
(2001) 01 MP CK 0029
In the Madhya Pradesh High Court
Case No : Writ Petition No. 384/99

M.P. State Road Transport Corporation	APPELLANT
Vs	
State Transport Appellate Tribunal, Gwalior and others	RESPONDENT

Date of Decision : 09-01-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 47(3)
Motor Vehicles Act, 1988 — Section 2(38), 67, 67(1), 68, 68(1)

Citation : (2001) 2 ACC 168 : AIR 2001 MP 209 : (2001) 3 MPHT 349

Hon'ble Judges : Mr. S.S. Jha, J

Bench : Single Bench

Advocate : Shri Arvind Dudawat, Mr. D.V. Nigudkar, for the Appellant; Shri Tapan Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Jha, J.—Petitioner has filed this petition challenging the grant of regular stage carriage permit to respondent Nos. 3 and 4 for the route between Morena to Shankarpura via Madiya-kheda, Babu Ka Pura, Kheda, Badagaon Dimni, Ratiram Ka Pura, Umariya Pura, Ralhod Ka Pura, Baba Ki Tekri, Badfara, Ambah, Tharapalai Ka Tal, Pachpheda.

2. Learned counsel for the petitioner submitted that after amendment in Motor Vehicles Act, new Section 68(3)(ca) has been introduced, which provides for formulation of routes by Government for plying stage carriages. Learned counsel submitted that in the present case, in the absence of formula-tion of routes for plying stage carriages no permit could be granted by Regional Transport Authority. The Regional Transport Authority has no jurisdiction to formulate routes for plying stage carriages. In support of his contention learned counsel for the petitioner has placed reliance upon the judgment in the case of Smt. Mithlesh Rani Vs. State Transport Appellate Tribunal and others, reported in 1997 A.I.H.C. 771. In this case, only question of law involved was whether with the deletion of Section 47(3) of Motor Vehicles Act, 1939 in the new Motor Vehicles Act of 1988

power of creation of route no more lies with the Regional or State Transport Authority. Single Bench of Allahabad High Court, after considering the facts of the case, considering the documents and provisions of law having relevance on the point of issue considered the scope of Motor Vehicles Act of 1939 and that of 1988, held that power to create route for plying of stage carriages, after November, 1994 when sub-clause (c-a) came into force, cannot be exercised by the R.T.A.; such power has to be exercised by the S.T.A. only, obviously on the principles formulated by the State Government, the R.T.A. has no power for creation of new routes and its power to create new routes has ceased on 14th November, 1994. Considering the scope of clause (3) and clause (4) of Section 68 of 1988 Act it was held that power to create route with effect from 14-11-1994 vests in the S.T.A. with the condition that it will be done on the principles laid down by the State Government. By no stretch of imagination the power in this respect can be assumed in favour of the R.T.A.

3. Learned counsel for the petitioner then placed reliance upon the judgment of the High Court of Rajasthan, delivered in Civil Writ Petition No. 3313/1998 between Zamindara Motor Transport Cooperative Society Vs. R.T.A. Bikaner and others. In this case, specific question was involved whether after the Amendment Act No. 54/1994, which inserted the provisions of Section 68(3)(c-a) with effect from 14-11-1994, which has taken away the competence of the transport authorities, i.e., S.T.A./R.T.A. to create a route, the authority can grant permit on an inter-State route over and above the ceiling fixed by the inter-State agreement, and if the permit is not counter-signed by the other authority whether that permit can be termed as valid in view of the provisions of Section 88(1) of the Act even for part of the route falling within the jurisdiction of the granting authority ? Rajasthan High Court, interpreting the judgment in the case of Mithilesh Garg Vs. Union of India and others, reported in Mithilesh Garg, Vs. Union of India and others etc. etc., , held that if the judgment of the Supreme Court in Mithilesh Garg (supra) and Janta Motor Transport, reported in 1984 (Suppl.) SCC 711, are read together and on considering their cumulative effect, one may reach (he irresistible conclusion that grant of permits on inter-State route is governed by an entirely different and special procedure, and considering the scope of sub-section (3) (c-a) of Section 68 it is held that S.T.A./R.T.A. have been deprived of the competence to establish a new route and it now falls exclusively within the domain of the Government. The scope of Section 68(3)(c-a) has been considered by the Allahabad High Court in the case of Smt. Mithlesh Rani (supra), and the similar view was taken by the Rajasthan High Court in the case of Dharam Chand Vs. S.T.A.T. and Others, . Even prior to the amendment, this question was considered by this Court in the case of Madhya Pradesh State Road Transport Corporation, Gwalior Vs. Nirmal Kumar Chordia and Others, . Relying upon these facts, Rajasthan High Court has held that the language of Section 68(3)(c-a) is plain and simple and no new route can be created by Regional Transport Authority.

4. Learned counsel for the petitioner relying upon these judgments has

submitted that the Regional Transport Authority had no jurisdiction to grant permit by creating a new route.

