
(1992) 11 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 356 of 1992

Shyam Lal Kabra	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 05-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 123, 192, 206, 207, 88

Citation : (1992) 2 RLW 463 : (1992) 3 WLC 369 : (1992) 2 WLN 372

Hon'ble Judges : K.C. Agrawal, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This writ petition, under Article 226 of the Constitution, has been filed by Shyam Lal Kabra for the following reliefs:

(a) this Hon"ble Court may kindly be pleased to issue a writ of prohibio or any other writ, order or direction which is deemed fit and proper in the circumstances of this case restraining the non-petitioners and their officers and employees from interfering with the plying of the vehicle of the petitioner or seizing the same covered by valid All India Tourist permits for whole of Rajasthan which stands only renewed; and

(b) Any other writ, direction or order which is deemed fit and proper in the circumstances of this case may kindly be passed in favour of the petitioner.

2. The petitioner was granted permits in respect of tourist vehicles valid for the whole of Indian incontinentous States including the home State i.e. Rajasthan. A list of permit given to him is attached to the writ petition as Annex. 1. he was maintaining the tourist vehicles in accordance with the provisions of Sub-section (ii) of Section 88 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as "the Act") and operating the same in accordance with the provisions of Rules 83, 84 and 85 of the Central Motor Vehicles Rules, 1989.

3. In exercise of the power conferred by the Act, the Central Government as well as the State Government have made the Rules. The rules made by the Central Government known as "The Central Motor Vehicles Rules, 1989", whereas the rules made by the State Government known as "The Rajasthan Motor Vehicles Rules, 1990".

4. Rules 82 to 85 of the Central Motor Vehicles Rules, 1989 deal with the tourist permits. Sub-rules (1) and (2) of Rule 85 which are relevant are being reproduced below:

85 Additional Conditions of tourist permit

(1) The permit holder shall cause to be prepared in respect of each trip a list in triplicate of tourist passengers to be carried in the vehicles, duly attested by the Executive Magistrate or Sub-Inspector of Police or a Gazetted Officer of the State Transport Authority or Regional Transport Authority authorised in this regard of the area from which the tour emanates giving full particulars as under:

- a) name of the passengers
- b) address of the passengers
- c) age of the passengers
- d) starting point and the point of destination

(2) One copy of the list shall be sent by Registered AD Post to the Authority which issued the permit for record, the second copy shall be carried in the tourist vehicle and shall be produced on demand by the officers authorised to demand production of documents by or under the Act and the third copy shall be preserved by the permit holder.

5. Rule 5.19(A)(2) of the Rajasthan Motor Vehicles Rules, 1990 provides for certain conditions in respect of Contract Carriage. Clause (iii) of Sub-rule (2) which is relevant is being reproduced below:

Rule 5.19(A)(2)(iii)

that in case of a contract carriage, having seating capacity more than 12 in all, the vehicle shall carry a list of passengers travelling therein in the following form in respect of each trip and such list shall on demand be produced before the officer of the Transport Department not below the rank of Motor Vehicle Sub-Inspector.

6. From the perusal of the provisions of Sub-section (9) of Section 88 of the Act, Rules 82 to 85 of the Central Motor Vehicles Rule, 1989 read with Sub-rule (2) of Rule 5.19(A) of the Rajasthan Motor Vehicles Rules, 1990, it appears that the tourist vehicle before the commencement of his tour should have a permit in that respect and a certificate of fitness. It is required to carry with it a certificate of insurance and also a list of tourist passengers on its journey.

7. The police and transport authorities used to challan and seize the tourist vehicle on the allegations of want of documents and or plying the vehicles against the conditions of permit. The petitioner's complaint was that the police and transport authorities used to get the vehicles vacated from the drivers and after leaving them at the spot where the vehicles were seized without any shelter and without caring for the mode of transportation. Consequently, the petitioner had to file the present writ petition in this Court for a writ of prohibito restraining the authorities from either seizing the vehicles or compelling the passengers to vacate the vehicles on the ground that under the Rule applicable they did not have power to do so.

