

Brijendra Kumar Chaudhari and Another

Vs

State of U. P. and Others

Dharampal Singh and Others

Vs

State Transport Authority U. P. Lucknow and Others

Premlata Sharma (Smt) and Others

Vs

State Transport Authority and Others

Civil Appeal Nos. 4216-4218 of 1992

(S. Ranganathan, V. Ramaswami-II, B. P. Jeevan Reedy JJ)

14.10.1992

JUDGMENT

V. RAMASWAMI, J. -

1. We granted leave and dismissed the appeals on March 27, 1992. Here are our reasons for the dismissal of the appeals. In Gur Bachan Singh v. Regional Transport Officer, Kanpur (Civil Misc. Writ No. 9553 of 1981 (All HC)) a Division Bench of the Allahabad High Court in their order dated April 19, 1985 held on the ground that as the Transport Authority had granted contract carriage permits to their mini buses to be piled as motor cars, the operators were free to pick up individual passengers from one point to other. They further held that :

"[T]he definition of 'contract carriage' was widened by the amendment made by Act 56 of 1969, as a result of which a contract carriage permit holder is entitled to carry passenger or passengers for hire or reward on a route or distance, or from one point to another. The only restriction is that it cannot stop between one point to the other to set down and pick up passengers. Ordinarily contract carriage permit holder is entitled to carry passengers from one point to another; but the extended meaning has made it clear that the contract carriage can be operated as motor carriage notwithstanding that the passengers pay separate fares. Thus it is apparent that separate individual passengers may be booked by the contract carriage holders from one point to another."

2. It appears that prior to 1971, Transport Authorities of U.P. State were generally granting contract carriage permits to Fiat and Ambassador cars for plying the same from one city to another. On the ground that there were pressing demands for introduction of mini buses the State Transport Authority by resolution dated November 5/6, 1971 decided to adopt a liberal policy of issuing

contract carriage permits to mini buses permitting them to ply their vehicles on the various routes in the State. There appears to have been no definition of a 'mini bus' at that time in any enhancement. However in the view that the 'mini bus' which were constructed or adapted to carry more than six persons would fall either under the definition of 'omnibus' or 'motor cars' contract carriage permits were issued to these mini buses to be plied as motor cars. There is an obvious mistake in this view because the definition of 'motor car' excluded transport vehicles. This decision was holding the field till the new Motor Vehicles Act, 1988 came into force with effect from July 1, 1989.

3. When another case came up before another Division Bench in the case of *Samundra Devi v. State Transport Authority* (Civil Misc. Writ No. 25781 of 1990 (All HC)) that Bench in view of the change in the definition of contract carriage in the new Act referred the matter along with some other cases to a larger Bench. The Full Bench held that the definition of 'contract carriage' is exhaustive and would take into its fold all types of vehicles which are permitted to ply as 'contract carriage' irrespective of their size and seating capacity and that maxi cab and motor cab would also be included in the definition of contract carriage notwithstanding that separate fares are charged from its passengers.

4. 'Mini buses' came to be defined in Section 2(d) of the U.P. Motor Vehicles (Special Provisions) Act, 1976 as under :

"mini bus means an omnibus which is constructed or adapted to carry not more than 35 persons excluding the driver."

5. The question which thus arises for consideration in these appeals is whether the contract carriage permit holders of mini buses are entitled to pick up individual passengers at the starting point of their journey.

6. It would be convenient and necessary at the stage to refer to the relevant provisions under the old Motor Vehicles Act, 1939 and the provisions of Motor Vehicles Act, 1988 (hereinafter called the Act). Broadly the public passenger transport motor vehicles recognised under the Act were 'motor cab' and 'omnibus' which in turn with reference to its user permit is either a 'contract carriage' or a 'stage carriage'. These descriptive vehicles were defined in the old Act as it was originally enacted as under :

"2. (15) 'motor cab' means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward";

'Omnibus' and 'maxi cab' were not defined in the original Act but definition of 'omnibus' was inserted by the Motor Vehicles (Amendment) Act, 1956 which reads as under :

"2. (18-A) 'omnibus' means any motor vehicle constructed or adapted to carry more than six persons excluding the driver";

'Stage Carriage' was defined in Section 2 (29) of the old Act as follows :

"2. (29) 'stage carriage' means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;"

'Contract Carriage' was defined in Section 2(3) and that as it stood prior to 1970 was under :

"(3) 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate of sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares."

After it was amended by Act 56 of 1969 with effect from March 2, 1970 the definition read :

"(3) 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed or sum -

(i) on a time basis whether or not with reference to any route or distance, or

(ii) from one point to another, and in either case without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares."

7. The Motor Vehicles Act, 1939 was repealed and the new Act 59 of 1988 came to force as already stated with effect from July 1, 1980. There is no change in the definition of 'motor cab'. The definition of 'stage carriage' also remains the same. The definition of 'contract carriage', however, has been changed which in our view was intended to convey more explicitly what the Legislature intended to convey by those words even under the old Act and that definition reads as follows :

"2. (7) 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate of sum -

(a) on a time basis whether or not with reference to any route or distance, or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey; and includes -

(i) a maxi-cab; and

(ii) a motor-cab notwithstanding that separate fares are charged for its passengers."

