

Ram Chandra Palai and Others

Vs

The State of Orissa and Others

Petitions Nos. 604, 605, 647-649, 663, 671 and 692 of 1954

(CJI S. R. Dass, B. P. Sinha, Syed Jafar Imam, N. H. Bhagwati, B. Jagannath Das JJ)

20.01.1956

JUDGMENT

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BHAGWATI J. -

These petitions under article 32 of the Constitution are filed by the owners of Stage Carriage Services plying their buses on several routes in the districts of the State of Orissa impugning the provisions of Orissa Act XXXVI of 1947 and Orissa Act I of 1949 as violative of their fundamental rights. They raise a common question of law and can be disposed of by one judgment.

The State of Orissa embarked upon a scheme of Nationalised State Transport and, as a first step towards it, enacted an Act styled the Orissa Motor Vehicles (Regulation of Stage Carriage and Public Carrier's Services) Act, 1947 (Orissa Act XXXVI of 1947), which modified the provisions of the Motor Vehicles Act, 1939, for the better regulation of Stage Carriage and Public Carrier's Services in the Province of Orissa. This Act envisaged the formation of a Joint-Stock Company in which the Central and the Provincial Governments shall together have controlling interests for providing in stages or in one stage a more efficient administration of the entire stage carriage and public carrier's services in the Province of Orissa. Such a Company was to be authorised to run stage carriage and public carrier's services in the Province of Orissa to the exclusion of all other persons in the routes and areas over which it extended its activities, and with that end in view, the provisions of the Motor Vehicles Act, 1939, were modified as therein specified. Section 4 of the Act provided that the Provincial Government may, if they think fit, by notification direct that the powers conferred by the Motor Vehicles Act, 1939, on a Provincial Transport Authority or Regional Transport Authority shall be held in abeyance with respect to the issue, renewal, suspension or transfer of permits for stage carriage services and public carrier's services. Such a notification was to be effective according to the directions either in the whole of the Province or in any specified area or in respect of any specified route or routes. On the issue of such a notification, the abovementioned powers conferred on the Provincial Transport Authority or the Regional Transport Authority were to be held in abeyance and all permits issued, renewed or transferred by them were to become inoperative and the Provincial Government along was to have the power to issue or renew permits or to grant temporary permits or to suspend or to transfer permits for stage carriage services and public carrier's services.

Whilst the State of Orissa was examining the question of the formation of such a Company, the merger of feudatory States of Orissa with the Province of Orissa took place on the 1st January, 1948. Some of these Durbars had their own transport services and these were taken over by the

State Government of Orissa. Orissa was then divided into 5 zones for the purpose of proper development of road transport, viz., Sambalpur, Keonjhar, Koraput, Ganjam and Cuttack zones. It was decided by the Government to nationalise passenger service transport in the first three zones to be run departmentally based on the nucleus services taken over from the feudatory States which had merged. In order to give effect to this decision, the Orissa Motor Vehicles (Amendment) Act, 1948 (Orissa Act I of 1949) was enacted which further amended the Motor Vehicles Act, 1939, in the manner therein specified. Section 1(3) of that Act provided that the remaining provisions of the Act shall come into force in such specified areas of the district or districts as the Provincial Government may by notification from time to time appoint. The Provincial Government may also by notification withdraw the remaining provisions of the Act from any specified areas. It was further provided that on and from the date when the remaining provisions of the Act came into force in any specified areas, the provisions of Orissa Act XXXVI of 1947 shall be repealed in respect of the said specified areas and when the remaining provisions of the Act were withdrawn from any specified areas, the provisions of Orissa Act XXXVI of 1947 shall be deemed to be revived in the said specified areas from the date of publication of the notification of withdrawal.

The effect of these provisions was that in those areas or districts where a notification under section 4(1) of the Orissa Act XXXVI of 1947 was not issued, the provisions of the Motor Vehicles Act, 1939, continued to apply; where such a notification was issued, the provisions of Orissa Act XXXVI of 1947 came to be applied except where, by virtue of the power reserved under section 1 of Orissa Act I of 1949, the remaining provisions of that Act were brought into force by a notification issued in that behalf, in which case the provisions of Orissa Act XXXVI of 1947 were repealed in respect of the said specified areas and the provisions of Orissa Act I of 1949 became applicable. These were the three distinct sets of circumstances which would prevail at a given time after the enactment of Orissa Act I of 1949 according as the relevant notifications under section 4(1) of Orissa Act XXXVI of 1947 or under section 1(4) of Orissa Act I of 1949 were issued bringing particular area or areas within the operation of the said respective Acts.

