permit as the route was a notified roadways route. This decision was communicated to the Petitioner under its letter dated 28-10-1957, annexure "F" to the affidavit.

3. In paras. 17 and 18 of the affidavit it is also alleged that similar permits with regard to other private carriers were renewed, even though a part of the route had been notified and was covered by a scheme prepared under the Act. I have made a casual reference to these allegations to bring to the notice of the Respondents that whatever interpretation they may give to the provisions of the Act, they should not discriminate among permit holders. When they were of the opinion that no permit could be granted for the running of private carriers on the notified route, a view which was not correct, it was but proper that the same view should have been adopted while entertaining the implications of other owners of private carriers for the renewal of their permits.

4. The main point and in fact the only point for consideration in the present proceeding is whether the renewal of permits of private carriers could be refused, after the coming into effect of an scheme of the State Road Transport Service published u/s 4 of the Act, merely on the ground that the route had since been notified; or it was necessary for the Regional Transport Authority to pass orders on the renewal application in accordance with the provisions of the Motor Vehicles Act.

5. The confusion has apparently arisen on account of the unsatisfactory drafting of the Act. In Sections 3 and 4 thereof the term "road transport services" has been used, but this term was not defined in the definition clause nor in any other part of the enactment. This term has also not been defined or given its meaning in the Motor Vehicles Act. At this place it may further be observed that the same term was not used throughout. In Clause (c) of Sub-section (2) and also Sub-section (3) of Section 4 the words "transport services" or "transport service" have been used and not the term "road transport services". The words "transport services" are not preceded by the word "the"; but on consideration of the provisions of the Act, no other inference can be drawn except that the words "transport services," or "transport service" have reference to the term "road

transport services" and the two sets of words have the same meaning. As already mentioned above, the term "road transport services," has not been defined in the Act, nor has it been defined in the Motor Vehicles Act, but we can safely utilise the definition of "State Road Transport Service" in determining the meaning of the term "road transport services". In Section 2 of the Act "State Road Transport Service" has been defined to mean "Transport Service by a public service vehicle owned by the State Govt."; and "public service vehicle" as defined therein does not include a private carrier. Consequently, "road transport services", shall mean transport service by a public service vehicle, i.e. not by a private carrier.

5. A scheme framed u/s 4 of the Act has to provide for all or any of the matters detailed in Sub-section (2) thereof. As laid down in Clause (c) and (d), the scheme has to indicate the State Road Transport Services which are to be provided on the route or any portion thereof and for prohibiting or restricting the provision on the route or its portion of transport services otherwise than under the scheme; and the extent, if any, to which persons other than the State Govt. will be permitted to provide road transport services on the route or any portion thereof specified in Clause (b). Under Clause (h), the scheme has also to indicate the reduction in the number of transport vehicles plying on the route. It will thus be found that the scheme has to make a provision for transport services which can be provided by persons other than the State Government on the routes or a part thereof, even after the enforcement of the scheme. Under the scheme so published the Transport Commr. can completely prohibit or restrict the operation of private i.e. non State owned road transport services on the notified routes, or private road transport services can be permitted to some extent. Clauses (c) and (d) will, therefore, suggest that the only prohibition or restriction which the Transport Commr. can impose by publication of the scheme is with respect to road transport services. Road transport services do not include private carriers, i.e. goods vehicles meant for carrying goods belonging to the owner or his relations, i.e. goods not carried on hire or reward. The Petitioner had obtained a permit for the private carrier for the carriage of his own goods and the running of such vehicle could not therefore be prohibited on the coming into effect of the scheme.