The Legislature has used a new word 'maxi-cab' and that is defined as follows :

"2. (22) 'maxi cab' means any motor vehicle contracted or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward."

8. There is no definition of 'mini bus' in the Motor Vehicles Act but we have to look up to its definition only in the U. P. Act above referred to. In the light of that definition set out above and the other definitions in the New Act only a motor vehicle constructed or adapted to carry not more than thirty-five passengers excluding the driver and which is not "maxi cab" or "motor cab" will normally be treated as a mini bus. It will not come under the definition of 'motor car' in Section 2(26) as it is a transport vehicle within the meaning of Section 2(47). But the definition of 'omnibus' is wide enough to include within it mini bus as well. Therefore a contract carriage permit granted in respect of a mini bus will fall under the main part of the definition in Section 2(7) of the Act.

9. The argument of the learned counsel for the appellants was that though under a contract carriage permit only those persons who are mentioned in the contract could be picked up and stopping on the route to pick up or set down passengers is prohibited, there could be several contracts because the definition states that it is a motor vehicle which "carries a passenger or passengers".

10. The definition makes it clear that in order that a vehicle could be used to transport passenger or passengers there must be a prior contract express or implied; that the contract must indicate as to who are the passengers to be carried; that the contract shall have been entered into by a person with the holder of the permit or any person authorised by him; and that the engagement under "a contract" is for use of the vehicle as a whole. It is not possible to read the words "under a contract" in the context as referring to both a single contract and more than one contract. If the construction placed by the learned counsel is accepted there would be no distinction between stage carriage and contract carriage and contract carriage permits. Both these classes of permits are intended to meet different requirements. A stage carriage is intended to meet the requirements of the general travelling public. But the contract carriages are for those who want hire the vehicle collectively or individually for a group or party for their transport from place to place and the whole vehicle is at their disposal. This is also made clear in Section 88(8) of the Act corresponding of Section 63(6) of the old Act wherein it is provided :

"88. (8) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority, may, for the convenience of the public, grant a special permit in relation to a vehicle covered by a permit issued under Section 72 (including a reserve stage carriage) or under Section 74 or under sub-section (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be."

That the contract shall be prior and the persons who are to be carried shall be known prior to the journey is also clear from the other limitation that the vehicle cannot stop to pick up or set down passengers not included in the contract anywhere during the journey. As pointed out by this Court in *Roshan Lal Gautham v. State of U. P.* (AIR 1965 SC 991 : (1965) 1 SCR 841) :

"The contract carriage is engaged for the whole of the journey between two points for carriage of a person or persons hiring it but it has not the right to pick up other passengers on route. The stage carriage, on the other hand, runs between two points irrespective of any prior contract and it is boarded by passengers en route who pay the fare for distance they propose to travel."

If as contended by the learned counsel contract carriage permit holder can pick up individual passengers at the starting point of the journey it is virtually a stage carriage with corridor restriction. Some express buses and stage carriages with corridor restriction pick up passengers at the starting point of the journey and drop them at the last terminus of the route without the right to pick up or drop passengers on the notified route between the two termini. Further the definition in the Act has added the words "for the carriage of passengers mentioned therein (contract)" which were not there earlier. These words clearly show that there must be a prior contract and the passengers shall be settled in advance.

11. It was then contended by the learned counsel for the appellants that the latter part of the definition of contract carriage which says that "notwithstanding that separate fares are charged for its passengers" would show that here could be separate fares for its passengers and that, therefore, individual passengers could be picked up at the starting point. According to him this is an exception to an otherwise contract carriage permit under the main part of the definition of Section 2(7). This contention is unsustainable. The definition of a contract carriage under Section 2(7) is exhaustive and takes into its fold all types of vehicles which are permitted to ply as contract carriage irrespective of their size and seating capacity. In the main part of the definition which applies to all vehicles certain limitations and conditions are referred to as implied in the grant of a contract carriage permit. However, an exception has been made in the case of a motor cab and that is notwithstanding that separate fares are charged from its passengers a contract carriage permit could be granted in favour of such motor cab. But even in the case of a motor cab the condition relating to not picking up or dropping passengers on the route is applicable. The exception also is applicable only where the motor cab is under its permit or under any law entitled or eligible to charge separate fares from its passengers. The grant of contract carriage permit in respect of a motor cab will automatically attract all the conditions provided in the main part of the section. However, if there is any other provision or law under which the motor cabs are permitted to charge separate fares from its passengers then notwithstanding their entitlement to charge separate fares from its passengers it would be considered as having a contract carriage permit. As already stated mini bus is neither a maxi cab nor a motor cab and, therefore, the exception provided in the last part of the definition will not be applicable to the case of a mini bus. In fact it was not the case of the appellants themselves that they are running a maxi cab or that their vehicles are motor cabs. For the foregoing reasons the appeals were dismissed. No costs.

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