

Ishwar Singh Bagga & Ors. Etc vs State Of Rajasthan Etc on 19 November, 1986

Equivalent citations: 1987 AIR 628, 1987 SCR (1) 300, AIR 1987 SUPREME COURT 628, 1987 (1) SCC 101 (1987) WRITLR 33, (1987) WRITLR 33

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, M.M. Dutt

PETITIONER:

ISHWAR SINGH BAGGA & ORS. ETC.

Vs.

RESPONDENT:

STATE OF RAJASTHAN ETC.

DATE OF JUDGMENT 19/11/1986

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

DUTT, M.M. (J)

CITATION:

1987 AIR 628	1987 SCR (1) 300
1987 SCC (1) 101	JT 1986 892
1986 SCALE (2) 881	

ACT:

Motor Vehicles Act, 1939 Section 129A--Validity of the Notification No. 7-1(6) H/unit X-75 Home (Courts x) Department Government of Rajasthan, empowering Deputy General Manager (Traffic), Assistant Depot Managers and Traffic Inspectors in addition to the Police to exercise the powers under section 129A of the Act in respect of all stage carriages and contract carriages on the Notified routes under section 68-D(3)-- Words and phrases, 'other Person', meaning of--Whether includes officers of the Corporation.

HEADNOTE:

The State of Rajasthan issued a Notification No. 7.1(6)H/Unit-x-75 Home (Court x) dated 15.7.1975 under section 129A of the Motor Vehicles Act, 1939 empowering

certain officers of the Rajasthan State Road Transport Corporation to exercise in respect of all stage carriages and contract carriages on the Notified Routes under section 68-D(3) of the Act, the powers that can be exercised under section 129A of the Act by the police officers who are empowered in that behalf.

The writ petitioners and the appellants are holders of contract carriage permits carrying on business in the State of Rajasthan and other adjoining States. Under the said permits they are entitled to run the contract carriages throughout Rajasthan, except on the notified routes. Some of them also own motor vehicles which are covered by permits issued under section 63(7) of the Act having the privilege of carrying on passengers on contract throughout India.

The petitioners/appellants contended (i) that the appointment of the officers of the Corporation who are their rivals in motor transport business, as officers entitled to exercise powers conferred under section 129A of the Act was violative of Article 19(1)(g) of the Constitution; and (ii) that the said officers who are very much interested in seeing that the Corporation earns much profit, have been overzealous in exercising their powers conferred on them and by seizing and detaining the motor vehicles belonging to the petitioners/appellants have acted contrary to law.

Allowing the petitions and appeals, the Court,

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HELD: 1.1 The Deputy General Manager (Traffic), the Assistant Depot Managers and the Traffic Inspectors of the Corporation could not have been authorised by the State Government to discharge the powers under section 129A of the Motor Vehicles Act, 1939. [315 E]

1.2 Ordinarily, whenever a statute empowers the State Government to appoint persons to administer any of the provisions of the statute, the persons who may be appointed by the State Government under such provision can only be persons appointed in connection with the affairs of the State. In other words they should be employees or officers of the State Government, who are subject to the administrative and disciplinary control of the State Government directly.

1.3 The expression 'other person' mentioned in section 129A of the Act which has to be read ejusdem generis with the words 'any police officer' which precede that expression in section 129A of the Act can only refer to an officer of the Government and not to any officer or employee of any statutory corporation or to any other private person. [314 G]

1.4 A reading of section 129A and section 133A of the Motor Vehicles Act, 1939 together shows that the 'other person' referred to in section 129A of the Act, who may be empowered to discharge the powers under that section can only mean an officer of the Government, such as the Motor Vehicles Officer appointed under section 133A of the Act or

of any other department. It could never have been the intention of the Central Legislature, while enacting section 129A and section 133A of the Act that the powers exercisable under section 129A of the Act could be conferred on persons who were not officers of the Government. If the Central Legislature intended that such powers could be entrusted to private persons or employees of any statutory Corporation the section would have expressly provided in that regard. [313 H--314 B]

