

RAJASTHAN HIGH COURT

Kishan Lal

Vs.

State of Rajasthan

S. B. Civil Writ Petn. Nos. 3412, 3063, 3156, 3294, 3414, 3416, 3418 of 2000 and
C.W.P. No. 285 of 1996
(V.G. Palshikar, J.)

22.11.2000

ORDER

V.G. Palshikar, J.

1. These petitions involve identical questions of law and facts in each case. There is no dispute over facts at all. With the consent of the parties, the cases were heard together and are being decided together by this common order, it governs all the cases.

2. The surface transport in India is undertaken either by railway or by road. On road the transport is usually by motor vehicle, passenger transport is invariably by motor vehicles. The passenger transport was governed by the Motor Vehicles Act, 1939. With development of transport facilities and voluminous increases in the passenger transport restructuring of the law was found necessary and hence Motor Vehicles Act, 1988 was passed by the Parliament making a comprehensive legislation governing the surface transport in India. Since 1988, therefore, all the questions pertaining to grant of permits, registration etc. of vehicles plying for passenger transport within India are governed by the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). Chapter I of the Act deals with preliminary definitions. Chapter II provides for licensing of drivers of motor vehicle and spells out the conditions subject to which licenses for driving motor vehicle would be granted. The procedure for grant of such license, for renewal etc. is stated. It also provides for suspension of the license in certain contingencies mentioned in this chapter. Chapter III pertains to conductors. Chapter IV prescribes the procedure for registration of the vehicles. Chapter V deals with control of transport vehicles.

3. In the present case, we are concerned to the Chapter V. It begins with Section 66, which spells out the necessity of permits for plying transport vehicles of any kind in any place at any time. Section 67 gives the power to control the road transport to the State Government. Then the entire procedure necessary to be followed for grant of such permits as are described in this chapter is laid down in the subsequent sections. The provisions of Chapter V also provide for conditions governing the passenger transport by vehicle outside the State boundaries of each State. The Governments of each State within the territories of Union of India entering into agreement called inter-State agreement agreeing to the number of routes, number of vehicles or permits that should be granted on each route, the conditions on which these vehicles would ply etc. is stipulated in this agreement.

4. That in supersession of all earlier agreement between the State of Rajasthan and State of Haryana, a fresh agreement called Inter-State Reciprocal Transport Agreement was entered into between these two States on 9th July, 1997, it has duly been published in the Rajasthan Government Gazette on 15th July, 1997. Since that date it is in accordance with the conditions and stipulations mentioned in this agreement that the inter-State transport of passengers by motor vehicles is liable to be controlled. As observed earlier, the trips that a permit holder shall undertake is also stipulated in the agreement. The number of permits that are to be issued for each route is mentioned in the agreement and it is also stipulated that all the previous stage carriage permits, which are countersigned by either States before coming into force of the said agreement, shall remain in force till the term up to which they are issued with valid permits and the permit holder shall also have the right to seek renewal of these permits after the expiry of term for which it is granted. It has already been held by this Court in the case of *RSRTC v. RTA, Bikaner, reported in* ¹ that the Regional Transport Authority has no jurisdiction to create a new inter-State route which can be done only by the State Government in view of the amendment made in November, 1994. It was also held that the inter-State agreement should specify the routes and the number of trips on each route that can be granted under the inter-State agreement. This matter was considered by the Supreme Court also in the case of *Ashwani Kumar v. RTA, Bikaner, reported in* ² wherein view taken by this Court has been confirmed.

5. That thereafter in many cases, the Regional Transport Authorities started considering the applications for grant of permits on inter-State routes to the extent of

the number, fixed under the agreement dated 9-7-1997, ignoring the existing number of stage carriage permits already granted and in operation by reason of clause (iv) of the said agreement. In fact the action of the RTA resulting in grant of more permits than those stipulated, in the inter-State agreement dated 9-7-1997. Several petitions were, therefore, filed challenging this action of the RTA and the matter was finally decided by this Court in the case of *Jamidara Motor Transport Co-operative Societies v. R.T.A. Bikaner*, reported in ³ wherein this Court after a comprehensive study of the law governing on this point, held that the Regional Transport Authority shall not consider any application for grant or countersignature of permits over and above the ceiling fixed by the inter-State Agreement after observing that the number stipulated in the inter-State agreement includes the number of vehicles that continues to be validly permitted vehicles and, therefore, the Regional Transport Authorities cannot consider the applications for grant of permits beyond that number. The interpretation put on the said agreement by the authorities that the number stipulated in the agreement dated 9-7-1997 is in addition to the number of stage carriage permits validly existing by raising clause (iv) of the said agreement is incorrect. In spite of the decision of this Court in the Jamidara's case so pointed out above, the respondents have continued in their action of considering the applications for grant of stage carriage permits in addition to the number stipulated in the agreement dated 9-7-1997 requiring filing of such petitions, some of which are being disposed of by this order. Factually the controversy was finally decided by this Court in Jamidara's case.

6. I am in respectful agreement with the view expressed in that case and normally there was no need to write such detailed order. However, taking into consideration the fact that in spite of the judgment in Jamidara's case, such applications for grant of permits of inter-State routes are entertained by the Regional Transport Authority. Issuance of directions requiring strict compliance of the statutory pronouncement of this Court appears to be necessary. Hence this detailed order.

7. The preposition of law as emerges from the decision in Jamidara's case is, therefore, the law applicable within the State of Rajasthan. The ratio of the decision in Jamidara's case can be summarized as under :-

- (i) it is not open for the transport authorities to grant stage carriage permit or to countersign a stage carriage permit on an inter-State routes over and above the number of permits fixed by the inter-State agreement;

- (ii) after the amendment of Section 68 effected from 14-11-1994, the State Transport Authority or Regional Transport Authority has no jurisdiction to create a new route in relation to inter-State transport, and;
- (iii) consequently, it has no competence or jurisdiction or authority to grant permit on such newly created route or even to consider an application for grant of permit on such newly created routes as the creation of new route itself is void ab initio.

8. In this view of the legal position, the action of the respondents in considering the applications for grant of inter-State routes and permits of over and above number fixed by the inter-State agreement is bad in law. The action of the respondents in so doing after the judgment in Jamidara's case is a matter of concern as it amounts to ignoring the judgment in Jamidara's case. Normally under the Rule of law, such things should not happen. In any event, the statutory authorities like the State Transport Authority and Regional Transport Authority should not act beyond the parameters laid down by law after pronouncement of law in this regard in Jamidara's case. It was, therefore, not open for the respondents to entertain the applications for grant of inter-State permits over and above the number prescribed by the agreement dated 9-7-1997. In these circumstances, I deem it just and proper to issue following directions to the State Transport Authority and Regional Transport Authority in the State of Rajasthan, as under :-

- (i) that they shall not create new route at any inter-State route in violation of the provisions of Section 68 as amended on 14-11-1994;
- (ii) in view of this position of law, they shall not consider the applications for grant of stage carriage permits on such inter-State routes, where the number stipulated in the agreement dated 19-7-1997 is already achieved by existing and valid stage carriage permits.
- (iii) they shall reject all such pending applications for lack of jurisdiction in this regard as laid down in Jamidara's case, and;
- (iv) it is fervently hoped that the mandate issued by this Court is faithfully obeyed in letter and spirit by both the transport authorities within the State of Rajasthan.

In the result, therefore, the petitions succeed and are allowed issuing the directions mentioned in the preceding paragraph. There will be no orders as to costs.

Petition allowed.

Cases Referred.

1. 1995 WLN 471
2. AIR 1999 SC 3888
3. 1991 (1) WLC 348