
(1994) 07 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 1571 of 1993

H.R.T.C. Staff Union

APPELLANT

Vs

H.R.T.C. and Another

RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15(2)

Citation : (1995) 2 LLJ 1001 : (1995) 1 ShimLC 204

Hon'ble Judges : V. Ratnam, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : Rajiv Sharma, for the Appellant; M.S. Chandel and Indar Singh, AG., for the Respondent

Final Decision : Dismissed

Judgement

V. Ratnam, C.J.—The petitioner in this writ petition is an operational staff Union (drivers and conductors) of Himachal Road Transport Corporation, the first respondent herein. In order to bring about uniformity in and secure payment of correct over time allowance(s), after calculating duty hours, the first respondent herein, issued three communications dated January 8, 1993, March 5, 1993 and May 7, 1993, referred to as Annexures PA, PB and PC to the writ petition. In and by these communications, the first respondent had purported to set out the basis upon which the duty hours should be calculated and over-time allowance paid. The main grievance of the petitioner is that the first respondent, though a creation under the Road Transport Act, 1950 (hereinafter referred to as the Act), and an autonomous body, neither controlled nor owned by the State Government, has not implemented the several provisions of the Motor Transport Workers Act, 1961. Referring to the several provisions of that Act, the petitioner stated that Annexures PA, PB and PC issued by the first respondent, are in contravention of the provisions of that Act and inconsistent with some of the mandatory provisions of that Act. Claiming that the members of the petitioner are Motor Transport Workers within the meaning of Section 2-(H) of the Motor

Transport Workers Act, 1961 and that the first respondent is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The petitioner put forward the plea that there was a failure on the part of the first respondent to fulfil the requirements of the Motor Transport Vehicles Act, 1961, particularly in the matter of fixing of duty hours, calculation of overtime and payment of overtime allowance and that the representation made on June 14, 1993, on this regard to the first respondent had not been heeded to. In the above circumstances, the petitioner in the Writ Petition filed by it, prayed for quashing Annexures PA, PB and PC and for a direction that the various provisions of Motor Transport Workers Act, 1961, and Motor Vehicles Act, 1988, should be implemented for payment of overtime allowance as per the provisions of the Motor Transport Workers Act, 1961, after calculating the running time and duty-hours in accordance with its provisions and for payment of arrears of D.A. on over-time and interim relief w.e.f. January 1, 1986 onwards. In addition, the petitioner has also prayed for the constitution of a high power- committee to conduct the survey of the bus-route for framing of time-tables, considering the overall welfare of the society and the crew members.

2. In the reply filed by the first respondent, while disputing the claim of the petitioner put forward, two preliminary objections have been set out and they are : (1) the Himachal Road Transport Corporation is a statutory Corporation owned or controlled by the State Government and by reason of the notification dated August 29, 1986 issued by the State Government, the provisions of Section 15 of the Administrative Tribunal Act, 1985, would stand attracted and the petitioner cannot invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution of India, and (2) the petitioner had not exhausted remedies under the provisions of the Industrial Disputes Act. It was also the case of the first respondent that its share capital had been entirely contributed by the State and the Central Government and the Corporation is one wholly owned and controlled by the Government, which had also fully implemented the provisions of the Motor Transport Workers Act, 1961. The grounds upon which Annexures PA, PB and PC were impugned by the petitioner were all disputed, and it was maintained that the calculation of running time, duty-hours and payment of over-time allowance, had all been done in accordance with the provisions of law applicable to the workers of the petitioner, after obtaining the suggestions and advice of an expert committee constituted for that purpose. In regard to the representation made by the petitioner on June 14, 1993, the first respondent stated that a meeting of the representatives of the Union and the Management was held on July 2, 1993 and the petitioner agreed to submit details of routes on which some difficulties were experienced, so as to consider granting relaxation, but the petitioner, without submitting the details to the management, had approached this Court, instead. Justifying the fixation of the running time, calculation of duty hours and payment of over-time allowance, in the manner done under Annexures PA to PC, the first respondent also disputed the claim of the petitioner for payment of arrears of D.A. on over-time and interim relief and

prayed for the dismissal of the writ petition.

