

ALLAHABAD HIGH COURT

Junta Motor Transport

Vs.

State of Uttar Pradesh

Civil Misc. Writ No. 1191 of 1969 connected with Civil Misc. Writ No. 1396 of 1969
(G.C. Mathur, J.)

11.02.1970

JUDGMENT

G.C. Mathur, J.

1. In both these writ petitions, the amendments made in the First Schedule to the Uttar Pradesh Motor Gadi (Yatri-Kar) Niyamawali, 1962, by the Uttar Pradesh Motor Gacli (Yatri-Kar) Pratham Sanshodhan Niyamawali, 1969, are challenged.

2. The U. P. Motor Gadi (Yatri-Kar) Adhinyam, 1962 provides for the levy of tax on passengers carried in certain classes of public service vehicles in Uttar Pradesh. Sec. 3 provides for the levy of a tax on every passenger carried by a stage carriage. Sec. 5 provides that the tax shall be collected by the operator of the stage carriage and paid to the State Government in the manner prescribed. Sec. 6 requires all operators to submit returns of the tax and Sec. 7 inquires the tax to be paid every month into the Government Treasury by the operators. Sec. 10 provides that, where the whole or any portion of the tax payable for any month is not deposited, the operators will be liable to a penalty not exceeding 25 per cent of the maximum tax payable. Sec. 11 provides for the recovery of the tax and penalty as arrears of land revenue. Sec. 14 requires every stage carriage to obtain a registration certificate and Sec. 15 prohibits the plying of stage carriages without registration. Sec. 18 prohibits passengers from travelling on stage carriages without payment of tax. Secs. 19, 20 and 23, which are directly involved in this case, are as follows :

"19 (1) -A passenger on demand by a prescribed authority made during the course of or immediately before or after the journey, shall produce the ticket required to be issued by or under this Act."

"(2) -On the failure of the passenger to do so, he shall be chargeable by, the prescribed authority with twice the fare (inclusive of tax) as penalty and if he fails to pay the same, he may be required to alight from the stage carriage.

(20) (1) -The driver of a stage carriage shall cause the vehicle to stop or remain stationary when required so to do by a prescribed authority in order to enable it to carry out any duty imposed by or under this Act and the said authority may also enter the vehicle and travel

in it for doing so.

(2) -The prescribed authority may enter, inspect and search any place ordinarily used by the operator for parking a vehicle or keeping accounts of his business for the purpose of assessment or of verifying whether the provisions of this Act or any rules framed there under are being complied with and may countersign any document during the course of such inspection.

(3) --All searches made under sub-sec. (2) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

(3-A) -An authority acting under sub-sec. (1) or sub-sec. (2) may also seize any document prepared or maintained under this Act, if such seizure appears to the authority to be necessary for the preservation of evidence of contravention of u,y provision of this Act or of the rules made there under and when a document is so seized, a receipt therefore shall be issued to the person from whose possession the document is seized.

(4) -An authority referred to in sub-sec. (1) shall have to wear such uniform or such other distinguishing insignia as may be prescribed.

23 - No court shall take cognizance of any offence under this Act or the rules made there under except on a complaint in writing by the prescribed authority and no court inferior to that of a Magistrate of first class shall try any such offence."

Section 30 empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Act. In exercise of the power under Sec. 30 the State Government framed certain rules called the U. P. Motor Gadi (Yatri-Kar) Niyamawali, 1962. Rule 3 provides that the prescribed authorities, for the purposes of the provisions mentioned in Column I of the First Schedule to the Niyamawali, shall be as mentioned in the corresponding entry of Column 2 of the First Schedule. The First Schedule names the prescribed authorities for purposes of Sec. 12 (refunds) , Sec. 14 (registration) , Sec. 17 (time-table and fares), Secs. 19, 20 and 23 and Sec. 25 (compounding of offences). The authorities prescribed for purposes of Secs. 19, 20 and 23, with which alone we are concerned in these petitions, are as follows :

"Provisio n	Prescribed Authorities
Section 19 (1) and (2)	Transport Commissioner, Deputy Transport Commissioner (Yatri-Kar) , Deputy Transport Commissioner (Administration),
Section 20 (1) and (2)	Deputy Transport Commissioner (Enforcement), Assistant Transport

	Commissioner (Administration)
Section 23	, Assistant Transport Commissioner (Enforcement), Tax Officer, Tax Superintendent."

3. The U. P. Motor Gadi (Yatri-Kar) Pratham Sanshodhan Niyamawali, 1969, came into force on March 29, 1969, on which date it was published in the U. P. Gazette. It amends only the First Schedule to the 1962 Niyamawali and (toes so by adding to the list of prescribed authorities, for the purposes of Secs. 19(1) and (2), 20(1) and (2) and 23, the following:

"All other Gazetted Officers of the Roadways, Station Superintendents Roadways, Traffic Superintendents Roadways, Assistant Traffic Inspectors Roadways, Assistant Regional Transport Officer (Enforcement) and Assistant Regional Transport Officer (Administration)."

The result of the amendment is that, in addition to the prescribed authorities mentioned in the First Schedule to the 1962 Niyamawali, the above named also became prescribed authorities. The main attack of the petitioners is against the officers of the Roadways being constituted prescribed authorities and thereby being given the power to check and challan the petitioners.

