

(1986) 03 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 888 of 1984

Kanhaiyalal Lunaji Padiyar

APPELLANT

Vs

Regional Transport Authority, Indore

RESPONDENT

Date of Decision : 12-03-1986

Acts Referred:

Constitution of India, 1950 — Article 15(4), 46
Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 78A, 78B
Motor Vehicles Act, 1939 — Section 47, 47(1A), 47(3)

Citation : (1986) 2 ACC 314 : AIR 1986 MP 251 : (1987) ILR (MP) 470 : (1986) 31 MPLJ 689 : (1986) MPLJ 689

Hon'ble Judges : J.S. Verma, Acting C.J.; B.M. Lal, J

Bench : Division Bench

Advocate : S.L. Saxena, Dy. Advocate General, V.S. Dabir, for the Appellant;

Final Decision : Dismissed

Judgement

B.M. Lal, J.

The order passed in this petition shall also govern the disposal of the connected Miscellaneous Petition No. 252 of 1984 (Bapulal Kesharimal & Company v. Regional Transport Authority, Ujjain and Anr.), No. 878 of 84 (Akhtari Begum & Sons and Anr. v. Regional Transport Authority, Ujjain and Anr.). No. 3469 of 1984 (Vijay Motor Transport Co. v. State of Madhya Pradesh and Anr.), No. 725 of 1983 (Ramesh Chand v. Regional Transport Authority, Indore and Anr.), No. 1599 of 1985 (Ramprasad Purohit and Anr. v. State of M. P. and Anr.), and No. 3195 of 85 (M. P. State Road Transport Corporation through its Managing Director v. State of Madhya Pradesh and Anr.).

These petitions are under Articles 226 and 227 of the Constitution of India.

The petitioners who are bus operators, are seeking to quash the notifications issued by the various Regional Transport Authorities, wherein reservation of bus routes for Scheduled Castes and Schedules Tribes has been notified, on the

ground of discrimination. They have further sought that Rules 78-A and 78-B of the Motor Vehicles Rules 1977 (hereinafter referred to as the "Rules") in this regard be declared ultra vires.

The facts leading to this and the other connected petitions, as stated above, are as under. The petitioners are carrying on the business of motor transport on the strength of permits granted to them by the respective Regional Transport Authorities of the State. Section 47 of the Motor Vehicles Act, 1939 (hereinafter referred to as the "Act"), by an Amending Act No. 47 of 1978, has been amended radically by introducing Sub-sections (1-A) to (1-G) to Section 47 of the Act. These amended provisions read as under :

"47. Procedure of Regional Transport Authority considering application for stage carriage permit.

(1) xxx xxx xxx (1-A) The Government of a State shall reserve in that State certain percentage of Stage carriage permits for the Scheduled Castes and Scheduled Tribes.

Explanation :-- In this section and in sections 55 and 63, "Scheduled Castes" and "Scheduled Tribes" have the meanings respectively assigned to them in Article 366 of the Constitution.

(1-B) The reservation of permits under Sub-section (1A) shall be in the same ratio as in the case of appointments made by direct recruitment to Public services in the State.

(1C) The Government of State may, having regard to the extent to which persons belonging to economically weaker sections of the community have been granted stage carriage permits in that State.

(a) reserve in that State such percentage of stage carriage permits, as may be prescribed, for reasons belonging to economically weaker sections of the community; or

(b) notwithstanding anything contained in the proviso to Sub-section (1), give preference, in such manner as may be prescribed, to applications for stage carriage permits from such persons.

Explanation I.-- In this section and in Sections 55, 63 and 68, a person shall be deemed to belong to economically weaker section of the community, if and only if, on the prescribed date-

(a) the annual income of such person together with the annual income, if any, of the members of his family, or

(b) the extent of land (whether in one class or in different classes) held by such person together with that, if any held by the members of his family; or

(c) the annual income and the extent of land aforesaid, does, or do, not exceed such limit, as may be prescribed.

