

Hans Raj Kehar & Ors vs The State Of U.P. And Ors on 4 December, 1974

Equivalent citations: 1975 AIR 389, 1975 SCR (2) 916, AIR 1975 SUPREME COURT 389, 1975 (1) SCC 40, 1975 2 SCR 916, 1975 2 SCJ 268

Author: Hans Raj Khanna

Bench: Hans Raj Khanna, A.N. Ray, P. Jaganmohan Reddy, P.K. Goswami

PETITIONER:
HANS RAJ KEHAR & ORS.

Vs.

RESPONDENT:
THE STATE OF U.P. AND ORS.

DATE OF JUDGMENT 04/12/1974

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
RAY, A.N. (CJ)
REDDY, P. JAGANMOHAN
GOSWAMI, P.K.

CITATION:
1975 AIR 389 1975 SCR (2) 916
1975 SCC (1) 40
CITATOR INFO :
R 1978 SC 209 (2)
D 1983 SC 383 (8,18,19)
R 1992 SC 443 (11,12,13,14)

ACT:
Motor Vehicles Act, 1939-S.47-Amended by S. 43A of Motor Vehicles (U.P. Amendment) Act, 1972- Scope of amendment.
Constitution of India, 1950-If amended section violative of Art. 19(1)(f) and (g).

HEADNOTE:
For the purpose of making it easier to secure permits in respect of non nationalised routes and to simplify the procedure for this purpose s.47 of the Motor Vehicles Act

was amended by inserting s.43-A of the Motor Vehicles (U.P. Amendment) Act, 1972. The section provides that, in the case of non-nationalised routes. if the State Government is of the opinion that it is in the public interest to grant permits to all eligible applicants it may by notification in the gazette, issue a direction accordingly. A Notification was issued by the State Government. The appellant, questioned the validity of the section as well as of the notification both of which were upheld by the High Court. On appeal it was contended (i) that the State Government issued the impugned notification without applying its mind, as such a notification under s.43-A(2) could have been issued only in public interest; (ii) that the deletion of s.47(3) would have the effect of removing the limit on the number of permits for intra-region routes but that fact would not prevent the imposition of a limit for the number of permits for inter-region routes; and (3) that the impugned notification is violative of the rights of the appellants under Art. 19(1)(f) and (g) of the Constitution. Dismissing the appeal,

HELD : There is no infirmity in the impugned notification. Sub-section 2 of s. 43A gives power to the State Government to issue directions in respect of non-nationalised routes and areas by means of notification in case the Government is of the opinion that it is in the public interest to grant permits to all eligible applicants. The impugned notification recites that the State Government is of the opinion that it is in the public interest to grant permits for non-nationalised routes and areas to all eligible applicants. The notification thus ,gives all the particulars which are required by the statute. The notification removed the bar created by the limit on the number of permits for buses which ,could be issued and facilitates the issue of such permits to fresh applicants if they satisfy the requirement of eligibility. Any measure which results in larger number of buses operating on various routes would necessarily eliminate or in any case minimise long hours of waiting at the bus stands. [920 G; 921 A-B]

(2) There is no valid basis for the inference that if there is no limit on the number of permits for intra-region routes, limit on the number of permits for inter-region routes would have to be imposed. The object of the impugned notification is to liberalise the issue of permits and it is difficult to see how such a liberal measure can have the effect of introducing strictness or stringency in the matter of grant of permits for inter-region routes. [921 E]

(3) There is no valid basis for holding that the impugned provisions were violative of Art. 19. There is nothing in the notification which prevents the appellants from acquiring, holding and disposing of their property or prevents them from practising any profession or from carrying on any occupation. trade or business. The fact

that some others have also been enabled to obtain permit for running buses cannot constitute a violation of the appellants' right founder the above two clauses of Art. 19 of the Constitution. [922 B; 921 G]
917

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2072 of 1972.

Appeal from the judgment and order dated May 17 /3rd August, 1972 of the Allahabad High Court in C.W. Petn. No. 2438 of 1972.

S. K. Dhaon and S. M. Markandeya, for the appellants. D. N. Dikshit and O. P. Rana, for the respondents. The Judgment of the Court was delivered by KHANNA, J.-The short question which arises in this appeal filed on certificate against the judgment of Allahabad High Court is the validity of section 43A, inserted in the Motor Vehicles Act, 1939 by U.P. Act No. 25 of 1972, and the notification dated March 30, 1972 issued under that section. The High Court upheld the validity of the section and the notification.

