

ASHWANI KUMAR AND ANR. ETC.

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v.

REGIONAL TRANSPORT AUTHORITY, BIKANER AND ANR.

SEPTEMBER 29, 1999

[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

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Motor Vehicles Act, 1988 : Section 88(1), (5) and (6)—Inter State Permits—Appellants granted permit for plying buses on Sangaria-Delhi route opened by R-1—Major part of the route falling in the State of Haryana—State Transport Corporation challenged the grant of permit to appellants before High Court in a writ petition claiming that the said route was already covered by its services provided under Regional Transport Agreement between the States of Rajasthan and Haryana—Writ petition allowed, permit of appellants quashed—On appeal—Held, independent construction of Section 88(1) of the Act would frustrate objective of the Act—Existence of a route is condition precedent for grant of inter-State route under Section 88 (5) of the Act—Inter-State routes cannot be created unilaterally by one State as it requires a reciprocal agreement.

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Appellants had been granted permit for plying their buses on the Sangaria (Rajasthan) Delhi route by Respondent no. 1 Authority. It was claimed to be a part of Ganganagar to Delhi route and was stated to be falling in the reciprocal agreement between the two States. Respondent no. 2 the Rajasthan Road Transport Corporation challenged the grant of the said route to the appellants, by filing a writ petition before High Court submitting that under the Reciprocal Transport Agreement arrived at between the States of Rajasthan and Haryana, R-2 was providing services on the Ganganagar-Delhi via Hanumangarh-Sangaria-Dabwal- Hissar, etc. In the writ petition it was alleged that the appellants had applied for grant of the permit on the new inter-state route without mentioning necessary particulars. Later the appellants amended their applications by giving details that out of the total length of the said route of 359 Km., 3 Km. fell in the State of Rajasthan, 323 Km. fell in the State of Haryana while the remaining 33 Km. fell in Delhi. After the said amendment, R-1 decided to open a new Sangaria-Delhi inter-state route for which temporary stage carriage permits were granted to the appellants. The said writ petition was allowed by the High Court holding that opening, establishing and creation

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A of inter-state route lying in two or more states was the prerogative of the concerned states by entering into a reciprocal agreement and to get it finalised by following the procedure prescribed under Section 88 (5) & (6) of the Motor Vehicles Act, 1988. The High Court also quashed the permit granted in favour of the appellants. Appeal preferred by the appellants before the Division Bench of the High Court was dismissed. Hence the present appeal.

B The appellants contended that Section 88 (1) of the Act has to be construed independently which did not prescribe the existence of a reciprocal agreement regarding the inter-state route permits. It was further contended that Section 88 (5) and (6) of the Act cannot come in the way of Regional Transport Authority of a State, which when granted, becomes valid in the other State upon its being counter-signed.

Dismissing the appeals, the Court

D HELD : 1. The contention of the appellant that Section 88(1) of the Motor Vehicles Act, 1988 has to be construed independently ignores the opening words of the Section "except as may be otherwise prescribed" completely. Such prescribing can be by way of the Act itself or by rules framed under it. Section 88(5) and (6) of the Act provide for procedure of entering into agreement between the states for grant of inter-state permits. The grant of inter-state permits concerning the present appeals are permissible under Section 88(5) of the Act. The existence of a route is a condition precedent for exercise of power under Section 88(1) of the Act. Inter-State route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by one State or an Authority in the State. The concerned State Governments are supposed to deliberate and decide the routes to be opened as inter-State routes by determining the number of trips each route to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective which is claimed to be a social welfare legislation. [216-D-E; 217-B-C-D]

G 2. The Motor Vehicles Act, 1939 which related to the law of motor vehicles was amended from time to time to keep it upto date. Various committees examined different aspects of the road transport and recommended updating, simplification and rationalisation of the law relating to motor vehicles. A working group was constituted in January, 1984 to review all the provisions of the Act and to submit draft proposals for comprehensive legislation to replace the existing law. After considering the recommendations of the working group and obtaining the comments of the State

Governments it was decided to make important modifications in the Act in consonance with the growing requirements. A Bill was moved in Parliament for seeking to achieve the objectives detailed in the Statement of Objects and Reasons. The Act was thereafter passed on 14th October, 1988. Accepting the submissions made on behalf of the appellants would result in frustration of the objective sought to be achieved by the Act. In the absence of the existence of inter-State route, the authorities under the Act were not justified in granting the permits to the appellants. The orders of the Authority granting permit in favour of the appellants were thus without jurisdiction. [217-D-E-F-G-H; 218-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3341 of 1997.

WITH

C.A. No. 1122 of 1998.

From the Judgment and Order dated 27.11.95 of the Rajasthan High Court in D.B.C. Spl. A. No. 361 of 1995.

Mrs. Rani Chhabra for the Appellants.

Sushil K. Jain, Additional Advocate General for Rajasthan (Aruneshwar Gupta) (NP) for the Respondents.

