

Sher Singh

Vs

Union of India and Others

Gandiban Transports

Vs

Managing Director, Pallavan Transport Corporation Ltd. and Another

Kuldeep Singh and Others

Vs

Union of India and Others

Special Leave Petitions (Civil) No. 6605 of 1983

(Desai, J.)

21.10.1983

JUDGMENT

DESAI, J. –

13. In this group of special leave petitions and writ petitions, constitutional validity of Section 47(1-H) of the Motor Vehicles Act, 1939 ('Act for short) directly or indirectly figures. With a view to focussing attention on the context in which the question is raised it may be advantageous to refer to the factual matrix in S.L.P. 6605 of 1983, in which the learned single Judge and the Division Bench of the High Court repelled the challenge. We would first deal with the principal challenge common to all petitions and then dispose of specific contention raised in other petitioners clubbed together here. For representative facts we would refer to S.L.P. 6605 of 1983.

Re : S.L.P. No. 6605 of 1983 :

2. Petitioner Sher Singh is the holder of a stage carriage permit on Behror-Rewari via Barrod, Shahjahanpur inter-State route. A portion of the route from Bahrer to National Highway No. 8 via Barrod and Shahjahanpur 29 kms. In length passes through Rajasthan State and the rest of the portion of the route 22 kms. In length lies in Haryana State. It is thus an inter-state route. Petitioner holds 12 permits for operating on the aforementioned route. Of the 12 permits, the period prescribed under 8 permits expired and the petitioner applied for the renewal of the permits under Section 58 of the Act. Regional Transport Authority granted renewal of the permits upto and inclusive of January 20, 1981. The petitioner again applied for renewal of the permits on December 29, 1980. The Rajasthan State Road Transport Corporation, fifth respondent ('Corporation for short) made an application to the Regional Transport Authority on April 20, 1981 for stage carriage permit on the aforementioned route. This application was as usual advertised. The application of the petitioner for

the renewal of his permits accordingly was taken up for consideration on April 30, 1981. Pending the consideration of the application for renewal of permits. Petitioner was granted temporary permits under Section 62 for a period of four months commencing from the date of the expiry of the earlier permit. The temporary permits were thus to expire on May 20, 1981. And these temporary permits were further renewed for a period of four months. Thereafter, the application of the petitioner for renewal of his permits and the application for stage carriage permit made by the Corporation were taken up for consideration. An objection was raised by the Corporation that as the route in question in an inter-State route, it is entitled to permit in preference to the petitioner in view of the provision contained in Section 47(1-H) of the Act. On the other hand, it was contended on behalf of the petitioner that in view of the provision contained in Section 58, the petitioner is entitled to renewal of his permits in preference to the Corporation which has made an application for a fresh permit. This contention found favour with the Regional Transport Authority and the renewal of permits was refused to the petitioner and the permits were granted to the Corporation. This decision was questioned in a writ petition filed by the present petitioner in which the only contention raised was that the preference was accorded to the Corporation for grant of permit under Section 47(1-H) of the Act which is constitutionally invalid, and once no such preference could be granted, the preference in favour of a renewal of permit under Section 58 should have precedence and the renewal ought to have been granted.

3. It was contended before the learned single Judge of the High Court that Section 47(1-H) is violative both of Article 14 and Article 19(1)(g) and is thus constitutionally invalid. That was the only contention canvassed before the learned Single Judge which did not find favour with him as well as the Division Bench of the Rajasthan High Court. Hence the petitioner filed this petition for special leave. A notice was ordered to be issued to the respondent and it was directed that the petition be finally disposed of at this stage as the only question raised is one of law and no investigation of facts is necessary.

