

## Jagat Bus Service vs State Transport Authority And Ors. on 24 July, 1951

**Equivalent citations: AIR1952ALL74**

JUDGMENT

Sapru, J.

1. I should like to indicate my attitude towards the line taken by my brother, Agarwala J., and, with this object in view, I propose to make in this case a few remarks of my own. The question whether any or all the members of the State Transport Authority and the Regional Transport Authority were validly nominated or not came up for consideration before us at the time when we were disposing of the Full Bench case of Moti Lal v. Government of the State of Uttar Pradesh, A. I. R. (38) 1951 ALL. 257. Reference may be made to the observations relating to this matter by the various learned Judges composing that Bench. The learned Chief Justice was not impressed with the argument that officials of Government serving in the Transport Department must be said to have a financial interest inasmuch as their service depended upon the continuation of the Transport Department. He went on to observe that without further facts it would be impossible to hold that a person who was in the permanent service of the State could be deemed to have acquired a financial interest in an undertaking started by the Government by merely being put in charge of that Department. Mootham and Wanchoo JJ. pointed out that there could, at the time that the Motor Vehicles Act was passed be no objection to the Provincial and Regional Transport Authorities being composed of Government servants and persons nominated by the Government for they had to decide only the merits of conflicting claims between citizens and citizens. That might, however, cease to be so when the Government itself operated a transport undertaking. They went on, however, to observe that sufficient facts had not been placed before them to enable them to say whether any of the persons who at that time composed the various Transport Authorities had a financial interest whether as a proprietor or employee or otherwise in any transport undertaking within the meaning of Section 44 (2). They left that question as an open question which might require consideration at a later stage. The view which I took was that the object of the section, i. e., Section 44 (2), was to ensure that the persons appointed must be persons possessed of an independent mind not tied to the vested interests of such transport business. On that assumption I remarked that the scheme ruled out the appointment of officials serving either permanently or temporarily on a loan basis in the Transport Department. The remark was further made by me that the difficulty in deciding the question raised was one connected with facts. I indicated that on the assumption that the Regional Transport Officer got his salary from the budget of the Transport Department, I would be prepared to hold that he was disqualified from acting on the Board. I do not think that that disqualification would attach to some other officers as they had nothing to do with the Transport Department and that it would be going too far to hold that a permanent official who does not occupy the position of a transport official

appointed to the Board was covered by the disqualification laid down by Section 44(2) of the Act. Agarwala J. pointed out that a person could be said to have a financial interest only if he was an employee of the body, carrying on any transport undertaking. On that assumption, he held that Government employees in the Roadways Department undoubtedly fell under Section 44 (2), Motor Vehicles Act and if any such persons were found to have been appointed as members of the State Regional Transport Authority, their appointment would be invalid. He was unable to make any order in regard to that matter as the facts of that part of the case were not clear to him.

2. I have referred to the view of the various members of the Bench in order to indicate that at the time when this question was being considered in connection with other questions raised in regard to the Motor Vehicles Act, there was a paucity of the materials necessary for the formation of a definite judgment. I regret to observe that the materials before me are no more definite or satisfactory than they were at the time when the Full Bench decision was delivered. I note that in the affidavit which has been filed on behalf of the applicant all that is stated is that Shri Jagdish Prasad receives certain extra pecuniary allowances and amenities which he would not have received in his original post of Executive Engineer. No indication is however, given of the extra pecuniary allowances and various amenities which he is supposed to receive as Transport Commissioner. Repeatedly the suggestion was made by the Court that the budget of the Roadways sub-department as well as of the Transport Department might be placed before it. These figures could not be supplied to us and the position at the moment is that, according to the affidavit which has been filed by Mr. Sahi on behalf of the various officers, their salaries do not depend upon the success or failure of the transport undertaking and that their posts and salaries cannot be affected even if the Roadways were to be wound up. It has been further pointed out in that affidavit that Shri Jagdish Prasad is a permanent employee of the Public Works Department, that his substantive post is that of a Senior Superintending Engineer and that the staff car which was sanctioned for him was made available to all officers who have to do extensive touring duties. It has been categorically asserted that he has not been provided with any amenities as the Head of a Department which is in charge of running the Roadways. Our judgments in the Full Bench case, referred to above, proceeded upon the assumption that the Transport Commissioner was getting some financial benefit out of the Roadways sub-department I am unable to say on the material before us that that assumption is borne out by the facts which have been brought to our notice. We do not even know whether the State Transport Commissioner gets his salary from the budget of the Transport Department or the Roadways section of the Transport Department. There is nothing to indicate that the Deputy Inspector General of Police who, according to the test laid down by us, would be otherwise qualified to act on the Board gets his salary or any of his allowances from the Transport Department or, to be more accurate, from the Roadways section of the Transport Department. There is nothing to indicate that the officers in question get any gratuity, bonus or share in the profits of the Roadways run by Government. The position, as I see it, is that they are permanent officials who have not been shown, as, indeed, it was incumbent on the applicant to show, to be possessing a financial interest in the transport undertaking run by Government. I may mention that the third member is a M. L. A. Obviously he cannot be held to be under any disability under Section 44 (2) of the Act. I feel that on the materials before us, I would not be justified in holding that the Regional Transport Authority is illegally constituted. It is unnecessary to express any opinion on any other point in the case as this finding is sufficient to dispose of the application. This being the state of affairs, I feel that there is no

