

M/S. Krishna Bus Service Pvt. Ltd. Etc. ... vs State Of Haryana & Ors on 25 July, 1985

Equivalent citations: 1985 AIR 1651, 1985 SCR SUPL. (2) 330, AIR 1985 SUPREME COURT 1651, 1985 (3) SCC 711 (1985) 2 CURCC 682, (1985) 2 CURCC 682

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, R.B. Misra

PETITIONER:

M/s. KRISHNA BUS SERVICE PVT. LTD. ETC. ETC.

Vs.

RESPONDENT:

STATE OF HARYANA & ORS.

DATE OF JUDGMENT 25/07/1985

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

MISRA, R.B. (J)

CITATION:

1985 AIR 1651 1985 SCR Supl. (2) 330

1985 SCC (3) 711 1985 SCALE (2) 72

CITATOR INFO :

F 1987 SC 628 (2,10)

ACT:

The Punjab Motor Vehicles (Haryana First Amendment) Rules, 1973 adding clause (d) to 1062 whereby the General Manager, Haryana Roadways is conferred with all powers exercisable by a Deputy Superintendent of Police under the Motor Vehicles Act, 1939 (Act IV of 1939) - Whether the conferral of such a power is violative of Article 19(1)(d) of the Constitution and otherwise contrary to the object and spirit of the Act, in view of his position as General Manger.

HEADNOTE:

Under section 133-A of the Motor Vehicles Act, 1939 the

State Government may for the purpose of carrying into effect the provisions of the Act establish a motor vehicles department and appoint as officers thereof such as it thinks fit. Under Rule 10:2 of the Punjab Motor Vehicles Rules, 1940 (as in force in the State of Haryana) as it stood prior to March 16, 1973, under class II, the State Government had appointed and empowered (a) Secretaries, Regional Transport Authorities; (b) Extra Assistant Transport Controller (Operation); and (c) Extra Assistant Transport Controller (Traffic) with police powers exercisable by Deputy Superintendent of Police under the Act. There are several powers, like in sections 129. 129-A of the Act, which a Police Officer may exercise under the Act and the rules made thereunder against persons who are carrying on the business of providing motor transport facilities.

The appellant in the Civil Appeal and the petitioners in the Writ Petitions carry on their business of motor transport in the State of Haryana. All the motor vehicles operators are required to comply with the provisions of the Act and the rules made thereunder. Non-compliance with many of those provisions would result in prosecution and those who are found guilty are liable to be punished. The Haryana Roadways is a department of the State of Haryana. It also carries on the business of providing passenger transport facilities in competition with the appellant and the petitioners herein. It owns a fleet of motor vehicles for the purpose of its business. The Haryana Roadways

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is also subject to the various provisions of the Act and the rules made thereunder. The General Manager of Haryana Roadways is principally responsible for the proper administration of the Haryana Roadways.

By a notification dated March 16, 1973 called the Punjab Motor Vehicles (Haryana First Amendment) Act Rules, 1973, the General Manager Haryana Roadways was conferred with the powers exercisable by a Deputy Superintendent of Police by virtue of the addition of clause (d) in Rule 10:2 of the Punjab Motor Vehicles Rules, 1940.

The appellant in C.A. No. 2890/85 filed a writ petition No. 1770/78 on the file of the Punjab and Haryana High Court challenging the said conferral of power upon the General Manager, which was dismissed in limine and has come in appeal by way of Special Leave. The writ petitioners under Article 32 also contend: (i) the appointment of the General Manager, Haryana Roadways, who is himself responsible for the proper management of the activities of the Haryana Roadways and its prosperity and profitability and who is carrying on business in competition with other private operators as an officer who can exercise the powers of the Deputy Superintendent of Police under the Act is violative under Article 19 (1)(g) of the Constitution and it is otherwise contrary to the object and spirit of the Act; and (ii) that the General Manager, Haryana Roadways would not be

able to discharge his functions satisfactorily in the interests of the general public since as being himself under a duty to comply with the provisions of the Act and the rules made thereunder in respect of the motor vehicles of the Haryana Roadways cannot be expected to discharge the functions of checking, inspection, search and seizure regarding the motor vehicles belonging to the Haryana Roadways and to take appropriate steps to prosecute the officers of his own department who are not complying with the provisions of the Act.

