

(1995) 01 KL CK 0003
In the High Court Of Kerala
Case No : W.A. No. 1403/94

State of Kerala and Others

APPELLANT

Vs

Sebastian and Others

RESPONDENT

Date of Decision : 28-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 67, 72, 96

Citation : (1995) 1 KLJ 318

Hon'ble Judges : K. Sreedharan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : S. Narayanan Potti, A.G. For State, for the Appellant; K.V. Gopinathan Nair, P. Gopalakrishna Menon, K. Radhakrishnan, M.K. Chandramohan Das, M. Rameschander and K. Ramachandran, for the Respondent

Final Decision : Allowed

Judgement

Sreedharan, J.—State Government in exercise of the powers conferred by Section 67 of the Motor Vehicles Act, 1988, hereinafter referred to as "the 1988 Act", issued G.O. (P) No. 19/94/PW&T dated March 28, 1994 as S.R.O. No. 364/94. By the said notification, Government modified the earlier notifications relating to the same subject. As per the present notification, S.R.O. 364/94, rates of fares for different classes of stage carriage services were fixed. Fare for Ordinary Mofussil services, including City, Town and Limited Stop City services, is fixed at 18 paise per kilometre. In the case of Fast Passenger and Limited Stop Fast Passenger, the fare is fixed at 22 paise. In the case of Super Fast services, Express services, Super Express services, Deluxe services and Super Deluxe services, the rates of Fares is 24 paise, 27 paise, 28 paise, 30 paise and 32 paise respectively. As per the notification, permit holders of stage carriages were directed to provide certain additional facilities to the passengers. Clause (F) of the notification deals with those additional facilities to be provided by operators having permits for plying Fast Passenger, Limited Stop Fast Passenger, Super Fast Services, Express Service, Super Express service, Deluxe Service and Super

Deluxe service. For a proper understanding of the same, we read the said clause:-

(F) The services mentioned in items (ii) to (vii) of Clause (A) shall be operated by the Operators if they fulfill the following conditions:-

(i) Speed Limit :- In compliance to Government of India Notification No. S.O. 425 (E), dated 9.6.1989, Fast Passengers to run at an average speed of 40 Kilometres, Super Fast services to run at an average speed of 50 kilometres or above, Express/Super Express services to run at an average speed of 50 kilometres, Deluxe/Super Deluxe services to run at an average speed of 50 kilometres.

(ii) Advance Reservation Facilities - All Fast Passengers, Super Fast, Express/Super Express, Deluxe/Super Deluxe services should have seven days advance reservation facilities at both ends at important stations in all revenue Districts through which the services passes.

(iii) Retiring Rooms, Latrines, Urinals and Refreshment Stalls All Fast Passenger, Super Fast, Express/Super Express, Deluxe/Super Deluxe permit holders to maintain their own bus stations/Garages in all districts, lying within the route length and such Bus Stations and Garages to have retiring rooms, latrines, urinals separately for ladies and Gents, refreshment stall, and advance reservation counters. Bus Station owned by Local Bodies shall not be treated as that of permit holder.

(iv) All Fast Passenger, Super Fast, Express/Super Express, Deluxe/Super Deluxe permit holders should maintain Reserve Bus, as contemplated under Rule 182 of the Kerala Motor Vehicles Rules, 1989.

(v) In the case of existing superior classes of services like Fast passengers, Super Fast Express/Super Express and Deluxe & Super Deluxe the fare under Clause (A) should be charged by the Operators.

The provisions contained in this clause was questioned by permit holders in a series of Original Petitions. Learned Single Judge upheld the objections and also took the view that the said clause is not severable and so the entire notification is bad. Accordingly, the learned Judge quashed the notification and revived S.R.O. 1048/92, which fixed the rates of fares for the various classes of stage carriages. The State has come up on appeal questioning the correctness of the action of the learned Single Judge in quashing the entire notification. The permit holders, who challenged Clause (F) of the notification, are also aggrieved by the decision, since their right to collect enhanced fare as per the notification has been interfered with as a result of the entire notification having been struck down. Learned Single Judge quashed the notification primarily on four grounds. A notification issued u/s 67 of the 1988 Act can only be treated as an administrative direction and not legislative in character. So, it cannot in any manner interfere with the jurisdiction of the quasi-judicial authority of the

Regional Transport Authorities and State Transport Authority. Secondly it was held that the impugned notification violates provisions contained in the Panchayat Act relating to the establishment of bus stations. The third ground relied on by the learned Judge is that the notification imposed unreasonable restrictions on the permit holders on their right to carry on the motor transport business. It was also the view of the learned Judge that u/s 67 of the 1988 Act, the State Government can issue directions regarding the fixation of fares and freights only and not on any other matter.

