

Tansukh Rai Jain

Vs

Nilratan Prasad Shaw and Others

Civil Appeal No. 538 of 1964

(CJI P. B. Gajendragadkar, K. N. Wanchoo, J. R. Mudholkar, Raghubar Dayal, M. Hidayatullah JJ)

04.11.1964

JUDGMENT

RAGHUBAR DAYAL, J. –

This appeal, on certificate granted by the High Court of Patna, raises the question whether section 64A of the Motor Vehicles Act as introduced by the Motor Vehicles (Bihar Amendment) Act, 1949 (Bihar Act XXVII of 1950), hereinafter referred to as Bihar section 64A, was not applicable to proceedings for grant of permit for inter-State routes. This question, however, was decided by this Court in *S. K. Pasari v. Abdul Ghafoor* (Civil Appeal No. 306 of 1964, decided on 4-5-64). It was held that it was applicable to cases of stage-carriage permits for inter-State routes.

The respondent prayed, in view of the observations in *Abdul Mateen v. Ram Kailash Pandey* ([1963] 3 S.C.R. 523) for permission to challenge the validity of the aforesaid section on the ground that Parliament, by the Motor Vehicles (Amendment) Act, 1956 (Act No. 100 of 1956), has introduced another section 64A in the Motor Vehicles Act, 1939 (Act IV of 1939), hereinafter referred to as Central section 64A and that thereby Bihar section 64A must be taken to have been repealed by necessary implication.

The question arises in this way. The appellant Tansukh Rai Jain, was one of the applicants for the stage-carriage permit for an inter-State route between Bihar and Orissa. The State Transport Authority, Bihar, granted the permit to the United Motor Works & Co. Ltd. The appellant and respondent No. 1, Nilratan Prasad Shaw, appealed to the appellate authority, the Deputy Minister of Transport, Bihar, against the order of the State Transport authority. The appellate authority reversed the order and granted the permit to Shaw, respondent No. 1. Thereafter, the appellant went in revision to the Bihar Government, in view of Bihar s. 64A. The Transport Minister set aside the order of the appellate authority and granted the permit to Jain, the appellant. Shaw, respondent No. 1, then filed a writ petition in the High Court and prayed for the quashing of the order of the Transport Minister and for the restoration of the order of the appellate authority granting the permit to him. The High Court allowed the writ petition holding that Bihar section 64A did not apply to stage-carriage permits for inter State routes and that therefore the Bihar Government was incompetent to revise the order of the appellate authority.

It is urged for the respondent that the provisions of Bihar s. 64A are repugnant to those of Central section 64A and are therefore void in view of cl. (1) of Art. 254. It is also urged that the Central Act has repealed Bihar section 64A by enacting Central s. 64A in the exercise of the power it had under the proviso to Art. 254(2). If the provisions of Bihar section 64A are repugnant to any extent with those of Central section 64A, Bihar section 64A will be void to the extent of the repugnancy in view

of cl. (1) of Art. 254 of the Constitution. As the Central Act was enacted by Parliament subsequent to the enactment of Bihar section 64A, the provisions of the main part of cl. (2) of Art. 254 will not apply to make Bihar section 64A good within the State of Bihar, even though it had received the assent of the President, as those provisions applied when the Central Act is enacted earlier than the State law. We have therefore to see whether the provisions of Bihar section 64A are repugnant to those of Central section 64A.

The tests for determining whether a certain provision of a State law is repugnant to the provisions of a law made by Parliament are stated thus, in *Deep Chand v. The State of Uttar Pradesh* ([1959] Supp. 2 S.C.R. 8, 43) :

"Repugnancy between two statutes may thus be ascertained on the basis of the following three principles :

- (1) Whether there is direct conflict between the two provisions;
- (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and
- (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

We may now refer to the two sections, Central section 64A and Bihar section 64 :

"Central section 64A : The State Transport Authority may, either on its motion or on an application made to it, call for the record of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit :

Provided that the State Transport Authority shall not entertain any application from a person aggrieved by an order of a Regional Transport Authority, unless the application is made within thirty days from the date of the order :

Provided further that the State Transport Authority shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

"Bihar section 64A : The State Government may, on application made to it in this behalf, within thirty days of the passing of the order in the course of any proceedings taken under this Chapter by any authority or officer subordinate to it, call for the records of such proceedings, and after examining such records pass such order as it thinks fit."

The words 'subordinate to it' in Bihar section 64A, were omitted by the Motor Vehicles (Bihar Amendment) Act, 1953 (Bihar Act I of 1954). This was however not noticed when Bihar section 64A was quoted in *Pasari's case* (Civil Appeal No. 306 of 1964, decided on 4-5-64).

