
(1980) 02 DEL CK 0044
In the Delhi High Court
Case No : Letter Patent No. 61 of 1979

Nasur-ud-Din

APPELLANT

Vs

State Transport Authority and Others

RESPONDENT

Date of Decision : 04-02-1980

Acts Referred:

Citation : AIR 1981 Delhi 9 : (1980) 2 ILR Delhi 1047

Hon'ble Judges : V.S. Deshpande, J; Harish Chandra, J

Bench : Division Bench

Advocate : Madan Bhatia, B.K. Paul, S.K. Mahajan and S.S. Dalal, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The decision of this appeal turns upon the true distinction between the substantive part of sub-section (3) of section 63 of the Motor Vehicles Act, 1939 (the Act), and the relevant part of the proviso thereto. Since they are to be carefully read, they are reproduced below:

" THE provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits : "Provided that it shall not be necessary to follow the procedure laid down in section 57 for the grant or countersignatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or the Regional Transport Authority concerned as a result of any agreement arrived at between the States. . . "

The petitioner-appellant is the holder of an inter-State stage carriage permit No. 1627 to ply between Ghaziabad, U.P., and Delhi issued by the Regional Transport Authority, Meerut, (RTA). U.P., His application to the State Transport Authority, Delhi, for countersignatures necessary for the operation of the inter-state route was rejected by the said Authority on 13th November, 1975 on the ground that

though 30 inter-State permits in all were to be issued and countersigned on this route and the permit holders had to be from U.P. and Delhi in the proportion agreed between the two States, in fact there was no vacancy on the route inasmuch as all the 30 vacancies had been validly and legally used up and as such no countersignatures for any additional permits could be made. In an appeal by the petitioner appellant against this decision to the State Transport Appellate Tribunal, Delhi, it was found that there was no proper agreement between Delhi and U.P. for increasing the inter-State permits on the Ghaziabad-Delhi route from 20 to 30. Since the application made by the petitioner-appellant to the Sta, Delhi, for countersignature was based on the ground that such an agreement existed between the two States, the application before the Sta, Delhi, could not succeed. It was found by the Appellate Tribunal that though the State Transport Authorities of the two States had agreed that the later-state permits on this route should be increased from 20 to 30 the Government of U.P. did not ratify this agreement and, Therefore, no agreement between the two States as such could be said to have been arrived at.

(2) Civil Writ 906 of 1977 was then filed by the petitioner-appellant. with a prayer that these orders be quashed. The learned single Judge dismissed the writ petition on the following construction of the substantive part of section 63(3) and the proviso thereto, namely, that after an initial agreement is arrived at between these two States for counter- signature of inter-State carriage permits issued by the two States in an agreed proportion up to the number of 20, no further inter-State permit issued by the State of U.P. to the petitioner-appellant could be required to be counter signed by the S.T.A. Delhi, In the absence of a further agreement between the two States to increase the total number of inter-State permits on this route beyond 20, since the petitioner- appellant failed to prove that the two States had agreed to increase the inter-State permits on this route from 20 to 30.

(3) A formal agreement between the two States was arrived at on 24-10-1957 as per Annexure PI. Clause Ii of the agreement provided that the then current number of inter-State permits on the Dalhi - Ghaziabad route should be 10 to be shared in the ratio of 7 : 3 between U.P. and Delhi. Clause 2 of the said agreement stipulated that the proportion of the stage carriage permits to be countersigned in future shall be 7: 3 between U.P. and Delhi without disturbing the existing ratio. The State Transport Authorities of the two States subsequently agreed to increase the number of inter-State permits on the route to 20. Still later they agreed to increase it to 30, but the two States as such did not enter into any formal agreement for the last increase. Twenty inter-State permits are already currently held in the agreed ratio by the inter-State permit holders of the two States. Since the petitioner-appellant wanted to have his inter-State permit issued by the Regional Transport Authority, Meerut, U.P., countersigned by the Sta, Delhi, beyond the number of 20 inter-State permits and since the agreement between the two States for an increase of inter-State permits beyond 20 could not be proved, the petitioner-appellant failed to obtain the

countersignatures of the Sta, Delhi, and suffered adverse decisions of the Sta, Delhi, the State Transport Appellate Tribunal and also of the learned single Judge. Hence this appeal.