1.5 Under the Rajasthan State Road established under section 3 of the Road Transport Corporation Act LXIV of 1950, the officers and servants of the Corporation are not holders of civil posts under the State Government, so as to fall within the term 'other persons'. Further, there is no provision in the Corporations Act, authorising the Corporation to permit any of its officers to exercise the powers under Section 129A of the Motor Vehicles Act or to spend money on the safe custody of the vehicles which are seized and detained under section 129A of the Motor Vehicles Act. [310 C-D, 311 H-312 A]

From the reading of the provisions of the Motor Vehicles Act and of the Corporations Act it is evident that the Corporation is just another operator of motor vehicles which is entitled to run motor vehicles in accordance with law
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after obtaining permits. When the Corporation applies for permits under Chapter IV of the Act it has to compete with other applicants to obtain permits in accordance with the provisions of that Chapter. When an approved scheme is brought into operation under Chapter IV-A of the Act it is no doubt entitled to get permits to the exclusion, complete or partial of other operators. It is also true that when the approved scheme provides that other operators are excluded completely or partially no private operator can operate his motor vehicles along the notified route or in the notified area in question except in accordance with the approved scheme. Barring what is stated above and some other liabilities from which the Corporation is expressly exempted under the Act, the Corporation is subject to all the obligations and responsibilities which are imposed on other private operators by the Act. It is subject to the powers of supervision and control of the transport authorities under the Act and to the rules governing the proper maintenance of transport vehicles. The Corporation is also subject to the jurisdiction of the Motor Vehicles Department which is established under section 133-A of the Act and its vehicles are liable to be inspected and checked by the officers appointed under that section in the interests of the travelling public. It is thus clear that the Corporation is one of the many operators of the motor vehicles in the State though the fleet of the motor vehicles owned by it and the magnitude of the operations carried on by it may be very large. [312 C-F]

1.6 Further every permit issued under Chapter IV of the Act contains a number of conditions which are specified therein. The contravention of either section 22 or section 42(1) of the Act or any of the conditions mentioned in the permit would entitle and officer empowered under section 129A of the Act to seize and detain the vehicle in question and also to provide for the temporary safe custody. A report or complaint, as the case may be, also may be filed by him before the Magistrate for taking action against the owner of the vehicle for violation of any of the provisions of the Act referred to above. It is thus seen that the powers are of a drastic nature and have the effect of depriving the owner of a motor vehicle of his property, which sometimes may be of the value of Rs.2 to 3 lakhs. They also have the effect of depriving the passengers who are travelling in that vehicle of a transport service right in the middle of a route and may expose them to 'hunger and thirst'. Since the Corporation is only entitled to a preference in the grant of permits as respects the Notified routes or in any NOTified area. The police officers who are empowered to exercise certain powers under the Motor Vehicles Act should exercise these powers in respect of motor vehicles owned by the private operators and also in respect of the motor vehicles owned by the State Road Transport Corporation. Such a power cannot be granted to the officers of the Corporation by resorting to the term 'other person' in the Motor Vehicles Act. [309 F-310 A, 312 G, 311 H]

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Having regard to the nature of the power, the expression 'other person' in section 129 also will have to be interpreted as meaning any other person appointed in connection with the affairs of the State Government and not any private person or officer of a Corporation. [315 C]

Krishna Bus Service Pvt. Ltd. v. State of Haryana & Ors., [1985] 3 S.C.C. 711, followed.

Transport Commissioner, Andhra Pradesh v. Sardar Ali Bus Owner, [1983] S.C.R. 729, referred to.

