

Brij Mohan Parihar vs M.P. State Road Transport Corporation & ... on 25 November, 1986

Equivalent citations: 1987 AIR 29, 1987 SCR (1) 369, AIR 1987 SUPREME COURT 29, 1987 (1) SCC 13, 1987 CRILR(SC MAH GUJ) 105, (1986) JT 935 (SC), (1987) 1 CURLJ(CCR) 349, 1986 JT 935 AND 940 (1), (1987) 100 MAD LW 122, (1987) 1 SCJ 210, (1987) 2 SUPREME 37, (1987) 2 CURCC 405, (1987) JAB LJ 170

Author: E.S. Venkataramiah

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

PETITIONER:

BRIJ MOHAN PARIHAR

Vs.

RESPONDENT:

M.P. STATE ROAD TRANSPORT CORPORATION & ORS.

DATE OF JUDGMENT 25/11/1986

BENCH:

VENKATARAMIAH, E.S. (J)

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DUTT, M.M. (J)

CITATION:

1987 AIR	29	1987 SCR	(1) 369
1987 SCC	(1) 13	JT 1986	935
1986 SCALE	(2) 894		

ACT:

Motor Vehicles Act, 1939: ss. 68-C, 68-D, 68-F, 68-FF, 42 and 59: State Road Transport Corporation--Permit issued to--Private operator whether entitled to ply his motor vehicle as nominee of Corporation.

Road Transport Corporation Act, 1950 :
s.19(2)(h)--State Road Transport Corporation not authorised to allow private operator to run his vehicle on a permit issued to the Corporation.

HEADNOTE:

Section 68-FF of the Motor Vehicles Act, 1939 prohibits grant of permit in respect of notified area or notified route by State Transport Authority or the Regional Transport Authority except in accordance with the scheme published under subs. (3) of s. 68-D but provides for grant of temporary permits in cases where no application for a permit has been made by the State Transport Undertaking in respect of such notified area or route. Section 59 bars transfer of permits from one person to another except with the permission of the concerned Transport Authority. Section 42 prohibits the owners of transport vehicles from plying them in public places except in accordance with the conditions of the permit.

Under an agreement entered into with the respondent Corporation the petitioner was permitted to PLY his bus on a specified route as a nominee of the former for a period of five years ending on December 23, 1982. Thereafter the respondent was issued temporary permits and the petitioner was permitted by it to ply his motor vehicle on monthly basis. The route in question had by that been brought within a scheme published under s. 68-C of the Act.

The respondent through an advertisement dated August 12, 1984 invited tenders from private operators for the grant of privilege of running buses as stage carriages as its nominees. Aggrieved by the said advertisement the petitioner filed a writ petition in the High Court assailing the decision to invite tenders as arbitrary and illegal, and for a writ in the nature of mandamns directing the respondent Corporation to allow him to ply his motor vehicle as its nominee for a further period of five years. Under an interim order of the Court he continued to ply his bus as a stage carriage till May 31, 1985. Subsequently, the High Court dismissed the petition since the scheme

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published under s. 68-C of the Act had been approved and brought into effect from June 1, 1985.

Dismissing the petition for special leave, the Court,

HELD: 1.1 It is not permissible under the Motor Vehicles Act for a State Transport Undertaking to obtain a permit under Chapter IV-A and to allow a private operator as its nominee to operate under that permit his motor vehicle as a stage carriage on the notified route. It cannot by granting such permission collect any money either as nomination fees or as royalty or supervision charges. Section 42 and 59 of the Act which equally apply to permits issued under Chapter IV-A, debar all holders of permits, including the State Transport Undertakings from indulging in such unauthorised trafficking in permits. [373E, 374A, D]

1.2 The petitioner was not, therefore, entitled to the issue of a writ in the nature of mandamus to the respondent Corporation to allow him to operate his' motor vehicle as a stage carriage under the permit obtained by the latter, as its nominee. The agreement entered into by the petitioner

with the respondent was clearly contrary to the Act and could not be enforced. The advertisement issued by the respondent was equally ineffective. [374E]

2. If the respondent Corporation cannot run its vehicle under a permit issued to it, it must surrender it so that the Regional Transport Authority may grant the permit to some other deserving applicant or it must transfer it to somebody else with the permission of the Regional Transport Authority granted under s.59 of the Act. It cannot allow the permit to be used by others either for consideration or without consideration. If it does so it would be exercising the power of the Regional Transport Authority. The Corporation cannot thus indirectly clutch at the jurisdiction of the Regional Transport Authority. [374F]

3.1 Even though the Corporation was established by the State Government under the Road Transport Corporations Act, 1950 and the State Government had by an executive order approved the action of the Corporation to allow private operators to operate their vehicles under the permits issued to the Corporation, the Corporation could not in law allow its nominees to exploit the permits in such manner. [374B]