3. In view of the preliminary objections raised by the first respondent, we proceeded to hear Counsel on this aspect of the matter. Referring to and relying upon the notification dated August 29, 1986 and also several provisions of the Act, learned counsel for the first respondent contended that the Transport Corporation is either controlled or owned by the State Government and in view of the notification, the remedy of the petitioner would be to approach the Administrative Tribunal for relief, as that Tribunal is an effective alternative institutional mechanism for securing redress and relief with reference to the matters complained of by the petitioner. An attempt was also made by the learned Counsel for the first respondent to contend that as per Section 28 of the Administrative Tribunal Act, 1985, the jurisdiction of this Court under Article 226 of the Constitution of India had also been taken away and the petitioner is not in order in approaching this Court for relief. On the other hand, learned Counsel for the petitioner, drawing our attention to several provisions of the Act, submitted that under its provisions, the day-to-day control and functioning of the corporation was vested in the Board of Directors and not in the state Government and the Corporation was also at liberty to raise funds by issuing shares and was also free to spend monies and its activities were not controlled by the State, but only by the Board and this would indicate that the Transport Corporation is neither owned nor controlled by the State and is not covered by the notification dated August 29, 1986 issued by the Government of Himachal Pradesh, as corrected. It was also contended by the learned counsel for the petitioner that the taking away of the jurisdiction of this Court under Article 226 of the Constitution of India, would amount to an alteration of the basic structure of the Constitution and cannot be countenanced.

4. Before proceeding to consider the rival contentions so put forward, it is necessary to state that though Counsel on both sides referred to numerous decisions in support of their respective submissions, yet, it is not in dispute that the question whether the Transport Corporation is owned or controlled by the State Government, has to be considered by taking mainly into account the provisions of the Act. In relation to Himachal Pradesh, the provisions of the Act were brought into force on March 28, 1958 and the first respondent Transport Corporation had come into existence, in implementation of the provisions of that Act, its share capital having been entirely contributed by the State and the Central Government, which had not been in any manner disputed by the petitioner in its reply. In order to ascertain whether the first respondent Corporation is either owned or controlled by the State Government, the several provisions of the Act have to be considered. It may also be mentioned that though the notification relied upon by the first respondent refers to Corporations owned or controlled by the State, before us, the question was debated only on the footing of State Control of the Corporation. It would, therefore, suffice to notice the provisions of the Act, having a bearing on this aspect.

5. The Himachal State Road Transport Corporation, which has issued Annexures PA to PC sought to be quashed, is a Road Transport Corporation, established u/s 3 of the Act. That section empowers the State Government to establish, by a notification in the official Gazette, a Road Transport Corporation, for the whole or any part of the State, under such name as may be specified in the notification. Before issuing such a notification, the State Government should, however, have regard to matters provided in that section, which generally represent the interests of the public.

6. u/s 4, a Corporation brought into being u/s 3, shall be a body corporate with perpetual succession and common seal and entitled to sue and be sued in its name. Section 5 provides for the management of the Corporation and Board of Directors and this is a very important provision. Section 5(1) vests the general superintendence, direction and management of the affairs of the Corporation in a Board of Directors, which, with the assistance of the committees and the Managing Director, is empowered to exercise all such powers and do all such acts and things, as may be exercised or done by the Corporation. In regard to the composition of the Board, Section 5(2) provides that the Board shall consist of a Chairman and such other Directors, being not less than five and not more than seventeen, as the State Government may think fit to appoint. Thus the power of appointment of Directors, whether their number is five or seventeen, is vested in the State Government. u/s 5(3) of the Act, the State Government is empowered to appoint one of the other Directors, as Vice-Chairman of the Board. Section 5(4) enables the making of rules for the representation of the Central Government and of the State Government on the Board of Directors, in such proportion, as may be agreed to by both the Governments and the appointment by each Government, of its representatives. In addition, provision for rules for the representation of share holders in the Board has also been made, where the capital of the Corporation is raised by the issue of shares to other parties u/s 23(3) of the Act. Section 23(3) does not stand attracted to this case, as there is no raising of capital by the issue of shares to other parties. Section 7 of the Act makes provision for the resignation of the office of Chairman and Director by giving notice in writing to the State Government and the acceptance of the resignation by the Government. This provision is again in contrast to the normal method of resignation, by sending a communication to the Corporation or Board of Directors. It is thus seen from Sections 5(2) and 7 of the Act that the appointment of the Chairman and the Directors of Board and even their resignation is subject to the control of the State Government.

