

Brij Mohan Parihar

Vs

M. P. State Road Transport Corporation and Others

Shivanarain and Others

Vs

State of Madhya Pradesh and Another

Special Leave Petition (Civil) No. 3486 and Writ Petition No. 1505 of 1986

(E. V. Vankataramiah, M. M. Dutt JJ)

25.11.1986

ORDER

VENKATARAMIAH, J. -

1. The petitioner in the above petition filed under Article 136 of the Constitution has prayed for special leave to appeal against the judgment of the High Court of Madhya Pradesh in Miscellaneous Petition No. 2577 of 1984 dated January 6, 1986. In the petition filed under Article 226 of the Constitution before the High Court the petitioner had questioned the validity of an advertisement issued by the Madhya Pradesh Road Transport Corporation (hereinafter referred to as 'the Corporation') inviting tenders from owners of motor vehicles for plying their vehicles on the routes mentioned therein as nominees of the Corporation under the permits issued in favour of the Corporation under the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'). It is alleged that the petitioner who was an unemployed graduate entered into an agreement with the Corporation to ply his bus as a nominee on the route Gwalior to Chinor via Dabra for a period of five years ending on December 23, 1982. The route in question came within scheme No. 38 published under Section 68-C of the Act. The permit of the Corporation was to expire on December 23, 1982. Therefore the Corporation applied for renewal of its permit but since it took time for finalisation, temporary permits were issued from time to time. The petitioner was permitted to ply his bus on monthly basis during that period. Under the agreement the petitioner was liable to pay periodically certain amount to the Corporation as nomination fees or supervision charges and additional taxes. But on August 12, 1984, as stated earlier, tenders were invited by the Corporation from private operators for the grant of the privilege of running buses as stage carriages as the nominees of the Corporation. Aggrieved by the said advertisement the petitioner filed the writ petition, referred to above, in the High Court. The petitioner contended that even though he had been regularly paying the nomination fees and taxes, yet the Corporation in order to earn more money by way of nomination fees had invited tenders from others with a stipulation that tenders of those giving the highest offers by way of nomination fees would be accepted and they would be appointed nominees of the Corporation to ply the stage carriages. The petitioner further contended that the decision to invite tenders was arbitrary and illegal. In the writ petition he obtained in interim order dated September 11, 1984 under which he was allowed to operate his motor vehicle as a stage carriage on the same terms and conditions as the nominee of the Corporation. The petitioner

continued to ply his motor vehicle on the route in question on the basis of the temporary permits issued in the name of the Corporation till May 31, 1985. Since no temporary permit was obtained by the Corporation thereafter the petitioner could not ply his motor vehicle in question. In the meanwhile under the orders passed by this Court in Special Leave Petition Nos. 941, 4667 to 4669, and 7115-7117 of 1985 dated July 22, 1985 filed by some others, the petitioners therein who were similarly situated were allowed to ply their motor vehicles on some other routes as the nominees of the Corporation for a period of five years. The above order, it is alleged, was passed on a concession made by the Corporation. The said order is not supported by reasons. The petitioner relying upon the above order contended before the High Court in the writ petition filed by him that he should also be permitted to ply his motor vehicle as a nominee of the Corporation for a further period of five years. The High Court declined to grant the request of the petitioner since by then the scheme No. 38 had been approved and had come into effect from June 1, 1985 and dismissed the writ petition on January 6, 1986. Aggrieved by the order of the High Court the petitioner has filed this petition.

2. It is contended on behalf of the petitioner that since the petitioner had been permitted to operate his motor vehicle as a stage carriage service as a nominee of the Corporation under a programme called 'Half a Million Job Programme' initiated by the Government of India which was being implemented by the State of Madhya Pradesh he could not be denied the privilege of continuing to operate his motor vehicle on the notified route in question. Reliance is also placed by the learned counsel for the petitioner on the order passed by this Court on July 22, 1985 in some of the special leave petitions referred to above permitting the petitioners therein to operate their motor vehicles as the nominees of the Corporation for a further period of five years. After the disposal of the special leave petitions referred to above on July 22, 1985 by this Court, on October 17, 1985 a Constitution Bench of this Court delivered its judgment in *Adarsh Travels Bus Service v. State of U.P.* ((1985) 4 SCC 557) In that case the Constitution Bench held that reading Sections 68-C, 68-D(3) and 68-FF of the Act together it was clear that once a scheme was published under Section 68-D of the Act in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking could operate a stage carriage on the notified route or in the notified area except as provided in the scheme itself.

