

TANSUKH RAI JAIN

v.

NILRATAN PRASAD SHAW AND OTHERS

November 4, 1964

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO,
M. HIDAYATULLAH, RAGHUBAR DAYAL
AND J. R. MUDHOLKAR, JJ.]

Constitution of India, Art. 254(1)(2)—Motor Vehicles Act, (Act 4 of 1939), s. 64A whether renders void or repeals s. 64A of the Motor Vehicles (Bihar Amendment) Act, 1949 (Bihar Act 27 of 1950).

The Bihar State Legislature by Act 27 of 1950 introduced s. 64A into the Motor Vehicles Act (Central Act IV of 1939). By that section power was given to the State Government to revise orders of authorities and officers in proceedings under Chapter IV of the Motor Vehicles Act. Subsequent to this by Act 100 of 1956 Parliament introduced another s. 64A into the Act providing that revision would lie to the State Transport Authority from the non-appealable orders of Regional Transport Authority.

Respondent No. 1 filed a writ petition before the High Court challenging an order of the State Government under s. 64A of Bihar Act 27 of 1950. By the said order the State Government had granted a stage carriage permit to the appellant setting aside an order of the Appellate Authority in favour of Respondent No. 1. The High Court held that Bihar s. 64A did not apply to stage carriage permits for inter-State routes and therefore the order of the State Government made under that section was bad. The appellant thereupon filed an appeal before the Supreme Court with certificate. Before the appeal was heard, the Supreme Court had already decided in another case that there was nothing in Bihar s. 64A to render it inapplicable to stage carriage permits for inter-State routes, thus reversing the High Court's decision on that point. Respondent No. 1 therefore sought, and was given permission to challenge the order of the State Government on another ground, namely, that Central s. 64A had by virtue of the provisions of cls. (1) and (2) of Art. 254 of the Constitution rendered void or impliedly repealed Bihar s. 64A. It was urged that Central s. 64A was exhaustive, that it covered the same field as Bihar s. 64A, and that the two sections were directly repugnant.

HELD : (i) Central section 64A could not said to be exhaustive. While it provided for revision to the State Transport Authority against the non-appealable orders of the Regional Transport Authority, it did not confer any finality on the orders passed by the former and it was open to the Bihar Legislature to provide further remedies. Moreover the scope of Central s. 64A could be enlarged or reduced by the State Government which had power under s. 68 to determine which orders of the Regional Transport Authority would be appealable. [11 B-C, F-H]

(ii) Nor could it be said that Central s. 64A and Bihar s. 64A covered the same field. Central s. 64A only dealt with revisions against the orders of the Regional Transport Authority, while Bihar s. 64A had a much wider operation giving to the State Government power to revise orders of any authority or officer in proceedings under Ch. IV of the Act. Such orders could be those of the State Transport Authority, and the Appellate Authority besides other authorities and officers, [11 C-D, G-H]

A (iii) The language of Bihar s. 64A is very general. Literally construed it can be said to be in conflict with both s. 64 and Central s. 64A, inasmuch as it can cover cases open to appeal under the former section, and to revision under the latter section. To the extent of this repugnance Bihar s. 64A is void. But the section as a whole is not void nor has it been repealed by Central s. 64A; its scope has been limited only to this extent that revisions against such orders of the Regional Transport Authority which are not appealable, have to be preferred to the State Transport Authority. [10A, D, H; 12C]

Deep Chand v. State of Uttar Pradesh, [1959] Supp. 2 S.C.R. 8, applied.

S. K. Pasari v. Abdul Ghafoor, C.A. No. 306 of 1964 decided on 4-5-64 and *Abdul Mateen v. Ram Kailash Pandey*, [1963] 3 S.C.R., 523, referred to.

C In the present case the State Government of Bihar revised the order made by the Appellate Authority. It was competent to do so. The High Court was in error in holding otherwise. [12D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 538 of 1964.

D Appeal from the judgment and order, dated September 25, 1963 of the Patna High Court in Misc. Judicial Case No. 1381 of 1962.

K. Rajendra Chaudhuri and *K. R. Chaudhuri*, for the appellant.

M. C. Setalvad, *D. P. Singh*, *S. C. Agarwal* and *M. K. Ramamurthy*, for the respondent No. 1.

E The Judgment of the Court was delivered by

F *Raghubar Dayal, J.* This appeal, on certificate granted by the High Court of Patna, raises the question whether s. 64A of the Motor Vehicles Act as introduced by the Motor Vehicles (Bihar Amendment) Act, 1949 (Bihar Act XXVII of 1950), hereinafter referred to as Bihar s. 64A, was not applicable to proceedings for grant of permit for inter-State routes. This question, however, was decided by this Court in *S. K. Pasari v. Abdul Ghafoor*⁽¹⁾. It was held that it was applicable to cases of stage-carriage permits for inter-State routes.