Allowing the appeal and the petitions, the Court

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HELD: 1.1. The Notification dated March 16, 1973 called the Punjab Motor Vehicles (Haryana First Amendment) Rules, 1973 by which the General Manager, Haryana Roadways was conferred the powers exercisable by a Deputy Superintendent of Police under the Act is invalid. [338 D-E]

1.2 The appointment of the General Manager, Haryana Roadways who is directly responsible for running its motor vehicles as one of the officers who can exercise the powers of a

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Deputy Superintendent of Police under the Act imposes an unreasonable restriction on the fundamental right of the private motor vehicles operators and is therefore violative of Article 19(1)(g) of the Constitution. [337 G-H]

1.3 The powers of stopping the motor vehicles and the powers of inspection, search, seizure and detention exercised under the Act are serious restrictions on the fundamental right of the operators of motor vehicles guaranteed under Article 19(1) (g) of the Constitution. These powers can be considered as reasonable restrictions only when they are exercised properly in the interests of the general public. They should be reasonable both from the substantive as well as the procedural standpoint. Such powers should, therefore be entrusted to a person who is expected to exercise them fairly and without bias. [337 A-B]

The General Manager of Haryana Roadways who is a rival in business to the private operators of motor vehicles in the State and is intimately connected with the running of motor vehicles cannot be expected to discharge his duties in a fair and reasonable manner. An unobstructed operation of the motor vehicles by private owners operating along the same route or routes would naturally affect the earnings of the Haryana Roadways. Therefore, there is every likelihood of his being over-zealous in discharging his duties of stopping a vehicle and in searching, seizing and detaining motor vehicles belonging to others and at the same time excessively lenient in the case of vehicles belonging to his own department. If in discharging his duties in the case of vehicles belonging to others he fails to give due regard to the interests of the owners thereof he would be violating their fundamental right to carry on business in a reasonable

way. If he is too lenient in inspecting the vehicles belonging to his own department, the interests of the travelling public at large would be in peril. In both the cases there is a conflict between his duty on the one hand and his interest on the other. Moreover administration must be rooted in confidence and that confidence is destroyed when people begin to think that the officer concerned is biased. This is not a case which is governed by the rule of necessity. As it is, there are many other officers who are entrusted with the powers of the police officers under the Act. And, therefore, there is no necessity to appoint the General Manager of Haryana Roadways also to exercise the said powers. Further the appointment is not in the interests of the general public since large number of motor vehicles owned by the Haryana Roadways would not be subject to inspection and checking

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by an independent agency. The legislature could not have intended while enacting section 133-A of the Act that a person who was himself directly responsible for the proper running of the motor vehicles according to law could be appointed as the inspecting and investigating officer by the State Government for the purpose of enforcing the Act. [337 B-F, 338 A-C]

Junta Motor Transport and Another v. State of Uttar Pradesh, 1970 Allahabad Law Journal, Page 810, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2890 of 1985.

From the Judgment and Order dated 1.2.1984 of the Punjab and Haryana High Court in L.P. A. No. 28 of 1984.

AND Writ Petition Nos. 12895-12896 of 1984.

Under Article 32 of the Constitution of India S.K. Mehta for the Appellant in C.A. No. 2890 of 1985 and Petitioner in W.P. Nos. 12895-96/84.

M.K. Dua, P.N. Puri, Aman Vachhar for the Petitioners in W.P. Nos. 12895-96 of 1984.

M.S. Gujral and R.N. Poddar with him for the Respondents in W.P. Nos. 12895-96 of 1984.

Anil Dev Singh, N.S. Das Behl and R.N. Poddar with him for the Respondents in C.A. No. 2890 of 1985.

The Judgment of the Court was delivered by VENKATARAMIAH, J. In the above cases the short question which arise for consideration is whether the appointment of the General Manager of Haryana Roadways as an officer who can exercise the powers exercisable by a Deputy Superintendent of Police under the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') by the Government of Haryana under the Notification dated March 16, 1973 issued under section 133-A of the Act is valid or not.