6. However, under Clause (h), the Transport Commissioner has also to indicate in scheme the reduction in the number of transport vehicles plying on the route. The term "transport vehicle" has not been defined in the Act, but in the Motor Vehicles Act it is defined to mean a public service vehicle, a goods vehicle etc. The terms "public service vehicle" and "goods vehicle" are also defined in the Motor Vehicles Act. It will be found that goods vehicles include private carriers for the carriage of goods, solely or in addition to passengers. Consequently, under the Motor Vehicles Act a private carrier is a transport vehicle and as laid down in the Act the same meaning must be assigned to the term. In other words, under Clause (h) the Transport Commissioner can reduce the number of private carriers which can ply on the notified route. It will be found that this part of the scheme

shall be in conflict with the prohibitions or restrictions imposed under Clause (c). The reduction in the number of private carriers shall also be against the object of the Act. Section 3 of the Act details the circumstances in which the State Road Transport Services can be operated on routes or parts thereof. Sub-section (1) of Section 3 provides that where the State Government is of the opinion that it is necessary in the interest of the general public and for sub-serving the common good, or for maintaining and developing efficient road transport system so to direct, it may, by notification in the official Gazette declare that the road transport services in general, or any particular class of such service on any route or portion thereof as may be specified, shall be run and operated exclusively by the State Govt. or by the State Govt. in conjunction with railways or be run and operated partly by the State Government and partly by others under and in accordance with the provisions of the Act. The nationalization of the transport services on notified routes can be done in the interest of the general public and for sub-serving the common goods and also for developing efficient road transport system. The public is not in any way concerned with the running of private vehicles including the private carriers. No member of the public can travel in such vehicles nor can his goods be carried in private carriers and consequently restrictions in the running of private carriers shall not be in the interest of the general public nor shall it sub-serve the common good. The restrictions imposed shall also not be for the purposes of maintaining and developing efficient road transport system. Further any notification to be issued under Sub-section (1) of Section 3 shall be with regard to road transport services in general or any particular class of such service. Road transport services, shall not include the carriage of goods in private carriers, as such goods are not carried on hire or on reward. Consequently, no notification can be issued pertaining to the running of private carriers. When the object of the State Government in issuing the notification u/s 3 is to make a provision for an efficient road transport system, restrictions or prohibitions can be imposed with regard to road transport services only and not with regard to private carriers. In these circumstances, the term "transport vehicles" used in Clause (h) of Sub-section (2) of Section 4 of the Act cannot be given the general meaning as laid down in the definition clause of the Motor Vehicles Act. Vehicles, the number of which can be reduced, shall, therefore, be public service vehicles and not private carriers.

7. On similar grounds Section 10 of the Act cannot place any restriction on the powers of the Regional Transport Authority to renew permits of private carriers. The restrictions imposed under or prohibitions contained in the scheme shall pertain to public service vehicles and not to private carriers. In my opinion, therefore, the application of the Petitioner for renewal of the permit of his private carrier could not be refused on account of the route or routes in question, or parts thereof being notified under the Act. The Regional Transport Authority still has the power to entertain the renewal application and to pass orders in accordance with the provisions of the Motor Vehicles Act, the provisions of the Act and also the scheme framed u/s 4 could not in any way prohibit or restrict

the renewal of permits of private carriers.

8. In the end it may be observed that a Division Bench of this Court has taken a similar view in connected writ petitions Nos. 2058, 2320 and 2420 of 1959 decided on 13-1-1960. The decision was based upon a statement made by the Advocate-General in writ petition No. 2058 of 1959 when he conceded that it was not the intention of the Act that when a scheme is published for carrying on by the State Govt. of road transport services in respect of public carriers, that private carriers should be prohibited or restricted. In the present case, the Standing Counsel did not make such a statement and it consequently became necessary to express an opinion on the scope of the Act and the scheme to be framed thereunder.

9. The petition is hereby allowed and a writ of certiorari is issued to quash the order dated 19-10-1957 of the Regional Transport Authority which was communicated to the Petitioner under letter dated 28-10-1957, annexure "F" whereby the renewal of the Petitioner's permit for private carrier was refused. This order shall stand quashed. The Regional Transport Authority, Respondent No. 1, is further directed by way of a writ of mandamus to entertain the application of the Petitioner for the renewal of permit for his private carrier which shall be deemed to be still pending, in the light of the observations made above. Costs on parties.

10. As the High Court has no power to issue any interim order to remain in force after the decision of the writ petition, no further order is being passed, but the Regional Transport Authority will be well advised to issue a temporary permit till the matter can be reconsidered, otherwise, the Authority will itself be responsible for further consequences, i.e. to any loss or damage which may be incurred by the Petitioner in the working of his business.