

(1972) 01 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 57 of 1970

S.Harnam Singh

APPELLANT

Vs

Passenger Service J&K Government Transport Undertaking,
Jammu

RESPONDENT

Date of Decision : 18-01-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32(2A)
Motor Vehicles Act, 1988 — Section 41, 47, 63, 68C, 68D

Citation : AIR 1973 J&K 78 : (1973) JKLR 11 : (1972) KashLJ 451

Hon'ble Judges : S.M.F.Ali, C.J;J.N.Bhat, J and Jaswant Singh, J

Bench : Full Bench

Advocate : J.L.Sehgal, Amar Chand, Advocates appearing for the Parties

Judgement

Jaswant Singh, J.

(1) The petitioner who plies his Vehicle No. JKN 427 between Jammu and Poonch on the authority of a route permit granted to him by the

Regional Transport Authority! Jammu, has filed this petition under Article 32 (2A) of the Constitution of India as applied to the State of Jammu and

Kashmir read with Section 103 of the State Constitution for issue of a writ of prohibition enjoining the respondent not to ply any vehicle from

Pathankote to Rajouri and vice versa without complying with the requirements of law and obtaining proper route permits.

(2) The case of the petitioner as set out in the petition is that Respondent No. 1 has without lawful authority or route permit established a bus

service directly from Pathankote to Rajouri and back for carrying passengers that a part of the area in which the said service has been established

is covered by the route permit duly granted in his favour, that the respondent

has neither got a route permit for ParhankoteRajouri Return route nor is it entitled under law to such a permit, that a special procedure under Chart IVA of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act" having been prescribed in relation to State Transport undertakings, it was incumbent upon Respondent No. 3 to prepare and publish a scheme specifying the nature of the service proposed to be rendered, the area or route proposed to be covered by it and other prescribed particulars as ordained by Sees. 68C and 68D of the Act, that no such scheme having been prepared and published with the previous approval of the Central Govt. as required by the aforesaid provisions of the Act, respondent No. 1 could not be granted a permit, that PathankoteRajouri return route being an interstate route starting from Punjab and passing through the Jammu and Kashmir State, respondent No. 1 cannot operate the Bus service without complying with the requirements of the Act and that by plying buses on the said route in disregard of the provisions of the Act the respondent is illegally depriving the petitioner of the passenger traffic to which he is lawfully entitled by virtue of the permit duly granted in his favour.

(3) The petition has been contested by respondent No. 1 averring inter alia that PathankoteRajouri Bus Service has been stated in a lawful manner with a view to provide facilities and relieve inconvenience and hardship caused to the army personnel and the civilians travelling from Pathankote to PoonchRajouri area ; that buses operating on PathankoteRajouri route hold route permits for the whole of the Jammu Province and no separate route permits for the aforesaid routes are or were needed, that it was open to the respondent not to avail of the benefit conferred by Chapter IVA of the Act and that respondent No 1 being entitled to run the impugned service like any other transport operator and the Government of Punjab not having objected to the operation of the service in their territory the petitioner has no light to prevent respondent No. 1 from running the service on commercial lines or to maintain the petition.

(4) On the petition initially coming up for hearing before Bhat. J. it was contended before him that specific provisions having been made in Chapter IVA of the Act for grant of permits in favour of the State Transport undertakings and the same not having been taken recourse to by respondent

No. 1, it could not be granted any route permit under Chapter IV of the Act. It was also urged before the learned Judge that the route on which

the bus service has been started being an interstate route, respondent No. 1 was not competent to ply buses thereon without getting the route

permits counter signed by the transport authority of the State of Punjab. The learned Judge being of the opinion that the points raised before him

were of considerable importance and required to be settled by a larger Bench, requested the Hon'ble Chief Justice to constitute a Full Bench for

determination of the said points. Accordingly the present Bench has been constituted by the Hon'ble Chief Justice. This is how the matter is before

us.