The appellant in the above appeal by special leave questioned the validity of the appointment of the General Manager of Haryana Roadways under the Notification, referred to above, as an officer entitled to exercise the powers of a Deputy Superintendent of Police under the Act in Writ Petition No. 1770 of 1978 on the file of the High Court of Punjab and Haryana. The Writ Petition was dismissed by the High Court in limine. Aggrieved by the decision of the High Court the appellant has preferred the above appeal. The petitioners in the above mentioned Writ Petitions have questioned the validity of the above said Notification under Article 32 of the Constitution. Since the point involved in the Civil Appeal and in the Writ Petitions is common, we propose to dispose of all these cases by this common judgment.

The appellant in the Civil Appeal is a company carrying on the business of motor transport. Its motor vehicles operate within the State of Haryana also. The petitioners in the Writ Petitions are also carrying on the same kind of business in the State of Haryana. All the motor vehicles operators are required to comply with the provisions of the Act and the rules made thereunder. Non-compliance with many of those who are found guilty are liable to be punished. The Haryana Roadways is a department of the State of Haryana. It also carries on the business of providing passenger transport facilities in competition with the appellant and the petitioners herein. It owns a fleet of motor vehicles for the purpose of its business. The Haryana Roadways is also subject to the various provisions of the Act and the rules made thereunder. The General Manger of Haryana Roadways is principally responsible for the proper administration of the Haryana Roadways.

Under section 133-A of the Act the State Government may for the purpose of carrying into effect the provisions of the Act establish a motor vehicles department and appoint officers thereof such persons as it thinks fit. Section 129 of the Act provides that any police officer authorised in this behalf or other person authorised in this behalf by the State Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, 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, seize the mark of 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. Under section 129-A of the Act any police officer authorised in this behalf or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or being used in contravention of the provisions of section 22 or without the permit required by sub-section (1) of section 42 or in contravention of any condition of such permit relating 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. On such seizure it is open to the officer concerned to lodge a prosecution

before the magistrate competent to try it. There are several other powers which a police officer may exercise under the Act and the rules made thereunder against persons who are carrying on the business of providing motor transport facilities.

Rule 10.2 of the Punjab Motor Vehicles Rules, 1940 (as in force in the State of Haryana) as it stood prior to March 16, 1973 read as follows:

"10.2. Classification of Officers - (1) There shall be four classes of the staff, namely, Class I, Class II, Class III and Class IV. (2) The officers included in each class and the police powers exercisable by them under the Act, shall be as noted below against each. The police powers exercisable by the officers of the Transport Department are in respect of Motor Vehicles Offences under the Motor Vehicles Act, 1939 only:

Class I xx xx xx Class II

(a) Secretaries, Regional Powers exercisable Transport Authorities by Dy. Supdt. of Police.

(b) Extra Assistant Transport - do - Controller (O)

(c) Extra Assistant Transport - do -

Controller (T) xx xx xx xx But by Notification dated March 16, 1973, referred to above, the Haryana Government for the Transport Department in exercise of its powers under section 133-A of the Act amended Rule 10.2 by adding clause (d) in the category of Class II Officers referred to in Rule 10.2 of the Punjab Motor Vehicles Rules, 1940, the relevant portion of which reads as follows :-

"2. In the Punjab Motor Vehicles Rules, 1940 after clause (c) under class II in sub-rule 2 of rule 10.2 the following clause (d) shall be added namely:-

(d) General Manager, Power exercisable by a Haryana Roadways. Deputy Superintendent of Police.

After the issue of the above Notification, the General Manager, Haryana Roadways commenced to exercise the powers exercisable by a Deputy Superintendent of Police under the Act.

We are concerned in these cases with the validity of the above Notification dated March 16, 1973 by which the General Manager, Haryana Roadways is empowered to exercise the powers of a Deputy Superintendent of Police under the Act only.