8. The learned Counsel for the petitioner urged that neither the authorities had power to seize the vehicles and take the same into their possession nor ask the passengers to vacate them. They could take into their possession only the papers which the driver was required to carry on journey. The submission of the learned Counsel for the petitioner was based on Rule A 5.19(A)(2)(iii) of the Rajasthan Motor Vehicle Rules, 1990. Counsel urged that this Court should lay down the guidelines on which the authorities have to work. The petitioner's counsel urged that the Rules should be so interpreted that it con harmoniously work. According to him, the liability of having committed the breach if at all is that of the owner and that the person driving the vehicle is entitled to consult him for the future course of action.

9. The Rajasthan Motor Vehicles Rules, 1990 had been framed under the following provisions:

Now, therefore, in exercise of the powers conferred by Sections 8(3), 28, 38, 65, 95, 96, 107, 111, 138, 146, 176, 201, 211 and 213 of the said Act, the State Government hereby makes the following rules, namely:

The Rajasthan motor vehicles Rules, 1990.

10. The contention of the Addl. Advocate General and Mr. Munshi, learned Counsel for the respondent was that as Rule 5.19(A)(2)(iii) of the Rajasthan Motor Vehicles Rules, 1990 were not enacted u/s 95 dealing with the power of State Government to make rules as to stage carriage and contract carriages, the same did not apply.

11. The learned Counsel for the petitioner contended that these rules had been framed under the power conferred by Rules 75 and 76, therefore, although in the heading of the Rajasthan Motor Vehicles Rules, 1990 there is no mention of the rules having been framed u/s 95 and 96, the same would be deemed to have been made under those provisions also. Rules 75 and 76 are general in nature.

12. There was a controversy raised before me by the learned Counsel for the petitioner as to whether the said rule applied on did not.

13. The contention of the Addl. Advocate General was that the Rajasthan Motor Vehicles Rules, 1990 having been made no specified provisions quoted above,

they could only apply to the contingencies or the provisions of those section and not beyond that.

14. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. The delegatee cannot over-ride the Act either by exceeding the authority or by making provisions inconsistent with the Act. Further, the delegatee has to exercise the power of making subordinate legislation in accordance with the procedure prescribed if any.

15. With regard to All India Tourist permits, the submission of the Addl. Advocate General was that the Rule 5. 19(A)(2)(iii) did not apply. Even in the absence of a concluded decision on this controversy, I would think that the petitioner is not entitled to any of the reliefs claimed in the present case.

16. Counsel for the petitioner submitted a number of difficulties which the motor vehicle owners used to face because of unguided powers being given to police and transport authorities.

17. It is true that rules expensively and swiftly scrutinize the exercise of discretion, they provide easy justification for statutory powers. However, in this case, we have to act in accordance with the rules and guidelines given therein. It, is impossible as well as unwise for the High Court to lay down the procedure in the matter of seizure and search. Details which were possible in this regard have already been given. Every motor has to carry a list of passengers.

18. The petitioner's counsel argument was that the Court should eliminate any motivation and illegal demand of money by those who coerce the drivers and compel them to pay money by unjustifiably saying that in the absence of money being paid, they were liable to be harassed.

19. The aforesaid argument of the petitioner's counsel is not borne-out from any of the allegations made in the writ petition. After seizure and search, the persons found guilty should be liable to prosecution. It is no part of the duty laid down in the rules that each individual passenger should be provided with the facilities of reaching his destination. The State Government did not deliberately make any rule on the same as it was not possible to comply with the same.

20. I have already indicated that whether the Rajasthan Motor Vehicles Rules, 1990 applied to All India Tourist Permit or not is not material for deciding the controversy raised in this case.

21. There was no cause of action for the petitioner to file the writ. What ever he alleged was only speculative and imaginary. Whenever seizure of the vehicle is done against the Act or the Rules, the petitioner would have a right to take up his defence in prosecution. Till he is not prosecuted or his property is illegally seized, he would have no right to agitate against the seizure and to challenge the same. There is no allegation in the writ petition that at any point of time the passengers were made to get down from the vehicles caught and seized and that

they suffered on account of the high handedness of the police and transport authorities.