(4) Mr. Madan Bhatia, learned counsel for the appellant, has argued before us that on a proper construction of section 63(3) of the Act and the proviso thereto, two distinct and separate grounds for counter- signatures of an inter-State permit would be found. He contended that the learned single Judge was not right in dismissing the writ petition on the ground that because initial agreement between the two States existed regulating the number of inter-State permits on this route no subsequent inter-State permit could be granted by one State and could be required to be countersigned by the other State Transport Authorities in the absence of another agreement between the two States for increasing the total number of inter-State transport permits on this route beyond 20 because the existence of an agreement is only one of those two grounds. He complains that the learned single Judge has ignored the right of I he petitioner-appellant to the countersignatures of the inter-State permits under the substantive part of sub-section (3) of section 63 which is the second ground.

(5) In our view, this contention must be upheld. Under the substantive part of sub-section (3) of section 63 the provisions of Chapter Iv including sections 42 to 68 relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits. Under this provision if one State issues an inter-State permit and the holder of such inter-State permit applies to the other State for counter-signatures, then the relevant procedure in Chapter Iv has to be followed. In this case the said procedure has been followed because no formal agreement between the two States to increase the number of permits from 20 to 30 existed. Thereafter it was the duty of the Sta, Delhi, to take into account the relevant considerations, such as those mentioned in sub-sections (1) and (2) of section 47 on the merits of the case. Instead, the Sta, Delhi, went off at a tangent and rejected the application for counter-signature"s on the ground that all the 30 permits were being used and no vacancy existed in which the petitioner-appellant"s inter-State permit could be counter-signed. This ground has not been found to be tenable. The Delhi Transport Corporation had been given only temporary inter- State permits between Delhi-Ghaziabad for all the 10 vacancies between. 20 and 30 without prejudice to the permanent arrangement which could be only for the issue of such inter-State permits in the agreed rat between the two States. This is perhaps why the State Transport Appellate Tribunal did not find that ground tenable. But it rejected the petitioner-appellant"s appeal on the sole ground that no agreement for the increase of the inter-State permits from 20 to 30 between the two States existed. It did not consider the alternative ground whether the Sta, Delhi, was bound to consider the application on merits under the substantive part of section 63(3) without referring to the proviso at all. It is only before the learned single Judge that both section 63(3) and the proviso thereto were considered. The conclusion of the learned single Judge was expressed as follows:

"If the agreement reached thereafter is for permitting a specified number of stage carriages it would be frustrated if the procedure laid down in section 57 has to be followed in granting counter-signature of permits beyond the agreed limit. If the effect is to be given to sub-section (3) of section 63 for grant of counter-signature in excess of the limit fixed under the agreement, it would make the provisions of the proviso to sub-section (3) of section 63 nugatory."

(6) We are, however, of the view that substantive part of section 63(3) and the proviso thereto are two independent and alternative grounds for the petitioner-appellant to seek counter-signatures on his permit from the Sta, Delhi. The petitioner-appellant at first relied on the proviso because he thought that there was in fact an. agreement between the two States, inasmuch as the State Transport Authorities of both the State's had agreed that the total inter-State permits on this route should be increased from 20 to 30 in the agreed ratio. It was arguable that a formal agreement between the two States as such was not needed, inasmuch as the subject of transport of the respective States was to be dealt with by their respective transport authorities and an agreement between such transport authorities would amount to an agreement between the two States. The positive refusal of the S.T.A.. U.P. to ratify the agreement between the transport authorities of the two States, however, shows that the agreement between the two States did not amount to "any agreement arrived at between the States" within the meaning of the proviso to section 63(3) of the Act. The petitioner-appellant, Therefore, rightly fell back on the alternative argument.

