
(1966) 09 GUJ CK 0017
In the Gujarat High Court

Minochar Pestonji Patel

APPELLANT

Vs

A.M. Amin

RESPONDENT

Date of Decision : 27-09-1966

Acts Referred:

Motor Vehicles Act, 1939 — Section 33(1)(b), 42, 42, 42

Citation : (1968) 9 GLR 171

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Judgement

P.N. Bhagwati, J.—These four petitions raise a short question as to whether a hotelier who sends his car to the station or airport for transport of his customers from the station or airport and vice versa without making any extra charge for such transport can be said to use his car for the carriage of passengers for hire or reward so as to make it a public service vehicle requiring permit u/s 42 of the Motor Vehicles Act, 1939. The petitioner is a hotelier having a hotel in Udwada which he runs in the name of Majestic Hotel. Udwada is a small town situate on the West Coast of India and it is a place of pilgrimage for Parsis for it is at that place that Parsis seeking refuge on the Indian soil from Muslim persecution in Iran, installed the sacred fire which they brought with them from Iran. Even to-day the self-same sacred fire burns in the temple at Udwada and to worship it come Parsis from all parts of India. Udwada is accessible by road as well as by rail but if one comes by rail, one has to get down at Udwada Station and from Udwada Station to Udwada Town is about 4 1/2 miles. The petitioner was, therefore, at one time running a private bus service for carrying passengers between Udwada Station and Udwada Town and two buses were placed on this route by him according to the timings fixed so as to suit the convenience of the passengers. But this route was subsequently taken over by the Gujarat State Road Transport Corporation and the petitioner had to stop running his private bus service. This route was, however, served by only one bus by the Gujarat State Road Transport Corporation and the pilgrims to Udwada were, therefore, greatly inconvenienced. Realising this difficulty, the petitioner started sending his car to

the Udwada Station at the time of the arrival of the train for the purpose of bringing his customers from the Station to the Hotel and also made his car available for the purpose of taking the customers from the Hotel to the Station. The petitioner did not charge anything extra to the customers for this facility of transport provided to them and the customers paid only the charges for boarding and lodging which were uniformly charged to all customers irrespective whether or not they availed of the facility of transport. One day, on 30th March 1965, when the car of the petitioner was bringing the customers from the Udwada Station to the Hotel, R.M. Modi, the Motor Vehicle Inspector stopped the car for the inspection and took the statements of the passengers for the purpose of checking whether the car was being plied for hire or reward. All the passengers who were questioned stated that they were being taken from Udwada Station to the hotel free of charge and the only charge which they had to pay was for boarding and lodging at the hotel. R.M. Modi thereupon submitted a checking report to the driver of the car recording that the passengers in the car had stated that they had to pay only the charges for boarding and lodging at the hotel and no charges for the transport from the station to the hotel. The Assistant Regional Transport Officer, however, on the strength of this checking report issued a notice dated 26th April 1965 to the petitioner u/s 33(1)(b) of the Motor Vehicles Act calling upon the petitioner to show cause why the certificate of registration in respect of his car should not be suspended on ground that the car was being used for hire or reward without a valid permit for using it as such. The petitioner by his reply dated 1st May 1965 pointed out to the Assistant Regional Transport Officer that the car was being used merely for the purpose of transporting (he customers of the hotel from Udwada Station to the hotel and back without any extra charge for such transport and it was not used for hire or reward and no action was accordingly liable to be taken against the petitioner u/s 33(1)(b). The Assistant Regional Transport Officer however proceeded to hold an inquiry and at the inquiry certain questions were asked by the Assistant Regional Transport Officer to the petitioner and they were answered by the petitioner. The verbatim record of the questions and answers has been produced before me by Mr. J.R. Nanavati, learned advocate appearing on behalf of the respondent, and I shall have occasion to refer to the same at the appropriate time. Suffice it to say at the present moment that after concluding the inquiry the Assistant Regional Transport Officer made an order dated 13th July 1965 holding that the additional facility of transport was being given by the petitioner as part and parcel of the hotel business and the car was being used for the purpose of advancing the hotel business and it was, therefore, used as a public service vehicle in respect of which it was necessary to obtain permit and since there was no permit obtained by the petitioner, the case of the petitioner fell within Section 33(1)(b) and by the said order the Assistant Regional Transport Officer suspended the certificate of registration of the car temporarily for a period of two months. Similar orders dated 31st August 1965, 1st September 1965 and 31st August 1965 suspending the certificate of registration of the car respectively for three months, two months and four months were passed by the Assistant Regional Transport Officer