Explanation II.-- For the purposes of Explanation I, "family", in relation to an individual, means the wife or husband as the case may be, of such individual and the minor children of such individual.

(1D) The number of permits reserved under Sub-section (1B) and Clause (a) of Sub-section (1C) shall not exceed fifty per cent of the total number of stage carriage permits granted during a calendar year.

(1E) In giving effect to the provisions of Sub-section (1B), and Clause (a) of Sub-section (1C), the Regional Transport Authority or the State Transport Authority may, if it considers necessary or expedient so to do, group the various routes within its jurisdiction.

(1F) Where any stage carriage permit is to be granted from the quota reserved under Sub-section (1B) or Clause (a) of Sub-section (1C) to any co-operative society registered or deemed to have been registered under any enactment in force for the time being or any firm to which the provisions of the Indian Partnership Act 1932 apply, no permit shall be granted to such society or firm unless the members of the Co-operative Society or the partners of the firm belong to the Scheduled Castes, the Scheduled Tribes or economically weaker sections of the community;

Provided that where the members of such co-operative society or the partners of such firm are partly from the Scheduled Castes, partly from the Scheduled Tribes and partly from the economically weaker sections of the community, or from any two of, these categories, any permit under this sub-section shall be granted to such society or firm only from the quota reserved for the category to which the largest number of members of the co-operative society, or, as the case may be partners of the firm, belong.

Provided further that where no reservation has been made in the State for economically weaker Sections of the community under Clause (a) of Sub-section (1C), no permit under this sub-section shall be granted to a cooperative society or firm unless the members of such society or partners of such firm belong to the Scheduled Castes or the Scheduled Tribes or partly to the Scheduled Castes and partly to the Scheduled Tribes and the permit to such society or firm shall be granted only from the quota reserved for the Scheduled castes or the Scheduled Tribes according as to whether the larger number of the members of the co-operative society, or partners of the firm, belong to the Scheduled Castes or the Scheduled Tribes.

(1G) The circumstances under which, the manner in which, and the extent to which, reservation under Sub-section (1-A) and Clause (a) Sub-section (1C) may be carried forward shall be such as may be prescribed.

(1H) xxx xxx xxx (2) xxx xxx xxx (3) xxx xxx xxx"

Similarly, by Section 27 of the Motor Vehicles (Amendment) Act, 1978 (47 of 1978), the original Section 68 of the Act has been amended by insertion in Sub-

section (2) after Clause (c) as under :

"(C1) The percentage of stage carriage permits, public carrier permits or National Permits to be reserved u/s 47 or Section 55 or Section 63 for economically weaker Sections of the community."

The aforesaid amendment to Section 68 of the Act gives power to the rule making Authority to amend the Rules. Accordingly, the State Government has made Rules 78-A and 78-B by amending the Madhya Pradesh Motor Vehicles Rules, 1974, which read as under:

"78-A. Reservation of permits for Scheduled Castes and Scheduled Tribes.-- (i) From the date of the commencement of the Motor Vehicles (Amendment) Act, 1978 (No. 47 of 1978) and subject to the provisions of Sub-section (1-D) of Section 47, Sub-section (1-A) of Section 55 and Sub-section (11-A) of Section 63, there shall be reserved in the State 15 per cent, and 18 per cent of the stage carriage permits public carriers permits and national permits as the case may be, for the Scheduled Castes and the Scheduled Tribes, respectively.

(2) The permits reserved for Scheduled Castes and Scheduled Tribes under Sub-rule (1) shall, as far as possible, account for 15 and 18 per cent respectively of the total mileage under each category of routes, which may be grouped together under Sub-section (1E) of Section 47.

78-B, Manner of reservation of permits for Scheduled Castes and Scheduled Tribes. The reservation for Scheduled casts and Scheduled Tribes under rule 78-A, shall be carried out in the following manner : --

(i) Each RTA/STA shall reserve 15 and 18 per cent respectively of the stage carriage permits, public carriers permits and national permits within their respective jurisdiction for grant to persons belonging to Scheduled castes and Scheduled Tribes.