(7) The question for consideration is whether merely because there is a valid and formal agreement between the two States for Having a total number of inter-State permits on this route fixed at number 10 and subsequently increased to number 20, any further grant of interstate permits and counter-signatures thereon would be governed only by an additional agreement between the two States. That is to say. whether, once there is an agreement between the two States stopping at the issue of a certain number of inter-State permits, no increase in that number is possible without an additional agreement. The learned single Judge seems to be of the view "once an agreement always an agreement". But, in our view, the agreement between the two States must be taken for what it is. It cannot be taken to wipe out the applicability of section 63(3) between the two States in respect of further issue of inter-State permits which are not the subject matter of any such agreement. It cannot be said that issue of inter-State permits and the counter-signatures thereon beyond the number of 20 is the subject matter of any agreement between the two States, nor is it that the agreement expressly or otherwise prohibits the grant of permits or counter-signatures beyond 20 or other than by agreement alone. Since the very ground of rejection of the application of the petitioner-appellant is the absence of such an agreement, it would be surprising if the petitioner-appellant were to be told that this very ground disables the petitioner-appellant from moving the STA. Delhi, under the substantive part of section 63(3). We do not see anything either in s. 63(3) or the proviso thereto which can be read as meaning that once there

is an agreement under the proviso to s. 63(3), then s. 63(3) ceases to apply even to the issue of inter-State permits and counter-signatures thereon beyond the agreed number of permits. We do not think that the proviso to s. 63(3) would be made nugatory if the petitioner- appellant's application is directed to be considered by the Sta, Delhi, under the substantive part of section 63(3). For, the application of the proviso is exhausted when the number of permits as agreed in the agreement between the two States is dealt with. The agreement does not extend beyond the number and, Therefore, cannot be a bar to the consideration of the counter-signature of another inter-State permit beyond the agreed number under a totally different provision, namely, the substantive part of section 63(3).

(8) Mr. S. S. Dalal of the respondent relied upon the interpretation of section 63(3) and the proviso thereto by the Supreme Court in Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc., . In paragraph 12 of the report the court observed as follows :

" THE effect of the proviso to section 63(3) is that in the case of inter-State permits where an agreement has been arrived at between the States the provisions of section 57 of the Act need not be followed for the grant of counter-signatures of permits. In other case the procedure in section 57 of the Act will apply..... Section 47(3) of the Act will not in our opinion apply to inter-State permitsIn the absence of specific rules, the best way of harmonising the powers and functions is to allow these inter-State authorities to exercise their power within their respective spheres in regard to grant and counter- signature of permits by agreement and accord."

In paragraph 14, the court observed as follows:

"As in the case of inter-State permits the harmonious reading of the sections will be to make sections 42 to 68 of the Act applicable wherever it is possible to do so. The fixing of limit of number of stage carriage permits in or within the region is entrusted to the Regional Transport Authority because of the particular local matters contemplated in section 47(1) of the Act, namely, adequacy of other transport services between the places to be served. benefit to a particular locality to be afforded by the service, conditions of the roads included in the proposed route or area. These considerations in the case of Inter-state permits as also in the case of inter-regional permits cannot be said to be entrusted to the Regional Transport Authority to which the application is made because both ill the case of inter-State permits and inter-regional permits considerations in different States and in different regions will become relevant and are not embraced within the scope and intent of section 47(3) of the Act. We are Therefore of opinion that s. 47(3) of the Act will not apply either to grant or to counter-signatures of permits both in the case of inter-State and inter-regional permits. The relevant authorities in two States or two regions will on sure agreement and act in concert as the case may be. The number of services in the region can of course be fixed by the Regional Transport Authority but they will be for the region only. The

number of services for inter- regional or inter-State routes beyond the frontier of the region will have to be determined by agreement."

