

Delhi Transport Undertaking

Vs

Zamindar Motor Transport Co. (P) and Another

Civil Appeal No. 1324 of 1966

(K. S. Hegde, J. C. Shah JJ)

08.10.1969

JUDGMENT

SHAH, J. –

1. The Delhi Municipal Corporation took over the organisation of the Delhi Transport established under Section 3 of the Delhi Transport Authority Act, 13 of 1950, and administered it in the name of Delhi Transport Undertaking-hereinafter called D.T.U. Even though the jurisdiction of the Delhi Municipal Corporation extends only to the municipal area, by Section 288 of Act 66 of 1957 it is authorised to set up transport service for passengers and goods in the entries Union Territory of Delhi and even outside by virtue of Section 288 and 292 of the Act.

2. The respondent-Company held in 1960 permits on three routes : (1) Delhi-Bawana-Narela, (2) Delhi-Bawana-Auchandi and (3) Delhi-Bawana-Kharkhoda. Since May 9, 1956, the Delhi Transport Authority and its successor D.T.U. were holding stage carriage permits valid for certain areas but not including the routes on which the respondent - Company held permits to ply its stage carriages. On October 19, 1959 the D.T.U. addressed a letter to the Secretary, State Transport Authority, Delhi, stating that is considered "it necessary to approach x x with the request to place the matter before State Transport Authority x x to validate" its road permits to cover the entire Union Territory of Delhi. The State Transport Authority treated that letter as an application for validation of the existing permits so as to cover the entire area of the Union Territory of Delhi. After considering the objection filed by existing operators on the routes outside the Municipal Corporation area, the State Transport Authority passed the following order on February 10, 1960 :

"The representatives of the D.T.U. point out that under the Municipal Act they were required to provide efficient and adequate services in the entire territory of Delhi and therefore the area of their permits should be altered accordingly. The authority considered the request of the D.T.U. reasonable. It was decided to alter the permits and make them valid for entire territory of Delhi but they should be informed that they should not operate new services parallel to the existing services of the private operates without the approval of the State Transport Authority.

3-4. On June 17, 1961 the D.T.U. issued a circular that it was decided to operate its services on Delhi-Bawana route with effect from June 19, 1961, and informed the Transport Authority of its intention to do so. The respondent-Company lodged a protest with the State Transport Authority and asked the Authority to order that the running of the proposed service be stopped, and in the meantime the procedure under the Motor Vehicles Act be complied with, and an opportunity for making

representations against the proposals of the D.T.U. be afforded. On June 20, 1961 the State Transport Authority gave notice to the respondent-Company that the application made by the D.T.U. for operating service between Delhi-Bawana will be considered by the State Transport Authority in its meeting to be held on June 21, 1961 at 11 a.m. On June 21, 1961 the respondent-Company wrote a letter to the Secretary State Transport Authority intimating that it was not aware of the contents of the application of the D.T.U., that the application had not been published and objections and representations had not been invited, that the "notice of hearing was very short" and that proper opportunity for filing objections should be given after due publication of the application of the D.T.U. On June 21, 1961, the State Transport Authority resolved that :

"The Delhi Transport Undertaking already held permits for Delhi territory and they can ply on any route in the territory under these permits. No fresh permits are necessary. In the meeting held on 10-5-1961, the State Transport Authority, while reviewing the requirements of services on various routes, decided that the Delhi Transport Undertaking should be asked to provide service on Delhi-Bawana-Narela route and if they are unable to do so, additional permits may be issued. Since the Delhi Transport Undertaking have started playing 2 buses x x x in public interest, the operation of such service was approved but there should be no overlapping of the timings of the services."

