

A Secretary, Regional Transport ... vs D.P. Sharma And Others on 12 December, 1988

Equivalent citations: 1989 AIR 509, 1988 SCR SUPL. (3)1038, AIR 1989 SUPREME COURT 509, 1989 SCC (SUPP) 1 407, (1989) 1 MAD LW 497, 1989 (103) MADLW 497, (1988) 4 JT 686 (SC), ILR 1989 KANT 409, (1989) 1 CURCC 141

Author: M.M. Dutt

Bench: M.M. Dutt

PETITIONER:

A SECRETARY, REGIONAL TRANSPORT AUTHORITY, BANGALORE AND ANOT

Vs.

RESPONDENT:

D.P. SHARMA AND OTHERS

DATE OF JUDGMENT 12/12/1988

BENCH:

DUTT, M.M. (J)

BENCH:

DUTT, M.M. (J)

NATRAJAN, S. (J)

CITATION:

1989 AIR 509 1988 SCR Supl. (3)1038

1989 SCC Supl. (1) 407 JT 1988 (4) 686

1988 SCALE (2)1521

CITATOR INFO :

RF 1990 SC2072 (37)

ACT:

Motor Vehicles Act 1939: Sections 62, 63 and 63 (6)-
'Special permit' grant of--Whether permissible after
Karnataka Contract Carriages Acquisition Act 1976 came into
force.

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Karnataka Contract Carriages (Acquisition) Act 1976:
Section 3 9g), 3 (m), 14 and 20 (3)-'Contract Carriages'-
Special Permit'-Issuance of--Under section 63(6)-Motor
Vehicles Act, 1939- Pmissibility of.

Words and Phrases--'Has been'--Meaning of:

HEADNOTE:

Respondent No. 1, the owner of a public service vehicle, made an application to the Regional Transport Authority for the grant of a 'special permit' under section 63(6) of the Motor Vehicles Act, 1939. The Regional Transport Authority rejected the said application on the ground that the provisions of the Karnataka Contract Carriages (Acquisition) Act, 1976 prohibited the grant of such permit.

Aggrieved by the aforesaid order of refusal, respondent No. 1 filed a writ petition in the High Court and a Single Judge of the High Court allowed writ petition and directed the Regional Transport Authority to consider the application of respondent No.1 for the grant of a special permit.

The Regional Transport Authority preferred a writ appeal. The Division Bench of the High Court taking the view that the intention of the legislature was that only a public service vehicle in relation to which a special permit had been issued when the 1976 Act came into force and which was not operating as a stage carriage should be acquired, held that a public service vehicle in relation to which a special permit had not been issued when the Act came into force would not come within the definition of 'contract carriage' under section 3(g) of the Act and the prohibition contained in section 20 of the Act against the grant of contract carriage permit would not extend to the grant of special

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permit under sub-section 6 of section 63 of the Motor Vehicles Act. The Division Bench dismissed the appeal.

The Regional Transport Authority appealed by special leave to this Court. On the question whether after the coming into force of the Karnataka Contract Carriages (Acquisition) Act, 1976, a special permit under section 63(6) of the Motor Vehicles Act, 1939 can be granted under the Act.

Allowing the appeals,

HELD: 1. Section 14 read with Section 20(3) of the Karnataka Contract Carriages (Acquisition) Act, 1976 confers a monopoly on the Karnataka State Road Transport Corporation to run vehicles as contract carriages. [1050A]

2. Section 14 read with section 20(3) of the Act clearly prohibits the grant of renewal of any permit for the running of any contract carriage. [1049C]

3. The High Court was not therefore right in its view that a public service vehicle in relation to which a special permit had not been issued when the Act came into force, would not come within the definition of 'contract carriage' in section (g) and the prohibition contained in Section 20 of the Act against the grant of contract carriage permit cannot extend to grant of special permit under Section 63(6) of the Motor Vehicles Act. [1050B-C]

