

(1973) 09 RAJ CK 0008

In the Rajasthan High Court

Case No : Special Appeal No's. 367, 368 and 655 of 1971

Samarathmal and Others

APPELLANT

Vs

Jugaldas and Others

RESPONDENT

Date of Decision : 21-09-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 115

Motor Vehicles Act, 1939 — Section 43, 44(3), 45, 46, 57

Citation : AIR 1974 Raj 104 : (1973) WLN 813

Hon'ble Judges : B.P. Beri, C.J;M.L. Joshi, J

Bench : Division Bench

**Advocate : M.L. Shrimal, A.A.G., S.M. Mehta and N.L. Pareek, for the Appellant;
M.M. Vyas and R.R. Vyas, for the Respondent**

Final Decision : Allowed

Judgement

1. These three appeals are directed against the common order dated 7-7-1971 passed by learned Single Judge of this Court disposing of two writ applications (S. B. Writ Petition No. 1926 of 1970 Messrs. Modern Transport, Kota v. State Transport Authority and others and S. B. Writ Petition No. 946 of 1970, Jugaldas v. State Transport Authority and others) whereby he accepted the writ petitions and quashed the resolution dated 5-9-1970 of the State Transport Authority, Rajasthan, hereinafter referred to as the S.T.A., granting counter-signatures on the permit of Shri Samrathmal on Neemuch-Kota route.

2. The material facts which it is necessary to notice for the disposal of these appeals stated in brief are : That a reciprocal agreement in regard to various inter-Statal routes was arrived at between the representatives of the State of Rajasthan and State of Madhya Pradesh in their meeting held on 11th and 12th of January, 1968 at Gwalior. This agreement also embraced in its fold the following inter-Statal routes:

(1) Kota-Chambal Dam-- 62 miles.

(2) Neemuch-Chambal Dam, expended upto Kota 109 miles.

(3) Kota-Chambal Dam extended upto Neemuch 109 miles.

Under the said agreement two single services were provided for each, of the aforesaid routes. Samrathmal, the appellant made an application on 15th of March, 1968, to the S.T.A. (M. P.) for the grant of one non-temporary stage carriage permit on the Neemuch-Kota via Chambal route. The same was granted by the S.T.A. (M. P.) on 10-8-1970. The permit was issued to Samrathmal on 20th of August, 1970, and the same was to be counter-signed by the S.T.A. (Rajasthan). The Secretary to the S.T.A. (M. P.) sent a letter of request to the S.T.A. (Rajasthan) for grant of counter-signature in regard to the permit of Samrathmal. Samrathmal also moved the S.T.A. (Rajasthan) by way of an application on 21-8-1970 for obtaining the counter-signatures on his permit.

It appears that in the meantime on 7-8-1970 the existing operators on the affected routes moved an application to the S.T.A. (Rajasthan) to the effect that according to their information the S.T.A. (M. P.) has either granted two non-temporary stage carriage permits for Nee-much to Chambal Dam extended upto Kota under the alleged reciprocal agreement and the same have been presented for counter-signature to the S.T.A. (Rajasthan) or are likely to be submitted for its counter-signature. They prayed that they should be afforded an opportunity before the counter-signatures were granted as the S.T.A. had no jurisdiction to grant counter-signature. The S.T.A. (Rajasthan) overruled their objections and granted counter-signatures by its impugned resolution dated 5-9-1970. Jugaldas and Messrs. Modern Transport moved this Court under Article 226 of the Constitution of India and challenged the impugned resolution inter alia on the ground (i) that a scheme u/s 68-C of the Motor Vehicles Act for Kota-Ravat Bhata route having been published no counter-signatures could be granted to Samrathmal on Neemuch-Kota route as it completely covered the route under the scheme already published; (ii) that neither the draft of the proposed direction, nor the directions finally issued by the State of Rajasthan. for giving effect to any inter-Statal agreement were published under the proviso to Section 43 (1) (iv) of the Act; (iii) that the impugned counter-signature was against the stay order of the Rajasthan High Court passed on 13th March, 1970, in Civil Writ Petition No. 293 of 1970; (iv) that the S.T.A. (Rajasthan) virtually reviewed its resolution dated 6-7th August, 1970, wherein it had resolved not to countersign such permits; (v) that the impugned resolution was passed in a meeting which was illegal for want of quorum; and (vi) that the S.T.A. (Rajasthan) had no jurisdiction over the inter-Statal and interregional routes in the matter of granting permit or counter-signatures. On these submissions both Messrs. Modern Trans- port and Jugaldas challenged the impugned resolution of the S.T.A.,