4. A Brief reference to the relevant provisions of the Act may help up in demarcating the contours of controversy with precision. Chapter IV of the Act contains provisions for control of transport vehicles. For regulating the transport business a scheme for granting different type of permits has been statutorily prescribed. There are various kinds of permits contemplated by the Act such as stage carriage permit, contract carriage permit, all-India tourist permit, special permit, permits for transport of goods, etc. Various authorities have been constituted under the Act for the purpose of implementing the Act. Power has been conferred upon specific authorities for granting different kinds of permits. Section 47 prescribes procedure which the Regional Transport Authority has to follow while examining and deciding an application for stage carriage permit. Section 47 was specifically amended by Act 47 of 1978 which came into force on January 16, 1979. By the Amending Act, sub-sections (1-A) to (1-H) were added to Section 47. The focus of controversy is on sub-section (1-H). Sub-section (1-H) reads as under :

(1-H) Notwithstanding anything contained in this section, an application for stage carriage permit from a State Transport Undertaking for operating in any inter-State route shall be given preference over all other applications.

Provided that the authority shall not grant a permit under this sub-section unless it is satisfied that the State Transport Undertaking would be able to operate in the inter-state route without detriment to its responsibility for providing efficient and adequate road transport service in any notified area or notified route as is referred to in sub-section (3) of Section 68-D where the undertaking operate the service.

Explanation. – For the purpose of this sub-section, ‘inter-State route’ means any route lying contiguously in two or more States.

A bare reading of the provision contained in sub-section (1-H) shows that where a Corporation set up under the Road Transport Corporations Act, 1950 is one of the applicants for a stage carriage permit on an inter-State route, then an between other applicants and a State Transport Undertaking (‘Undertaking’ for short), the latter will have preference over others. Routine statutory procedure prescribed in Section 47 for grant of a stage carriage permit requires the Regional Transport Authority which has the power to grant permit before selecting who amongst the numerous applicants could be granted the permit must take into consideration various things that are enumerated an Section 47. Fair approach would be that after examining the credentials of every applicant, the Regional Transport Authority shall grant permit to the person who in its opinion would best serve the travelling public. The Regional Transport Authority upon a judicious consideration of merits and demerits of every applicant must in a fair and reasonable manner decide who amongst the applicant would perform the duty and carry out the obligations under the permit. However, sub-section (1-H) carves out an exception to this generally well-recognised principle that an administrative authority has to adopt while exercising the power conferred upon it by the statute, that where an application for a stage carriage permit on an inter-state route is made by all intending applicants which includes a State Transport Undertaking, its application must be accorded preference. But while granting preference the Regional Transport Authority must satisfy itself that the Corporation would be able to operate on the inter-State route without detriment to its responsibility for providing efficient and adequate road transport service in any notified area or notified route as is referred to in sub-section (3) of Section 68-D where the Undertaking operates the service.

5. At this stage, a reference to Section 58 would be useful. It provides for duration and renewal of stage carriage and contract carriage permits other than temporary permit granted under Section 62. An existing holder of permit may apply for renewal of permit. Sub-section (2) of Section 58 requires that a permit may be renewed on an application made and disposed of as if it were an application for a permit. There is a proviso to sub-section (2) which prescribes the time limit within which an application for renewal of different kinds of permits may be made. There is a second proviso which is material and which may be extracted :

Provided further that other conditions being equal an application for renewal shall be given preference over new application for permits.

Chapter IV-A was introduced in the Act by Amending Act 100 of 1956 which came into force on February 2, 1957. Chapter IV-A makes special provisions relating to State Transport Undertaking. The broad scheme of Chapter IV-A is that a State Transport Undertaking may prepare and public a scheme on road transport service. On the publication of the scheme, objections can be filed as provided in Section 68-D. Section 68-E confers powers for modification and cancellation of the scheme. Then comes Section 68-F which provides that where, in pursuance of an approved scheme, any State Transport Undertaking applies, in such a manner as may be prescribed by the State Government in this behalf, for a stage carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State Transport Undertaking, notwithstanding anything to the contrary contained in Chapter IV. In short in respect of a notified area or a notified route, an application for permit by State Transport Undertaking shall be granted to the exclusion of any other operator. Apart from this

specific provision in Section 68-F, this outcome to some extent also emerges from the provision contained in Section 68-B which provides that the provisions of Chapter IV-A and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act or any other law for the time being in force or in any instrument having effect by virtue of any such law.