Whereas a Joint-Stock Company in which the Central and the Provincial Governments were together to have controlling interests was envisaged in Orissa Act XXXVI of 1947, State Transport Service was envisaged in Orissa Act I of 1949 which defined State Transport Service to mean a service in which the Orissa State has entire or partial financial interest and which the Provincial Government may by notification declare to be a State Transport Service for the purposes of the Act. A Joint-Stock Company was accordingly formed in 1950 which was called the Orissa Road Transport Co., Ltd. The Transport Services which were run through the Joint-Stock Company were termed the "Rationalised Services". The Services which were run through the State Transport Service were termed the "Nationalised Services".

In pursuance of the above scheme of Nationalised State Transport, the State Government of Orissa issued notifications and press notes which gave intimation to the owners of Stage Carrier Services operating on the several routes within the districts of Orissa that with effect from the 1st January 1955 either the Orissa Road Transport Co., Ltd., or the State Transport Service will be operating the said respective routes. That was the occasion for the above petitions being filed by the owners of the Stage Carriage Services plying their buses on the said respective routes impugning Orissa Act XXXVI of 1947 and Orissa Act I of 1949 as unconstitutional and void as aforesaid.

The petitions before us are not confined to the areas and routes where only Rationalised Services or Nationalised Services are contemplated to be introduced by the State Government. Petitions Nos. 604 of 1954, 648 of 1954, 664 of 1954, 666 of 1954 and 671 of 1954 are concerned with the

nationalisation of the services and the routes operated upon by the petitioners in those petitions are intended to be served by the State Transport Service. Petitions Nos. 605 of 1954, 647 of 1954, 649 of 1954, 663 of 1954 and 665 of 1954 are concerned with the rationalisation of the services and the routes operated upon by the petitioners in those petitions are intended to be served by the Orissa Road Transport Co., Ltd. Petition No. 692 of 1954 is not clear whether the scheme to be put into operation by the State Government in the route operated upon by the petitioner therein is intended to be nationalised or rationalised. One thing, however, is common between all these petitioners that their permits under which they have been operating their buses upon those routes for the last several years are liable to be either terminated or cancelled or are not to be renewed under the scheme of Nationalised Road Transport Services and either the State Government or the Transport Authorities will grant the permits on those routes only to the Orissa Road Transport Co. Ltd., or the State Transport Service as the case may be.

The provisions of the impugned Acts were attacked on the ground that there was discrimination in favour of the State Transport Service and the Orissa Road Transport Co. Ltd. It was urged that the State could not discriminate against persons in its own favour as well as in favour of the Joint-Stock Company formed for carrying on motor transport business as that would be a negation of equality guaranteed under article 14 of the Constitution. It was also urged that zonal and territorial discrimination in the application of the impugned Acts arbitrarily offended against Article 14 of the Constitution. A further ground of attack was that the said provisions of the impugned Acts and the rules framed thereunder infringed article 19(1) (f) and (g) of the Constitution as they put restrictions on the citizens regarding their rights to hold property and to practice trade or business. article 31(2) was also alleged to have been infringed because the Gazette Notification of the State of Orissa purporting to take away the petitioners' motor transport business amounted to confiscation and the interests of the petitioners in a commercial undertaking were purported to be acquired without making any provisions for compensation. The impugned Acts, it was alleged, also violated the guarantee of freedom of inter-State and intra-State trade embodied in Article 301 of the Constitution.