5. In reply, learned counsel for the respondents/permit-holders, submitted that the Act of 1994 has been amended with an intention to liberalise the routes and the Act should be interpreted harmoniously. Learned counsel for the respondents placed reliance upon the judgment in the case of Quilon Dist. Private Bus Operators Association and Others Vs. State of Kerala and Others, . Learned counsel submitted that in this judgment old Act and new Act have been considered. Relying upon the principles laid down in the case of Mithilesh Garg (supra) it was held that if the provisions of the Act are to be understood in favour of new entrants entitled to claim transport permit in time then such a direction not to grant permits, being contrary to the law declared by the Supreme Court would not be available for consideration, and it was held that considering the scope, the question of approach with reference to the provisions of Section 68(3)(c-a) of the Act of 1988 would have to be considered and the objects of Act No. 54 of 1994 were taken into consideration, wherein it was observed that liberalised schemes for grant of stage carriage permit on non-nationalised routes, All India Tourist permits and also national permits for goods carriage is the object of the said amendment with an intention that a greater flow of passengers and freight with the least impediments is also the object behind the amendment. Section 68 deals with the function of the transport authorities and in regard thereto more especially Section 68(3) enacts that the State Transport Authority and every Regional Transport Authority is obliged to give effect to directions issued u/s 67 and has to perform, exercise and discharge the powers and functions specified therein. These exercise and discharge of the functions is subject to such directions and save as otherwise provided by or under the Act. In the context Section 68(3)(c) relates to the settlement of disputes and decide all matters on which there are differences of opinion between the Regional Transport Authority and it is in this context that we find the enactment of Section 68(3) (c-a) with regard to the formulation of routes for plying stage carriages by the Government. On principles of legislation the fact that Section 68(3)(c-a) appears after Section 68(3)(c) would have to be understood to enact all matters covered by Section 68(3)(c-a) of the Act. The said provision cannot be read either in isolation or also independent of Section 68(3)(c) of the Act and would have to be understood on interpretation to have been enacted in the matter of settlement of dispute and decision in regard thereto relating to differences of opinion between the Regional Transport Authority. The expression "save as otherwise provided by or under the Act" and the fact that Section 68(3)(c-a) appears to be qualifying Section 68(3) (c) of the Act would have to be understood and construed in a harmonious manner so that the position is not reduced to a nullity. Therefore apart from the position that this is in the nature of a direction with reference to a situation of differences of opinion, the provision also will have to be read to amplify the enactment in Section 68(3)(c) of the Act only.

6. Learned counsel for the respondents then referred to the judgment in the case

of Mithilesh Garg (supra) and submitted that the Apex Court has held that the policy should be liberalised with an object to encourage healthy competition and eliminate corruption. 1994 Amendment has been passed after the observations were made in the case of Mithilesh Garg (supra).

7. Learned counsel for the respondents then invited attention to the objects and reasons for Motor Vehicles (Amendment) Act, 1994; Act No. 54 of 1994, (hereinafter referred to "Amendment Act"), and submitted that after the Motor Vehicles Act, 1988 came into force, the Government has received number of representations and suggestions from the State Governments, transport operators and members of public regarding inconvenience faced by them because of the operation of some of the provisions of 1988 Act. A Review Committee was, therefore, constituted by the Government in March, 1990 to examine and review the 1988 Act. The recommendations of the Review Committee were forwarded to the State Government for comments and they generally agree with these recommendations. The Government also considered a larger number of representations received, after finalisation of the report of the Review Committee, from the transport operators and public for making amendment in the Act. The draft of the proposals based on the recommendation of the Review Committee and representation from the public were placed before the Transport Development Council for seeking their views in the matter. The important suggestion made by the Transport Development Council relate to, or are on account of,--

- (a) the introduction of type of vehicles and fast increasing number of both commercial and personal vehicles in the country;
- (b) providing adequate compensation to victims of road accidents without going into long drawn procedure;
- (c) protecting consumers' interests in Transport Sector;
- (d) concern for road safety standards, transport of hazardous chemicals and pollution control;
- (e) delegation of greater powers to State Transport Authorities and rationalising the role of police authorities in certain matters;
- (f) the simplification of procedures and policy liberalisation in the field of Road Transport;
- (g) enhancing penalties for traffic offenders.

Therefore, the proposed legislation has been prepared in the light of the above background. The Bill inter alia provides for,--

- (a) modification and amplification of certain definitions of new type of vehicles;
- (b) simplification of procedure for grant of driving licences;
- (c) putting restriction on the alteration of vehicles;

- (d) certain exemptions for vehicles running on non-polluting fuels;
- (e) ceilings on individuals or company holdings removed to curb "benami" holdings;
- (f) States authorised to appoint one or more State Transport Appellate Tribunals;
- (g) punitive checks on the use of such components that do not conform to the prescribed standards by manufacturers, and also stocking/sale by the traders;
- (h) increase in the amount of compensation of the victims of hit and run cases;
- (i) removal of time limit for filing of application by road accident victims for compensation;
- (j) punishment in case of certain offences, is made stringent;
- (k) a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational.