7. Section 8 of the Act provides for the removal of Chairman and Members from office and enables the State Government to remove the Chairman or any other Director, subject to the fulfilment of the conditions set out, though a Director appointed by the Central Government, cannot be removed by the State Government, without the concurrence of the Central Government. The appointment of any Director can also be terminated by the State Government u/s 8(2) of the Act, by giving a notice of not less than one month, though a Director

appointed by the Central Government, cannot be terminated without the concurrence of that Government. From this provision, it is clear that the Chairman and Directors of the Board can be removed by the State Government, though for such removal of a Director appointed by the Central Government, that can be done with the concurrence of that Government. The manner of appointment of Chairman and other Directors u/s 5 at the instance of the State Government the provision for removal of Chairman and the members of the Board by the State Government as provided u/s 8 and even the resignation by the Chairman or a Director by giving notice to the State Government and acceptance by it to render the resignation effective, would all clearly establish that the chairman and the members of the Board of Directors are all persons, who owe their appointment to the exercise of the powers of the State Government in that regard and can also be removed at the instance of the State Government or can be permitted to resign only on the issue of a notice to the State Government and the acceptance by it of their resignation. Thus, in the manner of appointment of Chairman and Board of Directors, their removal and resignation, the State Government plays a very prominent and vital role.

8. Section 14 provides for the appointment of Managing Director, a Chief Accounts Officer and a Financial Adviser, at the instance of the State Government, though the same person may be appointed as Chief Accounts Officer and Financial Adviser. Thus the power of appointments of two very important officers of the Corporation has been left to the State Government. Even the power of constituting and appointing an Advisory Council to tender advice to the Corporation on such matters as may be required, is left to the State Government and the Transport Corporation has merely to offer its view in that regard to the State Government.

9. Establishment of subsidiary corporations by the Road Transport Corporation, cannot be done, without the concurrence of the State Government and the Central Government u/s 17-A of the Act. Even in the matter of its exercise of the powers of the Corporation, u/s 19(3), the State Transport Corporation has to obtain the previous approval, of the State Government to engage itself in any one or more of the activities set out therein. In other words, the carrying on of those activities, u/s 19(3) of the Act, has to be subject to the previous approval of the State Government.

10. u/s 20 of the Act, even the extension of Road Transport Service to any route or area, in another State, has to be negotiated with the other State, with the permission of the State Government and if the proposal of extension is approved by the other State, the Corporation is required to prepare a scheme and forward the same to the other Government and after its consent is received, with the previous approval of the State Government, the Corporation may sanction the scheme. It is thus seen that even the extension of normal road transport service, for which the Corporation had been established, is subjected to certain restrictions and control by the State Government.

11. In regard to financial matters, while Section 23 of the Act provides for the capital structure of the Corporation by contribution by the Central and the State Government in such proportion, as may be agreed to, Section 23(2) of the Act enables the raising of the capital by issue of shares, but even this has to be authorised by the State Government and where there is capital contribution by the Central Government also, the raising of capital by issue of shares, is subject to the previous approval of the Central Government. Earlier it had been pointed out that in the case of the first respondent, there is no question of raising any capital by issue of shares, as the entire capital had been contributed by the State Government and the Central Government, as per the Transport Corporation.

12. Section 24 of the Act provides for the raising of additional capital by the issue of new shares. The share of the Transport Corporation, with reference to the payment of the principal and dividend at such minimum rate, as fixed by the Government, is guaranteed by the State.

13. Even as regards the borrowing powers of the Transport Corporation, it is seen that u/s 26 of the Act, the previous approval of the State Government is required for borrowing money, either for raising working capital or meeting any expenditure of capital nature or even from a corresponding new bank (after nationalisation) or other financial institutions providing credit and subject to the control of the Reserve Bank of India. From these provisions, it follows that the Corporation is not free to go about borrowing as it likes to satisfy its requirements, but even that had been curtailed in that prior approval of the State Government, should be obtained.