3.2 Section 19(2)(h) of the Road Transport Corporation Act only authorises the Corporation to purchase or otherwise secure by agreement vehicles owned or possessed by the owner of any other undertaking for use thereof for the purpose of its undertaking. It does not authorise the

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Corporation to permit another person to run his vehicle on his own under a permit issued to the Corporation by paying some amount to the Corporation. [375B]

3.3 It would have been different if there had been a law corresponding to the Uttar Pradesh Motor Vehicles Special Provisions Act (27 of 1976) under which the competent authority can authorise such operation subject to the conditions specified therein. [374C]

Adarsh Travels Bus Service & Ant., v. State of U.P. & Ors., [1985] 4 S.C.C. 557; Sumer Chand Sharma & Anr. v. State of U.P. & Anr. [1986] 3 S.C.C. 263, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 3486 of 1986.

From the Judgment and Order dated 6.1.1986 of the Madhya Pradesh High Court in Misc. Petition No. 2577 of 1984. K.K. Venugopal, G.L. Sanghi, M.N. Krishnamani and Diwan Balak Ram for the Petitioner.

Rameshwar Nath for the Respondents.

The order of the Court was delivered by VENKATARAMIAH, J. The petitioner in the above petition filed under Article 136 of the Constitution has prayed for special leave to appeal against the judgment of the High Court of Madhya Pradesh in Miscellaneous Petition No. 2577 of 1984 dated 6.1.1986. In the petition filed under Article 226 of the Constitution before the High Court the petitioner had questioned the validity of an advertisement issued by the Madhya Pradesh Road Transport Corporation (hereinafter referred to as 'the Corporation') inviting tenders from owners of motor vehicles for plying their vehicles on the routes mentioned therein as nominees of the Corporation under the permits issued in favour of the Corporation under the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'). It is alleged that the petitioner who was an unemployed graduate entered into an agreement with the Corporation to ply his bus as a nominee on the route Gwalior to Chinor via Dabra for a period of five years ending on December 23, 1982. The route in question came within scheme No. 38 published under section 68-C of the Act. The permit of the Corporation was to expire on 23.12.1982..Therefore the Corporation applied for renewal of its permit but since it took time for finalisation, tempo- rary permits were issued from time to time. The petitioner was permitted to ply his bus on the monthly basis during that period. Under the agreement the petitioner was liable to pay periodically certain amount to the Corporation as nomination fees or supervision charges and additional taxes. But on 12.8.1984, as stated earlier, tenders were invited by the Corporation from private operators for the grant of the privilege of running buses as stage carriages as the nominees of the Corporation. Aggrieved by the said advertisement the peti- tioner filed the writ petition, referred to above, in the High Court. The petitioner contended that even though he had been regularly paying the nomination fees and taxes, yet the Corporation in order to earn more money by way of nomination fees had invited tenders from others with a stipulation that tenders of those giving the highest offers by way of nomina- tion fees would be accepted and they would be appointed nominees of the Corporation to ply the stage carriages. The petitioner further contended that the decision to invite tenders was arbitrary and illegal. In the Writ Petition he obtained an interim order dated 11.9.1984 under which he was allowed to operate his motor vehicle as a stage carriage on the same terms and conditions as the nominee of the CorpOra- tion. The petitioner continued to ply his motor vehicle on the route in question on the basis of the temporary permits issued in the name of the Corporation till 31.5.1985. Since no temporary permit was obtained by the Corporation thereaf- ter the petitioner could not ply his motor vehicle in ques- tion. In the meanwhile under the orders passed by this Court in Special Leave Petition Nos. 941, 4667 to 4669, and 7115- 7117 of 1985 dated July 22, 1985 filed by some others, the petitioners therein who were similarly situated were allowed to ply their motor vehicles on some other routes as the nominees of the Corporation for a period of five years. The above order, it is alleged, was passed on a concession made bY the Corporation. The said order is not supported by reasons. The petitioner relying upon the above order con- tended before the High Court in the writ petition filed by him that he should also be permitted to ply his motor vehi- cle as a nominee of the Corporation for a further period of five years. The High Court declined to grant the request of the petitioner since by then the scheme No. 38 had been approved and had come into effect from June 1, 1985 and dismissed the writ petition on January 6, 1986. Aggrieved by the order of the High Court the petitioner has filed this petition.

It is contended on behalf of the petitioner that since the petitioner had been permitted to operate his motor vehicle as a stage carriage service as a nominee of the Corporation under a programme called

'Half a Million Job Programme' initiated by the Government of India which was being implemented by the State of Madhya Pradesh he could not be denied the privilege of continuing to operate his motor vehicle on the notified route in question. Reliance is also placed by the learned counsel for the petitioner on the order passed by this Court on July 22, 1985 in some of the special leave petitions referred to above permitting the petitioners therein to operate their motor vehicles as the nominees of the Corporation for a further period of five years. After the disposal of the special leave petitions referred to above on July 22, 1985 by this Court, on October 17, 1985 a Constitution Bench of this Court delivered its judgment in *Adarsh Travels Bus Service & Anr., v. State of U. P. & Others.* [1985] 4 S.C.C. 557. In that case the Constitution Bench held that reading sections 68~C, 68-D(3) and 68-FF of the Act together it was clear that once a scheme was published under section 68-D of the Act in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking could operate a stage carriage on the notified route or in the notified area except as provided in the scheme itself.

