

Malik Ram and anr. Vs. Regional Transport Authority, Jaipur and ors.

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Court : Rajasthan

Decided On : Mar-20-1956

Reported in : AIR1956Raj142

Judge : Wanchoo, C.J.,; Ranawat and; Sharma, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 47(1); [Constitution of India](#) - Articles 19(1) and 226; Rajasthan Motor Vehicles Rules, 1951 - Rule 90

Appeal No. : Civil Writ Petn. No. 147 of 1955

Appellant : Malik Ram and anr.

Respondent : Regional Transport Authority, Jaipur and ors.

Advocate for Def. : J.P. Jain, Adv. (for Nos. 3, 4, 5, 9 and 11),; G.L. Yadava, Adv. (for Nos. 3, 4, 5 and 11) and;

Advocate for Pet/Ap. : C.L. Agarwal, Adv.

Judgement :

Wanchoo, C.J.

1. The following three points have been referred to this Full Bench for answer:

1. Whether the following condition laid down by Section 47 (1) (c), Motor Vehicles Act of 1939 is ultra vires Article 19(1)(g) of the [Constitution of India](#):

'the effect upon those services of the service proposed.' 2. Whether in view of Rule 90, Rajasthan Motor Vehicles Rules, 1951, the Transport Authority is under a duty to so fix the time table as to allow every stage carriage holding a permit on a particular route to run thereon daily, and whether the fixing of a time table and allowing the stage carriages to run by rotation on some days of the month only is in contravention of the said Rules?

3. Whether granting of a few more permits on a route on which the existing stage carriages are not running daily but only by rotation is by itself sufficient to justify this Court to quash the order of Regional Transport or Appellate Authority by a writ of certiorari on the ground of the order being erroneous on its face and repugnant to the condition regarding the adequacy of existing road passenger transport services between the places to be served laid down by Clause (c) of Section 47 (1), of the Motor Vehicles Act?

2. Before we consider these points one by one, we should like to give the facts briefly which led to the writ application in which this reference has been made, These facts are:

3. Malik Ram and Jagdish Narain applicants are bus-operators on the Jaipur Alwar route, and ply stage carriages on hire. The Regional Transport Authority Jaipur granted 27 permits for plying stage carriages on hire on this route in August 1953.

After granting these permits, the Regional Transport Authority fixed the rotation according to which these 27 bus operators would work. This was necessary as only five trips (both ways) were required every day on this route, the distance being about 90 miles. Five buses used to ply oneway, and five the other way every day, and the turn of each bus came once in two or three days.

After the grant of these 27 permits, five permit-holders dropped out and eventually only 22 stage carriages plied on the Jaipur Alwar route. When this happened the Regional Transport Authority granted three temporary permits to three other persons on the ground that five of the original permit-holders had dropped out.

Later, applications were invited for one more permit in 1954; but, in December 1954, the Regional Transport Authority granted eight permits, thus bringing the total number of buses on this route to 30. Three other persons had applied for permits, but their applications had been refused. They went in appeal to the Appellate Authority, and that Authority granted permits to them also. The number of permits thus granted on this route came to 33; but as one of the persons to whom permit was granted was dead, the real number was 32.

4. Thereupon, Malik Ram and Jagdish Narain applied to this Court under Article 226 of the Constitution, and their case was that no new permit should have been granted as there were sufficient number of buses available to carry out the number of trips even after five buses had fallen off.

It may be mentioned that originally there were only five trips fixed on this route but when the Regional Transport Authority decided to grant eight more permits, it took the view that a sixth trip was necessary. In fact, however, the sixth trip was not actually allowed till November, 1955.

5. The application was opposed by those to whom permits had been granted. When the matter came up before a Division Bench of this Court, it was thought necessary to refer these three points, which arose during the course of arguments before the Division Bench, to a Full Bench, as they raised questions of considerable importance. We shall now take these points one by one.

6. The first point relates to the validity of a certain portion of Section 47 (1) (c) which reads as follows:

'A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely: --

(c) the adequacy of existing road passenger transport services between the places to be served, the fares charged by those services and the effect upon those services of the service proposed;'

It is contended that every citizen is entitled to ply a bus as plying a bus for hire is a trade or business, and all citizens have been granted the right to practise any

profession, or to carry on any occupation, trade or business under Article 19(1)(g) of the Constitution.

Further under Article 19(6) the State has only the power to make any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by Article 19(1)(g). The applicants contend that Section 47 (1) lays down restrictions for the carrying on of the trade or business of plying buses on hire, and that those restrictions can only be justified if they are in the interest of the general public, and reasonable.

It is not denied that the first two parts of Clause (c) regarding the adequacy of existing road passenger transport services, and the fares charged by those services are matters which are in the interest of the general public, and might be taken into account in restricting the number of stage carriage services between two places.

But it is contended that the last part of Clause (c), which lays down that the Regional Transport Authority shall take into account the effect upon the existing services of the services proposed, is not in the interest of the general public, but only in the interest of the existing bus-operators, and therefore is not a reasonable restriction and therefore unconstitutional. Reliance in this connection has been placed on *C.S.S. Motor Service, Tenkasi v. State of Madras*, 1953 Mad 279 (AIR V 40) (A).