4. Under clauses (i) and (ii) of Section 3(g) of the Act

if a special permit under Section 63(6) or a temporary permit under Section 62(1) or sub-section (I-C) of Section 68-F of the Motor Vehicles Act has been issued, it will come within the purview of the definition of 'contract carriage'. [1046C-D]

5. If a special permit under Section 62(1) or under Section 63(6) of the Motor Vehicles Act was in force on January 30, 1976 in respect of a stage carriage, such a stage carriage will not be a 'contract carriage' within the meaning of Section 3(g) of the Act. [1046 D]

6. Whether the expression 'has been' occurring in a provision of a statute denotes transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of the Legislature to be gathered from the provision in which the said expression occurs or from the other provisions of the statute. [1046H; 1047A]

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In the instant case, the words 'has been' contemplate the issuance of a special permit or a temporary permit as preferred to in clauses (i) and (ii) of Section 3(g) of the Act after the enactment of the Act which is clear from exclusion clause (ii) of Section 3(g) which excludes a stage carriage from the definition of 'contract carriage', if special permits issued under section 62(1) or Section 63(6) of the Motor Vehicles Act were in force on January 30, 1976. [1049F]

7. The words 'contract carriage' occurring in Section 3(m) must be read in the light of the definition as contained in section 3(g) of the Act. So read, it is manifest that section 14 read with section 20(3) of the Act clearly bars the making of any application for a permit or for renewal of an existing permit for the running of a vehicle, whether a contract carriage or a stage carriage, as a contract carriage. [1049D-E]

State of Karnataka v. Shri Ranganatha Reddy. [1978] 1 SC 641 and Athlumney Ex parte Wilson, [1898] 2 QB 547 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 337-38 of 1982.

From the Judgments and order date 5.7.80 and 3.2.1981 of the Karnataka High Court in W.P. No. 543/1976 and 1217 of 1981 respectively .

R.N. Narasimamurthy. Attorney General and P.R. Ramasesh for the Appellants.

G.L. Sanghi, A.K. Sen H.B. Datar. K.R. Nagaraja. N. Ganpathy, K.R. Nambial, R.P. Ranga Swamy, R.B. Datar and Ms. c.K. Sucharita for the Respondents .

R.S. Hegde for the impled party.

The Judgment of the Court was delivered by. DUTT, J. These appeals by special leave preferred at the instance of the Secretary, Regional Transport Authority, Bangalore, and the State of Karnataka, are directed against the judgment of the Division Bench of the Karnataka High PG NO 1041 Court dismissing the appeal preferred by the appellants and affirming that of the learned Single Judge of the High Court whereby the Rule issued on the writ petition filed by the respondent No. 1 D.P. Sharma was made absolute. The respondent No. 1, who is the owner of a public service vehicle, made an application on October 10, 1976 to the Regional Transport Authority for the grant of a special permit under sub-section (6) of section 63 of the Motor Vehicles Act for the period from November 15, 1976 to November 22, 1976. The Regional Transport Authority rejected the said application on the ground that the provisions of the Karnataka Contract Carriages (Acquisition) Act, 1976, hereinafter referred to as 'the Act', prohibit the grant of such permits. The respondent No. 1 being aggrieved by the refusal by the Regional Transport Authority to grant a special permit filed a writ petition in the High Court. A learned Single Judge of the High Court allowed the writ petition and directed the Regional Transport Authority to consider the application of the respondent No. 1 for the grant of special permit.

Against the judgment of the learned Single Judge, the appellants preferred a writ appeal to the Division Bench of the High Court. The Bench took the view that the intention of the Legislature was that only a public service vehicle in relation to which a special permit had been issued when the Act came into force and which was not operating as a stage carriage should be acquired. Accordingly, it was held that a public service vehicle in relation to which a special permit had not been issued when the Act came into force would not come within the definition of 'contract carriage' under section 3(g) of the Act and the prohibition contained in section 28 of the Act against the grant of contract carriage permit would not extend to the grant of special permit under sub-section (6) of section 63 of the Motor Vehicles Act. In that view of the matter, the Division Bench dismissed the appeal preferred by the appellants.

