
(1992) 10 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3591 and 15480 of 1990

Nanak Chand Sharma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-10-1992

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6)
Motor Vehicles Act, 1939 — Section 134(1A), 2(28A), 42, 43, 44
Motor Vehicles Act, 1988 — Section 100(3), 68A, 68B, 68C, 68D

Citation : (1994) CriLJ 664

Hon'ble Judges : R.A. Sharma, J;M.K. Mukherjee, J

Bench : Division Bench

Advocate : Rakesh Dwivedi and Dinesh Dwivedi, for the Appellant;

Final Decision : Partly Allowed

Judgement

R.A. Sharma, J.—In exercise of power conferred on them by Section 63 of the Motor Vehicles Act, 1939, (hereinafter referred to as the Act) the Governments of U. P. and Haryana executed a reciprocal agreement (hereinafter referred to as the agreement) in 1968 for providing road transport service on the inter-State routes, lying between the two States, One of the inter-State routes covered by the agreement is Muzaffarnagar-Panipat-Karnal via Shyamli (hereinafter referred to as the route). Pursuant to the agreement the Regional Transport Authority, Meerut grafted permanent stage carriage permits to the petitioners in 1971. These permits were counter-signed by the transport authorities of Haryana State. Both these permits and their counter-signature continued to be renewed by the transport authorities of the two States after every three years, up to 1980. Permits renewed in 1980 were valid up to 9-11-1983. However, applications for renewal of permits of the petitioners, filed in 1983 for getting their permits renewed up to 1986, were rejected by State Transport Authority, U. P., Lucknow in 1985, against which they filed appeals before State Transport Appellate Tribunal, U. P., Lucknow. The Appellate Tribunal in exercise of its power u/s 134(1-A) of the Act granted interim relief permitting the petitioners to continue

to operate their vehicles on the route and it is admitted that during the pendency of the appeals the permits of the petitioners continued to be counter-signed by the transport authorities of Haryana in view of the interim orders of the Appellate Tribunal. The appeals were allowed on 30-5-1989 and applications for renewal for the period from 9-11-1983 to 8-11-1986 were allowed with the result that the petitioners' permits came to be renewed up to 8-11-1986. During the pendency of the appeals the petitioners made applications for renewal for further period of three years from 9-11-1986 to 8-11-1989 and thereafter from 9-11-1989 to 8-11-1992. It is stated that these applications for renewal are still pending. The petitioners have made applications for temporary permits pending renewal, before the State Transport Authority, U. P., Lucknow, which now has the jurisdiction to grant and renew the permits of inter-State routes, which were allowed and temporary permits, for four months at a time, were granted to the petitioners, which were counter-signed by Haryana Authorities. However, after some time transport authorities of Haryana declined to countersign the temporary permits of the petitioners on account of which the petitioners filed writ petition No. 557 of 1985 before this Court. This writ petition was, however, not pressed and was accordingly dismissed as not pressed.

2. The petitioners filed another writ petition before High Court of Punjab and Haryana at Chandigarh (C.W.P. No. 4391 of 1990). This writ petition was disposed of by High Court of Chandigarh with the observations that if in the opinion of the respondents the agreement provides for counter-signing of the permits of the private operators on the route, the claim of the petitioners be considered in accordance with law. Transport authority of Haryana not having counter-signed their permits the petitioners have filed these writ petitions for writ of mandamus directing the respondents to renew and counter-sign their permits. Further prayer for restraining the respondents from interfering with the plying of their vehicles on the route has also been made.

3. In 1989 permanent stage carriage permits have been granted to the U. P. State Road Transport Corporation (hereinafter referred to as Corporation) for the route against the same vacancies against which the petitioners were granted permits. It has been stated that the permits of the Corporation have been counter-signed by the transport authorities of Haryana and the Corporation is operating its vehicles on the route. The present position is that both the petitioners and the Corporation are holding permits for the route against the same vacancies and the trips which have been agreed upon in the agreement, although the permits of the petitioners have not been counter-signed by the transport authorities of Haryana, but they have been permitted to ply under the interim order of this Court.

4. In this connection it may also be mentioned that inter-State agreement between the two States, executed in 1968, has been replaced by another agreement dated October 24, 1983 which has been published in U. P. Gazette, Extraordinary, of the same date. In Clause 12 (Hi) of the new agreement it has

been provided that as far as possible stage carriage services agreed upon in the agreement may be operated by respective nationalised undertakings of both the States. This clause being relevant is reproduced below :

12(iii). It is agreed that as far as possible the stage carriage services agreed upon in this agreement may be operated upon by the respective nationalised undertakings of both the States.