5. On June 27, 1961, the respondent - Company moved a petition in the High Court of Punjab at Delhi for a writ of prohibition restraining the D.T.U. from plying stage carriages on the three routes in respect of which the respondent-Company was holding permits. This petition was dismissed by Pandit, J., holding that the condition mentioned in the resolution dated February 10, 1960 that the D.T.U. would operate new services parallel to the existing services of the private operators after getting the approval of the State Transport Authority was merely in the nature of an administrative instruction and that the letter dated October 19, 1959 was validly treated as a formal application for grant of a new permit under Section 57(8) of the Motor Vehicles Act, 1939. In appeal under the Letters Patent the judgment of Pandit, J., was reversed. The High Court held that the D.T.U. had applied to vary the condition of its permit, but the inclusion of a new route or routes or a new area within the meaning of Section 57(8) of the Act, and by the resolution dated February 10, 1960, the D.T.U. was not entitled to operate new services without the approval of the State Transport Authority; that such approval could be given after following the procedure prescribed by Section 57, sub-sections (3), (4) and (5) and not otherwise; that there was not even substantial compliance with the provisions of Section 46 of the Motor vehicular Act and Rule 47 of the Delhi Motor Vehicles Rules; and that in dispensing the requirements of Section 57 the State Transport Authority acted illegally. With special leave, the D.T.U. has appealed to this Court.

6. By Section 45 of the Motor Vehicles Act, 1939, every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicle. By Section 46 an application for a permit in respect of a service of stage carriage or to use particular motor vehicle as a stage carriage shall, as far as may be, contain the particulars set out in clauses (a) to (f). Section 47 provided that the Regional Transport Authority shall, in considering an application for a stage carriage permit, have take into consideration and representation made by person providing passenger transport facilities long or near the proposed route or area. Sub-section (1) of Section 48 provides that subject to the provisions of Section 46, a Regional Transport Authority may, on an application made to it under Section 46, grant a stage carriage permit in accordance with

the application or with such modification as it deems fit or refuse to grant such a permit. By sub-section (2) it is provided that every stage carriage permit shall be expressed to be valid only for a specified route or routes or for a specified area. By sub-section (3) it is provided that the Regional Transport Authority may grant a permit for a stage carriage of a specified description or for one or more particular stage carriages and may, subject to any rules that may be made under the Act, attach to the permit any one or more of the conditions. Nos. (i) to (xxiii) set out in that sub-section, and by condition (xxi) the Regional Transport Authority may, after giving notice of not less than one month (a) vary the conditions of the permit, and (b) attach to the permit further conditions. Sub-sections (2) and (3) of Section 57 provide :

"(2) an application for a stage carriage permit x x x shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates.

(3) On receipt of an application for a stage carriage permit x x x the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered

#Provided x x x.###

Under sub-section (4) representations made in writing in connection with an application for grant of a permit, before the appointed date, and a copy where of is furnished to the applicant, only may be considered. By sub-section (5) the representations made under sub-section (3) must be disposed of at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative. Sub-section (8) provides :

"An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of service above the specified maximum, x x shall be treated as an application for the grant of a new permit :

#Provided x x x.###

7. Rule 47 of the Delhi Motor Vehicle Rules provides that every application for a permit in respect of a transport vehicle shall be in one of the prescribed forms.

8. The proceedings taken by the State Transport Authority in making the decisions dated February 10, 1960 and June 21, 1961 were informal and also irregular. On October 19, 1959 the D.T.U. requested the Secretary, State Transport Authority, asking it to validate road permits held by the D.T.U. to cover the entire area of the Union Territory of Delhi. Such a request may be made only by an application in the prescribed form. After hearing objection thereto the State Transport Authority by order dated February 10, 1960, validated the permits for the entire Union Territory of Delhi with a condition that the D.T.U. shall not operate new services parallel to the existing services of private

operators without the approval of the State Transport Authority. Against this resolution no appeal was preferred by the respondent. By the resolution the permits were extended to make them valid for the entire territory of Delhi but subject to the condition that the D.T.U. was not to operate new service parallel to the existing services of the private operators. If thereafter it was intended to remove the condition, the prescribed procedure under Section 57, sub-sections (3), (4) and (5) had to be followed for an application to vary the conditions of any permit, by the inclusion of a new route or routes or a new area, is by sub-section (8) required to be treated as an application for the grant of a new permit.