The material part of section 47 of the Motor Vehicles Act, 1939 (Act No, 4 of 1939), as it stood before the amendment made by section 43A in Uttar Pradesh, read as under :

"(1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely :-

- (a) the interest of the public generally;
- (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from, journeys not being broken;
- (c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served;
- (d) the benefit to any particular locality or localities likely to be afforded by the service;
- (e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;
- (f) the condition of the roads included in the proposed route or area;

and shall also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies-, (3) A Regional Transport Authority may, having regard to the matters mentioned in sub-section (1), limit the number-

Of stage, carriages generally, or of any specified type for which stage carriage permits may be granted in the region or in any specified area or any specified route within the region."

Section 43A has been inserted by the Motor Vehicles (Uttar Pradesh Amendment) Act, 1972 (U.P. Act No. 25 of 1972). The material part of section 43A reads as under :-

"(1) The State Government may issue such directions of a general character as it may consider necessary or expedient in the public interest in respect of any matter relating to road transport to, the State, Transport Authority or to any Regional Transport Authority, and such Transport Authority shall give effect to all such directions. (2) Without prejudice to the generality of the foregoing power, where the State Government is of opinion that it is in the public interest to grant stage carriage permits (except in respect of routes or areas for which schemes have been published under section 68(C) or contract carriage permits or public carrier permits to all eligible applicants, it may by notification in the Gazette issue a direction accordingly, and thereupon all transport authorities as well as the State Transport Appellate Tribunal constituted under section 64 shall proceed to consider and decide all applications, appeals and revisions in that behalf (including any pending applications, appeals and revisions) as if-

(a) in section 47,-

(i) for sub-section (1) the following sub-section were substituted :

(i) A Regional Transport Authority shall, in considering an application for a stage car-

riage permit, have regard to the following matters, namely-

(a) the interest of the public generally;

(b) the advantage to the public of the service to be, provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the benefit to any particular locality or localities likely to be afforded by the service;

and shall also take into consideration any representation made by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies.';

(ii) sub-section (3) were omitted;

The impugned notification dated March 30, 1972 reads as under "WHEREAS the state government is of opinion that it is in the public interest to grant stage carriage permits (except in respect of routes or areas for which schemes have been published under section 68C of the Motor Vehicles Act, 1939), contract carriage permits and public carrier permits to all eligible applicants;

Now, therefore, in exercise of the power conferred by section 43A of the Motor Vehicles Act, 1939, the Governor is pleased to direct that stage carriage permits (except in respect of routes or areas aforesaid), contract carriage permits and public carrier permits shall be granted according to the provision of the said Act to all eligible applicants."

The petitioner-appellants hold stage carriage permits for operating buses on various routes in Uttar Pradesh. It is not necessary to set out any other fact because all that we are concerned with is the validity of section 43A and the notification issued thereunder.

The Motor Vehicles (Uttar Pradesh Amendment) Act, 1972 (U.P. Act No. 25 of 1972) received the assent of the President on May 1, 1972 and was published in the U.P. Gazette of the same date. Before that the Governor of U.P. had promulgated U.P. Ordinance No. 9 of 1972. U.P. Act No. 25 of 1972 took the place of that ordinance. The ordinance was repealed by section 3 of the amending Act. The following Statement of Objects and Reasons was given when introducing the Bill which- after being passed by the legislature took the shape of the amending Act:

"Operators engage in a race for securing permits for stage carriages on non-nationalised routes. Due to limitation on the number of permits this business is controlled by a few persons. Complaints in this regard are made every other day. Therefore, with a view to making it easier to secure permits in respect of non-nationalised routes and to introducing simplicity in procedure and to providing greater employment and securing equitable distribution thereof it was considered necessary to amend sections 47, 50, 55, 57 and 64 of the Motor Vehicles Act, 1939, suitably. Accordingly, in the public interest and with the aforesaid objects in view the Motor Vehicles (Uttar Pradesh Amendment) Ordinance, 1972 was promulgated. This Bill is introduced to replace the said ordinance."

Perusal of section 43A shows that the object of the legislature in inserting it in the Motor Vehicles Act was to make it easier to secure permits in respect of non-nationalised routes. The section seeks to simplify the procedure for this purpose. It has accordingly been provided that in the case of non-nationalised routes if the State Government is of the opinion that it is in the public interest to grant permits to all eligible applicants, it may by notification in the Gazette issue a direction accordingly. Once such notification is issued a number of consequences which have been enumerated in the various clauses of sub-section (2) of section-43A, follow. One effect of such

