

Hindustan Transport Co. and Another

Vs

State of U. P. and Others

Writ Petitions Nos. 76-77, 304, 133-136 of 1979; 1139-41 of 1980; 9455 of 1981; 10053 of 1982 and 613, 756, 855-56, etc. of 1983

(O. Chinnappa Reddy, E. S. Venkataramiah JJ)

24.02.1984

JUDGMENT

CHINNAPPA REDDY, J. -

1. The path of nationalisation of motor bus transport can hardly be said to have been smooth in the State of Uttar Pradesh. The cases now before us illustrate this point. To take an example, the route Lucknow to Kanpur was notified under the Uttar Pradesh State Road Transport Act of 1951. The effect of the notification was to totally exclude private operators from plying their stage carriages on the whole or any part of the route, Lucknow to Kanpur. But the Uttar Pradesh Act 2 of 1951 and the notification were struck down in this Court in *Saghir Ahmad v. State of U.P.* (AIR 1954 SC 728 : (1955) 1 SCR 707 : 1954 SCJ 819). However, the Uttar Pradesh Legislature enacted Uttar Pradesh Act 9 of 1955, by Section 19 and 20 of which the notifications issued under the Uttar Pradesh Act 2 of 1951 were revalidated with effect from June 18, 1951. Hindustan Transport Company and Smt Chunni Devi the petitioners in Writ Petition Nos. 76 and 77 of 1979 held permits to ply stage carriages between Hardoi and Unnao. Unnao is a station between Lucknow and Kanpur. In 1972, the petitioners obtained an extension of their permits enabling them to run their state carriages on the route Hardoi-Unnao-Kanpur, subject to what are known as "Corridor Restrictions", that is, that the vehicles would not pick up or set down any passengers between Unnao and Kanpur, which was a sector of the nationalised route, Lucknow-Kanpur. It is not known how despite the total exclusion of private operators from plying any stage carriage on the whole or any sector of the route, Lucknow-Kanpur, the extension of the route Unnao to Kanpur was granted to these two persons. Aggrieved by the order of the Regional Transport Authority granting the extension, the U.P. State Road Transport Corporation filed a revision before the State Transport Appellate Tribunal. The State Transport Appellate Tribunal set aside the order of the Regional Transport Authority on April 18, 1973. A writ petition filed by the two operators was dismissed by the Allahabad High Court on February 27, 1978. The operators had earlier obtained a stay of the operation of the order of the State Transport Appellate Tribunal and were continuing to ply their vehicles on the sector Unnao-Kanpur also. They preferred an appeal (C.A. Nos. 1411-12 of 1978) to this Court and obtained a similar stay.

2. In the mean while this Court, in *Mysore Road Transport Corporation v. Mysore State Transport Appellate Tribunal* (AIR 1974 SC 1940 : (1974) 2 SCC 750), decided that when there was a total exclusion of private operators in a nationalisation scheme, it was not permissible to allow operators to ply their vehicle even on sectors of the notified route on condition of observing "Corridor Restrictions". As it was thought that a too stringent application of the principle of the decision was likely to cause hardship in some cases, the Uttar Pradesh Legislature passed the U.P. Motor Vehicles

(Special Provisions) Act, 1976 (U.P. Act 27 of 1976). Section 5 of U.P. Act 27 of 1976 enables the competent authority to authorise "any holder of a permit for a stage carriage to ply his stage carriage on such portion of a notified route as may be prescribed and for such period and to such terms and conditions which may be in respect of matters specified in Section 48(3) of the Principal Act or in respect of any other matter as it thinks fit". For the period during which the authorisation is in force, the scheme is to be deemed to be modified to the extent of the authorisation. It is further provided that "it shall be a condition of such authorisation that the owner of a stage carriage shall pay such amount to the Corporation as may be fixed by the competent authority having regard to the nature and class of route, the distance covered, the sitting capacity and other relevant factors and abide by such administrative and operational control of the Corporation as the competent authority may from time to time direct". Section 3 of the Act provides for the appointment of the competent authority.

3. The appeals, C.A. Nos. 1411-12 of 1978 were disposed of by this Court on September 11, 1978. It was thought that in view of U.P. Act 27 of 1976, it was not necessary to go into the effect of nationalisation of portion of a route as the affected operators could well seek relief under Section 5 of the U.P. Act 27 of 1976. A direction was, therefore, given in the following words :

Every permit-holder who has a current permit is entitled to move the competent authority for an order under Section 5(1)(a) of the U.P. Motor Vehicles Act (U.P. Act 27 of 1976). The fact that the route has been nationalised or a part of it has been nationalised cannot be the basis for holding that the permit has been cancelled when we are considering the application of Section 5(1)(a). On the other hand, if for any other reason, the permit of a private operator has been cancelled, that stands on a different footing. In the present cases the three appellants viz. Hindustan Transport Corporation, Smt Champa Devi and Yashoda Devi, have permits which are current even now. Therefore, it is open to them to approach the competent authority forthwith and seek an order in terms provided thereunder until orders by the competent authority are passed on their application. We direct that the appellants be permitted to ply their vehicles on that portion of the route not covered by the nationalisation, that is to say, without picking up or setting down passengers on the nationalised portion of the route. Of course, when the competent authority finally passes orders, the appellants' rights will be governed by those orders subject to remedy by way of appeal or otherwise. The appeals are disposed of as above with no order as to costs.