(ii) Each RTA/STA shall maintain a roster of stage carriage permits, public carrier's permits and national permits indicating therein the permits reserved for Scheduled Castes and Scheduled Tribes;

(iii) The roster shall, in the first instance, include all new stage carriage permits included in the order passed under Sub-section (3) of Section 47 and thereafter all stage carriage permit applications as and when received under Sub-section (2) of Section 57;

(iv) While publishing an application for grant of stage carriage permit or public carrier's permit under Rule 73 and hearing of the application and objections under Rule 74, the RTA shall indicate whether a particular permits is/are reserved for Scheduled Castes or Scheduled Tribes as the case may be, in accordance with the roster and also indicate that applications may also be made by other persons which may be considered in case no applications are received from the Scheduled Castes or Scheduled Tribes of that no suitable applicants are

found amongst them;

(v) While reserving permits for Scheduled castes and Scheduled Tribes in the roster and also while granting permits the RTA/STA may, as far as possible, looking to local circumstances ensure that 15 and 18 per cent respectively of the total mileage in his jurisdiction for which permits are granted or under each category of routes, which may be grouped together under Sub-section (1-E) of Section 47 is covered by the permits granted to them;

(vi) In case no applications are received from persons belonging to Scheduled Castes or Scheduled Tribes or if no suitable applicants are found amongst them, the permit shall be treated as unreserved, and shall be granted to other persons;

(vii) The number of reserved permits granted to persons, not belonging to Scheduled Castes and Scheduled Tribes during a calendar year shall be carried forward to the next year and added to the number of reserved in that year for these categories but the number of, reservations shall not exceed fifty per cent of the total stage carriage permits granted during a year. Also, the number of reserved permits shall not be carried forward beyond one year after which they shall be considered as lapsed;

(viii) In case a permit included in the roster is granted to the State Transport Undertaking the relevant number in the roster shall be deleted and the roster shall be re-numbered

In all the petitions the main contention of the learned counsel Shri V.S. Dabir, Shri B.K. Rawat and Shri S.Q. Hasan, appearing for the petitioners is that the reservations made in favour of Scheduled Castes and Scheduled Tribes, which have been introduced by amending Section 47-(1A) to (1G), are discriminatory in nature and violative of Articles 14 and 15 of the Constitution of India and therefore, the same may be struck down. They have further submitted that by way amendment Rules 78-A and 78-B have been added to the Rules. The provisions of these newly added Rules are without guidelines and as such the scheme as envisaged for Scheduled Castes and. Scheduled Tribes, cannot be legally implemented. Therefore, the said newly added rules may also be struck down.

On the other hand, the learned counsel appearing for the respondents supported the amendment to Section 47 of the Act and to the Rules by adding Rules 78-A and 78-B and submitted that there is no discrimination of any nature on which either the amendment to Section 47 of the Act or to Rules, be declared ultra vires in any manner whatsoever. It is further submitted that amendment to Rules by adding Rules 78-A and 78-B prescribes full guidelines and therefore, no interference is called for.

After hearing the arguments and giving our anxious thoughts to the point in issue, we have reached the conclusion that these petitions must be dismissed.

Under Section 47 of the Act, the respective Regional Transport Authorities have

power to limit the number of stage carriages in view of Sub-section (i) of Section 47 of the Act, prescribing the stage carriages of general or of any specified type, for which permit can be granted for any specified area or route within the territorial jurisdiction of such Regional Transport Authority.

