
(1971) 05 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3360 of 1967

State of Uttar Pradesh

APPELLANT

Vs

The Inter-State Transport and Others

RESPONDENT

Date of Decision : 21-05-1971

Acts Referred:

Motor Vehicles Act, 1939 — Section 42(1), 42(3), 63A
Uttar Pradesh Road Transport Services (Development) Act, 1955 — Section 10(1), 10(2)

Citation : AIR 1971 All 488

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Advocate : K.N. Singh, for the Appellant; G.P. Dixit, for the Respondent

Final Decision : Dismissed

Judgement

Pathak, J.—The State of Uttar Pradesh filed these petitions under Article 226 of the Constitution against the order dated January 17, 1966 of the Inter-State Transport Commissioner, New Delhi and the order dated August 26, 1967 of the Inter-State Appellate Tribunal, New Delhi.

2. The State of Uttar Pradesh, through its Transport Department, plies stage carriages on a number of routes which lie partly within Uttar Pradesh and partly within Delhi. The State Transport undertaking is referred to as the U. P. Government Roadways. In respect of some of the routes, the Transport Department has been plying the vehicles from as long ago as 1950 or even from before. Originally, they were plied pursuant to executive orders issued by the State Government. Subsequently, the U. P. Legislature enacted the U. P. State Road Transport Act, 1950 under which the operation of the vehicles of the State Transport undertaking on those routes was validated. The Act was struck down by the Supreme Court in *Saghir Ahmad Vs. The State of U.P. and Others*, The U. P. Legislature then enacted the U. P. Road Transport Services (Development) Act, 1955. It came into force with retrospective effect from June 18, 1951, and under

Sections 19 and 20 the plying by the State Transport undertaking on the routes was validated.

3. The routes covered by this petition and so validated are the Meerut-Delhi, Dehradun-Delhi, Hardwar-Delhi, Moradabad, Garhmukteshwar Hapur-Delhi, Agra-Delhi via-Bulandshahr and Mathura-Delhi routes, Except for the last route, ten kilometers of each route lie in the State of Delhi. In the case of the Mathura-Delhi route, nineteen Kilometers lie in the State of Delhi. After the enactment of the U. P. Act of 1955, a scheme for the operation of the U. P. Government Roadways on the Buland-shahr-Delhi route to the complete exclusion of private operators was finalised under that Act on September 29. 1956. Ten kilometers of this route lie in the State of Delhi. The petitioner says that the U. P. Government Roadways have been operating on some of the aforesaid inter-State routes with the concurrence of the Delhi State authorities without obtaining any permits or counter-signatures.

4. The Motor Vehicles (Amendment) Act, 1956 was enacted by Parliament and came into force on February 16. 1967. So far as is relevant here, it inserted two distinct sets of provisions in the Motor Vehicles Act. Section 63-A to Section 63-C were added in Chapter IV and provided for an Inter-State Transport Commission having jurisdiction over areas or routes common to two or more States. Chapter IV-A, consisting of Sections 68-A to 68-1, provided for the preparation and finalisation and implementation of schemes of road transport services by State Transport undertakings. One of the schemes provided for the operation of the U. P. Government Roadways on the Saharanpur-Delhi route, ten kilometers of which lie in the State of Delhi. The scheme received the approval of the Central Government and was notified u/s 68-D (3) on September 29, 1959.

5. The U. P. Government Roadways has been operating upon the routes mentioned above without permits and, therefore, without counter-signatures on any permits. It seems that it is doing so relying on that it alleges to be an order dated August 5, 1958 u/s 10 (1) (a) of the U. P. Act of 1955 which purports to exempt the U. P. Government Roadways from obtaining permits and refers in this connection to Section 42 (3) (a), of the Motor Vehicles Act. Reliance is also placed on Rule 70-A of the Motor Vehicles Rules, added by a Notification dated February 29, 1960, and purporting to have been made u/s 68 read with Section 42 (3) (f). Rule 70-A reads:

"70-A. Public purposes for exemption from permit--The use of transport vehicles owned by the State Government and operated by the U. P. Government Roadways in pursuance of a scheme which has been enforced under Chapter IV-A of the Motor Vehicles Act, 1939 (Act 4 of 1939) as amended by the Motor Vehicles (Amendment) Act, 1956 (Act 100 of 1956) for providing an efficient, adequate, economical and properly co-ordinated road transport service in Uttar Pradesh, shall be a public purpose within the meaning of Clause (f) to Sub-section (3) of Section 42, for exemption under the sub-section from the provisions of Sub-section (4) of Section 42."

