
(1973) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petns. No's. 305 and 403 of 1967, 159 of 1971 and 307 of 1972

The Madhya Pradesh State Road Transport Corpn.

APPELLANT

Vs

State Transport Appellate Authority and Others

RESPONDENT

Date of Decision : 05-07-1973

Acts Referred:

Motor Vehicles Act, 1939 — Section 44(5), 68

Citation : AIR 1974 MP 44 : (1977) ILR (MP) 971 : (1973) JLJ 1078 : (1974) MPLJ 160 : (1973) 18 MPLJ 922

Hon'ble Judges : P.K. Tare, C.J.; M.L. Malik, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; P.C. Pathak, for the Respondent

Judgement

Tare, C.J.

This order shall also govern the disposal of Misc. Petition No. 159 of 1971 (The M. P. State Road Transport Corporation, through its General Manager. Bairagarh, Bhopal v. 1 State Transport Authority. Gwalior, and 2-M/s. Pahlairai Naraindas). Misc. Petition No. 307 of 1972 M/S (Pahlairai Naraindas v. Assistant Secretary, State Transport Authority. Gwalior and M. P. State Road Transport Corporation, through its General Manager. Bairagarh, Bhopal) and Misc. Petition No. 403 of 1967 -- (M/S. Prahlad Rai Naraindas v. State Transport Appellate Authority, M. P., Gwalior and three others).

The facts leading to the filing of the Present petitions are as follows: In pursuance of an approved scheme for an inter-State nationalised route, there was a reciprocal agreement, entered into between the States of Madhya Pradesh and Uttar Pradesh for six trips on Mirzapur-Rewa via Hanumana route, which are to be operated by the nominees of the States of Madhya Pradesh and Uttar Pradesh. Prior to this agreement there was no private operator operating on the Mirzapur-Rewa route. Till the year 1965 the Central Provinces Transport Service, i.e., the predecessor of the present petitioner. Corporation, was operating the

route. The scheme No. 24, proposed by the petitioner. Corporation was published on 22-5-1964, as required by Section 68-C of the Motor Vehicles Act, 1939. The scheme was approved and notified by the State Government in the Madhya Pradesh Rajpatra dated 6-3-1970 and it came into operation with effect from 15-7-1970, Clause 3 of the agreement permitted the existing operators to operate on the Mirjapur-Rewa route. According to the petitioner. Corporation, what Clause 3 of the agreement permits is to allow the existing operators to operate on the route and as such, it is contended that the State Transport Authority had no jurisdiction to grant any fresh permits. Consequent on the scheme being approved, the Regional Transport Authority, Rewa, by order dated 4-7-1966 granted two return permits to the petitioner Corporation in the vacancy arising out of the stipulation in the reciprocal agreement. Against that order there was an appeal before the State Transport Appellate Authority. By order dated 18-5-1967 the Appellate Authority maintained the grant of one return trip in favour of the petitioner. Corporation, but granted one return trip to the third respondent, namely M/s. Pahlairai Naraindas. The petitioner, Corporation, challenges this order of the State Transport Appellate Authority dated 18-5-1967 (Annexure-C) granting one return trip and fixing timings with reference to the other return trip granted to the third respondent. This is the subject-matter of Writ Petition No. 305 of 1967.

The very order of the State Transport Appellate Authority dated 18-5-1967 (Annexure-E) is the subject-matter of Writ Petition No, 403 of 1967 at the instance of the rival operator, namely. M/S. Pahlairai Naraindas, wherein the rival operator challenges the grant of one return trip in favour of the petitioner, Corporation, as also the timings. Therefore, it will be convenient to deal with these two petitions together as they are directed against the same order.

In Misc. Petition No. 159 of 1971, the petitioner. Corporation, challenges the order of the State Transport Appellate Authority, dated 27-2-1971 (Annexure-D) granting renewal of permit in favour of the second respondent. M/S. Pahlairai Naraindas on the said nationalised route.

In Misc. Petition No. 307 of 1972 the rival operator, namely, M/S Pahlairai Naraindas challenges the order of the first respondent namely, the Assistant Secretary. State Transport Authority. M. P. Gwalior, dated 22-11-1971 (Annexure-E) prohibiting the petitioner, namely, the rival operator from operating his permit on the nationalised route and cancelling the same in view of the order of the High Court dated 5-11-1971 (Annexure-F) passed in Misc. Petn. No. 172 of 1970 and nationalised scheme No. 24 being approved and being upheld in the said Writ Petition. Therefore, these two Writ Petitions, namely Misc. Petition No. 159 of 1971 and Misc. Petition No. 307 of 1972 will have to be dealt with separately and independently of the earlier two Writ Petitions.