6. The first contention raised on behalf of the petitioner was that the State Transport Undertaking must either take recourse to provision in Chapter IV-A or otherwise if it wants to compete without recourse to Chapter IV-A, it must stand in competition with other applicants for stage carriage permit and any preference that it may enjoy in respect of inter-State route under sub-section (1-H) of the Section 47 is violative of Article 14 and is denial of fundamental freedom to carry on trade guaranteed to petitioners by Article 19(1)(g).

7. At the outset it is necessary to bear in mind the legal position of a State Transport Undertaking when dealt with under Chapter IV-A and Chapter IV of the Act. If an approved scheme in respect of a notified area or a notified route is in force, State Transport Undertaking alone is entitled to operate vehicles and therefore is entitled to obtain stage carriage permits both regular and temporary depending upon whether the scheme provides for total or partial exclusion of private operators. However, when an application for a permit is made under Chapter IV, the Undertaking has to compete with private operators who may as well make an application for permit. When the Undertaking applies for permit under Chapter IV, it must satisfy the Regional Transport Authority that it is better suited than the private operator to render transport facility to the travelling public. Section 47(1-H) however, provides that in the case of inter-State route, the Undertaking will have preference in the matter of stage carriage permit. Does preference of this nature deny equality guaranteed by Article 14 ? The expression 'preference' amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other. It signifies that other things being equal, one will have preference over the others. When an application for a stage carriage permit is being processed as required by Section 47, the application of the Undertaking for an inter-State route shall be examined as application of any other private operator. Their merits and demerits must be ascertained keeping in view the requirements of (a) to (f) of Section 47(1) and after comparing the merits and demerits of both, not with the yardstick of mathematical accuracy, but other things being equal, the application of the Undertaking will have preference over others. Qualitative and quantitative comparison on broad features of passenger transport facility such as fleet, facilities to travelling public and other relevant consideration may be undertaken and after balancing these factors other things being equal, the application of the Undertaking shall be given preference over other applicants. There is no question of eliminating private operators merely because the Undertaking applies for a stage carriage permit under Chapter IV. That situation is catered to under Chapter IV-A. In an application under Chapter IV, Corporation has to enter the arena like any other applicant, face the competition and come up to the level of other private operators intending to obtain stage carriage permits and then in respect of the route in question claim preference. Would this statutory provision violate equality guaranteed by Article 14 ? The answer is obviously in the negative. Competition is the essence of improved commercial service. After ensuring competition in matter of rendering more efficient transport service a public sector undertaking is assured statutory preference, remember no monopoly, there is no denial of equality guaranteed by Article 14. A similar argument when the vires of the provisions contained in Chapter IV-A were question in *Dosa Satyanarayanamurty v. Andhra Pradesh State Road Transport Corporation* ((1961) 1 SCR 642, 650 : AIR 1961 SC 82) did not commend to the Constitution Bench when it repelled the challenge observing as under :

Ordinarily a State Transport Undertaking..... should be in a better position than others to carry on the said services for the benefit of the public; administratively, financially and technically it can be expected to be in a far better position than others. It can provide more well-equipped buses, give better amenities to the travelling public, keep regular timings, repair or replace the buses in emergencies. It may also employ efficient supervisory staff to keep things going at an appreciably high standard.

This would apply mutandis mutandis to the present situation. But let it be made clear that while considering the application for stage carriage permit under Section 47, the private operator has an equal chance to get a permit even on inter-state route if it shows that the Undertaking is either unable to provide efficient and economical service or that the private operator is better equipped to render the same. Preference in this context would mean that other things generally appearing to be quantitatively and qualitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking. Viewed from this perspective the provision contained in Section 47(1-H) would not deny equality before law and hence would not offend Article 14.

