

Sree Gajanana Motor Transport Co. Ltd vs The State Of Karnataka And Ors on 22 September, 1976

Equivalent citations: 1977 AIR 418, 1977 SCR (1) 665, AIR 1977 SUPREME COURT 418, 1977 (1) SCR 665, 1977 (1) SCC 37, 1977 TAC 17, 1977 9 LAWYER 19, 1976 (2) KANTLJ 358, 1976 2 SCWR 344, 1976 U J (SC) 929, ILR 1977 1 KANT 327

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, P.N. Shingal

PETITIONER:

SREE GAJANANA MOTOR TRANSPORT CO. LTD.

Vs.

RESPONDENT:

THE STATE OF KARNATAKA AND ORS.

DATE OF JUDGMENT 22/09/1976

BENCH:

BEG, M. HAMEEDULLAH

BENCH:

BEG, M. HAMEEDULLAH

RAY, A.N. (CJ)

SHINGAL, P.N.

CITATION:

1977 AIR 418

1977 SCR (1) 665

1977 SCC (1) 37

ACT:

Motor Vehicles Act, 1939, s. 43(1)---State Government can direct imposition of fixed rates on stage-carriage operators for carrying mails as condition permit Ss. 48(3) and 59(3)(c), such directions do not interfere with quasi judicial functions of Regional Transport Authority--Special provision 48 of 3(XV) do not override general provision 43 of 1(d)(1).

HEADNOTE:

The State Government issued a notification u/s 43(1) Motor Vehicles Act, 1939, directing the State Transport Authority to impose the charge of certain uniform rates of

freight upon the operators of stage-carriages other than State Transport undertakings, carrying mails or postal goods. The S.T.A. then directed the Regional Transport Authority, u/s 44(1) of the Act, to impose the duty of carrying the postal goods upon rates fixed by the Government as a condition ~~under~~ ^{under} 48(3)(XV) to permits.

The appellant contended that the power of the Government u/s 43(1) to issue directions relating to "freights", does not include imposition of charges for carrying postal goods as conditions of permits granted by the Regional Transport Authority. in exercise of its quasi judicial powers. Dismissing the appeal the Court,

HELD: The State Government has the data and the legal power ~~Section~~ ^{Section} 43(1) of the Act to fix freights for carriage of postal goods in various types of carriages mentioned there, including stage carriages. Such charges are merely a species of freight on postal goods about which the State Government can issue appropriate directions. [668 E]

~~Section~~ ^{Section} 48(3) deals with what lies past the quasi-judicial stage of decision to grant the permit. At that stage, the decision to grant the permit is already there and only conditions have to be attached to the permit. The Regional Transport Authority has, at this stage to act mainly mechanically after considering matters on which it has, acting quasi-judicially, formed an opinion and taken a decision. There is no interference with the quasi-judicial functions as the annexation of a condition like. this is a part of the purely executive duties of the Regional Transport Authority. [668 D-E, 669 A]

S. Srikantiah & Ors. v. The Regional Transport Authority, Anantapur & Ors [1971] Suppl. SCR 816 followed.

(3) There is no question of any special provision overriding the general. The provisions are complementary. Section 48(3)(XV) is really meant to carry out the directions which can legally be given ~~Section~~ ^{Section} 43(1)(d)(i) of the Act. [669 B--C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 366 of 1976 (From the Judgment and Order dated 2.12.1974 of the Karnataka High Court in Civil Writ Appeal No. 171/73). K.N. Bhatta and M. Rangaswamy for the Appellant Mrs. Shyamla Pappu and Girish Chandra for Respondent No. 3 B.R.G.K. Achar for Respondents Nos. 1 and 2.

The Judgment of the Court was delivered by BEG J.--This appeal by special leave raises the question whether the State Government could, by a general direction given under Section 43(1) of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') fix the charges to be imposed upon operators of stage carriages for carrying mails as conditions of their permits.

Section 48 of the Act lays down the power of the Regional Transport Authority to grant stage carriage permits with conditions annexed thereto. The first stage of exercise of this power is preceded by the quasi-judicial enquiry, under Section 47 of the Act, into the matters affecting the interests of public in general. Section 48, sub-s. (1), subjecting the power to grant stage carriage permits to provisions of section 47 of the Act, includes what may be correctly characterised as the "quasi-judicial" power either to grant or refuse to grant a permit after consideration of matters stated in Section 47 of the Act. After that, we come to the power to attach conditions laid down in Section 48(3), and we find:

"49(3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:" "

Out of a number of kinds of conditions which may be imposed, the xvth, given below, is relevant:

"(xv) that mails shall be carried on any of the vehi-

cles authorised by the permit subject to such conditions (including conditions as to the time in which mails are to be carried and the charges which may be levied) as may be specified".

Now, it is contended on behalf of the appellants, that the power to attach conditions under Section 48(3) is also quasi-judicial with which the State Government neither has nor ought to have any concern. The conditions of permits are prescribed by statute. It is for the authority, exercising the power quasi-judicially to grant or not to grant permits, to decide what conditions to attach or not to attach to each permit. It is not, it is submitted, for the State Government to dictate any conditions to be attached. Hence, the challenge to the Government notification dated 30th May, 1968, which directed the State Transport Authority, to impose the charge of certain uniform rates of freight upon operators carrying mails or postal goods in stage carriages owned by operators other than State Transport Undertakings throughout the State. The State Transport Authority had, in its turn, issued a direction to the Regional Transport Authorities all over the State under Section 44 (1) of the Act to impose, duty of carrying the postal goods upon rates fixed by the Government as a condition annexed under Section 48(3)

(xv) to permits.

