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Court : Rajasthan

Decided On : Feb-25-1983

Reported in : 1983WLN52

Judge : N.M. Kasliwal, J.

Appeal No. : S.B. Civil Writ Petition Nos. 217 and 271/1983

Appellant : Prahlad Prasad and anr.

Respondent : The Union of India (Uoi) and ors.

Advocate for Pet/Ap. : Mr. Mehta

Disposition : Petition dismissed

Judgement :

N.M. Kasliwal, J.

1. In both the above writ petitions an identical question of law has been raised as such the same are disposed of by one single order. In both the above writ petitions the petitioners have prayed that Section 47 (I-R) of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') be declared as ultra vires and violative of Articles 14 and 19 of the Constitution of India and the respondents be refrained from giving effect to & implement the said provisions of the Act.

2. The petitioners are holders of non-temporary state carriage permit on different inter State routes. A challenge has been made to the provisions of Section 47(I-N) of the Act which reads as under:

Section 47(I-N) - Notwithstanding anything contained in this section, an application for stage carriage permit from a State Transport Under-taking for operating in any inter-State route shall be given preference over all other applications:

Provided that the authority shall not grant a permit under this sub-section unless it is satisfied that the State Transport Undertaking would be able to operate in the inter-State route without detriment to its responsibility for providing efficient and adequate road transport service in any notified area or notified route as is referred to Sub-section (1) of Section 68 where the Undertaking operates the service.

Explanation - For the purpose of this sub-sections 'inter-State route' means any route lying continuously in two or more State.

3. It is argued by learned Counsel for the petitioner that the Rajasthan State Road Transport Corporation has been given preference over all over applications and this is violative of the petitioners' right guaranteed under Articles 14 & 19 of the Constitution of India. It is contended that Chapter IV-A of the Act was inserted by Section 62 of the Motor Vehicles (Amendment) Act, 1956 (No. 100 of 1956). This Chapter consists of nine sections deal with the grant of monopoly permits to the State Transport Undertakings. This Chapter confers a monopoly on the State to the partial or complete exclusion of other persons. However, under Chapter IV which contains Sections 42 to 68 no preference should be given to the State Transport Undertakings. It must compete with other applicants to secure permits. There are already provisions contained in Section 47 from Clauses (a) to (f) which shall be taken into consideration in considering applications for stage carriage permit. It is contended that the above provisions, lay down sufficient guidelines to watch the interest of the public and there was no justification for giving preference to any State Transport Undertaking while considering the applications for stage carriage permit under Section 47 of the Act. The State Transport Undertakings have already been granted monopoly rights in respect of the routes covered under Chapter IV-A of the Act and there is no reasonable basis for granting them any

further preferential right over other applicants by enacting Section 47(I-N) in the Act. It is further submitted that a State Transport Undertaking should compete on equal footing with the other applicants & the application for the grant of stage carriage permit should be decided on the basis of considerations already laid down in Section 47(1) of the Act. Reliance is placed on the following observations in *Tarhbeni Transport Co-operative society Ltd. v. The Regional Transport Authority, Aurangabad and Ors.* : [1960]3SCR177 .

Now the position here is different. The Government has of course the power to do any business it likes and therefore, the business of running stage carriages. We have earlier drawn attention to the change made in Clause (a) of Section 42 by the amendment of 1956. Previously, it was not necessary for the Government to obtain permits under Section 42) for the buses that it intended to run as stage carriages. Since the amendment the Government can no longer run transport vehicles for commercial purposes without obtaining permits under Section 42(J). So the plying of buses as stage carriages is a commercial enterprise and for such buses, therefore, under the sections as they stand, the Government would require permits as any one else. That being so, the sections clearly contemplate that the Government may apply for and obtain permits for its buses run as stage carriages. The rule applied in *Mazid Ahmed's case* 61 Ind. App. 379 : AIR 1926 SC 251 (2), does not permit the ordinary meaning of Section 42. Sub-section (1) and Sub-section (2), Clause (a) to be cut down because of the provisions of Chapter IVA. The Act lays down two independent sets of provisions in regard to the running of buses by the Government, one under Chapter IV and the other under Chapter IVA. Chap-IVA was intended to give the Government, a special advantage. When the Government chooses to proceed under that chapter, it becomes entitled as a matter of right under Section 68 to the necessary permits. Under Chapter IV the Government does not have any such advantage, it has to compete with other applicants to secure permits to be able to run its buses. The powers under the two Chapters are therefore, different. To such a case the principle of *Nuzir Ahmed's case* cannot be applied.

Reliance is also placed on the following observations in *Satyanarain Singh v. District Engineer P.W.D. Ballia and Anr.* AIR 1962 SC 116.

The mere fact that the activity may be useful to the public would not necessarily render it public service. An activity however beneficial to the people and however useful cannot, in our opinion be reasonably regarded as public service if it is of a type which may be carried on by private individuals and is carried on by Government with a distinct profit motive. It may be that plying stage carriage buses even though for hire is an activity undertaken by the Government for ensuring the people a cheap, regular and reliable mode of transport and is in that sense beneficial to the public. It does not however, cease to be a commercial activity if it is run with profit motive. Indeed even private operators in order to attract customers are also interested in providing the same facilities to the public as the Government undertaking provides. Since that is so, it is difficult to see what difference there is between the activity carried on by private individuals & that carried on by Government. By reason of the facts that a commercial undertaking is owned and run by the State it does not ipso facto become a public service.