as a result of inspection of the car carried out by the Motor Vehicles Inspector while the car was proceeding with the customers of the hotel from Udwada Station to the Hotel on 22nd April 1965, 25th April 1965 and 20th May 1965. The petitioner thereupon preferred four appeals to the Director of Transport, one against each order suspending the certificate of registration of the car. The appeals were heard together by the Director of Transport and by a common order dated 20th November 1965, the Director of Transport dismissed the appeals. The Director of Transport held that looking to the amounts of boarding and lodging charges recovered from the persons taking advantage of the hotel, it appeared that relatively wealthy persons must be making use of the hotel and "it can normally be presumed that the full boarding and lodging charges taken by the Majestic Hotel which are quite high for a town like Udwada can naturally include transport of passengers also without specifically mentioning the same on the cash memo" and the Assistant Regional Transport Officer was, therefore, justified in suspending the certificate of registration of the car. This view taken by the Director of Transport is challenged before me in the present petitions. There are four petitions since the original notices issued to the petitioner were four in number in respect of four different occasions when the car was inspected by the Motor Vehicles Inspector, four different orders were passed by the Assistant Regional Transport Officer suspending the certificate of registration of the car and four different appeals were preferred by the petitioner to the Director of Transport though all of them were disposed of by a common order. The point which arises for consideration in all the petitions is, however, the same and it will, therefore, be convenient to dispose them of by a common judgment.

2. The impugned orders suspending the certificate of registration of the petitioner's car were made by the Assistant Regional Transport Officer and confirmed by the Director of Transport u/s 33(1)(b) and it is, therefore, necessary to look at the provisions of Section 33(1)(b). Section 33(1)(b) empowers the registering authority to suspend the certificate of registration of a motor vehicle on the ground that the motor vehicle is being used for hire or reward without a valid permit for being used as such and provides that in such a case the registering authority may, after giving the owner an opportunity of making any representation he may wish to make, for reasons to be recorded in writing, suspend the certificate of registration of the motor vehicle for such period not exceeding four months as it may deem fit. The registering authority can thus take action against the owner of a motor vehicle by suspending the certificate of registration of the motor vehicle u/s 33(1)(b) if it finds that the motor vehicle has been or is being used for hire or reward without a valid permit for being used as such. The requirement of a permit for use of a motor vehicle for hire or reward is to be found in Section 42. That section says that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or Commission authorising the use of the vehicle in that place in the manner in which the vehicle

is being used. "The section refers to transport vehicle and what is a transport vehicle is defined in Section 2(33). "Transport vehicle" according to Section 2(33) means a public service vehicle, or a goods vehicle and a "public vehicle" is defined in Section 2(25) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor car, contract carriage, and stage carriage. The petitioner's car would, therefore, require a permit u/s 42 if it was a motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and if it was in fact being used for carriage of passengers for hire or reward. Now admittedly no permit was obtained by the petitioner for the use of the car u/s 42 and the only question which, therefore, requires to be considered for the purpose of adjudicating upon the validity of the impugned orders is whether the car of the petitioner was being used for the carriage of passengers for hire or reward. This requires an examination of the facts relating to the use of the car and since these are petitions invoking the extra-ordinary jurisdiction of the Court under Article 227 of the Constitution, no disputed questions of fact can be raised in the petitions and the petitions would have to be decided on the admitted facts on record. The admitted facts are to be found in the answers given by the petitioner to the questions put to him at the inquiry by the Assistant Regional Transport Officer. The Assistant Regional Transport Officer as also the Director of Transport accepted the answers of the petitioner as representing the correct state of facts and both of them relied upon the facts elicited in the answers for the purpose of holding that the car was being used for the carriage of passengers for hire or reward. The answers given by the petitioner clearly establish that the car was being used by the petitioner only for the purpose of carrying the customers of the hotel from the Udwada Station to the hotel and back and no extra charge was being made to the customers for such transport and the customers paid only the charges for boarding and lodging at the hotel which charges were uniformly charged to all customers irrespective whether or not they availed of this facility of transport provided by the petitioner and the expenses of the car were treated as the expenses of the hotel. These facts show beyond doubt that the only charges which were being collected by the petitioner from the customers were charges for boarding and lodging at the hotel and no charge was being made by the petitioner for the carriage of the customers from the Station to the hotel and back. That was a facility which was provided by the petitioner free without payment of any charge. Whether customer availed himself of this facility of transporter not, he had to pay the same charges for boarding and lodging at the hotel: if he took advantage of the facility of transport, he did not have to pay anything extra and if he did not take advantage of the facility of transport, he did not get any refund. On these facts it is clear that there was no element of hire involved in the carriage of the customers from the station to the hotel and back. "Hire" postulates an antecedent agreement for payment of money for services rendered and imports an obligation to pay the same and there was in the present case no antecedent agreement for payment of any charge by the customers for the transport from the station to the hotel and back nor was there any such