4. The petitioners hold stage carriage permits for the Delhi-Saharanpur route. On this route there are many private operators. The U. P. Government Roadways (hereinafter referred to as the Roadways) also plies stage carriages on this route. An attempt was made to nationalize this route but, on account of the opposition and objections by the private operators, the scheme has not been wholly successful with the result that the private operators as well as the Roadways are plying stage carriage on this route. The petitioners' case is that there have been fought out a large number of cases before the authorities and in courts, including the High Court, between the private operators, the Roadways and the Government. There is also keen competition and rivalry between the private operators and the Roadways in the running of their vehicles on this route. One of the questions which is still pending decision, is whether the private operators or the Roadways provide better service facilities for the public. In view of all this, it is obvious that the officers of the Roadways are not favorably inclined towards the private operators and are hostile to them. It is for these reasons that the petitioners apprehend that the officers of the Roadways, in exercising their powers as prescribed authorities under the Act, would harass the private operators.

5. The Pratham Sanshodhan Niyamawali, 1969, in so far as it constitutes the officers of the

Roadways prescribed authorities under the Act, is challenged on the following grounds :

- (1) That the provisions of the Act do not contemplate the appointment of All operator or his servants or officers as prescribed authorities under the Act;
- (2) that the constitution of the officers of the Roadways as prescribed authorities under the Act without constituting the private operators also as prescribed authorities under the Act is discriminatory and offends Article 14 of the Constitution; and
- (3) that the Pratham Sanshodhan Niyamawali, 1969, places unreasonable restrictions upon the fundamental rights of the petitioners to carry on their trade or business guaranteed by Article 19 (1) (g) of the Constitution and is void.

So far as the first ground is concerned, it is contended that the Act contemplates prescribed authorities which are independent and not the operators or their officers or servants. It is urged that an operator, who is constituted a prescribed authority, cannot effectively exercise his functions as he cannot carry out the duties, imposed by the Act, of inspection, search and seizure in respect of his own vehicle. Though the argument appears to be attractive at first sight, there is no substance in it. The Act does not lay down the class or classes of persons from amongst whom the prescribed authorities are to be constituted; nor does it prohibit the appointment of an operator or his officers or servants. It is, implicit in the provisions of the Act that no operator or his officers or servants can be appointed prescribed authorities under the Act.

6. The second ground also is without substance. The argument that either the private operators as well as the Roadways should both have been appointed prescribed authorities or neither should have been appointed is not sound. The conferment of these powers on some of the officers of the Roadways does not, by itself, result in any hostile discrimination against private operators. Neither the private operators nor the officers of the Roadways have any right to the appointment as prescribed authorities. If the rule-making authority appoints one of them, no question of discrimination can arise.

7. There is considerable force in the third ground raised by the petitioners. Though the tax is imposed on the passengers, the Act places serious restrictions upon the operators carrying on their trade or business of running stage carriages. It casts upon them the duty to collect the tax and to pay it into the Government Treasury. It requires them to obtain registration. It subjects them to penalty in case of failure or delay in depositing the tax. Sec. 20 (1) requires the driver of the stage carriage to stop his vehicle or to remain stationary when required to do so by a prescribed authority for checking purposes. Sub-sec. (2) empowers the prescribed authority to enter, inspect and search any place where the operator parks his vehicle or keeps his accounts etc. Sub-sec. (3-A) empowers the prescribed authority to seize any document. Sec. 23 contemplates the filing of a complaint against an operator by the prescribed authority. These restrictions placed upon the fundamental rights of the operators to carry on their trade or business are reasonable restrictions in the interest of the general public as they have been made with the object of

enforcing the payment of the passenger tax. It is now well settled that a restriction must be reasonable from the substantive as well as the procedural standpoint. Not only must the restriction not be arbitrary or excessive, the procedure or manner of its enforcement must also be fair and just. If the procedural provisions entrust the enforcement of the restrictions to independent persons or high officials, there is some safeguard against abuse of power. But, if the power to enforce the restrictions is vested in interested persons, the likelihood of abuse is great and the restrictions become unreasonable. The power of stopping a vehicle and the power of inspection, search and seizure are serious restrictions on the fundamental rights guaranteed under Article 19 (1) (g) of the Constitution and the restrictions can be held to be reasonable only if the power is entrusted to independent officers of proper status. In the present case, in view of the bad blood and hostility between the private operators and the Roadways, there can be little doubt that the officers of the Roadways are interested persons who are hostile to the private operators. There is great likelihood that the entrustment of powers under the Act to these officers will result in abuse. These officers are interested in showing that the private operators do not provide satisfactory service and commit breaches of the law. The power in their hands is likely to be used discriminately as they would not check the Roadways vehicles or search and seize their documents but will exercise their powers only against the private operators. The conferment of powers under the Act on the officers of the Roadways results in the placing of unreasonable restrictions on the fundamental rights of the petitioners and other private operators to carry on their trade or business. For these reasons, I am of opinion that the U. P. Motor Gadi (Yatri-Kar) Pratham Sanshodhan Niyamawali, 1969', in so far as it appoints the officers of the Roadways prescribed authorities under Secs. 19, 20 and 23 of the Act, offends Article 19 (1) (g) of the Constitution and is void.

8. The writ petition is accordingly allowed and the U. P. Motor Gadi (Yatri-Kar) Pratham Sanshodhan Niyamawali, 1969, in so far as it amends the First Schedule to the U. P. Motor Gadi (Yatri-Kar) Niyamawali, 1962, by the addition of the words "all other Gazetted Officers of the Roadways, Station Superintendents Roadways, Traffic Superintendents Roadways, Assistant Traffic Inspectors Roadways" to the list of prescribed authorities for purposes of Sec. 19 (1) and (2) , Sec. 20 (1) and (2) and Sec. 23 is declared void. These officers of the Roadways are restrained from exercising any of the functions of the prescribed authorities under Secs. 19, 20 and 23 of the Act. The petitioners will be entitled to their costs from the respondent.
Petition allowed.