6. On March 8, 1958, the Central Government made an order constituting an Inter-State Transport Commission u/s 63-A (1) and authorising it to perform the functions specified in Clauses (a), (b) and (c) of Section 63-A (2).

7. It appears that the Delhi Administration represented to the Inter-State Transport Commission against the U. P. Government Roadways plying on the portion of the inter-State routes lying within the State of Delhi without permits or counter-signatures from the Delhi Transport authorities. The commission invited the representatives of the Delhi Administration and the Government of Uttar Pradesh for discussion, and when no agreement could be arrived at it made an order dated January 17, 1966 directing the U. P. Government Roadways to comply with Section 42 (1) and Section 63 so far as they related to the obtaining of permits and counter-signatures in respect of stage carriages operating on the inter-State routes between Uttar Pradesh and Delhi. The Commission also directed the U. P. Government to take steps to ensure compliance with the order within four months. The U. P. Government appealed to the Inter-State Appellate Tribunal, but after hearing the parties the Tribunal dismissed the appeal by its order dated August 26, 1967.

8. The case of the petitioner before the Inter-State Transport Commission and the Appellate Tribunal rested principally on the order said to have been made u/s 10 (1) (a) of the U. P. Act of 1955 dispensing with the need to obtain permits and counter-signatures in the case of the U. P. Government Roadways and, alternatively on Rule 70-A of the U. P. Motor Vehicles Rules declaring that the plying of the U. P. Government Roadways on the inter-State routes was a public purpose and, therefore, they were exempt from the provisions of Section 42 (1). Both contentions were rejected. The Appellate Tribunal held that what was alleged to be an order u/s 10 (1) (a) of the U. P. Act was not an order but a mere letter and it did not achieve the purpose of exempting the U. P. Government Roadways from the need to obtain permits or to get them countersigned, and that Section 42 (3) (a) to which it referred did not apply to the U. P. Government Roadways inasmuch as they constituted a commercial enterprise.

As regards Rule 70-A, the Appellate Tribunal held that the operation of the U. P. Government Roadways could not be described as a public purpose within the meaning of Section 42 (3) (f), and reliance was placed upon the decision of a learned single Judge of this Court in *Chandra Krishna v. State of U. P.* AIR 1963 SC 301. The submission on behalf of the State of U. P. that Rule 70-A be treated as having been framed u/s 68-1 (1) of the Motor Vehicles Act was repelled on the ground that the rule had been framed long before that section had come into force, and on the further ground that, as Section 68-F (1) itself contemplated the issue of a permit by the Regional Transport Authority to a State Transport undertaking on a notified route. Rule 70-A could not be ascribed to Section 68-1 which envisaged the framing of rules for giving effect to the provisions of Chapter IV-A. The Appellate Tribunal also rejected the contention that the Inter-State Transport Commission had no jurisdiction in the matter.

9. Two contentions have been raised before us on behalf of the petitioner. They are:--

1. The Inter-State Transport Commission had no jurisdiction in the dispute between the U. P. Government and the Delhi Administration concerning the plying of the U. P. Government Roadways on the notified inter-State routes under Chapter IV-A.

2. The U. P. Government Roadways is entitled to ply on the notified inter-State routes without the necessity of obtaining permits and, therefore, of counter-signatures on any permits.

