
(1983) 11 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1770 of 1978 and Civil Miscellaneous No. 2631 of 1983

Krishna Bus Service Private Limited

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-11-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Motor Vehicles Act, 1939 — Section 133
Punjab Motor Vehicles Rules, 1940 — Rule 10.2

Citation : AIR 1984 P&H 137 : (1984) 2 ILR (P&H) 411

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Judgement

1. The petitioner transport company impugns the notification issued as 16, 1975 (Annexure P. I) vide which the General Manager, Haryana Roadways has been authorized to exercise the powers of a Deputy Superintendent of Police for carrying into effect the provisions of the Motor Vehicles Act, 1939 (for short, the Act) by way of amendment of Rule 10.2 of the Rules, known as Punjab Motor Vehicles Rules, 1940, on a wide variety of grounds. This challenge is based on the following facts.

2. Petitioner runs twelve return trips daily on the inter-State Delhi-Hissar route on the basis of the permits granted by the State Transport Authority. Delhi and duly countersigned by the Regional Transport Authority, Hissar. These permits have been granted as a result of the reciprocal arrangement between the States of Haryana and Delhi in terms of Section 63 of the Act. For sometime past, the State of Haryana has completely nationalized the transport services in the entire State and thus the private operations stand eliminated. General Manager, Haryana Roadways, respondent No. 3, controls the operation of services and staff of the Roadways working in Hissar Dept. Out of his multifarious duties, one is to apply for permits to the transport authorities of the State and to Delhi authorities for the countersignatures of those permits. According to the petitioner

this obligation makes the General Manager, Haryana Roadways "an Operator running by services on the abovenoted route." He, along with the petitioner, is also required to frame a joint timetable for running their buses according to running schedule. Since according to the petitioner the buses of the respondent State are "rickety" and "frequently out of order" and cannot possibly complete in efficiency and many other matters with the buses running by the petitioner, "a bad blood and unhappy relations have developed between the petitioner respondent No. 3." On account of the abovenoted background and in consonance with the avowed policy of the State Government not to allow private operators to operate within the boundaries of the Haryana State, respondent No. 3 started to harass and challan the petitioner company in exercise of his newly conferred powers as a police officer. Petitioner's case further is that as a result of some extraneous reasons and the reckless exercise of the abovenoted power, the company has been challaned more than fifteen times during the period January 6, 1978 to mid-April, 1978. It is also highlighted on its behalf that for somewhat similar omissions and commissions done by the staff of the Roadways, their buses are not checked or challaned by this officer. Petitioner claims to have made along with private operators a number of representations to the Chief Minister and the Transport Minister, Haryana, but without any result. In the light of these facts, it is sought to be contended on its behalf that:--

- (i) The Act does not contemplate the contemplate of powers of a police officer on an operator or his servants or officers;
- (ii) To confer such powers on State officials who have to perform the role of an operator and not to confer similar powers on private operators, is an act of discrimination and is violative of Art. 14 of the Constitution of India;
- (iii) The conferment of the abovenoted powers on the General Manager, Haryana Roadways, and the exercise of the same in a reckless manner against the petitioner amounts to unreasonable restriction on the carrying on the transport business or trade by the petitioner company and is thus derogatory to the provisions of Art. 19(1)(g) of the Constitution; and
- (iv) Secretary to Government, Haryana, Transport Department, under whose signatures the impugned notification has been issued, was not competent to issue the same as in accordance with the delegation of powers under Art. 166 of the Constitution the Department of Police and the authority to confer police powers on an officer of the State vests in the Home Department of the State Government and not the Transport Department.

3. As against this. the case of the respondent State is that the conferment of powers of a Deputy Superintendent of Police an the General Manager. Haryana Roadways, in exercise of its powers u/s 133-A of the Act for the limited purpose of carrying into effect the provisions of the Act is not in any way derogatory to any of the provisions of the Constitution of India. Besides justifying the action taken by the said officer and denying that there was any bad blood or unhappy

relationship between the parties, it is highlighted on its behalf that the petitioner has all and every opportunity to impugn the action of the General Manager in a Court of law, when it is put on judicial trial as a result of the challans prepared by him against it.

4.? In order to examine the merits of the abovenoted contentions raised on behalf of the petitioner, it is but necessary to notice the following relevant provisions of the Statute and the rules:--

"Section 133-A. Appointment of Motor vehicles Officer:--

(1) The State Government may, for the purpose of carrying into effect the provisions of this Act. establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

....."

Rule?10.2, Classification of officers:--

(1) There shall be five classes of the staff, namely:

Class I, Class II, Class III, Class IV and Class V.

(2) The officers included in each class and the police powers exercisable by them under the Act. shall be as noted below against each. The police powers exercisable by officers of the Transport Department are in respect of Motor Vehicles Offences under the Motor Vehicles Act, 1939, only.

... ..

Class II

(a) Secretaries, Transport (b) Extra Assistant Transport Controller (O) (c) Extra Assistant Transport Controller (T) port (d) General Manager, Haryana Roadways. Regional Authorities. Powers exercisable by a Superintendent of Police. Ditto Ditto Powers exercisable by a Deputy Superintendent of Police.