OBSERVATION:

1. The police officers and the officers of the Motor Vehicles Department are expected to discharge their duties properly and diligently and if they discharge their duties in accordance with law with the amount of diligence which is required of them, there should no difficulty in plugging any kind of unauthorised running of stage carriage or contract carriages on the notified routes. Negligence on the part of the Transport Authorities, the Motor Vehicles Department and the police officers in exercising their powers of supervision, inspection and control in respect of the motor vehicles of the Corporation leads to grave public suffering and sometimes to disasters. They should not take it for granted that the motor vehicles of the Corporation do not need to be checked or inspected only because it is established by the State Government. Omission on their part in discharging

these duties amounts to dereliction of public duty. [315 G-H, 312 G-H]

2. Prima facie, the Corporation is not entitled to be paid compensation under section 357 of the Code of Criminal Procedure, 1973. It can be paid such compensation only when it is open to the Corporation to file a suit and recover damages in law for such unauthorised operation of stage carriages. Section 357 of the Code of Criminal Procedure, 1973 provides for payment of compensation out of the fine to certain persons. The orders directing payment of compensation to the Corporation may have been passed under clause (b) of that section which provides that the fine recovered may be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court. Magistrates should hereafter pass such orders only after hearing all the parties. [316 D-F]

JUDGMENT:

ORIGINAL/APPELLATE JURISDICTION: Writ Petition No. 237 of 1986 Etc. (Under Article 32 of the Constitution of India) WITH Civil Appeal Nos. 423536 & 4243/86 R.B. Datar, Mrs. Binu Tamta, Mrs. Rani Chhabra and B.S. Chauhan, for the Petitioners/Appellants. L.M. Singhvi, T.S. Krishnamurthy Iyer, S.K. Jain, A.M. Singhvi, C. Mukhopadhyay, B.D. Sharma and S. Atreya for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The petitioners in the Writ Petitions and appellants in the Civil Appeals are holders of contract carriage permits issued under the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') carrying on business in the State of Rajasthan and other adjoining States. Under the said permits they are entitled to run the contract carriages throughout Rajasthan except on the notified routes. Some of them also own motor vehicles which are covered by permits issued under section 63(7) of the Act having the privilege of carrying passengers on contract throughout India. In these Writ Petitions and Civil Appeals they have questioned the validity of the Notification dated 15.7.1975 issued by the State of Rajasthan under section 129-A of the Act empowering certain officers of the Rajasthan State Road Transport Corporation (hereinafter referred to as 'the Corporation') to exercise in respect of all stage carriages and contract carriages on the notified routes under section 68-D(3) of the Act the power that can be exercised under section 129-A of the Act by police officers who are empowered in that behalf. The Notification reads as follows:

"RAJASTHAN RAJPATRA"

Dated 7.8.1975 HOME (Cr. X) DEPARTMENT NOTIFICA-

TION Jaipur, July 15, 1975 O.O.420. In exercise of the power conferred by section 129-'A of the Motor Vehicles Act, 1939 (Central Act IV of 1939) the State Government hereby further authorises

the following persons to exercise the powers and to take or cause to be taken all the proper steps within their respective jurisdictions under the said scheme in respect of all the stage carriages and contract carriages plying on or in any notified route or in any notified area under-section 68-D(3) of the said Act or in any portion thereof, namely:

S.No.	Persons authorised	Jurisdiction
1.	Deputy General Manager (Traffic)	1. All Rajasthan
2.	Assistant Depot Managers	2. Within the jurisdiction of their respective depot.
3.	Traffic Inspectors	3. Within the jurisdiction of their respective routes

No. F. 1 (6)H / Unit-X-75
by order of Governor

Sd/- Raj Singh
Commissioner for Home/Secy.
to the Government

The petitioners/appellants contend that the officers of the Corporation named in the Notification who are very much interested in seeing that the Corporation earns much profit have been over-zealous in exercising the powers conferred on them under section 129-A Of the Act and seizing and detain- ing the motor vehicles belonging to the petitioners/appel- lants contrary to law. The principal contention urged by the petitioners/appellants is that it was not open to the State Government to appoint persons who are not officers of the Government as persons who could exercise the powers of seizure and detention of property of citizens under section 129-A of the Act. Relying on the Judgment of this Court in Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and Others, [1985] 3 S.C.C. 711, it is contended that the ap- pointment of the officers of the Corporation who are their rivals in motor transport business as officers entitled to exercise powers conferred under section 129-A of the Act was violative of Article 19(1)(g) of the Constitution of India. These Writ Petitions/Civil Appeals are opposed by the State Government and the Corporation. It is contended by the respondents that the impugned notification is issued only to protect the interests of the Corporation and in order to prevent the running of motor vehicles either as stage car- riages or contract carriages along the routes over which the Corporation is exclusively entitled to operate its stage carriages under permits issued under Chapter IVA of the Act. They also contend that the appointment of the officers of the Corporation under section 129-A of the Act is not out- side the scope of that section. In the course of the hearing it was submitted that the said powers would not be used against motor vehicles covered by permits issued under section 63(7) of the Act although it is alleged that- even such vehicles had been seized and detained in the past by the officers of the Corporation. Section 129-A of the Act with which we are concerned in this case reads as follows:

"129-A. Power to detain vehicles used without certificate of registration or permit--Any police officer authorized in this behalf or other person authorized in this behalf by the State Government may, if he has reason to believe that a motor' vehicle has been or is being used in contravention of the provisions of section 22 or without the permit required by subsection (1) of section 42 or in contra- vention of any condition of such permit relat- ing to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle.

Provided that where any such offi- cer or person has reason to believe that a motor vehicle has been or is being used with- out the permit required by sub-section (1) of section 42, he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledge- ment in respect thereof.

Provided further that where a motor vehicle has been seized and detained under this section for contravention of the provi- sions of section 22, such vehicle shall not be released to the owner unless and until he produces a valid-certificate of registration under this Act in respect of that vehicle. Section 129-A was introduced into the Act by section 20 of the Motor Vehicles (Amendment) Act, 1942 (Act 20 of 1942). Section 133-A was introduced by section 21 of the very Amending Act. Originally section 133-A contained only the first three sub-sections. Sub-sections (4) and (5) to section 133-A were added later. Now section 133-A reads thus:

"133-A. Appointment of motor vehicles officer--(1) The State Government may, for the purpose of carrying into effect the provi-

sions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

(3) The State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authori-

ties to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the exer- cise of such powers.

(4) In addition to the powers that may be conferred on any officer 'of the Motor Vehicles Department under subsection (3), such officer as may be empowered by the State Government in this behalf shall also have the power to (--)

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and the rules made thereunder are being observed;

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises which is in the occupation of a person who, he has reason to believe, has committed an offence under this Act or in which a motor vehicle in respect of which such offence has been committed is kept:

Provided that---

(i) any such search without a warrant shall be made only by an officer of the rank of a gazetted officer;

(ii) where the offence is punishable with fine only the search shall not be made after sunset and before sunrise;

(iii) where the search is made without a warrant, the gazetted officer concerned shall record in writing the grounds for not obtaining a warrant and report to his immediate superior that such search has been made;

(c) examine any person and require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;

(d) seize or take copies of any registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed;

(e) launch prosecutions in respect of any offence under this Act and to take a bond for ensuring the attendance of the offender before any court;

(f) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(5) The provisions of the Code of Criminal procedure 1973 (2 of 1974) shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure under the authority of any warrant issued under section 94 of that Code."

In *Transport Commissioner, Andhra Pradesh v. Sardar Ali, Bus Owner*, [1983] S.C.R. 729, this Court has while upholding the constitutionality of section 129-A of the Act explained its scope, manner and the different powers which are exercisable by an officer empowered under that section to exercise the powers mentioned therein. In that case the appellant was the Transport Commissioner

of the State of Andhra Pradesh and not the Andhra Pradesh State Road Transport Corporation. Any police officer or other person authorized by the State Government under section 129A of the Act may seize and detain a motor vehicle if he has reason to believe that the motor vehicle has been or is being used in contravention of the provisions of section 22 of the Act, or without the permit required by subsection (1) of section 42 of the Act, or in contravention of any conditions of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. He is also to take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle. In the first proviso to section 129-A of the Act such authorised officer may instead of seizing the vehicle seize the certificate of registration of vehicle and issue an acknowledgement in respect thereof. It further provides that where the motor vehicle has been seized or detained under the said section for contravention of the provisions of section 22 of the Act, such vehicle shall not be released to the owner unless and until he produces a valid certificate of registration under that Act in respect of that vehicle. The said powers can be exercised in respect of any motor vehicle such as an omnibus, a car, an auto-

rickshaw, a tractor, a lorry etc. etc., the expression 'motor vehicle' having been defined by the Act in sub-section (18) of section 2 of the Act thus:

"2(18). 'motor vehicle' means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises."

