
(1992) 11 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6402 of 1991

Jagtar Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 51, 67, 68, 68B, 68F
Rajasthan Motor Vehicles Rules, 1990 — Rule 5.19

Citation : AIR 1993 Raj 47 : (1992) 2 RLW 409 : (1993) 1 WLC 482 : (1992) 2 WLN 387

Hon'ble Judges : K.C. Agrawal, C.J

Bench : Single Bench

Advocate : R.R. Vyas, for the Appellant; R.N. Munshi, for R.S.R.T.C. and L.S. Udawat, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This petition under Article 226 of the Constitution has been filed for writ of prohibition, directing the respondents not to interfere in its plying of the motor vehicle on the nationalised route as well as on non-nationalised, for which the petitioner-firm had a permit, and as such, the respondents were liable to be restrained from in any way interfering with the said right.

2. The petitioner claims that unjustifiably and illegally the policemen and transport authorities were interfering with plying of the vehicles, by checking in the night and arbitrarily asking the passengers to vacate the buses, as a result whereof, the petitioner-firm suffered its business.

3. The petitioner alleged that it held one non-temporary stage carriage permit, being permit No. 78/782 validly renewed up to 31-1-93 covered by vehicle No. RNJ 7697, Model 1985. Formerly, when the petitioner applied for a permit being granted to it, to ply the aforesaid vehicle, the Regional Transport Authority, Jodhpur, imposed a condition in the permit, not to ply on the nationalised routes,

which condition had been subsequently deleted as per the order of the State Transport Appellate Tribunal, Rajasthan, Jaipur, dated 18-4-1981. According to the petitioner, it was entitled to utilise the contract carriage, for the whole of Rajasthan, without any corridor condition. It is alleged that it deposited the special road tax and also obtained Fitness Certificate from the Transport Department.

4. The petitioner has alleged that P.CO.P. No. 78/832 belonged to Bahadur Singh, S/o Gurubachan Singh. He was similarly situated to the petitioner-firm. The said vehicle of Bahadur Singh was challenged by the Flying Squad belonging to the Transport Officer, Rajasthan, on the ground that it was not covered by a temporary permit and further that it was not accompanied by duly certified list of the passengers. Bahadur Singh, feeling aggrieved by the illegal action of the Transport Authorities in interfering with his right to ply the vehicle, when the same was going from Jodhpur to Jaisalmer, filed Writ No. 5270/91. The writ petition had been admitted and an interim stay order was passed, restraining the non-petitioners from interfering with from plying of the vehicle. Thereafter the officers and the employees of the police Department, started harassing all the contract carriage permit holders, including the petitioner when they took the tourist parties either to Jaisalmer or to Banner etc. on the policy that they would stop the vehicle, ask the passengers to step down from the same. After the passengers have got down, the vehicle would be taken empty to the place of its destination.

5. For agitating the illegal interference and its fundamental right to trade, the petitioner made a complaint to the Superintendent of Police, Barmer as well as the Superintendent of Police, Jaisalmer, but the complaints made, yielded no result. As a result thereof, the petitioner filed the present writ petition in this Court, for prohibiting the respondents from interfering with its right to ply its vehicle on the route, for which it held the permit.

6. It has been stated in the beginning that the petitioner's assertion was that it was given the permit for the whole of Rajasthan and as such, it could ply the same even on the nationalised route, irrespective of the fact that the said route had been "assigned under Chapter IV A of the Motor Vehicles Act (Old).

7. The petitioner asserted that previously a condition had been imposed on the petitioner not to ply the vehicle on the nationalised route, but the same was subsequently deleted, under the orders of the Rajasthan State Transport Appellate Tribunal. The permit, along with the note, has been filed as Anx. P/1 to the writ petition. For my purpose, since only the note is relevant, the same is quoted below:--

"Office of the Secretary, Regional Transport Authority, Jodhpur.

Permit No. 78/782 Bus No. R.R.Q. 6421 The condition imposed not to ply on nationalised route is hereby deleted as per the orders of State Transport Appellate Tribunal, Rajasthan, Jaipur, dated 18-4-81.

Sd/- :

Secretary

Regional Transport Authority,

Jodhpur."

8. The petitioner asserted that its right to ply on the nationalised route had been recognised, acknowledged and accepted by the Transport Department as well as by the High Court.

9. In support of the recognition of its right, the petitioner has stated in paragraph 7 of the Writ petition that on a condition imposed by the Regional Transport Authority, Bahadur Singh, ,who was similarly situated as the petitioner, and had also "a; permit of the same nature, the writ petition! was filed before the High Court," being No. 5270/91. This petition had been admitted in October 1991 and an ad-interim order was also passed.

10. Learned counsel for the" petitioner urged that the police officers and the Transport Authorities were creating unjustified and illegal hindrance in the right of the petitioner, to ply the vehicle on the nationalised route and even otherwise. He urged that as per rule 5. !9 of the Rajasthan Motor Vehicles Rules, 1990, which came into force with Effect from 16-7-90, there" was no necessity for preparing a list of passengers duly certified by Transport or Police" Authorities.

- - . 11. His submission was that requirement of preparing a list of passengers travelling by the vehicle or the bus, apply to cases of All India Tourist"s" Permit and not to contract carriage permit. Rule 5.19 applicable to the petitioner, did not require the same. Rule 5.19(iii) of the Rajasthan Motor Vehicles Rules, 1990 is being quoted below:--

R.5.19(A) Additional conditions in" respect of certain permits.-

(1)& (2).....

