

MADHYA PRADESH HIGH COURT

M.P. State Road Transport Corporation Bhopal

Vs.

Regional Transport Authority

Misc. Petn. No. 337 of 1968
(P.V. Dixit, C.J. and G.P. Singh, J.)

20.12.1968

JUDGMENT

Singh, J.

1. By this petition under Articles 226 and 227 of the Constitution the Madhya Pradesh State Road Transport Corporation calls into question an order of the Regional Transport Authority, Rewa passed on 17th June, 1968 by which one stage carriage permit was granted to each of the respondents, M/s. Ramgopal Satyanarayan and M/s. Viswanath Prasad Ramgopal for the route Rewa to Pendra via Shahdol, Burhar and Amarkantak.

2. Rewa-Shahdol is a notified route in the scheme No. 50 made under Chapter IV-A of the Motor Vehicles Act, 1939. This route under the scheme is reserved for exclusive operation of the Corporation. The route Rewa-Pendra covers the entire route Rewa-Shahdol and goes beyond upto Pendra. In the permits, that were granted to the respondents, a condition has been imposed that the operators "will not set down passengers from Rewa and places between Rewa and Shahdol and at Shahdol and similarly on the return journey between Shahdol and Rewa they will not pick up passengers at Shahdol or thereafter." The contention raised in this petition by the Corporation is that, as Rewa Shahdol is a route reserved for exclusive operation of the Corporation, no permit covering this route or any portion of it with whatever condition could be granted by the Regional Transport Authority. In answer, the learned counsel appearing for the respondents, in whose favour the permits were granted, contended that on a proper construction of the scheme No. 50, it would appear that Rewa Shahdol was not a route of exclusive operation and therefore, there was no bar for granting any permit on this route.

3. To appreciate the rival contention, we must notice the provisions of the scheme No. 50. The scheme as proposed, mentioned in Clause (2) the routes or areas in respect of which the scheme was proposed. Clause (5) of the scheme stated that the State Transport Undertaking will exclusively provide all road transport services on Rewa Shahdol route. Clause (7) of the scheme was divided into three parts mentioning the permits that were to be cancelled, curtailed or made ineffective by virtue of the scheme. This scheme was considered by the Special Secretary on behalf of the State Government and was approved with certain modifications by his order passed on 9th February, 1967. The Special Secretary found that on permit for a route partly overlapping the route Rewa Shahdol was not mentioned in Clause (7) of the proposed scheme either for cancellation, curtailment or for being made ineffective. The Special Secretary, with a view to avoid discrimination of other permit-holders whose permits were also for such routes, which only partly overlapped the route Rewa Shahdol, removed all such permits from Clause (7). The final scheme as modified and approved by the Special Secretary was published in the Madhya Pradesh Gazette dated 24th February, 1967. In the approved scheme, Clause (5) of the scheme which mentioned Rewa Shahdol as a route reserved for exclusive operation of the Corporation was retained. This approved scheme was challenged in *Allied Transport Co. v. State of M. P.*,¹ It was found that some other permits, which were also for routes which only partly covered by the route of exclusive operation were mentioned in the list of permits to be cancelled and therefore, to bring uniformity, these permits were also allowed to stand. The effect of the modification by the Special Secretary and the order of this Court in this writ petition was that permits for the routes, which were only partly covered by the route of exclusive operation, were allowed to continue. It is to be noticed that in *Baluram v. State of M. P.*,² it was held by this Court that a permit not mentioned in the proposed scheme for cancellation or modification could not be included for cancellation or modification in the final scheme. It was because of this ruling, that the Special Secretary as also this Court had to remove a class of permits from the list of permits to be cancelled under the scheme, for certain permits of that class were not shown in the draft scheme. However, the exclusive character of the route Rewa Shahdol was in no-way affected, as Clause (5) of the scheme was not modified. Because a class of permit-holders for the routes, which partly overlapped the route Rewa Shahdol were allowed to continue, it was argued by the learned counsel for the respondents that this feature of the scheme really made the route Rewa Shahdol a route of partial exclusion. Reference in this connection was made to Section 68-C and

it was pointed out that a scheme may be "to the exclusion complete or partial of other persons" and that a scheme in which number of persons were allowed to continue cannot be held to be a scheme of complete exclusion, but must be held to be that of partial exclusion. We were referred in this connection to a decision of the Supreme Court in *M/s. Standard Motor Union Private Ltd. v. State of Kerala*,³ where the following observations occur :

"If other existing services are allowed to continue over a part of the highway relating to the notified route, the scheme is not one of complete exclusion."