3. Samrathmal and the State of Rajasthan contested the stand taken on behalf of the writ petitioners and justified the grant of counter-signature by the S.T.A. (Rajasthan). They further opposed writ petitions inter alia on the grounds that the petitioner had alternative remedy of an appeal before the Transport Appellate

Tribunal, Jaipur (hereinafter referred to as the T.A.T.). The writ petitioners did not avail the alternative remedy of appeal and, therefore, are not entitled to invoke the extraordinary jurisdiction of this Court. A further plea was raised that writ petitioners themselves were operators on Kota-Chambal route and inter-Statal route on the basis of reciprocal agreement arrived at between the two States and implemented exactly on identical conditions under which the reciprocal agreement in question was entered into and that they had obtained renewal of their permit from the S.T.A. in respect of their routes after the coming into force of the agreement of 1968 and have been plying under the reciprocal agreement and are still continuing to take advantage and were, therefore, disentitled to get any relief by invoking the extraordinary jurisdiction of this Court. The plea of laches was also taken on the ground that the agreement in question was of January, 1968 but the petitioners had moved this Court under Article 226 of the Constitution after about a period of two years.

4. The learned Single Judge accepted the writ petitions on two grounds: Firstly that the S.T.A. had no authority to grant counter-signature on the permit as it had no jurisdiction to grant permit or counter-signature on a permit for the inter-Statal route at the material time. Secondly, Section 43 (1) (iv) and its proviso were not complied with as the draft of the proposed directions was not shown to have been published in the official gazette. The learned Judge, however, rejected the remaining contentions of the petitioners. The plea of the appellants that the writ petitioners themselves were deriving benefit under the reciprocal agreement was brushed aside simply on the ground that the S.T.A. had no jurisdiction whatsoever to grant counter-signatures on the permits over the inter-Statal route and, therefore, their conduct would not confer any jurisdiction on the S.T.A. when it had none. Eventually the learned Single Judge accepted the writ petition and quashed the impugned resolution of the S.T.A. dated 5-9-1970. Both Samrath Mal and State of Rajasthan feel aggrieved by the order of the learned Single Judge and have, therefore, come before us by way of appeal.

5. D. B. Civil Special Appeal No. 367 of 1971 is in respect of the writ petition by Jugaldas and D. B. Civil Special Appeal No. 368 of 1971 relates to the writ petition filed by Messrs Modern Transport. The State of Rajasthan has also filed an appeal against the impugned order which is D. B. Civil Special Appeal No. 655 of 1971. All these appeals arise out of a common order and are therefore being disposed of by this judgment.

6. On behalf of the appellants it was contended that the learned Single Judge erred when he held on the authority of Noor Mohammed v. State of Rajasthan 1970 RLW 357 that the S.T.A had no jurisdiction to grant counter-signatures on the permit in regard to an inter-Statal route. It was urged that the S.T.A. was empowered to deal with the application in regard to inter-Statal routes as it was empowered by the State Government by its notification dated April 21, 1970. Reference was made to Supreme Court decision in the State of Rajasthan and Others Vs. Shri Noor Mohammad, It was further urged that Section 43 (1) (iv) of

the Act is only applicable to directions if the Government chooses to issue and it is not contemplated therein to publish the directions for giving effect to the reciprocal agreement entered into between the two States. Reliance was placed in this regard to the Division Bench Authority of the Madhya Pradesh High Court rendered in miscellaneous petition No. 96 of 1965.

7. Messrs M. M. Vyas and R. R. Vyas have, however, supported the order of the learned Single Judge setting aside the impugned resolution of S.T.A. dated 5-9-1970 on the grounds stated by the learned Single Judge and have further added that resolution of the S.T.A. was even otherwise invalid as it contravened Section 68-F (1) (1-D) of the Act and also on account of the fact that the draft of agreement in question was entered into without complying with the provisions of Section 63 (3-A) as no opportunity was afforded to the existing operators of being heard before finalising the reciprocal agreement. While elaborating the argument in regard to Section 63 (3-A) it was submitted that sub-section (3-A) of Section 63 was inserted by Section 29 of Act No. 56 of 1969, and that provision lends support to their contention. It was further said that Section 63 (3-A) of the Act dispenses with the compliance of Section 57 of the Act only when the draft agreement was published by the respective States in their official gazettes inviting objections from the existing operators. The contention of the learned counsel is that the application for counter-signature was made on 28-1-1970; the counter-signatures were granted on the application on 5-9-1970; Subsection (3-A) had already been added to Section 63 of the Act on 2-3-1970; and therefore in view of Sub-section (3-A) of Section 63 read with Section 63 (3-B) of the Act, the agreement in question could not be given effect to as draft of the agreement in question was not published and objections invited from the existing Operators before its finalisation.