In that case, the constitutionality of Section 47, Motor Vehicles Act of 1939 came up for consideration, and the learned Judges were of the view that Clause (a), (b), (d), and (f) of Section 47 were valid as being in the interest of the public. They also were of the view that Clause (e) was invalid as being not in the interests of the public but of the permit-holder.

As to Clause (c), they held that that part of it was not legal where it provided that the effect of the services proposed upon the existing services should be taken into account. There is no doubt that reasonable restriction's can be put only in the interest of the public, and not in the interest of a particular person like a bus-operator.

In the Madras case, this part of Clause (c), and the whole of Clause (e) were held, to be unconstitutional on the ground that they were not in the interests of the public, but of the permit-holder.

7. There is no doubt that prima facie it looks as if this part of Clause (c), and the whole of Clause (e) are in the interests of the permit-holders, and not of the general public. But with all respect, if the matter were analysed from a slightly different angle, it should not be difficult to see that these clauses are also in the interest of the general public.

Let us, as an illustration, deal with the second part of Clause (e) which lays down that the Regional Transport Authority shall, among other things, consider the operation by the applicant of unremunerative services in conjunction with remunerative services. Suppose that the Regional Transport Authority wants to put some buses on a route for the convenience of the public, but the traffic on that route is very little, and anyone who runs a bus on that route is bound to suffer loss.

In such circumstances, if a person comes forward and says that he is prepared to run a bus on the unremunerative route provided he is also given a permit to run a remunerative route so that he may not be put to loss, it seems to us that in order that the unremunerative route should have a service for the convenience of the public this matter should be taken into account while granting permits on remunerative routes.

Of course, the unremunerativeness or otherwise of the route should only be taken into account in the interest of the general public in order to secure a bus service on the unremunerative route. It is not to be taken into account in order to give a profit to any permit-holder. It seems to us, therefore, that it would be going too far to say that the considerations in the second part of Clause (e) are entirely for the benefit of the permit-holders, and not in the interest of the general public.

8. Let us now take Clause (c), and look to the last part of it from the angle of the general public. Suppose that a number of services are already running, on a route. Suppose again that those services are just remunerative enough to provide a living to those who operate them subject to proper travelling facilities for the public.

Suppose again that there are applications for half a dozen other stage carnages being added on the route,

In such circumstances, we feel that consideration by the Regional Transport Authority of the effect on the existing services by the addition of new services would be a matter in the public interest. If the result of the addition of new services is that the old services go out of the field, as it no longer pays to run them, or the facilities provided to the public dwindle, and the standard of stage carriages goes down in the matter of comfort and amenities to the public, it certainly would be in the interest of the public that the Regional Transport Authority should consider the effect of the new services on the existing services.

The Authority has not to consider it from the point of view of the going down of profits to be made by the existing permit-holders. If it looks at it from that point of view, it is not looking at it from the point of view of public interest. But if it looks at it from the point of view of the continuance of the existing services and the maintenance of the standards of comfort and amenities, it will certainly be acting in the interest of the public.

We feel therefore that when the Legislature enacted this part of Clause (c) as to the effect of the proposed service on the existing services, it intended that the Regional Transport Authority should consider that point from the angle of public interest in the manner indicated by us.

There is, if we may say so with respect, no reason to restrict these words to a consideration of the profits to be made by the existing bus-operator. They should be used in order to consider whether the public interest would be served or not if new additions are made to the existing services. How that public interest would be affected has already been indicated by us above.

We are, therefore, of opinion that this part of Clause (c), if looked at from the angle from which we are looking at it, provides a reasonable restriction in the interest of the general public. We are further of opinion that this part of Clause (c) was meant by the Legislature to be used in the interest of the public in the manner we have indicated above.

9. Our answer, therefore, to the first question is that the last part of Section 47(1) (c) which provides that the Regional Transport Authority shall have regard to the effect upon the existing services of the service proposed, is not ultra vires of the Constitution, as the provision, in our opinion, as explained above, is a reasonable restriction in the interest of the general public.

10. Let us now turn to the second point relating to Rule 90. That rule came up for consideration before, a Bench of this Court, to which one of us was a party, in *Sanwalram v. State Transport Authority Jaipur*, CWP No. 17 of 1954, P/-11-11-1954 (Raj) (B). Rule 90 does not confer a right upon the bus-operators, but imposes a duty on them. They cannot, under Rule 90, insist that they must have one trip every day, though the Transport Authority may require them to perform a regular daily service in the manner required by it.

We may add that none of the counsel appearing before us took the position that Rule 90 conferred a right on the bus-operators. It is not necessary for us therefore to elaborate on the reasons given in *Sanwalram's case* (B) for holding that Rule 90 merely imposes a duty, and does not confer a right on the bus-operators under which they can insist on being allowed a daily service by the Transport Authority.