Amendment to Section 47 of the Act, which makes provisions for reservation of permits for the interested members of Scheduled Castes and Scheduled Tribes and other weaker sections of the society, has been made by inserting Sub-sections (1A) to (1G) as reproduced above, in order to carry out the reservation policy which is in consonance with the provisions of Article 15(4) read with Article 46 of the Constitution and therefore, in order to carry out this reservation policy, in order to provide guidelines to the amended provisions of Section 47 of the Act, the State Government has framed rules by inserting Rules 78-A and 78-B, as reproduced above. These amended provisions of Section 47 of the Act came into force with effect from 18-9-1981 vide Notification No. 7-11-79-II-A(2) dated 9-9-1981 and thereafter the respective Regional Transport Authority, while giving effect to these amended provisions of Section 47 of the Act, notified the routes.

In order to deal with the controversy under issue, it will be better to examine the scheme of the Act. The object of Section 47 of the Act is to avoid nepotism and manipulation, and so fixation of number of vehicles to be operated in the region or the area or on a particular route, must precede consideration of the applications for grant of permits and the fixation of number of vehicles cannot be made while entertaining applications. This view is well settled by the decision of the Supreme Court in *R. Obliswami Naidu Vs. The Additional State Transport Appellate Tribunal, Madras and Others*, .

In view of the newly added Rules 78-A and 78-B to the Rules, the learned counsel Shri V.S. Dabir for the petitioners argued that because of the lack of guiding principles, implementation of the amended provisions of the Rules, is not possible. He further argued that in inter-regional routes, it is difficult to carry out the scheme of reservation of 15 per cent and 18 per cent for Scheduled Castes and Scheduled Tribes in view of the provisions of Section 47(3) of the Act. In our opinion, the contentions of the learned counsel is devoid of any substance.

The newly added Rules 78-A and 78-B of the Rules make provision for reservation of permits for Scheduled Castes and Scheduled Tribes. The manner of reservation has been prescribed by which the respective Regional Transport Authority/State Transport Authority shall maintain a roster of stage carriage permits, public carrier permits, national permits etc., indicating therein the permits reserved for Scheduled Castes and Scheduled Tribes. According to it, the roster shall in the first instance include all new stage carriage permits including those mentioned in the order passed under Sub-section (3) of Section 47 of the Act and thereafter all applications for stage carriage permits as and when received under Sub-section (2) of Section 57 of the Act shall be considered.

While publishing applications for grant of stage carriage permits or public carrier

permits and deciding objections under Rule 74 of the Rules, the Regional Transport Authority shall be obliged to indicate whether a particular permit or permits is/are reserved for Scheduled Castes or Scheduled Tribes, as the case may be, in accordance with the roster and he is further obliged to indicate: that applications may also be made by other persons, which may be considered in case no other applications are received from the Scheduled Castes or Scheduled Tribes or that no suitable operators are found amongst them.

It is further clear from the Rules that while reserving permits for Scheduled Castes and Scheduled Tribes in the roster and also while granting permits the Regional Transport Authority/State Transport Authority may, as far as possible, looking to the local circumstances, ensure that respectively, for Scheduled Castes and Scheduled Tribes 15 per cent and 18 per cent permits of the total mileage in his jurisdiction for which permits are granted under each category of routes which may be grouped together under Sub-section 1(c) of Section 47, is covered by the permits granted to them. It is further clear from the said rule that in case no applications are received from persons belonging to Scheduled Tribes and Scheduled castes, or if no suitable applicants are found amongst them, the permits in question shall be treated as unreserved and shall be granted to other persons.

In the newly added Rules we further find that the number of reserved permits granted to persons, not belonging to Scheduled Castes and Scheduled Tribes, during a calendar year, shall be carried forward to the next year and added to the number of reserved permits in that year for these categories, but the number of reserved permits shall not exceed 50 per cent of the total number of stage carriage permits granted during the year. Further also the number of reserved permits shall not be carried forward beyond one year after which they shall be considered as lapsed.

It is also laid down in the Rules that in case a permit is included in the roster and it is granted to State Transport Undertaking, the relevant number in the roster shall be deleted and the roster shall be renumbered.

