

(1967) 04 MAD CK 0030

In the Madras High Court

Case No : Writ Petition No's. 539, 540, 1868, 1870, 1871, 1872 and 1873 of 1966

N. Sathianathan, N.S. Motor Service Ltd., Salem

APPELLANT

Vs

Secretary, Regional Transport Authority, Salem and Another

RESPONDENT

Date of Decision : 07-04-1967

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 134

Motor Vehicles (Amendment) Act, 1956 — Section 59(3)

Motor Vehicles Act, 1939 — Section 43(1), 44(3), 48(3), 51(2)

Citation : AIR 1968 Mad 236 : (1969) ILR (Mad) 416 : (1968) 1 MLJ 31

Hon'ble Judges : Veeraswami, J; Krishnaswami Reddy, J

Bench : Division Bench

Judgement

Veeraswami, J.—The question in these petitions is whether the Regional Transport Authority's power to approve fares for passengers in

their stage carriages proposed by a transport operator within the limits directed by the State Government under S. 43(1) of the Motor Vehicles

Act 1939 includes authority to vary such fares and re-fix them as it thinks fit subject of course to the Government's directive as to the minimum

and maximum fares to be charged. To decide the point, it is not necessary to narrate the facts in each of the petitions. But it will suffice to notice

that in W. P. 539 of 1966 the petitioner is a transport operator who plies his stage carriages in Salem Dt. and other inter-district routes in Salem

and Tiruchi Dts. and other inter-State routes. He had been charging since 1953 about half anna per mile per passenger though the Government had

permitted then the maximum of 7½ pies per mile.

By a notification in the Fort St. George Gazette, dated 25-3-1964, the State Government directed that fares should not exceed three paise per kilo

metre in ordinary routes and five pies per k. m. in ghat routes. The Secretary of the Regional Transport Authority, Salem, thereafter called upon the petitioner to file a fare table for approval. On the basis of the old fare, the petitioner fixed it roughly at the rate of 21/2 paise per k. m. and submitted a fare table in respect of all his routes. The variation of the old fare was negligible. The Regional Transport Authority, however, refused to approve the fare table but by itself fixing the fare table at three paise per k. m. directed the petitioner to adhere to it. The petitioner says that it has no right to do so and prays on the ground that the order of the Regional Transport Authority dated 7-1-1966 be quashed.

(2) Sec 43(1) before its amendment by Central Act No. 100 of 1956 conferred power on the State Government to fix, having regard to the

desirability of preventing uneconomic competition among motor vehicles and after hearing the representatives of the interests affected and

consulting the Provincial and Regional Transport Authorities concerned, the maximum or minimum fares of freights for stage carriages and public

carriers to be applicable throughout the Province or any area or route within the province. Accordingly, the then Provincial Government by an

order dated 5-3-1964, notified in the Fort St. George Gazette fixing the maximum fares for ordinary stage carriages at 71/2 pies per mile in routes

in the plaint in the mofussil except in urban areas where there are town services, which was inclusive of the tax leviable under the Motor Vehicles

(Taxation of Passengers and Goods) Act 1952.

This was subject to the provision that for distances of less than 8 miles, a fare not exceeding five annas could be charged and that 8 pies per mile

might be charged at certain specified routes. A maximum of 13 pies per mile on ghat roads was fixed but for distances of less than four miles a fare

not exceeding 4 annas and three pies was charged. Other maxima for other routes including town service were also fixed but they need not be

referred to for present purposes. Under Sec. 46 as it originally stood an application for permit to use a motor vehicle as a stage carriage should

contain certain specified particulars and such other matters as may be prescribed Rule 156 required an application for permit for a stage carriage

to be in form PSPA Column 9 in the form related to the standard rate of fare which it was proposed to charge at so much per passenger per mile.

Sec. 48(3)(iii) empowered the Regional Transport Authority to attach to stage carriage permit the condition that copies of the fare table should be

exhibited on the stage carriage and that the fare table should also be observed. Sec. 59(3) stated that certain conditions mentioned there would be

part of a permit and the one was that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification

made under S. 43 should be observed in connection with any vehicle or vehicles to which the permit related. Sec. 51 authorised the Regional

Transport Authority to fix in the case of motor cabs fares that might be charged. Central Act 100 of 1956 amended these provisions. As amended

S. 43(1)(i) conferred on the State Government power to issue having regard to the desirability of preventing uneconomic competition among motor

vehicles, directions from time to time to the State Transport Authority regarding the fixing of fares and freights for stage carriages contract carriages

and public carriers.