(9) The observations of the Supreme Court have to be read as inter-preting the clear provisions of section 63(3) and the proviso thereto. The word "agreement" is used by the Supreme Court in two different senses. In the proviso to section 63(3) the word "agreement" means a binding agreement between the two States which alone governs the counter-signatures of inter-State permits and which dispenses with the procedure u/s 57. On the other hand, the word "agreement" is not used in the substantive part of section 63(3) at all. When the Supreme Court says that under the substantive part of section 63(3) the counter-signatures will have to be "by agreement and accord or will have to be "determined by agreement", the court does not mean that section 63(3) will not operate by itself at all and only an agreement under the proviso would operate. The reason is that even u/s 63(3) the two State Transport Authorities or the Regional Transport Authorities have to be in agreement with the intention of each other. That is to say. both of them should reach the same conclusion acting within their own respective spheres of authority as to the number of inter State permits to be issued by one and to be counter-signed by the other. Unless the views of these two authorities as to the relevant considerations embodied in sub-sections (1) and (2) of section 47 coincide the effective number of inter-State permits cannot be increased in the present case beyond 20. The concerned authority in the State of U.P. is to be of the view that the need of the public for issuing the inter-State permits to be counter-signed by the concerned authorities in Delhi exists and, Therefore, the U.P. State Transport Authority issues such an inter-State permit over and above the existing number of 20. This is the U.P. view. It is for the Sta, Delhi, to consider the question bearing in mind the provisions of sub-sections (1) and (2.) of section 47 and other relevant provisions when an application is made for the counter-signatures of such an inter-State permit issued by the State of U.P. At the time of such consideration the State of Delhi cannot take the stand that there is no agreement between the two States for increasing the inter-State permits on this route beyond the number of 20. Had there been an agreement between the two States as required by the proviso to section 63(3), then the procedure under section 57 would not have been followed at all. There would have been no need, then to consider whether the public need for the increase of the permits beyond 20 exists or not. The existence of the need would have been decided by the agreement under the proviso. It is because there is no such agreement under the proviso that the needs of the public have to be considered under sub-sections (1) and (2) of section 47 by the Sta, Delhi, on the merits of each case. If the conclusion of the Sta, Delhi, in counter-signing the permits of the appellant accords with the conclusion of the Regional Transport Authority, Meerut, in issuing the inter-State permit to the petitioner- appellant, then it would be said that the issue of the counter-signatures on the permit held by the petitioner-appellant has been the result of "agreement" and "accord" or is "determined by agreement" to use the

language of the Supreme Court at the end of paragraphs 12 and 14 of the report in Mohd. Ibrahim's case, referred to above.

(10) We need only emphasis that the petitioner-appellant has a right not only under the provisions of the Motor Vehicles Act, referred to above, but also under Article 19(1)(g) of the Constitution to apply for inter-State permits and for a counter-signatures thereon, In D. Nataraja Mudaliar Vs. The State Transport Authority, Madras, , the Supreme Court emphasised that "Permits are not bounty but are right, restricted reasonably by the Motor Vehicles Act." In T.N. Raghunatha Reddy Vs. Mysore State Transport Authority, . the Supreme Court observed that the provisions of an inter-State agreement is not law and cannot override Chapter IV-A of the Act. For the same reason we are of the view that an agreement between the two States under the proviso to section 63(3) operates only on the matters which are agreed to therein. It does not override section 63(3) in respect of matters which are not the subject matter of such an agreement.

(11) We, Therefore, allow the appeal and set aside the judgment of the learned single Judge as also the decisions of the State Transport Appellate Tribunal and of the Sta, Delhi regarding the application of the petitioner-appellant made to the Sta, Delhi, for countersignatures on his permit. We direct the Sta, Delhi, to decide the application of the petitioner-appellant for counter-signatures on merits after hearing fresh arguments of the parties who were before the STA. Delhi, when the resolution No. 6, dated 13th November, 1975 was passed by the Sta, Delhi. The notices to parties, etc. shall be expeditiously issued by the Sta, Delhi, and the arguments will be heard within three months from today. The decision on the application shall be arrived at and communicated to the petitioner-appellant by the Sta, Delhi within one month of the conclusion of the hearing of the arguments. Since different views of to the legal position were expressed by the Sta, Delhi, the State Transport Appellate Tribunal and the learned single Judge and we have decided this appeal on our own view of the meaning of section 63(3) and the proviso thereto, we do not make any order as to costs.