Section 22 of the Act requires every person to get his motor vehicle registered under the Act. It provides that no person shall drive any motor vehicle and that no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with Chapter III of the Act and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. Section 42 of the Act provides that no owner of a 'transport vehicle' as defined in sub-section (33) of section 2 of the Act shall use or permit the use of the vehicle in any public place whether or not such vehicle is actually carrying any passenger or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is being used. A 'transport vehicle' means a public service vehicle or a goods vehicle. The different kinds of permits that may be issued in respect of motor vehicles are set out in Chapter IV of the Act. They may be stage carriages, contract carriages, or public carriers. The other kind of transport vehicle is that in respect of which a permit is issued under section 63(7) of the Act which confers the privilege on the holder of the permit to use the vehicle throughout the territories of India. Every permit issued under Chapter IV of the Act contains a number of conditions which are specified therein. The contravention of either section 22 or section 42(1) of the Act or any of the conditions mentioned in the permit would entitle an officer empowered under section 129-A of the Act to seize and detain the vehicle in question and also to provide for its temporary safe custody. A report or complaint, as the case maybe, also may be filed

by him before the Magistrate for taking action against the owner of the vehicle for violation of any of the provisions of the Act referred to above. It is thus seen that the powers are of a drastic nature and have the effect of depriving the owner of a motor vehicle of his property, which sometimes may be of the value of Rs.2 to 3 lakhs. They also have the effect of depriving the passengers who are travelling in that vehicle of a transport service right in the middle of a route and may expose them to 'hunger and thirst' as it was widely advertised in a Pamphlet issued by the Corporation itself. It is against the above background that we have to consider whether it was open to the State Government in this case to authorise some of the officers of the Corporation to exercise the powers under section 129-A of the Act.

Section 129-A of the Act enables the State Government to appoint "any police officer... or other person" under section 129-A of the Act to exercise the powers mentioned therein. In so far as the appointment of a police officer for the said purpose, there is no room for any doubt because the section expressly mentions that a police officer can be authorised under it to exercise the powers mentioned therein. The short question which arises for consideration is whether the expression "other person" mentioned in section 129-A of the Act can include persons other than Government officers, such as the officers of the Corporation. The Corporation is established under the Road Transport Corporations Act, 1950 (Act 64 of 1950) hereinafter referred to as 'the Corporations Act'). The Corporations Act was enacted to provide for the incorporation and regulation of road transport corporations. Under section 3 of the Corporations Act, every State Government is authorised to establish a Road Transport Corporation. The corporation, in question, is one established under that section. It is a body corporate having perpetual succession and a common seal. The management of the Corporation vests in a Board of Directors who are appointed for a prescribed period. It consists of a Chairman and other Directors, being not less than 5 and not more than 17, who may be officials of the State Government or private persons as the State Government may think fit to appoint. The capital of the Corporation consists of any amount contributed by the Central Government or the State Government. The Corporation may, whether or not any capital is provided by the State Government or the Central Government, be authorised to raise by the issue of shares such capital as may be authorised in this behalf by the State Government. The authorised share capital of the Corporation may be divided into such number of shares as the State Government may determine and the number of shares which shall be subscribed by the State Government or the Central Government and other persons (including persons whose undertakings have been acquired by the Corporation) is liable to be determined by the State Government in consultation with the Central Government. The allotment of shares to other parties mentioned in subsection (3) of section 23 of the Corporations Act shall be made by the Corporation in such manner as may be prescribed. Dividends may be paid on the shares issued by it as per law. The Corporation may at any time, with the previous approval of the State Government, redeem the shares issued to the other parties in such manner as may be prescribed. The Corporation is under an obligation to obey the directions which may be issued by the State Government. If the State Government is of the opinion that the Corporation is unable to perform its duties or has persistently made default in the performance of the duties imposed on it by or under the provisions of the Corporations Act or has exceeded or abused its powers, the State Government may, with the previous approval of the Central Government, by notification in the Official Gazette, supersede the Corporation for such period as may be specified in the notification. Thus, it is seen that the Corporation is not a department of the