Therefore, Rules 78-A and 78-B of the Rules prescribe the full and complete manner of reservation of permits for Scheduled Castes and Scheduled Tribes and leave no room to create any vacuum of guide-lines to the respective Regional Transport Authorities in implementation of the reservation policy for Scheduled Castes and Scheduled Tribes and, therefore, in our opinion, the submission made on behalf of the petitioners by Shri Dabir that for want of guide-lines, Rules 78-A and 78-B of the Rules, be declared ultra vires, has no substance and must be repelled.

It is next argued on behalf of the petitioners by Shri Dabir that for inter-regional routes how the reservation of permits is to be made for Scheduled Castes and Scheduled Tribes, keeping in view the percentage of 15 and 18 per cent, is not clear from the provisions made in the impugned Rule and, therefore, on this

basis alone, the Rule be declared ultra vires.

In this respect, as discussed earlier relating to the scheme of the Act, we find that, limit of number of permits is required to be fixed before the grant of permit so as to give proper effect to the provisions by fixing the number of permits, before the applications for grant of permits, are invited u/s 57(2) of the Act and in other cases, before applications for grant of permits are published u/s 57(3) of the Act to enable interested persons to make representations. The central idea is that the applicants and those who will make representation should all know the limit of permits to be granted, to ensure thorough and fair competition.

It is also clear from the provision of Section 47 of the Act, keeping in view its scheme that while fixing the limit of the number of stage carriage permits, the Regional Transport Authority is not obliged to hear the bus operators. It is a settled view that for inter-regional routes, Section 47(3) of the Act has no application and therefore in such cases the respective Regional Transport Authorities after mutual deliberations, on meeting of mind, may settle the grant of permit and accordingly accord counter-signatures. (See Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc., .

For these reasons there is no difficulty in fixing 15 and 18 per cent reservation of permits for Scheduled Castes and Scheduled Tribes, as provided under the Rules, either for stage carriage permits or for inter-regional permits. The Rules not only provide for the reservation of permits at the rate of 15 per cent and 18 per cent respectively for Scheduled Castes and Scheduled Tribes, but also prescribe the manner in which the roster is to be prepared and permits are to be granted.

In all the petitions the learned counsel for the petitioners failed to point out that only trunk-routes have been reserved for the Scheduled Castes and the Scheduled Tribes, creating discrimination, whereas it is conceded that only the branch routes have been reserved. Therefore, the respective Regional Transport Authorities in the State while exercising their discretion in respect of reservation of routes and granting permits to the Scheduled Castes and Scheduled Tribes, by keeping in view all the various circumstances, particularly, convenience of the members of the Scheduled Castes and Scheduled Tribes, issued notifications relating to reservations of routes vide Annexures A and B, which in our opinion, cannot be said to be unjustified involving question of ultra vires of the amended provisions of Section 47 of the Act and Rules 78-A and 78-B of the Rules, on the ground of discrimination in any manner whatsoever.

Besides this, the reservations of routes have been done in the tribal areas of the State, consisting of higher percentage of tribal population.

In this regard validity of reservation of permits for socially and economically weaker section of the society and the Scheduled Castes and Scheduled Tribes, has to be judged by the specific conditions laid down in Article 15(4) of the Constitution, whereas the validity for reservation for other classes has to be decided on the basis of requirement of Article 14 of the Constitution. If these two

provisions are examined then keeping in view the provisions of Article 15(4) of the Constitution, we do not see that by reserving quota for route permits for Scheduled Castes and Scheduled Tribes under the amended provisions of Section 47 of the Act and Rules 78-A and 78-B of the Rules, there is any discrimination with general classes of the society.

In a recent case of K.C. Vasanth Kumar and Another Vs. State of Karnataka, while delivering the Judgment, Hon"ble Mr. Justice A.P. Sen has expressed his opinion thus:

"Economic backwardness is only one of the tests to determine social and educational backwardness. If that test were to be the sole criterion of social and educational backwardness, reservation for the advancement of such classes to special treatment under Article 15(4) would fail. The predominant and the only factor for making special provisions under Article 15(4) or for reservations of posts and appointments under Article 16(4) should be poverty, and caste or a sub-caste or a group should be used only for purposes of identification of persons comparable to Scheduled Castes or Scheduled Tribes, till such members of backward classes attain a state of enlightenment and there is eradication of poverty amongst them and they become equal partners in a new social order in our national life.