notification is that the transport authorities shall proceed to consider and decide applications, appeals and revisions (including pending applications appeals 'and revisions') as if sub-section (3) of section 47 were omitted. Under that sub-section a Regional Transport Authority was required to limit the number. of stage carriages generally, or of any specified type for which stage carriage permits might be. granted in the region or in any specified area or on any specified route within the region. As a consequence of the omission of that sub-section, it would be no longer necessary for the Regional Transport Authority to put a limit on the number of stage carriage permits. The result would be that it would be permissible to issue any number of such permits having regard to the interest of the public generally, the advantage to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken as also the benefit to any particular locality or localities likely to be afforded by the service. The Regional Transport Authority has also to take into consideration any representations made by a local authority or police authority within whose. jurisdiction any part of the proposed route or area lies. Sub-section (1) of section 43A clothes the State Government with power to issue directions of a general character as it may consider necessary or expedient in the public interest in respect of any matter relating to road transport. The transport authorities have been enjoined to give effect to all such directions. The State Government in exercise of the power conferred apparently by sub-section (2) of section 43A has issued the impugned notification dated March 30, 1972 in respect of routes or areas for which schemes have not been published under section 68C of the Motor Vehicles Act. According to the notification, contract carriage permits and public carrier permits shall, except in respect of routes or areas mentioned above, be granted according to the provisions of the said Act to all eligible applicants.

It has been argued on behalf of the appellants that the State Government issued the impugned notification without applying its mind, as such a notification under sub-section (2) of section 43A could have been issued only in public interest. We are unable to accede to this contention as we find no such infirmity in the impugned notification. Sub- section (2) of section 43A gives power to the State Government to issue direction in respect of non-nationalised routes and areas by means of notification in case that Government is of the opinion that it is in the public interest to grant permits to all eligible applicants. The impugned notification recites that the State Government is of the opinion that it is in the public interest to grant permits for non-nationalised routes and areas to all eligible applicants. The notification thus gives all the particulars which are required by the statute. It is no doubt true that the State Government failed to file a return in the High Court in support of its plea that the impugned notification was issued because the Government was of the opinion that it was in the public interest to grant permits to all eligible applicants, but that omission, in our opinion, is not very material as that fact is self-evident from the notification. The notification removes the bar created by the limit on the number of permits for buses which could be issued and, facilitates the issue of such permits to fresh applicants if they satisfy the requirement of. eligibility. It hardly need much argument to show that the larger number of buses operating on different routes would be for the convenience and benefit of the travelling public and as such would be in the public interest. Any measure which results in larger number of buses operating on various routes would necessarily eliminate or in any case minimise long hours of waiting at the bus stands. It would also relieve congestion and pro- vide for quick and prompt transport service. Good transport service is one of the basic requirements of a progressive society. Prompt and quick transport service being a

great boon for those who travel, any measure which provides for such an amenity is in the very nature of things in the public interest.

Argument has also been advanced that the deletion of section 47(3) would have the effect of removing the limit on the number of permits for intra-region routes but that fact would not prevent the imposition of a limit for the number of permits for inter-region routes. This argument has been advanced in the context of the case of the appellants that the impugned provisions discriminate in the matter of issue of permits for intra-region routes and those for inter-region routes and as such are violative of article 14 of the Constitution. We are not impressed by this argument for we find no valid basis for the inference that if there is no limit on the number of permits for intra-region routes, limit on the number of permits for inter-region routes would have to be imposed. The object of the impugned notification is to liberalise the issue of permits and we fail to see as to how such a liberal measure can have the effect of introducing strictness or, stringency in the matter of grant of permits for inter-region routes. Assuming that a different rule is applicable in the matter of inter-region routes, the differentiation is based upon reasonable classification. It is nobody's case that the impugned provision brings about discrimination in the matter of grant of permits between applicants belonging to the same class. The argument about the impugned provision being violative of article 14 is wholly untenable.

The contention that the impugned notification is violative of the rights of the appellants under article 19(1)(f) or

(g) of the Constitution is equally devoid of force. There is nothing in the notification which prevents the appellants from acquiring, holding and disposing of their property or prevents them from practising any profession or from carrying on any occupation, trade or business. The fact that some others have also been enabled to obtain permits for running buses cannot constitute a violation of the appellants, rights under the above two clauses of article 19 of the Constitution. The above provisions are not intended to grant a kind of monopoly to a few bus operators to the exclusion of other eligible persons. No right is guaranteed to any private party by article 19 of the Constitution of carrying on trade and business without competition from other eligible persons. Clause (g) of article 19(1) gives a right to all citizens subject to article 19(6) to practise any profession or to carry on any occupation, trade or business. It is an enabling provision and does not confer a right on those already practising a profession or carrying on any occupation, trade or business to exclude and debar fresh eligible entrants from practising that profession or from carrying on that occupation, trade or business. The said provision is not intended to make any profession, business or trade the exclusive preserve of a few persons. We, therefore, find no valid basis for holding that the impugned provisions are violative of article 19. The appeal consequently fails and is dismissed with costs. Appeal dismissed P.B.R.