

BOMBAY HIGH COURT

Mohamed Zafrul Islam

Vs.

Birendra Lall

Misc. Petn. No. 344 of 1962

(K.K. Desai, J.)

11.09.1963

JUDGMENT

K.K. Desai, J.

1. In this petition under Article 226 of the Constitution the petitioner, who is an employee working as a motor driver in the Posts and Telegraphs Department, claims a writ of mandamus against the Respondent (Postmaster General, Bombay Circle) directing him to enforce the provisions of the Motor Transport Workers Act, 1961 (hereinafter referred to as "the Act") to the Hosts and Telegraphs Motor Service, Bombay. The only purpose of the petition is that the Respondent should not prescribe more than 8 hours' duty on any day and 48 hours' duty in any week for the drivers of motor vehicles employed in the Posts and Telegraphs Motor Service.

2. The petitioner's main contention is that the Posts and Telegraphs Department is a commercial undertaking. The Department runs the Motor Service in order to convey mails from and to different Post Offices in Greater Bombay. The Department employs drivers, who are required to work on this Motor Service. These drivers are required to work for 8 hours and 40 minutes every day and 52 hours every week. Under the provisions of the above Act, admittedly, it is not permissible to employ drivers of motor vehicles so as to make them work for more than 8 hours every day and more than 48 hours every week. The petitioner's contention is that the provisions of the Act are applicable to the Motor Service maintained by the Department. It is, therefore, not justifiable that the Respondent should make the petitioner or other drivers employed in the Motor Service of the Department to work for the hours, which are in excess of the prescribed hours under the Act.

3. The Respondent's contention is that the Department is not a commercial undertaking. In fact, provisions of the Act are not applicable to the Department. The petitioner's contention is, therefore, untenable.

4. In connection with these rival contentions, It is first necessary to notice the provisions in Sections 1(4), 2(e), 2(g), 2(h), 2(n), 13 and 38 of the Act, which run as follows :

"1. (4) It (the Act) applies to every motor transport undertaking employing five or more motor transport workers :

Provided

2. (e) 'employer' means, in relation to any motor transport undertaking, authority which, has the ultimate control over the affairs of the motor transport undertaking, and;

2(g). 'motor transport undertaking' means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier;

2(h) 'motor transport worker' means a person who is employed in a motor transport undertaking to work in a professional capacity on a transport vehicle and includes a driver,

2(n) all other words and expression used but not defined in this Act and defined in the Motor Vehicles Act, 1939, shall have the meanings respectively assigned to them in that Act." The substance of Section 13 is that no transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week. Section 38 provides for exemptions in respect of certain transport vehicles and also authorises the State Government to grant exemption from the provisions of the Act in respect of certain motor transport workers.

5. The petitioner's main contention is based on the provisions in Section 2(g) of the Act. It is however, not the petitioner's case that the Motor Service maintained by the Department carries passengers or goods by road for hire or reward. The first part of the provisions in Section 2(g) is admittedly not applicable to the Motor Service maintained by the Department. The main contention of the petitioner accordingly is that the Motor Service maintained by the Department is maintained as a "private carrier" and is, therefore, motor transport undertaking within the meaning of Section 2(g). It is for this reason that the petitioner contends that the provisions of the Act apply to the motor Service maintained by the Department. The Act does not define "a private carrier". Admittedly, for finding out the meaning of the phrase "a private carrier" as contained in Section 2(g), one has to examine the provisions in that connection in the Motor Vehicles Act, 1939. Reliance has also been placed on behalf of the Respondent on certain other provisions of that Act. "Private Carrier" is defined in Section 2(22) of the Motor Vehicles Act as follows :

" 'Private carrier' means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business providing transport, or who uses the vehicle for any of the purposes specified in Sub-Section (2) of Section 42;"

"Public carrier" is defined in Sub-Section (23) of Section 2. The substance of that definition is that "Public carrier" is one who carries on business of transport of goods for

hire or reward. It is not the petitioner's case that the Department carries goods which are its property. It is not the petitioner's case that the Department uses vehicles for the purposes specified in Sub-Section (2) of Section 42. The petitioner's only case is that the Department uses the vehicles belonging to its Motor Service for the carriage of goods which is necessary for the purposes of its business. It is for this reason that the petitioner contends that the Department is maintaining its Motor Service as a private carrier.

6. The main question that has arisen having regard to the above facts is as to whether the Department carries on business and the carriage of postal articles is necessary for the purposes of the business of the Dept the Motor Service maintained by the Department is not for any business at all. The Department does not carry on business. The motor Service is maintained merely as a public utility service and is part of the revenue. The Department is not concerned to carry on any trade or commerce.