obligation undertaken and accepted by the customers. The Director of Transport took the view that the customers were being carried in the car for hire on the ground that the boarding and lodging charges charged by the petitioner were rather high for a small town like Udwada and they must, therefore, be held to include charges for the carriage of the customers also. But this view is clearly erroneous for it is based upon an assumption totally unfounded in evidence that the boarding and lodging charges charged by the petitioner were unduly high in relation to the boarding and lodging services provided by the petitioner and they must, therefore, be held to include charges also for the carriage of the customers from the station to the hotel and back. There was no evidence before the Director of Transport to show that the boarding and lodging charges were unrelated to the boarding and lodging services provided at the hotel so as to lead to an inference that a part of the amount charged under the guise of boarding and lodging charges represented charge for the facility of transport provided to the customers. The cash memo produced by the petitioner clearly showed that the amount which was collected from the customers was in respect of boarding and lodging charges and no part of it was charged for the facility of transport provided by the petitioner. The view taken by the Director of Transport was thus based solely on conjecture and surmise and there was no evidence at all to support that view.

2.1 Realising this infirmity in the reasoning adopted by the Director of Transport, Mr. J.R. Nanavati, learned advocate appearing on behalf of the respondent, jettisoned that line of reasoning and contended that though it may be that the car was not being used for the carriage of the customers for hire, it was certainly being used for the carriage of the customers for reward. He urged that the additional facility of transport provided a certain benefit to the business by attracting customers and it was this benefit which constituted reward for the carriage of the customers from the station to the hotel and back. "Reward" as used in Sections 2(25) and 33(1)(b), he submitted, might be direct or indirect and even if indirect reward in the shape of benefit to the business was being secured by the petitioner by providing the additional facility of carrying the customers from the station to the hotel and back, the carriage of the customers would be for reward and Section 33(1)(b) would be attracted. This contention, plausible though it may seem, is in my view fallacious for it fails to give due effect to the words used in Sections 2(25) and 33(1)(b). What these sections contemplate is the use of the car for the carriage of passengers for reward and the reward must, therefore, be a reward for the carriage. Now "reward" according to its plain natural connotation means any recompense for service rendered and the service rendered in the present case being the carriage by car, the reward which is contemplated in Sections 2(25) and 33(1)(b) must be a recompense for the carriage by car and the recompense must have direct relation to the carriage by car. Here in the present case there was no recompense directly relatable to the carriage of the customers by car. It is no doubt true that the petitioner provided the additional facility of transport to the

customers from the station to the hotel and back for the purpose of attracting customers and that would certainly help his business but for that reason it cannot be said that there was any recompense from the customers for the transport or that the transport was for reward. Whatever charges were received by the petitioner from the customers were for boarding and lodging at the hotel and there was no recompense from the customers for bringing them from the station to the hotel and reaching them back from the hotel to the station. The facility of transport from the station to the hotel and back was provided by the petitioner for the purpose of earning boarding and lodging charges which were charged for the boarding and lodging provided at the hotel but there was no recompense from the customers specifically relatable to the transport and the car could not be said to have been used for carriage of the customers for earning recompense or reward for such carriage. If the view contended for by Mr. J.R. Nanavati were accepted, the result would be that even a corporation like the Indian Airlines Corporation which carries the passengers going by its flights from the airport to the City Office and back would be said to be using its motor vehicle for the carriage of passengers for hire or reward and even a business house which keeps a car for the purpose of bringing its business visitors from the station or airport to the hotel and back and for use by them in the City would be said to be using the car "for the carriage of passengers for hire or reward, for in either case it would be possible to say that the providing of the facility of transport by the motor vehicle or car would advance or benefit the business by attracting customers. Such a result would be unwarranted and unjustified and the Court would be slow to accept a construction which leads to such result. The construction canvassed on behalf of the respondent confuses the object of the carriage of passengers-which may be to attract customers-with the consideration for the carriage of passengers. I am therefore, of the view that in the present case the car of the petitioner was not being used for the carriage of passengers for hire or reward and the impugned orders made by the Assistant Regional Transport Officer and confirmed by the Director of Transport were not within the terms of Section 33(1)(b).

3. There will, therefore, be a writ of certiorari issued in each petition quashing and setting aside the impugned orders made by the Assistant Regional Transport Officer and confirmed by the Director of Transport. The respondent will pay the costs of each petition to the petitioner.