The contention urged by the appellant and the petitioners in these cases is that the appointment of the General Manager, Haryana Roadways, who is himself responsible for the proper management of the activities of the Haryana Roadways and its prosperity and profitability and who is carrying on business in competition with other private operators as an officer who can exercise the powers of the

Deputy Superintendent of Police under the Act is violative under Article 19(1)(g) of the Constitution and it is otherwise contrary to the object and spirit of the Act. It is further urged that the General Manager, Haryana Roadways would not be able to discharge his functions satisfactorily in the interests of the general public since he being himself under a duty to comply with the provisions of the Act and the rules made thereunder in respect of the motor vehicles of the Haryana Roadways cannot be expected to discharge the functions of checking, inspection, search and seizure regarding the motor vehicles belonging to the Haryana Roadways and to take appropriate steps to prosecute the officers of his own department who are not complying with the provisions of the Act. In a given case it is likely that the General Manager himself may have to be prosecuted for not complying with law.

The powers of stopping the motor vehicles and the powers of inspection, search, seizure and detention exercised under the Act are serious restrictions on the fundamental right of the operators of motor vehicles guaranteed under Article 19(1)(g) of the Constitution. These powers can be considered as reasonable restrictions only when they are exercised properly in the interests of the general public. They should be reasonable both from the substantive as well as the procedural standpoint. Such powers should, therefore, be entrusted to a person who is expected to exercise them fairly and without bias. The General Manager of Haryana Roadways who is a rival in business to the private operators of motor vehicles in the State and is intimately connected with the running of motor vehicles cannot be expected to discharge his duties in a fair and reasonable manner. An unobstructed operation of the motor vehicles by private owners operating along the same route or routes would naturally affect the earnings of the Haryana Roadways. There is, therefore, every likelihood of his being over-zealous in discharging his duties of stopping a vehicle and in searching, seizing and detaining motor vehicles belonging to others and at the same time excessively lenient in the case of vehicles belonging to his own department. If in discharging his duties in the case of vehicles belonging to others he fails to give due regard to the interests of the owners thereof he would be violating their fundamental right to carry on business in a reasonable way. If he is too lenient in inspecting the vehicles belonging to his own department, the interests of the travelling public at large would be in peril. In both the cases there is a conflict between his duty on the one hand and his interest on the other. Moreover administration must be rooted in confidence and that confidence is destroyed when people begin to think that the officer concerned is biased. This is not a case which is governed by the rule of necessity. As it is, there are many other officers who are entrusted within the powers of the police officers under the Act. There was, therefore, no necessity to appoint the General Manager of Haryana Roadways also to exercise the said powers. We are, therefore, of the opinion that the appointment of the General Manager, Haryana Roadways who is directly responsible for running its motor vehicles as one of the officers who can exercise the powers of a Deputy Superintendent of Police under the Act imposes an unreasonable restriction on the fundamental right of the private motor vehicles operators and is therefore violative of Article 19(1)(g) of the Constitution. We however make it clear that the appointment of other officers of the State Government is not bad even though the Government is the owner of the vehicles as their connection with the running of the vehicles is too remote. The appointment of the General Manager as an officer who can exercise the powers of the Deputy Superintendent of Police under the Act is also not in the interests of the general public since the large number of motor vehicles owned by the Haryana Roadways would not be subject to inspection and checking by an independent agency. Can

we expect a fair investigation by a police officer into a criminal case in which his own kith and kin are involved as the accused? The position is not different in this case. The Legislature could not have intended while enacting section 133-A of the Act that a person who was himself directly responsible for the proper running of the motor vehicles according to law could be appointed as the inspecting and investigating officer by the State Government for the purpose of enforcing the Act.

Our view receives support from a decision of the High Court of Allahabad in Junta Motor Transport and Another v. State of Uttar Pradesh [1970] Allahabad Law Journal, Page 810, by which the appointment of Gazetted Officers, Station Superintendents, Traffic Superintendents and Assistant Traffic Inspectors of Uttar Pradesh Roadways as the prescribed authorities to enforce the Uttar Pradesh Motor Gadi (Yatra-kar) Adhiniyam, 1962 and the rules made thereunder was held to be void.

The appeal and the writ petitions are accordingly allowed. The impugned Notification dated March 16, 1973 called the Punjab Motor Vehicles (Haryana First Amendment) Rules, 1973 by which the General Manager, Haryana Roadways was conferred the powers exercisable by a Deputy Superintendent of Police under the Act is held to be invalid and is, therefore, quashed. There will, however, be no order as to costs.

S.R.

Appeal & Petitions allowed.