14. u/s 27(2), the State Government is enabled to direct the Transport Corporation to deposit its monies in a Bank, other than Reserve Bank of India or the corresponding new Banks (after nationalisation). The State Government is also empowered to direct the investment of the monies belonging to the Transport Corporation in such security as may be approved by the State Government. Thus apart from clipping the borrowing powers, the State Government may, even direct the investment of the funds of the Transport Corporation in other securities or other financial or banking institutions, even excluding the Reserve Bank of India.

15. u/s 28 of the Act, where the capital is provided by the Central Government and the State Government, the Transport Corporation can pay interest on such capital at such rates as may be fixed by the State Government from time to time in consultation with the Central Government. Only in a case where capital had been raised by issue of shares, the Corporation can pay a dividend on the shares, but again, only at such rate as may be fixed by the Corporation, subject to such general limitation as may be imposed by the State Government in Consultation with the Central Government.

16. The provision for depreciation and reserves and other funds by the Corporation is also controlled by the State Government u/s 29 of the Act. The

State Government, from time to time, may direct the Corporation to make provision for depreciation and for reserve and other funds, though, management of the funds and the amounts to be carried from time to time the credit thereof and the application of the monies, can be determined by the Corporation. The utilisation of a fund intended for one purpose, for another, cannot be done by the Corporation, without the previous approval of the State Government.

17. Section 30 enables the State Government to specify the percentage of the net profits for provision of amenities to the passengers and other related matters with the previous approval of the Central Government and the balance of the amount with the prior approval of the State Government and Central Government, may be utilised for financing the expansion programmes and the remainder shall be made over to the State Government for the purpose of road development. Thus the disposal of the net profits of the Corporation is subjected to the control and direction of the State Government, not only in the matter of its appropriation, but application as well.

18. u/s 32 of the Act, the Transport Corporation should prepare and submit a budget to the State Government for approval unless there is a current budget grant coverage approved by the State Government, no sum shall be expended on behalf of the State Corporation u/s 32 (3) of the Act, even the re-appropriation of the grant under one head of expenditure to another or - the provision made from one scheme to another, is subject to conditions and restrictions specified by the State government. The accounts of the Corporation, including the Annual statement of Accounts and profit and Loss account and the Balance sheet have to be prepared in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor General of India, who shall audit the accounts annually and the accounts certified by the Comptroller and Auditor General of India should be forwarded by the Corporation to the State Government and the Government shall cause the same to be laid before the Legislature of the State.

19. With reference to recruitment, conditions of service, training, wages to be paid to the employees, reserves to be maintained and disposal of profits or stocks, u/s 34(1) of the Act, the State Government can give directions and general instructions to the Corporation to be followed by it and Section 34(2) provides that the Corporation shall not, in the exercise of its powers and performance of duties under the Act, depart from any general instructions issued u/s 34(1), except with the previous permission of the State Government.

20. Returns of the Corporation, statistics, accounts as well as other information, should be furnished to the State Government, u/s 35(1) of the Act from time to time, as may be required and a performance report is also required to be submitted by the Corporation to the Central and the State Governments and the State Government shall cause that report to be laid before the Legislature of the State.

21. Section 36 confers upon the State government, the power to appoint any person or persons to enquire into all or any of the activities of the Corporation to satisfy itself that the Corporation exercises its powers and performs its duties properly and a report shall be submitted to the State Government.

22. Section 37(1) of the Act provides that on receipt of the report u/s 36 of the Act or even otherwise, the State Government may by a notification in the official Gazette, authorise any person to take over from the Corporation, such part of the undertaking of the Corporation, as may be specified in the notification and to administer in accordance with such directions as may be issued from time to time by the State Government and the person so appointed may exercise all or any of the powers of the Corporation. Section 37 (2) provides that the remuneration and other expenses, as may be fixed by the State Government, shall be paid to a person appointed, from the funds of the Corporation and the State Government can also direct those in the custody of funds to pay that amount to that person in preference to other charges against such funds. Every such notification is also required to be laid before the Legislature of the State.