G The respondent prayed, in view of the observations in *Abdul Mateen v. Ram Kailash Pandey*⁽²⁾ for permission to challenge the validity of the aforesaid section on the ground that Parliament, by the Motor Vehicles (Amendment) Act, 1956 (Act No. 100 of 1956), has introduced another s. 64A in the Motor Vehicles Act, 1939 (Act IV of 1939), hereinafter referred to as Central s. 64A and that thereby Bihar s. 64A must be taken to have been repealed by necessary implication.

(1) Civil Appeal No. 306 of 1964, decided on 4-5-64.

(2) [1963] 3 S.C.R. 523.

The question arises in this way. The appellant Tansukh Rai Jain, was one of the applicants for the stage-carriage permit for an inter-State route between Bihar and Orissa. The State Transport Authority, Bihar, granted the permit to the United Motor Works & Co. Ltd. The appellant and respondent No. 1, Nilratan Prasad Shaw, appealed to the appellate authority, the Deputy Minister of Transport, Bihar, against the order of the State Transport authority. The appellate authority reversed the order and granted the permit to Shaw, respondent No. 1. Thereafter, the appellant went in revision to the Bihar Government, in view of Bihar s. 64A. The Transport Minister set aside the order of the appellate authority and granted the permit to Jain, the appellant. Shaw, respondent No. 1, then filed a writ petition in the High Court and prayed for the quashing of the order of the Transport Minister and for the restoration of the order of the appellate authority granting the permit to him. The High Court allowed the writ petition holding that Bihar s. 64A did not apply to stage-carriage permits for inter-State routes and that therefore the Bihar Government was incompetent to revise the order of the appellate authority.

It is urged for the respondent that the provisions of Bihar s. 64A are repugnant to those of Central s. 64A and are therefore void in view of cl. (1) of Art. 254. It is also urged that the Central Act has repealed Bihar s. 64A by enacting Central s. 64A in the exercise of the power it had under the proviso to Art. 254(2). If the provisions of Bihar s. 64A are repugnant to any extent with those of Central s. 64A, Bihar s. 64A will be void to the extent of the repugnancy in view of cl. (1) of Art. 254 of the Constitution. As the Central Act was enacted by Parliament subsequent to the enactment of Bihar s. 64A, the provisions of the main part of cl. (2) of Art. 254 will not apply to make Bihar s. 64A good within the State of Bihar, even though it had received the assent of the President, as those provisions applied when the Central Act is enacted earlier than the State law. We have therefore to see whether the provisions of Bihar s. 64A are repugnant to those of Central s. 64A.

The tests for determining whether a certain provision of a State law is repugnant to the provisions of a law made by Parliament are stated thus, in *Deep Chand v. The State of Uttar Pradesh*⁽¹⁾ :

“Repugnancy between two statutes may thus be ascertained on the basis of the following three principles :

(1) [1959] Supp. 2 S.C.R. 8, 43.

- A (1) Whether there is direct conflict between the two provisions;
- (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and
- B (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

We may now refer to the two sections, Central s. 64A and Bihar s. 64A :

- C "*Central s. 64A* : The State Transport Authority may, either on its motion or on an application made to it, call for the record of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit :

- D Provided that the State Transport Authority shall not entertain any application from a person aggrieved by an order of a Regional Transport Authority, unless the application is made within thirty days from the date of the order :

- E Provided further that the State Transport Authority shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

- F "*Bihar s. 64A* : The State Government may, on application made to it in this behalf, within thirty days of the passing of the order in the course of any proceedings taken under this Chapter by any authority or officer subordinate to it, call for the records of such proceedings, and after examining such records pass such order as it thinks fit."

The words 'subordinate to it' in Bihar s. 64A, were omitted by the Motor Vehicles (Bihar Amendment) Act, 1953 (Bihar Act I of 1954). This was however not noticed when Bihar s. 64A was quoted in *Pasari's* case⁽¹⁾.

First we have to see whether there is any direct conflict between Central s. 64A and Bihar s. 64A. Such a conflict, to a

H (1) Civil Appeal No. 395 of 1964, decided on 4-5-64.

certain extent, can arise if Bihar s. 64A be construed literally. A
 The language of Bihar s. 64A is very general and empowers the
 State Government to revise any order made in the course of any
 proceedings taken under Chapter IV and pass such orders as it
 thinks fit. It must, however, be so construed, if possible, as not to
 come in conflict with the provisions of the Central Act. The power
 of revision vested in the State Government under its provisions are B
 to come into play only when the Central Act does not provide any
 remedy against the orders proposed to be revised. Certain orders
 have been made appealable under s. 64 of the Act. The power
 of revision therefore will arise and will be exercised after the appel-
 late power is exhausted and not when the aggrieved person has C
 not appealed against the order. Similarly, it will be available only
 against non-appealable orders after the aggrieved person has taken
 action under Central s. 64A. The aggrieved person cannot have
 recourse to action under Bihar s. 64A without first taking action
 under Central s. 64A. To the extent that the language of Bihar
 s. 64A can cover the cases open to appeal and to revision under D
 s. 64 and Central s. 64A respectively, it will be in direct conflict
 with the provisions of the Central Act and Bihar s. 64A will be
 void to that extent.