10. In respect of the contention that the Inter-State Transport Commission had no jurisdiction, it is necessary at the outset to refer to a few provisions of the Motor Vehicles Act. Section 42 (1) requires the owner of a transport vehicle, using or permitting the use of any vehicle in any public place, to obtain a permit for that purpose granted or counter-signed by a Regional or a State Transport Authority or the Inter-State Transport Commission authorising the use of that vehicle in that place. As we have seen the Inter-State Transport Commission is constituted u/s 63-A (1). As regards a State Transport Authority and Regional Transport authorities, power is conferred u/s 44 (1) upon the State Government to constitute them. The Regional Transport Authorities exercise and discharge their powers and functions in areas described as "regions" which are specified by Notification in respect of each Regional Transport Authority. The area specified as the region of a Regional Transport Authority is in no case less than an entire district. Where the route over which the vehicle is authorised to ply falls within the same transport region, the grant of a permit by the Regional Transport authority of that region suffices to enable it to do so. Where, however, the route falls in two or more transport regions lying within the same State, Section 63 (1) provides that a permit granted by the Regional Transport Authority of one region will not be valid in the other region unless the permit has been countersigned by the Regional Transport authority of that other region. Where the two regions through which the route passes lie in two different States, a permit granted in one of the States will not be valid in the other State unless countersigned by a Transport authority of that other State.

11. It is clear that the routes with which we are concerned are routes common to the State of Uttar Pradesh and the State of Delhi. The question is whether the Inter-State Transport Commission can have jurisdiction in respect of a dispute concerning the operation of the U. P. Government Roadways on those routes. Section 63-A (1) empowers the Central Government to constitute an Inter-State Transport Commission "for the purpose of developing, coordinating and regulating the operation of transport vehicles in respect of any area or route common to two or more States (hereinafter referred as inter-State region) and conferring such other functions as may be prescribed u/s 63-C". The routes common to two or more States, for the purposes of convenient reference, are described as an "inter-State region." Section 63-A (2) provides:--

"(2). The Commission shall perform throughout an inter-State Region all or such of the functions as it may be authorised to do by the Central Government by notification in the official Gazette, namely:

(a) to prepare schemes for the development, co-ordination or regulation of the operation of transport vehicles and in particular of goods vehicles in an inter-State region;

(b) to settle all disputes and decide all matters on which differences of opinion arise in connexion with the development, co-ordination or regulation of the operation of transport vehicles in an inter-State region;

(c) to issue directions to the State Transport Authorities or Regional Transport Authorities interested regarding the grant, revocation and suspension of permits and of counter-signatures of permits for the operation of transport vehicles in respect of any route or area common to two or more States;

(d) to grant, revoke or suspend any permit or countersign any permit for the operation of any transport vehicle in respect of such route or area common to two or more States as may be specified in this behalf by the Central Government;

(e) to perform such other functions as may be prescribed by the Central Government u/s 63-C.

If any direction issued by the State Government u/s 43 is repugnant to any direction made by the Commission under Clause (c) of Sub-section (2), then, the direction of the commission, whether issued before or after the direction issued by the State Government, shall prevail and the direction made by the State Government shall, to the extent of the repugnancy, be of no effect."

12. It is urged on behalf of the petitioner that the functions set out in Clauses (a) to (e) must be read as constituting an integral code. The purpose of the Commission being to develop, coordinate and to regulate the operation of transport vehicles in respect of an inter-State region, the function of a commission under Clause (a) is to prepare a scheme, under Clause (b) to settle all disputes and differences arising in relation to such scheme, and for the purpose of implementing that particular scheme to exercise the functions mentioned in Clauses (c), (d) and (e). It is contended that the functions mentioned in Clauses (b) to (e) relate solely to the scheme prepared under Clause (a), and cannot be exercised in relation to transport vehicles plying otherwise. In this connection our attention has also been invited to Rule 21 of the Inter-State Transport Commission Rules, 1960. We are unable to accept the contention. Nothing in the Act and in the Rules leads us to the conclusion that the clauses of Section 63-A (2) must be read and applied together or not at all.