Our attention was drawn to the relevant provisions of the Motor Vehicles Act, 1939, Orissa Act XXXVI of 1947 and Orissa Act I of 1949 regarding the issue and renewal of permits. Under the Motor Vehicles Act, 1939, the Provincial Transport Authority and the Regional Transport Authority were invested with the requisite powers in this behalf. Sections 47 and 55 prescribed the matters to be considered by the Regional Transport Authority in considering applications for stage carriage permits and public carrier's permits and section 58 provided for the duration and renewal of permits. So far as renewals of permits were concerned, it was provided that, other conditions being equal, applications for renewal shall be given preference over new applications for permits. When a notification was issued under section 4(1) of Orissa Act XXXVI of 1947, the powers conferred on the Provincial Transport Authority or the Regional Transport Authority by the Motor Vehicles Act, 1939, were held in abeyance and the Provincial Government alone was invested with the power to issue or renew permits. In the granting or refusing to grant such permits, the Provincial Government was not bound to take into consideration the matters specified in sections 47 or 55 of the Motor Vehicles Act, 1939. The Provincial Government was also authorised by notification to cancel any permit granted under the Motor Vehicles Act, 1939, without following the provisions of section 60 of that Act. The only provision which was made in section 6 of Orissa Act XXXVI of 1947 in this behalf was that when a permit became inoperative under section 4(2) or was cancelled under section 5 of that Act, compensation as therein prescribed was payable to such permit holder.

Sections 3 and 4 of Orissa Act I of 1949 added two further clauses to sections 47 and 55 of the

Motor Vehicles Act, 1939, viz.,

" (g) other conditions being equal, in the interest of proper co-ordination of transport facilities, the expediency of giving due consideration to a State Transport Service;

(h) the necessity for preventing unhealthy competition in any route or routes or area on which the State Transport Service may ply;"

It was pointed out that the whole scheme of Orissa Act XXXVI of 1947 and Orissa Act I of 1949 was to oust the owners of stage carriage service from business and create a virtual monopoly in favour of the Orissa Road Transport Co. Ltd. or the State Transport Service and thus discriminate against persons in favour of the Joint-Stock Company or the State. Even though the Provincial Government was invested with power to issue or renew the permits which would become inoperative, under section 4(2) (b) of Orissa Act XXXVI of 1947, that power would be exercised only having regard to the object which the State Government had in view in enacting that Act and the only result would be the issue of permits in favour of the Orissa Road Transport Co. Ltd. The position under Orissa Act I of 1949 would be no better in spite of clauses (g) and (h) having been added to sections 47 and 55 of the Motor Vehicles Act, 1939, because the expediency of giving due consideration to a State Transport Service and the necessity for preventing unhealthy competition therein mentioned would also have the effect of eliminating the private-owned stage carriage service altogether and replacing in its stead the State Transport Service.

It was also pointed out that the State Government had arbitrarily and without any rational basis selected certain districts like Ganjam and Puri and parts of Cuttack District for starting the Orissa Road Transport Co. Ltd., and had introduced State Transport Service in certain other districts such as Sambalpur, Keonjhar, Bolangir and some parts of Cuttack District. Orissa Act XXXVI of 1947 was applied to the former Districts while Orissa Act I of 1949 was applied to the latter Districts. The provisions of both the Acts being materially different as set out above the application of one Act to particular districts of the State and of the other Act to the other districts of the State was violative of the guarantee of equal protection of laws enshrined in Article 14 of the Constitution. The owners of stage carriage services to whom Orissa Act XXXVI of 1947 applied had the additional advantage of having compensation granted to them in accordance with the terms of section 6 thereof which advantage was not available to those owners of stage carriage services to whom Orissa Act I of 1949 was applied. There was also a further advantage which was available to the persons to whom Orissa Act XXXVI of 1947 applied and it was section 8 of the Act which provided that, when permits had been cancelled by the Provincial Government under the provisions of the Act, the Provincial Government may, by notification, require such permit holders or owners to sell any specified vehicle or vehicles and any other movable or immovable property used in connection with the operation and maintenance of such vehicle or vehicles, to the Company, when so constituted, at the rates assessed in the prescribed manner. This advantage was not available to the persons to whom Orissa Act I of 1949 applied.

