

Bihar State Road Transport Corporation

Vs

State Transport Appellate Tribunal and Others

Civil Appeal No. 3693 of 1982

(K. Ramaswamy, M. M. Punchhi JJ)

22.02.1991

JUDGMENT

PUNCHHI, J. –

1. This appeal by special leave is directed against the order of the High Court of Judicature at Patna dated January 29, 1982 passed in Civil Writ No. 4087 of 1981 dismissing the writ petition of the appellant in limine.

2. The appellant, Bihar State Road Transport Corporation, is a State Transport Undertaking. Under the provisions of the Motor Vehicles Act, 1939 (hereafter referred to as the 'Act'), the State Transport Authority invited applications for the grant of stage carriage permits for the route named Bhurkunda-Chaibasa via Patratu-Pithoria-Kanke-Ranchi-Chakradharpur part of which, that is, Ranchi-Chaibasa is covered under a notified scheme dated April 1, 1960, duly in force, under the provisions of the Act. On applications received in response to the invitation, the Corporation filed its objections before the State Transport Authority claiming that no private operator could be permitted to operate on the said route, as part of it, being Ranchi-Chaibasa, was by itself a notified route and the grant of permits on the route in question would contravene a notified scheme. The objection of the Corporation was rejected by the State Transport Authority in its meeting held on January 23 and 24, 1979 taking the view that the overlapping Ranchi-Chaibasa route was restrictedly notified for direct services only and as such there could be no legal objection to the grant of permits on the Bhurkunda-Chaibasa route. It accordingly granted permits to respondents 3 and 4 herein. Appellant's appeal before the State Transport Appellate Tribunal, Bihar was dismissed and the view of the State Transport Authority was upheld. The Appellate Tribunal in support of its view placed reliance on a Division Bench of the Patna High Court in Marwari Motor Service v. Chotanagpur Regional Transport Authority (AIR 1973 Pat 273 : 1973 BLJR 353) in which such an objection as raised herein was negated. The appellants writ petition against the orders of the State Transport Appellate Tribunal, Bihar was dismissed in limine giving cause to the appellant to approach this Court for appropriate relief.

3. The notified scheme dated April 1, 1960, afore-referred to, whereunder the Ranchi-Chaibasa route was declared a nationalised route was the brain child of the appellant-Corporation itself. Initially a draft scheme was published in the Bihar Gazette on January 13, 1960 under the provisions of Section 68-C of the Act. Objections were invited to the proposed scheme and after considering the objections received, the State Government approved the scheme with some modifications under Section 68-D (2) of the Act. The approved scheme was then notified under Section 68-D (3) of the Act in the Bihar Gazette on April 1, 1960. The relevant extract of the scheme is reproduced below :

"The Bihar State Road Transport Corporation shall run and operation stage carriage services relating to routes or portions thereof specified below to the complete exclusion of other persons except those who, on the dates, specified below, hold permanent permits to run stage carriages in those routes and are hereby allowed to operate them until the dates of expiration of the existing permits :

#Sl. Nature of Name of route Name of Date from whichNo. service Services services are proposed to be plied1. State carriage Ranchi-Muri All services April 1, 1961 or portions thereof2. Ditto Hazaribag Ditto April 1, 1960 Ranchi or portions thereof3. Ditto Barhi-Bagodar- Ditto Ditto Dumri-Gobindpur or portions thereof4. Ditto Giridih-Dumri Ditto Ditto or portions thereof5. Ditto Giridih-Jamua- Kedarma or portions Ditto April 1, 1961 thereof6. Ditto Jamua-Chakai Ditto Ditto or portions thereof7. Ditto Ranchi-Chaibasa (direct service) Ditto April 1, 1960."##

4. It is evident from the entry in Serial No. 7 that the name of the route is Ranchi-Chaibasa and in this entry alone that the bracketed words 'direct service' finds mention whereas in the remaining Serial Nos. 1 to 6, the main routes or portions thereof are contrastingly mentioned. In Marwari Motor Service case (AIR 1973 Pat 273 : 1973 BLJR 353), the then writ petitioner stood already given a stage carriage permit for the route Hazaribag-Hazaribag (sic) Road and when its renewal was objected to by the Corporation on the ground that it would overlap Hazaribag-Bagodar notified route, the words 'direct service' occurring in the relevant entry of the notification under the notified route was required to be interpreted. The contention of the said writ petitioner before the High Court was that though private operators stood ousted on the Hazaribag-Bagodar route, it could not be ousted from operating on a longer or shorter route even though overlapping wholly or partially on the Hazaribag-Bagodar route. The Corporation refuted the argument by contending that no private operator could be permitted to operate that on any portion of the route even if he had tended to operate on a longer or a shorter route. Confronted with this situation, the Patna High Court ventured, in the absence of any direct binding judicial precedent, to solve the question by adopting the interpretation given to the bracketed words 'direct service' by the Transport Minister of the Bihar Government to mean the exclusion of private operators for direct transport services only and not to the exclusion of private operators thereon overlapping on longer or shorter routes. Another factor which appealed to the High Court was that though the scheme had come into force in 1960 and Hazaribag-Bagodar route had been nationalised still the then writ petitioner had thereafter been kept granted route permits on the Hazaribag-Hazaribag (sic) Road route despite overlapping on the nationalised routes. The High Court in these circumstances made the following observations : (AIR p. 274, para 8)

"The correct meaning is that private operators who were operating directly on Hazaribag-Bagodar route were excluded, private operators having these two termini were not allowed to operate but private operators having only one terminus out of these two termini or passing through this route having different termini were not excluded in the approved scheme."