Bihar s. 64A, it is argued for the respondent, is wholly void
 as by Central s. 64A Parliament intended to lay down an exhaustive
 code in respect of the said subject matter of revisions. It is also E
 urged that Bihar s. 64A is wholly void as both that section and
 Central s. 64A cover the same field. On these very grounds, it is
 urged that by enacting Central s. 64A Parliament has repealed
 by implication Bihar s. 64A as it was competent to do in view of
 the proviso to cl. (2) of Art. 254.

Repeal, by implication, is not to be easily inferred. It is to
 be expected that when Parliament was aware of the provisions of
 Bihar s. 64A and of Art. 254 of the Constitution and it intended
 to repeal Bihar s. 64A, it would have expressly stated so. There
 is nothing in Central s. 64A or in any other provision of the Act
 which expressly states that Bihar s. 64A is repealed. We are of G
 opinion that the mere fact that Central s. 64A deals with revisions
 against non-appealable orders of the Regional Transport Authority
 is not sufficient to conclude that Parliament intended to repeal
 Bihar s. 64A.

The language of Bihar s. 64A is very wide and covers all
 orders made by any authority or officer in the course of any
 proceedings taken under Chapter IV of the Act. The only limita- H
 tion on the exercise of the revisional power conferred on the State

- A by Bihar s. 64A is that the State cannot *suo motu* exercise that power. It can exercise it when moved on application by some person aggrieved with the order he seeks to be revised. Such orders can be orders of the State Transport Authority, the Regional Transport Authority or any other authority or officer. Central s. 46A provides for revisions against the orders of the Regional
- B Transport Authority and does not provide for revisions against the orders of the prescribed authority to whom appeals could be preferred under s. 64. Central s. 64A can therefore preclude the State Government from entertaining revisions against non-appealable orders of the Regional Transport Authority, but cannot preclude the operation of Bihar s. 64A in regard to other orders.
- C It is not provided in the Act that the order passed by the State Transport Authority in the exercise of its revisional jurisdiction under Central s. 64A would be final. If such a provision had been made it might have been possible to urge that Parliament intended that the order of the State Transport Authority in revision was not to be interfered with by any authority. The absence of
- D such an expression therefore leads to the inference that Parliament did not intend that there be no interference with such orders of revision. Further, it may be noticed that s. 64 does not exhaust the list of all appealable orders. Its cl. (i) provides for an appeal by a person aggrieved by any other order which may be prescribed.
- E 'Prescribed' means 'prescribed by rules made under the Act'. Sub-section (1) of s. 68 empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV which consists of ss. 42 to 68. Sub-section (2) specifies certain matters with respect to which rules be made. Its clause (za) mentions 'any other matter which is to be or may be
- F prescribed'. It follows that the State Government can make rules providing for certain orders to be appealable under s. 64 and thus reduce the orders which otherwise would come within the ambit of Central s. 64A. The orders made appealable under the rules framed by a State would not be open to revision under s. 64A as it provides for revisions against non-appealable orders
- G only. It is clear therefore that Parliament cannot be imputed the intention to make the provisions of s. 64A to be so exhaustive and complete as to lead to the necessary conclusion that thereby it intended to repeal the provisions of Bihar s. 64A which gave power to the State of Bihar to revise orders made by authorities or officers in proceedings under Chapter IV.
- H The provisions of Bihar s. 64A and Central s. 64A are not such that they cannot be complied with simultaneously, except for the contingency already mentioned, *i.e.*, when an application is

made to the State Government by a person aggrieved by such an order of the Regional Transport Authority which be not appealable under s. 64. In such a case, the State Government cannot exercise its power under Bihar s. 64A against the orders of the Regional Transport Authority, though it would be free to exercise that power at a later stage after the State Transport Authority had disposed of the revision, if any, made to it. Revision, in the first instance, against non-appealable orders passed under Chapter IV must go to the State Transport Authority as in respect of such orders Parliament must be taken to have varied the provisions of Bihar s. 64A. A

We therefore hold that Bihar s. 64A is neither void nor has been repealed by Central s. 64A and that its scope has been limited only to this extent that revisions against such orders of the Regional Transport Authority which are not appealable have to be preferred to the State Transport Authority. C

In the present case the State Government of Bihar revised the order made by the appellate authority. It was competent to do so. The High Court was in error in holding otherwise. D

We therefore allow the appeal with costs, set aside the order of the High Court and restore that of the State of Bihar granting permit to the appellant Jain.

Appeal allowed.