First we have to see whether there is any direct conflict between Central section 64A and Bihar

section 64A. Such a conflict, to a certain extent, can arise if Bihar section 64A be construed literally. The language of Bihar section 64A is very general and empowers the State Government to revise any order made in the course of any proceedings taken under Chapter IV and pass such orders as it thinks fit. It must, however, be so construed, if possible, as not to come in conflict with the provisions of the Central Act. The power of revision vested in the State Government under its provisions are to come into play only when the Central Act does not provide any remedy against the orders proposed to be revised. Certain orders have been made appealable under section 64 of the Act. The power of revision therefore will arise and will be exercised after the appellate power is exhausted and not when the aggrieved person has not appealed against the order. Similarly, it will be available only against non-appealable orders after the aggrieved person has taken action under Central section 64A. The aggrieved person cannot have recourse to action under Bihar section 64A without first taking action under Central section 64A. To the extent that the language of Bihar section 64A can cover the cases open to appeal and to revision under section 64 and Central section 64A respectively, it will be in direct conflict with the provisions of the Central 'Act' and Bihar section 64A will be void to that extent.

Bihar section 64A, it is argued for the respondent, is wholly void as by Central section 64A Parliament intended to lay down an exhaustive code in respect of the said subject matter of revisions. It is also urged that Bihar section 64A is wholly void as both that section and Central section 64A cover the same field. On these very grounds, it is urged that by enacting Central section 64A Parliament has repealed by implication Bihar section 64A as it was competent to do in view of the proviso to cl. (2) of Art. 254.

Repeal, by implication, is not to be easily inferred. It is to be expected that when Parliament was aware of the provisions of Bihar section 64A and of Art. 254 of the Constitution and it intended to repeal Bihar section 64A, it would have expressly stated so. There is nothing in Central section 64A or in any other provision of the Act which expressly states that Bihar section 64A is repealed. We are of opinion that the mere fact that Central section 64A deals with revisions against non-appealable orders of the Regional Transport Authority is not sufficient to conclude that Parliament intended to repeal Bihar section 64A.

The language of Bihar section 64A is very wide and covers all orders made by any authority or officer in the course of any proceedings taken under Chapter IV of the Act. The only limitation on the exercise of the revisional power conferred on the State by Bihar section 64A is that the State cannot suo motu exercise that power. It can exercise it when moved on application by some person aggrieved with the order he seeks to be revised. Such orders can be orders of the State Transport Authority, the Regional Transport Authority or any other authority or officer. Central section 46A provides for revisions against the orders of the Regional Transport Authority and does not provide for revisions against the orders of the prescribed authority to whom appeals could be preferred under section 64. Central section 64A can therefore preclude the State Government from entertaining revisions against non-appealable orders of the Regional Transport Authority, but cannot preclude the operation of Bihar section 64A in regard to other orders. It is not provided in the Act that the order passed by the State Transport Authority in the exercise of its revisional jurisdiction under Central section 64A would be final. If such a provision had been made it might have been possible to urge that Parliament intended that the order of the State Transport Authority in revision was not to be interfered with by any authority. The absence of such an expression therefore leads to the inference that Parliament did not intend that there be no interference with such orders of revision. Further, it may be noticed that section 64 does not exhaust the list of all appealable orders. Its cl. (i) provides for an appeal by a person aggrieved by any other order which

may be prescribed. 'Prescribed' means 'prescribed by rules made under the Act'. Sub-section (1) of section 68 empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV which consists of sections 42 to 68. Sub-section (2) specifies certain matters with respect to which rules be made. Its clause (za) mentions 'any other matter which is to be or may be prescribed.' It follows that the State Government can make rules providing for certain orders to be appealable under s. 64 and thus reduce the orders which otherwise would come within the ambit of Central section 64A. The orders made appealable under the rules framed by a State would not be open to revision under section 64A as it provides for revisions against non-appealable orders only. It is clear therefore that Parliament cannot be imputed the intention to make the provisions of section 64A to be so exhaustive and complete as to lead to the necessary conclusion that thereby it intended to repeal the provisions of Bihar section 64A which gave power to the State of Bihar to revise orders made by authorities or officers in proceedings under Chapter IV.

The provisions of Bihar section 64A and Central section 64A are not such that they cannot be complied with simultaneously, except for the contingency already mentioned, i.e., when an application is made to the State Government by a person aggrieved by such an order of the Regional Transport Authority which be not appealable under section 64. In such a case, the State Government cannot exercise its power under Bihar section 64A against the orders of the Regional Transport Authority, though it would be free to exercise that power at a later stage after the State Transport Authority had disposed of the revision, if any, made to it. Revision, in the first instance, against non-appealable orders passed under Chapter IV must go to the State Transport Authority and in respect of such orders Parliament must be taken to have varied the provisions of Bihar section 64A.

We therefore hold that Bihar section 64A is neither void nor has been repealed by Central section 64A and that its scope has been limited only to this extent that revisions against such orders of the Regional Transport Authority which are not appealable have to be preferred to the State Transport Authority.

In the present case the State Government of Bihar revised the order made by the appellate authority. It was competent to do so. The High Court was in error in holding otherwise.

We therefore allow the appeal with costs, set aside the order of the High Court and restore that of the State of Bihar granting permit to the appellant Jain.

Appeal allowed.

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