7. In developing the above contention on behalf of the Respondent, Mr. Sorabji has mainly relied upon the provisions in the Indian Post Office Act, 1898, and similar provisions in the English Act and some decisions of the English Courts relating to the functions discharged by the Posts and Telegraphs Department. Before referring to the Indian Post Office Act, it may be stated that the Motor Service maintained by the Department is not for any business at all. The Department does not carry on business. The motor Service is maintained merely as a public utility service and is part of the revenue. The Department is not concerned to carry on any trade or commerce.

7. In developing the above contention on behalf of the Respondent, Mr. Sorabji has mainly relied upon the provisions in the Indian Post Office Act, 1898, and similar provisions in the English Act and some decisions of the English Courts relating to the functions discharged by the Posts and Telegraphs Department. Before referring to the Indian Post Office Act, it may be stated that the Motor Service maintained by the Department is not for any business at all. The Department does not carry on business. The motor Service is maintained merely as a public utility service and is part of the revenue. The Department is not concerned to carry on any trade or commerce.

7. In developing the above contention on behalf of the Respondent, Mr. Sorabji has mainly relied upon the provisions in the Indian Post Office Act, 1898, and similar provisions in the English Act and some decisions of the English Courts relating to the functions discharged by the Posts and Telegraphs Department. Before referring to the Indian Post Office Act, it may be stated that the word "business" has been dealt with in different authorities in connection with different statutory provisions. It has been construed to mean "anything which occupies the time and attention and labor of a man, for the purpose of profit". Now, it appears to me that de or commerce.

7. In developing the above contention on behalf of the Respondent, Mr. Sorabji has ment of revenue with a purpose to discharge functions of public utility.

8. In connection with the maintenance of post offices, the Indian Post Office Act, 189S, was enacted. Section 2(f) of that Act provides: "the expression 'Postage' means the duty chargeable for the transmission by post of postal articles" The expression "Postage stamp" is defined to mean "any stamp provided by the Central Government 'for denoting postage or other fees or sums payable in respect of postal articles under this Act . . .'" The expression "Post office" is defined to mean "the department established for the purpose of carrying the provisions of the "Act into effect and presided over by the Director General". Under Section 4, it is provided that "the Central Government shall have the exclusive privilege of conveying by post, from one place to another, all letters except in the following cases, and shall also have the exclusive privilege of performing all the incidental services..... "Under Section 6, it is provided that "the Government shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to any postal article..... and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default". Section 7 authorises the "Central Government by notification in the Official Gazette to "fix the rates of postage and other sums to be charged in respect of postal articles. ..." It also provides that "the highest rate of postage, shall not exceed the rate set forth for each class of postal articles in the First Schedule". Under Section 13, Customs duty even can be recovered by postal authorities. Under Section 19, transmission toy post of anything injurious is prohibited. Under Section 20, transmission by post of anything indecent is prohibited. Section 23 authorises the postal authorities to deal with and dispose of articles posted in contravention of the provisions of the Act. Chapter X of the Act containing Sections 49 to 72 provides for penalties and procedure relating to offences mentioned in the Act. The rates mentioned in the First Schedule show that uniform fixed rates are prescribed to be charged in respect of postal articles to be accepted for transmission from place to place. The rates do not vary by difference in distances between the place of transmission and the place of destination.

9. Having regard to the above scheme of the Indian Post Office Act, it is obvious that in connection with the work of accepting postal articles for transmission from place to place, the Central Government charges postage at the rates fixed under Schedule I. The postage is merely duty chargeable for transmission of postal articles. What is charged is thus allocable to revenue. The charges levied are not intended to be collected for the for the purposes of making gains or profits. The main purpose of the Act appears to be to vest exclusive privilege and/or monopoly in the Central Government of conveying by post from one place to another postal articles. I have no doubt that this privilege creates a corresponding obligation on the Central Government to discharge its functions under the Act satisfactorily. The work that the Central Government thus does under the Act is discharging functions of public utility and public purposes. The work that the Central Government does under the Act is not for the purposes of making gains or profits and cannot be construed as carrying on of business. It is quite obvious that the work done by the Central Government under the Act cannot, be comparable with the work done by trading corporation or the work done by other common carriers of passengers and for goods. It is for this reason that provisions like prohibition for carrying certain types of goods and for collecting

Customs Duty and provisions for penalties, offences and procedure to be adopted in this connection were made part of the Indian Post Office Act.