In this connection, we may, refer to the observations in *Kulwant Singh v. Appellate Authority of State Transport Authority*, CWP No. 138 of 1954, D/- 27-1-1955 (Raj) (C), to which one of us was a party. It was thought that the view taken in that case was different from the view in *Sanwalram's case* (B). It is enough to say that that is not so. In that case, there was only a passing reference to Rule 90, and it was said that

'apparently the fixation of turns is not contemplated by the rule, and it is a matter for serious consideration of the Regional Transport Authority to comply with the provisions of Rule 90, & so arrange the time table that every bus gets an opportunity to be on the road for its regular daily service.'

It is enough in this connection to point out that when the Transport Authority has fixed a certain number of trips per day on a particular route, it has to issue permits to a greater number of vehicles than the number of trips for three obvious,

reasons.

In the first place, it must allow for a weekly holiday to the driver and the conductor. In the second place, it must allow for occasions when the staff goes on leave. Thirdly, it must allow for occasions when, the bus is out of order. So the Transport Authority is bound to issue a few more permits than the number of trips it sanctions on the route. But, of course, it does not follow from this that if there are only six trips to be made per day on a route of 20 miles, permits should be issued to say 30 buses.

The Authority has to allow a reasonable margin of extra buses, and that would necessarily mean that every bus may not get a turn every day. At the same time, it does not follow from what we have said about the effect of Rule 90 that the Transport Authority is at liberty to grant permits in such manner that a bus gets a turn say only once a week. The result of such a policy would be that every day while one bus is plying, six buses would be standing idle. Such a waste certainly is not contemplated by the Motor Vehicles Act or the rules framed thereunder.

11. Subject therefore to these observations, the answer to the second question must be that the Transport Authority is not under a duty so to fix the time table as to allow every stage carriage holding a permit on a particular route to run thereon daily, and the fixing of a time table and allowing the stage carriage to run by rotation is not in contravention of Rule 90.

But we must make it clear that there is a limit to this, and as already indicated it would be a waste of national wealth if such a large number of buses are permitted on a certain route that each one gets a turn say only once or twice a week according to the trips fixed per day.

12. We now come to the last question. It may be divided into two parts. The first part is this:

'Whether granting of a few more permits on a route on which the existing stage carriages are not running daily but only by rotation is by itself sufficient to justify this Court to quash the order of the Regional Transport or Appellate Authority by a

writ of certiorari on the ground of the order being erroneous on its face.'

In view of what we have said while dealing with Rule 90, it cannot be said that merely because a few more permits are granted on a route on which the existing stage carriages were not running daily, but by rotation, the order would be erroneous on its face, and liable to be quashed by this Court.

Take a simple example which will clear what we mean. Supposing the route is 90 miles long, and it is decided that six trips a day, both ways, are necessary. Suppose further that the Transport Authority considers that considering the length of the route a bus should run only one way each day in order that it may not become unserviceable too quickly. In such a case, the Transport Authority would require 12 buses to maintain the six daily trips.

Besides this, it will require two buses more allowing for one weekly holiday. It may also require 2 to 4 buses more at the outside to provide for leave, sickness, and damage to buses requiring repairs. Supposing that it sanctions 16 to 18 buses on this route, and one or two of them go out of service for one reason or another. If it grants one or two more permits to make up for the deficiency, it cannot be said that the order is erroneous on the face of it, and liable to be quashed simply because every bus is not running every day.

13. Then we turn to the second part of the question. It is this:

'Whether granting of a few more permits on a route on which the existing stage carriages are not running daily but only by rotation is by itself sufficient to justify this Court to quash the order, of the Regional Transport or Appellate Authority by a writ of certiorari on the ground of the order being repugnant to the condition regarding the adequacy of existing road passenger transport services between the places to be served laid down by Clause (c) of Section 47(1), Motor Vehicles Act?

Here again, our answer to the question is that merely because there is rotation, it cannot be said that the granting of a few more permits is repugnant to the condition regarding the adequacy of existing road passenger transport services. Whether it is repugnant to that condition or not is a question to be considered

broadly on the merits of each case.

Take again the example which we have given above. Let us suppose that in the case mentioned above. 3 or 4 out of the 16 or 18 buses fall out for the one reason or the other. Granting of permits in place of those buses would not be in itself repugnant to the condition regarding the adequacy of existing road passenger transport services. But suppose that in a case of that kind where 16 to 18 buses would be reasonably required, the Transport Authority has already granted 25 or 30 permits.

Suppose again that out of these 25 or 30 permit-holders 4 or 5 drop out, and the Transport Authority decides to replace these 4 or 5, in such a case a question may well arise whether the replacement is necessary considering that the remaining buses are more than adequate for the existing road passenger transport services.

In such a case this Court may well come to the conclusion that the granting of permits in place of those that have dropped out from an overstocked route is on the face of it repugnant to the condition regarding the adequacy of existing road passenger transport services.

In coming to that conclusion, this Court will always give the greatest weight to the opinion of the Transport Authority, and would never lightly interfere with it. But, as we have said above, there is a limit beyond which it may become necessary to interfere on the ground that the existing road passenger transport services are on the face of it more than adequate, and therefore no new permits should be granted.

14. Let these answers be returned to the Bench concerned.

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