(5) At the bearing of the petition by this Bench the learned counsel for the petitioner has reiterated the contention raised by him before the learned

single Judge. Mr. Amar Chand appearing on behalf of the respondent has on the other hand submitted that although Chapter IVA of the Act

contains special provisions relating to State Transport undertakings and those provisions were not availed of in the instant case, respondent No 1

could not still be granted route permits under Chapter IV of the Act. He has further submitted that although the route on which the service operates

is an interstate route neither the petitioner nor this court is concerned with the operation of the service beyond the Ravi Bridge near Lakhanpur and

it is for the transport authority of the State of Punjab and not for this court to restrain the respondent from operating the service without complying

with the procedure prescribed in the Act for validation of permits for use out side the region in which they are granted

(6) I have given my earnest consideration to the submissions made by the learned counsel for the parties. So far as the first contention of the

learned counsel for the petitioner is concerned I find no force in it. It is no doubt true that specific provisions relating to State Transport

undertakings have been incorporated in Chapter IVA of the Act by Act No. 100 of 1956, but from this it does not by any means follow that

Respondent No. 1 is precluded from availing of the provisions of Chapter IV like other private transport operators. As held in Raja Khangerjee

and others Vs. State of Bihar, AIR 1950 Patna 506, the provisions of Chapter IVA of the Act apply only "to a case where there is a scheme

prepared and published in accordance with Section 68C of the Act, but so long as a scheme is not prepared and published under section 68C

there is no reason why the State Transport undertaking should be estopped from making an application for a transport permit under Chapter IV of

the Act. In the aforesaid Patna case Chowdhary J. speaking for the Bench observed :

There is nothing in the language of any of the provisions of the new Chapter IVA of the amended Act to suggest that the right of the Rajya

Transport undertaking to make an application for State carriage permit under Section 57 (2) has been taken away expressly or by necessary

implication."

(7) In Amir Chand Narayan Vs. Divisional Officers, Bombay Division Bombay and others AIR 1960 Bombay 83 Shelat J. said :

"An application under Chapter IV could be made either by an individual or by a State Transport Undertaking. By the enactment of Chapter IVA

the State Transport Undertaking has not lost its right to make an application under Chapter IVA. Chapter IVA confers certain additional rights to a

State Transport Undertaking which such an undertaking did not have before the enactment of Chapter IVA"".

(8) At an other place in the same Judgment the learned Judge held I

The word 'may prepare a scheme' used in S. 68C cannot be said to be coupled with any duty. Section 68C is merely an enabling section and

there is nothing contained in the section which makes it compulsory or mandatory for a state transport undertaking to prepare a scheme."

(9) Again in Parbhami Transport Cooperative Society Ltd. Vs. G. M Bedekar and others, AIR 1960 Bombay, 278 it was held that section 68C

does not exclude Section 47. It would be worthwhile here to quote the following observations made by Mudholkar J. who spoke for the Bench.

The provisions in Chapter IVA are, as the heading would indicate, only additional provisions which relate the State Transport Undertakings and

are not the only ones which apply to such undertaking. Section 68B clearly supports this conclusion.

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The provisions of Chapter IVA do not touch the same matter as is dealt within S. 47. The amendment made by the Legislature in the Motor

Vehicles Act by enacting the provisions of Chapter IVA merely added to the rights of a State Transport Undertaking. That right conferred by this

chapter is to run bus services by excluding wholly or partially other operators. This right is quite distinct from the right of the State Transport

Undertaking to institute its bus service in competition with other operators and therefore an application by a State Transport Undertaking for

permit under S. 47 is maintainable.

(10) A contention similar to the one raised before us was also raised in *Ptabhami Transport Cooperative Society Ltd Vs, Regional Transport*

Authority Aurangabadh and others AIR 1960 SC 801. Sarkar J who spoke for the court while repelling the contention observed :

The Government has of course the power to do any business it likes and therefore the business of running stage carriages. We have earlier drawn

attention to the change made in cl. (a) of Section 42(3) by the amendment of 1956 Previously, it was not necessary for the Government to obtain

permits under S 42 (1) for the buses that it intended to run as stage carriages, S nee the amendment the Government can no longer run transport

vehicles for commercial purposes without obtaining permits under Section 42 (1). Now the plying of buses as stage carriages is a commercial

enterprise and for such buses therefore, under the Sections as they stand the Government would require permits as any one else. That being so, the

sections clearly contemplate that the Government may apply for and obtain permits for its buses run as stage carriages. The rule applied in *Nazir*

Ahmad's case, 63 Ind App 372 (AIR 1936 PC 253 (2) does not permit the ordinary meaning of S. 42 Sub Section (!) and Sub Section (3) cl. (a)

to be cut down because of the provision of Chapter IVA. The Act lays down two independent sets of provisions in regard to the running of buses

by the Government, one under Chapter IV and the other under Chapter IVA. Chapter IVA was intended to give the Government, a special

advantage. When the Government chooses to proceed under that Chapter, it becomes entitled as a matter of right under S 68 F(I) to the necessary

permits. Under Chapter IV of the Government does not have any such advantage ; it has to compete with other applicants, to s cure permits to be

able to run its buses. The powers under the two Chapters are therefore a different. To such a case the principle of *Nazir Ahmad's case* 63 Ind

App 372 (AIR L936 PC 25 (2) cannot be applied.

