

Ashwani Kumar and Another

Vs

Regional Transport Authority, Bikaner and Another

Birbal

Vs

Regional Transport Authority, Bikaner and Another

Civil Appeal No. 3341 of 1997 with No. 1122 of 1998

(S. Saghir Ahmad, R. P. Sethi JJ)

28.09.1999

JUDGMENT

SETHI, J.:-

1. IAs Nos. 2 and 3 filed in Civil Appeal No. 1122 of 1998 are allowed.

2. The Regional Transport Authority, Bikaner is stated to have circulated Circular Note no. 3537 for opening a route Bhadra-Delhi being the inter State route lying within the jurisdiction of the States of Rajasthan, Haryana and UT Delhi. Appellant Birbal applied for grant of one stage carriage permit on the said route for which he offered his Bus Model No. 1986. Besides the appellant, Abhey Singh and Kan Singh also submitted applications for the grant of permit on the same route. The Regional Transport Authority, Bikaner (hereinafter referred to as "RTA, Bikaner") is stated to have resolved on 22-11-1993 to open the said route but granted the permit in favour of Abhey Singh only for providing daily one return trip. The appellant's application was rejected along with one Kan Singh's. Being aggrieved with the order of RTA, Bikaner, the appellant and Kan Singh filed separate appeals, the appellant's appeal being no. 64 of 1994 before the State Transport Appellate Tribunal, Rajasthan, Jaipur. The Tribunal took up both the appeals together and allowed the same vide its order dated 4-4-1994. The Tribunal is stated to have held that the order of RTA, Bikaner rejecting the applications of the appellants before it was wrong since the vehicles offered by both of them were within the prescribed model in Resolution No.1 of 1993 of the State Transport Authority. RTA, Bikaner was directed to grant stage carriage permit to the appellant in respect of his bus for providing daily one single trip on the condition that the permit would be valid on obtaining counter-signatures from the States concerned. RTA, Bikaner is stated to have issued permit in favour of the appellant vide its order dated 3-5-1993. Consequent upon the issuance of permit in its favour the appellant is stated to have started plying his Vehicle No. RJ-07/P0777 covered by Route No. 172. However, in January 1997 the appellant's permit was cancelled by RTA, Bikaner purportedly consequent upon the decision of the Rajasthan High Court dated 7-7-1995 in Writ Petition No. 2929 of 1994 wherein it was held that the route in dispute did not exist before the passing of the order of RTA, Bikaner. Being aggrieved with the order of RTA, Bikaner cancelling the appellants permit a writ petition was filed by the appellant in the High Court of Rajasthan submitting therein that the judgment of the learned Single Judge dated 31-3-1995 passed in Civil Writ No. 1877 of 1994,

confirmed by the Division Bench in Special Appeal No. 361 of 1995 by its order dated 7-11-1995, relied upon the learned Single Judge in his order dated 7-7-1995 in Writ Petition No. 2929 of 1994 had earlier been challenged in the Supreme Court in SLP (C) No. 18050 of 1996 wherein leave was granted on 11-8-1997 and the operation of the judgment of the High Court, the cancellation of the permit was illegal and deserved to be quashed. The writ petition filed by the appellant was dismissed on the ground of existence of an alternative remedy under Section 89 of the Motor Vehicles Act, 1988. Special Appeal (Writ) No. 862 of 1997 filed by the appellant against the order of the learned Single Judge was dismissed on 22-8-1997. Not satisfied with the dismissal of his appeal, the appellant has preferred this appeal.

3. The appellants in Civil Appeal No. 3341 of 1997 claimed to have been granted permit for plying their buses from Sangaria in Rajasthan to Delhi route. The aforesaid route was claimed to be part of the route Ganganagar to Delhi, which was stated to be falling in the reciprocal agreement between the two States. Respondent 2, the Rajasthan road Transport Corporation filed a writ petition in the High Court of Rajasthan against the grant of route permits to the appellants. A learned Single Judge of the High Court vide his order dated 31-1-1995 set aside the order of RTA, Bikaner granting permits to the appellants on the Sangaria to Delhi inter-State route. The appeal filed against the judgment of the learned Single Judge was dismissed vide the impugned judgment in this appeal. The respondent Corporation in its writ petition had submitted that under the reciprocal transport agreement arrived at in between the States of Rajasthan and Haryana, the Corporation was providing services on the Ganganagar-Delhi via Hanumangarh-Sangaria-Dabwali-Hissar, etc. The appellants had applied in October 1993 for grant of stage carriage permits in their favour by opening a new inter-State route Sangaria to Delhi via Dabwali-Hissar without mentioning therein the necessary particulars. It is alleged that on 21-10-1993 RTA, Bikaner was informed that the applicants had not disclosed that particulars of the Sangaria-Delhi route which was overlapping by the notified route and the details of the length of the route. The secretary, RTA, Bikaner vide his circular note dated 28-10-1993 stated that all the three applicants, including the appellants had amended applications on 27-10-1993 for the Sangaria-Delhi inter-State route in a length of 359 kilometers out of which a small portion in length of 3 kilometres lay in the State of Rajasthan and 323 kilometres in the State of Haryana. The remaining portion of 33 kilometres was stated to be in Delhi. RTA, Bikaner, after considering the circular notes sent by the Secretary to RTA decided to open a new Sangaria-Delhi inter-State route for which temporary stage carriage permits granted to the appellants.