Having regard to the hierarchy of authorities created under the different provisions of Chapter IV, and the purposes and functions for which they are contemplated, it seems that while the Regional Transport Authority is conferred jurisdiction in respect of a region within the State, and the State Transport

Authority is conferred jurisdiction throughout the State, it was found necessary to provide for an Inter-State Transport Commission enjoying jurisdiction in respect of an area or route common to two or more States. Before provision was made for it by inserting Sections 63-A to 63-C there was no authority which exercised jurisdiction over the entire area or route common to two or more States. The arrangement provided so far under the State Was the grant of a permit by a transport authority of one State and its countersignature by a transport authority of the other State. With the increase of motor transport across State boundaries, it became necessary to create a body having supra Statal jurisdiction. The importance of inter-State routes had increased and there was an urgent need for ensuring a free flow of commerce throughout the country. For that purpose, provision was made for Inter-State Transport Commission with the object of developing, coordinating and regulating the operation of transport vehicles in respect of inter-State regions. The preparation of schemes devoted to that purpose is only one of the function of the Inter-State Transport Commission. With the growing volume of inter-State transport, disputes and differences could be envisaged between the transport Authorities of different States, and so far there was no administrative authority armed with the jurisdiction to resolve such disputes and differences. Provision for that, therefore, was also made and the Inter-State Transport Commission was given that authority. The Commission can exercise that jurisdiction not only in respect of the operation of transport vehicles pursuant to a scheme prepared by it but also in respect of the existing operation of transport vehicles across State boundaries. Under Clause (c) of Section 63-A (2) the Commission has been given the power to issue directions to State Transport Authorities and to Regional Transport Authorities in respect of permits and countersignatures concerning transport vehicles operating over an area or route common to two or more States. Such a power is essential in order to ensure the effective execution of any decision rendered by the Commission in the disputes and differences mentioned above. The power of the Commission in this respect, as is clear from the amendment introduced subsequently in Section 63-A (2) by the Motor Vehicles (Amendment) Act of 1969, prevails over any directions issued by the State Government u/s 43.

It will also be noticed that the power conferred upon the Regional Transport Authorities and the State Transport Authorities under the other provisions of Chapter IV in respect of routes or areas common to two or more States can be superseded entirely and vested in the Commission upon a notification in that behalf by the Central Government u/s 63-A (2) (d). Upon such notification. Section 63-A (5) provides for the supersession of the powers and functions of the Regional Transport Authorities and the State Transport Authorities concerned so far as inter-State routes and areas are concerned. It will, therefore, appear that the Inter-State Transport Commission, was competent to entertain the dispute which had arisen between the State of Uttar Pradesh and the Delhi Administration in respect of the plying of the U. P. Government Roadways over that part of the inter-State routes which falls within the State of Delhi.

13. But it is contended for the petitioner that the routes in question are notified routes, that is to say, routes in respect of which schemes have been prepared, finalised and approved under Chapter IV-A, and, it is said, in respect of notified routes the commission has no jurisdiction. For the purposes of this case, we may assume that the Inter-State Transport Commission has no power to interfere with the operation and implementation of a scheme prepared, finalised and approved under Chapter IV-A. It has not been shown, that any of the approved schemes with which we are concerned specifically contemplate that the U. P. Government Roadways will operate on the routes in question without permits at all and that, therefore, no countersignatures will be needed. The Appellate Tribunal has specifically referred to this in para 8 of its order. It observes:--

"It may be mentioned that the scheme framed by the U. P. Government and approved by the Government of India does not itself say that no permits would be needed by the State Government vehicles on the Inter-State routes."

Nothing has been shown to us to indicate that this observation is incorrect, and that the schemes themselves dispense with the need for permits and countersignatures. Reference has been made to Section 68-B which declares that the provisions of Chapter IV-A and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law. In view of what we have said, Section 68-B can be of no assistance to the petitioner. No provision of Chapter IV-A or of any rule or order made thereunder necessarily envisages that a State Transport undertaking will operate its vehicles without permits. On the contrary, express provision has been made by Section 68-F for the grant of permits in respect of such vehicles.