2. The first question that, has to be dealt with in these appeals is regarding the nature and effect of a notification issued by the Government in exercise of the powers u/s 67 of the 1988 Act. Section 67 inter-alia authorises the state government to issue directions by notification in the official gazette to the State Transport Authority and Regional Transport Authorities regarding the fixing of fares ad freights of stage carriages, contract carriages and goods carriages. This power has to be exercised having regard to the advantages offered to the public, trade and industry by the development of motor transport, the desirability of co-ordinating road and rail transport, the desirability of preventing the deterioration of the road system and the desirability of preventing uneconomic competition among holders of permits. This means that any notification issued u/s 67 must have regard to the advantages offered to the public. In other words, while fixing fares and freights for stage carriages, contract carriages and goods carriages, the Government must have regard to the advantages offered to the public. Putting it differently, any notification regarding the fixing of fares and freights of stage carriages, contract carriages and goods carriages, provision can also be made for extending additional comforts and benefits to the public. It, therefore, follows that while fixing fares for stage carriages of different types, Government can certainly insist on the permit holders to offer more amenities and comforts to the travelling public.

3. If provisions are made in the notification issued u/s 67 of the 1988 Act for Fast Passenger, Super Fast, Express and other fast bus services, they are certainly advantages to the travelling public. Such vehicles will certainly provide for quick and prompt transport service. Therefore, for different varieties of stage carriages, different rates of fare can be fixed by the Government. Such fixation of fare cannot be legally objected to.

4. A. For coming to the conclusion that the impugned notification issued u/s 67 of the 1988 Act is only administrative in character and not having the character of subordinate legislation, learned Single Judge relied on the decision of the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, In that case, their Lordships were concerned with an order issued u/s 43 A of the Motor Vehicles Act, 1939, hereinafter referred to as "the 1939 Act". Sec. 43 A allowed the State Government to issue orders and directions of a general character in respect of any matter relating to road transport to the State Transport Authority or a Regional Transport Authority. Such a direction, as per

the section, is binding on those authorities and they are to give effect to the same. Clause (2) of that Section further stated that the State Government may direct the State Transport Authority or any Regional Transport Authority to open any new route or to extend an existing route or to permit additional stage carriages to be put or to reduce the number of stage carriages on any specified route. An order of the State Government in relation to the above aspects was held to have the effect of interfering with the quasi-judicial function of the State Transport Authority and the Regional Transport Authorities. Further, the directions or orders issued u/s 43-A were not required to be published. Nor were they required to be communicated to the parties, whose claims were affected thereby. Orders issued by the Government u/s 43-A interfered with matters which were, as per the Act, to be dealt with by the above-mentioned authorities in a quasi-judicial manner. Under the provisions of the Act, the State Transport Authority and the Regional Transport Authorities were to grant permits or refuse the same on an evaluation of the entire circumstances in exercise of their powers quasi-judicially. Any attempt to interfere with the said jurisdiction of these authorities was frowned upon by the Supreme Court. So, the orders issued by Government in exercise of the purported jurisdiction u/s 43-A was held to be not binding on the State Transport Authority or Regional Transport Authorities. Their Lordships held:-

When applications are made for permits under the relevant provisions of the Act and they are considered on the merits, particularly in the light of evaluation of the claim of the respective parties, the transport authorities are exercising quasi-judicial powers and are discharging those functions as quasi judicial Tribunals which are subject to the jurisdiction of the High Court under Art. 226, so that when we examine the question about the validity of the impugned order, we cannot lose sight of the fact that the impugned order is concerned with matters which fall to be determined by the appropriate transport authorities in exercise of their quasi-judicial powers and in discharge of their quasi-judicial functions.

The law stated by the Supreme Court cannot have any application to the facts of the case before us. Section 43-A of the 1939 Act has nothing in common with the provisions contained in Section 67 of the 1988 Act. Section 67 allows the Government to issue directions to the State Transport Authority and Regional Transport Authorities by notification in the official gazette regarding the fixing of fares for stage carriages, having regard to the advantages offered to the public. The notification issued in exercise of this power cannot be termed as purely administrative in character. Such a notification issued under this Section can certainly partake the character of subordinate legislation.

5. Section 67 comes under Chapter V of the 1988 Act, which deals with control of transport vehicles. Section 96 of the Act, which comes under the same chapter, empowers the Government to make rules for the purpose of carrying into effect the provisions contained in the chapter. So, the notification issued by Government u/s 67 of the 1988 Act fixing the fares of stage carriages having

regard to the advantages offered to the public is certainly not an administrative order, it is a subordinate legislation binding on quasi-judicial authorities like the State Transport Authority and the Regional Transport Authorities. The contrary view taken by the learned Single Judge, we are afraid, cannot be supported.