Govern- ment but it is an independent body corporate established under the statute. Section 14 of the Corporations Act pro- vides that every Corporation shall have a Managing Director, a Chief Accounts Officer and a Financial Adviser, appointed by the State Government. It further provides that a Corpora- tion may appoint a Secretary and such other officers and employees as it considers necessary for the efficient per- formance of its functions. The conditions of appointment and service and scales of pay of the officers and employees of a Corporation are dealt with by sub-section (3) of section 14 of the Corporations Act. It provides that the conditions of appointment and service and the scales of pay of the offi- cers and employees of the Corporation shall (a) as respects the Managing Director, the Chief Accounts Officer and the Financial Adviser, or, as the case may be, the Chief Ac- counts Officer-cum-Financial Adviser, be such, as may be prescribed and as respects the other officers and employees be such as may be subject to the provisions of section 34, be determined by regulations made under the Corporations Act. Section 15 of the Corporations Act provides that the Managing Director shall be the executive head of the Corpo- ration and all other officers and employees of the Corpora- tion shall be subordinate to him. It is, thus, seen that the officers and servants of the Corporation are not holders of civil posts under the State Government, but they are employ- ees of the Corporation. The functions of the Corporation are set out in section 19 of the Corporations Act. Subject to the other provisions of the Corporations Act, A Corporation shall have power to operate road transport services in the State and in any extended area, to provide any ancillary service, to provide for its employees suitable conditions of service including fair wages,. establishment of provident fund, living accommodation, places for rest and recreation and other amenities, to authorise the issue of passes to its employees and other persons either free of cost or at con- cessional rates and on such conditions as it may deem fit to impose, to acquire and held such property, both movable and immovable as the Corporation may deem necessary for the purpose of any of the said activities, and to lease, sell or otherwise transfer any property held by it etc. etc. It may also with the prior approval of the State Government do all other things to facilitate the proper carrying of the busi- ness of the Corporation.

There is no provision in the Corporations Act authoris- ing the Corporation to permit any of its officers to exer- cise the powers under section 129-A of the Act or to spend money on the safe custody of vehicles which are seized and detained under section 129-A of the Act. The Corporation no doubt is entitled to draw up schemes under section 68-C of the Act and to run motor vehicles in accordance with the said scheme after it is approved by the State Government to the exclusion complete or partial of other operators on any notified route or in notified area. Section 68-B of the Act provides that the provisions of Chapter IVA of the Act and the rules and orders made there- under shall have effect notwithstanding anything inconsist- ent therewith contained in Chapter IV of the Act or any other law for the time being in force or in any instrument having effect by virtue of any such law. From the reading of the provisions of the Act and of the Corporation Act it is evident that the Corporation is just another operator of motor vehicles which is entitled to run motor vehicles in accordance with law after obtaining permits. When the Corpo- ration applies for permits under Chapter IV of the Act it has to compete with other applicants to obtain permits in accordance with the provisions of that Chapter. When an approved scheme is brought into operation under Chapter IV-A of the Act it is no doubt entitled to get permits to the exclusion, complete or partial, of other operators. It is also true that when the approved scheme provides that other operators are excluded completely or partially no private operator can operate his motor vehicles along the

notified route or in the notified area in question except in accordance with the approved scheme. Barring what is stated above and some other liabilities from which the Corporation is expressly exempted under the Act, the Corporation is subject to all the obligations and responsibilities which are imposed on other private operators by the Act. It is subject to the powers of supervision and control of the transport authorities under the Act and to the rules governing the proper maintenance of transport vehicles. The Corporation is also subject to the jurisdiction of the Motor Vehicles Department which is established under section 133-A of the Act and its vehicles are liable to be inspected and checked by the officers appointed under that section in the interests of the travelling public. It is thus clear that the Corporation is one of the many operators of the motor vehicles in the State though the fleet of the motor vehicles owned by it and the magnitude of the operations carried on by it may be very large. The police officers who are empowered to exercise certain powers under the Act should exercise those powers in respect of motor vehicles owned by the private operators and also in respect of the motor vehicles owned by the Corporation. Negligence on the part of the Transport Authorities, the Motor Vehicles Department and the police officers in exercising their powers of supervision, inspection and control in respect of the motor vehicles of the Corporation leads to grave public suffering and sometimes to disasters. They should not take it for granted that the motor vehicles of the Corporation do not need to be checked or inspected only because it is established by the State Government. Omission on their part in discharging these duties amounts to dereliction of public duty.