The only point that is involved in these appeals is whether after the coming into force of the Act, a special permit under section 63(6) of the Motor Vehicles Act can be granted under the Act.

The Act is to provide for the acquisition of contract carriages and for matters incidental, ancillary or subservient thereto. The preamble provides, inter alia as follows:

PG NO 1042 'Whereas contract carriages and certain other categories of public service vehicles are being operated in the State in a manner highly detrimental and prejudicial to public interest;

And Whereas with a view to prevent such misuse and also to provide better facilities for the transport of passengers by road and to give effect to the policy of the State

towards securing that the ownership and control of the resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; And Whereas for the aforesaid purposes it is considered necessary to provide for the acquisition of contract carriages and certain other categories of public service vehicles in the State and for matters incidental, ancillary or subservient thereto;

It is apparent from the preamble of the Act that the primary object of the Act is acquisition of contract carriages with a view to preventing misuse and also to provide better facilities for the transport of passengers by road Besides the preamble, we may refer to the Statement of Objects and Reasons for the Act which will show the back ground for the enactment of the Act. The Statement of objects and Reasons for the Act is as follows:

"A large number of contract carriages were being operated in the State to the detriment of public interest and were also functioning stealthily as stage carriages. This had to be prevented. Article 39(b) and (c) enjoins upon the State to see that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth to the common detriment.

In view of the aforesaid it was considered necessary to acquire the contract carriages run by private operators Accordingly the Karnataka Contract Carriages PG NO 1043 (Acquisition) Ordinance, 1976 was promulgated. The Bill "seeks to replace the Ordinance."

The constitutional validity of the Act was challenged before this Court and a Constitution Bench of Seven Judges in *State of Karnataka v. Shri Ranganatha Reddy*, [1978] 1 SCR 641 upheld the validity of the Act. In considering the question of validity of the Act, this Court referred to the Statement of Objects and Reasons for the Act and on the basis of various affidavits filed on behalf of the State, observed that the operators were misusing their permits granted to them as contract carriage permits, and that in many cases the vehicles were used as stage carriages picking up and dropping passengers in the way. Accordingly, the Legislature thought that to prevent such misuse and to provide for better facilities to transport passengers and to the general public, it was necessary to acquire the vehicles permits and all right title and interest of the contract carriage operators etc. Keeping in view the objects and reasons for the enactment of the Act, we have to consider whether after the coming into force of the Act, it is permissible to grant a special permit under section 68(6) of the Motor Vehicles Act. But before we do that we may refer to the Scheme of the Act.

We have already referred to the preamble to the Act providing for the acquisition of contract carriages. The Act shall be deemed to have come into force on January 30, 1976 as provided in sub-section (3) of section 1 of the Act. Section 2 contains a declaration that the Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39

of the Constitution of India and the acquisition therefor of the contract carriages and other property referred to in section 4 of the Act. Section 3 is the definition section. Clause (g) of section 3 is an extended definition of contract carriage' as given in section 3(2) of the Motor Vehicles Act. and we shall presently refer to and deal with the definition in detail. Clause (h) of section 3 of the Act defines 'contract carriage operator'. Under clause (m) of section 3 of the Act, 'permit' means the permit granted under the Motor Vehicles Act, authorising the use of a vehicle as a contract carriage. Section 4 is the vesting provision of contract carriages etc. Section 6 provides for the determination of the amount for the vesting of the acquired property under section 4 of the Act. Section 14 bars the issuance of a fresh permit or renewal of the existing permit for the running of any contract carriage. Sub-section (l) of section 20 provides inter alia that all contract carriage permits granted or renewed in respect of PG NO 1044 any vehicle, other than a vehicle acquired under the Act or belonging to the Karnataka State Road Transport Corporation or referred to in section 24 of the Act, shall stand cancelled. Sub-section (3) of Section 20 provides that "no officer or authority shall invite any application or entertain any such application of persons other than the Corporation for the grant of permit for the running of any contract carriage".