14. Our attention has been invited, on behalf of the petitioner, to the proviso to Section 68-D (3). That proviso requires that before a scheme under Chapter IV-A can be considered to be an "approved scheme," if it relates to an inter-State route it must receive the previous approval of the Central Government. It is urged that the previous approval of the Central Government was in fact, received and, therefore, it must be taken that there could be no objection to the plying on the inter-State routes by the U. P. Government Roadways without obtaining permits. Now, if the schemes had indeed provided for dispensing with such permits, it may have been necessary to investigate the merits of the point, but as nothing to that effect has been shown to us we fail to see how the approval of the Central Government to any of the schemes can carry the case of the petitioner any further. It may be that to the extent that action is taken pursuant to a scheme finalised under Chapter IV-A the jurisdiction of the Inter-State Transport Commission is excluded. But where some thing is done by the State Transport undertaking beyond the terms of the approved scheme in relation to an inter-State region, we are unable to hold that an immunity has been conferred from the jurisdiction of the commission. The jurisdiction of the commission

extends to all transport vehicles operating on an inter-State route, and in respect of the vehicles of a State Transport undertaking that jurisdiction may be said to be excluded only in respect of matters covered by Chapter IV-A. No general immunity can be claimed by a State Transport undertaking from the provisions of the Motor Vehicles Act merely because it operates its vehicles pursuant to a scheme under Chap. IV-A.

15. The contention of the petitioner that the Inter-State Transport Commission had no jurisdiction to entertain the dispute raised by the Delhi Administration, in our opinion, is without substance and must be rejected.

16. The next question is whether the U. P. Government Roadways is obliged to obtain permits and to have them countersigned when plying across the inter-State routes. Section 42 (1), as we have said, obliges every owner of a transport vehicle, who wishes to use or permits the use of the vehicle in any public place, to obtain a permit. Section 42 (3) details the cases where a permit is not necessary. At the relevant time it provided:--

"(3) Sub-section (1) shall not apply--

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(ee) to any transport vehicle owned by a manufacturer of automobiles and used solely for such purposes as may be approved by the Central Government;

(f) to any transport vehicle used for any other public purpose prescribed in this behalf;

(g) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the State Government or whose managing committee is a society registered under the Societies Registration Act, 1860 (21 of 1860);

(i) except as may otherwise be prescribed, to any goods vehicle which is a light motor vehicle and does not ply for hire or reward or to any two-wheeled trailer with a registered laden weight not exceeding 800 kilograms drawn by a motor car."

Under Clause (a), a transport vehicle owned by a State Government may be plied without a permit provided it is used for a governmental purpose unconnected with any commercial enterprise. It is urged for the petitioner that the U. P. Government Roadways cannot be described as a commercial enterprise. We are not satisfied from the material on the record that the contention has force. The activity in which the U. P. Government Roadways is engaged on the routes mentioned above was carried on by commercial operators before they were excluded. The activity is instinct with a profit motive. The Appellate Tribunal has examined the matter and has also held that the U. P. Government Roadways are a commercial enterprise. So far as the order dated August 5, 1958 said to have been made u/s 10 (1) (a) of the U. P. Act of 1955 is concerned, we have perused a copy of the document and we are unable to hold that it is an order of that description. Nowhere does it purport to be an order of the Government made u/s 10 (1) (a) of the Act. On the contrary, it appears to be merely a communication from the Deputy Secretary to the U. P. Government to the Transport Commissioner, U. P. informing that the U. P. Government Roadways vehicles are exempt from the necessity of obtaining permits. The communication, it seems to us, is no more than the understanding of the U. P. Government on the question whether Section 42 (3) (a) applies to the vehicles of the U. P. Government. That does not have the force of law, and accordingly we hold that no advantage can be derived by the petitioner on the basis of the communication dated August 5, 1958.

17. The second pillar on which the petitioner rests its case is Rule 70-A. That rule merely purports to declare that the operation of the U. P. Government Roadways in pursuance of the scheme under Chapter IV-A is a public purpose within the meaning of Section 42 (3) (f). A mere declaration to that effect cannot be pressed into service as a declaration referable to Section 42 (3) (f) when the vehicles of the U. P. Government Roadways are being operated as a commercial enterprise. Section 42 (3) (a) exhaustively deals with the cases of transport vehicles owned by a State Government. If they are used for a governmental purpose unconnected with any commercial enterprise they are entitled to exemption from obtaining permits. If not, then by necessary implication they are not entitled to that exemption. The legal effect of Section 42 (3) (a) cannot be circumvented by declaring that vehicles owned by the Government, although used for a commercial enterprise, are being used for a public purpose with reference to Section 42 (3) (f). Section 42 (3) (a) impliedly excludes such transport vehicles from exemption, and indirectly the exemption cannot be attracted by having recourse to Section 42 (3) (f).