In amendment of Section 68, it is mentioned that in Section 68 of the Principal Act, in sub-section (3), after clause (c), clause (c-a) shall be inserted.

8. Now, only question to be examined is whether the amended clause is independent of Section 68(3)(c) or is to be read along with Section 68(3)(c) ? and, whether routes can be created by Regional Transport Authority or State Transport Authority or after commencement of new Act the power to create route still continues with the Regional Transport Authority or State Transport Authority ?

9. Section 2(38) of the Motor Vehicles Act defines "route". Section 2(38) is reproduced below:--

"2 (38). "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another."

Thus, a route means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. However, in this Act definition of "highway" is not given. "Highway" is defined in Oxford Dictionary as "a public road" or "a main route by land, sea or air". Thus, "highway" would mean a public route on which vehicle is plied. Therefore, from bare reading of the definition of word "route" is a line of travel which " specifies the highway which may be traversed by motor vehicle between one terminus and another. Thus, road between two terminus over which motor vehicle can be plied is a highway.

10. Now, considering the scope of Section 68(3)(c-a) it is to be examined whether incorporation of sub-clause (c-a) by Act No. 54 of 1994 is independent of or is to be read with sub-clause (c). Sub-section (3) of Section 68 empowers State Transport Authority and every Regional Transport, Authority to give effect to any directions issued u/s 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and

discharge throughout the State the following powers and functions, namely :--

"(c-a) Government to formulate routes for plying stage carriages."

So, one of the powers by Amendment Act is whereby Government is empowered to formulate routes for plying stage carriages.

11. u/s 67 of the Act State Government has power to control road transport and the State Government may, from time to time, by notification in the Official Gazette, issue directions both to the State Transport Authority and Regional Transport Authority regarding, fixing of fares and freights for stage carriages, contract carriages and goods carriages; prohibition or restriction, subject to such conditions as may be specified in the directions, of conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages; any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government.

Thus, Section 67 has no bearing with the creation of the routes. u/s 67, State Government can issue directions only with respect to field covered by clauses (i) and (iii) of Section 67(1). The State Government cannot issue any other directions.

12. Section 68 refers to the Transport Authorities. Sub-section (1) of Section 68 provides that the State Government shall, by notification in the Official Gazette, constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge through out such areas as may be specified in the notification in respect of each Regional Transport Authority.

13. Thus, if a notification has been issued by the State Government for exercising its powers to State Transport Authority or Regional Transport Authority then both the Authorities can perform the functions mentioned in sub-section (3) of Section 68 of the Act. From the combined reading of Section 68(1) with sub-section (3) of Section 68, it is apparent that the power for formulation of route has been vested by virtue of the notification of the Government u/s 68(1) with State Transport Authority and Regional Transport Authority. Therefore, the contention of the petitioner that the route can only be formulated by State Government cannot be accepted, as sub-section (3) of Section 68 has to be read with Section 68(1) of the Act. On bare reading of sub-section (1) of Section 68 it is amply clear that the route can be framed by every Regional Transport Authority throughout their region for which they are appointed and State Transport Authority can formulate the routes throughout the State. Therefore, power to formulate route within the region vests with the Regional Transport Authority and within the State it vests with the State Transport Authority.

14. Sub-section (3) of Section 68 of the Act cannot be read independently of

Section 68(1) of the Act. Sub-section (1) of Section 68 provides that the State Government shall, by notification in the Official Gazette, constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas as may be specified in the notification in respect of each Regional Transport Authority; the powers and functions conferred by or under this Chapter on such Authorities. Therefore, any act done u/s 68(3) is under the powers conferred by the State Government upon the State Transport Authority or Regional Transport Authority. Sub-clause (c-a) of sub-section (3) of Section 68 is part of sub-section (3) of Section 68. Sub-clause (c-a) provides that the Government should formulate routes for plying stage carriages. Reading this provision in consonance with Section 68(1) the State Government is empowered to confer the powers for discharging its functions upon the Authorities, namely, State Transport Authority or Regional Transport Authority. Thus, question of formulating the route by the Government would mean the formulation of route by the Authorities conferred with the powers by the State Government. If the State Government has delegated its powers to the Authorities then the powers exercised by the Authorities shall be deemed to be performed by the State Government.

15. Even otherwise, from the object of amendment of Act No. 54 of 1994 it is apparently clear that the Act is amended with an intention for liberalisation of scheme and removing the hurdle for grant of stage carriage permits. Considering the intention and the object of Amending Act it is clear that the word "State Government" used in clause 3 (c-a) would mean the Authority conferred with the powers to exercise the powers of the State Government.

16. Considering the facts of the case, the contention of the petitioner is unfounded. If the notifications have been issued, the Regional Transport Authority and State Transport Authority have jurisdiction to formulate the routes.

17. As discussed above, petition fails and is dismissed without any order as to costs.

18. Writ Petition dismissed.