Misc. Petitions Nos. 305 of 1967 and No 403 of 1967-

In the said petition and the counter petition filed by the rival operator, the

petitioner challenges the order of the State Transport Appellate Authority, dated 18-5-1967 Annexure-C, in Misc. Petition No. 305 of 1967 and Annexure-E in Misc. Petition No. 403 of 1967). It is contended on behalf of the State Road Transport Corporation that scheme No. 24 having been approved and the third respondent, namely the rival operator. M/s. Pahlairai Naraindas not being an existing operator, the Regional Transport Authority had no jurisdiction to grant a permit in favour of the rival operator for one return trip. It was Pointed out that the inter-State agreement with respect to the inter-state route, and particularly Clause 3, would prohibit the grant of a permit to a private operator as the nationalised route was not a conjoint route. It was, therefore, contended that the action of Regional Transport Authority granting permits for two return trips in favour of the petitioner. Corporation, was the only correct one which ought not to have been modified by the State Transport Appellate Authority. In this connection it is pertinent to note Clause 3 of the order approving the scheme No. 24 (to be found in Annexure-D, filed in Misc. Petition No. 307 of 1972), which is as follows:-- "The nature and extent of the State Transport Services to be provided on the routes mentioned in Clause (2) above are specified in the schedule annexed hereto. The provisions of the transport services otherwise than under the scheme is prohibited, except that the vehicles plying under the terms of reciprocal agreement with Uttar Pradesh State, covering Portions of the routes, mentioned above, being subject to be governed by reciprocal transport agreement between the States of Madhya Pradesh and Uttar Pradesh, shall be allowed to ply as before."

In the schedule also the Rewa-Hanumana Mirjapur route is shown to be an inter-statal route on which six single trips are shown to have been permitted and three vehicles are to operate. Therefore, it is clear that under the scheme itself there can be no conjoint operation and what was permitted was merely the trips by persons authorised under the bilateral agreement The existing operators as per the reciprocal bilateral inter-State agreement alone were permitted to operate. Otherwise no other operators would be permitted to operate on the said route. It is not the petitioner's case that he was a nominee of any of the Governments under the reciprocal inter-State agreement and moreover, the existing operators operating under the said agreement alone were "permitted to continue. Therefore, it is clear that no fresh permits could be granted by the transport authorities in contravention of the specific provisions of the scheme. In this view of the matter, we are clearly of the opinion that the Regional Transport Authority was right in granting permits for two return trips to the petitioner Corporation and the State Transport Appellate Authority acted illegally in modifying that order and in granting a permit for one return trip in favour of the third respondent, namely. M/S. Pahlairai Naraindas, the rival operator. In view of the specific provisions in the scheme itself, this could not have been done. Consequently, the appellate order impugned suffers from a patent illegality and, therefore, it is quashed. The order of the Regional Transport Authority is restored.

As a result, Writ Petition No. 305 of 1967 succeeds and is allowed with costs as

against the third respondent and there shall be no order as to costs vis-avis the petitioner and the other respondents. Counsel's fee in this Court shall be Rs 100/-, if certified. The outstanding amount of the security deposit be refunded to the petitioner.

Coming to Misc. Petition No. 483 of 1967, the rival operator has directed this petition against the very order of the State Transport Appellate Authority upholding the grant of a permit for one return trip in favour of the third respondent, namely, the M. P. State Road Transport Corporation on the Rewa-Mirjapur via Hanumana route. For the reasons stated earlier in Misc. Petition No. 305 of 1967, this petition fails and is accordingly dismissed with costs. The order for costs is vis-a-vis the petitioner and the third respondent. As regards the other respondents, there shall be no order as to costs. Counsel's fee in this Court shall be Rs. 100/-, if certified. The outstanding amount of the security deposit be refunded to the petitioner.

Coming to Misc. Petition No. 159 of 1971, the petitioner Corporation challenges the order of the State Transport Authority, dated 27-2-1971 (Annexure-D) granting renewal of the permit to the second respondent, namely, the rival operator, M/S. Pahlairai Naraindas. In Misc. Petition No. 305 of 1967, we have held that permits could not be granted to any private operators and what the scheme permitted was that the existing operators in pursuance of the reciprocal inter-State agreement would be allowed to operate on the route. As we have held that the Initial permit granted to the rival operator was illegal, there can be no doubt that there would be no question of renewal. The renewal itself would be equally illegal as being in violation of the scheme No. 24. The reciprocal agreement has been filed in this Writ petition and has been marked as Annexure-A. It clearly shows that the existing arrangement shall continue in pursuance of the inter-State reciprocal agreement. Consequently, the order impugned (Annexure-D) cannot be sustained. The first respondent, it appears, was under the impression that all existing operators were permitted to operate on the route. We may stress the words occurring in Clause 3 of the approved scheme, which provides as under:--"The provisions of the transport services otherwise than under the scheme is prohibited, except that the vehicles Diving under the terms of reciprocal agreement with Uttar Pradesh covering portions of the routes mentioned above being subject to be governed by reciprocal transport agreement between the States of Madhya Pradesh and Uttar Pradesh, shall be allowed to ply as before." It, is, therefore, clear that not all existing operators were permitted to continue the operations, but those existing operators in pursuance of the reciprocal inter-State agreement alone will be allowed to continue. The interpretation put by the third respondent on Clause 3 is clearly erroneous. It is not the case of the second respondent that he was a nominee of the State of Madhya Pradesh In pursuance of the bilateral agreement. The existing operators clearly meant the operators operating in pursuance of the bilateral agreement and not any and every existing operator.