The Judgment of the Court was delivered by

SETHI, J. IA Nos.2 and 3 filed in Civil Appeal No.1122 of 1998 are allowed.

Regional Transport Authority, Bikaner is stated to have circulated a Circular Note No.3537 for opening a route Bhadra-Delhi being the inter-State route lying within the jurisdiction of the States of Rajasthan, Haryana and U.T. Delhi. Appellant Birbal applied for grant of one stage carriage permit on the said route for which he offered his Bus Model No.1986. Besides appellant, Abhey Singh and Kan Singh also submitted applications for the grant of permit on the same route. The Regional Transport Authority, Bikaner (hereinafter referred to as 'RTA, Bikaner' is stated to have resolved on 22nd November, 1993 to open the said route but granted the permit in favour of Abhey Singh only for providing daily one return trip. The appellant's application was rejected along with one Kan Singh. Being aggrieved with the order of the RTA, Bikaner, the appellant

A and Kan Singh filed separate appeals, the appellant's appeal being No.64/94 before the State Transport Appellate Tribunal, Rajasthan, Jaipur. The Tribunal took up both the appeals together and allowed the same vide its order dated 4.4.1994. The Tribunal is stated to have held that the order of the RTA, Bikaner rejecting the applications of the appellants before it was wrong since the vehicles offered by both of them were within the prescribed model in Resolution No. 1 of 1993 of the State Transport Authority. The RTA, Bikaner was directed to grant stage carriage permit to the appellant in respect of his bus for providing daily one single trip on the condition that the permit would be valid on obtaining counter signatures from the concerned States. The RTA, Bikaner is stated to have issued permit in favour of the appellant vide its order dated 3.5.1993. Consequent upon the issuance of permit in its favour the appellant is stated to have started plying his Vehicle No. RJ-07/P 0777 covered by route No.172. However, in January, 1997 appellant's permit was cancelled by the RTA, Bikaner purportedly consequent upon the decision of the Rajasthan High Court dated 7.7. 1995 in Writ Petition No.2929/94 wherein it was held that the route in dispute did not exist before the passing of the order of the RTA, Bikaner. Being aggrieved with the order of the RTA, Bikaner, cancelling the appellant's permit a writ petition was filed by the appellant in the High Court of Rajasthan submitting therein that the judgment of the learned Single Judge dated 31st March, 1995 passed in Civil Writ No.1877 of 1994, confirmed by the Division Bench in Special Appeal No.361 of 1995 by its order dated 7.11.1995, relied upon by the learned Single Judge in his order dated 7.7.1995 in Writ Petition No.2929/94 had earlier been challenged in the Supreme Court in SLP (C) No.18050/96 wherein leave was granted on 11.8.1997 and the operation of the judgment of the High Court stayed. It was contended that in view of the order of this Court, the cancellation of the permit was illegal and deserved to be quashed. The writ petition filed by the appellant was dismissed on the ground of existence of an alternative remedy under Section 89 of the Motor Vehicles Act, 1988. Special Appeal (Writ) No.862 of 1997 filed by the appellant against the order of the learned Single Judge was dismissed on 22nd August, 1997. Not satisfied with the dismissal of his appeal, the appellant has preferred this appeal.

G Appellants in Civil Appeal No.3341 of 1997 claimed to have been granted permit for plying their buses from Sangaria in Rajasthan to Delhi route. The aforesaid route was claimed to be part of the route Ganganagar to Delhi which was stated to be falling in the reciprocal agreement between H the two States. Respondent no.2, the Rajasthan Road Transport Corpora-

tion filed a writ petition in the High Court of Rajasthan against the grant of route permits to the appellants. A learned Single Judge of the High Court vide his order dated 31st January, 1995 set aside the order of the RTA, Bikaner granting permits to the appellants on Sangaria to Delhi inter- State route. The appeal filed against the judgment of the learned Single Judge was dismissed vide the impugned judgment in this appeal. The respondent-Corporation in its writ petition had submitted that under the Reciprocal Transport Agreement arrived at in between the States of Rajasthan and Haryana, the Corporation was providing services on the Ganganagar-Delhi via Hanumnagarh-Sangaria-Dabwal-Hissar, etc. The appellants had applied in October, 1993 for grant of stage carriage permits in their favour by opening a new inter-State route Sangaria to Delhi via Dabwali-Hissar without mentioning therein the necessary particulars. It is alleged that on 21st October, 1993 the RTA, Bikaner was informed that the applicants had not disclosed the particulars of Sangaria-Delhi route which was overlapping by the notified route and the details of the length of the route. The Secretary, RTA, Bikaner vide his Circular Note dated 28th October, 1993 stated that all the three applicants, including the appellants had amended applications on 27th October, 1993 for Sangaria-Delhi inter-State route in a length of 359 kilometers out of which a small portion in a length of 3 kilometers lay in the State of Rajasthan and 323 kilometers in the State of Haryana. The remaining portion of 33 kilometers was stated to be in Delhi. The RTA, Bikaner, after considering the circular notes sent by the Secretary to the RTA decided to open a new Sangaria-Delhi inter-State route for which temporary stage carriage permits were granted to the appellants.