In the list of inter-State routes appended to the agreement at serial No. 22, provisions have been made for grant of permits on the route against trips mentioned therein to the State" transport undertakings of the two States. The petitioners have accordingly amended the writ petition by adding prayer for quashing the aforesaid Sub-clause (iii) of Clause 12 and the relevant portion of item No. 22 of the list appended to the agreement. Further prayer for quashing the permits granted to the Corporation for the route, is sought to be added in the writ petition.

5. State of Haryana and U. P. State Road Transport Corporation have filed counter-affidavit and the petitioners have filed rejoinder-affidavit in reply thereto. During the course of argument the learned Counsel for the petitioners have confined their arguments to the challenge of Sub-clause (iii) of Clause 12 of the agreement and item No. 22 of the list of the routes appended thereto and have stated that the petitioners do not want to challenge the permits granted to the Corporation for the route and have requested that this question be left to be decided by the transport authorities concerned. Learned Counsel for the State of Haryana, apart from supporting the validity of the impugned Clauses of the agreement, has also argued that the portion of the route lying within the State of Haryana is covered by an approved scheme under Chapter IV-A of the Act which provide for exclusive operation of the State Transport Undertakings of the State of Haryana, on account of which no permits can be granted and counter-signed for portion of the routes lying within the State of Haryana by Transport Authorities of any of the States to any private operator including the petitioners.

6. There are only two questions which have been argued by the learned Counsel for parties and which are required to be decided by this Court, namely, (i) whether the route can be taken over for exclusive operation of the State Transport Undertakings by means of inter-State agreement u/s 63 of the Act and (ii) whether permits can be granted on the route to private operators including the petitioners in spite of the fact that part of the route lying within the State of Haryana having been nationalised for exclusive operation of its State Transport Undertakings.

7. Chapter IV of the Act containing provisions of Sections 42 to 68 provides for control of transport vehicles. Section 42 prohibits the owner of a transport vehicle from using or permitting use of vehicle in any public place save in accordance with the conditions of the permits granted or countersigned by a regional or State Transport Authorities, authorising the use of vehicle in that

place. Section 48 empowers the transport authorities to grant stage carriage permits. Permits can be granted on regional, interregional and inter-State routes. However, Sub-section (2) of Section 63, lays down that, except as may be otherwise prescribed, in the case of inter-regional route the permit granted by Regional Transport Authority of one region cannot be valid in any other region unless the permit has been counter-signed by Regional Transport Authority of the other region. Similarly a permit granted in any one State shall not be valid in any other State, unless counter-signed by the transport authorities of the other State. Sub-section (3) of Section 63 of the Act laid down that the provisions of the Chapter IV relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits. However, the proviso appended to the said Sub-section (3) provides that it will not be necessary to follow the procedure laid down in Section 57 for grant of counter-signatures of the permits, where the permits granted in one State are required to be counter-signed by the transport authority of the other State as a result of any agreement arrived at between the two States after complying with the requirements of Sub-section (3-A). Sub-sections (3-A) and (3-B) being relevant are reproduced below :

(3-A). Every proposal to enter into an agreement between the States referred to in the proviso to Sub-section (3) and every proposal in such agreement to fix the number of permits which is proposed to be granted or countersigned in respect of each route of area, shall be published by each of the State Government concerned in the Official Gazette, together with a notice of the date before which representations in connection therewith may be submitted, and the date, not being less than thirty days from the date of such publication, on which, and the authority by which, and the time and place at which, the proposal and any representations received in connection therewith will be considered :

Provided that no person, association or authority, other than those mentioned hereunder, shall have a right to make such representation, namely : --

- (i) any person already providing passenger or goods transport facilities by any means in the proposed area or along or near the proposed route ;
- (ii) any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government;
- (iii) any local authority or police authority within whose jurisdiction any part of the proposed area or route lies.

(3-B). Every agreement arrived at between the States shall, in so far as it relates to the grant of countersignature of permits, be published in the Official Gazette by each of the States concerned and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it.

It is in pursuance of these provisions that the Governments of the two States of U. P. and Haryana have executed reciprocal agreements.

8. Sub-sections (3-A) and (3-B) of Section 63 empower the Governments of the two States to make reciprocal agreement in respect of any route or area falling between the two States fixing number of permits which is proposed to be granted and counter-signed in respect of those routes or areas. Under these agreements the Governments can fix the number of permits which are to be granted and counter-signed and can also provide for matter connected therewith or incidental thereto. However, these Governments have no power to lay down in the agreement as to who will be granted permits. The scope of agreement is limited in terms of the provisions of the Sub-sections (3-A) and (3-B) of Section 63. Government by means of inter-State agreement cannot assume functions of the transport authorities by selecting the persons who are to be granted permits. In the instant case the two Governments have made provisions in the agreement reserving the route for operation by State Transport Undertakings of the two States. As mentioned above, the Governments do not have such power while acting under Sub-sections (3-A) and (3-B) of Section 63.