3. Admittedly, the approved scheme published under Section 68-C of the Act has come into operation in respect of the route in question excluding the operation of stage carriages by all others. Section 68-FF of the Act states that where an approved scheme has been published under sub-section (3) of Section 68-D of the Act in respect of any notified area or notified route the State Transport (sic Authority) or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. It further provides that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route. It is not, however, permissible under the Act for the Corporation to obtain a permit under Chapter IV-A of the Act and to allow a private operator as its nominee to operate under that permit his motor vehicle as a stage carriage on the notified route. It cannot by granting such permission collect any money either as nomination fees or as royalty or supervision charges. Section 59 of the Act which lays down the general conditions attached to all permits provides that save as provided in Section 61 of the Act, a permit shall not be transferable from one person to another except with the permission of the Transport Authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred

any right to use that vehicle in the manner authorised by the permit. Section 61 of the Act only deals with the question of transfer of the permit on the death of the holder of the permit in favour of his successor. Section 42 of the Act provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place whether or not such vehicle is actually carrying any passenger or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is being used. Section 42 and Section 59 of the Act which are in Chapter IV of the Act apply to permits issued under Chapter IV-A of the Act also since in Chapter IV-A of the Act we do not find any provision which is inconsistent with these two sections. Section 68-B of the Act only provides that Chapter IV-A of the Act 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. Even though the Corporation is established by the State Government under the Road Transport Corporation Act, 1950 and the State Government has by an executive order approved the action of the Corporation to allow private operators to operate their vehicles under the permits issued to the Corporation as the nominees of the Corporation, the Corporation cannot in law allow its nominees to exploit the permits by running their motor vehicles against payment of some amount to the Corporation since there is no statutory provision authorising the grant of such permission. It would have been different if there had been a law corresponding to the Uttar Pradesh Motor Vehicles Special Provisions Act (12 of 1976) under which the competent authority can authorise such operation subject to the conditions specified therein. (See *Sumer Chand Sharma v. State of U.P.* ((1986) 3 SCC 263)) The provisions of the Act and in particular Sections 42 and 59 clearly debar all holders of permits including the Corporation from indulging in such unauthorised trafficking in permits. The agreement entered into by the petitioner with the Corporation is clearly contrary to the Act and cannot, therefore, be enforced. In the circumstances, the petitioner is not entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage carriage under the permit obtained by the Corporation as its nominee. It follows that the advertisement issued by the Corporation is equally ineffective. The position would not be different even where the permit is issued in favour of the Corporation under Chapter IV of the Act. If the Corporation cannot run its vehicle under a permit issued to it, it must surrender it so that the Regional Transport Authority may grant the permit to some other deserving applicant or it must transfer it to somebody else with the permission of the Regional Transport Authority granted under Section 59 of the Act. It cannot however allow the permit to be used by somebody else to run his vehicle either for consideration or without consideration. If it does so it would be exercising the power of the Regional Transport Authority. The Corporation cannot thus indirectly clutch at the jurisdiction of the Regional Transport Authority. It is hoped that the Corporation will desist from entering into such agreements with third parties, which are wholly illegal and from continuing to allow them to run their vehicles as its nominees. The concerned Regional Transport Authority should immediately take action to stop such illegal operation of transport vehicles on all routes, both notified and non-notified routes.

4. It is seen that in one of the documents filed before the High Court it was asserted that the Corporation could allow private operators to operate their vehicles in the name of the Corporation under Section 19(2)(h) of the Road Transport Corporations Act, 1950. That provision only authorises the Corporation to purchase or otherwise secure by agreement vehicles owned or possessed by the owner of any other undertaking for use thereof by the Corporation for the purposes of its undertaking. It does not however authorise the Corporation to permit another person to run his vehicle on his own under a permit issued to the Corporation by paying some amount to the

Corporation. Hence no reliance can be placed on the above provision.

5. It was lastly contended on behalf of the petitioner that since the Corporation was not in a position to operate its motor vehicles on the notified routes in accordance with the approved scheme, the scheme itself is liable to be quashed. Since the said prayer is not made in the writ petition, we cannot consider the said question. It is open to the petitioner if he is so advised to approach the High Court for appropriate relief in this regard. We may, however, record here that in the counter-affidavit filed before this Court it is stated that the Corporation is already operating its own motor vehicles on the route in question. The special leave petition is, however, dismissed.

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