8. The next contention was that Section 47(1-H) is violative of Article 19(1)(g) in that it denies to the petitioner the fundamental freedom to carry on trade. There is no substance in this contention because the petitioner has not been denied his freedom to carry on trade. The petitioner is entitled to make an application under Chapter IV for a stage carriage permit and must compete with other private operators as also the Undertaking. It is too late in the day to contend that a preference in favour of the Undertaking would be violative of Article 18(1)(g) for the obvious reason that Undertaking like all other applicants for permit has to compete for a permit. It may be recalled that when it came to the provisions of Chapter IV-A, this Court has more often than once upheld the validity of the Provisions contained in Chapter IV-A and repelled the challenge of its being violative of Article 19(1)(g), even though the private operator may be wholly excluded from even applying for a permit in respect of a notified area or a notified route being part of an approved scheme. From a slightly different angle, the challenge may be repelled in that other things being equal, even a part from the statutory preference, the Undertaking whose net profits are required to be spent for the provision of amenities to the passengers using road transport service, welfare of labour employed by the Undertaking, for financing the expansion programmes of the Undertaking, and the balance to be made over to the State Government for the purpose of road development must receive in large public interest preference for a permit compared to a private operator whose profits would go to augment his private income. Section 30 of the Road Transport Corporation Act, 1950, makes statutory provision for disposal of net profits of a State Transport Undertaking. In a slightly different context, this court in *Lachhman Das v. State of Punjab* ((1963) 2 SCR 353 : AIR 1963 SC 222) while repelling the challenge to the validity of Patiala Recovery of State Dues Act, IV of 2002 BD approved the ratio in *Manna Lal v. Collector of Jhalawar* ((1961) 2 SCR 962, 970 : AIR 1961 SC 828 : (1961) 2 LLJ 146) in which it was held that "the dues of the Government of a State are the dues of the entire people of the State. This being the position, a law giving facility for the recovery of such dues cannot, in any event, be said to offend Article 14 of the Constitution." This very approach requires to be adopted while examining the challenge under Article 19(1)(g).

9. It was next Contended that petitioner was an existing permit holder and therefore, under Section 58 it was entitled to renewal of its permits in preference to the applications for new permits made by the Undertaking. The second proviso to Section 58(2) does provide that "other conditions being equal, an application for renewal shall be given preference over new applications for permits". What

has surprised us the most is that while the petitioners have a serious grievance against the preference accorded to the Undertaking for a permit on the inter-State route under Section 47(1-H), the same petitioner is keen to protect preference in favour of the renewal of a permit against a new applicant statutorily provided in Section 58. But Section 58 also manifests the legislative intention when it uses the expression preference with an adjectival clause "that other conditions being equal", an application for renewal will have a preference over the new applications.

10. The first submission in this behalf is that when an application is made for a renewal of a permit, it has to be considered only under Section 58 and the preference therein provided excludes any consideration of an application for a permit under Section 47. Approaching the matter from this angle, it was contended that as the present petitioner has made an application for the renewal of the permit, he should have been accorded preference as mandated by the second proviso to Section 58(2) over the fresh application of the Undertaking and consideration of the application for renewal of the permit under Section 58 excludes importing of the provisions of Section 47. This approach overlooks a specific provision enacted in sub-section (2) of Section 58 which provides as under :

58. (2) A permit may be renewed on an application made and disposed of as if it were an application for a permit...

When a statute prescribes that an application for renewal of a permit shall be made and disposed of as if it were an application for a permit, the legislature incorporated by pen and ink all those provisions which are applicable for grant of a permit upon a fresh application made in this behalf. If an application for renewal of a permit was to be treated differently from the application for a permit made under Section 45 and processed under Section 47 and other connected provisions, it was absolutely unnecessary for the Legislature to provide that an application for renewal of a permit shall be made and disposed of as if it were an application for a fresh permit. The expression 'as if' is used to make one applicable in respect of other. Therefore, the expression 'as if' used in Section 58(2) would mean and imply that the application for renewal must be made in the same manner and to same extent as an application for a fresh permit and must be processed as such. This would mean that even where an existing permit holder applies for a renewal of his permit, it has to be advertised and fresh applicants can as well apply for a permit to ply vehicles on the same route for which the previous holder of permit has applied for renewal of his permit. After considering all such applications, other conditions being equal, an existing operator who has applied for renewal will have preference. Therefore, by necessary interpretation, Section 47(1-H) would also come into play when an application is for renewal of a permit on an inter-State route. There is no conflict between Section 47(1-H) and Section 58(2). It is therefore, not possible to accept the submission that while considering the application for renewal of permit, Section 47(1-H) is not attracted.