9. That apart, no route or area can be taken over by the Governments for operation by State Transport Undertakings except in accordance with provisions contained in Chapter IV-A of the Act, which corresponds to Chapter VI of the new Motor Vehicles Act, 1988, Chapter IV-A consists of Section 68-A to 68-J. This Chapter provides for nationalisation of the routes or areas for operation of the State Transport Undertakings. Sections 68-C and 68-D, being relevant, in that connection, are quoted below :

68C. Preparation and publication of scheme of road transport service of a State Transport Undertaking-- Where any State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State Transport Undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct.

68-D. Objection to the scheme-- (1) on the publication of any scheme in the Official Gazette and not less than one newspaper in regional language circulating in the area or route which is proposed to be covered by such scheme : --

(i) any person already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme;

(ii) any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government; and

(iii) any local authority or police authority within the jurisdiction any part of the area or route proposed to be covered by the scheme lies, may within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter if they so desire, approve or modify the scheme.

(3) The scheme as approved or modified under Sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area route to which it relates shall be called the notified area or notified route;

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government.

10. u/s 68-C a State Transport Undertaking can prepare a draft scheme if it is of the opinion that for the purpose of providing efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in relation to any route or area should be run and operated by it, whether to the complete or partial exclusion of others or otherwise. Such a draft scheme, when prepared, is required to be published inviting objections and the existing operators are entitled to file objections against such a scheme, opposing it on various grounds which are permissible under law. The Government, thereafter, after giving reasonable opportunity of being heard, to both the operators and the State Transport Undertakings, may approve or reject or modify the scheme. Draft scheme so approved or modified is to be published in the Official Gazette and it thereupon becomes final and is called the approved scheme and route or area to which it relates is called notified route or notified area. It is only after the scheme has been approved and route has been notified that the permit can be granted to State Transport Undertakings in accordance with terms and conditions of such scheme. In case of inter-State route power of the State to nationalise such a route has, however, been fettered by the proviso appended to Sub-section (3) of Section 68-D of the Act (which corresponds to proviso to Sub-section (3) of Section 100 to the new Act), according to which a scheme which relates to inter-State route shall not be deemed to be an approved scheme unless it has previous approval of the Central Government. No I permit on inter-State route can be granted to the State Transport Undertaking in pursuance of any scheme unless the same has the previous approval of the Central Government.

11. As held by Supreme Court in the case of H.C. Narayanappa and Others Vs. The State of Mysore and Others, the relevant extract of which is reproduced below, an approved scheme under Chapter IV-A is "law" within the meaning of

Article 19(6) of the Constitution of India: at page 1079 (of AIR)

the scheme framed u/s 68C may properly be regarded as "law" within the meaning of Article 19(6) made by the State excluding private operators from notified routes or notified area, and immune from the attack that it infringes the fundamental right guaranteed by Article 19(1)(g).

The inter-State agreement, arrived at, u/s 63 is, however, not "law". In this connection reference may be made to the decision of Supreme Court in the case of T.N. Raghunatha Reddy Vs. Mysore State Transport Authority, relevant extracts from it is reproduced below :

Regarding the third point, we were unable to appreciate how an inter-State agreement overrides the provisions of Chapter IV-A. The inter-State agreement is not law and to hold that an inter-State agreement overrides Chapter IV-A would be to completely disregard the provisions of Section 68-B of the Act which provides that "the provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law.

Article 19(1)(g) of the Constitution of India confers a fundamental right on every citizen to practice any profession or to carry on any occupation, trade or business. Clause 6 of Article 19, however, permits the State to "make any law imposing, in the interest of general public, reasonable restriction on the exercise of the right conferred by Sub-clause (g) and it further enable the State to make any law relating to carrying on, by the State or by the Corporation, owned and controlled by the State, any trade, business or industry or service, whether to the exclusion, complete or partial of the citizen or otherwise. As mentioned hereinbefore an approved scheme is a law within the meaning of Clause 6 of Article 19 under which the State or Corporation, owned and controlled by it, can, to the complete exclusion of citizen, carry on trade and business. Inter-State agreement, however, as mentioned before, is not "law", and not being; a "law" it cannot prohibit carrying on business by citizen on inter-State route by reserving such right for exclusive operation of the State Transport Undertakings. Such power can only be exercised under Chapter IV-A by nationalising a route in accordance with provisions contained therein. The provisions; of Chapter IV-A are not merely regulatory of the procedure for nationalised route or area; it confers substantive right on the State to take over the route for operation by State Transport Undertaking. In this connection reference may again be made to the case of H. C. Narayanappa v. State of Mysore (supra); wherein the Supreme Court has laid down as follows: at page 1078