22. Section 129 of the old Act which is equivalent to Section 206 of the new Act with which we are concerned was interpreted by the Supreme Court in *Ishwar Singh Bagga and Others Vs. State of Rajasthan*, . In that case, the controversy was whether the officers of the State Road Transport Corporation could be treated as persons falling within the meaning of expression "other persons" in Section 129 or 129-A. The Supreme Court held that the other persons referred to in Section 129 or 129-A could not be the officers of the State Road Transport Corporation.

23. Counsel for the petitioner urged vehemently that seizure of the vehicle u/s 207 of the Act does not serve any purpose excepting to harass its owner. The submission of the petitioner's counsel is not correct. This has been dealt with the Supreme Court in *The Transport Commissioner, Andhra Pradesh, Hyderabad and Another Vs. S. Sardar ali, Bus Owner, Hyderabad and Others*, . The Supreme Court said:

A precondition to the seizure and detention of the vehicle is that the police officer or authorised person must have reason to believe that one or the other of the offences specified, punishable as we have seen u/s 123 (now Section 192), has been or is being committed. Whenever property involved in the commission of an offence is seized, the seizure is generally expected to serve a manifold purpose such as to prevent repetition of the offence, to use the thing seized as material evidence in the prosecution, to preserve the property so as to enable the court to pass appropriate orders for its disposal by way of destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise. There is no reason to assume that the seizure u/s 129-A (now Section 207) is any different and is not to serve any of these purpose or any purpose at all.

24. It is not always essential to seize the vehicle. Proviso gives an option to seize the certificate of registration instead of the vehicle. This action disable the plying of the vehicle. Under Sub-section (2), the owner or the person in charge of the vehicle which has been seized and detained may apply to the transport authority or authorised person for release of the vehicle. He must submit the relevant documents such as: (a) the driving licence; (b) the certificate of age; (c) the certificate of registration and (d) the permit. After verification of the documents, the vehicle may be released subject to such conditions as may be imposed.

25. The next point to be considered is whether a writ of prohibio could be issued in this case.

26. Prohibio is a judicial writ, issuing out of a superior Court, to an inferior Court, preventing the inferior Court from jurisdiction with which it is not legally vested, or in other words, to compel Courts with judicial duties to keep within the limits of their jurisdiction, or to prevent them from violating the rules of natural justice.

27. At page 382 of the Administrative Law Second Edition 1989 by P.P. Craig, the author has dealt with the scope of certiorari and prohibito. Certiorari and prohibito will issue to any body which exercises statutory authority, including departments of State.... It is assumed that they will not be available against the Crown....

28. In 1924 Atkin L.J. produced what has proved to be the most frequently quoted dictum as to the scope of the certiorari,

Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.

29. Prohibito is in general subject to the same rules as certiorari; any points of distinction will be mentioned. While not a statutory definition, the dictum of Atkin L.J. does provide a useful starting point in considering the scope of the remedies.

30. Thus from the above, it would be seen that prohibito lies only against judicial or quasi judicial proceedings and not against the exercise of legislative or executive functions. In short, a writ of prohibito is available only against such authorities as are amenable to the jurisdiction of certiorari. It will not issue to correct the course, practice or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings or to correct an error of law unless it makes it go outside its jurisdiction. see *Govinda Menon Vs. Union of India (UOI)*, .

31. Though a writ of prohibito does not issue against an administrative authority, the Supreme Court has held that under Article 226 of the Constitution, the High Court has the power to issue an order prohibiting a statutory administrative authority from acting without jurisdiction where such act is likely to subject a person to lengthy proceedings and unnecessary harassment. See *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, .

32. They are issued at different stages of the proceedings. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior court for a writ of prohibito, and on that ground, an order will issue prohibiting the inferior court from continuing the proceedings.

33. The present being not a judicial or quasi-judicial proceedings, this Court has difficulty in issuing the writ of prohibito.

34. For the reasons given above, the writ petition fails and is dismissed with costs.