23. Section 38 of the Act confers very drastic powers on the State Government, in that it enables the State Government, with the previous approval of the Central Government, by notification in the official Gazette to supersede the Corporation, for such period as may be specified. Such supersession should be after a showcase notice is issued to the Corporation and after consideration of its explanation, objection, if any. The effect of the issue of a supersession notification is rather drastic and is provided for u/s 38(2), according to which all Directors vacate their office as such from the date of supersession and all the powers and duties to be exercised and performed by the Corporation, can be performed by such person or persons as directed by the State Government and all the property of the Corporation during its supersession, shall vest in the State Government. Section 38(3) confers powers on the State Government to extend the period of supersession or to re-constitute the Corporation in the manner provided u/s 5 of the Act.

24. Section 39 excludes the applicability to the Transport Corporation, of any law relating to winding up of Companies or Corporations and Transport Corporation cannot be placed in liquidation, without an order of the State Government concerned and only in such manner, as may be directed by that Government, though the State Government can take an order with the previous approval of the Central Government. Section 39(2) provides for the division of assets of the Corporation on liquidation after meeting its liabilities among the Central and the State Government and such other parties, as may have subscribed to the capital, in proportion to the contributions made by each of them to the total capital of the Transport Corporation.

25. The several provisions of the Act referred to earlier, make it clear that the effective control over the Corporation, as well as its activities, is vested only in the State Government. The Transport Corporation owes its very existence to a

notification by the State Government and the Chairman and other members of the Board are all appointed and removed by the State Government and even their resignation could be brought about only after giving notice in writing, to the State Government and not to the Corporation or to the Board, and the acceptance of their resignation, again not by the Corporation, but by the Government. The provisions relating to budget and accounts, required to be submitted to the State Government, which is empowered to give appropriate directions to the Corporation with respect to its functioning, which are all binding upon it, make out control by the State over the Corporation. Again it is the State Government which orders the enquiry and also for appropriate follow up action, on the basis of such enquiry reports. The power of supersession and liquidation of the Corporation, is also vested in the State Government only. No doubt, the Central Government is also mentioned in some of the provisions, but it is significant that the Central Government does not directly come into close contact with the Corporation. Borrowing, expenditure, creation of reserves, declaration of profits, allocation, appropriation and application of profits etc., have all to be done only subject to the control, approval and concurrence of the State Government. The circumstance that the State Government is obliged in certain matters to consult the Central Government or obtain its previous approval, does not result in Central Government exercising the control over the Transport Corporation. The Transport Corporation is thus a Company, which differs from others in that the provisions of the Companies Act do not apply and the whole of the statute law applicable to it is contained in the enactment; which has created it. There are no share-holders and the well-known dichotomy of management and membership, has no meaning whatever with reference to the Transport Corporation. No doubt the Transport Corporation can issue shares, but it is guaranteed by the State. However there are no share-holders either to elect the Directors or fix their remuneration. The Corporation cannot be wound up. Thus by the provisions of the Act, in form a Corporation no doubt, has been brought into existence, but the control over the affairs and activities of the Corporation is not free, in that the State Government at every stage, can hold the Transport Corporation and its activities effectively in check. It was stated by the learned counsel for the petitioner that the Board was free to function and the Corporation was at liberty to raise funds by issue of shares and also free to spend and the Board of Directors control all the functions and activities of the Corporation. We are, however, unable to accept this for the reason that though the activities of the company may seemingly appear to be in implementation of a decisions or direction of the Board, yet, it should not be lost sight of that the Chairman and the entire Board are creatures of the State Government. In the absence of the Directors in the Board not being elected at an Annual General Meeting of the Corporation by the members or the share-holders, the Board, including the Chairman, in the case of this Transport Corporation, is only a body of men appointed by the Government and owing allegiance to it. It is not unusual that such appointees who owe their appointments to the State Government, feel bound to support it and cannot act independently and completely free from the

