

State of Rajasthan

Vs

Mohan Lal Vyas

Civil Appeal No. 996 of 1967

(G. K. Mitter, A. N. Ray JJ)

22.01.1971

JUDGMENT

RAY, J. -

1. This is an appeal by special leave against the judgment, dated February 8, 1966, of the High Court of Rajasthan upholding the judgment and decree of the District Judge, Jodhpur, restraining the appellant State of Rajasthan from recovering any amount from the respondent under two agreements for plying buses or trucks on route or routes mentioned in the agreements. The High Court further upheld the judgment of the District Judge that the contracts granting monopoly rights to the respondent became void with the coming into force of the Constitution, and, therefore, the State Government had no right to demand or realise from the respondent any amount for plying the buses and trucks on the routes mentioned in the impugned contracts.

2. In the month of December, 1948, the respondent and the Government of the State of Jodhpur which subsequently on April 7, 1949, merged with the State of Rajasthan entered into two agreements in respect of two bus routes. The first route was Nagaur-Role-Deh for three years from December 1, 1948, to November 30, 1951, and the second was for Kuchera-Khajwana route from July 1, 1948, to November 30, 1951. Under both the agreements the respondent was given the monopoly right to ply the buses on the routes mentioned. Under the first agreement the respondent was to pay to the State, Rs. 72,121/- for the period mentioned thereunder. For the second agreement the respondent was to pay Rs. 41,121/- for the entire period. The several sums of money under both the agreements were payable by instalments. Up to January 26, 1950, the respondent paid Rs. 51,000/- to the State. The respondent contended that on the Constitution coming into force on January 26, 1950, the monopoly contracts between the respondent and the State became void and were unenforceable.

3. The State issued a demand notice for Rs. 69,932-4-0 under the aforesaid two agreements. The alleged amounts, according to the State, were payable subsequent to January 26, 1950, for the remaining period. The respondent filed the suit for an injunction restraining the State from recovering the sum of Rs. 69,932-4-0 inasmuch as the monopoly contracts became illegal, void and unenforceable.

4. The State contended that the Marwar Motor Vehicles Act, 1945, remained in force up to April 1, 1951, when the Motor Vehicles Act of 1939 was extended to the entire area of the State of Rajasthan including the former State of Jodhpur and therefore the monopoly contracts which were entered into by and between the respondent on the one hand and the State of Jodhpur on the other continued in force. Reliance was also placed on sub-section (8) to Section 57 of the Marwar Motor Vehicles Act,

1945, which was brought into effect on June 8, 1946, whereby the monopoly permits could be granted.

5. It is manifest that after the Constitution came into force every citizen under Article 19(1)(g) of the Constitution has the right of freedom of trade including the right to ply buses and trucks on the road. Under Article 13 the law has to be in consonance with the Constitution. It has, therefore, to be found out as to whether there is any law by virtue of which the State of Rajasthan could grant or keep alive any monopoly contract. The answer is in the negative. There cannot be any law in violation of the provisions of the Constitution. A monopoly right cannot be conferred on a citizen under the Constitution nor can it be justified under the Constitution.

6. In 1951, there was amendment of the Constitution whereby Article 19(6) provided that the monopoly rights could be created in favour of the State in respect of any trade or business. The monopoly contracts in the present case were not in favour of the State Government. Article 19(6) of the Constitution provides a reasonable restriction on the fundamental rights of citizens as contained in Article 19(1)(g). If the State obtained a monopoly it would be defensible as a reasonable restriction on the rights of citizens to carry on any business or trade and to ply buses. On the other hand, if the State conferred any monopoly right on a citizen it would be indefensible and impermissible and would be an infraction of the inviolable provision of the Constitution.

7. The Constitution forbids grant by the State to a citizen of monopoly right to carry on the business of plying buses undertaken in the agreements. The manner in which the agreements were to be performed became illegal as a result of the Constitution. The arguments were therefore incapable of enforcement. The Constitution struck at the root of the agreements. The effect was that circumstances of the agreements were radically changed as a result of the Constitution and the agreements were incapable of performance under the law of the land.

8. We are of opinion that the High Court correctly held that the State was unable to rely on any provision of the law which empowered the State Government to realise the amount demanded from the respondent for using the highway. No reliance could be placed by the State on the monopoly contracts which were impeached by the respondent inasmuch as these were unenforceable and unconstitutional.

9. For these reasons, we are of opinion that the appeal fails and is dismissed with costs.

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