Thus, reservation of permits in favour of Scheduled Castes and Scheduled Tribes is not in any way unconstitutional and in our opinion, must continue as it is.

We are of the opinion that in order to safeguard the interests of the economically backward classes, it is essential that the privileged society should not be permitted to monopolise preferential benefits. The amendment of Section 47 of the Act and the adding of Rules 78-A and 78-B to the Rules, eliminate the possibility of monopolising.

The concept of backward classes of Scheduled Castes and Scheduled Tribes enumerated under Articles 15(4) 338(3) 340(1) of the Constitution is not relative in the sense that any class which is backward in relation to the most advanced class in the community/society, must be included in it. Article 15(4) refers "backward classes" and not "backward castes" and therefore, the argument of the learned counsel Shri Dabir for the petitioners that the reservation is not extended to other backward castes is of no avail, as Article 15(4) of the Constitution only refers to "Backward classes" and not "backward castes". In this regard we must observe that Article 15(4) does not prescribe any limit on the power of the Government to make reservations. The only limitation is that these reservations should not be excessive or extravagant so as to defeat the purpose of Article 14 or Article 15(1) of the Constitution. Further, it should not be for personal favour of political patronage, but it should always be related solely to the very existence of such classes in consonance with the Directive Principles of State Policy embodied in Article 46 of the Constitution.

The learned counsel for the petitioner could not point out that by keeping

reservation u/s 47 of the Act and Rules 78-A and 78-B of the Rules for Scheduled Castes and Scheduled Tribes, a patronage of particular kind has been extended to a particular caste or tribe. Scheduled Castes and Scheduled Tribes have been recognised as reserved "class" and therefore, in our opinion, there is no discrimination and thus the socially, educationally and economically backward Scheduled Castes and Scheduled Tribes, cannot be equated with "castes" under Article 15(4) of the Constitution.

In this regard we must point out that the object of reservation under Article 15(4) of the Constitution is to recognise the factual existence of socially, educationally and economically backward classes in our country and to make a sincere attempt to promote the welfare of the weaker section of the society.

Lastly, the learned counsel on behalf of the petitioners argued with vehemence that amendment to Section 47 of the Act and the Rules is discriminatory in nature inasmuch as the Scheduled Castes and Scheduled Tribes will not only get preference in reserved quota but in general quota also they can apply and as such they are doubly benefited, amounting to discrimination. We are unable to accept this argument of the learned Counsel.

The object of reservation under Article 15(4) of the Constitution is with a view to advancing the cause of weaker sections of the society, which, in our opinion, is a sacred duty cast upon the welfare State by the Directive Principles enumerated in Article 46 of the Constitution. Despite the fact that the Scheduled Castes and Scheduled Tribes are treated as backward and economically weaker, section of the Society and they come within the protected class under Article 15(4) of the Constitution, it does not take away the right of that Class from competing on the general merit basis amongst other general classes.

Therefore, in our opinion, the amendment to Section 47 of the Act by inserting Sub-sections (1A) to (1G) and making Rules 78-A and 78-B of the Rules, has been done for giving effect to the policy of the State towards achieving the goal on the principles embodied in Article 46 of the Constitution and hence the same is protected under Article 15(4) of the Constitution and the said amendment to the Act and the Rules, is not either ultra vires to Constitution on the ground of discrimination or that the provisions of Rules 78-A and 78-B of the Rules lack guiding principles for their implementation.

From the discussion aforesaid, all the petitions fail and are hereby dismissed with costs. Counsel's fee Rs. 250/- in each set of petition, if certified. The security amount, if any, shall be refunded to the petitioner.