As a result of the discussion aforesaid, the order impugned cannot be sustained in law and Consequently, it is quashed. This petition, therefore, succeeds and is accordingly allowed with costs as against the second respondent. There shall be no order as to costs vis-a-vis the petitioner and the first respondent- The outstanding amount of the security deposit shall be refunded to the petitioner).

Misc. Petition No. 307 of 1972.

In this petition under Articles 226 and 227 of the Constitution of India, the petitioner, a rival private operator, challenges the order of the first respondent dated 22-11-1971 (Annexure-E) on the grounds that the reasons given by the first respondent for cancellation of the permit in favour of the petitioner are not tenable and secondly, that the first respondent had no jurisdiction to pass an order on behalf of the State Transport Authority.

It may be relevant to reproduce the impugned order dated 22-11-1971, which is as follows:

"In view of the Hon"ble High Court order dated 15-11-1971 passed in M. P. No. 172/70 about nationalisation Scheme No. 24, it is ordered that permits held by the private operators on Rewa-Chak Allahabad (ii) Rewa-Hanumana-Mirjapur be cancelled. Permit holders be asked to stop the operation and surrender the permits at once. Copy of cancellation memo be sent to R. T. O. Rewa for necessary action. Also issue telegram to concerning operators on the above routes.

Sd/- M. Z. Siddiqui Asstt. Secretary. State Transport Authority."

Taking up the Question of jurisdiction first it was contended that there being no rules framed in this behalf u/s 68 of the M. P. Motor Vehicles Act, 1939. the State Transport Authority could not have delegated its powers and functions to the Assistant Secretary vide Section 44 (5) of the Motor Vehicles Act, 1939. Sub-section (5) of Section 44 of the said Act reads as follows:--

"The State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made u/s 68 may delegate such of its powers and functions to such authority or person and subject to such restrictions, limitations and conditions as may be prescribed by the said rules." It is an admitted position that no rules have been framed in this behalf. Therefore, the question arises whether the Assistant Secretary was exercising any powers which may be required to be delegated upon authorisation by rules. In Writ Petition No. 305 of 1967, we have already held earlier that no Private operators could be allowed to operate on the nationalised Rewa-Hanumana-Mirjapur route. The only exception was the permit holders in pursuance of an inter-statal agreement to be made between the Governments of Madhya Pradesh and Uttar Pradesh and only the existing operators operating under the said agreement were permitted to continue, Otherwise. Clause 3 of the scheme No, 24, which was finally approved, prevented all other operators from operating on the said nationalised route. Nor

can it be asserted on behalf of the petitioner that this was a conjoint route. On the other hand, this being an exclusive route, no other operators could be permitted except under Clause 3 of the final scheme. In this view of the matter, cancellation of the permit was more or less automatic and merely a ministerial act, which would not be required to be performed by the State Transport Authority itself Section 68-F (2) of the Motor Vehicles Act. 1939 provides for certain eventualities consequent upon a scheme being approved. Sub-section (2) of Section 68-F is as follows:-- "For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or, as the case may be, the Regional Transport Authority concerned, may, by order-- (a).....,.....

(b)cancel any existing permit,

(c)

(d)

Sub-section (3).-- For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the State Transport Authority or any Regional Transport Authority under Sub-section (1) or Sub-section (2)."

It has been laid down by their Lordships of the Supreme Court in a series of cases that such an action is a mechanical process and it is more or less a ministerial function consequent upon a scheme being approved. In this connection it may be relevant to reproduce the observations of their Lordships of the Supreme Court in Abdul Gafoor Vs. State of Mysore, as follows:--

"In our opinion, the Regional Transport Authority acts wholly in a ministerial capacity while dealing with an application of the State Transport Undertaking u/s 68-F (1) The fact that on other occasions and in other matters the Regional Transport Authority has quasi-judicial functions to perform cannot make its function u/s 68-F (1) a quasi-judicial function."

In Kalyan Singh v. State of U. P. AIR 1962 SC 1183 their Lordships of the Supreme Court made the following observations:--

"There is no doubt that the scheme has been duly published u/s 68-D (3) and if the objection to the invalidity of the scheme on the ground that the objections were not heard by an authority competent in that behalf cannot be permitted to be raised in this Court for the first time during the course of the arguments, the statutory consequences prescribed by Section 68-F must ensue.