It has, however, to be remembered that the Scheme of Nationalised State Transport had its origin in the White Paper published by the Government of India towards the end of the year 1944 with a view to removing the difficulties coming in the way of proper development of road transport and the need for cheap, efficient and rapid road transport services and the elimination of wasteful competition had been emphasized therein. The matter was discussed at the meeting of the Transport Advisory Council held in 1945 and the Transport Advisory Council had then drafted a code of principles and practice for regulating the co-ordination of rail-road transport services which were later ratified by

the State Government and accepted by the Government of India. It was this scheme which was embarked upon by the State of Orissa and several steps were taken by the State Government in order to implement that scheme. The first step towards such implementation was the enactment of Orissa Act XXXVI of 1947 which envisaged the formation of a Joint-Stock Company in which the Central and the Provincial Governments shall together have controlling interests. Before such a Company could be formed the feudatory States in Orissa had merged in the Province on the 1st January 1948 and the State Government had on its hand transport services which were owned by such States and had been taken over by the State Government of Orissa. These transport services formed the nucleus on the basis of which the State Government thought of adopting another mode of implementing the scheme of Nationalised State Transport and Orissa Act I of 1949 was passed envisaging the State Transport Service which would also serve the same purpose. When these two modes of implementation, viz., the formation of a Joint-Stock Company and the starting of the State Transport Service, were adopted by the State Government, the question naturally arose as to how these two different ideas could be worked out for the fulfillment of the end in view. The nucleus of transport services which had been owned by the State Government had to be utilised so far as it was available and having regard to the situation as it obtained, the State Government naturally thought of applying Orissa Act I of 1949 to certain districts of the State leaving the other districts to be served by the mode envisaged in Orissa Act XXXVI of 1947. Such a zonal or territorial or geographical division of the several districts of the State for implementation of the scheme of Nationalised State Transport by either the formation of a Joint-Stock Company or the running of the State Transport Service was based on the availability of the transport services acquired by the State Government from the various merging States and if such a division was made having regard to the situation as it thus obtained, no challenge could be made against it on the ground of discrimination or the denial of equal protection of laws. What was essential was that, as between the owners of stage carriage services operating on a particular route or in a particular area, no discrimination should be made and all should be treated alike. If each one of such owners had the same Act applied to them they could not be heard to complain about any discrimination. They formed a separate group or class by themselves to be treated in a particular manner having regard to the exigencies of the situation and the Government was the best judge of the circumstances which obtained within the particular locality which necessitated the application of one Act or the other for the implementation of the scheme. If the State Transport Services were not sufficient in number and could not fully serve the purpose sought to be achieved, the State Government would well be within its rights to form a Joint-Stock Company as envisaged in Orissa Act XXXVI of 1947 and if such a Joint-Stock Company could not be formed within a measurable distance of time, the State Government could very well allow the old order of things to continue under which the owners of stage carriage services would be governed only by the provisions of the Motor Vehicles Act, 1939. It all depended upon the administrative convenience as to whether the State Government could adopt one mode of implementation of the scheme or the other and no blame could be laid at its door if, in the circumstances of this case, it adopted one mode of implementation in one district or part of a district and adopted another mode of implementation in another district or another part of a district provided, however, as we have stated above, all persons who were operating on a particular route or routes or were located in a particular area or district were treated equally and without any discrimination inter se. Such zonal or territorial or geographical division, therefore, would not be violative of the equal protection of laws.

A further argument which was addressed before us on behalf of the petitioners may be noted here and it was that Orissa Act I of 1949 had been applied to some of them and that Act provided for no compensation to be given to them as in the case of those owners of stage carriage services to whom

Orissa Act XXXVI of 1947 had been applied. That, it was contended, was discriminatory as between the several owners of stage carriage services and thus violated article 14 of the Constitution. This argument, however, ignores the fact that under Orissa Act XXXVI of 1947, the permits issued or renewed in favour of the owners of stage carriage services by the Provincial Transport Authority or the Regional Transport Authority cease to be operative or are cancelled by the Provincial Government as the case may be and compensation is given to such permit holders for such premature termination or cancellation of their permits. The owners of stage carriage services to whom Orissa Act I of 1949 is applied stand, however, on a different footing. Their permits continue for the normal period and the considerations which are laid down in clauses (f) and (g) which have been thereby added to sections 47 and 55 of the Motor Vehicles Act, 1939, would come into play when these permits which have expired by lapse of time come to be considered for renewal on applications made by permit holders in that behalf. These permits may or may not be renewed in favour of these permit holders but the non-renewal of such permits would not be on a par with the premature termination or cancellation of the permits held by the owners of stage carriage services to whom the provisions of Orissa Act XXXVI of 1947 were applied. The two positions, therefore, are not similar and the permit holders under Orissa Act I of 1949 do not fall in the same class or group as the permit holders under Orissa Act XXXVI of 1947. There is no question, therefore, of any discrimination between these two classes or groups of permit holders and it cannot be validly urged that the provisions of the impugned Acts in so far as they applied to different classes or groups of permit holders are in any manner violative of the fundamental right embodied in article 14 of the Constitution.