As noticed earlier, the writ petition was allowed by the learned Single Judge holding that under the provisions of Motor Vehicles Act, 1988 it was the prerogative of the two or more concerned States only to open, establish and create an inter-State route lying in the respective jurisdiction by entering into a reciprocal agreement and to get it finalised by following the procedure prescribed under sub-sections (5) and (6) of Section 88 of the Act. It was found on facts of the case that there did not exist any such agreement amongst the concerned States. The route was found to be non-existent prior to the passing of the order impugned in the High Court. It was found that the route Sangaria-Delhi had been opened by the RTA, Bikaner for the first time consequent to which the permits were granted to the appellants. In the absence of any specific provision in that regard

A empowering the RTA to open inter-State route without following procedure, the RTA was held to have committed illegality. The appellants were held to be operating on the inter-State route in the absence of a reciprocal agreement which overlapped the permits granted to the Corporation for Sangaria-Delhi inter-State route. Private operators were held to have been excluded from plying their vehicles on the said route. The permit granted in favour of the appellants on the Sangaria-Delhi inter-State route was quashed. The Division Bench confirmed the judgment of the learned Single Judge vide judgment impugned in this appeal.

C We have heard the learned counsel appearing for the parties and perused the records. As the question of law sought to be raised is common in both the appeals, they are being disposed of by this common judgment.

D Learned counsel appearing for the appellants Mrs. Rani Chhabra submitted that sub-Section (1) of Section 88 has to be construed independently which, according to her, did not prescribe the existence of a reciprocal arrangement regarding the inter-State route permits. According to her sub-sections (5) and (6) cannot come in the way of RTA of a State to grant the permit in a State which, when granted, becomes valid in the other State upon its being counter-signed. Such an argument completely ignores the opening words of the Section "except as may be otherwise prescribed". Such prescribing can be by way of the Act itself or by rules framed under it. Sub-section (5) provides that a proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Government concerned in their official gazette and in any one or more newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representation in connection therewith may be submitted and the date not being less than thirty days from the date of publication on which the Authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered. Sub-section (6) provides that every agreement arrived at between the States shall, in so far as it relates to the grant of counter signature of permits, be published by each of the State Governments concerned in the Official Gazette and in

any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it. The Act envisages three categories of permit-seekers, namely (i) Inter-region, (ii) Intra-region and (iii) inter-State. Different criteria and procedure has been provided under the Act for granting permits in respect of each of the categories. The grant of inter-State permits with which we are concerned in these appeals are permissible under Section 88(5) of the Act. The existence of a route is a condition precedent for exercise of the power under Sub-section (1) of Section 88 of the Act. Inter State route under the scheme of the Act has to be reciprocal and cannot be unilaterally created by one State or an Authority in the State. The concerned State Governments are supposed to deliberate and decide the routes to be opened as inter-State routes by determining the number of trips each route to have and prescribe other conditions for the smooth functioning of the Act to achieve its objective which is claimed to be a social welfare legislation. It has to be noted that the Motor Vehicles Act, 1939 which related to the law of motor vehicles was amended from time to time to keep it upto date. Various committees like National Transport Policy Committee, National Police Commission, Road Safety Committee, Low Powered Two Wheelers Committee and the Law Commission of India examined different aspects of the road transport and recommended updating, simplification and rationalisation of the law relating to motor vehicles. A working group was constituted in January, 1984 to review all the provisions of the Act No.4 of 1939 and to submit draft proposals for comprehensive legislation to replace the existing law. After considering the recommendations of the working group and obtaining the comments of the State Governments it was decided to make important modifications in the Act by taking care of the fast increasing of both commercial vehicles and personal vehicles in the country, the need to encourage the adoption of high technology in automotive sector, the greater flow of passenger and freight, the concern of road safety standards, pollution control measures, standards of transportation of hazardous and explosive materials, the parameters where the private and public sector can co-exist and develop and for effective ways of tracking down traffic offenders. A Bill was moved in the Parliament for seeking to achieve the objectives detailed in the statement of objects and reasons. The Act was thereafter passed on 14th

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Accepting the submissions made on behalf of the appellants would result in frustration of the objective sought to be achieved by the Act. The interpretation put by the High Court is rationale, legal and proper. In the absence of existence of inter-State route, the authorities under the Act were not justified in granting the permits to the appellants. The existence of permit depends upon the reciprocal agreements between the States covered by the route which, admittedly, did not exist in the instant case. The orders of the Authority granting permit in favour of the appellants were thus without jurisdiction.

C Under the circumstances the appeals are dismissed with costs assessed at Rs.500 each.

R.C.K.

Appeal dismissed.