4. Thereafter the two petitioners moved the competent authority under Section 5 of the U.P. Motor Vehicle (Special Provisions) Act, 1976 and on November 17, 1978 their applications were rejected by the competent authority. The reason given by the competent authority was that the sector Unnao-Kanpur could not be termed a 'corridor' in the sense in which the expression was used in Section 5 of the U.P. Act 27 of 1976 since there was no 'natural or inevitable overlapping of the two routes'. The order of the competent authority is challenged by the petitioners in these two writ petitions.

5. The reason given by the competent authority is totally ununderstandable and Shri O. P. Rana, learned counsel for the respondents, did not attempt to sustain the order of the competent authority for the reason given by that authority. Shri Rana, however, urged that the petitioners were not entitled to be considered at all for the grant of the authorisation under Section 5 of the U.P. Act 27 of 1976 as they did not hold a stage carriage permit over the Unnao-Kanpur sector on the date of the nationalisation of the Kanpur-Lucknow route. According to Shri Rana, in order to entitle a transport operator to be considered for the grant of authorisation under Section 5, it was necessary that he

should hold a permit, on the date of nationalisation, over a sector of the nationalised route. Shri R. K. Garg and other learned counsel countered the argument of Shri Rana and submitted that it was enough if the applicant held a permit over the sector on the date of his application for authorisation. We do not have any doubt that Shri Rana's submission is correct. Section 5 of the U.P. Act 27 of 1976 was obviously enacted to give relief to existing transport operators holding permits on portions of notified route on the dates of the notifications. Obviously, again, the provision did not and could not contemplate any transport operator obtaining a permit over the whole or a part of the notified route subsequent to the date of the notification. Shri Garg submitted that in Civil Appeal Nos. 1411-12 of 1978, this Court had come to the conclusion that the petitioners were operators, who were entitled to be considered for the grant of authorisation under Section 5 of the U.P. Act 27 of 1976. We are unable to read the earlier order of this Court in that manner. All that was said was that the petitioners who currently held permits were entitled to move the competent authority under section 5 of the Act. It did not mean that the Court decided that they were entitled to be considered for the grant of authorisation even if they did not fulfil the requirement of Section 5. As we said, Section 5 enables the competent authority to grant authorisation to existing transport operators holding permits over the whole or part of a notified route on the date of the notification. The petitioners did not hold permits over the sector Unnao-Kanpur on the date of the notification. They are, therefore, not entitled to the grant of authorisation under Section 5 of the Act. Shri Garg also attempted to urge that the route Hardoi-Unnao-Kanpur was not the same as the route Lucknow-Kanpur and therefore, notwithstanding the nationalisation of the Lucknow-Kanpur route, vehicles could nevertheless be permitted to ply on the Hardoi-Unnao-Kanpur route. The argument has only to be stated to be rejected. The very basis of an application under Section 5 is that without an authorisation the operators may not ply their vehicles on the nationalised portions of the routes over which they hold permits. Writ Petition Nos. 76-77 of 1979 have, therefore, to be dismissed and are accordingly dismissed with costs.

6. Writ Petition Nos. 133-136 of 1979, 304 of 1979, 1139-41 of 1980 also stand concluded by what we have said above. They are also dismissed with costs. So also Writ Petition Nos. 5230-34 of 1983 and 855 of 1983, which too are dismissed with costs. But in Writ Petition No. 1139-41 of 1980 we propose to award heavy costs as the very petitioners in Writ Petition Nos. 1139-41 of 1980 had earlier filed Writ Petition No. 304 of 1979. When stay was vacated in Writ Petition No. 304 of 1979, they filed Writ Petition Nos. 1139-41 of 1980 and once more obtained stay without disclosing the filing of the earlier Writ Petition No. 304 of 1979 and the circumstance that the stay had been vacated therein. In Writ Petition No. 1139-41 of 1980, we quantify the costs awarded to the respondents at Rs 2000 in each petition.

7. In Writ Petition Nos. 10053 of 1982, 169-71 of 1983 and 178-79 of 1983, the petitioners claim that their applications for the grant of permit, though published, are not being disposed of by the Regional Transport Authority. The Regional Transport Authority is bound to dispose of their applications in accordance with law. A mandamus will, therefore, issue to the Regional Transport Authority concerned to dispose of the applications of the respective petitioners in accordance with law.

8. In Writ Petition No. 613 of 1983, the petitioner was granted an authorisation under Section 5 of the U.P. Act No. 27 of 1976. The complaint is that after the expiry of the original authorisation, his application for renewal is not being considered. A mandamus will issue to the competent authority to consider the petitioner's application for renewal of authorisation.

9. In Writ Petition Nos. 1726-32 of 1983, it is admitted that no application under Section 5 has been

made so far. The writ petitions are, therefore, dismissed costs.

10. Writ Petition Nos. 856 of 1983 was not pressed and is accordingly dismissed with costs.

11. In Writ Petition No. 756 of 1983, the original permit which the petitioner held over the route Varanasi-Dhanpur expired on February 4, 1974 and was not renewed. Later he was granted a fresh permit over the non-notified route Chandauli to Dhanpur. His application under Section 5 was, therefore, incompetent and was rightly dismissed. The writ petition is, therefore, dismissed with costs.

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