The argument that the provisions of the impugned Acts were designed with a view to oust the private stage carriage services from business altogether and were intended to create a virtual monopoly in favour of the Joint-Stock Company or the State as the case may be is also now of no avail. Saghir Ahmad's case [[1955] 1 S. C. R. 707.] was particularly relied upon by the petitioners in support of their contentions but article 19(6) of the Constitution as amended by the Constitution (First Amendment) Act, 1951, enacts that "Nothing in sub-clause (g) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, -

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(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise".

This amendment excludes all argument in regard to the alleged ousting of the private-owned stage carriage services and the creation of a virtual monopoly in favour of the Joint-Stock Company or the State. The Orissa Road Transport Co. Ltd. which is a Joint-Stock Company formed under the provisions of Orissa Act XXXVI of 1947 and the State Transport Services which are envisaged in Orissa Act I of 1949 would, therefore, be able to carry on their business even if it resulted in the complete elimination of the private-owned stage carriage services without any violation of the fundamental right guaranteed under Article 19(1) (g) of the Constitution.

It was attempted to be argued on behalf of the petitioners that the amendment of article 19(6) of the Constitution would not affect the position as it obtained under the impugned Acts because these

Acts had been long in operation before the amendment came into force and the petitioners were entitled to relief based on our decision in Saghir Ahmad's case, supra. A similar argument was sought to be advanced before us in Petitions Nos. 189 to 193 of 1955 - Bhikaji Narain Dhakras v. The State of Madhya Pradesh & Another [[1955] 2 S. C. R. 589.] - and that argument was repelled by us in the manner following :

"The contention of the respondents before us is that although the amending Act, on the authority of our decision in Saghir Ahmad's case (supra), became on and from the 26th January 1950 void as against the citizens to the extent of its inconsistency with the provisions of article 19(1) (g), nevertheless, after the 18th June 1951 when clause (6) was amended by the Constitution (First Amendment) Act, 1951 the amending Act ceased to be inconsistent with the fundamental right guaranteed by article 19(1) (g) read with the amended clause (6) of that article, because that clause, as it now stands, permits the creation by law of State monopoly in respect, inter alia, of motor transport business and it became operative again even as against the citizens..... In our judgment the contentions put forward by the respondents as to the effect of the Constitution (First Amendment) Act, 1951 are well-founded and the objections urged against them by the petitioners are untenable and must be negatived".

It is hardly necessary for us to consider the further contention urged by the petitioners, viz., that the fundamental right guaranteed under article 19(1) (f) and under article 31(2) had been violated. If the permits held by them under the Motor Vehicles Act, 1939, were prematurely terminated or cancelled under the provisions of Orissa Act XXXVI of 1947 compensation was provided by the Act itself. If there was no renewal of their permits on the expiration thereof after they had run for their normal period by virtue of the provisions of Orissa Act I of 1949, no claim could be made by them on the score of such non-renewal because renewal was not a matter of right. The Provincial Transport Authority or the Regional Transport Authority would be well within their rights to refuse such renewal having regard to the provisions of the amended sections 47 and 55 of the Motor Vehicles Act, 1939, and, if at all there was any deprivation of their proprietary rights, it would be by authority of law.

Nor need we pause to consider the last contention urged on behalf of the petitioners that the impugned Acts violated the guarantee of freedom of inter-State and intra-State trade or business embodied in article 301 of the Constitution. In the first instance, it is not a fundamental right conferred by Part III of the Constitution which can be enforced by a petition under article 32. Moreover, article 305 as it stood before the amendment and the amended article 305 which came into effect after the Constitution (Fourth Amendment) Act, 1955, afford a complete answer to this contention of the petitioners.

The result, therefore, is that there is no substance in any of the contentions urged on behalf of the petitioners and the petitioners must, therefore, stand dismissed as ordered by us already.

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