Relying on the said ratio the Transport Authorities overruled the objection of the Corporation.

5. We have had the advantage of hearing Mr. Ranjit Kumar, learned counsel for the appellant only since no one appeared either on behalf of the State of Bihar nor for the permit holders respondents 3 and 4. The sole point for consideration is whether the view taken by the Patna High Court in Marwari Motor Service case (AIR 1973 Pat 273 : 1973 BLJR 353) is any more relevant in view of

the decision of the Constitution Bench of this Court in *Adarsh Travels Bus Service v. State of U.P.* ((1985) 4 SCC 557 : 1985 Supp 3 SCR 661)

6. In *Adarsh Travels* case ((1985) 4 SCC 557 : 1985 Supp 3 SCR 661), this court ruled that if the route has been nationalised under Chapter IV-A of the Motor Vehicles Act, a private operator with a permit to ply stage carriage for another route, which has a common overlapping sector with the nationalised route, can ply his vehicle over that part of the overlapping common sector if he does not pick up or drop passengers on the overlapping part of the route, and the question would really get the right answer on the terms of the scheme rather than on the provision of the statute. The word 'route' was introduced to be defined in Section 2(28-A) of the Act by amendment from March 2, 1970 to mean 'the line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another'. Spelling out the necessity for its so defining it was recorded : (SCC p. 562, para 4)

"The introduction of Section 2(28-A) defining the expression 'route' appears to have been necessitated to dispel the confusion consequent upon the seeming acceptance by this Court in *Nilkanth Prasad v. State of Bihar* (1962 Supp 1 SCR 728 : AIR 1962 SC 1135) of the suggested difference between 'route' and 'highway' by the Privy Council in *Kelani Valley Motor Transit Co. Ltd. v. Colombo-Ratnapura Omnibus Co. Ltd.* (1946 AC 338) where it was said :

'A "highway" is the physical track along which an omnibus runs, whilst a "route" appears to their Lordships to be an abstract conception of line of travel between one terminus and another, and to be something distinct from the highway traversed there may be alternative roads leading from one terminus to another but that does not make the route and highway the same.'

The present definition of route makes it a physical reality instead of an abstract conception and no longer makes it something distinct from the highway traversed."

7. In the light of the above observations Ranchi-Chaibasa route is identified as the line of travel on which State Transport Undertaking on nationalisation is allowed to run its vehicles. The bracketed Words 'direct service' occurring in Serial No. 7 when contracted with entries in Serial Nos. 1 to 6 reveal that the total route of Ranchi-Chaibasa, without leaving any portion, stood nationalised signifying by its name that Ranchi-Chaibasa route is a straight and direct line of travel which would be traversed by a vehicle by the State Transport Undertaking between two termini rendering all kinds of services. Any further interpretation would frustrate the object of Chapter IV-A whereunder the scheme is prepared. It was observed in *Adarsh Travels* case ((1985) 4 SCC 557 : 1985 Supp 3 SCR 661) as follows : (SCC p. 567, para 7)

"[I]t is quite well known that under the guise of the so-called 'corridor restrictions' permits over longer routes which cover shorter notified routes or 'overlapping' parts of notified routes are more often than not misutilised since it is well impossible to keep a proper check at every point of the route. Oftentimes permits for plying stage carriages from a point a short distance beyond one terminus to a point at a short distance beyond another terminus of a notified route have been applied for and granted subject to the so called 'corridor restrictions' which are but mere ruses or traps to obtain permits and to frustrate that scheme. If indeed there is any need for protecting the travelling public from inconvenience, the State Transport Undertaking

and the government will have to make sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public."

8. If the interpretation put by the Patna High Court in Marwari Motor Service case (AIR 1973 Pat 273 : 1973 BLJR 353) to the bracketed words 'direct service' is to be kept valid, it would frustrate the very purpose of nationalisation, for any person in that event could operate on a nationalised route by adding thereto, or subtracting therefrom, some kilometrage and keep one terminus as a point of start, or point of ending, on an unnotified route and put forward his willingness to submit himself to the discipline called 'corridor restrictions' which practice has been deprecated by this Court.

9. For the views afore-expressed, we are of the view that Marwari Motor Service case (AIR 1973 Pat 273 : 1973 BLJR 353) militates against the principles settled in Adarsh Travels case ((1985) 4 SCC 557 : 1985 Supp 3 SCR 661) and thus it should be left to be confined to the facts of that case and not any more a binding precedent. Having taken that view, we come to the conclusion that the State Transport Authority and State Transport Appellate Tribunal were in error in rejecting the objections of the appellant and High Court too was in error dismissing the writ petition in limine. Accordingly, instead of remanding the matter to the High Court, we allow this appeal and quash the aforesaid three orders but without any order as to costs. Since there was no opposition, we permit respondents 3 and 4 to keep plying vehicles on their permits, subject of course to their being subsisting and valid till date, uptill March, 31, 1991, and not any further, to avoid abrupt disruption of transport facilities. We also leave it open to the State Government to take such steps as ar further necessary to avoid inconvenience to the travelling public and for that purpose it may coordinate with the appellant Corporation by making suitable amendment and provisions in the scheme to further that cause.

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