Section 129-A and section 133-A of the Act, as mentioned earlier, were introduced into the Act by Act 20 of 1942. Clauses 20 and 21 of the Notes on Clauses found in the Statement of Objects and Reasons attached to the Bill relating to the Amending Act of 1942 read thus:

"Clause 20--Although the plying of vehicles without registration or of transport vehicles without a permit is punishable, there is no provision for stopping them from plying and thus continuing their offence. The clause provides for the grant of power for authorised officers to detain vehicles so as to prevent their being used without being registered or without a permit or in violation of certain conditions of the permit.

Clause 21 --The powers under Chapters VI and VII with which police officers have been invested cannot be exercised by officers of other departments of the Provincial Government. It is desirable that when special departments are set up for the purpose of administering the Act, the officers of these departments should have the powers entrusted to police officers by the Act."

Clause 20 relates to section 129-A of the Act and clause 21 relates to section 133-A of the Act. It is clear from clause 20 that by enacting section 129A of the Act the Central Legislature intended to authorise certain officers to detain vehicles so as to prevent being used without being registered or without a permit or for violation of certain conditions of the permit. Clause 21 of the Notes on Clauses explains the reason for establishing the Motor Vehicles Department in a State. Sub-section (3) of section 133-A of the Act provides that the State Government may make rules to regulate the discharge by the officers of the Motor Vehicles Department of their functions and in particular and

without prejudice to the generality of the foregoing power to pre- scribe the uniforms to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under the Act) to be exercised by them and the conditions governing the exercise of such powers. Sub- section (4) of section 133-A authorises inter alia the State Government to empower the officers of the Motor Vehicles Department to exercise powers of search without a warrant in certain cases, to examine any person and require the produc- tion of any register or other document maintained in pursu- ance of the Act, and take on the spot or otherwise state- ments of any person which they may consider necessary for carrying out the purposes of the Act, to launch prosecutions in respect of any offence under the Act and to take a bond for ensuring the attendance of the offender before any court. A reading of section 129-A and section 133-A of the Act together shows that the "other person" referred to in section 129-A of the Act, who may be empowered to discharge the powers under that section can only mean an officer of the Government, such as the Motor Vehicles Officer appointed under section 133-A of the Act or of any other department. It could never have been the intention of the Central Legislature, while enacting section 129-A and section 133-A of the Act that the powers exercisa- ble under section 129-A of the Act could be conferred on persons who were not officers of the Government. If the Central Legislature intended that such powers could be entrusted to private persons or employees of any statutory Corporation the section would have expressly provided in that regard. Ordinarily, whenever a statute empowers the State Government to appoint persons to administer any of the provisions of the statute, the persons who may be appointed by the State Government under such provision can only be persons appointed in connection with the affairs of the State. In other words they should be or employees officers of the State Government, who are subject to the administra- tive and disciplinary control of the State Government di- rectly. The powers of search, seizure and detention of vehicles belonging to private parties and of launching prosecutions are incidental to the sovereign powers of the State and they cannot ordinarily be entrusted to private persons unless the statute concerned makes express provi- sions in that regard. It is a different matter if a private person on his own files a complaint before magistrate and wishes to establish a criminal charge. In such a case the private person would not be investigating into the crime with the aid of the powers of search, seizure or detention. The Magistrate may, if he so desires, direct a police offi- cer to investigate into the allegations and report to him. In order to illustrate the above point reference may be made to section 43 of the Code of Criminal Procedure, 1973. It provides that any private person may arrest or cause to be arrested any person who in his presence commits a non-bail- able and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station. We are of the view that the expression "other person" mentioned in section 129-A of the Act which has to be read ejusdem generis with the words 'any police officer' which precede that expression in section 129-A of the Act can only refer to an officer of the Government and not to any officer or employee of any statutory Corporation or to any other private person. We have a similar provision in section 129 of the Act. That section authorises the-State Government to empower any police officer or other person to exercise the powers under that section. Such police officer or other person may, if he has reason to believe that any identification mark carried on a motor vehicle or any li- cence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the