direction of the Government. In the light of the provisions noticed earlier, it is quite possible that the Board of Directors is packed with persons who may always be inclined, in matters pertaining to the Transport Corporation- to carry out such directions as may be given by the State Government from time to time. Though control of the Corporation may mean control of the functions of the Corporation, it is seen that the effect of the several provisions of the Act, already noticed, is to have brought into existence a corporation carrying on a business enterprise and commercial activity of running or operating the transport service, with every facet of its activities being curtailed or subjected to control by the State Government. Even statutorily, the Corporation is bound by the instructions of the State Government u/s 34 of the Act, in the matter of recruitment, conditions of service, training of employees, wages to be paid reserves to be maintained and disposal of the profit or stock. Even in respect of other activities of the Corporation, as noticed earlier, the Transport Corporation is not free to act in the same manner as any other Corporation incorporated under the provisions of the Companies Act. In other words, the whole range of business activities, financial powers, constitution of the Board of Directors of the Corporation, budgetary provisions, accounts, investment of funds, declaration of profits, creation of reserves and other funds and all other related matters, are entirely governed by the provisions of the Act creating the Transport Corporation and those provisions had curtailed the freedom of the Corporation in several respects permitting several of its activities subject to the approval or concurrence or direction of the State Government. We are, therefore, of the view that the Transport corporation, the first respondent herein, is one controlled by the State Government, within the meaning of notification dated August 29, 1986, relied on by the learned counsel for the first respondent. In view of that and Section 15(2) of the Administrative Tribunal Act, 1985, the proper forum for the petitioner to seek redress, in respect of its grievances, would be the Tribunal and not this Court. We hasten to add that we are not to be understood as stating that the jurisdiction of this Court under Article 226 of the Constitution has been taken away by reason of Section 28 of the Administrative Tribunal Act, 1985, though counsel for the first respondent referred to and relied on S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, and J.B. Chopra and Others Vs. Union of India (UOI) and Others, in support of that. It has, however, been brought to our notice that the Andhra Pradesh High Court, while disposing of a batch of the writ petitions, had taken the view that Article 323-A (2) (d) of the Constitution of India, is unconstitutional in that it had empowered Parliament, by law, to exclude the jurisdiction of High Court under Article 226 and that Section 28 of the Administrative Tribunal Act, to the extent it divested the High Court of its jurisdiction, is unconstitutional and that the matter is now pending before the Supreme Court of India. The conclusion regarding the State controlled character of the Transport Corporation is based only upon a consideration of the provision of the Act, referred to earlier. In view of the character of the Transport Corporation, as one controlled by the State the notification u/s 15(2) of the Administrative Tribunal Act, 1985, would stand attracted making available to the

petitioner, an effective and alternative remedy, before the institutional mechanism of the Tribunal, in relation to service matters of the members of the petitioner Union. Though elaborate arguments were addressed by the learned Counsel for the petitioner and a large volume of case, law was also cited to contend that the powers of this Court under Article 226 of the Constitution, cannot be taken away, it is not necessary for us to go into that question, as our conclusion is rested on the only ground of availability of an alternative and effective remedy to the petitioner, in respect of the matters complained of in the writ petition. It may also be stated that though some decisions were cited with reference to the control of the State government over the Transport Corporation, it is unnecessary to refer to any of them, as the question of a Transport Corporation, being controlled by the State Government, had not been dealt with in any of those decisions, on the basis of the provisions of the Act referred to in extenso earlier, but on some other aspects which do not arise for consideration in this case.

26. Earlier, it had been pointed out that even according to the petitioner, its members are workmen and the first respondent is an "industry" and if that be so, then, it will be open to the petitioner to avail itself of the adequate remedies provided for under the Industrial Disputes Act, 1947. It may also be pointed out that in response to the representation made by the petitioner, on June 14, 1993 the first respondent had held a meeting between the representatives of the petitioner and the Management of the Himachal Pradesh Transport Corporation and the petitioner Union was asked to give some further particulars so as to consider whether the calculation of the duty-hours and payment of overtime allowance, as done earlier, require to be varied or modified, but the petitioner had not furnished the required particulars, as per the stand taken by the first respondent in paragraph 23 of its reply, which has not in any manner been demurred to in the rejoinder filed by the petitioner. It is thus clear that even now it is open to the petitioner to approach the first respondent and seek redress of the grievances of its members, if any, and without doing so, the petitioner seems to have approached this Court in a hurried manner, without exhausting the avenues available for redressing the grievances.

27. For the foregoing reasons, up-holding the preliminary objections of the first respondent, the writ petition is dismissed.