11. It appears that the State of Rajasthan had amended Section 58(2) in its application to that State by engrafting a third proviso to sub-section (2) of Section 58 by Rajasthan Act 8 of 1973, which reads as under :

Provided also that other conditions being equal, an application for stage carriage permit by a State Transport Undertaking, as defined in Section 68-A, whether an application for renewal or a new application shall be given preference over all other applications for renewal.

Addition of this proviso merely makes explicit what was implicit in sub-section (2) of Section 58. Nothing was pointed out to us to hold that the Rajasthan State Legislature lacked competence to add

the aforementioned proviso to sub-section (2) of Section 58.

Re : S.L.P. s Nos. 9678 to 9680 of 1982 :

12. In this group of petitions for special leave, it was contended before the High Court that as Pallavan Transport Corporation Ltd., the first respondent, did not make provision for night halt cleaners, the application for permits made by them were liable to be screened. The High Court declined to examine this contention on the short ground that this contention was not raised before the State Transport Appellate Tribunal. For the same reason, we could as well have declined to examine this contention. However, it may as well be pointed out that even if the contention is to be examined on merits, there is no substance in it. The State of Tamil Nadu has framed what are styled as Tamil Nadu Motor Vehicles Rules. Rule 155-A provides for a marking system under different heads to rival claimants for permit to objectively assess who amongst them is the best to whom permit should be granted. Before proceeding to assign marks under different heads, the Transport Authority has to screen applications so as to weed out those unsuitable on one or the other ground mentioned in the rule. One such disqualification is the failure to provide for night halt cleaners. It was urged that after the Transport Authority made the enquiry from the first respondent-Corporation whether it has provision for night halt cleaners, without waiting for the clarification, the Transport Authority proceeded to dispose of the application. It was next pointed out that Rule 155-A(3)(d) provides that five marks shall be awarded to the applicant falling within the proviso to clause © of Section 62 of the Act which means and implies a State Transport Undertaking. The grievance is that such ad hoc assignment of marks and failure to weed out the application on the ground of disqualification for not providing for night halt cleaners has vitiated the decision of the Transport Authority. The validity of Rule 155-A and its various sub-clauses came up for consideration of this Court in *D. R. Venkatachalam v. Dy. Transport Commissioner* ((1977) 2 SCR 392 : (1977) 2 SCC 273, 279 : AIR 1977 SC 842). This Court repelled the challenge especially to the provision for assigning five marks to a State Transport Undertaking observing as under : (SCC p. 279, para 11)

..., a State enterprise, in a truly Welfare State, is charged with a social consciousness and responsibility for its citizens, an attention to serve them and a willingness to embark on public utility undertakings better to fulfill people's demands. The public sector enterprises are expected to be model employers and model servants, planning their budgets, subjecting themselves to public audit and criticism and inquest by legislative committees and the Houses of the Legislature. Profits are their concern but, more importantly, public weal is their commitment. Such is the philosophy of the State sector in our socialistic pattern of society

On the question assignment of five marks to State Transport Undertaking, this Court held that "this is not an arbitrary stroke of favouritism because there are many promotional factors bearing on the interest of the travelling public which a State enterprise qua State enterprise will, but a private enterprise qua private enterprise will not, take care of. After all, private enterprise has its primary motivation in profit". The Court further observed that "the superiority in many respect (.....) of State Transport Undertakings, in the legislative judgment, has led to Rule 155-A". The Court ultimately held that "the assignment of marks under Rule 155-A is geared to public interest, which is the desideratum of Section 47(1) of the Act". Once the assignment of five marks to State Transport Undertaking is held to be valid, the Transport Authority was perfectly justified in refusing renewal of permits to the petitioner in comparison to the State Transport Undertaking. As for failure to explain absence of night halt cleaners, in the absence of concrete evidence, no inference can be drawn. This was the only additional contention in this group of petitions and we find no substance in it.

13. These are all the contentions in this group of petitions and as we find no substance in any of them, all the petitions are dismissed with no order as to costs.

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