The difference between the old provision and the new is that prior to the amendment the power of the Government was to fix the maximum or

minimum fares but after, it has to issue directions to the State Transport Authority regarding the fixing of fares for stage carriages. The procedure

for issuing such directions remains substantially the same. Sec. 44(3) as amended requires a State Transport Authority to give effect to any

directions issued under S. 43 and gives it certain powers but subject to such directions including the power to co-ordinate and regulate the

activities and policies of the Regional Transport Authority if any, of the State. S. 44(4) enables the State Transport Authority to issue directions to

the Regional Transport Authority which the latter is required to give effect to and be guided by such directions.

Sec. 46 though amended in certain other particulars, contains a provision similar to the one before, namely the application for a permit should set

out such other matters as may be prescribed. Rule 156(1) like the old rule 156, prescribes the form of application for a permit for a stage carriage

and column 9 in the present form is on identical terms as in the earlier form namely the standard rate of fare which is proposed to be charged at so

many nP per mile should be set out. S. 48 has been recast. Clause (xii) of sub-sec (3) of the section which is one of the conditions that the Regional

Transport Authority is entitled to attach to a stage carriage permit is ""that fares shall be charged in accordance with the approved fare table"". The

next clause in the sub-section is another condition ""that a copy of, or extract from, the fare table approved by the Regional Transport Authority and

particulars of any special fares or rates of fares so approved for particular occasions shall be exhibited on every carriage and at specified stands

and halts"".

Rule 134-A as modified by clause (xvi) gives power to the Regional Transport Authority ""to approve fare table with or without modification in

respect of a particular stage carriage or service of stage carriages"". Sec. 59(3) (c) remains as it was. After amendment of the Act by Central Act

100 of 1956, the State Government issued on 25-3-1964 fresh directions to the State Transport Authority under S. 43(1) relating to fixation of

fares for such carriages plying in Madras State. By these directions the State Government fixed 3 Np per k.m. on roads in the plains in the mofussil

except in urban areas where there are town services provided that for distances of less than 12 k.ms. a fare not exceeding 30 Np may be charged.

A maximum of 5np per k.m. has been fixed for state carriages for ghat roads subject of course to the proviso that for distances of less than 6 k.m.

a fare not exceeding 25nP may be charged.

(3) The directions cover maximum fares to be allowed for city and town services, express stage carriages and stage carriages run on special

occasions. Para 3 of the directions said--

The State Transport Authority is further directed having regard to the desirability of preventing uneconomic competition among motor vehicles to

take into consideration the conditions of the roads covered by the Stage carriages and monopoly of operations and occupational ratio in fixing the

above fares.

In accordance with these directions, the State Transport Authority in its turn issued directions to the Regional Transport Authorities under S.

44(4) read with S. 44-A. Its communication dated 28-3-1964 referred to the directions of the Government under S. 43(1) and assumed that the

actual rates at which passenger fares had to be charged within the maximum specified by the Government were to be taken up for determination

for the purpose of issuing directions to the Regional Transport Authorities. The

communication proceeded to say that the Regional Transport

Authority with effect from 1-4-1964 should adopt the passenger fares as specified below it in fixing fares and approving of fare tables in respect of

stage carriages. The rates specified for ordinary stage carriages are 2.5 nP per k.m. on roads in the plains in the mofussil except in urban areas

where there are town services. For distances of less than 12 k.ms. a fare not exceeding 28 nP is allowed to be charged 4.5 nP per k.m. on ghat

roads is fixed but for distances of less than 6 k.ms. a fare not exceeding 25 nP may be charged. One of the other directions in the communication

reads:--

The Regional Transport Authorities are further directed to take immediate steps to fix the fares and approve the fare tables in accordance with the

rates specified above for the respective classes of stage carriages in order to enforce the conditions (xii) and (xiii) specified under sub-sec. (3) of

S. 48 of the Motor Vehicles Act.

By amendment of the Transport Commissioner dated 3-11-1965, the rate of 21/2 ps. for ordinary stage carriages on roads in the plains was

enhanced to 3 paise per k. m. Apparently the petitioner was asked by the Regional Transport Authority, Salem to submit a fresh fare table and in

the table so submitted by him, he proposed 21/2 paise per k. m. as against 3 paise per k. m. fixed by the Government as the maximum fare under

sec. 43(1). The Regional Transport Authority by its order dated 7-1-1966 informed the petitioner that he should adopt the fare table as approved

by the authority that is 3 paise per k.m.