It has been already noticed that the Act provides for acquisition of contract carriages. The words 'contract carriage' have been defined in section 3(R) of the Act as follows:

3(g). 'contract carriage' shall have the same meaning as in clause(3) of section 2 of the Motor Vehicles Act and includes-

(i) a public service vehicle in relation to which a special permit has been issued under sub-section (6) of section 63 of the Motor Vehicles Act:

(ii) a public service vehicle in relation to which a temporary permit has been issued under sub-section (l) of section 62 or sub-section (1C) of section 68F of the Motor Vehicles Act;

(iii) a public service vehicle without a contract carriage permit but which is specified as contract carriage in the concerned certificate of registration;

(iv) any right in or over such vehicles or moveable property, but does not include,

(i) a tourist vehicle in relation to which a permit has been issued under sub-section (7) of section 63 of the Motor Vehicles Act;

(ii) a vehicle operating as a stage carriage in relation to which on the 30th day of January, 1976 a temporary contract carriage permit or a special permit issued under sub-section (l) of section 62 or sub-section (6) of section 63 respectively of the Motor Vehicles Act, is in force;

(iii) a motor cab;"

PG NO 1045 Under section 3(g), the 'contract carriage' shall, in the first place, have the same meaning as in section 2(3) of the Motor Vehicles Act, which provides as follows:

"2(3). 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum--

(i) on a time basis whether or not with reference to any route or distance. or

(ii) from one point to another, and in either case without stopping to pick up, or set down along the line of route passengers not included in the contract, and includes a motor cab notwithstanding that the passengers may pay separate fares;"

In the second place, section 3(g) gives an extended meaning to 'contract carriage'. Under the extended meaning, 'contract carriage' will include a public service vehicle in relation to which a special permit has been issued under section (6) of section 63 of the Motor Vehicles Act or in relation to which a temporary permit has been issued under sub-section (1) of section 62 or sub-section (1C) of section 68F of the Motor Vehicles Act. It also includes a public service vehicle without a contract carriage permit but which is specified as contract carriage in the concerned certificate of registration. We are not referring to clauses

(iv) and (v) of the extended definition, as the same are not relevant for our purpose.

A 'public service vehicle' has been defined in section 2(25) of the Motor Vehicles Act as meaning any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage. Thus, it is apparent from the definition of 'public service vehicle' that it includes a contract carriage and a stage carriage as well. Under clauses (i) and (ii) of section 3(g) of the Act if a special permit under section 63(6) or a temporary permit under section 62(1) or sub-section (1C) of section 68F of the Motor Vehicles Act has been issued, it will come within the purview of the definition of contract carriage'. In other words, if a 'contract carriage' or a 'stage carriage' within the meaning of the Motor Vehicles Act has been issued a special permit or a temporary permit, as referred to in PG NO 1046 clauses (i) and (ii) of section 3(g). such 'contract carriage' or 'stage carriage' will be a contract carriage within the meaning of section 3(g) of the Act. Now we may refer to the latter part of the definition of 'contract carriage' under section 3(g) of the Act which excludes certain vehicles from the definition of contract carriage'. The exclusion that has been provided in clause

(ii) is important for our purpose. It excludes a stage carriage in respect of which a temporary contract carriage permit under section 62(1) or a special permit under section 63(6) of the Motor Vehicles Act is in force on January 30, 1976, that is, the date on which the Act is deemed to have come into force. Under clauses (i) and (ii) of section 3(g) of the Act, which form a part of the extended definition of 'contract carriage', a public service vehicle, that is to say, a contract carriage or a stage carriage in respect of which a special permit under section 63(6) or a temporary permit

under section 62(1) or section 68F(IC) of the Motor Vehicles Act has been issued, will come within the meaning of 'contract carriage' under the Act. On the other hand, if a special permit under section 62(1) or under section 63(6) of the Motor Vehicles Act was in force on January 30, 1976 in respect of a stage carriage, such a stage carriage will not be a 'contract carriage' within the meaning of section 3(g) of the Act.