As already indicated, this clause (d) has been added to the abovenoted rule by way of amendment with the issuance of the impugned notification Annexure P. 1. On examining the abovenoted contentions ad seriatim in the light of the submissions of the learned counsel, my conclusions are as follows:

5. To support the first three contentions, the learned counsel for the petitioner places primary reliance on a Single Bench judgment of the Allahabad High Court reported as Junta Motor. Transport v. State of U. P. Lucknow 1970 All 810. On a perusal ***** this judgment I find that the first two contentions can straightway be rejected in the light of the reasoning adopted therein. Otherwise also I am of the considered view that General Manager, Haryana Roadways, who has been authorized vide Annexure P. 1 to exercise the police Powers of Deputy Superintendent of police for purposes of carrying out the provisions of the Act cannot be styled as an "operator" merely on the ground that one of his varied

duties is to apply for the grant of transport permits in favour of Haryana Roadways or to present the same for countersignatures by the Delhi authorities. He being a Government official has no personal interest in the whole affair, He only manages the transport business on behalf of the State. No mala fides or extraneous considerations can be attributed to him or justifiably assumed about his working merely on the ground that the petitioner's buses have been repeatedly checked by him and challaned for violation of the rules. As already pointed out and highlighted by the respondent authorities, the only result of those challans is that the petitioner is made to face a summary but judicial trial. It is at liberty to take up any defences and show to the Court concerned that it is not guilty of the alleged violation of the rules or the provisions of the Act. Further, the Act does not lay down the class or classes of persons on whom the powers of a police officer exercisable under the Act can be conferred. No restrictions in the exercise of this power by the State Government can be read into the provisions of S. 133-A of the Act. It deserves to be highlighted here that in this petition there is not even a remote challenge to the vires of the provisions of S. 133-A which provisions authorises the State Government to confer the police powers on one of its officers to carry out the provisions of the Act. Rather Mr. D. S. Nehra, learned counsel for the petitioner, very fairly and frankly conceded at the time of arguments that the constitutionality of this provision of the statute cannot possibly be impugned on any round. If that be so, as it is, then how can the State Government be required to confer the abovenoted powers on a particular category of officers. It again deserves to be noticed that the learned counsel does not in any way challenge the validity of the conferment of superior powers of a Superintendent of Police on officers mentioned in categories (a), (b) and (c) of Class II Officers in this rule Those officers too are as much the officer of the State as the General Manager. Haryana Roadways, mentioned in category (d) is.

6. At the time of hearing, the learned counsel also raised a half-hearted argument that the powers conferred on the General Manager, Haryana Roadways being excessive and arbitrary which can reasonably be misused by him and as per the case of the petitioner, these have actually has been misused by him the notification or the route conferring those powers on him be held as violative of Art. 14 of the Constitution. Though the learned counsel did not cite any principle or precedent in support of this contention of his, yet I find the same to be totally devoid of any merit for the reason that the mere possibility that there may be abuse of power given by law, cannot be a ground to strike down the validity of the law. In their celebrated judgment In Re: The Special Courts Bill, 1978, , a special Bench of seven Hon"ble Judges of the Supreme Court. after examining numerous earlier cases which dealt with different facets of the problems arising under Art. 14 of the Constitution, stated thirteen propositions which emerged from those judgments and the proposition stated at No. 10 which is relevant to the facts of this case, is in the following words:--

"Whether a law conferring discretionary powers on an administrative authority is

constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur: but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power."

Thus, I repel the first two contentions of the learned counsel.

7. So far as the challenge mentioned at No. (iii) above is concerned, the abovenoted Allahabad High Court judgment no doubt completely supports the stand of the learned counsel, yet I find that this pronouncement is in complete disregard of a chain of authorities of the Supreme Court, such as:--

1. State Trading Corporation of India Ltd. v. Commercial Tax Officer AIR 1963 SC 1811;

2. The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs, Calcutta and Others, ;

3. Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, ;

4. The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, ; and

5. Municipal Committee, Amritsar v. State of Punjab AIR 1989 SC 1100,

wherein it has been held that a Corporation or a company is not a citizen for purposes of the Constitution and thus cannot claim the rights mentioned in Art. 19 of the Constitution. It is the conceded case here that the petitioner is a company registered under the Companies Act with its Head Office in Delhi. Thus the argument raised at No. (iii) is not available to the petitioner and I respectfully decline to follow the reasoning adopted in Allahabad judgment.

8. So far as the fourth and the last submission of the learned counsel or the petitioner is concerned, a bare reading of the provisions of S. 133-A and sub-r. (2) of R. 10.2 already reproduced above makes it manifestly clear that the police powers conferred by the State Government on some of its officers are for the limited purpose of carrying into effect the provisions of the Act or are exercisable only under the Act. It is not that these officers are appointed as police officers in the general sense and enjoy all the powers of a police officer under the Police Act or the Punjab Police Rules or under any other law including the Code of Criminal Procedure. It is primarily the concern of the Secretary, Transport Department, to see the functioning of that Department in accordance with the Act and the Rules framed thereunder and thus it is squarely within his sphere to issue the impugned notification. Besides this the learned counsel for the petitioner has not even made a remote reference to any of the Rules of business framed by the Governor as Executive Head of the Government allocating Government business to various functionaries the violation of which might be involved.

9. For the reasons stated above, the petition is totally meritless and is dismissed

with costs which I determine at Rs. 500/-.

10. Petition dismissed.