(4) Before us what is urged for the petitioners is that neither the Transport authority nor the Regional Transport Authority has power to fix by itself

the rate of fares to be followed by bus operators and that the power of the Regional Transport Authority is merely to approve the fares proposed

by bus operators. It is said that power to approve includes power to reject, but not to modify the fares proposed by bus operators and fix the

fares by itself at its discretion. The position that emerges with reference to the statutory provisions and the rules before and after the Central Act

100 of 1956 appears to be this. Both before and now the rates of fares are proposed by applicants for permits for stage carriages as may be seen

from the form of application prescribed under S. 46. But the fares so proposed

must be subject to the minimum and maximum fares fixed by the Government under S. 43(1) as it stood before the 1956 amendment.

The power of the Government under this section as amended in 1956 is to issue directions to the State Transport authority regarding the fixing of

fares and freights for stage carriages, contract carriages and public carriers. The phraseology is very elastic and comprehensive and includes also

the power to fix the maximum and minimum to be charged. It should follow, therefore, that the fares proposed by bus operators should conform to

the Government's directive under S. 43(1). The State Transport Authority's power in relation to the Government's directive, under S. 43(1), is to

give effect to the directive and in its turn to give directions to Regional Transport Authority who in discharge of its functions under the Act should

give effect to and be guided by such directions. The powers of the State Transport Authority and the Regional Transport Authority do not, in our

opinion, include the power to fix the fares by themselves.

Their power is only to give effect to the directions of the Government fixing the maximum and minimum rates. The power of the Regional Transport

Authority is to give effect to the directions of the State Transport Authority and be guided by such directions. It may be noticed that the old Sec.

51 conferred power on the Regional Transport Authority to fix in the case of motor cabs the fares which might be charged. But no such power

was given to the Regional Transport Authority or the State Transport Authority before the Central Act 100 of 1956 to fix fares for other kinds of

motor vehicles. The position appears to be no different even after the amending Act of 1956.

(5) For the State it is said that the power for the Regional Transport Authority to fix rates is sought to be derived from S. 48(3)(xii) and (xiii). It is

contended that reference in the two clauses to fare table approved by the Regional Transport Authority implies that the authority has the power to

approve fares and this means that the authority can reject the fares proposed by the bus operator and fix the rate of fare by itself. We are unable to

accept the last part of this contention. In our opinion, the word "approved" in Sec. 48(3)(xii) and (xiii) in the context does not include the power for

the Regional Transport Authority to fix rates by itself. as we said that power was given to the Regional Transport Authority in respect of motor

cabs and the power to fix fares for other kinds of motor vehicles was with the Government under S. 43(1). After the amendment that power of the

Regional Transport Authority has been included in the power of the Government under S. 43(1) as amended in 1956.

The scheme of Ss. 43 and 44 is that the State Transport authority gives effect to the directions of the Government under Sec. 43(1) and in its turn

for that purpose it gives directions to the Regional Transport Authority which will give effect to and be guided by them. The two authorities, merely

execute the directions of the Government and cannot in such execution purport to arrogate to themselves the power which the State Government

only has under S. 43(1) to fix the fares. The implied power of approval under S. 48(3)(xii) and (xiii) merely enables the Regional Transport

Authority to check up whether the rates proposed by the bus operator are in conformity with the directions of the Government under S. 43(1).

(6) Radha Gobinda Paul, Secretary, Dist. Transport Organization, Midnapore and self Vs. Regional Transport Authority, Midnapore, held on

interpretation of the Motor Vehicles Act as stood prior to the Central Act 100 of 1956 that the Regional Transport Authority had no powers to fix

the rates under the Act. The Calcutta High Court said--

..... the Regional Transport Authority has no power to fix the rates under the Act until either of the two contingencies happen, namely, some

provision is made by amending the Act, granting to it the power to fix the rates of fares in respect of stage carriages or such a power is prescribed

by rules made by the State Government empowering the R.T.A. to impose it as a condition of the permits issued to stage carriage owners.

There is no indication in the Central Act 100 of 1956 or rules framed under the Motor Vehicles Act as modified after 1956 that power has been

given to the Regional Transport Authority or the Transport Authority to fix the rates of fares by themselves. It is true that in Amarnath S. Nanda Vs.