18. An attempt has been made to show that the plying of the U. P. Government Roadways is a public purpose. In our opinion, that attempt cannot succeed. It may be an activity in the public interest, but public interest and public purpose are two distinct concepts. Even if it is taken that the U. P. Government Roadways is engaged in an activity of public interest it cannot be regarded as a public purpose for that reason. In this connection the observations of the Supreme

Court in *Sri Satya Narain Singh Vs. District Engineer, P.W.D. and Another*, are relevant:

"Certain activities will undoubtedly be regarded as public services, as for instance, those undertaken in the exercise of the sovereign power of the State or of governmental functions. About these, there can be no doubt. Similarly a pure business undertaking though run by the Government cannot be classified as public service. But where a particular activity concerns a public utility a question may arise whether it falls in the first or the second category It may be that plying stage carriage buses even though for hire is an activity undertaken by the Government for ensuring the people a cheap, regular and reliable mode of transport and is in that sense beneficial to the public. It does not, however, cease to be a commercial activity if it is run with profit motive. Indeed even private operators in order to attract custom are also interested in providing the same facilities to the public as the Government undertaking provides. Since that is so, it is difficult to see what difference there is between the activity carried on by private individuals and that carried on by Government. By reason of the fact that a commercial undertaking is owned and run by the State it does not ipso facto become a public service. It is not disputed before us that the Roadways Department of the Government of U. P. is running a pro- fit making and a profitable activity by excluding every kind of competition. In the circumstances, therefore we find it impossible to hold that its vehicles crossing over ferries can be graded as crossing on public service."

We are of opinion that the plying of its vehicles by the U. P. Government Roadways cannot be described as a public purpose. When the legal content of the expression "public purpose" cannot reasonably lend itself to the activity pursued by the vehicles of the U. P. Government Roadways, the State Government was not competent under the guise of its rule making power u/s 68 to frame a rule-making that declaration. Some indication of what is intended by the expression "public purpose" in Section 42 (3) (f) is proved by the matters mentioned in the preceding clauses. Section 42 (3) (f) speaks of "any other public purpose" thereby indicating its true scope. In the opinion that the plying of the vehicles by the U. P. Government Roadways cannot be justified on the basis of Rule 70-A, and that Rule 70-A is invalid, we are fortified by the view taken by Oak, J. in *Chandra Krishna v. State of U. P.* (supra). We have already pointed out that in respect of the vehicles operated by a State Transport undertaking pursuant to a scheme under Chapter IV-A, Section 68-F envisages the grant of permits. If it were intended that an exemption from the obligation imposed by Section 42 (1) was necessarily intended in the case of such vehicles, Section 68-F would not have been enacted and on the contrary an appropriate provision would have found place in Section 42 (3).

19. Therefore, neither the communication of August 5, 1958 nor Rule 70-A can avail the petitioner for the purpose of plying the transport vehicles of the U. P. Government Roadways within the State of Delhi without a permit and a

corresponding countersignature.

20. It is then urged on behalf of the petitioner that an agreement had been arrived at between the State Transport Authorities of the two States, Uttar Pradesh and Delhi, reciprocally extending an immunity concerning their respective transport vehicles from the necessity of obtaining permits and to get them countersigned. We are not satisfied from the material before us that any such agreement was in force concerning the routes mentioned above at the relevant time.

21. An objection was raised on behalf of the respondent that this Court has no jurisdiction to grant any relief upon this petition inasmuch as the impugned orders have been passed by authorities situated outside the State of Uttar Pradesh. Inasmuch as, in our opinion, this petition has no force on the merits, it is not necessary to consider this objection.

22. The petition is dismissed with costs.