4. As noticed earlier, the writ petition was allowed by the learned Single Judge holding that under the provisions of the Motor Vehicles Act, 1988 it was the prerogative of the two or more States concerned only to open, establish and create an inter-State route lying in their respective jurisdiction by entering into a reciprocal agreement and to get it finalised by following the procedure prescribed under sub-sections (5) and (6) of Section 88 of the Act. It was found on the facts of the case that there did not exist any such agreement amongst the States concerned. The route was found to be nonexistent prior to the passing of the order impugned in the High Court. It was found that the route Sangaria-Delhi had been opened by RTA, Bikaner for the first time consequent to which the permits were granted to the appellants. In the absence of any specific provision in the regard empowering RTA was held to have committed illegality. The appellants were held to be operating on the inter-State route in the absence of a reciprocal agreement which overlapped the permits granted to the Corporation for the Sangaria-Delhi inter-State route. Private operators were held to have been excluded from plying their vehicles on the said route. The permit granted in favour of the appellants on the Sangaria-Delhi inter-State route was quashed. The Division Bench confirmed the judgment of the learned Single Judge vide judgment impugned in this appeal.

5. We have heard the learned counsel appearing for the parties and perused the records. As the question of law sought to be raised is common in both the appeals, they are being disposed of by this common judgment.

6. Learned counsel appearing for the appellants Mrs. Rani Chhabra submitted that sub-section (1) of Section 88 has to be construed independently which, according to her, did not prescribe the existence of a reciprocal arrangement regarding the inter-State route permits. According to her, sub-sections (5) and (6) cannot come in the way of RTA of a State to grant the permit in a State which, when granted, becomes valid in the other State upon its being countersigned. Such an argument completely ignores the opening words of the section "except as may be otherwise prescribed". Such prescribing can be by way of the Act itself or by rules framed under it. Subsection (5) provides that a proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in their Official Gazette and in any one or more newspapers in the regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representation in connection therewith may be submitted and the date not being less than thirty days from the date of publications on which the authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered. Subsection (6) provides that every agreement arrived at between the States shall, insofar as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it. The Act envisages three categories of permit-seekers, namely (i) inter-region, (ii) inter-region, and (iii) inter-State. Different criteria and procedure have been provided under the Act for granting permits in respect of each of the categories. The grant of inter-State permits with which we are concerned in these appeals is permissible under Section 88(5) of the Act. The existence of a route is a condition precedent for exercise of the power under sub-section (1) of Section 88 of the Act. Inter-State route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by One State or an authority in the State. The State Governments concerned are supposed to deliberate and decide the routes to be opened as inter-State route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by one State or an authority in the State. The State Government concerned are supposed to deliberate and decide the routes to be opened as inter-State routes by determining the number of trips each route was to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective which is claimed to be a social welfare legislation. It has to be noted that the Motor Vehicles Act, 1939 which related to the law of motor vehicles was amended from time to time to keep it up to date. Various committees like the National Transport Policy Committee, the National Police Commission, the Road Safety Committee, the Low-Powered Two-Wheelers Committee and the Law Commission of India examined different aspects of the road transport and recommended updating, simplification and rationalisation of the law relating to motor vehicles. A working group was constituted in January 1984 to review all the provisions of Act 4 of 1939 and to submit draft proposals for comprehensive legislation to replace the existing law. After considering the recommendations of the working group and obtaining the comments of the State Governments it was decided to make important modifications in the Act by taking care of the fast increase of both commercial vehicles and personal vehicles in the country, the need to encourage the adoption of high technology in the automotive sector, the greater flow of passenger and freight, the concern of road safety standards, pollution control measures, standards of transportation of hazardous and

explosive materials, the parameters where the private and public sector can coexist and develop and for effective ways of tracking down traffic offenders. A Bill was moved in Parliament for seeking to achieve the objectives detailed in the Statement of Objects and Reasons. The Act was thereafter passed on 14-10-1988.

7. Accepting the submissions made on behalf of the appellants would result in frustration of the objective sought to be achieved by the Act. The interpretation put by the High Court is rational, legal and proper. In the absence of the existence of an inter-State route, the authorities under the Act were not justified in granting the permits to the appellants. The existence of permit depends upon the reciprocal agreements between the States covered by the route which, admittedly, did not exist in the instant case. The orders of the authority granting permit in favour of the appellants were thus without jurisdiction.

8. Under the circumstances the appeals are dismissed with costs assessed at Rs. 500 each.