6. Now the question that arise for consideration is whether the conditions imposed in Clause (F) of the notification are reasonable. In case if any of the provision is found to be unreasonable, can that unreasonable provision be severed and the remaining part of the notification saved?

7. Sub-clause (i) of Clause (F) relates to the speed limit of vehicles having various types of permits. Fast Passengers are to run at an average speed of 40 kilometres, while Super Fast, Express, Super Express, Deluxe and Super Deluxe services are to run at an average speed of 50 kilometers. No one, who is a party to these proceedings, questions the validity of this provision. So, we do not find any ground to interfere with the said provision fixing the speed limit.

8. Sub-clause (ii) of Clause (F) relates to advance reservation facilities. According to this sub-clause, the operators of Fast Passenger, Super Fast, Express, Super Express, Deluxe and Super Deluxe services should have advance reservation facility at both ends and at important stations in all revenue districts through which the services passes. The direction to have reservation facilities at all important stations in all revenue districts through which the service passes does not appear to be workable in the case of operators having lesser number of permits. If they are compelled to have such reservation facilities at all important stations, it will cast heavy burden on them and it will, according to us, be unworkable. But, that is not the case in relation to the termini of the route. At both ends operator should have his office or agent. Reservation facilities at both ends of the route will be advantageous to the traveling public. Such a direction cannot be objected to by the permit holders. In this view of the matter, we restrict the scope of sub-clause (ii) of Clause (F) of the notification and read it down as directing the permit holders of Fast Passengers, Super Fast, Express, Super Express, Deluxe and Super Deluxe services to have seven days advance reservation facilities at both ends of the route.

9. Sub-Clause (iii) of Clause (F) requires the permit holders to have retiring rooms, latrines, urinals and refreshment stalls and to maintain their own bus stations/garages in all districts lying within the route length. They are also prevented from making use of the bus stations owned by local bodies in order to make available the above facilities to the passengers. This direction is the one which has been seriously objected to by the permit holders. According to them, these directions, if insisted on, will compel all the private bus operators to surrender their permits, since the said condition is unworkable.

10. Section 72 of the 1988 Act deals with the grant of permits to stage carriages. As per clause (2) of that Section, subject to any rule that may be made by the Government one or more of the conditions specified therein can be attached to

the permit. Sub-clause (xx) states that the permit may contain a condition that any specified bus station or shelter maintained by Government or a local authority shall be used and that any specified rent or fee shall be paid for such use. So, the use of bus station maintained by local authority can be a condition of the permit. The permit holder can thus be compelled to avail of the facilities provided by local authorities in the bus stations established by them. Rule 207 of the Kerala Motor Vehicles Rules, 1989 deals with the starting places and termini. It states that where a local authority has provided and maintains a public stand for motor vehicles with facilities for drinking water supply, lighting, latrine and waiting sheds for passengers, the Regional Transport Authority is to approve the use of that stand for the purpose of picking up or setting down passengers of public service vehicles. It also states that the State or Regional Transport Authority should direct the permit holders to make use of those stands established by local authorities. These statutory provisions enjoin upon the State Transport Authority and the Regional Transport Authorities to compel the permit holders to avail of the facilities in the bus stations established by the local authorities. While so, by the impugned notification, the permit holders are required to set up their own retiring rooms, latrines, urinals and refreshment stalls and advance reservation counters in all districts lying within the route length. By this provision, an unreasonable restriction is sought to be imposed on the permit holders. Such a restriction will virtually disable them from carrying on with the operation of the vehicle. As observed by the Supreme Court in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, , the famous bank nationalization case, where restrictions imposed upon the carrying on of the business are so stringent that the business cannot in practice be carried on, the Court will regard the imposition of the restrictions as unreasonable. The restriction imposed in this case are so stringent that its implementation, if insisted on, will compel the private bus operators to close down their business. The restrictions imposed by sub-clause (iii) of Clause (F) are arbitrary, unworkable and highly unreasonable. In this view, we strike down sub-clause (iii) of Clause (F) of the impugned S.R.O. No 364/94.

11. Sub-clause (iv) of Clause (F) of the notification provides for maintenance of reserve bus as contemplated under Rule 182 of the Kerala Motor Vehicles Rules, 1989 by permit holders of Fast Passenger, Super Fast, Express, Super Express, Deluxe and Super Deluxe vehicles. This provision is seriously objected to. A permit holder may be having only one, two or three vehicles. If such a permit holder is required to maintain a reserve bus, it will virtually amount to drive him out of the business in motor transport. According to us, it is highly unreasonable to expect one who has got only a very few permits to maintain a reserve bus. This provision in the impugned notification also is unreasonable and it has to be set at naught. We do so.