The High Court seems to think that if any special permit had not been granted to a public service vehicle when the Act came into force, such a vehicle will not come within the meaning of the definition of 'contract carriage' under section 3(g). This view of the High Court is not correct. In clauses (i) and (ii) of section 3(g), the expression 'has been issued' occurs. It is submitted by the learned Advocate General of Karnataka that in view of the expression 'has been issued', clauses (i) and (ii) contemplate the issuance of a special permit or a temporary permit after the coming into force of the Act. It does not include the issuance of a special permit or a temporary permit earlier than the date of the commencement of the Act. The learned Advocate General has placed reliance on an English decision in *re Athlumne, Ex parte Wilson*, [1898] 2 QB 547. In that case, the words 'where a date has been proved under the principal Act' came to be construed and it was observed "But this form of words is often used to refer, not to a past time which preceded the enactment, but to a time which is made past by anticipation a time which will have become a past time only when the event occurs on which the statute is to operate." In our opinion, whether the expression 'has been' occurring in a provision of a statute denotes transaction prior to the enactment of the statute in question or a transaction PG NO 1047 after the coming into force of the statute will depend upon the intention of the Legislature to be gathered from the provision in which the said expression occurs or from the other provisions of the statute.

In the instant case, the words 'has been' contemplate the issuance of a special permit or a temporary permit as referred to in clauses (i) and (ii) of section 3(g) of the Act after the enactment of the Act which is clear from the exclusion clause (ii) of section 3(g) which excludes a stage carriage from the definition of 'contract carriage', if special permits issued under section 62(1) or section h.(6) of the Motor Vehicles Act were in force on January 30, 1976. It is difficult to interpret clauses (i) and (ii) of section 3(g) as contemplating the issuance of a temporary permit or a special permit. as referred to therein before the coming into force of the Act. Merely because of the use of the words has been in clauses (i) and (ii) of section 3(g), such an interpretation is not possible to be made, particularly in view of the legislative intent apparent from the exclusion clause (ii), namely. that the Legislature only. excluded a stage carriage in respect of which a temporary contract carriage or a special permit issued under section 62(1) or 63(6) of the Motor Vehicles Act was in force on January 30, 1976.

It has, however, been urged by Mr. A K. Sen learned counsel appearing on behalf of the respondent No. 1. that a stage carriage vehicle in respect of which a special permit has been granted, is excluded from the operation of the Act. counsel submits that the Act only contemplates the acquisition of a contract carriage within the meaning of the Motor vehicles Act and not a stage carriage in respect of which a special permit was or has been granted. In support of his contention, the learned counsel has placed strong reliance on the definition of the word permit under section 3(m) of the Act, as meaning the permit granted under the Motor Vehicles Act, authorising the use of a vehicle as a contract carriage. It is submitted by him that the contract carriage under the Motor Vehicles Act. It

is urged by the learned Counsel that the word permit used in the different provisions of the act will have the same meaning of the word as defined in section 3(m), that is to say, the permit granted under the Motor Vehicles Act for the use of a vehicle as a contract carriage.