8. We have heard learned counsel for the parties at some length and given our earnest consideration to the respective contentions raised on either side.

9. The first question that calls for determination is whether the S. T. A. had jurisdiction to assume the functions of the R. T. A. in regard to inter statal route in dispute. Functions under clause (b) of Sub-section (3) of Section 44 of the Act could be discharged by the State Transport Authority subject to directions given to it u/s 43 of the Act. The State Government by its notification dated 21st April, 1970 (published in Rajasthan Rajpatra dated 21-4-1970 part 1 (b) Home "B" (1) Department) had Issued directions that all applications under Sub-section (1) of Section 45 of the said Act for vehicles proposed to be used in different States shall be made before the S. T. A. It will thus appear that by virtue of this notification it is the S. T. A. which was empowered to deal with the application in the matter of grant, renewal of permit including the grant of counter-signatures thereon in respect of inter-Statel routes. We are fortified in this view of ours by the decision of the Supreme Court in 1972 WLN 595 = State of Rajasthan and Others Vs. Shri Noor Mohammad, The State Transport Authority being a superior authority having been empowered by the directions issued by the Government to

deal with applications in regard to inter-statal route has obviously jurisdiction to grant counter-signatures on the permits relating to inter-statal route after the publication of the notification dated 21st April, 1970. It may be recalled that the application for counter-signature was made on 21-8-1970 i.e. after the publication of the aforesaid notification. The inference is, therefore, irresistible that the S. T. A. had jurisdiction to grant counter-signatures on the permit of the appellants which related to inter-Statal route, namely, Neemuch-Chambal Dam. We are, therefore, of the view that the finding of the learned Single Judge on this score cannot be upheld.

10. At this stage it is convenient to deal with additional contentions of Mr. M. M. Vyas urged in support of the conclusion arrived at by the learned Single Judge. Mr. M. M. Vyas contended that the counter-signatures in regard to the inter-Statal route under the reciprocal agreement of the two States could not be granted as before finalising the agreement of the year 1968, the provisions of Section 63 (3-A) were not complied with. The argument in this behalf is that the draft agreement under which permit in question was granted having not been published as required by Section 63 (3-A) of the Act, it was incumbent upon the S.T.A. to comply with the provisions of Section 63 (3-A) of the Act by inviting objections from the existing operators and affording an opportunity of being heard. It is argued that after the insertion of Sub-section (3-A) to Section 63, proviso to Section 63 (3) cannot be availed of for dispensing with, the observance of the provisions of Section 57 of the Act. According to learned counsel Section 63 (3-A) is a procedural provision and shall govern the instant case.

On careful scrutiny we are unable to agree with the contentions of the learned counsel. The agreement in question before us was entered into on 11th January, 1968. It appears that its draft agreement was not published. The point, however, is whether Sub-section (3-A) is retrospective in nature and would govern the permits granted under the reciprocal agreement entered into prior to coming into force of Section 63 (3-A). Our answer to this is in a plain negative. In the instant case the application for permit was made on 15th of March, 1968, to the S.T.A. (M. P.) by the appellant for the grant of inter-Statal permit which was of course granted on 10-8-1970. Sub-section (3-A) of Section 63 to our minds is not purely procedural as it is of a composite nature embracing substantive as well as procedural provisions. The agreement in question under which the impugned permit was granted is of the year 1968. Validity of existing contracts cannot be affected by posterior acts making contracts of that nature invalid. It has been held in *Henshall v. Porter* (1923) 2 KB 193 that an act for avoiding wagers which provided that all agreements by way of gaming and wagering shall be null and void and not enforceable, did not affect the validity or enforceability of the wagering agreement made prior to the coming into force of the Act. It has been held in *Gardner & Co. v. Cone* (1928) All ER 458 (461) that a statute altering existing contracts and retrospective in that sense need not necessarily be construed to be so retrospective as to affect a breach of contract or its

consequences which had taken place before its operation. The impugned permit in question was granted under a reciprocal agreement which was effective and complete whereunder the permit was granted. In our view, provisions which curtail or affect right of a party cannot be taken to be of a retrospective nature. The general rule is that any new law that is made should ordinarily affect future transactions, not past ones, because as Earle, C. J. pointed out in *Midland Railway Co. v. Pye*, (1861) 10 CB 179 (191). "It manifestly shocks one's sense of justice that an act legal at the time of doing it should be made unlawful by some new enactment". We are, therefore, of the opinion that the law governing the grant of counter-signature on a permit obtained under the reciprocal agreement dated 11th June, 1968, will be the law which was prevalent on the date when the agreement was made. If we were to apply the provisions of Sub-section (3-A) of Section 63, to such agreement it will not only work inconvenience but will impair the effect of the agreement itself and render act unlawful which was legal at the time of its doing. The contention of Messrs Vyas, therefore, has no merit in it and the same is rejected.