The relevant part of Section 43 (1) of the Act enacts: "43 (1) A State Government having regard to-

(a) the advantage's offered to the public, trade and industry by the above development of motor transport, and

(b) the desirability of co-ordinating road and rail transport, and

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among motor vehicles, may, from time to time, by notification in the Official Gazette, issue directions to the State Transport Authority--

(i) regarding the fixing of fares and freights for stage carriages, contract carriages and public carriers;"

Learned Counsel for the appellant contends that the power of the Government to issue directions relating to "freights" does not include imposition of charges for carrying postal goods as conditions permits which the Regional Transport Authority grants in exercise of its quasi-judicial powers. The attack on the validity of the Government direction is thus two fold: firstly, that it falls outside the scope of Section 43(1) of the Act as charges for carrying mail are not "freight" on goods carried; and, secondly, that no directions could be given to a quasi-judicial authority as to how it should perform its functions. So far as the first argument is concerned, we do not find much substance in it. The term "charge" is a broad one. As used here, it is not a technical term and has not been defined by the Act. It has, therefore, its ordinary dictionary meaning. It means any amount which may be demanded as a price for the rendering of some service or as price of some goods. The argument of the learned Counsel for the appellant that the Act uses the term "freight" to indicate the charge made on carriage of goods, whereas the term "fare" is used for the charge made for carrying passengers, itself rests on the assumption that the term charge is a wide one. It includes both freights and fares. It is true that the term "fare" is used in relation to charges made for carriage of passengers and the term freight is used for charges made for the carriage of goods. Nevertheless, both are charges. It may be that stage carriages are meant for the carriage of passengers. But, as is a matter of common knowledge, they also carry the luggage of passengers. In other words, they also carry some goods incidentally. The mail bags in which the postal goods are sent are only a type of goods which are not so bulky as to require trucks or special vans. It is possible to carry them in stage carriages together with the luggage of the passengers. In any case, this is a condition which is probably imposed only in those areas where mail vans of the State are not found to be necessary or economical to run. In the villages in the interior of some rural areas, there may not be so much mail to carry as to justify sending a mail van. Therefore, power is given to the Regional Transport Authority to attach the condition that postal goods should be carried in stage carriages at rates fixed by the Government. The real grievance of the operators is not that they have to carry postal goods as a condition of their permits but that the rates fixed are too low. The proper remedy for such a grievance is, as the High Court rightly pointed out, to apply to the Government for revision of rates fixed. Coming to the second submission, we may observe that, although, there is ample authority for the proposition that the grant of stage carriage permits is a quasi-judicial function, with which the State Government cannot interfere by giving directions which may impede the due performance of such functions, yet, when

Section 48(3) speaks of the power to attach conditions after the decision to grant the permit, it really deals with what lies past the quasi-judicial stage of decision to grant the permit. At that stage, the decision to grant the permit is already there and only conditions have to be attached to the permit, such as the necessity to carry postal goods on certain routes at rates fixed by the Government. On the face of it, these rates cannot be properly determined by the Regional Transport Authority. They have to be uniform throughout the State. A decision on what they should be must rest on considerations of policy and on facts which are not quite relevant to the grant of stage carriage permits.- In any case, it is the State Government which has the data and the legal power, under Section 43(1) of the Act, to fix freights for carriage of postal goods in various types of carriages, mentioned there, including stage carriages. We think that such charges are merely a species of freight on postal goods about which the State Government can issue appropriate directions to the State Transport Authority. The Regional Transport Authority has only to annex the condition automatically in areas where such a condition may be required to be annexed to the permits granted.

A reference to Section 59, sub. s. (3)(c) would show that acceptance of the fixed rates of fares and freights, after their notification under Section 43, becomes a condition which has to be automatically attached to a permit. The Regional Transport Authority has no option on this matter. This is what this Court held in *S. Srikantiah & Ors. v. The Regional Transport Authority, Anantapur & Ors.*(1) In other words, the Regional Transport Authority has to act mainly mechanically after considering matters on which it has to form an opinion and take a decision quasi-judicially. We think that there is no scope for argument that there is any interference here with the quasi-judicial functions of the Regional Transport Authority. The (1) [1971] Supp. S.C.R. 816.

annexation of a condition like this is a part of the purely executive Activities of the Regional Transport Authority. By Civil Miscellaneous Petition No. 4023 of 1976, learned Counsel for the appellant sought to add two further grounds of appeal. These were: that, the special provisions of Section 49(3)(xv) over-ride the general provisions of Section 43(I)(d) (i) on the principle of interpretation '*generalia specialibus non derogant*' : and, that, in view of the special provision of Section 48(3)(xv), the impugned notification of the State Government was *ultra vires*. The second ground is what follows if the first is good. But as we have already explained above, the first ground itself is not sound. There is no question of any special provision over-riding the general. The provisions are complementary. Section 48(3)(xv) is really meant to carry out the direction which can legally be given under section 43(1)(d)(i) of the Act. Therefore, although we allow the miscellaneous application and have permitted the grounds to be argued, we reject them as untenable.

For the reasons given above, we agree with the views contained in the judgment of the Karnataka High Court against which this appeal has been filed. We hold that the impugned direction and notification by the Government was not invalid and that the Regional Transport Authority had not acted illegally in attaching the required condition to the permit. Consequently, we dismiss this appeal with M.R. Appeal dismissed.