In section 3(h) 'contract carriage operator' has been defined as follows:

PG NO 1048 "3(h). 'contract carriage operator' means an operator holding one or more contract carriage permit and includes any person in whose name a public service vehicle is registered and is specified as a contract carriage in the certificate or registration of such vehicle ;"

According to the learned Counsel, the word 'permit' in section 3(h) refers only to permit granted in respect of a contract carriage under the Motor Vehicles Act. Section 4 is the vesting provision of contract carriages. Clause (a) of sub-section (1) of section 4 provides as follows: "4 Vesting of contract carriages, etc.--(1) On and from such date as may be specified by the State Government in this behalf by notification in respect of any contract carriage operator,

(a) every contract carriage owned or operated by such contract carriage operator along with the permit or the certificate of registration or both as the case may be shall vest in the State Government absolutely free from all encumbrances;"

Counsel submits that the word Permit' in clause (a) refers to a permit granted to a vehicle for the use of a contract carriage under the Motor Vehicles Act. In other words, the sum and substance of the argument of Mr. Sen is that the word 'permit' in section .(m) relates to the permit granted to a vehicle for the use as a contract carriage under the Motor Vehicles Act and the definition with this interpretation should be applied to the word Permit' occurring in the different provisions of the Act including section 3(h) and should also be applied to the word occurring in section 14 of the Act. Section 14 provides as follows:

"14 Fresh permit or renewal of the existing permit barred.--Except otherwise provided in this Act (1) no person shall on or after the commencement of this Act apply for any permit or fresh permit or for renewal of an existing permit for the running of any contract carriage in the State; and (2) every application for the grant of a permit or fresh permit Or for the renewal of the existing permit and all PG NO 1049 appeals or revisions arising therefrom relating thereto made or preferred before the commencement of this Act and pending in any court or with any officer, authority or Tribunal constituted under the Motor Vehicles Act shall abate. "

It is submitted that only the grant or renewal of a permit in respect of a 'contract carriage' within the meaning of the Motor Vehicles Act is prohibited under section 14 of the Act, and such prohibition does not relate to a stage carriage for the running of the same as; contract carriage.

We are unable to accept the contention. If the interpretation as given by Mr. Sen of the definition of the word 'permit', under section 3(m) of the Act is accepted, it will make the definition of the words 'contract carriage' under section 3(g) of the Act meaningless and nugatory and also set at naught the object of the Act and the clear intention of the Legislature to acquire a stage carriage as well in respect of which a special permit or a temporary permit, as referred to in clauses (i) or (ii) of section 3(g), has been granted. The words 'contract carriage' occurring in section 3(m) must, in our opinion, be read in the light of the definition as contained in section 3(g) of the Act. So read, it is manifest that section 14 read with section 20(3) of the Act clearly bars the making of any application for a permit or fresh permit or for renewal of an existing permit for the running of a vehicle, whether a contract carriage Or a stage carriage. as a contract carriage.

It is not disputed before use that the Act does not contemplate the vesting of stage carriage simpliciter But section 14 read with section 20(3) of the Act clearly, prohibits the grant or renewal of any permit for the running of any contract carriage. A stage carriage in respect of which d temporary contract carriage permit or a special permit under section 62(1) or section 63(6) respectively of the Motor Vehicles Act was in force on January 3t) 1')76, has been excluded from the definition obtaining a permit under the Motor Vehicles Act. But whether a special permit was granted in respect of a stage carriage or not, no such PG NO 1050 permit can be granted in respect of a stage carriage for the running of it as a contract carriage. In other words, section 14 read with section 20(3) of the Act confers a monopoly on the Karnataka State Road Transport Corporation to run vehicles as contract carriages.

The High Court is not, therefore, right in its view that a public service vehicle in relation to which a special permit had not been issued when the Act came into force, would not come within the definition of 'contract carriage' in section 3(g) and the prohibition contained in section 20 of the Act against the grant of contract carriage permit cannot extend to grant of special permit under section 63(6) of the Motor Vehicles Act.

But before we conclude, we may observe that but for the object of the Act as stated above, it would have been very difficult for us to interpret the provisions of the Act in view of bad drafting of the same.

Be that as it may, for the reasons aforesaid, these appeals are allowed and the judgment of the High Court is set aside. The writ petition filed by the respondent No. 1 in the High Court is dismissed. There will, however, be no order as to costs.

N.V.K.

Appeals allowed.