10. The conclusion that I have arrived at above can be supported by referring to the case of *Triefus and Co. Ltd. v. Post Office*¹, and other cases referred to in the judgment in that case. The plaintiffs in the case were diamond merchants. They had handed to the Post Office two postal packets containing diamonds valued at 3,380 and 17,998, respectively, for carriage and transmission from Hatton Garden, London, to New Zealand. They had complied, in this connection, with all the regulations prescribed. The goods were lost and they filed a suit claiming damages from the Post Office. Their case was that they having complied with all the regulations, the Post Office had by accepting the packets entered into contract of carriage, or alternatively of bailment, with them. The Post Office, according to them, had misconducted themselves and accordingly had lost their goods

¹(1957) 2 QB 352

and that they were entitled to damages. The first Court dismissed their action. The Report relates to the judgment of the appellate Court. The relevant observations of Parker, L.J., who agreed with the main Judgment delivered by Hodson, L.J., run as follows :

"Clearly the Postmaster General is in a position quite different from that of a private individual. He is responsible to Crown for running a public service and, incidentally, a monopoly. The money that is paid by the public is revenue. So far as this case is concerned, I find it unnecessary to go further into those arguments, because, as it seems to me, there are three matters which, taken together at any rate, are conclusive against the plaintiffs in this case : (1) In *Lane v. Cotton*², and in *Whitfield v. Lord Le Despencer*³ - true, both actions on the case - there were strong dicta, to which my Lord has referred, to the effect that the Postmaster-General enters into no contract for the carriage of postal packets, and those dicta have never been questioned; (2) so far as is known, no one before those cases, in those cases, or since those cases, has ever brought before the court a claim alleging that there was any such contract; and (3) in subsequent legislation Parliament has clearly acted on the basis that that is the true legal position. Thus, it seems to me that Section 13 of the Post Office Act, 1908, proceeds on the basis that the mere acceptance of a postal packet does not create any contractual tie." As appears from the judgment of Hodson L.J., the Post Office Act was passed in England in 1060 and as early as 1699 in the case of (1701) 1 Lid. Raym. 646 the Appeal Court found that in the matter of acceptance by the Postmaster-General of the Postal articles for transmission from place to place, there was never any contract between the parties, Again, in (1778) 2 Cowp 75-1 Lord Mansfield observed :

"..... the comparison between a Post-master and a carrier, or the master of a ship, seems to me to hold in no particular whatsoever.. The post-master has no hire, enters into no contract, carries on no merchandize or commerce. But the Post Office is branch of revenue, and a branch of police, created by Act of Parliament. As a branch of revenue,

there are great receipts; but there is likewise a great surplus of benefit and advantage to the public arising from the fund. There is no analogy therefore between the case of the Post-master and a common carrier. The branch of revenue and the branch of police are to be governed by different officers....."

11. In the case of 1957-2 QB 352 Hodson, L.J. also observed :

"In my judgment what Lord Mansfield said in that case is, in all relevant respects, as true today as it was then. In particular, I think one of the important parts of the ratio of his decision was his observation that the Post Office was a branch of revenue."

12. As I have already stated, the Department of Posts and Telegraphs cannot, having regard to the scheme of the Indian Post Office Act, be held to be carrying on any business or commercial activity as such. The Department and its activities are essentially branch of the revenue.

²(1701) 1 Ld. Raym. 646

³(1778) 2 Cowp. 754

13. As already mentioned, under Section 2(22) of the Motor Vehicles Act, it is necessary. If the Department is to be held to be "private carrier", that it should be held that the Department uses the vehicles belonging to its Motor Service for the carriage of the goods, which is necessary for the purpose of its business. As my finding is that the Department does not carry on business, it is not possible to hold that the Department is a private carrier in respect of its Motor Service. It is, under the circumstances, not possible to make a finding that the Respondent is running "motor transport undertaking" within the meaning of Section 2(g) of the Motor Transport Workers Act, 1961.

14. In this connection, Mr. Sorabji has also referred to Section 42(3)(a) of the Motor Vehicles Act. Under the first part of the section, it is necessary for all the owners of transport vehicles to obtain permits for plying their vehicles. Sub-Section (3) provides as follows :

"(3) Sub-Section (1) shall not apply -

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise",

By a notification dated May 4, 1951, the State Government has, in exercise of the powers conferred by Section 18 of the Bombay Motor Vehicles Tax Act, 1935, exempted the motor vehicles owned by the Government of India other than those used commercially from payment of tax imposed under the Bombay Motor Vehicles Tax Act, 1935. Having regard to the provisions in Sub-Section (3)(a) of Section 42 of the Motor Vehicles Act and the above notification issued by the State Government, all the motor vehicles maintained by the Posts and Telegraph Department have not been taking any per mils as mentioned in Section 42 and have not been paying any tax to the State Government. These facts, according to Mr. Sorabji, are relevant in considering whether the Department can be said to be carrying on business as mentioned in

Section 2(22) of the Motor Vehicles Act.