Indian Penal Code (45 of 1860), seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of. such mark or document. That section also provides that any police officer authorised in that behalf or other person authorised in that behalf by the State Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under the Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence and the said Court shall, on the first appearance of such driver before it, return the li- cence to him in exchange for the temporary acknowledgment given under sub-section (3) of section 129 of the Act. Having regard to the nature of the power, the expression "other person" in section 129 ,also will have to be inter- preted as meaning any other person appointed in connection with the affairs of the State Government and not any private person or officer of a Corporation.

It may be that the Corporation is established by the Government with the capital contributed by the Central Government or the State Government and it may also be that for the purposes of Part III of the Constitution the Corpo- ration is treated as 'a State'. Nevertheless the officers of the Corporation cannot be treated as persons falling within the meaning of the expression "other persons" in section 129 or section 129-A of the Act, even though some of them may be officers deputed by the State Government to work as the officers and servants of the Corporation. In view of the foregoing we hold that the Deputy General Manager (Traffic), the Assistant Depot Managers and the Traffic Inspectors of the Corporation could not have been authorised by the State Government to discharge the powers under section 129-A of the Act. The impugned Notification has to fail on this account only. We also hold that the reasons given in support of the decision in Krishna Bus Service case (supra) are equally applicable to this case also.

It was argued that on account of unauthorised use of motor vehicles as stage carriages or contract carriages on the notified routes over which the Corporation has got exclusive right to operate its vehicles, the Corporation is losing a large amount of revenue and therefore it was neces- sary to empower the officers of the Corporation to exercise the powers under section 129-A of the Act. We do not find it as a satisfactory ground to uphold the impugned Notifica- tion. The police officers and the officers of the Motor Vehicles Department are expected to discharge their duties properly and diligently and if they discharge their duties in accordance with law with the amount of diligence which is required of them, there should be no difficulty in plugging any kind of unauthorised running of stage carriages or contract carriages on the notified routes. We have to im- press upon the police officers of the Motor Vehicles Department of the State of Rajasthan not to allow the confidence vested in them to be eroded. We hope and trust that they would discharge the duties to be performed by them strictly and ensure that the provisions of the Act are obeyed by the motor vehicle operators. In view of the foregoing, the impugned Notification is liable to be set aside and we accordingly quash it. Before leaving this case we have to observe that in some of the orders passed by certain magistrates in respect of persons accused of running motor vehicles unauthorisedly on the notified routes it is seen that the fines levied there- under have been ordered to be paid over to the Corporation. We are told that the Corporation has realised several lakhs of rupees under such orders. Section 357 of the Code of Criminal Procedure, 1973 provides for payment of compensa- tion out of the fine to certain persons. The orders direct- ing payment of compensation to the

Corporation may have been passed under clause (b) of that section which provides that the fine recovered may be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court, Prima facie, we feel that the Corporation is not entitled to be paid any compensation under section 357 of the Code of Criminal Procedure, 1973. It can be paid such compensation only when it is open to the Corporation to file a suit and recover damages in law for such unauthorised operation of stage carriages. The question whether such unauthorised running will give rise to a claim for damages in a civil court is not free from doubt. We do not, however, express our opinion on the above question. This is a matter in which the State is also interested. We hope that the magistrates before whom such cases are filed hereafter will, before passing an order under section 357 of the Code of Criminal Procedure, 1973 in favour of the Corporation, examine and decide the question in accordance with law.

In the result these writ Petitions/Civil Appeals are allowed. There will, however, be no order as to costs.

S.R.
allowed.

Petitions & Appeals