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His point i. e. the point of the learned counsel for the petitioner is that Chapter IVA was introduced by the amendment of 1966 to meet the

observations made in Moti Lal Vs. Government of Uttar Pradesh ILR (1951) I All 269 (AIR 1951 All 257 (FB) and some other cases that S. 42

(3) (a) was discriminatory in that it exempted the Government from the requirement of a permit and was hence void as offending Art. 14 of the

Constitution. It is said that Chapter IVA must, therefore, be construed as containing the only provisions enabling the Govt to run a stage carriage. It

is difficult to appreciate this contention. The observations in the case referred to had been made in regard to cl (a) of S. 42(3) as it stood before its

amendment in 1956. That section has been amended and as it now stands it is not discriminatory. The evil pointed out no more exists and no

question of reading the Act keeping in view that evil of discrimination, arises. We find nothing in Moti Lal's case ILR (1951) I All 269 (AIR 1951

All 257 (FB) or any other case which points to an evil nor has the learned counsel drawn our attention to any, which the Act can be said to have

intended to remedy. We therefore find no justification for reading Chapter IVA as containing the only provisions under which the Government can

ply stage carriages

(12) Thus I have no hesitation in holding that the provisions added by Chapter IVA in 1956 confer additional rights on State Transport

Undertaking and do not deprive it of the right already possessed by it to make an application for grant of permit under Chapter IV of the Act.

(13) There is, however, a lot of substance in the other contention raised by the learned counsel for the petitioner. A State Transport undertaking no

doubt has got a right under Chapter IV of being granted a permit like any other private transport operator but that does not mean that it can ignore

the procedure prescribed by the Act for running an interstate transport service. That would not only result in making ineffective the permit duly

granted in favour of a private transport operator but would also amount to a negation of the rule of law. In a welfare State like ours which is based

on the Rule of law, it is of utmost importance that the public authorities functioning in the State should act according to law and should engender a

feeling in the mind of the general public that they would not by riding brought shod over the law governing them deprive the public of the rights and

advantages accruing to it under the law in force in the State. As in although a part of the PathankoteRajouri route lies outside the territories of the

State and it is for the transport authority of the State of Punjab to see that vehicles operating in its territory do so without obtaining a proper permit

or without following the procedure prescribed by law relating to interstate or inter regional permits, as the respondents are within our jurisdiction

and it is of urgent public importance that they should be kept within the bounds of law, it is open to us to direct them not to ply the buses belonging

to the State Transport undertaking on PathankoteRajouri route without following the procedure laid down in the Act. That such a direction can be

issued would be evident from a perusal of a Division Bench decision of the Mysore High Court in United Transport Ccmpany Mangalore Vs.

Regional Transport Authority and others. In AIR 1964 Mysore 26 where G K. Govinda Bhat J speaking for the Bench observed:

Though the countersigning authority in the Maharashtra State is outside the jurisdiction of this court and as such beyond our jurisdiction,

respondents 1 and 2, whose primary duty is to grant inter state permits and make recommendations to the Maharashtra State Transport Authority

for counter signature, are within our jurisdiction. When it is brought in the notice of this court that the statutory authorities within its jurisdiction

refuse or neglect to perform the duty imposed on them by the statute it is the duty of this court while exercising its jurisdiction under Article 226

and 227 of the Constitution to compel the performance of public duties prescribed by the statute and to keep the subordinate and inferior bodies

and tribunals exercising statutory functions within there jurisdictions.

(13) Accordingly I would allow the petition to a limited extent and direct the respondents not to ply their buses beyond the territories of the State

on the interstate route without following the relevant procedure or without getting the route permits countersigned by the competent authority of the

State of Punjab as envisaged by S. 63 of the Act.