

RAJASTHAN HIGH COURT

Poonamchand

Vs.

State of Rajasthan

D.B. Civil Writ Petition No. 298 of 1961
(Sarjoo Prosad C.J. and Shinghal J.)

24.08.1961

JUDGMENT

Sarjoo Prosad. C.J.

1. These two petitions are directed against the order of the State Transport Authority dated 29th May, 1961. The petitioners pray that the said order of the said Transport Authority should be quashed by a writ of certiorari or any other appropriate writ.

2. Petitioners Messrs. Ujagarsingh and sons in one case, and the petitioner Poonamchand in the other, held non-temporary stage carriage permits on the Deoli-Kotah route. As the permits were to expire on 29th February, 1960, the petitioners applied to the Regional Transport Authority for renewal of those permits in the month of November 1959. For various reasons, to which it is unnecessary for us to refer at this stage, the Regional Transport Authority could not dispose of those applications. The petitioners approached this Court under Article 226 of the Constitution for a writ of mandamus and this Court, in D.B. Civil Writ Petitions Nos. 155 and 157 of 1961, directed, by its order, dated 11th May, 1961, that the Regional Transport Authority should consider the claim for renewal of the permits of these petitioners and dispose of their applications for renewal within a fortnight from the date of the order. It is relevant to mention at this stage that during the pendency of these applications, schemes for nationalization of road transport both for the Ajmer-Korah route and the Jaipur-Korah route were framed and published. The scheme with reference to the Ajmer-Kotah route was published on 15th December, 1960 while that in respect of the Jaipur Kotah route was published on 15th February, 1961. Object ones to these schemes were raised by certain operators and they were over-ruled. The matter, therefore, came up before this Court for consideration under Article 226 of the

Constitution whether the schemes in question were valid schemes; and by an order, dated 3rd May, 1961, this Court held that the Jaipur-Kotah scheme could not be upheld and the objections raised in respect of that scheme had to be reconsidered by the person authorized to hear them and dispose of the objections before approving the scheme. This Court, however, rejected the objections in regard to the Ajmer-Korah scheme and upheld the same. It was only after the above order of the Court dated 3rd May, 1961 was passed that the Court later disposed of those writ petitions and gave the direction as aforesaid on 11th May, 1961 as respect the applications for renewal of permits by these petitioners. It appears that on account of the transfer of the Divisional Commissioner, who was the Chairman of the Regional Transport Authority, Kotah, the Regional Transport Authority was not functioning and therefore the State Transport Authority dealt with the matter of renewal of the permits of these petitioners, and by its order, which is now impugned before us, rejected the applications for renewal. The petitioners have moved that the order in question should be quashed and have raised two grounds in support of their prayer.

3. Firstly, it is contended that the State Transport Authority had no jurisdiction whatsoever to deal with the question of the renewal of these permits and the only authority which was authorized to hear the matter was the Regional Transport Authority. In fact the Court by its order, dated 11th May, 1961, had also directed the Regional Transport Authority, Kotah to dispose of these applications within a fortnight from the date of the order. Secondly, the order is assailed on the ground that the State Transport Authority was in error in rejecting the applications for renewal of these permits, simply because the route on which these petitioners operate, i.e. Deoli-Korah route, was covered by the scheme for nationalization of the Ajmer-Kotah route. It is submitted by the learned counsel for the petitioners that the scheme with reference to the Ajmer-Korah route made no reference whatsoever to this route of the petitioners, viz. Deoli-Korah route, nor in the description of the permit-holders whose permits were to be cancelled by virtue of that scheme or in respect of whom renewal was ordered to be refused, any mention was made of the permits of these petitioners. We have examined both these contentions with care; but we feel that they do not carry conviction so as to induce us to interfere with the order passed by the State Transport Authority. We may deal with the questions seriatim.

4. In so far as the question of jurisdiction is concerned, it appears that the State Transport Authority has acted under section 44 (3) (b) of the Motor Vehicles Act,

1939. Section 44 (3) (b) provides that the State Transport Authority shall exercise and discharge throughout the State the various powers and functions as mentioned therein. One of those powers is "to perform the duties of a Regional Transport Authority where there is no such authority, and if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions." This provision contemplates three contingencies under which the State Transport Authority can act to perform the duties of the Regional Transport Authority: (1) Where "there is no such authority"; (2) where the State Transport Authority itself thinks fit to perform those duties in respect of any route common to two or more regions: and (3) where the State Transport Authority is so required by the Regional Transport Authority to perform those duties in respect of any such common route. We are, at this stage, not concerned with the latter two contingencies, except the first. The contention of the learned counsel for the petitioners is that the word: "there is no such authority" imply that where there is no Regional Transport Authority at all in existence or constituted; they do not refer to a case where there is a Regional Transport Authority duly constituted but on account of certain reasons the Regional Transport Authority is unable to function. The contention of the Government Advocate is that the e words in the statute do not preclude a case where on account of certain reasons the Regional Transport Authority although constituted is not competent to function. It appears to us that the language of the statute is sufficiently wide to cover both class of cases and we see no reason or justification for narrowing the scope of these words. These words enable the State Transport Authority to perform the duties and functions of the Regional Transport Authority not only where such authority has not been actually constituted but also where for certain unavoidable reasons the Regional Transport Authority is unable to function. It is true that under sub-sec. (1) of section 44 of the Act it is incumbent on the State Government by notification in the official gazette to constitute for the State Transport Authority and in the like manner a Regional Transport Authority to exercise and discharge the functions specified in the statute within their respective areas. That, however, does not mean that if for any reason such a Regional Transport Authority has not been constituted or is not even able to function, the State Transport Authority cannot perform those functions within the meaning of section 44 (3) (b) of the Act. In this case one has to remember that the direction of the Court was that matter should be disposed of within a fortnight from the date of its order. It is no body's case that the Regional Transport Authority was functioning during the period or was capable of functioning and yet the State Transport Authority arrogated to itself a jurisdiction which it did not possess. The fact