12. No other provision in the notification has been challenged by the Appellants-permit holders-as unreasonable restriction on their right to carry on business.

13. On the basis of the earlier discussion, we come to the conclusion that sub-clause (ii) of Clause (F) has to be read down to have the effect of directing permit holders to provide seven days advance reservation facilities in respect of the seats in their vehicle at both ends of the route. They need not have such facilities in all revenue districts through which the service passes. Sub-clause (iii) of Clause (F) in its entirety is struck down. The permit holders of long distance buses are to make use of the facilities in the bus stations established and maintain by the Government or the local authorities. Sub-clause (iv) of Clause (F) is also struck down, since it imposes an unreasonable restriction on the right of permit holders to carry on business in motor transport.

14. Yet another aspect which is to be considered is whether sub-clause (ii), (iii) and (iv) of Clause (F) of the notification can be severed from the other part and the remaining part saved. The provisions which have been found objectionable can be severed and their severance will in no way affect the other parts of the notification. Therefore, there is no need to strike down the entire notification. The learned judge was not right in thinking that the notification cannot exist without Clause (F). We uphold the notification except to the extent indicated earlier in this judgment.

15. One more question that arises for consideration is whether the State Transport Authority and the Regional Transport Authorities are justified in granting permits to the vehicles as Fast Passenger; Super Fast, Express, Super Express, Deluxe or Super Deluxe without any guideline regarding the standard to be maintained by the vehicles. According to Mr. K. Ramachandran, Learned Counsel who appeared in this case on behalf of the Consumer Forum, various types of permits are being issued by different authorities without any guideline prescribing the facilities or conditions of the vehicle. According to the Learned Counsel, the private operators want to operate only on profitable and remunerative routes as Fast Passenger services and Express services. As a result of their vehicle being granted permit as Fast Passenger or Express, they charge higher fares without providing any additional amenity or facility to the passengers. Higher rates of fare is payable by the passengers depending on the category of the permit. Super Fast and other fast services are to run at 50 Kilometres per hour. But Fast Passenger, Super Fast, Express, Super Express, Deluxe and Super Deluxe are allowed to realize 22 paise, 24 paise, 27 paise, 28 paise, 30 paise and 32 paise respectively for running kilometer. Same vehicle, as the rules stand today, can get permit of any of the above category. Why should the consumer be forced to pay the higher rates of fare without getting any additional amenity? We find much force in this argument. Now any vehicle can be granted any type of permit because there is no rule laying down the standard to be satisfied by the vehicle for getting the different types of permits. Government have not fixed any guideline in the form of rules prescribing the requirements of vehicles to be used as Fast passenger, Super Fast, Express, Super Express, Deluxe or Super Deluxe. A vehicle which can be granted ordinary permit can be given permit as Fast Passenger, Express, etc. depending on the whims and

fancies of the transport authority. This will lead to arbitrary decisions. As a result of this, the permit holders realize higher fare without providing any additional amenity to the traveling public. So, we consider it highly essential to direct the Government to fix the standard to be maintained by the vehicles which are to be granted the permits for plying as Fast Passenger, Super Fast, express etc. The transport system in the State is meant for the benefits and convenience of the public. The policy to grant permits liberally under the 1988 Act is one directed to achieve the said goal. If permits are granted to vehicles which are not having any additional facility than that required for getting a permit to ply as ordinary passenger vehicle and allow the permit holders to realize higher rates of fares, it will certainly undermine the above policy. Therefore, we direct the Government to come out with appropriate rules fixing the standard to be maintained by vehicles which are to be granted permits as Fast Passenger, Super Fast, express etc. The absence of such rule leads to arbitrary grant of such permits. Therefore, we think it proper to direct State Transport Authority, Regional Transport Authorities and the State Transport Appellate Tribunal not to grant permits for Fast Passenger, Super Fast, Express, Super Express, Deluxe or Super Deluxe till the Government lay down the standard and requirements of the vehicle which can be put in use as Fast Passenger, Super Fast, Express, Super Express, Deluxe or Super Deluxe. We do so.

In the result, all appeals are allowed. Notification, S.R.O. 364/94, is upheld except to the extent mentioned above, that is, permit holders should have seven days advance reservation facilities at both ends of the route, and sub-clauses (iii) and (iv) of Clause (F) are invalid. No costs.