

(1970) 04 RAJ CK 0009
In the Rajasthan High Court
Case No : Writ Petition No. 453 of 1969

Noor Mohammed

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-04-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1970) RLW 357 : (1970) WLN 240

Hon'ble Judges : Jagat Narayan, C.J.; L.N. Chhangani, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jagat Narayan, C.J.—This is a writ petition under Article 226 of the Constitution by one Noor Mohammed challenging the validity of a notification No. Tr. C T.A./69/31743, dated 27-1-1969, issued by the State Transport Authority, Rajasthan, Jaipur (Annexure 7).

2. The petitioner submitted an application to the Regional Transport Authority, Jaipur, for the grant of a non-temporary stage carriage permit on Jaipur-Rohak route. The application was published in the official gazette dated May 2, 1968 and objections were invited within 30 days. No objection was filed by anyone against the application. The matter came up for consideration in the meeting of the Regional Transport Authority, Jaipur, held on May 3, 1969. Besides the applicant, the State Road Transport Corporation (herein after to be referred as the Corporation) and 2 other persons had applied for the grant of the permit on this route. These 2 other persons were absent. Only the petitioner and the General Manager of the Corporation were present. The Corporation had not paid the prescribed permit fee. The Regional Transport Authority, however, did not consider the application of the petitioner on account of the notification dated January 27, 1969, published in the Rajasthan Raj Patra, dated 6-2-1969, which runs as follows:

No. Tr. S.T.A 69 31743.--An extract copy of Resolution No. 2 of the proceedings of the 66th meeting of the State Transport Authority, Rajasthan, Jaipur, held on 2nd and 3rd January, 1969, is notified for information of all concerned, which is as under:

"In exercise of the powers u/s 44 Sub-section 3(b) of the Motor Vehicles Act the State Transport Authority, Rajasthan resolves that with effect from the date of the publication of this resolution in the official Gazette, (i) the State Transport Authority shall hereinafter grant all types of permits, renewals, transfers etc, on inter regional and Interstate routes. In respect of these routes State Transport Authority shall perform all the duties hither to being performed by the Regional Transport Authority.

2. All types of permits on inter-state routes shall be countersigned by the S.T.A.

3. There was an agreement between the States of Rajasthan and Hariyana about the grant of, Inter-State permits. For giving effect to that agreement, the State Government issued a direction u/s 43(1) to the State Transport Authority. This direction is contained in Notification dated December 14, 1966 (Annexure 4). Under this notification, the Regional Transport Authorities were to invite applications for stage carriage or public carrier permit and to select applications for keeping in view the conditions laid down by the Inter State Transport Commission in this behalf. The cases of these selected applicants were then to be referred to the Transport Authorities of the other States concerned for granting counter signature under the agreement.

4. The notification dated January 27, 1969 (Andexure A 7) issued by the State Transport Authority has been attached on two grounds. Firstly, it is contended that the State Transport Authority was bound to obey the directions issued by the State Government u/s 43(1) with regard to the grant of Inter State permits. Secondly, it is contended that the State Transport Authority has no power to grant a permit where there is Regional Transport Authority functioning.

5. Having heard the learned counsel for the petitioner and the learned Additional Advocate General we are of opinion that both these contentions appear to the State Government necessary or expedient for giving effect to any agreement entered into with any other State Government relating to the regulation of motor transport generally. It was in the exercise of this power that the State Government issued the directions contained in its notification dated December 14. 1966 (Annexure 4). Under these directions the Regional Transport Authority was to invite applications for grant of permits on Inter State routes and to select applications for the grant of the permit. In view of this direction even if the State Transport Authority otherwise had the power to grant such permits, it could not exercise it It was the Regional Transport Aurtherity, Jaipur, which alone could consider the applications for permits on the Jaipur Rohtak route, which is an Inter-State Route.

6. Coming now to the second contention, Section 45(3)(b) of the Motor Vehicles

Act runs as follows:

(3). A State Transport Authority shall give effect to any directions issued u/s 43, and subject to such directions and save as otherwise provided by or under this Act shall exercise and discharge throughout the State the following powers and functions, namely:

(a) ...

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions.

The above provision enables the State Transport Authority to perform the duties of a Regional Transport Authority only in two contingencies. The first is where there is no Regional Transport Authority and the State Transport Authority thinks fit to perform such duties. This contingency is not applicable in the present case as the Regional Transport Authority, Jaipur, was functioning.

7. Secondly, the State Transport Authority can perform the duties of the Regional Transport Authority only in respect of any route common to two or more regions if so required by the Regional Transport Authority. This contingency is also not applicable as the Regional Transport Authority, Jaipur, did not ask the State Transport Authority to perform its duties in respect of the Inter-Regional routes.

8. The learned Additional Advocate General relied on the following observations made by a Division Bench of this Court in *Poonamchand v. State of Rajasthan* and another ILR 1961 Raj. 1031;

Section 44(3) (b) provides that the State Transport Authority shall exercise and discharge throughout the State the various powers and functions as mentioned therein. One of those powers is to "perform the duties of the Regional Transport Authority where there is no such Authority, to perform those duties in respect of any route common to two or more regions." This provision contemplates three contingencies under which the State Transport Authority can act to perform those duties of the Regional Transport Authority; (1) where "there is no such authority; (2) where the State Transport Authority itself thinks fit to perform those duties in respect of any route common to two or more regions; and (3) where the State Transport Authority is so required by the Regional Transport Authority to perform those duties in respect of any such common route. We are at this stage not concerned with the latter two contingencies, except the first.

9. It was the clear from the above observations that their lordships were only concerned with the first part of Clause (b) of Section 44(3). The observations with regard to the second and the third contingencies are obiter. We have duly considered the observations and are of opinion that Clause (b) contemplates only two contingencies and not three. The first contingency is where there is no Regional Transport Authority functioning. In such a case the State Transport

Authority can perform the duties of a Regional Transport Authority if it thinks fit to do so. It is not obligatory on it to perform all the duties of the Regional Transport Authority where such an authority is not functioning for some reason. The second contingency is where the Regional Transport Authority is functioning. In such a case the State Transport Authority can discharge the functions of the Regional Transport Authority only in respect of Inter Regional routes and only at the request of that authority. We read the clause as follows:

to perform the duties of a Regional Transport Authority

- (i) where there is no such authority and, if it thinks fit, or
- (ii) if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions,

The comma after the word "and" has been wrongly placed. As was held in AIR 1929 69 (Privy Council) commas are no part of the statute, and should be ignored in interpreting it.

10. If Clause (b) had contemplated three contingencies, it would have been worded as follows:

to perform the duties of a Regional Transport Authority

- (1) where there is no such authority, or
- (2) if it thinks fit to perform those duties in respect of any route common to two or more regions, or
- (3) if so required by the Regional Transport Authority to perform those duties in respect of any route common to two or more regions.

11. We accordingly hold that the State Transport Authority is not empowered to perform the duties of a Regional Transport Authority to grant permits on inter regional routes unless a request is made in that behalf by the Regional Transport Authority or the Regional Transport Authority is not functioning. We, therefore, declare the notification dated January 27, 1969, to be invalid and quash it. The State Transport Authority had no jurisdiction to grant permits on inter regional or inter State routes or perform any other duties of the Regional Transport Authority like renewal, transfer etc.

12. In the result, we allow the writ petition, set aside the order of the Regional Transport Authority and direct it to dispose of the application of the petitioner for grant of permit on the Jaipur-Rohtak route in accordance with law. We leave the parties to bear their own costs of this writ petition.