15. It must be recorded that in developing his contention that the Department carries on business and commerce, Mr. Vaidya has relied upon several public statements made on behalf of the Central Government. He has relied upon pamphlets entitled "Activities - 1958-59" and "Activities - 1961-62" issued by the Posts and Telegraphs Department. At page 2 of the first pamphlet, it is mentioned as follows :

"Commercial character of the Department and utilisation of surplus. - The P. and T. functions as a Commercial Department but its finances have not been separated from the General Revenues of the Government of India. The Gross Receipts are utilized to meet the Working Expenses... as well as Interest on capital payable to General Revenues. An outright contribution of a portion of the surplus is made to General Revenues and the balance is maintained as a pro forma credit to the P. and T. Department. The Department, however, receives a rebate of interest on such accumulated surpluses".

In the second pamphlet, it is mentioned at page 3 as follows :

"Commercial Character of the Department and Utilisation of Surplus. - The accounts of the Posts and Telegraphs Department are maintained on a commercial basis."

Statements similar to those contained in the prior pamphlet are also contained on this page.

16. Mr. Vaidya has also relied upon statements made in the Parliament in March 1955 and March 1956 during the Budget Sessions. It appears from the Book containing Lok Sataha Debates (Vol. II-Part II 9th Session-1955, page 3725) that Shri Raj Bahadur, the Deputy Minister for Transport and Communications, stated as follows :

"I think the Hon. Member has heard from us many a time that the Finance Ministry, in spite of the fact that a particular post office will not be remunerative, has allowed us to open it if it runs at a loss up to Rs. 750. Similarly for backward areas it allowed us to open post offices if the loss does not go above Rs. 1,000/-. If we were purely running on commercial principles that would not have been allowed. That is how we say it is a commercial-cum-public utility Department. We must try our level best to see that it pays its way, and the need for expansion of post and telegraph facilities should also not be ignored."

The Deputy Minister also stated at page 3724 :

"I would now come to Sri Nambiar's observations. He said that we should not treat this P. and T. Department as a commercial undertaking. I wonder whether he means that all the expenditure to be incurred on the expansion of the P. and T. facilities or on the pay and

emoluments given to the staff should be borne by the nation by direct taxation. I do not know what he means by that, because we have time and again declared on the floor of the House that it is a commercial-cum-public utility department, and it has been accepted on all hands that there is no reason why the Department should not be able to pay its way."

Similar statements appear at page 3404 of the Booke containing Lok Sabha Debates (Vol. II, Part II-12th Session - 1956). There Shri Raj Bahadur stated :

"I would submit that it was after a good deal of deliberation and consideration that this was decided by this House and also the House that preceded it, namely that this Department should function on the basis of a commercial-cum-public utility department. . . ."

Mr. Vaidya has further relied upon certain statements contained in the Book entitled "An introduction to Indian Government Accounts and Audit" (2nd Edition). Paragraph 846 in this Book runs as follows :

"The Finances of the Indian Posts and Telegraphs Department form part of the general finances of the Government of India. The Department is, however, a commercial department in the sense that it is expected to meet, its liabilities from its own revenues."

Mr. Vaidya has also relied upon certain other statements contained in other Book issued by the Central Government. I have not been able to appreciate how these statements help the Petitioner. The background of these statements appears to be that the Department is referred to as a commercial Department in the sense that it is expected to meet its liabilities from its own revenues. In my view, these statements do not make any difference to the conclusions, which I have arrived at. The conclusions that I have arrived at are solely based on the provisions in the Indian Post Office Act. In my view this is the only appropriate way for the Court to decide the questions raised. It is difficult for this Court to arrive at any conclusions on the basis of statements, on which reliance is placed by Mr. Vaidya. The contentions advanced on behalf of the Petitioner must, under the above circumstances, be negatived.

17. Mr. Sorabji has contended, that the Motor Service maintained by the Departments is under the control of an employer, whose office is at New Delhi and this Court has no jurisdiction to issue any writ in respect of that Motor Service. It is unnecessary for me to decide this contention, as I have on the merits of the petition made findings in favour of the Respondent.

18. The petition is dismissed with costs.
Petition dismissed.