State Transport Authority and Another, , K.K. Desai J. appears to be of a different view. The learned Judge there observes--

These provisions (Ss. 48 and 51) necessarily show that it is obligatory on Regional Transport Authority in respect of an application for permit for

stage carriage and/or contract carriage to fix the fares to be charged. In the matter of mentioning the fares to be charged if directions are given

under S. 43 by the State Government or by State Transport Authority under S. 44 Regional Transport Authority would necessarily have to

mention the fares so directed in each permit. In the absence of such directions it is obvious that unless the Regional Transport Authority fixes fares

in the conditions of permit it would fail to discharge its duty in the matter of fixing of fares.

The learned Judge was there concerned with a contract carriage and in respect of such a vehicle Sec. 51(2) gives powers to the Regional

Transport Authority to attach a condition to the permit that ""in the case of vehicles other than motor cars, specified rates of hiring not exceeding

specified maximum shall be charged"". A similar power is given to the Regional Transport Authority in the case of motor cabs to attach a condition

in the permit specified fares or rates of fares shall be charged. But in Sec. 48 relating to stage carriage permit there is no such power granted to the

Regional Transport Authority. Assuming that Sec. 51(2) bears the interpretation which Desai J. places on it, the language in S. 48(3)(xii) and (xiii)

is different and we are not prepared to hold that Sec. 48(3)(xii) and (xiii) confers on the Regional Transport Authority the power to fix fares by

itself.

As held by the Supreme Court in Malik Ram Vs. State of Rajasthan, an authority to which power has been given to approve or modify some

proposal has certainly the power to say that it will not approve the proposal at all. We are willing to take it that a power to approve will certainly

include a power to reject. But whether the power will include also a power to modify will include also a power to modify will depend on the terms

of conferment of the power and the context.

(7) Having regard to the scheme of the Act as modified in 1956, we are of the view that it is the operator who is to propose the fares and the

Regional Transport Authority in exercise of its power of approval may approve the proposed fares or decline to do so but on the ground that the

fares proposed are not in conformity with the directions given under S. 43(1). The Regional Transport Authority has no power in exercise of its

right of approval of the fares to fix by itself the rate of fares at its discretion. It may be seen that in fixing the minimum or maximum fare, the State

Government under S. 43(1) is to have regard to the desirability of preventing

uneconomic competition among motor vehicles. Before giving directions, it has to hear representatives of the interest affected and also consult the State and Regional Transport Authorities. When can a competition be said to be uneconomic? We suppose that such a situation may arise in cases of under-cutting to drive out other operators or there are too many permits on a route so that every one will have to run at the lowest load or at a loss. Minimum rates are prescribed to control under-cutting and maximum rates to check the greed of operators. When there are too many permits on a route, the number of vehicles on the route are regulated as provided in S. 47. Leslie A. Schumer in his book on ""Elements of Transport"" states at page 180--

The desirable limitation of competition is effected by (a) controlling entry into the transport system and the expansion of existing facilities; and/or (b) prescribing the minimum rates to be charged for services..... The prescription of minimum rates to be charged by professional carriers may be an alternative or complementary method of removing the destruction elements in competition namely general cutting of rates to levels below cost. It aims at establishing a scale of charges at a level high enough to permit efficient carriers to operate profitably. The minimum rates are usually fixed after a close study of the costs in providing service and, when fixed, become enforceable by law on both the carrier and the user of the service.

We may except that when the State Government issued directions under S. 43(1) fixing the maximum rates to be charged it had like considerations in mind to prevent uneconomic competition among the motor vehicles. But when the State Government gave directions that the rates to be charged should not exceed the maximum fares specified, it did not follow from it that there would be justification for fixing the rate at the maximum without regard to other factors.

(8) It was argued for the respondents that the State Transport Authority had power under S. 44(3) to co-ordinate and regulate the activities and policies of the Regional Transport Authority of the State and that this implied that it could direct the Regional Transport Authority to fix the fare at the maximum allowed by the direction under Sec. 43(1). We cannot accept the contention. The power to fix rates is different and distinct from

power to co-ordinate and regulate the activities and policies of the Regional Transport Authorities. The only reason for the Regional Transport

Authority to fix the fares at the maximum rates appears to be that other transport operators in Salem District charged that rate. It seems to us that

this will be entirely an irrelevant consideration.

(9) The petitions are allowed with costs in W. P. 539 of 1966. Counsel's fee Rs. 100. There will be no costs in the other petitions.

(10) Petitions allowed.