Admittedly, the approved scheme published under section 68-D of the Act has come into operation in respect of the route in question excluding the operation of stage carriages by all others. Section 68-FF of the Act states that where an approved scheme has been published under sub-section (3) of section 68-D of the Act in respect of any notified area or notified route the State Transport or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. It further provides that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route. It is not, however, permissible under the Act for the Corporation to obtain a permit under Chapter IV-A of the Act and to allow a private operator as its nominee to operate under that permit his motor vehicle as a stage carriage on the notified route. It cannot by granting such permission collect any money either as nomination fees or as royalty or supervision charges. Section 59 of the Act which lays down the general conditions attached to all permits provides that save as provided in section 61 of the Act, a permit shall not be transferable from one person to another except with the permission of the Transport Authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit. Section 61 of the Act only deals with the question of transfer of the permit on the death of the holder of the permit in favour of his successor. Section 42 of the Act provides that no owner of a transport vehicle 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. Section 42 and section 59 of the Act which are in Chapter IV of the Act apply to permits issued under Chapter IV-A of the Act also since in Chapter IV-A of the Act we do not find any provision which is inconsistent with these two sections. Section 68-B of the Act only provides that Chapter IV-A of the Act and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent 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. Even though the Corporation is established by the State Government under the Road Transport Corporations Act, 1950 and the State Government has by an executive order approved the action of the Corporation to allow private operators to operate their vehicles under the permits issued to the Corporation as the nominees of the Corporation, the Corporation cannot in law allow its nominees to exploit the permits by running their motor vehicles against payment of some amount to the Corporation since there is no statutory provision authorising the grant of such permission. It would have been different if there had been a law corresponding to the Uttar Pradesh Motor Vehicles Special Provisions Act (27 of 1976) under which the competent authority can authorise such operation subject to the conditions specified therein (See *Sumer Chand Sharma and Another v. State of U.P. and Another*, [1986] 3 S.C.C. 263). The provisions of the Act and in particular sections 42 and 59 clearly debar all holders of permits including the Corporation from indulging in such unauthorised trafficking in permits. The agreement entered into by the petitioner with the Corporation is clearly contrary to the Act and cannot, therefore, be enforced. In the circumstances, the petitioner is not entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage car-riage under the permit obtained by the Corporation as its nominee. It follows that the advertisement issued by the Corporation is equally ineffective. The position would not be different even where the permit is issued in favour of the Corporation under Chapter IV of the Act. If the Corporation cannot run its vehicle under a permit issued to it, it must surrender it so that the Regional Transport Authority may grant the permit to some other deserving applicant or it must transfer it to somebody else with the permission of the Regional Transport Authority granted under section 59 of the Act. It cannot however allow the permit to be used by somebody else to run his vehicle either for consideration or without consideration. If it does so it would be exercising the power of the Regional Transport Authority. The Corporation cannot thus indirectly clutch at the jurisdiction of the Regional Transport Authority. It is hoped that the Corporation will desist from entering into such agreements with third parties, which are wholly illegal and from continuing to allow them to run their vehicles as its nominees. The concerned Regional Transport Authority should immediately take action to stop such illegal operation of transport vehicles on all routes, both notified and non-notified routes.

It is seen that in one of the documents filed before the High Court it was asserted that the Corporation could allow private operators to operate their vehicles in the name of the Corporation under section 19(2)(h) of the Road Transport Corporation Act, 1950. That provision only authorises the Corporation to purchase or otherwise secure by agreement vehicles owned or possessed by the owner of any other undertaking for use thereof by the Corporation for the purposes of its undertaking. It does not however authorise the Corporation to permit another person to run his vehicle on his own under a permit issued to the Corporation by paying some amount to the Corporation. Hence no reliance can be placed on the above provision.

It was lastly contended on behalf of the petitioner that since the Corporation was not in a position to operate its motor vehicles on the notified routes in accordance with the approved scheme, the scheme itself is liable to be quashed. Since the said prayer is not made in the writ petition, we cannot consider the said question. It is open to the petitioner if he is so advised to approach the High Court for appropriate relief in this regard. We may, however, record here that in the counter-affidavit filed

before this Court it is stated that the Corporation is already operating its own motor vehicles on the route in question. The Special Leave Petition is, however, dismissed.

P.S.S.
dismissed.

Petition