11. Another contention of Mr. Vyas is that the route for which inter-Statal permit was granted overlapped Kota-Ravat Bhata route for which scheme had already been published. It is true that once upon a time a scheme was published but it is not disputed that the same was subsequently withdrawn on 1-12-1972. Even otherwise Neemuch-Chambal Dam route is an inter-Statal route whereas Kota-Ravat Bhata is an inter-regional route. Therefore mere publication of a scheme in regard to Kota-Ravat Bhata route cannot be allowed to stand against the creation of inter-Statal route tinder reciprocal agreement recognised by the State itself. It has to be borne in mind that the object of the Motor Vehicles Act is securing the convenience of the public and developing a co-ordinated system of transport. If we were to put a wide interpretation on Section 68-F (1-D), as the petitioners desire us to do the very object of providing convenience to the public by a co-ordinated transport is likely to be frustrated which in our opinion could not have been the intention of the legislature.

12. We shall now consider the argument in regard to non-compliance of Section 43 (1) (iv) of the Act. There is divergence of judicial opinion on this point. Tyagi, J, has taken the view in *Aravali Roadways, Udaipur v. R. T. A, Udaipur* (S, B. Civil Writ Petn. No. 73 of 1969 decided on 4-8-1969 (Raj.)) that in view of the ratio laid down in *Abdul Gafoor and Others Vs. State of Rajasthan and Others*, and *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, the existing operators lawfully plying their vehicles on a route acquired some sort of a proprietary right and they have got a right to be heard and that hearing could only be conveniently possible as suggested in the aforesaid Supreme Court authority u/s 43 (1) (in). Tyagi, J. further after examining the scheme of the Act and considering the provisions of Section 63 (3) proviso dispensing with the compliance of the provisions of Section 57 for granting the counter-signature on permits reached the conclusion that the inter-Statal agreement could be only given effect to by publication of directions u/s 43

(1) (iv) after inviting objections from the existing operators and in this view of the matter the learned Judge held that the counter-signature obtained on inter-State permits were bad in law and they were ordered to be quashed. On the other hand the Division Bench of the Madhya Pradesh High Court in Pannalal v. S.T.A., Gwalior (D. B. Civil Misc. Petn. No. 96 of 1965 decided on 19-10-1965 (Madh Pra)) have taken an opposite view. It has been held by the Madhya Pradesh High Court in that case that the jurisdiction of the State Transport Authority to counter-sign a permit granted by the Transport Authority of another State under a reciprocal agreement does not depend on the terms of the agreement or any directions that the State Government may issue u/s 43 (1) (iv) as that power automatically vests in the Transport Authority by Section 63 (1) of the Act. We, however, need not go into this controversy as in our opinion the petitioners are disentitled to get relief in the exercise of extraordinary jurisdiction on account of not having availed the alternative remedy of appeal and also on account of their conduct which we are going to deal with presently. It is not disputed that Modern Transport had preferred objections before the S.T.A. against the grant of counter-signatures which were rejected by the S.T.A. The petitioner had an alternative remedy of appeal against the order of the S.T.A. The learned Single Judge in this case has also held to this effect and his finding has not been challenged before us. The only submission made in this behalf was that the order of the S.T.A, granting counter-signature was absolutely without jurisdiction and, therefore, failure to avail the alternative remedy of appeal could not come in the way of the petitioner for invoking the extra- ordinary Jurisdiction of this Court under Article 226 of the1 Constitution. Likewise the question of conduct of the petitioners was agitated before the learned Single Judge. It has been argued that the petitioner himself has obtained" renewal of his permit from the S.T.A. in pursuance of the reciprocal agreement of 1968, and has been plying their vehicles and reaping advantage under the reciprocal "agreement which they seek to impugn when it is used by the appellant Sam-rath Mal to show that the S.T.A. had jurisdiction to grant counter-signatures on his permit. The learned Single Judge however while dealing with this point has observed that-