(in) that in case of a contract carriage, having seating capacity more than 12 in all, thfe vehicle shall carry a list of passengers travelling therein in the following form in respect of each trip and such list shall on demand be produced before the officer of the Transport Department, not below the rank of Motor Vehicle Sub-Inspector."

12. I have considered the question of applicability of Rule 5.19 in case of All India Tourist Permit in Shyam Lal Kabra V. State of Rajasthan and others (S.B. Civil Writ Petition No. 350/92) and have negated the condition raised,therein. The Central Rules framed by the Government of India applied to those vehicles.

13. In this case, the controversy is slightly different,; inasmuch as the applicability is of Rule 5.19(iii), In my view, the said rule does not dispense with the requirement of preparing the list of passengers, in the form prescribed and no exception could be taken to the same. Moreover, it was such a trivial matter

that the petitioner could raise the controversy before the authorities themselves and was not justified to file a writ petition under Article 226 of the Constitution.

14. As I am unable to find any apparent error in requiring the petitioner to prepare a list of passengers, I am unable to uphold its submission. The petitioner has not filed any documentary or other evidence, which could prove that it had been harassed or put to any loss, on account of being asked to prepare the list of passengers. The ground sought for interference in this writ petition, appears to be imaginary and without any basis;. On imaginary grounds, power under Article 226 of the Constitution, can neither be invoked nor be exercised.

15. Coming to the next point about the right to ply the vehicle on the nationalised route, it may be relevant to point out that the submission of the petitioner's counsel to that effect, is untenable, even if it was correct that the State Transport Appellate Tribunal had permitted to do so, the right of the petitioner to ply on the, natipnalised route has ,to ,be judged and decided on the basis of the various provisions contained,in the. Motor Vehicles Act, . .

16. Chapter IV-A deals with ; Special Provisibns relating to State Transport Undertakings. Sections 68A is a definition section. Section 68B, which is an important provision lays "down:--

""68B. Chapter IV-A to override Chapter, IV and other Jaws.,-- The provisions, of this Chapter and the rules, and orders made the" re-,under shall Have effect notwithstanding anything" inconsistent there with contained : in Chapter IV of this Act or any other law for" the time being in force or in any-instrument having effect by virtue of any such law." "

17. From the above, it appears that it overrides the provisions of Chapter IV. The petitioner obtained the permit under Chapter IV. Consequently, anything said to the contrary in this Chapter IV-A, would override and supersede the rights conferred by Chapter IV.

18. Section 6SB is a non obstante clause. It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some, contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect to all contrary provisions.

19. It operates to remove obstacles contained in the relevant existing laws which come in the way of giving effect to the provisions contained in the enactment, to which" the non-obstante clause is attached.

20. True it is that the non-obstante clause cannot be construed to widen the scope and effect of the enactment to which the non-obstante clause is attached nor can a non-obstante clause be interpreted to water down the natural scope and effect of the enactment to which it is attached.

21. Section 68C deals with preparation and publication of scheme of road

transport service" of a State Transport Undertaking. Thereafter, the provisions following the same laid down the procedure in accordance with which the scheme would be finalised.

" 22. u/s 68F, permits are issued to the State Transport Undertakings. Under the said provision, the route nationalised, confers exclusive" right On the State Road Transport Corporation, to ply the vehicle. It has been held in Ram Krishna Verma and Others Vs. State of U.P. and Others, as under (at page 1892):--

" "Draft "scheme u/s 68-C and approved under S. 68-D of Chapter IV-A of the Repealed Act (Chapter VI of the Act), is a law and it has overriding effect"over Chapter IV of the repealed Act (Chapter V of the new Act of 1988). It operates against everyone unless it is modified. It excludes private operators from the area or route or a portion thereof covered under the scheme except to the extent excluded under that scheme itself. The right of private operators to apply for and to obtain permits under Chapter IV of the repealed Act (Chapter V of the Act) has been frozen and prohibited."

23. It is clear from the observations made by the Supreme Court and the various provisions to which reference has been made in the judgment that the final scheme excludes private operators from the area or route or a portion thereof.

24. It was not disputed before me that there was a final scheme in respect of the route in question and that as a result, the petitioner did not have any right to ply the vehicle on the route in question.

25. The scheme produced by Mr. R.N. Munshi, support his contention that the plying of the stage carriage, as well as the contract carriage, had been excluded. This controversy came up for consideration" in Bhanwar Singh Vs. State of Rajasthan and Others, and Rajasthan State Road Transport Corporation Vs. Regional Transport Authority, Jaipur and Another, and in the latter case, the view taken was, where an approved scheme for nationalisation of routes prohibited provision of private transport services on the notified routes, there was no power to grant" renewal of permits existing at the time of enforcement of the draft scheme. Reference to several decisions have been. made. ,

26. In my view, the permit, on the strength of which the petitioner is claiming its right to ply its vehicle on the nationalised route runs counter to Chapter IVA and as such, the" owner of the permit had to be excluded from plying of vehicles prohibited by the scheme finalised. The permit, to the extent that it allowed the vehicle to be plied on nationalised route, had no legal force or effect. It was void, being contrary to the mandatory provisions of Section 68-F of the Motor Vehicles Act What is void, has no existence in the eye ,of law.

27. u/s 68-F(2); for the purpose" of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority, has been given various powers, including , that of cancellation or modification of the existing permit. Such being the position, the petitioner could not claim any right

on its basis.

28. For the reasons given above, the writ petition fails and is dismissed with costs, which is fixed at Rs. 500/-.