It is necessary to bear certain facts and considerations in mind in dealing with the remaining contentions. By the scheme (Clause 7) the Permit of the appellant was cancelled. The scheme as approved was published in the U. P. Gazette on October 8, 1960, and was to come into operation on October, 15, 1960 or thereafter. A notification was published on November, 4, 1960 u/s 68-F (2) of the

Act cancelling the appellant's Permit with effect from November 27, 1960. The appellant therefore ceased to have any right to ply his vehicles on the route and he had no right to object to the vehicles of the State Transport Undertaking plying on that route. If the scheme was validly promulgated and became final within the meaning of Section 68-D (3), it had the effect of extinguishing all rights of the appellant to ply his vehicles under his permit. After cancellation of his permit, he could not maintain a petition for a writ under Article 226 because a right to maintain such a petition postulates a subsisting personal right in the claim which the petitioner makes and in the protection of which he is personally interested."

In *Sobhraj Odharmal Vs. State of Rajasthan*, , their Lordships of the Supreme Court observed as follows:--

"Sub-sections (1) and (2) of Section 68-F deal with different matters: exercise of the powers under Clause (2) is not dependent upon the grant of any permits to the State Transport Undertaking. By Sub-section (1) a statutory duty is imposed upon the Regional Transport Authority to grant permits to the State Transport Undertaking, if application is made in that behalf pursuant to an approved scheme. To such an application the provisions contained in Ch. IV such as Sections 47, 48 57 and allied sections will not apply. It was observed by this Court in *Abdul Gafoor Vs. State of Mysore*, that in order that the approved scheme may be implemented the State Transport Undertaking which is to run and operate the Transport Service under the scheme must have a permit from the Regional Transport Authority It was held that the action to be taken under Sub-section (2) of Section 68-F is a ministerial work not involving any judicial or a quasi-judicial process."

In *D.M. Thippeswamy Vs. The Mysore Appellate Tribunal, Bangalore and Others*, their Lordships made the following observations:--

"The power of the R. T. A. u/s 68-F (2) is merely ministerial. He has only to carry out the directions contained in the scheme. As observed by this Court in *Abdul Gafoor Vs. State of Mysore*, that when a scheme prepared and published u/s 68 (c) has been approved and an application has been made in the proper manner as specified in Chapter IV of the Act, nothing more remains to be decided by the R. T. A. It has no option to refuse the grant of the permit. In that decision this Court further laid down that when deciding what action to take u/s 68-F (2), the authority is tied down by the terms and conditions of the approved scheme and its duty is merely to do what is necessary to give effect to the provisions of the scheme."

Thus, it is clear that the State Transport Authority while acting u/s 68-F (2) is not required to perform any judicial or quasi-judicial functions, but the action is purely ministerial. In this view of the matter, the question of authorisation by rules framed as required by Section 44 (5) of the Motor Vehicles Act, 1939, does not at all arise. The authorisation by the rules would be necessary where the

Regional Transport Authority or the State Transport Authority is required to act judicially or quasi judicially. So far as the ministerial or mechanical action pursuant to the finalisation of a scheme is concerned, it does not involve any judicial or quasi-judicial process, but is purely an administrative matter. Therefore, the State Transport Authority could certainly, by an administrative order direct the Assistant Secretary to perform some of the functions. It is not disputed that the first respondent had the necessary administrative authority in his favour to act in such matters on behalf of the State Transport Authority. Consequently, it is not possible to accept the contention of the learned counsel for the petitioner that the order impugned is without jurisdiction. In our opinion, it does not suffer from any legal infirmity and it was within the competence of the first respondent to Pass such an order on the strength of administrative authority given by the State Transport Authority.

Coming to the other point, namely, cancellation of the permit was illegal, we have already held that private operators could not be permitted to operate on the nationalised route except to the extent permitted by Clause 3 of the scheme and only the permit-holders under the inter-statal bilateral and reciprocal agreement between the States of Madhya Pradesh and Uttar Pradesh alone could operate and such existing operators under such bilateral agreement alone could continue. The petitioner never claims to be a permit holder under the bilateral agreement or an existing operator under the said agreement. Consequently, cancellation of his permit in pursuance of the finalisation of scheme No. 24 was automatic and involved only a ministerial process. Therefore, the order impugned cannot at all be challenged by the petitioner on any ground, whatsoever.

As a result of the discussion aforesaid, this petition fails and is accordingly dismissed with costs. The order regarding costs shall be operative between the petitioner and the second respondent and there shall be no order as to costs vis-a-vis the petitioner and the first respondent. Counsel's fee in this Court shall be Rs. 100/-, if certified. The outstanding amount of the security deposit be refunded to the petitioner.