The observations of the Supreme Court in the aforesaid case were made with reference to the forms prescribed under Rule 3 of the Kerala Motor Vehicles (State Transport Undertaking) Rules, 1960. Rule 3 provided "that every proposed scheme shall be in form No. 1 when it was in complete exclusion of existing road transport services and in form No. II when it was in partial exclusion of existing road transport services". It was in the context of these rules that it was held that, as existing road transport services on a sector of a route covered by the scheme were allowed to continue, the scheme was not one of complete exclusion and should not have been in form No. I. The aforesaid case does not in any way decide the point that falls for our decision. The approved scheme No. 50 with which we are dealing, is a scheme of complete exclusion in respect of Rewa Shahdol route subject to this that existing partially overlapping permits are allowed to continue till their expiry as they have been omitted from Clause (7) of the scheme. But that is only a temporary phase and the scheme, subject to the continuance of the permits till their expiry yet remains a scheme of complete exclusion in respect of Rewa Shahdol route as is abundantly clear from Clause (5) which expressly says that the State Transport Undertaking will alone have the right to ply stage carriages on that route. After these permits expire, it would be the duty of the Regional Transport Authority under Section 68-F (2) to refuse to entertain applications for their renewal to the extent the renewal of the permits may be inconsistent with Clause (5) of the scheme.

4. The question whether the Regional Transport Authority could grant permits for a route which covered the entire sector of the road Rewa Shahdol and went beyond it must be decided on a consideration of the scheme and Sections 68-B and 68-F of the Motor Vehicles Act. A scheme made under Chapter IV-A of the Motor Vehicles Act has the force of law; *H. C. Narayanappa v. State of Mysore*⁴ Further, as a scheme is finally made by an order of the State Government approving it, it is also an 'order'

within the meaning of that word as it occurs in Section 68-B and in terms of that section has effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act. Under Section 68-F, it is the duty of every Regional Transport Authority to give effect to the scheme and for that purpose it may refuse to entertain any application for the renewal of any permit, cancel any existing permit, or modify the terms of any existing permit. This section does not expressly deal with the prohibition to grant an application for a permit. The power to grant permits is contained in the provisions of Chapter IV, but in view of Section 68-B, that power would be affected in so far as grant of a new permit would be inconsistent with the provisions of an approved scheme. When the scheme expressly provides that the State Transport Corporation will have the exclusive right to ply buses on Rewa Shahdol route, it would be wholly inconsistent with the scheme if a new permit is granted covering, in whatever terms, the route Rewa Shahdol. A route or area in Chapter IV-A or in any scheme made under that chapter does not merely mean the notional line between two points but the actual road over which the omnibuses run : *C. P. C. Motor Service, Mysore v. State of Mysore*,⁵ *Nilkanth Prasad v. State of Bihar*,⁶ *Roshanlal Gautam v. State of Uttar Pradesh*,⁷ The route Rewa Shahdol thus includes the road between Rewa and Shahdol and the scheme cannot be evaded by including this sector of the road or any portion of it between two other points and thus giving it a colour of a new route : *M. P. State Road Transport Corporation, Bairagarh v. Regional Transport Authority, Indore*,⁸ In our opinion, the Regional Transport Authority has no jurisdiction whatsoever to grant a stage carriage permit with authority to ply any stage carriage with whatever restrictions on Rewa Shahdol sector of the Road, as that would be inconsistent with Clause (5) of the approved scheme No. 50. A permit on a sector of the road, which under the scheme is a route of complete exclusion, cannot be granted even with the restriction that the permit will be ineffective on that sector, *Mysore S. R. T. Corporation v. Mysore Revenue Appellate Tribunal*,¹⁰ The permits granted to the respondents cover Rewa Shahdol sector of the road and being in excess of the authority of the Regional Transport Authority must be quashed.

5. It was however urged by the learned counsel for the respondents that the order of the Regional Transport Authority was appealable under Section 64 of the Motor Vehicles Act and therefore, no interference should be made under Article 226. It is well settled that a provision for an alternative remedy does not take away the jurisdiction of this Court to interfere in inappropriate cases. The question is mainly of the discretion to be exercised by this Court. In the instant case, the impugned order

being patently in excess of jurisdiction, we think that it would not be a sound exercise of discretion to refuse interference on the ground that the petitioner had an alternative remedy to go up in appeal against the impugned order.

6. The petition is allowed. The order of the Regional Transport Authority dated 17th June, 1968 is hereby quashed. The petitioner will have costs of this petition from respondents Nos. 2 and 3. Counsel's fee Rs. 100/-. The amount of security deposit will be refunded to the petitioner.

Petition allowed.

Cases Referred.

1. M. P. No. 261 of 1967 D/d. 30.7.1968 (MP)
2. 1967 MPLJ 539: AIR 1967 Mad Prad 130
3. Civil Appeal No. 921 of 1968 D/-30-7-1968 (SC): (AIR 1969 SC 273
4. (1960) 3 SCR 742 at p. 752: (AIR 1960 SC 1073 at p. 1078).
5. 1962 Supp 1 SCR 717
6. 1962 Supp 1 SCR 728
7. 1965-1 SCR 841
8. M. P. No. 352 of 1968 D/d. 27-11-1968: AIR 1969 Mad Pra 182
9. AIR 1968 Mysore 1 (FB)
10. AIR 1968 Mysore 1 (FB)