is that on account of the absence of the Chairman, the Regional Transport Authority was incapable of functioning and in the circumstances the State Transport Authority took up the consideration of the applications for renewal of the permits under the mandate of this Court. It cannot therefore be argued that the State Transport Authority had no jurisdiction to deal with the matter. In the circumstances, the State Transport Authority alone could have jurisdiction to perform the duties of the Regional Transport Authority and the order cannot be challenged on this ground. We are unable to entertain the petitioners' contention circumscribing the language of the statute and thereby limiting the jurisdiction of the State Transport Authority.

5. Now we come to the merits of the case. It is not disputed that the Deoli-Kotah route on which the petitioners operate is covered completely not only by the Jaipur-Kotah route but also by the Ajmer-Kotah route. The learned counsel submits that in the Jaipur-Kotah route, the portion of the route on which the petitioners operate was clearly specified and in paragraph 7 of the scheme it was also indicated that the petitioners were not entitled to the renewal of the permits in respect of that route but there was no such limitation prescribed in the Ajmer-Kotah scheme. The learned counsel contends that the Jaipur-Kotah scheme has not been approved by this Court and therefore the route on which the petitioners operate is not affected. Accordingly it is urged that the State Transport Authority should not have refused to renew the permits of these petitioners on the erroneous ground that the scheme for the Ajmer-Kotah route had been approved and upheld by this Court. He urges that the scheme for the Ajmer-Kotah route does not affect the route with which the petitioners are concerned nor is it stated in that scheme that the petitioners will not be entitled to the renewal of their permits. This argument though apparently attractive does not bear scrutiny. It is to be remembered that both the schemes were published at about the same time. It is true that in the Jaipur-Kotah scheme, the route on which the petitioners operate, had been specifically mentioned and it was further mentioned in paragraph 7 of the scheme that if the permits in favour of these petitioners had expired and were no longer in existence, they should not be renewed. But the omission to state these facts in the Ajmer-Kotah scheme does not improve the position of the petitioners. These schemes have been published in the prescribed form as contemplated by the rules. The preamble of the scheme itself indicates that the Rajasthan State Roadways are to run and operate on the routes prescribed to the complete exclusion of other persons; and clause 4 clearly states that no person other than the State Transport Undertaking (Rajasthan State Roadways) will be permitted to provide passenger road transport

services on the routes or portions thereof specified in clause 2 above. It is true that the Deoli-Kotah route is not specifically mentioned in clause 2, but clauses 3 and 4 have got to be read together. It is not disputed that the Deoli-Kotah route is covered by the Ajmer-Kotah route and therefore by operation of clause 4 the State Roadways are to operate upon that route to the exclusion of all other persons, because others unless specifically permitted are not allowed to provide passenger road transport services on the routes in question. It may not have been necessary to repeat the exclusion of this particular route in the Ajmer-Kotah Scheme as well when it had already been mentioned in the Jaipur-Kotah Scheme. Obviously, it would have been mere duplication, and therefore there may be some justification, as the learned Government Advocate contends for not repeating the same language in the shorter route between Ajmer and Kotah which nevertheless overlaps the petitioners' route. Again, the omission in paragraph 7 also is immaterial. Utmost it can be said to be merely descriptive, because on reading the scheme as a whole, it is obvious that the intention was to exclude all other persons operating on the route except to the extent that by virtue of clause 3 and 4 permission is granted to some other persons to provide passenger road transport services on the routes in question or parts thereof. The decision in Devi Sahai's case (D.B. Civil Writ petition No. 38 of 1961) is to the same effect, where the import of these clauses in the scheme appears to have been considered and dealt with. The learned judges observed with reference to the last sentence in clause 3 of the scheme as follows:-

"The last sentence of this clause means that if there is a provision in the scheme for the running of the other transport services, they were not affected. Clauses (3) and (5), if read together, mean that the running of buses by the existing permit-holders was permitted to the extent specified in the scheme and was not in any way affected by clause (4) which was applicable to other persons who have not been permitted to run any buses under the Scheme. These two clauses must be reconciled in the manner set-forth above."

Here there is nothing to show that the petitioners were permitted to operate on the routes in question so that their permits could be saved under the scheme itself. Under section 68F (2) of the Motor Vehicles Act, for the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority or for the matter of that the State Transport Authority may by order refuse to entertain any application for the renewal of any other permit. In this case under the

terms of the scheme, it was not permissible for the petitioners to operate on a route which was over-lapped by the Ajmer-Kotah route and in respect of which the right to operate had been given exclusively to the Rajasthan State Roadways, and no exception had been made there in favor of these petitioners that they could also provide transport service on those routes. It may be observed that in Devi Sahai's case the scheme itself had not been quashed and only a direction was given to the effect that the objections of the parties concerned be re-heard and the scheme be reconsidered in the light of those objections and the same be modified or approved accordingly. It was open to the State Transport Authority to take notice of this fact also in refusing to grant renewal of the permits, but that apart, as we have said, on the strength of the Ajmer-Kotah scheme itself the order of the State Transport Authority seems to be justified.

6. We accordingly reject the writ petitions and direct the parties to bear their own costs.

.