Chapter IV-A is not merely regulatory of the procedure for carrying on business of road transport by the State; it enables the State Transport Undertaking, subject to the provisions of the scheme, to exclude private operators and to acquire a monopoly, partial or complete, in carrying on transport business, in a

notified area or on notified routes.

Unless the inter-State route is nationalised in accordance with the provisions of Chapter IV-A of the Act (which corresponds to Chapter VI of the new Act) a citizen cannot be prohibited from operating on such route by means of inter-State agreement, creating monopoly in favour of S.T.U. It is admitted to both the parties that the route has not been nationalised under the aforesaid provisions of the Act.

12. The offending Clause 12(iii) of the agreement is, as such, ultra vires and is liable to be quashed. Similarly the provisions made in appendices against item No. 22, so far as it provides for operation by State Transport Undertakings, has also to be struck down.

13. Government of Haryana has published an approved scheme u/s 68-D of the Act for nationalisation of various routes within its State. By that scheme, that part of the route which falls within the territory of Haryana, has also been nationalised for exclusive operation of the State Transport Undertaking of Haryana. The scheme was published in Haryana Gazette dated 2-12-1969 and has been filed as Annexure 2 to the Supplementary affidavit. Although it is true that by the scheme, portion of the route falling within the State of Haryana has been nationalised for exclusive operation of the State Transport Undertakings of Haryana, but in that very scheme provision has been made for operation by the operators under inter-State agreement executed by the Government of Haryana with the Government of other State. This is clear from the following extract of the scheme itself:

To the complete exclusion of other persons, running and operating their stage carriage on the route; provided that nothing in the scheme shall affect services of the persons of any State other than the State of Haryana or of any Union Territory running and operating on the route by virtue of any inter-State agreement.

14. Supreme Court in *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, the relevant extract of which is reproduced below, has laid down that after the route is nationalised permit cannot be granted to private operators, if approved scheme is for exclusive operation of State Transport Undertakings, but if the scheme itself provides for operation by others, permits can be granted to the persons other than the State Transport Undertakings in accordance with the terms and conditions laid down by the scheme: at page 324 (of AIR)

A careful and diligent perusal of Section 68C, Section 68D(3) and Section 68 FF in the light of the definition of the expression "route" in Section 2(28 A) appears to make it manifestly clear that once a scheme is published u/s 68D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is

that no private operator can operate his vehicle on any part of portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself.

When the scheme of intra State route, which is over lapped by inter-State route or the scheme of inter-State route, which overlaps the intra-State route, permits the operation under inter-State agreement, arrived at u/s 63 of the Act, stage carriage permits can be granted and renewed by the transport authorities of the two States under Chapter IV of the Act/Chapter V of the new Act, in favour of the private operators in accordance with the agreement. The reason is that when the scheme itself makes exception in favour of operation under inter-State agreement, grating the permits to the private operators in accordance with such agreement, will not amount to violation of the scheme and the transport authorities of the two States, as such, cannot refuse to grant and countersign the permits in favour of the private operators on the inter-State route. The submission of the learned Counsel for Haryana, as such, cannot be accepted.

15. Permits were granted to the Corporation in 1989, but the petitioners have challenged the same by means of amendment application in these writ petitions after about two years from the time of grant of those permits. We are not inclined to permit the petitioners to challenge those permits before this Court after lapse of about two years. Learned Counsel for the petitioners have themselves stated that they do not want to challenge the permits granted to the Corporation at this stage. We are not expressing any opinion on the question as to whether the petitioners can challenge the permits of the Corporation before any authority under the Motor Vehicles Act, 1939. If and when such challenge is made by the petitioners the authority will decide the same in accordance with law.

16, These writ petitions are partly allowed. Clause 12 (iii) of the new inter-State agreement and item No. 22 of the appendix appended to the said agreement, so far as it relates to the operation against trips agreed upon by the State Transport Undertakings of the two States, are quashed. The transport authorities of the two States will decide, if not already decided, the application for renewal of permits or counter-signatures of the petitioners, expeditiously in accordance with law. In view of facts and circumstances of the case there shall be no order as to costs. The stay orders are discharged.