alternative but to reject the application presented to us by the applicant.

3. The thing to do for the applicant was to show that the persons who constituted the Regional Transport Authority were persons who could not be said to be possessed of an independent mind. They have not been shown to us to be tied to any such vested interests as would disqualify them under Section 44 (2), Motor Vehicles Act. The applicant has not, in the application presented by it, supplied material for us to hold that the persons serving in the State Transport Authority are under any disqualification. The burden was on the applicant to show that they were disqualified and it has not discharged that burden in this case.

4. I have indicated that the applicant has placed no materials which would enable me to say that, according to the test laid down by the Full Bench case of *Moti Lal v. Govt. of the State of Uttar Pradesh*, A. I. R. (38) 1951 ALL 257, referred to above, the persons nominated by the Government acting as members of the Regional Transport Authority suffer from any disqualification such as is contemplated by s. 44 (2), Motor Vehicles Act. The Regional Transport Authority was intended to be, as I have indicated above, an independent body which would bring to bear upon its work an independent mind in discharging the functions entrusted to it. I agree with my brother, Agarwala J., in the view that in reconstituting the Board Government should attach importance to the fact that the persons nominated by it are likely to inspire confidence in the mind of those over whom it has been placed in a position of authority, I must not be understood to say, however, that Government servants are not proper persons to be appointed to the Regional Transport Authority. It may, however, be that in the peculiar circumstances of this case, and particularly having regard to the entire history of the Transport Department, the better course for Government would be not to appoint to the Board any person, directly or indirectly, connected with that section of the Transport Department which has to deal with the Roadways section. This, however, is a question of high policy in regard to which, I recognise, the decision must necessarily rest with Government.

5. For the reasons given above, I would concur in the order proposed by my brother, Agarwala J.

Agarwala, J.

6. This is an application for the issue of a writ in the nature of prohibition restraining the State Transport Authority, Lucknow, from hearing, considering and disposing of the appeal of the applicant in respect of the latter's applications for permits for its motor vehicles USV 1196 and USV 1333 for the Saharanpur-Rishikesh route; for the issue of a writ in the nature of Mandamus to the Government of the State of Uttar Pradesh directing it to reconstitute the State Transport Authority, Lucknow, in accordance with Section 44 (2), Motor Vehicles Act, 1939, and for an order or direction restraining Shri Jagdish Pd. Transport Commissioner, Lucknow, and Shri B. B. S. Jetley, I. P., D. I. G. of Police, Lucknow, from serving as members of the State Transport Authority Tribunal, Lucknow.

7. The applicant is a firm styled Messrs. Jagat Bus Service, Saharanpur, which carries on the business of running buses on the route between Saharanpur and Rishikesh. It owns stage carriages Nos. USV 1196 and USV 1333. On 1-12-1939 the Uttar Pradesh Government introduced its Government

Roadways on a part of the aforesaid route. The Secretary, Regional Transport Authority, Meerut, informed the applicant that the Government had taken over that route for the operation of Roadways and directed it to stop plying its vehicles on the said route. On 3-1-1950 the said official intimated to the firm that the applicant was free to ply its vehicles up to 15-1-1950. On 15-1-1950, the applicant firm was informed that the Transport Commissioner had instructed the Transport Officer, Meerut, to permit the vehicles of the applicant to ply on the Saharanpur-Rishi-kesh State route. By means of a letter dated 24-1-1950 the Regional Transport Officer, Meerut, informed the applicant that it was allowed to ply its mail buses on the Saharanpur-Hardwar route up to the midnight of 31-1-1950. Certain restrictions were imposed upon the applicant for plying its buses. The applicant alleges that because the Roadways were given an undue and illegal preference over the applicant, it was compelled to stop the plying of its buses with effect from 1-2-1950. On 15-7-1950, the applicant made applications for permanent permits for plying the same two vehicles on the same route. These applications were rejected by the Regional Transport Authority on 23-10-1950 upon the ground that the route for which the permits were required was "not recognised." On 28-10-1950, the applicant preferred an appeal against this order before the State Transport Authority, Lucknow. Before the appeal could be disposed of, the applicant came to this Court for the issue of writs as mentioned already. The ground on which relief is sought is that two out of the three members of the State Transport Authority have a financial interest in the Government Roadways as employees of the Government and as such are disqualified from serving on the State Transport Authority within the meaning of Section 44 (2), Motor Vehicles Act and that as such the State Transport Authority is not properly constituted,