9. By the order dated February 10, 1960 the permits were extended throughout the Union Territory of Delhi but the D.T.U. still required the permission of the State Transport Authority to ply its stage carriages on routes covered by the permits granted to the respondent-Company. Before granting that permission it was necessary to publish the application and to invite and consider objections thereto. The D.T.U. did not even ask for permission of the State Transport Authority but merely intimated by letter dated June, 17, 1961 that it will start service on the Delhi-Bawana route from June 19, 1961. After the D.T.U. started plying its stage carriages, the State Transport Authority gave intimation to the respondent-Company and others that the application of the D.T.U. will be considered in its meeting to be held on June 21, 1961. And disregarding the protests raised by the respondent-Company and others the State Transport Authority on June 21, 1961 ordered that the D.T.U. should be asked to provide service on Delhi-Bawana-Narela route, and if it was unable to do so, additional permits may be issued. There was no application for grant of permit for plying stage carriages under Section 57; there was no publication of a request by the D.T.U.; representation or objections were not invited; and no opportunity of a hearing to the objection in the manner contemplated by the Act was given. The proceedings of the State Transport Authority were wholly irregular.

10. Mr. Daphtary appearing on behalf of the D.T.U. contended that the order dated February 10, 1960 which was made after hearing the objections of the respondent-Company became final, and since no appeal was preferred, the D.T.U. was competent to extend its services with the approval of the State Transport Authority over the entire Union Territory of Delhi. The order dated June 21, 1961, merely extended the permits to cover the Union Territory of Delhi; it did not authorise the plying of stage carriages on routes already served by private operators. The existing operators were entitled to be heard when the condition in the permits of the D.T.U. was removed.

11. By Section 48(3)(xxi) it is to the Regional Transport Authority, after giving notice of not less than one month : (a) to vary the conditions of the permit, and (b) to attach to the permit further conditions. But an application was made by the D.T.U. for variation of the conditions of the permit including a new route or routes or a new area had to be treated as an application for the grant of a new permit under Section 57(8) of the Act and the State Transport Authority could not ignore the provision of Section 57, sub-sections (3), (4) and (5).

12. Section 288 and 289 of the Delhi Municipal Corporation Act, 1957, on which reliance was placed by Mr. Daphtary do not authorise the Corporations, without recourse to the Motor Vehicles Authorities, to ply its vehicles over the entire Union Territory of Delhi. Section 288 merely authorises the Corporation to take steps from time to time for providing or securing or promoting an efficient, adequate, economical and properly co-ordinated system for road transport service : it does not dispense with compliance with the provision of the Motor Vehicles Act, 1939. Section 289 enables the Delhi Transport Committee to take steps, amongst others to acquire in accordance with schemes prepared

under the Act either compulsorily in accordance with such procedure as may be prescribed by bye-laws or by agreement, the whole or any part of any transport service operated by any other person to the extent to which the activities thereof consist of the operation of road transport services or ancillary services in the Union Territory of Delhi or in any extended area, and to do all other things to facilitate the proper carrying on of the business of the Undertaking. But Section 289 merely confers upon the Corporation power to acquire services operated by others. But in exercising that power, the provisions of the Motor vehicles Act, insofar as the exercise of the power is required to be made in consonance with the provisions of the Act, are not dispensed with.

13. The D.T.U. was conscious of these requirements of the Motor Vehicle Act and had moved by an informal letter the State Transport Authority on October 19, 1959 for extension of its permits. But thereafter even without obtaining the concurrence of the State Transport Authority or its approval proceeded to start the services not he overlapping routes as from June 19, 1961.

14. In our judgment, the order passed by the State Transport Authority dated June 21, 1961 was without jurisdiction and must be set aside. We confirm the order passed by the High Court and dismiss this appeal.

15. The respondent-Company sought to defend the appeal by filing an appearance at a very late stage. The Company has not even filed a statement of case. In the circumstances we direct that there will be no order as to costs in its appeal.

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