4. On the other hand it was argued by Mr. R.N. Munshi, learned Counsel for the Corporation that the legislature in its wisdom inserted Sub-Sections (1-A) to (1-N) to Section 47 by Act 47 of 1978 (w.e.f. 16-1-1979). The provisions contained in Sub-section (1-N) only gave preference to a State Transport Undertaking for operating on any inter State route. On such inter-State route State Transport Undertaking has an additional advantage of having busses, large fleet of buses and other administrative grounds. It can certainly provide more efficient service to the passengers on such inter-State route in comparison to the private operators. It is contended that the Corporation will not be entitled to get the State carriage permit merely on account of having preference over all other applicants, as there is a further rider given in the proviso to sub Section (H-1). The proviso clearly lays down that the authority shall not grant a permit under this sub-section unless it is satisfied that the State Transport Undertaking would be able to operate in the inter-State route without detriment to its responsibility for providing efficient and adequate road transport service in such area. Thus, the State Transport Undertaking shall only be granted a permit when the authority would be satisfied about providing efficient and adequate road transport service. Reliance is placed on the following observations in *J.Y. Mandala Rao and Ors. v. Andhra Pradesh State Road Transport Corporation and Ors.* AIR 1961 S.C. 81.

The object of Ch. IVA, as disclosed by the provisions of Section 68, is to provide in the interest of the public an efficient, adequate, economical & properly co-ordinated road transport service. To achieve that object Section 68 confers a power on the State Transport Undertaking to prepare a scheme to run the service, whether to the exclusion, complete or partial, of other persons or otherwise. The classification has certainly reasonable nexus to the object sought to be achieved. Ordinarily a State Transport Undertaking compared with persons or private undertakings, should be in a better position when others to carry on the said services for the benefit of the public, administratively, financially and technically, it can be expected to be in a for better position than others. It can provide more well-aquipped buses, give better amenities to the traveling public, keep regular timings, repair or replace the buses in emergencies. It may also employ efficient supervisory staff to keep things going at an appreciably high standard. We are not suggesting that there are no individuals or private companies who can efficiently run the service. But the State, compared with individuals, should certainly be in a better position to achieve the object namely, to improve the road transport service in all its diverse aspects. In such a Situation when the legislature, which must be presumed to 'understand' and correctly appreciate the needs of its own people, made a classification between a State Transport Undertaking and others carrying on the businesses of transport services, we cannot say that there is no reasonable basis for such a classification.

5. I have given my careful consideration to the arguments advanced by learned Counsel for both the parties.

6. I may at the out set mention that there cannot be any violation of Article 19(1)(a) of the Constitution of India by enacting Section 47(1-N) of the Act as the State is empowered to make any law for the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion complete or partial, of citizens or otherwise as laid down under Article 19 of the Constitution of India. The matter has, therefore, to be considered whether the above provision is violative of Article 14 of the Constitution of India. In *J.Y. Mandala Rao and Ors. v. A.P. State Road Transport Corpora ion and Ors.* (supra) though the Supreme Court was considering the classification

made in Chapter IV-A of the Act but the classification was approved on the ground of having reasonable nexus to the object sought to be achieved. In this regard it was clearly held that a State Transport Undertaking, compared with persons or private undertakings was in a better position than others to carry on the said services for the benefit of the public. Administratively, financially & technically it was in a far better position than others. It can provide more well-equipped buses, give better amenities to the traveling public, keep regular timings repair or replace the buses in emergencies. It may also employ efficient supervisory staff to keep things going at an appreciably high standard. Thus irrespective of nature or class of the route the State Transport Undertaking has been held to be on a better footing than the private operators. If that be so, then there is certainly a reasonable basis for such a classification under Chapter IV of the Act also, specially when the preference has been given on inter-State route. I see no force in the argument of the learned Counsel for the petitioner that the above observations of the Supreme Court should be restricted only in case of Chapter IV-A of the Act and cannot be applied in respect of Chapter IV of the Act. The object of Chapter IV of the Act is also to provide in the interest of public an efficient, adequate, economical and properly co-ordinated road transport service and if the legislature in order to achieve this object gave a preference to State Transport Undertaking on the inter-State route it cannot be held to be arbitrary or violative of Article 14 of the Constitution of India.

7. That apart the provision to Sub-section (1-N) of the Act also makes the intention of the legislature clear and explicit that permit shall not be granted merely on account of preference unless the authority was satisfied that the State Transport Undertaking would be able to operate in the inter-State route without detriment to its responsibility for providing efficient and adequate road transport service. Public interest which is dominant consideration in such matter is sub served by the above proviso. The discretion given to the authority is not arbitrary but is subject to the restriction contained in the proviso. There is another aspect of the matter that the provision regarding preference contained in Sub-section (1-N) of Section 47 of the Act is restricted to inter-State route only. The buses on such route operate between-two States under reciprocal agreements. There is a control of the Central Government and of inter-State Transport Commission over such routes as

contemplated under Section 68 of the Act. In this view of the matter also that the preference has been given over area or route common to two or more States, it cannot be said that the preference given to State Transport Undertaking does not stand the test of reasonableness. The authorities cited by Mr. Mehta, learned Counsel for the petitioners, do not render any assistance as in those cases the question of giving preference to State Transport Undertaking in comparison to private operators was not under consideration.

8. In the result, I find no force in these writ petitions and the same are dismissed with no order as to costs.

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