8. The State Transport Authority, Lucknow, which has been appointed to hear appeals under the Motor Vehicles Act, consists of three members, (1) Sri Jagdish Prasad, Transport Commissioner, (2) Sri B. B. S. Jetley, I.P., D.I.G. of Police and (3) Sri Ram Kripal Singh, M.L.A., Meerut.

9. Sri Jagdish Prasad is a senior Superintending Engineer in the employ of the State of Uttar Pradesh and has been appointed Transport Commissioner and is acting as such, that is to say, the head of the Transport Department of the State of Uttar Pradesh. This department carries on several activities, one of them being the running of Government Roadways. In his capacity as Transport Commissioner he gets special pay which is normally granted to persons holding positions of responsibility and to heads of departments. He has been sanctioned a staff car which is usually sanctioned to all officers serving the Government and who have to do extensive touring duties.

10. Sri B. B. S. Jetley is the Deputy Inspector General of Police and as such he is not connected directly with the Roadways undertaking nor even with the Transport Department of which the Roadways is a sub-department.

11. The question, however, has to be decided upon the language of Section 44 (2) of the Motor Vehicles Act. That section runs as follows:

"A State Transport Authority or a Regional Transport Authority shall consist of such number of officials and non officials as the Provincial Government may think fit to appoint; but no person who has any financial interest whether as proprietor,

employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a Provincial or Regional Transport Authority, and if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the Provincial Government of the acquisition of such interest and shall vacate office.'

12. The section disentitles a person who has "any financial interest whether as proprietor, employee or otherwise in any transport undertaking" from being appointed or serving as member of the State Transport Authority. Can it be said that Sri Jagdish Prasad, as Transport Commissioner, and Sri B. B. S. Jetley, as D. I. G Police, have any financial interest as proprietors, employees or otherwise in any transport undertaking? It will not be enough to show that, they may have a bias in favour of the Government which owns a transport undertaking. It must be shown that they have a financial interest in the under taking whether as proprietors, employees or otherwise. Since they are not proprietors, we are only concerned with their interest as "employees or otherwise" in any transport under taking. Sri B. B. S. Jetley is clearly not an employee of the transport undertaking known at Government Roadways. Shri Jagdish Prasad is no doubt the Transport Commissioner and Head of the Department which carries on Boadways undertaking. But as already stated, the Transport Department has several activities and the Roadways undertaking is merely one of them and he, though head of the Transport Department, cannot be said to be an employee in the Roadways undertaking. The Roadways department has its own General Managers in the various towns and secretaries and other officers and employees. His salary and amenities are not at all dependent upon the success or failure of the undertaking known as Roadways. Even if the Roadways are stopped and the Government winds up the undertaking, the Transport Department will still remain and function and Sri Jagdish Prasad, as the Transport Commissioner, will still have to supervise the Transport Department.

13. Can these two gentlemen be said to possess financial interest in the Government Roadways for "any other reasons?" Being Government servants they may be said to possess a bias in favour of the Government, but not a 'financial interest' which is what Section 44(2) requires.

14. This matter was considered by a Full Bench of this Court in the case of Moti Lal v. Govt. of the State of Uttar Pradesh, A. I. R. (38) 1951 ALL. 257, of which the members of the present Bench were also members. The Judges constituting the Full Bench expressed their opinions but did not decide the point finally because they considered that sufficient facts had not been placed before them for forming a definite opinion. The Hon'ble Chief Justice was of opinion:

"It is difficult to hold, without further, facts, that a person who is in the permanent service of the State can be deemed to have acquired a financial interest in an undertaking started by the Government by merely being put in charge of that Department. If the Government discontinues the Department, the permanent official, who belong either to the police or to the executive, will have to be provided for and will have a right either to revert to their Department or be absorbed elsewhere."

Mootham and Wanchoo JJ. envisaged the possibility of Government servants being disqualified from being appointed as members of the Provincial or Regional Transport Authorities, Sapru J. was of opinion that:

"It strikes me that the scheme rules out the appointment of officials serving, either permanently or temporarily, on a loan basis, in the Transport Department."

His Lordship further clarified what he meant by saying:

"On the assumption, however, that the Regional Transport Officer gets his salary from the budget of the Transport Department I would hold that he is disqualified from acting on the Board."