"I am however of the view that if the S.T.A., Rajasthan did really lack the jurisdiction in the counter-signing of the permit of the respondent No. 4 then the point raised by the learned counsel for the respondent No. 4 regarding alleged acquiescence or estoppel on the part of the petitioner are of no avail for the simple reason that acquiescence by the petitioner in applying before S.T.A., Rajasthan for extension of his permit upto Neemuch or renewal of the permit under reciprocal agreement would not give jurisdiction to the S.T.A., Rajasthan if it really lacked from the beginning. It was for persons interested to have agitated against the grant or renewal of the permit of the petitioner at proper stage and in proper proceedings. But because the petitioner has obtained the renewal of his permit by the S.T.A., Rajasthan the cannot be debarred by saying in the present writ petition that the same S.T.A, had no authority or that it lacked jurisdiction of counter-signing the permit of respondent No. 4. In a case of present type it

cannot be said that the position of respondent No. 4 was in any way altered by reason of something done by the petitioner in the matter of obtaining renewal or extension of its permit and if the S.T.A. really lacked jurisdiction in the grant of counter-signature the acquiescence on the part of the petitioner in respect of his permit ipso facto would not grant the S.T.A. Rajasthan that jurisdiction."

It will appear that the learned Single Judge did not take into account the conduct of the petitioner or the availability of the alternative remedy to him mainly on the assumption that the S.T.A. lacked jurisdiction in the grant of counter-signature and acquiescence on the part of the petitioner would not have conferred on S.T.A. Rajasthan the jurisdiction to grant counter-signature. As already pointed out the S.T.A. Rajasthan was empowered by the State Government to deal with the applications in regard to inter-State routes. In our opinion, the conduct of the petitioners and the alternative remedy available to them in the circumstances of the case will have a great bearing in the matter of exercise of extraordinary jurisdiction of this Court. It will be profitable to extract the observations of Smith on the Judicial Review of Administrative Action, at pages 433 and 434-

"Whether the Tribunal lacked jurisdiction is one question; whether the court, having regard to the applicant's conduct ought in its discretion set aside the proceedings is another. The confused state of present law is due largely to a failure to recognise that these are two separate questions. It is improbable, however, that the distinction drawn between the effects of total and contingent want of jurisdiction would be adhered to in an extreme case. If a party had himself initiated proceedings before a Tribunal which was without any jurisdiction over the subject-matter were subsequently to apply to the Court to have proceedings set aside he would have little hope of being awarded a remedy, yet his conduct in invoking a non-existent jurisdiction would have done nothing to confer jurisdiction on the Tribunal,"

We are further fortified in our view by the authority reported in Venkatarao v. Rama Krishnarao, AIR 1958 AP 322 . Although this case does not arise under the Motor Vehicles Act but it does lay down the ratio that a person who had derived the advantage under a statute cannot be permitted to assert its invalidity when it has been decided against him under the statute. Likewise a person accepting the benefit by submitting to the jurisdiction of an authority cannot be permitted to contend that the authority had no jurisdiction. We cannot fail to notice the inconsistent conduct of the petitioner in approbating the jurisdiction of the S. T. A. when it suited him for taking renewal from him and take objection to the jurisdiction when it was to the advantage of the appellant. It is to be remembered that the High Court has the power to grant or refuse to grant a writ of certiorari. The submission to the jurisdiction of the State Transport Authority is a relevant point to be kept in mind. The party may be precluded by his conduct from claiming a writ whether the proceedings are void or voidable. It is true that no conduct of his will validate them but such considerations do not affect the principle on which the High Court acts in granting or refusing the writ of certiorari

as the writ of certiorari is a discretionary and equitable remedy and the conduct has great bearing on it. This is the view which has been taken in *Umaprabha Thampuratti Vs. State of Kerala and Others*, . In *Moon Mills v. Mehar* AIR 1967 SC 1450 it has been held that the certiorari being a discretionary remedy a party may disentitle himself to this remedy by his conduct. Moreover as observed in *A.M. Allison Vs. B.L. Sen*, proceedings by way of certiorari are not "of course". High Courts have power to refuse writs if there is no violation of justice. In the instant case the petitioners themselves have derived advantage under the renewal granted by the S. T. A. and are still reaping the benefits. In the circumstances no injustice would be caused to the petitioners on account of grant of counter-signature on the permits of the appellant. The learned Single Judge granted relief because he proceeded on the footing that the S.T.A. had countersigned without jurisdiction. This was due to the fact that the notification dated April 21, 1970 was not brought to his notice. Once the foundation of jurisdiction exists other contentions stand repelled for the reasons indicated above. We may also emphasize that jurisdiction is a matter distinct from the acquiescence by conduct. The learned Judge should have refused the remedy to the petitioners in exercise of his discretion in the circumstances of the case. We are, therefore, enable to maintain the judgment of the learned Single Judge and the same has to be set aside.

13. Accordingly, we accept the appeals, set aside the judgment of the learned Single Judge and dismiss the writ petitions of the petitioners Modern Transport and Jugal Das with costs.