By the Transport Department my brother probably intended the transport undertaking known as the Roadways. It has not been shown in the present case that Shri Jagdiah Prasad gets his salary or amenities from the budget of the Roadways undertaking or even of the Transport Department. It is not alleged that Sri B. B. S. Jetley gets his salary from the budget of that department. In the Full Bench case, I made the following observations:

"It is clear that a person can be said to have a financial interest if he is an employee of a body carrying on any transport undertaking. Government employees in the Roadways Department will undoubtedly fall under the said clause and will be said to possess a financial interest in the Government undertaking."

What I meant by the words "an employee of a body carrying on any transport undertaking" was an employee in the transport undertaking of a body carrying on that undertaking; and for that reason I confined myself to employees in the Roadways Department, or rather sub-department, and not in the larger Transport Department of which the Roadways Department is a part.

15. That Government servants as such are not debarred from acting on the State Transport Authority was also held by the Madras High Court in *Sri Rama Villas Service Ltd. v. Road Traffic Board, Madras*, A. I. R. (35) 1948 Mad. 400 :

"Whilst the employees of a transport undertaking are disqualified, it would be carrying to the extreme that disability against all officials, e.g., a Forestry Officer, a Collector of a district or a Hospital Medical Officer, of a Government owing such undertaking in respect of those officials who are unconnected with it."

16. The consensus of opinion, therefore, is in favour of the view that merely because the Government owns an undertaking, its servants and officials are not disqualified from being appointed as members of the State or Regional Transport Authority. But if these officials or servants are employed in the undertaking itself, then they are certainly disqualified because, being employees of the undertaking, they have a financial interest in that undertaking.

17. A further argument was addressed to us. It was urged that the general rule which applies even to quasi-judicial bodies is that a person cannot be a Judge of his own cause or, in other words, that a person who is likely to be biased in favour of one party should not serve as a Judge in a case in which that party may be interested. In support of this principle reference was made to *Frame United Breweries Go. v. Bath Justices*, 1926 A. C. 586, where Viscount Cave L. C. laid down the general principle in these words :

"My Lords, if there is one principle which forms an integral part of the English law, it is that every member of a body engaged in a judicial proceeding must be able to act judicially; and it has been held over and over again that, if a member of such a body is subject to a bias (whether financial or other) in favour of or against either party to the dispute or is in such a position that a bias must be assumed he ought not to take part in the decision or even to sit upon the tribunal. This rule has been asserted, not only in the case of Courts of justice and other judicial tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as Judges of the rights of others."

18. That the principle enunciated by Viscount Cave L. C. is sound and is followed in this country as well can admit of no doubt whatever. But where the Legislature has expressly legislated upon the subject, the Courts are bound by the words of the enactment. In Section 44 (2) the only prohibition against a person acting as a member of a State or Regional Transport Authority is that he shall not have a financial interest in a transport undertaking. The Legislature having stated the disqualification in express terms, we will not be justified in travelling beyond that disqualification. The principle that applies to such cases is expressed in the maxim "*Expressio unius est exclusio alterius*"--the express mention of one thing implies the exclusion of another. The general principle, therefore, which prevents a person who has any interest, other than financial interest, cannot, therefore, be applied to the constitution of the State or Regional Transport Authorities. An objection to the constitution of that authority must be decided upon the language of Section 44 (2). Applying this test, we find that none of the members of the State Transport authority possesses any financial interest in the Roadways undertaking. In my opinion, the application has no force and I would dismiss it.

19. I cannot part with this case, however, without observing that although I have held above that Government servants who are not servants in the Government Roadways undertaking may be lawfully appointed as members of the State or Regional Transport Authorities, the Government should in the larger interest of the State consider how far it will be desirable or advisable to appoint such persons to those bodies. Having regard to the scheme of the Motor Vehicles Act, the State or the Regional Transport Authorities are intended to be independent statutory bodies with quasi-judicial functions. They are expected to bring an independent mind to bear upon the problems presented to them for solution. When the Government itself was not running any transport undertaking and was not competing with private individuals in the business of transport, there could have been no objection to Government servants directly or indirectly connected with the Roadways being appointed to these quasi-judicial tribunals. But now that the Government itself has become one of the interested parties, such of its servants as are directly or indirectly connected with

the Roadways department cannot in the nature of things, inspire confidence in the minds of the public that they would get justice from the tribunals composed entirely or partially of the employees of one of the parties to the dispute. It has been said that justice must not only be done but seem to be done. I would say that the rule is equally applicable to all officers of law or statutory bodies called upon to perform functions which are either judicial or quasi-judicial. It will be an evil day for the State when the Government creates an impression that its tribunals cannot be expected to act impartially in disputes between itself and private individuals.

20. By the Court.--The application is rejected; but, in the circumstances of the case, we make no order as to costs. The stay order is discharged .